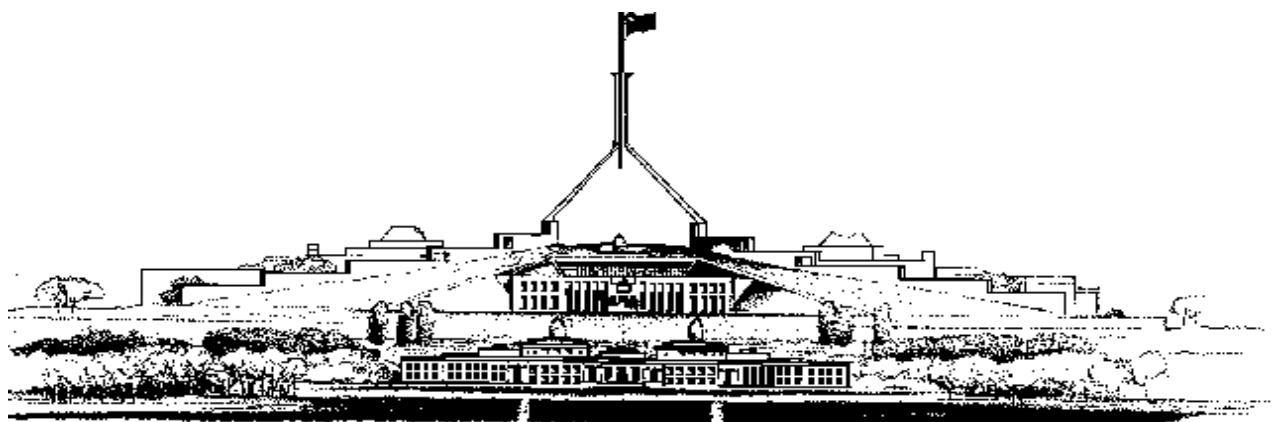




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 14, 2001  
THURSDAY, 27 SEPTEMBER 2001**

THIRTY-NINTH PARLIAMENT  
FIRST SESSION—SEVENTH PERIOD

BY AUTHORITY OF THE SENATE

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## SITTING DAYS—2001

Month	Date
February	6, 7, 8, 26, 27, 28
March	1, 5, 6, 7, 8, 26, 27, 28, 29
April	2, 3, 4, 5
May	22, 23, 24
June	4, 5, 6, 7, 18, 19, 20, 21, 25, 26, 27, 28
August	6, 7, 8, 9, 20, 21, 22, 23, 27, 28, 29, 30
September	17, 18, 19, 20, 24, 25, 26, 27
October	22, 23, 24, 25, 29, 30, 31
November	1, 12, 13, 14, 15, 19, 20, 21, 22
December	3, 4, 5, 6, 10, 11, 12, 13

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

*Thursday, 27 September 2001*

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

**PETITIONS**

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

**Australian Broadcasting Corporation: Independence and Funding**

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

The petition of the undersigned calls on the Federal Government to support:

- i. the independence of the ABC Board;
- ii. the Australian Democrats Private Members' Bill which provides for the establishment of a joint Parliamentary Committee to oversee ABC Board appointments so that the Board is constructed as a multi-partisan Board, truly independent from the government of the day;
- iii. an immediate increase in funding to the ABC in order that the ABC can make the transition to digital technology without undermining existing programs and services, and that it will be able to do this independently from commercial pressures, including advertising and sponsorship;
- iv. news and current affairs programming is made, scheduled and broadcast free from government interference, as required under law; and
- v. ABC programs and services which continue to meet the Charter, and which are made and broadcast free from pressures to comply with arbitrary ratings or other measures.

by **Senator Bourne** (from 17 citizens).

**Historical and Environmental Assets**

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

The petition of the undersigned respectfully showeth: but for a High Court decision narrowly favouring the Federal Government, 20,000 years old archaeological cave sites near the Franklin River, Tasmania, would have been destroyed, like a United Kingdom Government unable to stop a Wiltshire authority from clearing Stonehenge for a freeway. Constitutional protection for historical and environmental assets is needed.

Your petitioners therefore most humbly pray that the Senate in Parliament assembled should re-

quest the Government to hold a referendum to amend the Constitution so that:

- The Federal Government has the bounden constitutional duty, which any citizen may legally require it to perform and a right superior to state and local governments, to set above the commercial advantage of one generation, protect and restore all we hold in trust for the future
- Including relics, sites, features, areas, wildlife, buildings or things of Aboriginal and other historical, cultural, architectural, scientific, aesthetic, ecological or environmental importance; and
- To care for the maintenance of the balance of nature, manage land, marine and atmospheric use so as to avoid their degradation and act nationally and internationally in any matter seen as related to these; including
- To prevent military and commercial use or uranium and derivatives, beach and related mining; to preserve Heritage areas, The Great Barrier Reef region at least as originally defined in the 1975 Act and extended into Torres Strait and other coral reefs.

Your petitioners, as in duty bound, will ever pray.  
by **Senator Bourne** (from seven citizens).

**Republic Plebiscite: Head of State**

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

This petition of certain citizens of Australia draws to the attention of the Senate the growing desire for Australia to become a republic.

Your petitioners therefore request that the Senate conduct a plebiscite asking the Australian people if Australia should become a republic with an Australian citizen as Head of State in place of the Queen.

by **Senator Forshaw** (from 117 citizens).

Petitions received.

**NOTICES**

**Withdrawal**

**Senator COONAN (New South Wales)**

(9.31 a.m.)—Pursuant to notice given on the last day of sitting, on behalf of the Standing Committee on Regulations and Ordinances, I withdraw business of the Senate notice of motion No. 1 standing in my name for 11 sitting days after today.

**Presentation**

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

That the Senate—

- (a) notes that the South Australian Hiroshima Day Committee, on 5 August 2001, passed resolutions calling for:
  - (i) an apology from the Federal Government to those who were affected by the tests at Maralinga, Emu, Monte Bello Islands and Christmas Island,
  - (ii) compensation by the Federal Government of workers, indigenous people and others who were affected by the tests at Maralinga, Emu, Monte Bello Islands and Christmas Island,
  - (iii) the Federal Government to retain responsibility for management of nuclear weapons test sites and plutonium nuclear waste dumps,
  - (iv) state and federal governments to fully disclose the results of the radioactivity tests on deceased children,
  - (v) an inquiry by the South Australian Government into the health of people who were resident in Whyalla, Port Augusta, Port Pirie and Adelaide at the time of the Maralinga and Emu tests, and
  - (vi) the Australian Government to take steps to prevent a repetition of events such as those that occurred as a result of the nuclear weapons tests in Australia, in particular to:
    - (A) oppose the proposed United States nuclear missile defence system, also known as Star Wars,
    - (B) oppose the dumping of national and international nuclear wastes in South Australia, and
    - (C) oppose the construction of a nuclear reactor at Lucas Heights in New South Wales; and
- (b) commends the Hiroshima Day Committee 2001 for its work to ensure a nuclear free future for South Australia and Australia.

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

That the following bill be introduced: A Bill for an Act to amend the *Commonwealth Electoral Act 1918* to prevent discrimination against members of local government bodies, and for related purposes. *Commonwealth Electoral Amendment (Prevention of Discrimination against Members of Local Government Bodies) Bill 2001*.

**Senator COONAN** (New South Wales) (9.31 a.m.)—On behalf of the Standing

Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move that the Veterans' Entitlements (Means Test Treatment of Private Companies—Excluded Companies) Declaration 2001 made under subsection 52ZZA(5) of the Veterans' Entitlements Act 1986 be disallowed. I seek leave to incorporate in *Hansard* a short summary of the committee's concerns with this instrument.

Leave granted.

*The summary read as follows—*

Veterans' Entitlements (Means Test Treatment of Private Companies—Excluded Companies) Declaration 2001 made under subsection 52ZZA(5) of the Veterans' Entitlements Act 1986

The Declaration excludes a specified class of companies from the ambit of the definition of "designated private company" in the Act, with the result that assets and income of such companies will not be attributed to an individual for the purposes of means testing.

Section 5 of this Declaration excludes a company from the definition "designated private company" if the company has "the sole or dominant purpose" of receiving, managing and distributing property transferred to it by a government body for a community purpose, or income generated from the use of indigenous-held land. The Explanatory Statement provides no advice on how the sole or dominant purpose of a company is to be ascertained.

## BUSINESS

### Routine of Business

Motion (by Senator Ian Campbell)—by leave—agreed to:

That divisions may take place after 6 p.m. today.

### Government Business

Motion (by Senator Ian Campbell) agreed to:

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2 p.m. today:

No. 11 Royal Commissions and Other Legislation Amendment Bill 2001

No. 12 Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001

No. 13 Defence Legislation Amendment (Application of Criminal Code) Bill 2001

- No. 14 Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001
- No. 15 Cybercrime Bill 2001
- No. 16 Patents Amendment Bill 2001
- No. 17 Indigenous Education (Targeted Assistance) Amendment Bill 2001
- No. 18 Olympic Insignia Protection Amendment Bill 2001
- No. 19 Customs Tariff Amendment Bill (No. 4) 2001
- No. 20 Excise Tariff Amendment (Crude Oil) Bill 2001
- No. 21 Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001
- No. 23 Taxation Laws Amendment Bill (No. 2) 2001.

### General Business

Motion (by Senator Ian Campbell)—by leave—agreed to:

That the consideration of general business and consideration of committee reports, government responses and Auditor-General's reports not be proceeded with today.

### COMMITTEES

#### Foreign Affairs, Defence and Trade References Committee

##### Report

Motion (by Senator Hogg)—by leave—agreed to:

That busienss of the Senate order of the day no. 3, relating to the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the disposal of Defence properties be postponed to a later hour.

#### GOVERNMENT AGENCY CONTRACTS

##### Return to Order

Motion (by Senator George Campbell) agreed to:

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

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that a list of contracts in accordance with paragraph (2) has been

placed on the Internet, with access to the list through the department's or agency's home page.

- (2) The list of contracts referred to in paragraph (1) indicate:
  - (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
  - (b) the contractor, the amount of the consideration and the subject matter of each such contract;
  - (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
  - (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.
- (2A) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:
  - (a) the list is not up to date;
  - (b) not all relevant agencies are included;
  - (c) contracts all of which are confidential are not included.
- (2B) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.
- (3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (3A) In respect of letters including matter under paragraph (2A), the Auditor-General be requested to indicate in a

report under paragraph (3) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.

- (4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.
- (5) This order has effect on and after 1 July 2001.
- (6) In this order:

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

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

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

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

#### ASYLUM SEEKERS: COURT COSTS

Motion (by Senator Brown) not agreed to:

That the Senate—

- (a) notes that the civil rights lawyers who took action in the Federal Court on behalf of the asylum seekers on *MV Tampa* worked *pro bono* and in the public interest; and
- (b) calls on the Government to pay its own costs in the matter, including the costs of defending any appeals.

#### PARLIAMENTARY CHARTER OF RIGHTS AND FREEDOMS BILL 2001

##### First Reading

Motion (by Senator Lees) agreed to:

That the following bill be introduced: A bill for an Act relating to the human rights and fundamental freedoms of all Australians and all people in Australia, and for related purposes.

Motion (by Senator Lees) agreed to:

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

Bill read a first time.

##### Second Reading

Senator LEES (South Australia) (9.36 a.m.)—I move:

That this bill be now read a second time.

I present the explanatory memorandum and seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted

*The speech read as follows—*

##### Background

In 1973, Lionel Murphy introduced a proposed bill of rights in the Commonwealth Parliament. It was based on the *International Covenant on Civil and Political Rights* ('the Covenant'), to which Australia is a signatory. That bill lapsed when the Parliament was dissolved in 1974. In 1983, Gareth Evans again attempted to implement the Covenant, overseeing the drafting of another bill of rights. That bill was given Cabinet approval but was never introduced into Parliament. After the 1984 election, Lionel Bowen replaced Gareth Evans as Attorney-General. He had the bill re-drafted to water down its legal effect, and it was introduced into Parliament in 1985.

However, Labor's *Australian Bill of Rights Bill 1985* was ultimately abandoned.

The Democrats' *Parliamentary Charter of Rights and Freedoms Bill 2001* is based on Labor's 1985 legislation.

However, the legal effect of our proposed bill has been significantly enhanced to ensure that it is effective in protecting fundamental rights. The Labor bill did not apply to the laws or actions of the States and left the common law largely untouched. Our bill has a much broader operation. It applies to the laws and actions of State, Federal and Territory Governments, to the common law and to delegated legislation.

A draft version of this bill was released for comment last year, and this final version is the result of extensive community consultation.

##### The Charter of Rights and Freedoms

The Charter of Rights and Freedoms itself is a schedule to the bill and consists of 32 articles prohibiting the infringement of various civil and political freedoms. It is closely modelled on the 1985 Bill of Rights which, in turn, was modelled on the International Covenant on Civil and Political Rights.

##### Limitations on Rights

Article 3 of the Charter sets out the permissible limitations on the various rights and freedoms established by the bill. The Covenant itself contains some limitations on the various rights in the name of national security, public safety, public order and public health. These limitations are carried through into the Charter.

Other rights are entirely unqualified and appear to be 'absolute'. Some are stated very broadly, such as the right to freedom from arbitrary or unlawful interference. In all cases, the rights are subject to 'such reasonable limitations prescribed by law as can be demonstrably justified in a free and democratic society.' This mirrors the provision in the 1982 Canadian Charter of Rights and Freedoms. There are a number of conditions that must be fulfilled for such a limitation to be permissible:

- it must be 'reasonable';
- it may *limit*, but cannot wholly *deny*, the right in question;
- it must be 'prescribed by law': a specific law is required;
- the justification must be 'demonstrable': a court must be satisfied that the limits *are* justified; and
- the justification must be compatible with the basic values of a 'free and democratic society'.

#### **Rights Against Whom?**

The bill protects individuals against violations of their rights arising from the actions of governmental institutions or from the impact of State, Federal or Territory laws, the common law or delegated legislation.

As it stands, it does not affect the rights of individuals in relation to each other except when such rights flow from an impugned law. There is a case for extending the operation of the bill so that it applies as between private citizens. Constitutional law and human rights academic George Williams points out that there are more private police (such as security guards) than public police in Australia. Why should fundamental rights be enforceable against one but not the other? Williams suggests that the right to privacy may be in greater peril from corporations than from government, indicative of an emerging need for a broader approach to rights protection.

This would be quite a significant change to the bill. As it stands, it is one of the important principles of the bill that it is a shield and not a sword. It protects against governmental excesses by restraining the government in various ways. It does not create personal rights to be asserted against other private citizens. This is consistent with the approach taken to establishing rights protection regimes in other parts of the world. As Williams states, it may be the case that in "the longer term fundamental freedoms should also be guaranteed in specified contexts against non-governmental action."

#### **Effect in law**

#### Interpretation

When constructing Commonwealth, State and Territory legislation the courts will give preference to a construction that would result in the legislation not being inconsistent with the Charter, or would further the objects of the Charter.

#### Invalidity

Any existing legislation that is inconsistent with the Charter (despite attempts to construct the legislation consistently) will be invalid to the extent of the inconsistency. This provision will have a delayed effect. State, Federal and Territory governments will have three years to examine their laws for compliance.

Any future legislation that is inconsistent with the Charter will be invalid to the extent of the inconsistency unless it contains an express declaration that it is to operate notwithstanding the bill of rights. This will take effect immediately.

#### **The Human Rights and Equal Opportunity Commission**

The bill confers upon the Human Rights and Equal Opportunity Commission various functions relating to the Charter. The Commission may inquire into any act or practice of any governmental agency or authority that may infringe the Charter. It also has promotional and educational functions.

#### **Conclusion**

If passed, the proposed bill would be the biggest single step forward in the protection of fundamental rights that this country has ever seen. It would protect a broad range of fundamental rights recognised in international law. Those rights would not only be protected by force of law, but any alleged abuses would also be subject to investigation by the Human Rights and Equal Opportunity Commission.

It remains to be seen whether the Charter is capable of attracting the necessary political support. It is certainly more ambitious than the failed 1985 bill. The watered down 1985 Bill of Rights did not take the critical (but politically difficult) step of making the rights enforceable at a state level. This must be done to establish an effective regime for the protection of fundamental rights and I encourage Senators to support this legislation.

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

Leave granted; debate adjourned.

#### **HUNTER, DR ARNOLD (PUGGY)**

Motion (by Senator Ridgeway) agreed to:

That the Senate—

- (a) notes, with great sadness, the untimely passing of one of the nation's leading spokespeople on Aboriginal health

issues, Dr Arnold (Puggy) Hunter, of Broome in Western Australia on 3 September 2001;

(b) acknowledges that Dr Hunter's tireless efforts to improve Aboriginal health services spanned some 30 years, and included leadership roles with the Broome Regional Aboriginal Medical Service, the Kimberley Aboriginal Medical Services Council, the National Aboriginal and Torres Strait Islander Health Council; and the National Aboriginal Community Controlled Health Organisation; and

(c) pays tribute to Dr Hunter for his enormous contribution in raising national awareness of Aboriginal health problems and in improving access to health services for Aboriginal communities throughout Australia.

#### COMMITTEES

##### Rural and Regional Affairs and Transport References Committee

###### Meeting

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

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

##### Foreign Affairs, Defence and Trade References Committee

###### Extension of Time

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

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

##### STONEHAVEN POWER STATION

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

That the Senate—

(a) notes that:

(i) EPA Victoria approval has been given to AES Golden Plains to build a peak-load power station at Stonehaven, 8 km from Geelong city centre in Victoria,

(ii) when operating at full capacity for extended periods, the Stonehaven power station will potentially increase existing industrial nitrogen oxide emission levels over the Geelong region by 50 to 97 per cent depending on the fuel used;

(iii) EPA Victoria approval limits the operation of the peak load plant to 10 per cent of potential operation for the water injection unit – if low NOx units are to be used more than 20 per cent of the time then continued cycle conversion must be investigated,

(iv) 10 to 20 per cent of summertime respiratory-related hospital admissions in the north eastern United States are associated with ozone pollution, and

(v) electricity blackouts in February and November 2000 in Victoria have resulted in concerns about security of electricity supply;

(b) recognises the role of gas as a transitional fuel in power generation as we move towards less greenhouse intensive electricity generation;

(c) encourages the local community, including the Batesford and Geelong Action Group to continue efforts to pursue better outcomes for the people of the Geelong region; and

(d) calls on the Federal Government to work with the states to develop, as a matter of urgency, nationally consistent, world's best practice, energy efficiency and low pollution standards for all newly-commissioned power stations.

##### WESTERN SAHARA: REFERENDUM

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

That the Senate—

(a) notes that:

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

(ii) there has been little progress in the implementation of the UN/OAU peace plan for Western Sahara,

(iii) the UN Secretary General's Personal Envoy, Mr James Baker III, has proposed a 'Draft Framework Agreement' calling for the abandonment of the peace plan agreed by both parties in 1988,

(iv) the only just, legal and lasting solution to the conflict in Western Sahara is to allow the Saharawi people to exercise their right to

self-determination in a fair and just manner, and

- (v) a failure by the UN to implement the peace plan would lead to a deterioration of the situation and would have dire consequences for the whole region;
- (b) calls on both parties in the conflict, Morocco and the Frente Polisario, to fully cooperate with the UN in its efforts to organise a free and fair referendum in Western Sahara; and
- (c) urges the Commonwealth Government to make representations to:
  - (i) the UN, urging it to proceed as soon as possible in organising the long overdue referendum of self-determination, in accordance with the UN/OAU peace plan and all relevant UN resolutions, and
  - (ii) the Moroccan Government to fully cooperate with the UN and respect human rights in the occupied territories of Western Sahara.

### NOTICES

#### Postponement

Motion (by Senator Allison)—by leave—agreed to:

That general business notice of motion No. 1060 standing in her name for today, relating to the reference of a matter to the Select Committee on Superannuation and Financial Services, be postponed till a later hour.

Motion (by Senator Watson)—by leave—agreed to:

That general business notice of motion No. 1065 standing in his name for today, relating to the reference of matters to the Select Committee on Superannuation and Financial Services, be postponed till a later hour.

### COMMITTEES

#### Economics References Committee

##### Extension of Time

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

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

### PARLIAMENTARY ZONE

#### Approval of Works

Motion (by Senator Ian Campbell, at the request of Senator Ian Macdonald) agreed to:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being artworks and finishes to Speakers Square at Commonwealth Place in the Parliamentary Zone.

### RUGBY LEAGUE GRAND FINAL

Motion (by Senator Hutchins) agreed to:

That the Senate—

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

### EXCISE TARIFF AMENDMENT (CRUDE OIL) BILL 2001

Senator BROWN (Tasmania) (9.40 a.m.)—I seek leave to make a very brief statement about the *Excise Tariff Amendment (Crude Oil) Bill 2001*, which is going to be debated in non-controversial legislation later today.

Leave granted.

Senator BROWN—I thank the Senate. I simply wish to register my opposition to this bill. It is going to cost taxpayers many millions of dollars and it is going to extend exploration for crude oil, with some very worrying impacts on the environment, but not diminish our need to import oil. I have fundamental objections to that. I am concerned on environmental and revenue grounds. I thank the Senate for allowing me to register that point of view.

### COMMITTEES

#### Publications Committee

##### Report

Senator CALVERT (Tasmania) (9.41 a.m.)—On behalf of Senator Lightfoot and

the Publications Committee, I present the 29th report of the Publications Committee.

Ordered that the report be adopted.

### BUDGET 2001-02

#### Consideration by Finance and Public Administration Legislation Committee

##### Additional Information

**Senator CALVERT (Tasmania)** (9.42 a.m.)—On behalf of the Chair of the Finance and Public Administration Legislation Committee, Senator Mason, I present additional information received by the committee relating to hearings on the budget estimates for 2001-02.

### COMMITTEES

#### Public Accounts and Audit Committee

##### Report and Documents

**Senator CALVERT (Tasmania)** (9.43 a.m.)—On behalf of Senator Watson, on behalf of the Joint Committee of Public Accounts and Audit, I present the following report and documents: report No. 387: Annual Report 2000-01; and executive minutes and government responses to the following reports of the Joint Committee of Public Accounts and Audit—No. 370—*Review of Auditor-General's reports 1997-98, fourth quarter*; No. 372—*corporate governance and accountability arrangements for Commonwealth government business enterprises*; No. 373—*Review of Auditor-General's reports 1998-99, second half*; No. 376—*Review of Auditor-General's reports 1999-2000, first quarter*; No. 378—*Review of Auditor-General's reports 1999-2000, second quarter*; No. 379—*Contract management in the Australian Public Service*; and No. 380—*Review of Auditor-General's reports 1999-2000, third quarter*. I move:

That the Senate take note of the report.

I seek leave to incorporate the tabling statement in *Hansard*

Leave granted.

*The statement read as follows—*

Madam President, on behalf of the Joint Committee of Public Accounts and Audit (JCPAA), I present the Committee's Report No. 387—Annual Report 2000-2001. Under the Public Accounts and Audit Committee Act 1951, the JCPAA is required to prepare a report on the performance of its duties during the past financial year. I will

briefly discuss the Committee's highlights for the year.

Since the Financial Management and Accountability (FMA) Act, the Commonwealth Authorities and Companies (CAC) Act and the Auditor-General Act, came into effect on 1 January 1998, the Joint Committee of Public Accounts and Audit has completed a systematic review of the effectiveness of this suite of legislation. The Committee's reports on Corporate Governance Arrangements for Government Business Enterprises, and on the operation of the FMA and CAC Acts tabled last financial year were complemented by the Review of the Auditor-General Act 1997 which has just been completed and tabled as the Committee's Report 386.

Madam President, the JCPAA is proud of its work as the linchpin in accountability between Parliament and the people. It has been responsible for raising public standards in risk management, accountability and corporate governance. It has been the driving force for the introduction of accrual accounting in Commonwealth agencies. The Committee has been in the vanguard on these matters—a fact recognised both in Australia and overseas. The Committee's reports have been consulted widely and many of its recommendations have been adopted by governments of the day.

The JCPAA Chairman has been asked to speak in a number of forums and to participate in a number of conferences. Indeed I represented the Chairman and delivered a speech on 'Ecology of the Public Accounts Committee' to a CPA Study Group on Public Accounts Committees in Toronto, Canada in May this year.

One important change which illustrates the Committee's pre-eminence has been the change to the Committee's responsibility in 1997 when the Auditor-General reported to the Committee as the representative of the Parliament. The Committee has been diligent in its pursuit of developments which would facilitate the Auditor-General's programs. One breakthrough has been the gradual inclusion into agencies' contracts, of the Auditor-General's possible need to access third party premises in his own right to examine relevant documents.

Recent Committee inquiries into public service agencies have demonstrated shortcomings with respect to contract management. Such findings are significant in an environment where many government services have been subject to commercial contestability and contracting out, and in which responsibility for successful risk management has been devolved to agency heads. The Committee embarked on an inquiry into Contract

Management in the Australian Public Service in an attempt to identify systemic problems in contract administration and to develop better practice standards which can be applied across agencies.

The Committee also held public hearings and collected evidence on the Commonwealth Community Education and Information Program. As a result of this inquiry, the Committee developed and tabled its revised Guidelines for Government Advertising, Report No. 377 in September 2000.

Following the tabling of the Auditor-General's Report No. 38, 1999–2000, Coastwatch—Australian Customs Service, the Committee reviewed the effectiveness of the existing Coastwatch organisation, the challenges it faces, and examined options for the future. The Committee concluded that the organisation was performing well and had successfully detected and co-ordinated the interception of illegal entry vessels in northern Australian waters.

In its Coastwatch report, the Committee noted that the problem of people smuggling needed to be dealt with on an international level by addressing the issue in the source countries. This approach is currently being undertaken by the Minister for Immigration and Multicultural Affairs, the Minister for Foreign Affairs, and their respective Departments.

Recent Committee Auditor-General report reviews have found that accountability and risk management in agencies could be improved. However, the Committee did note that there had been improvements in contract administration among some agencies.

As part of its responsibility to consider the budget estimates of the Australian National Audit Office (ANAO), the Committee was briefed on the performance of the office by the Independent Auditor. The Committee resolved to ask the Independent Auditor to prepare a performance audit of ANAO as part of his routine audit responsibilities. This request was repeated in a recommendation in the Committee's report on the Auditor-General Act 1997, tabled in September 2001.

Finally, Madam President, in this financial year, the Committee hosted the 6th Biennial Conference of the Australasian Council of Public Accounts Committees (ACPAC) in Parliament House, Canberra during 4–6 February 2001.

In addition to representatives of public accounts committees and Auditors-General from the Australian States, Territories, New Zealand and Papua New Guinea, observers from Canada, Papua New Guinea, South Africa, Fiji, Hong Kong and the United Kingdom were present. It was decided to

expand the forum to admit Canada and South Africa as members, if they so wished.

Madam President, the Chairman has asked me to thank my colleagues on the Committee who have dedicated their time and effort to various inquiries and to reviewing the Auditor-General's reports throughout the 2000–2001 period. As well, I would like to thank the secretariat involved in the inquiries. The JCPAA has had a busy year in 2000–2001 and is justifiably proud of its work.

Madam President, I commend the JCPAA Annual Report 2000–2001 to the Senate.

Question resolved in the affirmative.

**Foreign Affairs, Defence and Trade References Committee Report**

**Senator HOGG (Queensland)** (9.43 a.m.)—I present the second report of the Foreign Affairs, Defence and Trade References Committee on the examination of developments in contemporary Japan and the implications for Australia, entitled *Japan: politics and society*.

Ordered that the report be printed.

**Senator HOGG**—I seek leave to move a motion in relation to the report.

Leave granted.

**Senator HOGG**—I move:

That the Senate take note of the report.

Whilst I have a tabling statement and I will be seeking leave in a moment to have it incorporated in *Hansard*, I would like to make a very brief comment, before seeking that leave, in respect of the secretary of the Foreign Affairs, Defence and Trade Committee, Paul Barsdell, who will be retiring as of next Tuesday, after long and meritorious service for the Senate. On behalf of the members of the committee, I extend our best wishes to Paul and his wife in his retirement and I thank him for the tireless work that he has done during my time on the committee in the Senate. I seek leave to have my tabling statement incorporated in *Hansard*.

Leave granted.

*The statement read as follows—*

This is the Committee's second report on the matter referred to it by the Senate, that is contemporary social, political and economic developments in Japan and their implications for Australia. Because of the wide-ranging nature of the inquiry, the Committee decided to report in two

stages. I presented a first report, Japan's economy: implications for Australia, in August last year. That first report dealt specifically with the contemporary economic developments and their implications for Australia. The report I am presenting today deals with the contemporary political and social changes in Japan and how they affect Australia.

I noted when I presented the first report last year that Japan is the world's second largest economy after the United States of America. It is the world's largest individual commodity importer, the world's leading creditor nation and it has one of the highest per capita incomes and the highest savings rate in the world. It occupies an even more dominant place in the Asia region where its economy is by far the largest. Aside from its global and regional significance, Japan is important to Australia as our largest trading partner.

Australia and Japan enjoy excellent political relations at all levels. We share many economic and strategic interests, especially in the Asia-Pacific region. The relationship is underpinned by a network of people-to-people links spanning the cultural, education, science, technology and sporting sectors. Some 20 different governmental committees meet regularly to discuss various aspects of Australia-Japan bilateral relationship.

The strength of the partnership with Japan was reflected in the May 1995 Joint Declaration of Prime Ministers Paul Keating and Ryutaro Hashimoto. The declaration described the relationship as of 'unprecedented quality' and stated that Japan welcomed Australia as an 'indispensable partner in regional affairs'.

The 1995 Joint Declaration on the Australia-Japan Partnership, and the 1997 Partnership Agenda between Australia and Japan attest in a very public fashion the close, cooperative and constructive relationship that the two countries enjoy.

Australia's relationship with Japan clearly illustrates how far partnership and integration with a major country in the Asia Pacific region has gone, and is an asset in Australia's dealings with other regional countries.

The Australia-Japan bilateral relationship features no significant tensions. Both Australia and Japan are close and important allies of the United States, whose forward strategic presence contributes to its unique and central role in Asia-Pacific security. Australia recognises the Japan-US Security Treaty as being central to the stability of the whole region, and supports the measured path now being taken by Japan in relation to its own defence, in the context of its constitution, the US alliance, and with sensitivity to regional views.

Australia and Japan are strong supporters of the UN system. Both seek an end to nuclear testing and the non-proliferation of weapons of mass destruction. Australia, as a significant player in the nuclear industry, is interested in the opportunity to participate in and to contribute to nuclear safety and the habit of consultation on security issues in the region. Both countries have cooperated closely in the area of nuclear weapons non-proliferation and arms reduction.

Australia supports Japan's bid for permanent membership of the United Nations Security Council, so that Japan can take a place reflecting its global political and economic standing.

The Japanese Government's announcement in September 2001 that it was considering sending troops to East Timor in 2002 as part of the UN's peacekeeping operations is evidence of Japan's determination to play its part in regional and global affairs.

The Australian Government has affirmed its support of Japan's greater regional security role in North East Asia. Uncertainties about the future direction of China's regional ambitions, notably in the South China Sea, the outcome of political changes in the Korean peninsula and further economic and political integration in South East Asia leave Japan's role as a regional power unclear. Australia, however, has committed itself to a partnership with Japan and therefore, Japan's diplomatic future will have direct ramifications for Australia.

The Japanese political scene is still undergoing fundamental change from the stable rule of the Liberal-Democratic Party to a multi-party, somewhat unstable system. The long-term implications of this are yet to be seen.

Japan is a dominating constant in Australia's foreign policy. The political, social and economic challenges facing Japan will have their effects on Japan's relationship with Australia. Australia will be wise to avoid complacency about its foreign policy successes with Japan.

Japan has been Australia's most significant trading partner for three decades. As Australia's largest trading partner and the third largest foreign investor in Australia, it is in Australia's interests that Japan quickly revitalise its economy and put in place those changes that will ensure its return to sustainable economic growth. The challenges facing Japan in this respect cannot be underestimated. The magnitude of the economic problems confronting Japan today is undeniable—one indicator being the level of public debt at 130 per cent of gross domestic product. Japan's financial sector is bearing the burden of an estimated minimum \$A294 billion in bad bank loans.

Fortunately for Australia, demand for our exports of coal and iron ore to Japan, worth over \$4 billion and \$3 billion respectively last year, has held up well in the face of the economic downturn. And in a huge economy like Japan, there are plenty of niche markets for the discerning exporter or importer.

A chapter in the Committee's report deals with the political significance and power of landholders and farmers. The farm sector in Japan is in a transitional phase from a dominant, well organised and electorally powerful majority interest, to a less well organised minority interest. Many of the changes in the political demography of agriculture are the culmination of trends that have been taking place over some decades and which will continue in the future. The contraction in farmers' political power is an incremental rather than a dramatic process, and it remains tenacious and formidable in many respects. Greater expertise on this subject is vital for those engaged in trade in agricultural produce with Japan: we need to study the nature of the farm lobby, and understand that politics, not abstract economic theory, dictates agricultural policy in Japan.

The Committee studied the important demographic changes taking place in Japanese society, which many economists consider to be the root cause of Japan's current economic difficulties. Japan has a rapidly ageing population, a birth-rate that at 1.34 is well below replacement level, and negligible immigration. Australia and Japan have been collaborating under the Partnership in Health and Family Services agreed to in January 1998, and the Committee has recommended that the Australian Government continue to support the program of activities set up under the Partnership.

The demographic and economic changes have had important effects on the levels of employment and on employment practices. These are described in the Committee's report. Unemployment in Japan is now at its highest level since 1953.

These changes are also having their effects on family life and the roles of women in Japan. The care of the aged is posing challenges for Japan. The Committee took evidence on these issues, which it is important to understand in framing Australia's trade and foreign policy in relation to Japan. The Australia-Japan Partnership Agenda provides an appropriate framework for discussion and consultation between the two countries on these matters.

The notion of partnership is central to the understanding of the Australia-Japan relationship. Like all partnerships, it needs constant attention and

nurturing. The Committee's inquiry and present report are a manifestation of this.

The Committee is grateful to all those who provided evidence and otherwise assisted the inquiry.

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

Leave granted; debate adjourned.

**Employment, Workplace Relations, Small Business and Education References Committee Report**

**Senator JACINTA COLLINS (Victoria)**

(9.45 a.m.)—I present the report of the Employment, Workplace Relations, Small Business and Education References Committee entitled *Universities in Crisis*, report on higher education, together with the *Hansard* record of the committee's proceedings, documents presented to the committee, responses to adverse comments, responses to questions on notice and submissions.

Ordered that the report be printed.

**Senator JACINTA COLLINS**—I seek leave to move a motion in relation to the report.

Leave granted.

**Senator JACINTA COLLINS**—I move:

That the Senate take note of the report.

Like Senator Hogg, before I seek leave to incorporate my tabling statement there are some brief comments that I would like to make. Firstly, I note that this is the second major report on the education sector presented by this committee to the Senate in this parliament. Having reported on the vocational education and training sector last year and having made major recommendations on quality assurance in vocational education and training, the committee believes that it has been equally broad in its inquiry into the higher education sector. This report that we are tabling is very comprehensive and has been a significant inquiry into the problems faced by that sector.

I would like to thank my colleagues on the committee for the work that they have put into this inquiry, particularly the secretariat and secretary, John Carter. I would also like to acknowledge the effort put into the inquiry process and the report itself by Margaret Blood, the principal research officer, who

had to deal with conflicting evidence and the minefield of statistical anomalies with which the committee was presented. There had been some media commentary about this inquiry that it would never report. Within very tight time frames we have ensured that a very comprehensive report is before the Senate before the end of this parliament and I commend it to anyone with an interest in this sector. I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

*The statement read as follows—*

This is the second major report on education sector policy presented by this Committee to the Senate in this parliament. Having reported on the VET sector last year, and having made major recommendations on quality assurance in vocational education and training, the Committee believes that it has been equally broad in its inquiry into the higher education sector.

The Committee set itself an ambitious task in its examination of the sector. We dealt with a national public higher education system that incorporates 37 universities and some other institutions of lesser status. Over 80,000 people are engaged in providing education to some 700,000 students within the sector at a cost of around \$9.5 billion this year.

In terms of income generation, universities bring in export dollars approaching \$1 billion and are an almost indispensable element to some regional economies. Universities in Newcastle, Geelong and Armidale, for instance, are the largest single employers in those cities.

Therefore, even if we regard higher education as only a service industry, its place in the economy is significant. But it is much more than that. It is the training base for the knowledge economy. It is the source of nearly all our vocational preparation of higher-level professional skills and knowledge.

Given that universities have such an important role in the economic and social life of Australia, the public under-investment in the sector is difficult to comprehend. It is one thing to argue that increased private funding is desirable. No one disagrees with that. However, it is quite another to argue, as the Government does, that private sources of income should make up the shortfall of shrinking public funding.

I'm sad to say that the Committee found the higher education sector in a fairly sorry state, and a great deal of regeneration now needs to be done to ensure the long term viability of higher education in our nation. Many of the matters of concern

have to do with governance issues, but the great majority are connected in some way to lack of funds.

These concerns cannot continue to be dismissed by the Government as attributable to poor management within the sector, or to the failure of universities to adjust to new ways of thinking about their role in society.

It is clear that the lack of Commonwealth funding is affecting the quality of education, particularly undergraduate teaching. While the Government trumpets its initiatives and increased expenditure for research, it forgets that the main game for universities is undergraduate work, producing the educated and trained specialists required in the workforce.

It is this lack of government funding that is resulting in a brain drain as our best academics head for positions abroad where they can achieve more in their field of work. It is lack of government funding that is resulting in a serious rundown in library and laboratory infrastructure to the extent that many universities in Asia are now far better equipped than those in Australia. That will have a noticeable impact on Australia's ability to attract overseas students in the future.

The Government has peddled a myth that private sources of university income will make up for reduced Commonwealth expenditure. The minority report makes much of the fact that private sources of income have resulted in an increased total amount of income for the sector. For inexplicable reasons, the Government and its supporters seem not to understand that private income, apart from student fees, comes in the form of tied money which cannot be used to support the general needs of the whole university: like libraries and laboratories, like salary increases. Funding from private sources will do nothing to reduce the size of tutorials, or even ensure that they are scheduled in the many undergraduate courses around the country where they have been discontinued.

The Government has also tried to create a misleading impression that it is leading a culture change will see us move closer to an American experience, where private funding is a long tradition.

There are two comments to be made about this. First, the United States spends a far higher proportion of GDP on higher education than Australia, and the proportion of public funding is far higher. Second, if the Government is going to announce a culture change it needs to inform the business sector, which sees no reason to invest in higher education beyond its current minimal level. Could it be that business, in common with

the rest of the country, sees higher education as primarily a government occupation?

Interestingly, I note that my old university, Monash, has long-term ambitions to become totally independent of government funding. Apparently, Monash considers this to be a desirable goal. They should know—and I'm sure they do—that Stanford University in California, one of that country's leading universities in science and technology, receives 70 per cent of its funding from United States government agencies, both state and federal. I only make the point, that using the United States as some kind of international model in higher education is fairly pointless from which ever ideological stance one wishes to take.

I must say that this inquiry has generated a great deal of interest in universities. As I have observed before in the tabling of reports, the inquiry process is as important as the outcome. In the case of this inquiry, a record number of 364 submissions was received, representing nearly all facets of university life and experience. Also, it is the first inquiry that listened to academics describe the conditions of their teaching and their research, of the difficulties they, along with their students and vice-chancellors, face with reduced Commonwealth funding.

This inquiry has been a fairly intense process, beginning in earnest last March, and with the final of our fifteen hearings concluding five weeks ago. It has produced the longest report ever made by this Committee. It draws heavily on the research of governmental and special interest groups and associations in the higher education field. It has also drawn on the research of academic specialists in the area.

Higher education is a difficult area of research because statistical tables, particularly in relation to expenditure details, can often be used to justify whatever point needs to be made. The contrived use of higher education statistics by the current Government is particularly noteworthy. The use of OECD figures to compare Australia's performance with advanced countries is also problematic, but at least the comparative expenditure trends are now increasingly clear, and it may be safely concluded that Australia has dropped close to the bottom of the OECD expenditure league table.

To arrest this downward trend in the university sector, the Committee has made a significant series of recommendations. Firstly and fundamentally, the Government must end the funding crisis in higher education by adopting designated Commonwealth programs involving significant expansion in public investment in the higher education system over a ten-year period. This programs need to include acknowledging the poor

salary levels of academics in Australia and the increasing of salary levels to stem the 'brain drain' of university personnel moving overseas.

Other funding recommendations include the Government identifying alternate models that would better reflect the specific needs of regional and new universities, and those serving large populations of disadvantaged students.

These funding changes are to take place within the context of the Government examining the current balance between Federal and State responsibilities for higher education and considering the possible transfer of statutory powers for universities to the Commonwealth.

In terms of rejuvenating higher education morale, there is need to build national consensus in regards to the future role that universities have in Australia. This is to be achieved through a National Summit that brings together all stakeholders and interest groups.

To further encourage this renewal, a national Universities Ombudsman should be appointed, funded by the Commonwealth, after consultation with the States and national representative bodies on higher education. The Ombudsman office should include the power to investigate ancillary university fees and charges and to conciliate complaints.

Additionally, to promote a new level of independent advice across the sector and to the government, a cross-sectoral advisory body should be established. This body should include respected and experienced individuals reflecting community interests as well as those of higher education.

The Government should also consider appointing Federal Parliamentary representatives, or parliamentary nominees, to governing bodies of universities in receipt of Commonwealth monies. This will help ensure that the Government remains 'on the pulse' of Australia's knowledge capabilities more than previously.

There are many more recommendations in the report. These include increasing quality processes within the university sector, expansion of research opportunities, greater clarification surrounding the commercial structures of universities and a review of student income support measures. I urge all interested Senators to seek a copy of the report.

In closing, the Committee's conclusions and recommendation rest upon the broad spectrum of evidence, some of which the current government usually chooses to ignore when it makes decisions for the sector. The Committee is confident that its soundings have enabled it to assess accurately the parlous condition of higher education - a condition that cannot be rationalised away by

the selective use of expenditure data. This has been a public process in the best tradition of Senate inquiries. If listening to the evidence has been an uncomfortable experience for some Government senators, it is because the sector itself is going through some very uncomfortable times, and without any promise, from this Government, of respite or regeneration.

Finally, I thank my colleagues on the Committee for the work that they put into this inquiry. I also thank the secretariat for its work. In particular, I would like to acknowledge the effort put into the inquiry process and the report by Margaret Blood, the principal research officer, who had to deal with the conflicting evidence and the minefield of statistical anomalies with which the Committee was presented.

**Senator CARR (Victoria)** (9.47 a.m.)—This report is entitled *Universities in Crisis*. This inquiry into the capacity of the public institutions to meet Australia's higher education needs has attracted some 360 submissions. That in itself is testimony to the widespread sentiment for university reform that the inquiry has tapped. The title *Universities in Crisis* was taken from evidence provided to the inquiry by the Chair of the Australian Vice-Chancellors Committee. It is both apt and accurate, for the massive cuts to public education and to public universities in particular have seriously eroded the resilience, quality and morale of our public universities.

Before addressing a number of the report's important recommendations, I wish to refer to the current context for higher education in this country. If the issues addressed in this report are considered and implemented, then higher education can anticipate its future with great confidence, which is not the case at the moment. This report has the potential to represent a new beginning—renewed opportunities for staff and students alike, a focus on high quality education, the encouragement of as many people as possible to take up the opportunities for tertiary education, and the reinforcement of the value and the importance of public tertiary education, together with adequate funding to enable universities to concentrate on their core businesses of teaching and research rather than dissipating energies and resources in the search for alternative funding in order to survive.

This has proved to be an exceptionally wide-ranging inquiry. That we have received more than 360 submissions and heard some 220 witnesses testifies to the depth of public feeling held by Australians for their universities and to the level of fear that prevails about their future. The report also provides us with a detailed insight into the condition of Australian universities and the massive problems that they face. Those problems are legion, they are increasing and they are well canvassed in this report. The strength of this report does not solely lie in its detailed analysis of the shortcomings and problems inherent in current policy; it also lies in its vision of a renewed tertiary education system buoyed by the certainty of increased public investment.

While I have mentioned necessary increases in public investment, which I will return to later, I also wish to emphasise that the current crisis in higher education will not be solved by money alone. The overwhelming weight of evidence and testimony returned time and time again to a crisis in confidence and a lack of morale, of collegiality and of transparent public practice at universities in an environment where established responsibilities for social and ethical obligations are being sacrificed for short-term, expedient financial purposes as universities struggle to maintain standards and educational programs. In this context, quality, integrity and a reaffirmation of the public responsibilities of our universities need to be reaffirmed by our universities and by government confidence in universities.

This is all the more necessary in light of the concerns raised during the inquiry about the proliferation, extent and practices of commercial operations in universities. Commercial operations are a legitimate activity. They are a longstanding feature of university life. The principle of universities exploiting intellectual property in the public good is one that I support. What is evident is that, for some, such activities are increasingly becoming an end in themselves. They operate in an increasingly private mode, often independent from scrutiny and at times lacking in transparency.

Another issue is the degree to which revenue streams are designed to replace public investment in research and the consequences of such efforts. Private income does not represent a guaranteed, sustainable revenue stream capable of supplanting public investment, nor is such an ambition healthy in terms of the priorities of public investment in our higher education system. The balance between public investment and private revenue needs to be clearly defined, and the range of legal and public responsibilities that accrue to universities in their commercial activities urgently requires clarification and redefinition. These are major issues that are properly highlighted in this report.

I wish to highlight a number of the report's important recommendations. The committee recommends that the government end the funding crisis in higher education by adopting a designated Commonwealth program involving significant expansion in public investment in higher education over a 10-year period. As I have previously said, money will not solve all of the problems revealed in the report, but without additional resources such problems will only get worse. The level of damage sustained has been so great that a 'quick fix' would be neither effective nor desirable. What is needed is a long-term, sustained commitment to support the tertiary education sector—and, frankly, that is something only a Labor government can deliver.

We also seek the appointment of a national ombudsman. Quite clearly, the existing complaints mechanisms within universities have failed. We want a review of the various arrangements in regard to income support, and there are obviously issues in regard to HECS. We would see the re-establishment of a cross-sectoral advisory body to provide independent, impartial advice to government. We seek a national summit, representative of cross-sectoral interests, to ensure that we can build a national consensus around what should be consideration of our nation's long-term higher educational needs and a commitment to academic freedom, to intellectual inquiry and to the primacy of responsibility for meeting public educational and research needs over commercial activities.

We also suggest that it is time to review the governance of universities. It is time for the Commonwealth to take an increasing role directly in the running of universities. The current arrangement of a divide between the Commonwealth and the states is frankly not working. State administrations may well have the legal responsibility under various acts of state parliaments; it is the Commonwealth that funds the bulk of universities. The gulf between responsibility and funding has gone on for too long and it needs to be addressed. We also suggest in this report that it is time for this parliament to appoint representatives to university councils. For too long we have had a situation where universities have not had access directly to this parliament through representatives on their councils.

There is a whole range of other recommendations here, which I trust the senators will read and the government and department will investigate. I have no doubt that a future Labor government will see this report as a very important guide to the sorts of actions that are required to address the fundamental problems that have emerged through this inquiry and that are clear for all to see. The soft marking issue is apparent. While we have not sought to apportion responsibility, we have said that the claims about soft marking and unethical practices are far too widespread, that there is substance to them—

**Senator Tierney**—Rubbish! Isolated.

**Senator CARR**—They are not isolated. They are very widespread. The complaints within the sector are based on sound concerns. Rather than point responsibility, we say that there needs to be a mechanism to address those concerns. I commend the report to the Senate. I trust that the report will be used widely and that its recommendations will contribute to the revitalisation of higher education in Australia.

**Senator TIERNEY (New South Wales)** (9.56 a.m.)—Due to the time pressure on the program today, I seek leave to have my speech incorporated in *Hansard*.

Leave granted.

*The speech read as follows—*

I rise today to speak on the report "Universities in Crisis", the capacity of public universities to meet Australia's higher education needs.

I would like to thank the senate staff who worked on this report and the secretariat of the committee, Mr John Carter.

All senators agree that universities should be places of excellence in teaching and in research. Australian universities are indeed excellent education institutions right across the country.

Today we have graduate satisfaction at its highest level ever at 91% and the number of enrolments is at the highest level ever and are expected to be 599,000 by 2003, a 30% increase since 1995.

It clearly shows how pleased the public are with their universities.

Unfortunately, opposition senators have taken the opportunity in this inquiry to sensationalise challenges facing higher education. They have set out to undermine the international reputation of Australia's universities. Opposition senators have conducted a witch-hunt inquiry where they have made cheap political points based on unsubstantiated evidence.

It was the expectation of opposition members of the committee that they would receive vast quantities of evidence alleging or claiming under funding, overcrowding, declining standards or abuse of power. But this did not happen.

Opposition senators have been chanting—the university sector is in 'crisis'. But this is far from true.

I'd like to take the opportunity to debunk some of the ridiculous myths permeating out of the opposition.

Not one VC before the committee said their uni was in crisis. Not one VC said student standards had declined.

Although opposition senators tried to use the 'Steele Case' at the University of Wollongong as an example that the entire higher education sector was in crisis. Again this did not work.

The President of the Australian Academy of Social Sciences told the committee that there was 'no evidence that standards have fallen'.

Professor Mary O'Kane, who at the time of giving was the Vice Chancellor of the University of Adelaide, told the inquiry

That universities are still producing 'excellent and high impact research'.

In fact some witnesses went into great lengths to report how excellent teaching standards are and the innovative programs that are currently being produced by universities. A good example of that is the learning centres that are spread out throughout Queensland.

Opposition senators have tried to say that there have been major cuts to funding to the sector. Again this is not true. Federal Government funding has remained constant since 1996 at around \$5.2 billion in real terms. Total university revenues from all sources have increased significantly since 1995 from around \$8.25 billion to an estimated \$9.5 billion in 2001.

Since 1996, the reforming of research and research training in Australian universities has been a government priority

The Government's White paper—*Knowledge and Innovation*—put in place the framework for a world competitive research and research training system in our universities.

This report also fails to recognise *Backing Australia's Ability*—which will inject \$1.47 billion into higher education in the next 5 years.

Funding under *Backing Australia's Ability* include \$736 million to double funding for the Australian Research Council; \$151 million for new university places in the areas of mathematics, science and information and communication technology; \$583 million for research infrastructure; and the Postgraduate Education Loans Scheme (PELS).

The report ignores the total investment into higher education as a percentage of GDP—which is 1.09%—higher than the OECD.

Opposition senators also fail to mention in the report that there are more opportunities for people to enter universities than ever before. In 2001, there will be 20,660 or 6% more commonwealth fully funded undergraduate places than in 1995. Unmet demand has dropped from 65,000 in 1990 to 25,000 in 2000.

So the picture we have here is hardly a story of declining standards and uncompetitive public investment in higher education, as opposition senators have suggested.

Opposition senators have shown an extremely narrow minded view of private investment into higher education during the course of this inquiry. They suggest private funding risks independence and quality of research teaching and research.

It's a tremendous pity that senators in this inquiry cannot see that forming relationships with industry including private investment, can have tremendous benefits for universities, researchers and graduates. Universities like Cambridge, Princeton and Harvard all have private investment as well as strong relationships with industry. I dare opposition senators to say that the standards of those highly regarded institutions have declined as a result of private investment.

So it seems to be that while the ALP in this country are blind to this potential, other universities throughout the world are gaining from it. And it is

to the detriment of the higher education sector that the opposition are really living in the dark ages on this matter. We received several submissions that repeated the message that the way forward in the future, is to make those relationships with industry stronger.

Also, the report completely fails to recognise the government's attempts to help the university sector following the Dawkins Reforms, which were implemented by the ALP. Many funding or other policies criticised by this report were in fact implemented by the former labor government.

It includes marketisation and competition; the introduction of HECS; the introduction of fee-paying places for post-graduate coursework; the introduction of full fees for international students; and the development of a growing export industry in higher education.

Another point that opposition senators have been trying to push is that some academics are soft marking in response to obtain income from fee-paying students. This outrageous allegation is not only untrue but it damages the vital reputation of our universities.

It was made quite clear during the course of the inquiry by witnesses before the committee, that universities have no interest in soft marking. In a competitive environment, if universities were producing graduates with greater marks than they deserved, universities would soon have a reputation for producing incapable graduates. Degrees awarded on the basis of dishonest practices would come to be regarded as useless.

Government senators see a more optimistic future for universities than the opposition would concede. This government is providing the policies and the funds needed to take universities into the new century and to help our researchers lead the way in innovation.

This report that has been tabled today has been exercise by opposition senators to make cheap political points and sensationalise unique cases. I reject their view that universities are in crisis and instead say that this government has put the framework in place to lead universities into the future.

**Senator O'BRIEN (Tasmania)** (9.56 a.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**NEW BUSINESS TAX SYSTEM (THIN CAPITALISATION) BILL 2001**  
**NEW BUSINESS TAX SYSTEM (DEBT AND EQUITY) BILL 2001**

**Second Reading**

Consideration resumed from 26 September, on motion by **Senator Minchin**:

That these bills be now read a second time.

Question resolved in the affirmative.

Bills read a second time.

**In Committee**

The bills.

**The TEMPORARY CHAIRMAN (Senator McKiernan)**—As indicated by the statement under the order of the Senate of 26 June 2000, the government amendments to this bill are of a kind which are treated by the Senate as amendments and not as requests. They will therefore be treated as amendments.

**Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate)** (9.57 a.m.)—I table two supplementary memoranda relating to the government amendments to these bills. I seek leave to move government amendments Nos 1 to 70 to the **New Business Tax System (Thin Capitalisation) Bill 2001** and government amendments Nos 1 to 54 and 56 to 69 to the **New Business Tax System (Debt and Equity) Bill 2001** together.

Leave granted.

**Senator IAN CAMPBELL**—I move the following amendments to the **New Business Tax System (Thin Capitalisation) Bill 2001** and the **New Business Tax System (Debt and Equity) Bill 2001**:

- (1) Schedule 1, item 1, page 7 (after line 18), after section 820-35, insert:

**820-37 Application—assets threshold**

Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if:

- (a) the entity is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for a period that is all or any part of that year; and
- (b) the entity is not also an \*inward investing entity (non-ADI) or an \*inward investing entity (ADI) for all or any part of that period; and
- (c) the result of applying the following formula is equal to or greater than 0.9:

(1) Schedule 1, item 1, page 7 (after line 18), after section 820-35, insert:

**820-37 Application—assets threshold**

Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any \*debt deduction of an entity for an income year if:

- (a) the entity is an \*outward investing entity (non-ADI) or an \*outward investing entity (ADI) for a period that is all or any part of that year; and
- (b) the entity is not also an \*inward investing entity (non-ADI) or an \*inward investing entity (ADI) for all or any part of that period; and
- (c) the result of applying the following formula is equal to or greater than 0.9:

$$\frac{\text{Sum of the average Australian assets of the entity and the average Australian assets of each of the entity's *associates}}{\text{Sum of the average total assets of the entity and the average total Assets of each of the entity's associates}}$$

where:

**average Australian assets** of an entity is the average value, for that year, of all the assets of the entity, other than:

- (a) assets attributable to the entity's \*overseas permanent establishment; or
- (b) assets comprised by the entity's \*controlled foreign entity equity; or
- (c) assets comprised by the entity's \*controlled foreign entity debt.

**average total assets** of an entity means the average value, for that year, of all the assets of the entity.

(2) Schedule 1, item 1, page 7 (line 20), omit “For the purposes of this Division, **debt deduction**,”, substitute **“Debt deduction.”**

(3) Schedule 1, item 1, page 9 (line 1), after “losses”, insert “and outgoings directly”.

(4) Schedule 1, item 1, page 9 (lines 3 to 5), omit paragraph (b), substitute:

- (b) losses incurred by the entity in relation to which the following apply:
  - (i) the losses would otherwise be a cost covered by subparagraph (1)(a)(ii); but
  - (ii) the benefits mentioned in that subparagraph are measured in a foreign currency or a unit of account other than Australian currency (for example, ounces of gold) and the losses have arisen only because of changes in the rate of converting that foreign currency or that unit of account into Australian currency;

(5) Schedule 1, item 1, page 9 (line 7), omit paragraph (d), substitute:

- (d) rental expenses for a lease if the lease is not a debt interest;

(6) Schedule 1, item 1, page 11 (item 3 of the table in subsection 820-85(2)), omit the table item, substitute:

3	(a) the entity (the <b>relevant entity</b> ) is an *Australian entity throughout a period that is all or a part of an income year; and (b) throughout that period, the relevant entity is an *associate entity of another Australian entity; and (c) that other Australian entity is an *outward investing entity (non-ADI) or an *outward investing entity (ADI) for that period	the relevant entity is not a *financial entity, nor an *ADI, at any time during that period	the relevant entity is an <b>outward investor (general)</b> for that period
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(7) Schedule 1, item 1, page 12 (method statement in subsection 820-85(3)), omit the method statement, substitute:

*Method Statement*

*Step 1* Work out the average value, for that year (the relevant year), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

*Step 2* Reduce the result of step 1 by the average value, for the relevant year, of all the \*associate entity debt of the entity (other than any \*controlled foreign entity debt of the entity).

*Step 3* Reduce the result of step 2 by the average value, for the relevant year, of all the \*controlled foreign entity debt of the entity.

*Step 4* If the entity is a \*financial entity throughout the relevant year, add to the result of step 3 the average value, for that year, of the entity's \*zero-capital amount, to the extent that:

- (a) the zero-capital amount is attributable to the securities loan arrangements mentioned in step 1 of the method statement in subsection 820-942(1); and
- (b) the securities loan arrangements are not \*debt interests.

*Step 5* Add to the result of step 4 the average value, for the relevant year, of any \*debt capital of the entity that does not give rise to any \*debt deductions of the entity for that or any other income year, if:

- (a) the debt capital is comprised of \*debt interests issued to another entity that remain \*on issue; and
- (b) that other entity is an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI) for a period that is, or includes, all or a part of the relevant year; and
- (c) for the purposes of the application of this Division to the entities, and in relation to only that part of the period that falls within the relevant year, the entities do not use the same \*valuation days and the same number of valuation days to calculate the average value of their respective debt capital.

The result of this step is the ***adjusted average debt***

(8) Schedule 1, item 1, page 18 (line 16), omit "for that year", substitute "for that or any other income year".

(9) Schedule 1, item 1, page 18 (line 27), omit "that year", substitute "the income year mentioned in subparagraph (1)(a)(i)".

(10) Schedule 1, item 1, page 23 (lines 3 to 4), omit "its \*debt deductions for that year", substitute "\*debt deductions of the entity for that or any other income year".

(11) Schedule 1, item 1, page 23 (method statement in subsection 820-120(2)), omit the method statement, subsubstitute:

*Method Statement:*

*Step 1.* Work out the average value, for that period, of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

*Step 2.* Reduce the result of step 1 by the average value, for that period, of all the \*associate entity debt of the entity (other than any \*controlled foreign entity debt of the entity).

*Step 3* Reduce the result of step 2 by the average value, for that period, of all the \*controlled foreign entity debt of the entity.

*Step 4.* If the entity is a \*financial entity throughout that period, add to the result of step 3 the average value, for that period, of the entity's \*zero-capital amount, to the extent that:

- (a) the zero-capital amount is attributable to the securities loan arrangements mentioned in step 1 of the method statement in subsection 820-942(1); and

*Step 5.* (b) the securities loan arrangements are not \*debt interests.

Add to the result of step 4 the average value, for that period (the *relevant period*), of any \*debt capital of the entity that does not give rise to any \*debt deductions of the entity for that or any other income year, if:

- (a) the debt capital is comprised of \*debt interests issued to another entity that remain \*on issue; and
- (b) that other entity is an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI) for a period that is, or includes, all or a part of the relevant period; and
- (c) for the purposes of the application of this Division to the entities, and in relation to only that part of the period that falls within the relevant period, the entities do not use the same \*valuation days and the same number of valuation days to calculate the average value of their respective debt capital.

The result of this step is the *adjusted average debt*.

- (12) Schedule 1, item 1, page 24 (line 11), omit “that period”, substitute “the period mentioned in subsection (1)’.
- (13) Schedule 1, item 1, page 24 (item 2 of the table in subsection 820-120(4)), omit the table item.
- (14) Schedule 1, item 1, page 27 (line 10) to page 28 (line 10), omit subsection 820-185(3), substitute:

*Adjusted average debt*

The entity’s *adjusted average debt* for an income year is the result of applying the method statement in this subsection.

*Method Statement*

*Step 1* Work out the average value, for that year (the relevant year), of all the \*debt capital of the entity that gives rise to \*debt deductions of the entity for that or any other income year.

*Step 2* Reduce the result of step 1 by the average value, for the relevant year, of:

- (a) if the entity is an \*inward investment vehicle (general) or an \*inward investment vehicle (financial) for that year—all the \*associate entity debt of the entity; or
- (b) if the entity is an \*inward investor (general) or an \*inward investor (financial) for that year—all the associate entity debt of the entity, to the extent that it is attributable to the entity’s \*Australian permanent establishments.

*Step 3* If the entity is a \*financial entity throughout the relevant year, add to the result of step 2 the average value, for that year, of the entity’s \*zero-capital amount, to the extent that:

The zero-capital amount is attributable to the securities loan arrangements mentioned in step 1 of the method statement in subsection 820-942(1); and

- (b) the securities loan arrangements are not \*debt interests.

*Step 4* Add to the result of step 3 the average value, for the relevant year, of any \*debt capital of the entity that does not give rise to any \*debt deductions of the entity for that or any other income year, if:

- (a) the debt capital is comprised of \*debt interests issued to another entity that remain \*on issue; and
- (b) that other entity is an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI) for a period that is, or includes, all or a part of the relevant year; and
- (c) for the purposes of the application of this Division to the entities, and in relation to only that part of the relevant year that falls within that period, the entities do not use the same \*valuation days and the same number of valuation days to calculate the average value of their respective debt capital.

The result of this step is the *adjusted average debt*.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (4) The entity's *\*adjusted average debt* does not exceed its *\*maximum allowable debt* if the *adjusted average debt* is nil or a negative amount.
- (15) Schedule 1, item 1, page 33 (line 27), at the end of step 5 of the method statement in subsection 820-210(2), add "If the result of this step is a negative amount, it is taken to be nil."
- (16) Schedule 1, item 1, page 35 (line 36), omit "for that year", substitute "for that or any other income year".
- (17) Schedule 1, item 1, page 36 (line 11), omit "that year", substitute "the income year mentioned in subparagraph (1)(a)(i)".
- (18) Schedule 1, item 1, page 38 (lines 29 to 30), omit "its *\*debt deductions for that year*", substitute "*\*debt deductions of the entity for that or any other income year*".
- (19) Schedule 1, item 1, page 39 (lines 15 to 32), omit subsection (2), substitute:
  - (2) The entity's *adjusted average debt* for that period is the result of applying the method statement in this subsection.

*Method statement*

*Step 1.* Work out the average value, for that period, of all the *\*debt capital* of the entity that gives rise to *\*debt deductions* of the entity for that or any other income year.

*Step 2.* Reduce the result of step 1 by the average value, for that period, of:

- (a) if the entity is an *\*inward investment vehicle* (general) or an *\*inward investment vehicle* (financial) for that period—all the *\*associate entity debt* of the entity; or
- (b) if the entity is an *\*inward investor* (general) or an *\*inward investor* (financial) for that period—all the *associate entity debt* of the entity, to the extent that it is attributable to the entity's *\*Australian permanent establishments*.

*Step 3.* If the entity is a *\*financial entity* throughout that period, add to the result of step 2 the average value, for that period, of the entity's *\*zero-capital amount*, to the extent that:

- (a) the *zero-capital amount* is attributable to the securities loan arrangements mentioned in step 1 of the method statement in subsection 820-942(1); and
- (b) the securities loan arrangements are not *\*debt interests*.

*Step 4.* Add to the result of step 3 the average value, for that period (*the relevant period*), of any *\*debt capital* of the entity that does not give rise to any *\*debt deductions* of the entity for that or any other income year, if:

- (a) the *debt capital* is comprised of *\*debt interests* issued to another entity that remain *\*on issue*; and
- (b) that other entity is an *\*outward investing entity* (non-ADI) or *\*inward investing entity* (non-ADI) for a period that is, or includes, all or a part of the *relevant period*; and
- (c) for the purposes of the application of this Division to the entities, and in relation to only that part of the period that falls within the *relevant period*, the entities do not use the same *\*valuation days* and the same number of valuation days to calculate the average value of their respective *debt capital*.

The result of this step is the *adjusted average debt*.

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- (2A) The entity's *\*adjusted average debt* does not exceed its *\*maximum allowable debt* if the *adjusted average debt* is nil or a negative amount.
- (20) Schedule 1, item 1, page 39 (line 34), omit "that period", substitute "the period mentioned in subsection (1)".
- (21) Schedule 1, item 1, page 40 (item 2 of the table in subsection 820-225(3)), omit the table item.
- (22) Schedule 1, item 1, page 42 (lines 16 to 23), omit paragraph (c), substitute:
  - (c) the entity is:

- (i) an Australian entity; and
- (ii) an <sup>\*</sup>associate entity of another entity that is an <sup>\*</sup>outward investing entity (non-ADI) or an <sup>\*</sup>outward investing entity (ADI) for that period.

(23) Schedule 1, item 1, page 47 (line 29), omit “eligible”.

(24) Schedule 1, item 1, page 48 (line 5), omit “eligible”.

(25) Schedule 1, item 1, page 48 (lines 15 to 16), omit “its <sup>\*</sup>debt deductions for that year”, substitute “<sup>\*</sup>debt deductions of the entity for that or any other income year”.

(26) Schedule 1, item 1, page 49 (item 3 of the table in subsection 820-330(3)), omit the definition of *average debt*, substitute:

*average debt* is taken to be the average value, for that period, of all the <sup>\*</sup>debt capital of the entity that gives rise to <sup>\*</sup>debt deductions of the entity for that or any other income year, to the extent that the debt capital is not attributable to any of the entity’s <sup>\*</sup>overseas permanent establishments

(27) Schedule 1, item 1, page 52 (line 5), omit “that year”, substitute “that or any other income year”.

(28) Schedule 1, item 1, page 55 (lines 13 to 14), omit “its <sup>\*</sup>debt deductions (other than <sup>\*</sup>allowable OB deductions) for that year”, substitute “<sup>\*</sup>debt deductions of the entity (other than <sup>\*</sup>allowable OB deductions) for that or any other income year”.

(29) Schedule 1, item 1, page 56 (line 17), omit “that year”, substitute “that or any other income year”.

(30) Schedule 1, item 1, page 59 (after line 24), after paragraph (3)(b), insert:

and (c) without limiting paragraph (b), each <sup>\*</sup>debt deduction, for the income year, of each entity in the group were a debt deduction of the group (even if it was incurred at a time when the entity was not in the group);

(31) Schedule 1, item 1, page 59 (lines 26 to 29), omit notes 1 and 2 to subsection 820-460(3), substitute:

Note: To work out the times during the income year when the entity was in the group, see section 820-530.

(32) Schedule 1, item 1, page 59 (lines 30 to 36), omit subsection (4), substitute:

(3A) This Division (except this Subdivision) does not apply to an entity in the group except as mentioned in subsection (3).

(4) If an <sup>\*</sup>Australian permanent establishment of a <sup>\*</sup>foreign bank is in the group, this Division (except this Subdivision) applies as if:

- (a) at all times when it was in the group during the income year, the Australian permanent establishment had been a division or part of the group; and
- (b) the Australian permanent establishment had been a division or part of the foreign bank at no time during the income year; and
- (c) without limiting paragraph (a) or (b), each deduction that:
  - (i) is a <sup>\*</sup>debt deduction of the foreign bank for the income year; and
  - (ii) is attributable to the Australian permanent establishment;
    - were a debt deduction of the group (even if it was incurred at a time when the Australian permanent establishment was not in the group);
    - but with the modifications set out in sections 820-550 to 820-575.

Note: To work out the times during the income year when the Australian permanent establishment was in the group, see section 820-530.

(33) Schedule 1, item 1, page 60 (line 26), after “value”, insert “or amount”.

(34) Schedule 1, item 1, page 60 (after line 35), at the end of section 820-470, add:

(2) To avoid doubt, subsection (1) also applies to working out the value or amount, as at a particular time, of a matter mentioned in any of sections 820-550 to 820-575 (for example, an entity’s tier 1 capital (within the meaning of the <sup>\*</sup>prudential standards) or <sup>\*</sup>paid-up share capital).

(35) Schedule 1, item 1, page 61 (line 14), after “each company in the group”, insert “(other than that company)”.

(36) Schedule 1, item 1, page 67 (line 28), at the end of the heading to section 820-555, add “**or its holding company**”.

(37) Schedule 1, item 1, page 68 (after line 12), at the end of section 820-555, add:

    ; or (v) a company that meets the condition in subsection (2).

(2) To be covered by subparagraph (1)(b)(v), a company:

- must be a <sup>\*</sup>foreign controlled Australian company at the end of the income year; and
- must beneficially own at the end of the income year all the <sup>\*</sup>shares in an entity in the group that is covered by subparagraph (1)(b)(i); and
- must have no other assets at the end of the income year; and
- must have no <sup>\*</sup>debt capital at any time during the income year.

(38) Schedule 1, item 1, page 68 (after line 21), after section 820-560, insert:

**820-562 Application of Subdivision 820-D to group**

- This section has effect for the purposes of applying Subdivision 820-D to a <sup>\*</sup>resident TC group that is an <sup>\*</sup>outward investing entity (ADI) for an income year.
- The group’s **adjusted average equity capital** for the income year is the average value, for that year, of the amount worked out under subsection (3).

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

- The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the table below for each member of the group that is covered by an item in the table and is in the group on that day.

Note: To work out the times during the income year when an entity or Australian permanent establishment was in the group, see section 820-530.

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**Resident TC group that is an outward investing entity (ADI)**

Item	For:	The amount is:
1	a company that, at the end of the income year: (a) is an <sup>*</sup> ADI; or (b) is a <sup>*</sup> 100% subsidiary of an <sup>*</sup> ADI	the total value of all the company’s tier 1 capital (within the meaning of the <sup>*</sup> prudential standards) as at the end of that day; minus the value of the company’s <sup>*</sup> debt capital that is part of that tier 1 capital at the end of that day
2	a partnership or trust, all interests in whose income and capital are beneficially owned at the end of the income year by one or more entities in the group covered by item 1	the total value of all the tier 1 capital (within the meaning of the <sup>*</sup> prudential standards) of the partnership or trust as at the end of that day; minus the value of the <sup>*</sup> debt capital of the partnership or trust that is part of that tier 1 capital at the end of that day

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**Resident TC group that is an outward investing entity (ADI)**

<b>Item</b>	<b>For:</b>	<b>The amount is:</b>
3	a company that is not covered by item 1	<p>the total value, as at the end of that day, of the company's *paid-up share capital, retained earnings, general reserves and asset revaluation reserves; minus</p> <p>the value of the company's *debt capital that is part of the company's paid-up share capital at the end of that day; plus</p> <p>the value of the company's debt capital at the end of that day that does not give rise to any *debt deductions of the company for the income year or any other income year</p>
4	a partnership or trust that is not covered by item 2	<p>the total value, as at the end of that day, of the capital and reserves of the partnership or trust; minus</p> <p>the value of the *debt capital of the partnership or trust that is part of the capital of the partnership or trust at the end of that day; plus</p> <p>the value of the debt capital of the partnership or trust at the end of that day that does not give rise to any *debt deductions of the partnership or trust for the income year or any other income year</p>
5	an *Australian permanent establishment through which a *foreign bank carries on its banking business in Australia	<p>the *equity capital of the foreign bank, as at the end of that day, that:</p> <p>(a) is attributable to that Australian permanent establishment; but</p> <p>(b) has not been allocated to the *OB activities of the foreign bank; plus the total of the amounts that, as at the end of that day:</p> <p>(c) are made available by the foreign bank to the Australian permanent establishment as loans to the Australian permanent establishment; and</p> <p>(d) do not give rise to any *debt deductions of the foreign bank for the income year or any other income year</p>

(4) For each \*Australian permanent establishment through which a \*foreign bank carries on its banking business in Australia and that is in the group, the group's \*risk-weighted assets include that part of the \*risk-weighted assets of the foreign bank that:

- (a) is attributable to that Australian permanent establishment; but
- (b) is not attributable to the \*OB activities of the foreign bank.

(39) Schedule 1, item 1, page 68 (line 22) to page 70 (line 8), omit section 820-565, substitute:

**820-565 Additional application of Subdivision 820-D to group that includes foreign-controlled Australian ADI**

Subdivision 820-D applies to a \*resident TC group for an income year, as if the group were an \*outward investing entity (ADI), if:

- (a) the group is not an outward investing entity (ADI) for the income year; and
- (b) the group includes at least one entity that is at the end of the income year both a \*foreign controlled Australian entity and an \*ADI; and

(c) the group includes at least one company that is at the end of the income year a <sup>\*</sup>100% subsidiary of no entity covered by paragraph (b) of this section.

(40) Schedule 1, item 1, page 71 (lines 17 to 37), omit subsection (2), substitute:

(2) The group's **average equity capital** for the income year is the average value, for that year, of the amount worked out under subsection (2A).

Note: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

(2A) The amount worked out under this subsection as at a particular day is the total of the amounts worked out under the table below for each member of the group that is covered by an item in the table and is in the group on that day.

Note: To work out the times during the income year when an entity or Australian permanent establishment was in the group, see section 820-530.

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**Resident TC group treated as an inward investing entity (ADI)**

Item	For:	The amount is:
1	a company	<p>the total value, as at the end of that day, of the company's <sup>*</sup> paid-up share capital, retained earnings, general reserves and asset revaluation reserves; minus</p> <p>the value of the company's <sup>*</sup> debt capital that is part of the company's paid-up share capital at the end of that day; plus</p> <p>the value of the company's debt capital at the end of that day that does not give rise to any <sup>*</sup> debt deductions of the company for the income year or any other income year</p>
2	a partnership or trust	<p>the total value, as at the end of that day, of the capital and reserves of the partnership or trust; minus</p> <p>the value of the <sup>*</sup> debt capital of the partnership or trust that is part of the capital of the partnership or trust at the end of that day; plus</p> <p>the value of the debt capital of the partnership or trust at the end of that day that does not give rise to any <sup>*</sup> debt deductions of the partnership or trust for the income year or any other income year</p>
3	an <sup>*</sup> Australian permanent establishment through which a <sup>*</sup> foreign bank carries on its banking business in Australia	<p>The <sup>*</sup> equity capital of the foreign bank, as at the end of that day, that:</p> <p>(a) is attributable to that Australian permanent establishment; but</p> <p>(b) has not been allocated to the <sup>*</sup> OB activities of the foreign bank;</p> <p>plus the total of the amounts that, as at the end of that day:</p> <p>(c) are made available by the foreign bank to the Australian permanent establishment as loans to the Australian permanent establishment; and</p> <p>(d) do not give rise to any <sup>*</sup> debt deductions of the foreign bank for the income year or any other income year.</p>

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(41) Schedule 1, item 1, page 88 (after line 8), at the end of section 820-815, add:

(2) This section does not apply to an <sup>\*</sup> associate entity of the entity if it is such an associate entity only because of subsection 820-905(3B).

(42) Schedule 1, item 1, page 88 (after line 25), at the end of subsection (3), add "This subsection does not apply to an associate entity of the entity if it is such an associate entity only because of subsection 820-905(3B).".

(43) Schedule 1, item 1, page 89 (line 9), at the end of subsection (2), add “This subsection does not apply to an associate entity of one or more entities in the group if it is such an associate entity only because of subsection 820-905(3B).”.

(44) Schedule 1, item 1, page 91 (item 2 of the table in subsection 820-855(2)), omit “foreign entities”, substitute “\*foreign entities”.

(45) Schedule 1, item 1, page 91 (item 2 of the table in subsection 820-855(2)), omit “Australian entities”, substitute “\*Australian entities”.

(46) Schedule 1, item 1, page 97 (line 4), omit “and only if.”.

(47) Schedule 1, item 1, page 97 (after line 19), at the end of subsection (1), add “However, this subsection does not apply to the first entity in its capacity as the \*responsible entity of a \*registered scheme (see subsection (2A)).”.

(48) Schedule 1, item 1, page 97 (line 21), omit “and only if.”.

(49) Schedule 1, item 1, page 97 (line 33) to page 98 (line 6), omit subsection (3), substitute:

(2A) An entity (the *first entity*), in its capacity as the \*responsible entity of a \*registered scheme at a particular time, is an *associate entity* of another entity at that time if the first entity, in that capacity, is an \*associate of that other entity at that time and at least one of the following paragraphs applies at that time:

(a) that other entity holds an \*associate interest of 50% or more in the registered scheme (see subsections (4) to (8));

(b) that other entity holds an associate interest of 20% or more in the registered scheme and the first entity, in that capacity, is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of that other entity in relation to:

(i) the distribution or retention of the profits of the registered scheme; or

(ii) the financial policies relating to the assets, \*debt capital or \*equity capital of the registered scheme;

whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed entities.

Note: The first entity, in another capacity, may also be an associate entity of an entity under another provision of this section (see also section 960-100).

(3) Subsection (1) or (2A) also has effect as if the first entity satisfies paragraph (b) of that section at a particular time if any of the following is expected to act in the manner mentioned in that paragraph at that time:

(a) a director of the first entity if it is a company;

(b) a partner of the first entity if it is a partnership;

(c) the \*general partner of the first entity if it is a \*corporate limited partnership;

(d) the trustee of the first entity if it is a trust;

(e) a member of the first entity’s committee of management if it is an unincorporated association or body.

(50) Schedule 1, item 1, page 98 (after line 6), after subsection (3), insert:

(3A) If:

(a) an entity (the *first entity*) is an \*associate entity of another entity (the *head entity*) under subsection (1), (2), (2A) or (3) at a particular time; and

(b) a third entity is also an associate entity of the head entity under subsection (1), (2), (2A) or (3) at that time;

the first entity is an *associate entity* of the third entity at that time.

(3B) If an entity (the *first entity*) is an \*associate entity of another entity under subsection (1) (2), (2A), (3) or (3A) at a particular time, that other entity is also an *associate entity* of the first entity at that time.

(3C) However, an entity in its capacity as the *\*responsible entity* of a *\*registered scheme* (the *responsible entity*) is not an *\*associate entity* of another entity under subsection (3B) at a particular time if, at that time, the responsible entity:

- (a) would be an associate entity of that other entity under subsection (3B) (apart from the effect of this subsection); but
- (b) is not an associate entity of that other entity under subsection (2A).

(51) Schedule 1, item 1, page 99 (lines 21 to 23), omit subsection (1), substitute:

- (1) This section applies to an entity (the *relevant entity*) that is an *\*outward investing entity* (non-ADI) or an *\*inward investing entity* (non-ADI) for a period that is all or a part of an income year, and each *\*associate entity* of the relevant entity that is:
  - (a) an *\*outward investing entity* (non-ADI), an *\*inward investment vehicle* (general), or an *\*inward investment vehicle* (financial), for that period; or
  - (b) an *\*inward investor* (general) or an *\*inward investor* (financial) for that period if it carries on its *\*business* in Australia at or through one or more of its *\*Australian permanent establishments* throughout that period.

(52) Schedule 1, item 1, page 100 (method statement in subsection 820-910(2)), omit the method statement, substitute:

*Method Statement*

*Step 1.* Apply step 2 to each *\*associate entity* of the relevant entity that is the kind of entity mentioned in paragraph (1)(a) at that particular time. The result of that step is the *associate entity debt amount* for that associate entity.

*Step 2.* Work out the value, as at that time, of all the *\*debt interests* that have been issued to the relevant entity by the *\*associate entity*, if:

- (a) the debt interests remain *\*on issue* at that time; and
- (b) the costs in relation to the debt interest (to the extent that they are not amounts mentioned in paragraph (2)(c) of the definition of *debt deduction* that are ordinarily payable to an entity other than the relevant entity) are assessable income of the relevant entity for an income year; and
- (c) the terms and conditions for the debt interests are those that would apply if the relevant entity and the associate entity were dealing at arm's length with each other.

*Step 3.* Apply steps 2 and 4 to each *\*associate entity* of the relevant entity that is the kind of entity mentioned in paragraph (1)(b) at that time. The lesser of the results of those steps is the *associate entity debt amount* for that associate entity.

*Step 4.* Work out the value, as at that time, of the *\*debt capital* of the *\*associate entity*, to the extent that it is attributable to the *\*Australian permanent establishments* of that associate entity.

*Step 5.* Add the *associate entity debt amounts* for all the *\*associate entities*. The result of this step is the *associate entity debt*.

(53) Schedule 1, item 1, page 100 (lines 26 to 28), omit subsection (2), substitute:

- (2) The entity's *associate entity equity* at a particular time during that period is the sum of:
  - (a) the total value of *\*equity interests* that the entity holds in all of its *\*associate entities* at that time; and
  - (b) the total value of *\*debt interests* issued to the entity by its associate entities that:
    - (i) do not give rise to any *\*debt deductions* for that or any other income year; and
    - (ii) remain *\*on issue* at that time.

(54) Schedule 1, item 1, page 103 (method statement in subsection 820-920(4)), omit the method statement, substitute:

*Method statement*

*Step 1.* Work out the \*safe harbour debt amount of the \*associate entity for the day during which that particular time occurs, as if:

- (a) the associate entity were an \*outward investing entity (non-ADI) or \*inward investing entity (non-ADI), as appropriate, for the period consisting only of that day; and
- (b) if the associate entity would otherwise be treated as an \*outward investor (financial) for that day and the relevant entity is not a \*financial entity throughout that day—the associate entity were an \*outward investor (general) for that day; and
- (c) if the associate entity would otherwise be treated as an \*inward investment vehicle (financial) for that day and the relevant entity is not a financial entity throughout that day—the associate entity were an \*inward investment vehicle (general) for that day.

*Step 2* Reduce the result of step 1 by the value of the \*adjusted average debt of the \*associate entity for that day as if it had been the kind of entity that it is taken to be under step 1 for that day. If the result of this step is a negative amount, it is taken to be nil.

*Step 3.* Multiply the result of step 2 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity that is attributable to the relevant entity at that time; and
- (b) the value, as at that time, of all the \*debt interests issued to the relevant entity by the associate entity that do not give rise to \*debt deductions of the associate entity for that or any other income year and remain \*on issue at that time.

*Step 4* Divide the result of step 3 by the sum of:

- (a) the value, as at that time, of all the \*equity capital of the \*associate entity; and
- (b) the value, as at that time, of all the \*debt interests issued by the associate entity that do not give rise to \*debt deductions of the associate entity for that or any other income year and remain \*on issue at that time.

The result of this step is the ***attributable safe harbour excess amount***.

(55) Schedule 1, item 1, page 107 (line 15) to 108 (line 5) (method statement in subsection 820-942(1)), omit the steps 2 and 3, substitute:

*Method Statement*

*Step 2.* Add to the result of step 1 the total value, as at that time, of all the \*debt interests issued to the entity to which the following paragraphs apply at that time:

- (a) the debt interests remain \*on issue;
- (b) each of the debt interests is a loan of money for which no fees, charges or other consideration for the purpose of enhancing the credit rating of the issuer of the interest has been paid or is payable to the entity, any of the entity's \*associates or another entity that is a \*foreign entity;
- (c) each of the entities issuing the interests has the required credit rating for the interests concerned in accordance with subsections (4) and (5).

*Step 3.* Add to the result of step 2 the total value, as at that time, of all the \*debt interests that are assets of the entity (whether they are debt interests issued to the entity or not) and to which the following paragraphs apply at that time:

- (a) the risk weight of each of the debt interests is either 0% or 20% under the \*prudential standards;
- (b) the debt interests do not satisfy all of the paragraphs in step 2.

(56) Schedule 1, item 1, page 109 (line 11), omit "and", substitute:

- or (iii) a \*scheme that, apart from the operation of paragraph

974-25(1)(b), would have given rise to a debt interest covered by subparagraph (i); and

(57) Schedule 1, item 1, page 109 (after line 14), at the end of section 820-942, add:

*What is the required credit rating?*

(4) For the purposes of step 2 of the method statement in subsection (1), the required credit rating for an entity issuing a <sup>\*</sup>debt interest is:

- (a) if the interest is a <sup>\*</sup>subordinated debt interest—a long-term foreign currency corporate credit rating of at least A (or equivalent) given to the entity by an internationally recognised rating agency; or
- (b) if the interest is not a subordinated debt interest—a long-term foreign currency corporate credit rating of at least BBB (or equivalent) given to the entity by an internationally recognised rating agency.

*When must an entity have the required credit rating*

(5) The entity must have the required credit rating as specified in any of the following paragraphs:

- (a) the entity had the required credit rating for the <sup>\*</sup>debt interest when the interest was issued;
- (b) the following subparagraphs apply:
  - (i) the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency when the debt interest was issued; but
  - (ii) the entity had the required credit rating for that interest at any time during the period of 6 months immediately before the interest was issued;
- (c) the following subparagraphs apply:
  - (i) when the debt interest was issued, and throughout the period of 6 months immediately before the interest was issued, the entity did not have any long-term foreign currency corporate credit rating given to it by an internationally recognised rating agency; but
  - (ii) the entity has the required credit rating for that interest at any time during the period of 6

months immediately after the interest was issued.

(58) Schedule 1, page 115 (after line 22), after item 4, insert:

#### **4A Subsection 160AE(1)**

Insert:

**debt deduction** has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **4B Subsection 160AE(1)**

Insert:

**overseas permanent establishment** has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **4C Subsection 160AF(8)**

##### **(paragraph (a) of the definition of *net foreign income*)**

After “assessable income”, insert “(other than any relevant debt deductions)”.

#### **4D Subsection 160AF(8)**

##### **(paragraph (c) of the definition of *net foreign income*)**

After “apportionable deductions”, insert “that are not relevant debt deductions”.

#### **4E Subsection 160AF(8)**

Insert:

**relevant debt deduction**, for a taxpayer, means a debt deduction of the taxpayer for an income year, to the extent that it is not attributable to any of the taxpayer’s overseas permanent establishments.

(59) Schedule 1, item 16, page 117 (line 16), omit “(a)”, substitute “(1)(a)”.

(60) Schedule 1, item 19, page 118 (line 9), omit “<sup>\*</sup>associate entities”, substitute “<sup>\*</sup>associates”.

(61) Schedule 1, item 22, page 119 (after line 20), after section 820-10, insert:

#### **820-12 Application of Division 974 of the *Income Tax Assessment Act 1997* for the purposes of Division 820 of that Act**

(1) Division 974 of the *Income Tax Assessment Act 1997* applies for the purposes of determining whether, for the purposes of Division 820 of that Act, an interest is a debt interest or an equity interest at any time on or after 1 July 2001 (whether or not the debt and equity test amendments apply to transac-

tions in relation to that interest at that time).

(2) In this section, **debt and equity test amendments** has the same meaning as in Part 4 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*.

(62) Schedule 1, item 22, page 121 (lines 14 to 33) to page 122 (lines 1 to 6), omit section 820-35, substitute:

**820-35 Transitional provision—transitional debt interests**

(1) This section applies to an interest for the period starting from 1 July 2001 and ending immediately before 1 July 2004 (the *transitional period*) if:

- (a) the interest was issued before 1 July 2001; and
- (b) disregarding the debt and equity test amendments (within the meaning of Part 4 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*), the interest would be:
  - (i) an asset of an entity comprised by equity issued by another entity; or
  - (ii) equity issued by an entity to another entity; and
- (c) the interest is a debt interest that remains on issue.

*What happens if there is no election*

(2) If:

- (a) the issuer of the interest does not elect under paragraph 118(6)(b) of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001* to have that paragraph apply to the interest; and
- (b) at any time during the transitional period, Division 820 of the *Income Tax Assessment Act 1997* applies to an entity that is the issuer or the holder of the interest;

the interest must be treated as an equity interest for the purposes of applying that Division to that entity at that time.

*What happens if there is an election*

(3) Subsections (4) to (6) apply if the issuer of the interest elects under paragraph 118(6)(b) of Schedule 1 to the *New Business Tax System (Debt and*

*Equity) Act 2001* to have that paragraph apply to the interest.

(4) For the purposes of applying Division 820 of the *Income Tax Assessment Act 1997* at any time during the transitional period to an entity that is the issuer of the interest at that time, the interest must be treated as a debt interest at that time.

(5) Except as provided by subsection (6), for the purposes of applying that Division at any time during the transitional period to an entity that is the holder of the interest at that time, the interest must be treated as an equity interest at that time.

(6) Despite subsection (5), the interest must be treated as a debt interest at that time for the purposes of applying that Division to that holder at that time if:

- (a) apart from this section, the interest would be included in the associate entity debt of that holder at that time for those purposes; and
- (b) at that time, the issuer of the interest is not an Australian controlled foreign entity for which that holder is an Australian controller.

(63) Schedule 1, item 22, page 122 (after line 6), at the end of Division 820 add:

**820-40 Transitional provision—transitional equity interests**

(1) This section applies to an interest for the period starting from 1 July 2001 and ending immediately before 1 July 2004 (the *transitional period*) if:

- (a) the interest was issued before 1 July 2001; and
- (b) disregarding the debt and equity test amendments (within the meaning of Part 4 of Schedule 1 to the *New Business Tax System (Debt and Equity) Act 2001*), the interest would be:
  - (i) an asset of an entity comprised by a debt owed to the entity by the issuer of the interest; or
  - (ii) a debt owed by the issuer of the interest to another entity; and
- (c) the interest is an equity interest.

*For the issuer*

(2) The interest must be treated as an equity interest at any time during the transitional period for the purposes of

applying Division 820 of the *Income Tax Assessment Act 1997* to an entity that is the issuer of that interest at that time.

*For the holder*

- (3) Except as provided by subsection (4), the interest must be treated as a debt interest at any time during the transitional period for the purposes of applying that Division to an entity that is the holder of the interest at that time.
- (4) Despite subsection (3), that interest must be treated as an equity interest at that time for the purposes of applying that Division to that holder at that time if:
  - (a) apart from this section, the interest would be included in the associate entity equity of that holder at that time for those purposes; and
  - (b) at that time, the issuer of the interest is not an Australian controlled foreign entity for which that holder is an Australian controller.
- (64) Schedule 1, page 123 (after line 7), after item 23, insert:

**23A Application—section 160AF of the *Income Tax Assessment Act 1936***

The amendments of section 160AF of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to assessable income of a year of income that begins on or after 1 July 2001.

- (65) Schedule 2, item 4, page 126 (line 2), omit “820-565”, substitute “820-562”.
- (66) Schedule 2, item 29, page 129 (line 25) to page 130 (line 12), omit the definition of *equity capital*, substitute:

*equity capital*, of an entity and at a particular time, means:

- (a) if the entity is a company that is not an *\*outward investing entity (ADI)* at that time:
  - (i) the total value of the entity’s *\*paid-up share capital*, retained earnings, general reserves and asset revaluation reserves as at that time; minus
  - (ii) the value of the entity’s *\*debt capital* that is part of the entity’s paid-up share capital at that time; or

- (b) if the entity is a company that is an *outward investing entity (ADI)* at that time:

- (i) the total value of all the entity’s tier 1 capital (within the meaning of the *\*prudential standards*) as at that time; minus
- (ii) the value of the entity’s debt capital that is part of the entity’s tier 1 capital at that time; or

- (c) if the entity is a trust or partnership at that time:
  - (i) the total value of the entity’s capital and reserves as at that time; minus
  - (ii) the value of the entity’s debt capital that is part of the entity’s capital at that time.

- (67) Schedule 2, item 48, page 133 (line 20), at the end of the definition of *non-debt liabilities*, add:

- ; or (d) any liability of the entity under a securities loan arrangement if, as at that time, the entity:
  - (i) has received amounts for the sale of securities (other than any fees associated with the sale) under the arrangement; and
  - (ii) has not repurchased the securities under the arrangement.

- (68) Schedule 2, page 135 (after line 15), after item 56, insert:

**56A Subsection 995-1(1)**

Insert:

*registered scheme* has the same meaning as in the *Corporations Act 2001*.

**56B Subsection 995-1(1)**

Insert:

*responsible entity*, of a *\*registered scheme*, has the same meaning as in the *Corporations Act 2001*.

- (69) Schedule 2, page 136 (after line 30), after item 62, insert:

**62A Subsection 995-1(1)**

Insert:

*subordinated debt interest* means a *\*debt interest* issued to:

- (a) an unsecured creditor; or
- (b) a secured creditor who, in the event of the liquidation of the entity issuing the interest, can only make a claim regarding that interest after

the claims of other secured creditors regarding other debt interests issued by that entity have been met.

(70) Schedule 2, page 138 (after line 4), after item 69, insert:

**69A Subsection 995-1(1)**

Insert:

**valuation days**, in relation to the calculation of the average value of a matter for an entity under Division 820, means the particular days at which the value of that matter is measured under Subdivision 820-G for the purposes of that calculation.

(1) Schedule 1, item 3, page 3 (line 21) to page 4 (line 4), omit subsections (1) and (2), substitute:

- (1) This section deals with a \*return that an entity pays or provides on a \*debt interest.
- (2) The \*return is not prevented from being a \*general deduction for an income year under section 8-1 merely because:
  - (a) the return is \*contingent on the economic performance (whether past, current or future) of:
    - (i) the entity or a part of the entity's activities; or
    - (ii) a \*connected entity of the entity or a part of the activities of a connected entity of the entity; or
  - (b) the return secures a permanent or enduring benefit for the entity or a connected entity of the entity.
- (3) If the \*return is a \*dividend, the entity can deduct the return to the extent to which it would have been a \*general deduction under section 8-1 if:
  - (a) the payment of the return were the incurring by the entity of a liability to pay the same amount as interest; and
  - (b) that interest were incurred in respect of the finance raised by the entity and in respect of which the return was paid or provided; and
  - (c) the \*debt interest retained its character as a debt interest for the purposes of subsection (2).
- (4) Subsections (2) and (3) do not apply to a \*return to the extent to which it

would be a \*general deduction under section 8-1 apart from this section.

- (2) Schedule 1, item 3, page 4 (line 5) omit "(3)", substitute "(5)".
- (3) Schedule 1, item 3, page 4 (line 5) omit "(4)", substitute "(6)".
- (4) Schedule 1, item 3, page 4 (line 6), omit "subsection (2) does", substitute "subsections (2) and (3) do".
- (5) Schedule 1, item 3, page 4 (line 7), omit "the return", substitute "return".
- (6) Schedule 1, item 3, page 4 (line 10) omit "(4)", substitute "(6)".
- (7) Schedule 1, item 3, page 4 (line 10) omit "(3)", substitute "(5)".
- (8) Schedule 1, item 4, page 4 (line 16), after "**distributions**", insert "**and dividends**".
- (9) Schedule 1, item 4, page 4 (after line 19), at the end of section 26-26, add:
  - (2) A company cannot deduct a \*dividend paid on an \*equity interest in the company as a \*general deduction under this Act.
- (10) Schedule 1, item 34, page 16 (line 6), omit "The test is intended to", substitute "Another object of this Division is that the test referred to in subsection (1) is to".
- (11) Schedule 1, item 34, page 16 (lines 9 to 12), omit "In assessing economic substance regard is to be had, for example, to the undue tax benefits that could be obtained from deducting dividend-like payments (deductible equity) or from franking interest-like returns (franked debt)."
- (12) Schedule 1, item 34, page 16 (line 13), omit "Note", substitute "Note 1".
- (13) Schedule 1, item 34, page 16 (after line 17), at the end of subsection (2) (after the note), add:

Note 2: The test is intended to operate, for example, to:

  - (a) deny deductibility (but allow franking) for "interest" in relation to a scheme that has the legal form of a loan if the economic substance of the rights and obligations arising under the relevant scheme gives the interest characteristics that are the same as or similar to those of a dividend on an ordinary share (and thereby prevent deductible returns on equity); and

- (b) allow a deduction (but not franking) for a “dividend” in relation to a scheme that has the legal form of an ordinary share if the economic substance of the rights and obligations arising under the relevant scheme gives the dividend characteristics that are the same as or similar to those of deductible interest on an ordinary loan (and thereby prevent frankable returns on debt).
 

This will not happen if a provision in this Act specifically provides for a different treatment for the interest or dividend.
- (14) Schedule 1, item 34, page 16 (line 18), omit “This Division allows the combined effect of \*related schemes to be”, substitute “Another object of this Division is that the combined effect of \*related schemes be”.
- (15) Schedule 1, item 34, page 16 (lines 20 and 21), omit paragraph (3)(a), substitute:
  - (a) to ensure that the test operates effectively on the basis of the economic substance of the rights and obligations arising under the schemes rather than merely on the basis of the legal form of the schemes; and
- (16) Schedule 1, item 34, page 16 (after line 31), after subsection (4), insert:
  - (5) The Commissioner must have regard to the objects stated in subsections (1) to (3) in exercising the power to make a determination under any of the following provisions:
    - (a) subsection 974-15(4);
    - (b) subsection 974-60(3), (4) or (5);
    - (c) section 974-65;
    - (d) subsection 974-70(4);
    - (e) subsection 974-150(2).

Note: An entity can apply to the Commissioner to have a determination made and can object under Part IVC of the *Taxation Administration Act 1953* if it is dissatisfied with a determination (see section 974-112).
- (17) Schedule 1, item 34, page 16 (line 32) omit “(5)”, substitute “(6)”.
- (18) Schedule 1, item 34, page 17 (line 3) omit “(6)”, substitute “(7)”.
- (19) Schedule 1, item 34, page 18 (lines 18 to 20), omit “determines that it would be inappropriate to apply that subsection to those schemes”, substitute “determines that it would be unreasonable to apply that subsection to those schemes”.
- (20) Schedule 1, item 34, page 18 (after line 20), at the end of section 974-15, add:
  - (5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:
    - (a) the purpose of the \*schemes (considered both individually and in combination);
    - (b) the effects of the schemes (considered both individually and in combination);
    - (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
    - (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
    - (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
    - (f) any other relevant circumstances.
  - (6) If:
    - (a) 2 or more \*related schemes give rise to a \*debt interest in an entity; and
    - (b) one or more of those schemes (the **hedging scheme or schemes**) are schemes for hedging or managing financial risk; and
    - (c) the other scheme or schemes give rise to a debt interest in the entity even if the hedging scheme or schemes are disregarded;

the debt interest that arises from the schemes is taken, for the purposes of Division 820 (the thin capitalisation

rules), not to include the hedging scheme or schemes.

Note: This means that in these circumstances the losses associated with the hedging scheme or schemes are not debt deductions under section 820-40.

- (21) Schedule 1, item 34, page 19 (line 2) omit "(3)", substitute "(2)".
- (22) Schedule 1, item 34, page 19 (line 3) omit "(4)", substitute "(3)".
- (23) Schedule 1, item 34, page 19 (line 4) omit "(3)", substitute "(2)".
- (24) Schedule 1, item 34, page 19 (line 5) omit "(4)", substitute "(3)".
- (25) Schedule 1, item 34, page 19 (lines 13 to 17), omit subsection (2).
- (26) Schedule 1, item 34, page 19 (line 18) omit "(3)", substitute "(2)".
- (27) Schedule 1, item 34, page 19 (line 26) omit "(4)", substitute "(3)".
- (28) Schedule 1, item 34, page 19 (after line 32), after subsection (4), insert:
  - (4) For the purposes of paragraph (1)(b) and subsections (2) and (3):
    - (a) a \*financial benefit to be provided under the \*scheme by the entity or a \*connected entity is taken into account only if it is one that the entity or connected entity has an \*effectively non-contingent obligation to provide; and
    - (b) a financial benefit to be received under the scheme by the entity or a connected entity is taken into account only if it is one that another entity has an effectively non-contingent obligation to provide.
- (29) Schedule 1, item 34, page 20 (lines 8 to 20), omit subsection (1).
- (30) Schedule 1, item 34, page 20 (line 22) omit "(2)", substitute "(1)".
- (31) Schedule 1, item 34, page 20 (lines 33 and 34), omit paragraph (2)(c), substitute:
  - (c) the financial benefit mentioned in paragraph 974-20(1)(c):
    - (i) is in fact provided within that period; or
    - (ii) is not provided within that period because the entity required to provide the benefit neglects to provide the benefit within that

period (although willing to do so); or

- (iii) is not provided within that period because the entity required to provide the benefit is unable to provide the benefit within that period (although willing to do so); and
- (32) Schedule 1, item 34, page 21 (line 5) omit "(3)", substitute "(2)".
- (33) Schedule 1, item 34, page 21 (line 6) omit "(2)", substitute "(1)".
- (34) Schedule 1, item 34, page 21 (line 9) omit "(2)", substitute "(1)".
- (35) Schedule 1, item 34, page 21 (line 11) omit "(2)", substitute "(1)".
- (36) Schedule 1, item 34, page 23 (line 21), omit "currency", substitute "currency etc.".
- (37) Schedule 1, item 34, page 23 (line 23), omit "currency, they do not need", insert "currency or in terms of quantities of a particular commodity or other unit of account, they are not".
- (38) Schedule 1, item 34, page 27 (lines 27 and 28), omit paragraph (1)(a), substitute:
  - (a) the scheme would satisfy paragraphs 974-20(1)(a), (b), (c) and (e); but
- (39) Schedule 1, item 34, page 29 (line 5), omit "Single scheme", substitute "Scheme".
- (40) Schedule 1, item 34, page 29 (lines 15 to 19), omit the notes, substitute:

Note 1: An equity interest can also arise under subsection (2) if a notional scheme with the combined effect of a number of related schemes would give rise to an equity interest under this subsection. To do this, the notional scheme would need to satisfy paragraph (b). This means that the related schemes will not give rise to an equity interest if the notional scheme would be characterised as (or form part of a larger interest that would be characterised as) a debt interest in the company or a connected entity.

Note 2: An equity interest can also arise under section 974-80 (arrangements for funding return through connected entities).

Note 3:Section 974-95 defines various aspects of the equity interest that arises.

(41) Schedule 1, item 34, page 30 (lines 11 and 12), omit “determines that, having regard to the objects of this Division, it would be inappropriate to apply that subsection to those schemes”, substitute “determines that it would be unreasonable to apply that subsection to those schemes”.

(42) Schedule 1, item 34, page 30 (after line 12), at the end of section 974-70, add:

(5) Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (4), have regard to the following:

- (a) the purpose of the \*schemes (considered both individually and in combination);
- (b) the effects of the schemes (considered both individually and in combination);
- (c) the rights and obligations of the parties to the schemes (considered both individually and in combination);
- (d) whether the schemes (when considered either individually or in combination) provide the basis for, or underpin, an interest issued to investors with the expectation that the interest can be assigned to other investors;
- (e) whether the schemes (when considered either individually or in combination) comprise a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
- (f) any other relevant circumstances.

(43) Schedule 1, item 34, page 31 (after line 14), at the end of section 974-75, add:

*Exception for certain call loans—until 31 December 2002*

(4) If:

- (a) a \*financing arrangement takes the form of a loan to a company by a \*connected entity; and
- (b) the loan does not have a fixed term; and
- (c) under the arrangement the loan is repayable on demand by the connected entity; and

(d) the arrangement was entered into on or after 21 February 2001; the arrangement does not give rise to an *equity interest* in the company. Instead, the arrangement is taken, despite anything in Subdivision 974-B, to give rise to a *debt interest* in the company. This subsection ceases to have effect on 1 January 2003.

(44) Schedule 1, item 34, page 32 (lines 5 to 7), omit paragraph (d), substitute:

- (ca) the \*scheme that gives rise to the interest is a \*financing arrangement for the company; and
- (d) there is a scheme, or a series of schemes, designed to operate so that the return to the connected entity is to be used to fund (directly or indirectly) a return to another person (the *ultimate recipient*).

(45) Schedule 1, item 34, page 32 (lines 31 and 32), omit “and the interest is not characterised as, and does not form part of a larger interest that is characterised as,”, substitute “and if the interest does not form part of a larger interest that is characterised as”.

(46) Schedule 1, item 34, page 35 (line 30), omit “this Act (other than this subsection)”, substitute “the provisions that subsection (2) covers”.

(47) Schedule 1, item 34, page 36 (after line 10), at the end of section 974-105, add:

(2) This subsection covers:

- (a) the provisions of this Division (other than this section); and
- (b) any other provision of this Act whose operation depends on an expression whose meaning is given by this Division.

(48) Schedule 1, item 34, page 37 (after line 34), at the end of Subdivision 974-D, add:

**974-112 Determinations by Commissioner**

*Determinations covered by this section*

(1) This section covers a determination by the Commissioner under any of the following provisions:

- (a) subsection 974-15(4);
- (b) subsection 974-60(3), (4) or (5);
- (c) section 974-65;
- (d) subsection 974-70(4);
- (e) subsection 974-150(2).

*Determination on own initiative or on application*

(2) The Commissioner may make a determination covered by this section:

- on his or her own initiative; or
- on an application made under subsection (3).

*Application for determination*

(3) An entity may apply to the Commissioner for a determination covered by this section in relation to:

- an interest of which the entity is the issuer; or
- an interest of which the entity would be the issuer:
  - if the determination were made; or
  - if the determination were not made.

Note: Paragraph (b) may apply, for example, if the effect of the determination applied for would be to allow, or to prevent, a number of related schemes giving rise to a debt interest or an equity interest.

(4) The application:

- must be in writing; and
- must set out the grounds on which the applicant thinks the determination should be made; and
- must set out any information relevant to deciding whether to make the determination.

*Review of determinations*

(5) A taxpayer who is dissatisfied with a determination covered by this section may object against the determination in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(49) Schedule 1, item 34, page 39 (lines 6 and 7), omit paragraph (1)(b), substitute:

- to fund another scheme, or a part of another scheme, that is a \*financing arrangement under paragraph (a); or
- to fund a return, or a part of a return, payable under or provided by or under another scheme, or a part of another scheme, that is a financing arrangement under paragraph (a).

(50) Schedule 1, item 34, page 39 (lines 24 to 29), omit paragraph (4)(a), substitute:

- a lease or bailment that satisfies all of the following:
  - the property leased or bailed is not property to which Division 16D of Part III of the *Income Tax Assessment Act 1936* (arrangements relating to the use of property) applies;
  - the lease or bailment is not a relevant agreement for the purposes of section 128AC of that Act (deemed interest in respect of hire-purchase and certain other arrangements);
  - the lease or bailment is not an arrangement to which Division 42A in Schedule 2E to that Act (leasing of luxury cars) applies;
  - the lease or bailment is not an arrangement to which Division 240 of Part 3-10 of this Act (hire-purchase arrangements treated as a sale and loan) applies;
  - the lessee or bailee, or a \*connected entity of the lessee or bailee, is not to, and does not have an obligation (whether contingent or not) or a right to, acquire the leased or bailed property;

(51) Schedule 1, item 34, page 40 (after line 5), at the end of section 974-130, add:

- The regulations may:
  - specify that particular \*schemes are not *financing arrangements*; and
  - specify circumstances in which a scheme will not be a *financing arrangement*.

(52) Schedule 1, item 34, page 42 (after line 21), after subsection 974-150(2), insert:

- Without limiting subsection 974-10(5), the Commissioner must, in exercising the power to make a determination under subsection (2), have regard to the following:
  - the purpose of the \*scheme (considered both as a whole and in terms of its individual components);
  - the effects of the scheme and each of its components (considered both as a whole and in terms of its individual components);

- (c) the rights and obligations of the parties to the scheme (considered both as a whole and in relation to its individual components);
- (d) whether the scheme (when considered as a whole or in terms of its individual components) provides the basis for, or underpins, an interest issued to investors with the expectation that the interest can be assigned to other investors;
- (e) whether the scheme (when considered as a whole or in terms of its individual components) comprises a set of rights and obligations issued to investors with the expectation that it can be assigned to other investors;
- (f) any other relevant circumstances.

(53) Schedule 1, item 34, page 42 (line 22) omit “(3)”, substitute “(4)”.  
 (54) Schedule 1, page 46 (after line 24), after item 46, insert:

**46A Subsection 6(1)**

Insert:

**return** on a debt interest or equity interest has the same meaning as in the *Income Tax Assessment Act 1997*.

(56) Schedule 1, item 98, page 62 (lines 10 to 12), omit paragraph (1)(b), substitute:

- (b) the non-share dividend is paid in respect of a non-share equity interest that:
  - (i) by itself; or
  - (ii) in combination with one or more schemes that are related schemes (within the meaning of the *Income Tax Assessment Act 1997*) to the scheme under which the interest arises;

forms part of the ADI's Tier 1 capital either on a solo or consolidated basis (within the meaning of the prudential standards); and

(57) Schedule 1, item 118, page 76 (line 27) to page 77 (line 2), omit subitem (6), substitute:

*Application of debt and equity test amendments to interests issued before 1 July 2001*

(6) If an interest was issued before 1 July 2001, the debt and equity test amendments:

- (a) apply only to transactions that take place in relation to the interest on or after 1 July 2004 if the issuer of the interest does not make an election under paragraph (b); and
- (b) apply to transactions that take place in relation to the interest on or after 1 July 2001 if the issuer elects to have this paragraph apply to the interest.

(58) Schedule 1, item 118, page 77 (line 4), omit “21 February 2001”, substitute “1 July 2001”.  
 (59) Schedule 1, item 118, page 77 (lines 14 to 16), omit subitem (8).  
 (60) Schedule 1, item 118, page 77 (line 17), omit “an election is made in relation to an interest under subitem (6)”, substitute “paragraph (6)(a) applies to an interest”.  
 (61) Schedule 1, item 118, page 77 (line 26), omit “subitem (6)”, substitute “paragraph (6)(b)”.  
 (62) Schedule 1, item 118, page 77 (line 28), omit “28”, substitute “90”.  
 (63) Schedule 1, item 118, page 77 (line 31), omit “subitem (6)”, substitute “paragraph (6)(b)”.  
 (64) Schedule 1, item 118, page 77 (line 33), omit “21 February 2001”, substitute “1 July 2001”.  
 (65) Schedule 1, item 118, page 78 (lines 15 to 17), omit subparagraphs (xi) and (xii), substitute:
 

- (xi) conversion/exercise details.

(66) Schedule 1, item 118, page 78 (line 18), omit “subitem (6)”, substitute “paragraph (6)(b)”.  
 (67) Schedule 1, item 118, page 78 (lines 19 to 21), omit subitem (11), substitute:
 

- (11) The Commissioner may allow further time under subparagraph (10)(a)(ii) if he or she:
  - (a) is satisfied that the issuer would otherwise not have sufficient opportunity to make the election; or
  - (b) otherwise considers it reasonable to do so.

(68) Schedule 1, item 118, page 78 (lines 23 to 28), omit paragraphs (a) and (b), substitute:
 

- (a) paragraph (6)(a) applies to an interest; and
- (b) on or after 1 July 2001 and before 1 July 2004:

- (i) the terms of the interest are altered; or
- (ii) the interest is rolled over; or
- (iii) the original term of the interest is extended;

(69) Schedule 2, page 83 (after line 9), at the end of the Schedule, add:

**23 Subsection 995-1(1)**

Insert:

*return* on a \*debt interest or \*equity interest does not include a return of an amount invested in the interest.

Amendments agreed to.

**The TEMPORARY CHAIRMAN (Senator McKiernan)**—The question now is that schedule 1, item 95 of the **New Business Tax System (Debt and Equity) Bill 2001** stand as printed.

Question resolved in the negative.

Bills, as amended, agreed to.

Bills reported with amendments; report adopted.

**Third Reading**

Bills (on motion by **Senator Ian Campbell**) read a third time.

**JURISDICTION OF THE FEDERAL MAGISTRATES SERVICE LEGISLATION AMENDMENT BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Hill**:

That this bill be now read a second time.

**Senator BOLKUS (South Australia)** (10.00 a.m.)—I seek leave to incorporate my speech in *Hansard*.

Leave granted.

*The speech read as follows—*

The Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001 will amend the Migration Act 1958 to give jurisdiction to the Federal Magistrates Service in matters under Part 8 of the Migration Act.

This jurisdiction will be concurrent with the jurisdiction of the Federal Court.

The bill will also remove the restrictions on the Federal Magistrates Service hearing migration matters under the ADJR Act and hearing appeals

in relation to migration matters under the AAT Act.

The Government has stated that many migration matters are of a routine nature and would be suitable for the Service.

In considering this bill it is necessary to make reference to the system for migration and refugee appeals as a whole—which this bill seeks to further modify.

**Current system of migration and refugee appeals**

The current system is under pressure because of the lengthy delays that occur in determining refugee matters. Generally, unsuccessful applicants for asylum pursue every avenue of appeal. This means that those people who have not made out genuine claims of asylum can spend very long periods—sometimes years—in detention, prior to being deported back to their country of origin. These lengthy periods cause great psychological and physical pressures.

Litigation costs stemming from the defence by the Department of Immigration of appeals lodged in the Federal and High Courts and the Administrative Appeals Tribunal by applicants in migration and refugee matters have now reached \$15m per annum. The costs (some \$104 per person, per day) associated with maintaining asylum seekers in detention who use the appeals process also places a heavy financial burden on the Commonwealth.

Accordingly, not only is it in the national interest but also in the interest of those people who claim refugee status, that applications and appeals should be dealt with as fairly and as quickly as possible.

Currently, determinations of refugee status are made by a delegate of the Minister for Immigration. Where the person is determined not to be a refugee, an application is then made for review of that decision to the Refugee Review Tribunal (RRT). Unsuccessful applicants then have two avenues of further appeal.

The first avenue of appeal is to the Federal Court under a restricted range of grounds specified in Part 8 of the Migration Act. An appeal from the decision of the Federal Court can then be lodged with the Full Court of the Federal Court. An application for special leave to appeal to the High Court can also be made.

The second avenue is directly to the High Court under section 75(v) of the Constitution—known as the “original jurisdiction” of the High Court. In practice, applicants usually choose one of these avenues, but not both.

The Migration Act currently prohibits the High Court remitting refugee matters to any other court for review. This means that the judges of the High Court must themselves sit in judgment on matters involving applications for refugee status.

This is placing enormous pressure on High Court judges who now spend considerable time hearing these low-level migration matters rather than attending to the proper business of the Court as the nation's highest court of appeal, namely Constitutional issues, the application of the general criminal law and the ever-burgeoning complexity of commerce related legislation.

#### **Judicial Review Bill**

This week the Senate passed **[will pass]** the Migration (Judicial Review) Bill 1999.

Its effect will be to abolish all avenues of judicial review of decisions made by the Migration Review Tribunal and Refugee Review Tribunal. It seeks to achieve this by enacting a "privative clause" which would have the effect of severely limiting the types of appeals which can be heard by the Federal Court and the High Court.

There is substantial legal opinion that the attempt to exclude the jurisdiction of the High Court in migration matters would be unconstitutional. This is because there is an explicit guarantee in the Constitution that the High Court has authority to hear applications for judicial review.

While a Constitutional challenge to the bill is likely, Labor has agreed to pass the bill so that the matter will be able to be tested. In the event that the High Court rules that the "privative clause" is not consistent with the Constitution, a Labor government would consider the position again at that time.

#### **This Bill**

This bill confers jurisdiction on the Federal Magistrates Court to hear appeals under the Migration Act.

With the passage of the Judicial Review Bill, this bill has only limited effect.

This legislation will give the Federal Magistrates Court concurrent jurisdiction to hear appeals with the Federal Court on those few migration matters which will continue to be appealable.

One problem with the legislation, despite the government's professed goal of reducing layers of appeal, this bill will actually introduce an extra layer of appeal. Applicants who choose the Federal Magistrates Court to hear their case will then be automatically entitled to a further appeal to the Federal Court.

Essentially, this will create more opportunities for unsuccessful applicants to delay the resolution of

their cases by introducing yet another layer of appeal.

For these reasons, Labor remains skeptical that the measures introduced by the government will have a positive effect on addressing the backlogs in the resolution of migration matters.

We put to the Minister for Immigration an alternative proposal—in the form of amendments to the Judicial Review legislation—which we believe would have been far more effective.

#### **A "One Stop Shop" for judicial review of migration and refugee applications**

Labor's amendments would have provided for fair and expeditious review of applications while discouraging the bringing of applications which have no merit.

Labor's amendments would have retained judicial review, but only allow applicants a single opportunity for judicial review in the Federal Magistrates Court. There would be no right of appeal from a decision of a Federal Magistrate.

The amendments also gave the FMC jurisdiction to hear those matters which currently can only be heard by High Court because the High Court is prohibited from remitting those matters to other courts.

Some applicants would elect to seek a review of the decision of the Migration Review Tribunal or Refugee Review Tribunal in the original jurisdiction of the High Court—as is presently the case. However, Labor's amendments would have allowed the High Court to send those directly cases to the Federal Magistrates Court for a decision.

It is envisaged that the High Court would refer all but the most exceptional cases to the Federal Magistrates Court so that, either way, the matter will be heard in the Federal Magistrates Court and dealt with fairly and quickly.

Labor's amendments also introduced new rules designed to discourage lawyers and migration agents from encouraging applicants to make appeals which have no reasonable prospect of success.

These rules would allow a court to impose a personal costs order of up to \$5000 on an adviser who encourages a person to make an appeal which has no reasonable prospects of success. Body corporates will be liable for a fine of \$10000.

This measure was designed to discourage advisers from exploiting applicants by urging them to take up appeals which, while without foundation, result in considerable further delay, expense and create unreasonable expectations of remaining in Australia.

The Minister rejected these suggestions, which Labor put forward in a spirit of bipartisanship.

### Conclusion

The bill which is before us—the Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001—only has a limited effect. It invests the Federal Magistrates Court with a jurisdiction co-extensive with the Federal Court in a very limited range of migration matters. Labor agrees that there will be cases currently heard by the Federal Court which can appropriately be dealt with at the Federal Magistrates level.

Labor supports the passage of the bill.

Question resolved in the affirmative.

Bill read a second time.

### In Committee

The bill.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.01 a.m.)—I table the supplementary explanatory memorandum relating to the government's amendments and I seek leave to move government amendments (1) to (8) together.

Leave granted

**Senator IAN CAMPBELL**—I move:

(1) Clause 2, page 1 (lines 8 to 10), omit the clause, substitute:

#### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 5 to 28 of Schedule 1 do not commence if Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001* commences on or before the day on which this Act receives the Royal Assent.
- (3) Items 26 and 27 of Schedule 1 do not commence if Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001* commences on or before the day on which this Act receives the Royal Assent.
- (4) Schedule 3 commences immediately after the later of the following:
  - (a) the commencement of section 1;
  - (b) the commencement of Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001*.

- (5) Items 1, 2, 3 and 9 of Schedule 4 do not commence if Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001* commences on or before the day on which this Act receives the Royal Assent.
- (6) Subject to subsection (5), items 1, 2, 3 and 9 of Schedule 4 commence immediately after the later of the following:
  - (a) the commencement of section 1;
  - (b) the commencement of Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001*.
- (7) Items 4, 5, 6, 7, 8 and 10 of Schedule 4 commence immediately after the later of the following:
  - (a) the commencement of section 1;
  - (b) the commencement of Part 2 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001*.
- (8) Schedule 5 commences immediately after the later of the following:
  - (a) the commencement of section 1;
  - (b) the commencement of Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 6) 2001*.
- (2) Clause 3, page 2 (line 2), omit “Each”, substitute “Subject to section 2, each”.
- (3) Heading to Schedule 1, page 3 (lines 2 and 3), at the end of the heading, add “**conferring jurisdiction on the Federal Magistrates Court in migration matters**”.
- (4) Schedule 1, heading to Part 1, page 3 (line 4), omit “**Amendments**”, substitute “**Amendment of the Migration Act 1958**”.
- (5) Heading to Schedule 2, page 8 (line 2), omit “**Other amendments**”, substitute “**Amendment of other Acts conferring jurisdiction on the Federal Magistrates Court in migration matters**”.
- (6) Page 9 (after line 9), at the end of the bill, add:

**Schedule 3—Amendments linked to the Migration Legislation Amendment (Judicial Review) Act 2001**

**Part 1—Amendment of the Migration Act 1958**

**1 Section 475A**

After “1903”, insert “or section 39 of the *Federal Magistrates Act 1999*, or the jurisdiction of the Federal Magistrates Court under section 483A of this Act, section 44 of the *Judiciary Act 1903* or section 32AB of the *Federal Court of Australia Act 1976*.”.

**2 Paragraph 475A(b)**

Omit “Court’s”, substitute “court’s”.

Note: The heading to section 475A is altered by inserting “**or Federal Magistrates Court**” after “Court”.

**3 Subsection 476(1)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

Note: The heading to section 476 is altered by omitting “**does**” and substituting “**and Federal Magistrates Court do**”.

**4 Subsection 476(2)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

**5 Subsection 476(2A)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

**6 Subsection 476(2B)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

**7 Subsection 476(4)**

After “Federal Court” (wherever occurring), insert “or the Federal Magistrates Court”.

**8 After subsection 477(1)**

Insert:

(1A) An application to the Federal Magistrates Court under section 483A for:

- a writ of mandamus, prohibition or certiorari; or
- an injunction or a declaration; in respect of a privative clause decision in relation to which the jurisdiction of the Federal Magistrates Court is not excluded by section 476 must be made to the Federal Magistrates Court within 28 days of the notification of the decision.

**9 Subsection 477(2)**

After “Court”, insert “or the Federal Magistrates Court”.

**10 Subsection 477(2)**

After “subsection (1)”, insert “or (1A)”.

**11 Section 478**

Omit “subsection 477(1)”, substitute “section 477”.

**12 Section 479**

Omit “subsection 477(1)”, substitute “section 477”.

**13 Subsection 480(1)**

Omit “subsection 477(1)”, substitute “section 477”.

**14 Subsection 480(2)**

After “Court”, insert “or Federal Magistrates Court (as the case requires)”.

**15 Section 481**

Omit “subsection 477(1)”, substitute “section 477”.

**16 After section 483**

Insert:

**483A Jurisdiction of the Federal Magistrates Court**

Subject to this Act and despite any other law, the Federal Magistrates Court has the same jurisdiction as the Federal Court in relation to a matter arising under this Act.

**17 Subsection 484(1)**

Repeal the subsection, substitute:

(1) The jurisdiction of the Federal Court and the Federal Magistrates Court in relation to privative clause decisions is exclusive of the jurisdiction of all other

courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

Note: The heading to section 484 is altered by inserting “**and Federal Magistrates Court**” after “Court”.

#### **Part 2—Application of amendments**

##### **18 Application of amendments**

The amendments of the *Migration Act 1958* made by this Schedule apply in relation to applications made under section 477 of that Act after the commencement of this item.

(7) Page 9 (after line 9) at the end of the bill add:

##### **Schedule 4—Amendments linked to the Migration Legislation Amendment Act (No. 1) 2001**

##### **Part 1—Amendment of the Migration Act 1958**

###### **1 Subsection 485(3)**

Omit “under section 44 of the *Judiciary Act 1903*, the Court”, substitute “or the Federal Magistrates Court under section 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* or section 39 of the *Federal Magistrates Act 1999*, the court”.

###### **2 Subsection 485(4)**

After “Court”, insert “or the Federal Magistrates Court”.

###### **3 Section 485A**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have”, substitute “(including sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), neither the Federal Court nor the Federal Magistrates Court has”.

Note: The heading to section 485A is altered by omitting “**does**” and substituting “**and Federal Magistrates Court do**”.

###### **4 Subsection 486B(1)**

Omit “or the Federal Court”, substitute “, the Federal Court or the Federal Magistrates Court”.

###### **5 Subsection 486C(1)**

After “Court”, insert “or the Federal Magistrates Court”.

Note: The heading to section 486C is altered by inserting “**or Federal Magistrates Court**” after “Court”.

###### **6 Subsection 486C(2) (note)**

Omit “has”, substitute “and the Federal Magistrates Court have”.

###### **7 Subsection 486C(3)**

After “1903”, insert “, section 39 of the *Federal Magistrates Act 1999*”.

###### **8 After subsection 486C(3)**

Insert:

(3A) This section applies to proceedings in the Federal Magistrates Court’s jurisdiction under Part 8 of this Act, section 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* or any other law.

###### **Part 2—Application of amendments**

##### **9 Application of amendments made by items 1, 2 and 3**

The amendments of the *Migration Act 1958* made by items 1, 2 and 3 of this Schedule apply in relation to proceedings instituted after the commencement of this item.

##### **10 Application of amendments made by items 4, 5, 6, 7 and 8**

The amendments of the *Migration Act 1958* made by items 4, 5, 6, 7 and 8 of this Schedule apply in relation to proceedings instituted after the commencement of this item.

(8) Page 9 (after line 9), at the end of the bill add:

##### **Schedule 5—Amendment linked to the Migration Legislation Amendment Act (No. 6) 2001**

##### **Part 1—Amendment of the Migration Act 1958**

###### **1 Subsection 91X(1)**

Omit “or the Federal Court”, substitute “, the Federal Court or the Federal Magistrates Court”.

Note: The heading to section 91X is altered by omitting “**or the Federal Court**” and substituting “**, the Federal Court or the Federal Magistrates Court**”.

###### **Part 2—Application of amendment**

###### **2 Application of amendment**

The amendment of the *Migration Act 1958* made by this Schedule applies in relation to proceedings instituted after the commencement of this item.

**Senator BOLKUS (South Australia)** (10.01 a.m.)—The opposition supports the amendments.

Amendments agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

Motion (by Senator Ian Campbell) proposed:

That this bill be now read a third time.

**Senator COONEY (Victoria)** (10.02 a.m.)—I would like to speak on the **Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001**, and I thank Senator Campbell for agreeing to that at this stage. The Federal Magistrates Court is headed up by Diana Bryant, a most outstanding jurist who has run this court quite brilliantly. I think the Federal Magistrates Court is a great achievement. Courts are essential for the proper running of this country. People have heard me on this topic now ad nauseam. I want to go on, even though the points I make have been made ad nauseam. A magistrates court fits into a hierarchy of courts and has an important job to do, but we should not get to the point of giving that court work that should properly be done by the Federal Court. Jurisdiction has been given in the area of migration, and we have spoken about migration for some time over the last few days. In any event, those bills have been passed.

The legal system is there to protect not only the majority but also the minority. When we are talking about democracy we are talking about a system that operates within immutable rules and immutable laws. I mention the Ten Commandments here, but there are others. The Magna Carta, the American Bill of Rights and the Universal Declaration of Human Rights are all examples of the ongoing principle that in a democracy there should be fundamental rules, tenets and principles that not even the legislature can overrule—or, in any event, overrule with any conscience. Those rules are set out and the interpretation of those rules should be left to the courts. That is why the courts are so important.

There is another matter that I want to raise. There has been great criticism of judges by people in this parliament in recent times. Like us all, judges are made up of the dark and the light but they are people who we have set up in society to ensure that everybody gets a fair go. Certainly they make mistakes, but they are likely to make fewer mistakes than the rest of us. There has also been great criticism of the legal profession. I quoted yesterday from Mr Justice French, a judge in the *Tampa* case who held against those who were bringing the case against the government. He said that, because of the action they had taken, they had acted in accordance with the highest principles of the law, which is that our rights should be maintained and that when our rights are attacked by our fellows or by government there should be a body of people to get up and protect them. Indeed, I think Australia is a good example of where the rule of law does by and large operate.

There has been a suggestion from time to time to fine lawyers who bring actions that others judge as not worthy. Those penalties imposed upon lawyers who bring actions which are considered by others as not worth bringing, or to have been brought when they should not have been, hit more at those lawyers who act for the poor and oppressed than they do at the lawyers who act for the rich and powerful. We do not want to become so draconian in this parliament that we punish those very people who are supporting the laws that we all declare we uphold. I think everybody who comes into this parliament comes in with a desire to do something for the community and a desire to see law maintained. It would be a pity if we started to punish those very people who are there to help the downtrodden and those unable to help themselves.

**Senator GREIG (Western Australia)** (10.08 a.m.)—Given the haste of today's proceedings, I missed the opportunity to give a contribution in the second reading debate. I had prepared a speech and within that speech I had a couple of questions that I wanted to direct to the minister. I ask Senator Ian Campbell, as the minister with carriage of this bill, if he would acknowledge those

questions and be kind enough to alert the Attorney-General to them, and perhaps the Attorney-General could respond to me in writing over the coming weeks. I also seek leave to incorporate my speech in *Hansard*.

Leave granted.

*The speech read as follows—*

This bill confers jurisdiction in migration matters on the Federal Magistrates Court.

The debate over the migration bills has been had and the position of the Australian Democrats is now clearly on the record, as is the position of the Australian Labor Party.

At present the Federal Magistrates Court has jurisdiction in a number of areas including administrative law, bankruptcy, family law, human rights and trade practices. This bill adds certain migration decisions – referred to as ‘judicially-reviewable decisions’ – to that list.

Part 8 of the Migration Act restricts the Federal Court’s ability to review migration decisions and that restriction will similarly apply to the Federal Magistrates Court. It seems to me that all this bill will really do is allow applicants for review of migration decisions to choose the Magistrates Court instead of the Federal Court perhaps because of the lower cost and more expeditious nature of that forum.

In either case, an aggrieved person will still have the option of appealing to the Full Court of the Federal Court and then on to the High Court, with leave of that Court.

The problem that this bill does not address is the High Court’s significant workload in migration matters. The reason for that workload is the restriction contained in Part 8 of the Migration Act. Under that Part an applicant can only seek review of a decision on a limited grounds. However, an applicant can seek review on a much wider range of grounds under the original jurisdiction of the High Court, set out in section 75(v) of the Constitution.

In *Abebe v. The Commonwealth*, decided in 1999, Chief Justice Gleeson and Justice McHugh commented:

The Parliament has chosen to restrict severely the jurisdiction of the Federal Court to review the legality of decisions of the Refugee Review Tribunal. That restriction may have significant consequences for this Court because it must inevitably force or at all events invite applicants for refugee status to invoke the constitutionally entrenched section 75(v) jurisdiction of this Court. The ef-

fect on the business of this Court is certain to be serious.

In January of last year, in the case of *Re The Minister for Immigration and Multicultural Affairs; ex parte Durairajasingham*, Mr Justice McHugh again stated:

Given the history and the need for this Court to concentrate on constitutional and important appellate matters, I find it difficult to see the rationale for the amendments to the Migration Act which now prevent this Court from remitting to the Federal Court all issues arising under that Act which fall within this Court’s original jurisdiction. No other constitutional or ultimate appellate court of any nation of which I am aware is called on to perform trial work of the nature that these amendments to the Act have now forced upon the court.

The government has curtailed those rights of review in the Federal Court, in keeping with its general desire to eliminate almost any rights that asylum seekers may have to appeal decisions made against them. But in doing so it has unduly burdened the High Court with the work, because, of course, the High Court’s jurisdiction is constitutionally entrenched.

Of course, we all know that there are many ways to skin a cat and we saw one of those methods practiced today with the Migration Legislation Amendment (Judicial Review) Bill 1998 – which the Australian Labor Party have just supported and which has just been passed by this Senate.

That bill severely limits judicial review of decisions under the Migration Act that relate to the ability of non-citizens to enter and remain in Australia. And that bill will probably have the effect of reducing the work load of the High Court.

The workload of the High Court in relation to judicial review of migration decisions needed to be addressed but the extinguishment of rights was not the appropriate means of address – although clearly the extinguishment of rights of asylum seekers is very consistent with this government’s policy. I expect that the government was happy to be able to reduce the workload of the High Court and appease One Nation voters with the passage of that bill.

But I should return to the bill before the Chamber. The Democrats are happy to support the bill. I would just have one question for the Minister and that relates to the issue of resourcing.

In his second reading speech the Attorney-General commented that the referral of migration

jurisdiction would lead to an increase in work and that the government would be appointing additional Magistrates. At the time of giving his speech, the number of additional Magistrates had not been determined.

When the Minister sums up this debate or even during the Committee stage, I would appreciate it if he could indicate, firstly the number and location of Magistrates at present and how many additional Magistrates will be appointed, if that number has now been determined. If that number has not been determined, could the Minister even provide a rough indication of what the number is likely to be – a ‘ball park’ figure – so to speak.

The Australian Democrats support this bill.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (10.09 a.m.)—I will refer the questions to the Attorney-General and make sure that there is a written response to Senator Greig.

Question resolved in the affirmative.

Bill read a third time.

### BUSINESS Government Business

Motion (by Senator Ian Campbell) agreed to:

That intervening business be postponed till after consideration of government business order of the day No. 5, **Taxation Laws Amendment Bill (No. 6) 2001**.

### TAXATION LAWS AMENDMENT BILL (No. 6) 2001

#### Second Reading

Debate resumed from 26 September, on motion by Senator Ian Macdonald:

That this bill be now read a second time, upon which Senator Cook had moved by way of amendment:

At the end of the motion, add “but the Senate calls on the Government to use the opportunity provided by this bill to amend the New Tax System legislation to:

- (a) remove the goods and services tax (GST) from the price of women’s sanitary products;
- (b) remove the GST from funeral expenses;
- (c) remove the GST from fees paid by long-term caravan park and boarding house residents;

- (d) compensate charities for the extra burden imposed by the GST; and
- (e) simplify the GST for small businesses”.

**Senator BROWN (Tasmania)** (10.11

a.m.)—I seek leave to incorporate a letter from the National Vice President of the Institution of Engineers Australia’s, Ken Mathers, which I have shown to the other parties. It puts the point of view from engineers that this legislation is going to be against the interests of the members of that institution. I would like it recorded that that concern is there and has not been resolved by amendments to the legislation.

Leave granted.

*The letter read as follows—*

The Institute of Engineers Australia  
National Office  
19th September 2001  
Dear Senator Brown,

There is an issue that is currently affecting around 8,800 of our 60,000 members that I am seeking your assistance to resolve.

The issue of concern for these 8,800 engineers relates to the treatment of contractors under the Alienation of Personal Services Income Act. The Institution supports measures that ensure a fair tax system, but is concerned that engineering practitioners who genuinely act as contractors are not being treated as such because of this legislation.

The legislation limits work related deductions for income generated by personal services, even where that income is earned through a company or partnership. Engineering contractors gain their income from offering their individual personal effort and skill, which is based on their qualifications and experience. The nature of a small engineering contracting business means that these engineers, more often than not, are unable to pass the three tests set out in legislation. Amendments to the legislation are currently before, Parliament Taxation Laws Amendment Bill (No. 6) 2001. However, these amendments do not in any way resolve the main issue for engineering contractors.

We are seeking an amendment to the Taxation Laws Amendment Bill (No 6) 2001, so that some, if not all the issues currently affecting our members can be resolved.

We would like your help and support in putting forward our proposed amendment so that it can be debated in Parliament and ultimately included in the Bill. Attached are details of the impact of the current situation on engineering contractors. If

you require further information, please contact Mr Malcolm Palmer on (02) 6270 6581.

Yours sincerely

Ken Mathers

National Vice President, Public Policy and Representation

Amendment agreed to.

Original question as amended, resolved in the affirmative.

Bill read a second time.

### In Committee

The bill.

**The CHAIRMAN**—The question is that the bill stand as printed.

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (10.12 a.m.)—Madam Chairman, I am not quite sure what order my amendments should be taken in. I have circulated two papers containing amendments to clauses in this bill and I indicate that I would be grateful for some guidance as to which way you would like to go. Perhaps if I can just deal with the first one by way of a question through you to the government—

**The CHAIRMAN**—The question will have to be split, even if you move them together, because one is opposing a section and wanting that removed and the other one is substituting various things. They would have to be put in different ways, so I suggest you speak to the first and when we have disposed of that move to the second. Are you happy to do that?

**Senator COOK**—Let me speak, firstly, to the question.

**The CHAIRMAN**—The question before the chair is that the bill stand as printed.

**Senator COOK**—Then perhaps the best way of proceeding might be for me to ask the minister who is now at the table a question. Last night in my remarks in the second reading debate I drew attention to clause 5 on page 3 of the bill relating to the gas industry, which concludes by referring to the regulations that are yet to be tabled. This is an example of a provision in which the real work is done by the regulations rather than set out in statute law. My understanding, from consultations with industry, is that the govern-

ment has been pursuing consultations prior to finalising those regulations and at this point those regulations are not concluded and not available. As a consequence, this chamber is being asked to legislate without knowing the full import of what that legislation would be, and that places us in a position which is not quite fair. I quickly intone that I am not suggesting bad faith here; I am suggesting that in all of the circumstances logistics have caught us all out.

**Senator Kemp**—That is a nice phrase.

**Senator COOK**—Thank you, Minister. If I did think bad faith existed you can be absolutely sure I would impugn it, but I do not think that it does.

**The CHAIRMAN**—Not in an unparliamentary manner, I hope.

**Senator COOK**—With equal forthrightness, I am pleased to say that I do not think it does. However, the anxiety expressed to me from the industry side is that—these are my terms, not theirs—they believe they are within an ace of concluding these consultations. They think that primarily this is a matter of being given the time to do so. The consultations are not bogged down in a furious argument over particular issues, and industry expressed to me that, if extra time were provided, then the reasonable view is that the consultations would end with a unanimous position.

As a consequence, last night I foreshadowed that I would move an amendment today in the committee stage which effectively stood aside this section of the bill, to be brought back on when the consultations were complete and when the regulations were therefore known to us, so that we could see what we are being asked to legislate about. However, I put to the government—with due respect to the minister; he may be caught a little by this because he was not in the chamber at the time last night and therefore did not hear it from me first-hand, but Senate Minchin was and I thought he was nodding to me in comprehension of this point—that we would not move our amendment if the government could give us an undertaking in the *Hansard* that it would not activate this provision, if we voted for it, until such time

as the consultations on the regulations were completed and agreed and an indication of that agreement—for example, the tabling of letters—was given to the chamber.

That would have the advantage of allowing us to vote for this package of bills—allowing what is in my comprehension a logistical problem to be dealt with in an appropriate way, allowing what I am advised is not a major issue of principle over the regulations but an issue of clarity—better explanation and understanding—to be smoothed out with the industry. That is the proposition I have put. It would save us a bit of time if there could be an answer to it. I will not labour the point, but the way this section of the tax act is to operate will be set out in the regulations. They are the critical missing link. We do not know what those regulations are and until we do it is inappropriate to ask us to vote for the bill.

The device I have proposed is a constructive and positive way around this, given what the practical and logistical obstacles might be. Perhaps the only other sensible thing I can say is that it is obvious to everyone—in fact, it was obvious to the doorman this morning when I came in—that this may well be the last day of parliamentary sitting before we go to an election, and the device I have offered up to the government as a way around this problem can quickly deal with it in those circumstances, without unnecessary delay.

**Senator KEMP (Victoria—Assistant Treasurer)** (10.20 a.m.)—First of all, my understanding is that Senator Cook did flag this last night. We appreciate the issue that he has raised, and I think I can give him sufficient assurances that it would not be in the interests of the industry if we did not proceed with the bill as it now stands. Equally, it is not unusual that the regulations which give effect to a bill come after the bill is through, and of course the Senate always does have that power to disallow the regulations. But I think I can give Senator Cook the assurances that he is seeking.

The advice that I have received—and I mention this by way of background—is that the government, as Senator Cook alluded to, over the last couple of years has had exten-

sive consultations about the new gas transfer price methodology, which is the subject of the proposed petroleum resource rent tax regulations. The government gives its assurance to the chamber that it will continue to consult with the industry on the detail of the regulations and will reflect the industry's views in those regulations. As requested by the chamber, the government will seek the industry's agreement to the regulations before the regulations are finalised. I think that is a pretty clear-cut assurance that we are giving to Senator Cook, and I hope that will be sufficient so we can proceed with the bill.

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (10.22 a.m.)—Thank you for that, Minister. That is a pretty firm assurance. We are in the committee stage, which is the realm of the pedants, and let me resort to a bit of pedantry—

**Senator Kemp**—Most atypical of you, Senator!

**Senator COOK**—No, we have to dot the i's and cross the t's right now, so I want to dot an 'i' if I can; I think the 't' has been crossed. What I did request was that, when agreement is reached, there be an indication to the chamber that that is the case. I do not think you are saying that you would not do that, but I would like you, if you would not mind, to put that on the record.

**Senator KEMP (Victoria—Assistant Treasurer)** (10.22 a.m.)—I think we could agree to table the letter from the industry itself which would show that the agreement has been reached. I think that would give you the comfort that you are seeking in this matter.

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (10.23 a.m.)—I thank the minister. On the basis of those assurances, which are now in *Hansard*, I will not proceed with my amendment to that section of this bill. I now move amendment No. 2 on revised paper 2411:

(2) Page 27 (after line 5), after Schedule 5, insert:

**Schedule 5A—Further exemptions to the goods and services tax**

***A New Tax System (Goods and Services Tax) Act 1999***

**1 After section 38-47**

Insert:

**38-48 Women's sanitary products**

- (1) A supply of women's sanitary products is ***GST-free***.
- (2) In this section:

***women's sanitary products*** means tampons, pads, liners and similar items concerned with feminine hygiene.

**2 After Subdivision 38-F**

Insert:

**Subdivision 38-FA—Funeral services**

**38-240 Funeral services**

- (1) A supply of funeral services is ***GST-free***.
- (2) In this section:

***funeral services*** means a range of products and services to facilitate the celebration of a deceased person's life, and for the disposition and memorialisation of the deceased in accordance with the family's cultural, religious and personal preferences.

**3 At the end of Division 87**

Add:

**87-30 Long-term accommodation at caravan park or boarding house**

Notwithstanding any other provision in this Division, a supply of long-term accommodation at a caravan park or boarding house is ***GST-free***.

We oppose items 1 to 8 in schedule 1 in the following terms:

- (1) Schedule 1, items 1 to 8, page 4 (line 5) to page 6 (line 11), **TO BE OPPOSED**.

The amendment would add further exemptions to the goods and services tax. The exemptions we seek to include are the removal from the GST of women's sanitary products, the removal from the GST of funeral services and the removal from the GST of long-term accommodation at caravan parks and boarding houses. I notice that Senator Stott Despoja has circulated a further amendment referring to lactation aids, and I imagine that she will be moving that shortly—and I just caught a nod in the affirmative. In order to shorthand the proceedings now, I indicate that we will support that amendment.

It is a matter of historical record that the Labor Party opposed the GST tooth and nail when it was brought into this chamber, and we are proud of that opposition to it and we believe that the events of its implementation—the widespread community dissatisfaction and alarm at its impact when its impact became more widely understood—justify the principled stand we took in initial opposition. Since we are under time constraints today, I do not want to recast the many speeches that I have made in this place, but I do want to refer to them and incorporate in my remarks those same sentiments. There is no question that the Labor Party in the last federal election fought trenchantly to win government on the basis that that would mean that the GST was not introduced. There is no doubt either that if, as the Prime Minister said on the eve of the last election, it had been regarded as a referendum for a GST, in terms of non-government votes, an absolute majority of voters in Australia would have voted against a GST. Although there was an absolute majority, the government won office because it got a majority of votes in the critical seats. The situation was similar to that which we have seen in the United States, with Mr Gore getting an absolute number of votes but President Bush being installed because he got the votes where it critically counted. My only point here is that, if it were a referendum, in my submission the GST would not have gone ahead. So I just want to make that point and pass on now that we have got the thing as the full orchestration of the GST.

Labor's position is that this tax is unfair, complicated and complex and that now the Income Tax Assessment Act, far from being more simple, is about 3½ telephone books high and is several kilograms heavier than it was previously. This is now not only an unfair tax but an even more complex one. It is not surprising to us at all that small business are struggling with the impositions of mastering the complexity of all the new tax regulations and rules that they are supposed to be across, it is not surprising to us at all that we are up to about 1,800 amendments to the GST since it was introduced and it is not surprising to us at all that the Taxation Office is still well behind the game in clarifying the

meaning of various elements of the tax act now that it has passed into law. If the tax office does not know and is making up its mind, how can small business know? We have canvassed all of those points in this chamber. I do not want to retraverse that ground; I just want to refer to it and incorporate it in my remarks now.

However, we believe that the tax should be made fairer and simpler. Our commitment to rolling back the tax is based on those two principles: fairness and simplicity. So we move this amendment today. We do not believe that there ought to be a GST on women's sanitary products. I note the remarks made last night by you, Madam Deputy President, in your speech from the back benches when you said that, in the interests of making the GST fairer, the GST should be removed from women's sanitary products because the use of those products is not an option for them. It is a necessity, and to tax a necessity of life like this seems to us to impose an unfairness. So we have moved the amendment to remove that provision from the GST.

The amendment also removes the GST on funeral services. As I remarked last night in my speech, the GST appears to many people to be a death duties tax. One thing that is certain in our life is that we will pass from this life and, in doing so, we will be taxed on exit. Funeral directors, in a paper presented to the Labor Party—it was made available to the government and the other parties; we were not just singled out—emphasised what a terrible tax this is and how difficult they find explaining it to their clients. Their clients come to them at a time of utmost personal grief, when they are grieving for the loss of a loved one, and the funeral directors find that there is an extraordinary difficulty in explaining why their bill has to contain a 10 per cent tax in addition to the normal charges. Last night I set out a list of things that this would refer to, and I do not wish to canvass it again, but essentially we would remove the GST from all funeral services and from all the inputs to funeral services, such as the hiring of celebrants and the cost of wreaths—the whole process. We have now moved that amendment and, as I say, we

believe that there is widespread community support for it.

Our amendment also relates to long-term accommodation at caravan parks or boarding houses. We do not believe that the government has done the right thing by people who live in such places. The government has altered some of the caravan park charges but not all of them and has therefore pretended that caravan park charges have been removed from the GST. That is not the case. This amendment would deliver justice to these people. Many long-term residents of caravan parks or boarding houses are in lower income brackets. Many of them are elderly people—the seniors in the community—who are eking out their final years in living in what may be, from their personal point of view, unsatisfactory accommodation. We think a bit of dignity should be extended to them and, because of their more straitened circumstances, a compassionate government should not tax this group—certainly not on their place of residence. We are operating under strict time constraints today, but I did want to make those points.

An amendment to the motion that this bill be now read a second time, which was agreed to by the Senate, expressed the view of the Senate that the government should revisit the tax act and make it fairer in these ways. I now think that it is appropriate that we give force to that expression by taking this opportunity to amend the law. I indicate in conclusion that the Democrats have added nursing aids—

**Senator Stott Despoja**—Lactation aids.

**Senator COOK**—The Democrats, in an amendment, have added lactation aids. That includes but is not limited to breast pumps, et cetera. The opposition will support that amendment because we think that that too will make the situation fairer. Young mothers do not have an option in many circumstances. If we had prevailed in our opposition to the GST initially, we would not be faced with this question now. However, since we did not prevail, we are faced with this question and a move to amend the situation and make it fairer is, of course, something that we would support.

**Senator MURRAY (Western Australia)** (10.34 a.m.)—The Australian Democrats would like, as a matter of process, for the three items in amendment No. 2 to be separated. I think that is a relatively easy thing to do, but I ask that you do it, not us, as a formal amendment. I do so on the basis that the consideration of each of those items will have a monetary consequence attached to it. Given its history, I would undoubtedly expect the government to react to them, and I would want it separately exposed. In making that process request to Senator Cook, I would clearly signal to him that it is the inclination of the Democrats' party room to support all three parts of the amendment on the basis that we get certain answers to certain questions, which I will put to you, and those principally relate to the financial consequences of this. Further, we hold the view that amendments at the margin—which mostly these are—put to any government would receive favourable consideration where they reflect desirable public policy. We frankly do not have strong in-principle objections to anyone seeking to adjust the GST regime in line with previously established principles and these three areas of the amendment are clearly areas where the government, the opposition and the Democrats have previously said that there should be special treatment.

The first item that we are dealing with relates to women's sanitary products, and our amendment includes lactation products. These do indeed address areas of health and, as you know, they have special treatment under the GST act. The second item, relating to funeral services, deals with issues of disadvantage and ensuring that essential services are treated beneficially. That, again, has the precedent of having special treatment, not least with respect to charitable organisations, through which a lot of funeral services are conducted. The third item has long had special treatment from the government. In fact, there have been recent announcements in that regard. So I do not think these adjustments are excising new areas from the general principles of the GST. I think that these are in fact adjustments to areas which, at present, have special treatment and are therefore within the boundaries of precedent both in terms of how this matter is dealt with

and in terms of principle. I will address this matter in a little more length later with some questions to Senator Cook. But I do think the three items should be isolated and taken separately in the debate.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (10.38 a.m.)—I foreshadow that I will move an amendment to the *Taxation Laws Amendment Bill (No. 6) 2001*, which has been circulated in my name on behalf of the Australian Democrats. It is a very simple amendment which, as has been identified by Senator Cook and my colleague Senator Murray, seeks to exempt lactation aids from the GST. I support Senator Murray's comments on the stance of the Democrats to the proposed exemptions before us. Indeed, there is precedent for special treatment in the cases that have been identified by the Australian Labor Party. Similarly, we have already identified a number of those cases as areas in which we would like to see more work done on getting a better exemption.

In relation to lactation aids, while it may seem to be one that came out of the blue, it is certainly a campaign that the Nursing Mothers Association and other interested groups have embarked on for a number of months. I think it is an oversight that it was not originally exempt. Therefore, we propose an amendment to Labor's amendment, in order to exclude lactation aids from the GST. For those who do not know, lactation aids play a very important role in facilitating some women's choice to breastfeed their babies. Baby formula is GST-free, as it is food so, in order to facilitate choices for women, the Australian Democrats feel that the tax treatment of the provision of breast milk should be equalised, and that is what we are seeking to do with this amendment. Senator Murray referred to the health aspects of this amendment but in some respects there is a precedent because it can be treated as a food. It is estimated that the cost of forgoing the GST on lactation aids is less than \$1 million. Senator Murray has stated that the Democrats are mindful of the financial implications of the Labor Party's amendments. We think these relatively modest range of exemptions being proposed should be sup-

ported, subject to the questions that we have of the Australian Labor Party.

In relation to the debate that took place last night—I acknowledge your speech, Madam Chairman—on women's sanitary products that can only be described as an oversight, and a very unfortunate one. Many members of the government, many female members—particularly backbenchers—have been quite supportive of the campaign to ensure that women's sanitary products are GST free, as they should be. We have a proud history in this country of ensuring that those products have been free from any taxation—since at least 1948, if my memory serves me correctly. I acknowledge Senator West's comments last night, when she said it was a furphy that there was a so-called luxury tax attached to those items when there has not been.

I would like us to continue that tradition in Australia. These are essential items and there are health issues associated with their exemption from the GST. That is why I was very quick last night to put at ease the concerns that some members of the Labor Party were expressing that we might not be supporting that amendment. Indeed we are. All members of the Australian Democrats party room support this. It was put on record very quickly by our former leader as well as members of our party room, male and female, that they support the exclusion of those products from the GST. The Democrats are very mindful that people need to be looked after from the cradle to the grave, and that is what the amendments before us do.

We do have some questions for Senator Cook, and my colleague Senator Murray will put those on record shortly. To conclude, the Democrats have always said that we would work to ensure that this tax was as fair and as simple as it could possibly be. We have foreshadowed, during negotiations and after the deal was done, that we would monitor the implementation of the tax and its impact on groups in our community, particularly lower socioeconomic groups.

If the government feel that there was no flexibility in the arrangement that we negotiated, they are wrong. They knew that the Democrat party room made it clear that we

would continue to monitor the implementation and the impact of the tax. That is exactly what we are doing. Senator Murray has indicated previously the need for more information and modelling to take into account the impact of the tax over the last year or so. We will continue to play that role in an accountability sense but also being mindful of equity issues. We do not resile from that position. In fact, I wish to re-emphasise that to the chamber today. This is a modest set of amendments. I look forward to a couple of questions being answered, and hopefully I will be able to move these amendments—or Senator Murray will do so on my behalf if I have to leave the chamber.

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (10.44 a.m.)—Madam Chairman, I think the question before me is from Senator Murray, through you, and that is: would I agree to break up my amendments and have each of them dealt with separately. The situation this suggests is that the Democrats will then cherry pick and choose which ones they want to support and which ones they want to reject, and I will not get all of my amendments up. That is the risk I run, but, in the straightforward way it has been put to me, I can agree to separate them. I hope that does not mean that all of them will not get through; all of them have merit and should be carried. But if it is a procedural question of dealing with them separately, I will agree.

**Senator MURRAY (Western Australia)** (10.45 a.m.)—I thank Senator Cook, that is very kind of him. Have you a ballpark figure—I would not expect you to have accurate costings—of the cost of each of these?

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (10.45 a.m.)—My parliamentary leader, Kim Beazley, has often made speeches about how unfair it is to have the GST on women's sanitary products, and has said that he believes the per annum return to the government from the GST on these products is in the ballpark of \$20 million.

As far as funerals, caravan parks and boarding houses are concerned: I will take funerals first. I do not have a figure for that but we believe that it is in the tens of mil-

lions of dollars. It is no more than that. The same is to be said for caravan parks and boarding houses. As Senator Murray said in his remarks, the government has announced some elements of this. We take it further, and the difference in cost between what the government has announced and the further distance we take it, to give complete justice to people in this situation, is not very great. I make those remarks against the comments made by the Treasurer, Mr Costello, yesterday and, in question time here yesterday, by the Assistant Treasurer, Senator Kemp, that there is a budget surplus of \$10.6 billion and that in comparison these are not major roll-back expenses. Since this appears to be the last day of sitting before the election, the Labor Party will be announcing, during the election campaign, further roll-back. That will be announced on a costed basis and it will deal with other items, but these are items that I think we can address immediately that will give fairness and simplicity to the system.

**Senator KEMP (Victoria—Assistant Treasurer)** (10.48 a.m.)—The government will not be supporting the amendments, which are part of Labor's roll-back. We are interested to listen to what other elements of roll-back will be occurring, and this will be a debate which will be carried forth through the election period. I will make a couple of observations about the comments from Senator Stott Despoja. Modelling has been done recently about the impact of the GST, as the senator would know. The NATSEM modelling showed, if my memory serves me correctly, just how advantaged many of the less well-off groups were and the huge benefits which have been delivered to families as a result of the goods and services tax. I notice some wry smiles among the Labor advisers. I would urge the Labor advisers to look very closely at the results of the NATSEM modelling. It shows how important tax reform is to Australian families and the huge benefits the tax reform was able to deliver. As you roll back the GST—as the Labor Party wants—you add to the complexity of the GST. I do not think any observer would gainsay that. The Treasurer has put out a press statement, which I will not go through in detail, about the Labor Party's

policy on funerals. That press statement clearly outlines the complexities which will now arise.

So it is an irony that Labor talks about making things simpler when, in fact, Labor Party policy is to make them more complex. Senator Cook gives us costings—and I would have to say that Labor Party costings particularly coming from Senator Cook have not been good in the past. The track record has not been good. The Labor Party costings show, from what Senator Cook said, \$10 million here, \$40 million there. The truth is, Senator, that as you cut down the base of the GST ultimately you cut down the revenues to state governments because the GST flows to state governments. I do not know whether you have consulted with your state colleagues on these issues but, once we get past the balancing adjustment phase, amendments which are carried and which continue on will affect the base. So I put that particular item on record.

As for Senator Stott Despoja referring to the agreement with the Democrats, I guess this is not the time or the place to debate at length the agreement. But there are letters which have been exchanged between the Prime Minister and the Democrats. It is all on record and it is a matter not really of debate now; it is a matter of history, and the record shows what the agreement was. I might say that, as a result of the agreement, the Democrats were able to achieve some important areas that they sought. That is why agreements are important and should always stick, in my view. It does surprise me that the Democrats in this particular case seem to be so willing to accept the Labor Party position on this in a seemingly uncritical fashion.

We have debated the GST now for a very long period of time. We differ, and ultimately the public will make a decision on this issue. I think the arguments you have raised are arguments that you and I have jostled over for a very long period of time. Clearly, I have not convinced you and, I have to tell you, you have not convinced me. I think—if I may judge correctly, and I hope I do—you have failed to convince the Australian public. As the benefits of tax reform and the very substantial changes that we have made are

now becoming quite apparent to the wider community, roll-back is seen as a thing which the community are worried about. They are concerned about the cost of roll-back, concerned about how it is going to be financed and concerned about the complexity roll-back brings. So I just put on record that the government will not be supporting the amendments which are before the chair.

**Senator MURRAY (Western Australia)** (10.53 a.m.)—I have two items for the record. Firstly, I would restate that it is the opinion of the Australian Democrats that the ambit of these three items falls within the precedent for exceptions and special treatment within the categories of health, charities and previously announced policy. These amendments descended on us by surprise last night and all of us are having to deal with them on the run. But we have put it within that framework. Secondly, for the record, I would like an answer from Senator Cook. I am assuming that these amendments are prospective, by my reading of the bills. Have you a start date for them? Is it the date of assent and proclamation or is it another date? I think you should confirm that.

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (10.54 a.m.)—The amendments are to the bills and the amendments take force when the bills come into force. We have not put in the amendments any retrospective application, although we did think on this point. We are dealing here with trying to make the GST fairer and we think it is unfair, for example, that it be on women's sanitary items and we were proposing by this amendment to take it off. About \$20 million have been paid by women around Australia in tax on those items, but to reach back and to find some mechanism by which it could be returned beggars the mind. What kind of mechanism could it be? While we are therefore not putting a retrospective clause in it—and we have concerns about that—we do recognise the injustice, nonetheless, and we think that the best way of dealing with it is to cut it off cleanly now. The short answer to the question is: yes, we think some injustices have occurred but to right them is an extraordinarily complex and difficult thing

and you can never be sure that you have delivered it. So the most pragmatic thing to do is to make it applicable from the proclamation of this bill.

**Senator MURRAY (Western Australia)** (10.55 a.m.)—I therefore ask whether we move to consider the first part of item 2 and consider Senator Stott Despoja's amendment to the first item and vote on that first item.

**The CHAIRMAN**—Senator Murray, because all of item 2 has been moved, with the agreement of the chamber I was going to move point 1 after section 38 to 47, section 2 after subdivision 38F, and section 3 after division 87, vote on those, get those out of the way and then come back to Senator Stott Despoja's amendment to the opposition's point 1.

**Senator MURRAY**—That would be satisfactory to us. I thought that in dealing with item 1 as you have just outlined it would be easier to put Senator Stott Despoja's motion straight into that.

**The CHAIRMAN**—But I would still have amendments before the chair and I have to clear those first procedurally. Is it the wish of the committee that the opposition's amendment No. 2 be divided into three sections? The first section is section 1 after section 38-47, the second is after subdivision 38-F and the third section is 3 at the end of division 87. There being no objections, it is so ordered.

**The CHAIRMAN**—The question is that section 1 after section 38-47 be agreed to.

Question resolved in the affirmative.

**The CHAIRMAN**—The question now is that section 2 after subdivision 38-F be agreed to.

Question resolved in the affirmative.

**The CHAIRMAN**—The next question is that the amendment at the end of division 87 be agreed to.

Question resolved in the affirmative.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (10.58 a.m.)—I move:

- (1) Schedule 5A, item 1, after section 38-48, insert:

**38-49 Lactation aids**

(1) A supply of lactation aids is **GST-free**.  
 (2) In this section:

**lactation aids** includes, but is not limited to, breast pumps.

We also oppose certain parts in the following terms:

(4) Schedule 1, Part 2, page 5 (lines 1 to 11), **TO BE OPPOSED**.  
 (7) Schedule 1, Part 4, page 8 (lines 1 to 13), **TO BE OPPOSED**.

Amendment agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

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

**NEW BUSINESS TAX SYSTEM (THIN CAPITALISATION) BILL 2001****NEW BUSINESS TAX SYSTEM (DEBT AND EQUITY) BILL 2001****JURISDICTION OF THE FEDERAL MAGISTRATES SERVICE LEGISLATION AMENDMENT BILL 2001**

**Senator KEMP** (*Victoria—Assistant Treasurer*) (10.59 a.m.)—I table supplementary explanatory memoranda to the following bills which were dealt with earlier today: *New Business Tax System (Thin Capitalisation) Bill 2001*, *New Business Tax System (Debt and Equity) Bill 2001* and *Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001*.

**TAXATION LAWS AMENDMENT (RESEARCH AND DEVELOPMENT) BILL 2001****Second Reading**

Debate resumed from 26 September, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

*(Quorum formed)*

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (11.04 a.m.)—I thank all honourable senators for their con-

tributions and commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

**In Committee**

The bill.

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (11.04 a.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in this chamber today. I seek leave to move the government amendments Nos 1 to 12 together.

Leave granted.

**Senator IAN CAMPBELL**—I move:

- (1) Schedule 2, item 11, page 14 (lines 1 to 34), omit subsections (4) and (5).
- (2) Schedule 2, item 11, page 15 (lines 15 to 33), omit the definitions of *eligible feedstock percentage*, *eligible feedstock profit*, *feedstock input* and *feedstock output*.
- (3) Schedule 2, item 11, page 16 (lines 3 and 4), omit the definition of *research and development activities*.
- (4) Schedule 2, item 11, page 16 (lines 11 to 13), omit paragraph (1)(a).
- (5) Schedule 2, item 11, page 16 (line 14), omit “that definition”, substitute “the definition of *plant* in section 42-18 of that Act”.
- (6) Schedule 2, item 54, page 39 (line 24) to page 40 (line 25), omit subsections (5) and (6).
- (7) Schedule 2, item 54, page 41 (lines 6 to 24), omit the definitions of *eligible feedstock percentage*, *eligible feedstock profit*, *feedstock input* and *feedstock output*.
- (8) Schedule 2, item 54, page 41 (line 26), omit “73BH”, substitute “73BC”.
- (9) Schedule 2, item 54, page 42 (lines 7 to 9), omit paragraph (a).
- (10) Schedule 2, item 54, page 42 (lines 11 and 12), omit “that definition”, substitute “the definition of *depreciating asset* in section 40-30 of that Act”.
- (11) Schedule 4, item 5, page 77 (after line 26), insert:

*start grant* means a subsidy or grant paid to an eligible company:

- (a) under an agreement between the company and the Board entered into under the program known as the R&D Start Program; and
- (b) in respect of a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

(12) Schedule 4, item 5, page 78 (after line 33), at the end of section 73Q, add:

- (3) For the purposes of paragraph (1)(b), subsection (2) of this section and subsection 73R(1), the eligible company or any of its group members is treated as if it had deducted or can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for a year of income if the company received a start grant in respect of that year of income.

**Senator GEORGE CAMPBELL (New South Wales)** (11.05 a.m.)—I want to make a number of opening comments in relation to this **Taxation Laws Amendment (Research and Development) Bill 2001** and to the amendments moved by the government. In some respects, we are pleased to see that the government have picked up amendments to this legislation, even if they have only done so at the eleventh hour. In essence, they have picked up most, if not all, of the amendments contained in the minority report on the bill submitted by Labor senators.

When the report on this bill was tabled in this chamber, I made several points in relation to it, the first being how ill considered it had been for the government to draft legislation in this area, which everyone knows is extremely complex, and to bring it before this parliament with virtually no consultation with the industry or, at least, very little consultation. As a consequence, when we came to conduct the Senate inquiry into the matter, we found there was widespread opposition from virtually the whole private sector to significant aspects of this bill—aspects dealing with the definition, aspects dealing with feedstock, aspects dealing with the application and access to the premium rate and the three-year history and aspects dealing with plant write-off and so forth. Virtually every aspect of the bill was challenged by significant sections of the industry in those

inquiries. It is pleasing to see that as a consequence of the report the government has moved some amendments which substantially narrow the impact of this bill to two areas, the first being that of tax credit for small companies and the other being the premium rate. As a consequence of these amendments, some of the areas that were of real concern to the industry have now been deleted.

I will come to making some remarks in respect of the amendments when each of the amendments is dealt with. I understand that the Democrats also have some amendments that they wish to move in respect of this bill. In general, the opposition will be supporting the amendments that have been moved by the government to the original bill.

Amendments agreed to.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (11.08 a.m.)—by leave—I move Democrats amendments Nos 1, 2, 3, 5 and 6 on sheet 2409:

- (1) Schedule 1, item 1, page 3 (line 15), omit “and”, substitute “or”.
- (2) Schedule 1, item 2, page 4 (line 12), omit “and”, substitute “or”.
- (3) Schedule 1, page 4 (after line 20), after Part 1, insert:

**Part 1A—Report on access to tax offset**

***Industry Research and Development Act 1986***

**2A After paragraph 46(2)(c)**

Insert:

(ca) must set out:

- (i) the total number of applications during the financial year for registration of eligible companies under section 39J that specified an intention to choose a tax offset under section 73I of the *Income Tax Assessment Act 1936*; and
- (ii) the total amounts of the offsets involved; and must include an analysis of the tax offset scheme, including the tax offset thresholds, for that year; and

## 2B Application

The amendment made by this Part applies to reports in relation to the financial year commencing on 1 July 2001 and all later financial years.

(5) Schedule 1, item 6, page 6 (lines 13 and 14), omit “pm, by legal time in the Australian Capital Territory, on 29 January 2001”, substitute “am, by legal time in the Australian Capital Territory, at the start of 1 July 2002”.

(6) Schedule 1, item 7, page 6 (after line 23), after subsection (1), insert:

(1A) In formulating the guidelines, the Board must ensure that, having regard to the size and complexity of the activities that are to be carried out in accordance with the plans, the guidelines will not impose undue burdens on eligible companies that are small.

We also oppose schedule 1 in the following terms:

(4) Schedule 1, Part 2, page 5 (lines 1 to 11), **TO BE OPPOSED**.

(7) Schedule 1, Part 4, page 8 (lines 1 to 13), **TO BE OPPOSED**.

Last night in my second reading comments I firstly put on record an acknowledgment of the government’s preparedness to negotiate over this legislation and indeed make some changes which we, the Democrats, believe will improve the legislation. It was quite clear from business and industry groups, as well as from the evidence provided to the Senate committee inquiry, that the bill in its original form was unacceptable and would have had not only a negligible impact but possibly a deleterious impact on the R&D climate and investment from business in research and development. We identified very early some of our concerns and I am glad to see that the government has accommodated most of those. I understand that there have been some last-minute changes.

Very briefly, I will outline the purpose of the Australian Democrats amendments. Firstly, there will be no changes to the current definition of research and development, including the proposed extension of the exclusions list. This was actually the single most important problem that was identified by industry in the original bill and amendments Nos 1, 2, 4 and 7 deal with that issue.

Also, we seek through the amendments to explicitly say that the guidelines for the R&D plans are to be mindful of the size and complexity of projects so as to ensure that small firms do not have a heavy compliance burden. That is covered by amendment No. 3 standing in my name on behalf of the Australian Democrats.

Amendment No. 6 will require the IRDB annual report to include an analysis of eligible companies’ access to the rebate. Amendment No. 5 will make 1 July 2002 the commencing date of the R&D plans. This also allows sufficient time for the IRDB to develop appropriate guidelines in consultation with industry and companies to develop their plans in a timely and considered fashion. I want to record the Democrats’ irritation that in our negotiations with the government we did insist that the commencing date be 1 July 2001—except the plans—but at the last minute, I understand, the ATO and, I suspect, the minister’s office have compromised on the effective life provision of R&D plant. While recording our concern at that pretty much last-minute change, we do recognise that the Democrats amendments—in conjunction with the government amendments—improve the legislation. I commend the amendments standing in my name.

**Senator GEORGE CAMPBELL (New South Wales)** (11.12 a.m.)—I just want to deal briefly with amendment No. 6 moved by the Australian Democrats. First of all, I thank Senator Stott Despoja for picking up and negotiating with the government on our behalf the proposed changes that were suggested in the minority report. I notice that we were not invited to the table, but obviously we were able to get through substantial parts of what we suggested in our minority report.

In respect of amendment No. 6 there are two issues that are of concern. The first issue is the definition of what is small and what is meant by small companies being eligible companies. Are they using the standard definition of SMEs as we understand it or do they have something else in mind in terms of the definition of small?

The second aspect of concern is the reference to the guidelines by the board. We have a real concern about the board being left to

not only determine these guidelines but manage the guidelines. This could in itself lead over time to a great deal of uncertainty in terms of how this will apply if there are changes to the board, if different individuals come in, and if those guidelines are changed, which the members of the board might do from time to time. We have seen some of that demonstrated in the hearings, where it was suggested that the board would be better off with its knowledge determining who should have access or what real R&D—I think that was the term they used—was as opposed to eligible R&D. It is our view that it may be better in dealing with these issues that those guidelines, having been developed by the board, become promulgated as regulations. They would then be subject to the scrutiny of this chamber and of the parliament, and any changes that might be advanced in respect of those guidelines would be also subject to scrutiny by this parliament.

One other area that concerns me—I thought it was in respect of the Democrats amendments but it is actually in respect to the government's amendments, and Senator Campbell may be able to answer this—is in relation to government amendment No. 11. Having just got these amendments some short period of time ago, I will also raise an issue to do with the START grant: the fact that those companies who had access to START grants can use that to demonstrate eligibility for access to the premium.

I note that in the report of the committee the majority of senators on the committee actually recommended that the qualifying period be reduced from three years to two years. I note that the government did not take up the invitation from its own senators in respect of that area. I would ask Senator Campbell: if you are giving those companies who are on START grants access to the 175 per cent premium—and we support it; we argued for it and we advocated it in the committee and as part of our minority report—how are you going to deal with the other element, that is, the 80-20 rule? How are you going to determine what proportion of their spend is actually eligible for the 175 per cent? In the current environment it is 20 per cent of that expenditure above 80 per

cent of your average over the three years, which applies to companies now. How will that work in respect of companies who have had a history of R&D START grants as opposed to a history of expenditures of their own moneys on research and development?

**Senator STOTT DESPOJA** (South Australia—Leader of the Australian Democrats) (11.16 a.m.)—While Senator Ian Campbell is discussing this with his advisers, I will briefly respond to Senator George Campbell's questions on behalf of the Labor Party. Obviously, there are always going to be definitional questions around terms like 'size' and 'complexity'. I would assume that we are talking about the standard definition of an SME, in response to your question. I think that we have echoed some of your comments regarding the board. This is supposed to send a legislative signal in relation to the board's duties in response to the analysis of eligible companies and their access, but we were wary of perhaps being too prescriptive in the amendments. I would imagine that SME in the standard definition is the one being used. If I am wrong about that, I ask the government if they have any other definitions that they were proposing to use.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.17 a.m.)—I hope I can help my colleagues. I am informed that, firstly, there is no discrimination between those who come into it because they have a START grant and those who come into it because they come into the tax concession scheme by registering. There is otherwise no discrimination between the two. Does that make it clear?

**Senator GEORGE CAMPBELL** (New South Wales) (11.18 a.m.)—I understand that element, but the issue I am really raising is not so much their eligibility for access, and it is important that they have that. The scheme that is currently proposed has an 80-20 rule, so the premium only applies to the additional amounts of money you spend over and above the average of your spend over the three years. How is that going to be defined in respect of companies who are given eligibility to the scheme as a result of them having had

access to or being members of the R&D START scheme? How will the percentage of expenditure that they get the premium on be determined? Or hadn't anyone thought about that yet?

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.19 a.m.)—The point we need to make is—

*An incident having occurred in the chamber—*

**The CHAIRMAN**—Excuse me, but would somebody like to take the appropriate action on that particular machine. A phone ringing in this chamber is not permitted. Please ensure all mobile phones are off, and do not repeat the offence. If you have to do anything with it, take it outside now, thank you.

**Senator IAN CAMPBELL**—From personal experience I know that you can actually make them stop ringing by dropping them in the Indian Ocean!

**The CHAIRMAN**—Many of us wish we could.

**Senator IAN CAMPBELL**—Then they never ring again. The focus is on the actual R&D spend, which is what is used to calculate the concession. So the fact that you have an R&D START grant—this is the way I conceptualise it—is more an issue of income as opposed to expenditure. The guidelines are looking at the expenditure side, so there is no discrimination between someone who has got into the process through a START grant and someone who has got in by registering through the tax concession. We look at their incremental expenditure, and there is no difference between the definition of incremental expenditure between one entity that might have an R&D START grant and one entity who has got into it by registering for the tax concession.

**Senator GEORGE CAMPBELL** (New South Wales) (11.20 a.m.)—I just want to make a final point on that, because it seems to me that there is a lack of understanding about how this will apply, which I think will create confusion amongst companies who are currently in the R&D START scheme as to

what will be available to them. Are you saying that for a company who has had access to the R&D START grant, who comes into this scheme and who is eligible for the 175 per cent premium, it will apply to all moneys they expend in respect of R&D? So there will be no application of the 80-20 rule to those companies—is that what you are saying? I am getting heads in the advisers boxes going up and down and sideways.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.21 a.m.)—The 80-20 rule will apply, regardless of how you come into the scheme. Whether you come into it with an R&D START grant or by registering for the tax concession, the same rule will apply to all of those.

**Senator GEORGE CAMPBELL** (New South Wales) (11.22 a.m.)—So the 80-20 rule will apply to those companies that have had access to the R&D START scheme and it will apply to the moneys that they expend in respect of R&D in the first year. Is that what you are now saying? If I have had R&D START grants for two years, which qualify me to have access to the premium, and if in the third year I spend a million dollars, then \$200,000 of that is available for the 175 per cent?

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.23 a.m.)—The answer to that hypothetical is that it depends on a range of different things; I have been advised that it is not appropriate to answer it on the run. AusIndustry and the IRD board have said that they are going to publicise this, put out guidelines and make it clear to people, who are obviously interested. I have suggested that, within that, they put in some hypotheticals and some cameos so that it is absolutely clear to people who want to access the scheme exactly how it will apply. I think that is by far the best way to do it, rather than having it in the *Hansard*.

**Senator GEORGE CAMPBELL** (New South Wales) (11.23 a.m.)—I do not want to hold up the passage of the bill any longer, other than to make the point that I hope

AusIndustry and DISR get those cameos and guidelines out a lot more quickly than they have done with other guidelines. There is a lot of uncertainty, a lot of anxiety and a lot of concern out there amongst the community that access these sorts of resources. The sooner that there is clarity about the intent of this bill and its application, the better.

Amendments agreed to.

**The CHAIRMAN**—The question is that schedule 1, part 2 and schedule 1, part 4 stand as printed.

Question resolved in the negative.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

Bill (on motion by Senator Ian Campbell) read a third time.

### BUSINESS

#### Consideration of Legislation

**Senator IAN CAMPBELL** (Western Australia)—Manager of Government Business in the Senate) (11.25 a.m.)—I move:

That government business order of the day No. 4, the *Air Passenger Ticket Levy (Collection) Bill 2001* and a related bill, be postponed till a later hour of the day.

**Senator Harradine**—Could we have a little more elaboration on that. I am prepared to go into debate on the legislation now.

**Senator IAN CAMPBELL**—I am happy to repeat an assurance publicly which I have given to Senator Harradine privately that the legislation I am seeking to defer will be brought on early in the day and certainly well before 5.15 p.m.—in fact, well before 4 o'clock. It will probably be before lunchtime, I expect.

**Senator Denman**—Could I ask what the order is. Are we going onto fuel legislation next?

**Senator IAN CAMPBELL**—The order is being negotiated in the ‘back channels’, as they call them in diplomacy. The order for now is the fuel bill and the *Taxation Laws Amendment Bill (No. 5) 2001*, and my intention is then to do the air passenger tickets legislation. So, if TLAB (No. 5) and the fuel

bill do not take long, we will be onto the air passenger tickets bills fairly quickly.

Question resolved in the affirmative.

### FUEL LEGISLATION AMENDMENT (GRANT AND REBATE SCHEMES) BILL 2001

#### Second Reading

Debate resumed from 26 September, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

**Senator IAN CAMPBELL** (Western Australia)—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (11.27 a.m.)—I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

#### In Committee

The bill.

**Senator ALLISON** (Victoria) (11.29 a.m.)—by leave—I move Democrat amendments (1) to (8) on sheet 2406:

- (1) Schedule 1, item 1, page 3 (line 7), omit “1 July 2003”, substitute “1 October 2002”.
- (2) Schedule 1, item 2, page 3 (line 10), omit “1 July 2003”, substitute “1 October 2002”.
- (3) Schedule 1, item 3, page 3 (line 12), omit “1 July 2003”, substitute “1 October 2002”.
- (4) Schedule 1, item 3, page 3 (lines 13 and 14), omit “1 July 2003”, substitute “1 October 2002”.
- (5) Schedule 1, item 4, page 3 (line 16), omit “1 December 2003”, substitute “1 March 2003”.
- (6) Schedule 1, item 5, page 3 (line 18), omit “30 June 2003”, substitute “30 September 2002”.
- (7) Schedule 1, item 6, page 3 (line 20), omit “30 June 2002”, substitute “30 September 2002”.
- (8) Schedule 1, item 7, page 3 (line 23), omit “1 July 2003”, substitute “1 October 2002”.

I explained in my speech on the second reading the necessity for these amendments. These amendments change the start-up date for the Energy Grants (Credits) Scheme to 1 October 2002. That would provide a three-month extension on the proposal the government has put. As I said in my speech, I

have asked the government to consider this question. The fuel tax inquiry does not report until March next year, so the Democrats can see an argument for an extension beyond the June date. However, I would like the minister to advise us why we need a further 12 months and why three months would not be sufficient time to write the legislation and do that work.

As I also said in my speech in the second reading debate, the government has known that the sunset of the two fuel schemes would be at the end of June next year and it did not do very much about making a proposal on what the energy credits scheme would do. So we think it has been very slack in developing a proposal. I think that a three-month extension should be sufficient for the government to take on board the recommendations of that inquiry, put those into legislation and do the consultation. That 1 October 2002 date should be achievable.

Amendments not agreed to.

**Senator ALLISON (Victoria)** (11.32 a.m.)—I did ask if the minister could advise about that timing. He has not done so. I realise we have put those amendments to the vote, but my second group of amendments proposes another date. It would be useful if the minister could advise why the date is not acceptable, so I know whether to proceed with the other amendments.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (11.32 a.m.)—The short answer, Senator Allison, is that, having read pieces of the speech you made last night in the second reading debate, I see you have in fact raised a whole range of options. For example:

So we could have a rebate that varies with fuel and engine; provides energy efficiency of existing diesel engines; brings forward the ultra low sulphur diesel fuels ... to subsidise catalytic converters ... applies international standards for off-road mobile machinery and stationary sources across the whole economy and not be sector, region or vehicle weight specific.

You have raised a whole range of suggestions. There is a whole panoply of things to be considered there, and obviously the

shorter the time frame the less chance you have of considering all of the options. We think we have got the time scale right.

**Senator ALLISON (Victoria)** (11.33 a.m.)—But my point was not so much the number of issues that I have put forward as suggestions or the submissions that were made for our discussion paper but, rather, how long the government needs following the recommendations of the inquiry. Presumably, all of those ideas will be sorted through and the inquiry will make recommendations. That is the point. After the recommendations are made by that inquiry and there is the settling of what the energy credits scheme will do, how long do you need for those rebate and credit schemes? Why do we need more than 12 months? In fact, it will be about 15 months. Why can we not see that legislation brought forward at an earlier time?

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (11.34 a.m.)—I am advised that the program can be brought forward but that the three-month constraint reduces the options that are available.

**Senator ALLISON (Victoria)** (11.34 a.m.)—Just to make it clear, does that mean that, should the recommendations be relatively simple and straightforward and there is widespread support for them by those affected by them—even though there is an extension to the cessation of those two schemes and the start-up of the energy credits scheme—it could be brought forward? In other words, if it is not a difficult matter, the legislation can be written within a relatively short time frame and we might still see the start-up date for the energy credits scheme being, say, 1 October 2002. Is that what the minister is suggesting?

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (11.35 a.m.)—The short answer is yes, if there are no administrative problems and if there is broad agreement, but it is of course, as Senator Allison knows better than most in this place, a very complex area. But the answer to your ques-

tion is yes; it could be brought forward if those problems do not occur. Let us hope they do not.

**Senator ALLISON (Victoria)** (11.35 a.m.)—by leave—I move Democrat amendments (9) to (16) on sheet 2406:

- (9) Schedule 1, item 1, page 3 (line 7), omit “1 July 2003”, substitute “1 January 2003”.
- (10) Schedule 1, item 2, page 3 (line 10), omit “1 July 2003”, substitute “1 January 2003”.
- (11) Schedule 1, item 3, page 3 (line 12), omit “1 July 2003”, substitute “1 January 2003”.
- (12) Schedule 1, item 3, page 3 (lines 13 and 14), omit “1 July 2003”, substitute “1 January 2003”.
- (13) Schedule 1, item 4, page 3 (line 16), omit “1 December 2003”, substitute “1 June 2003”.
- (14) Schedule 1, item 5, page 3 (line 18), omit “30 June 2003”, substitute “31 December 2002”.
- (15) Schedule 1, item 6, page 3 (line 20), omit “30 June 2002”, substitute “31 December 2002”.
- (16) Schedule 1, item 7, page 3 (line 23), omit “1 July 2003”, substitute “1 January 2003”.

These amendments make the start-up date 1 January 2003. That might be a bit more acceptable to the government since it is the beginning of the calendar year rather than half the way through the financial year. That seems to me to still provide nine months from the reporting of the committee on fuel tax and ought to be sufficient time for the government to put in place those measures, remembering that we are talking about a better, cleaner way forward. We are talking about finding alternatives to diesel and about doing that without reducing entitlements while looking for opportunities for cleaner air and lower greenhouse emissions. It ought to be something that the government is really keen on. It should be something that we are all working very hard towards achieving. I would like to see it happen on 1 January 2003, instead of at the end of July in that same year. It seems to me that this is at least achievable. You might still argue that October 2002—a three-month extension—is too tight, but surely a start-up date of 1 January 2003 would be manageable.

**Senator MACKAY (Tasmania)** (11.37 a.m.)—I might take this opportunity while

the parliamentary secretary is taking some advice to indicate Labor’s position on the Democrat amendments. Senators will recall that I indicated in my speech last night on the second reading that we were not in the loop in relation to the initial arrangement between the government and the Democrats. So it is obviously appropriate and germane for Senator Allison to be inquiring about it. Given the representations that we have had from the industry and the fact that we were not in the loop, we will not be supporting the Democrat amendments. On behalf of the Labor Party, I make the point that maybe the government ought to have been apprising the Democrats more closely as to the progress of this scheme, given that the arrangement was made between those two parties. We agree that it ought to be far more expeditiously processed than the time lines in the bill. When the government announced that the fuel tax inquiry would not report until March and would look at the Energy Grants (Credits) Scheme, it became pretty obvious to us that the time line that was agreed between the other two parties was not achievable.

I understand the difficulty that Senator Ian Campbell has. I am not sure where Senator Ian Macdonald is—he is the responsible minister—but I appreciate Senator Campbell’s difficulty in answering some of these questions. However, we would like some responses as to why this has taken so long. We were not in the loop but, out of curiosity, we would like to know why the extension has been required. We have not been apprised—I do not know about the Democrats—in any way of the progress of the energy credit scheme. We have no idea what it might look like. The government has had two years to look at this. The relevant industries—trucking, agricultural, mining and so on; not just the operators but also the manufacturers and suppliers—need lead time to make capital decisions and to plan properly. The reality is that the government made an arrangement which clearly it has not met. We are cognisant of stakeholders’ views and we do not want to inconvenience them. We would have preferred that the original time line was met. This is not a situation that we would wish for. However, we are stuck between the proverbial rock and a hard place.

When the government announced the fuel tax inquiry would not be reporting until March 2002 and would include consideration of the energy credit scheme, it became obvious to us that the time line was not going to be met. We are acceding to the extension, but we do not approve it and are not happy with it. It does not remove the imperative for the government to get cracking on finalising that scheme. It may be germane at this point for the government to give us some indication as to what progress is being made. As I say, we were not in this loop. We would prefer if the original time line were met. This arrangement was agreed to by the Democrats and the government—it had nothing to do with the Labor Party—but I do agree with Senator Allison as to why it has taken so long and, if the government has some indication of what the final scheme will look like, it may be appropriate to give that indication now.

Amendments not agreed to.

**Senator ALLISON (Victoria)** (11.41 a.m.)—by leave—Just one more shot! I move Democrat amendments (17) to (24):

- (17) Schedule 1, item 1, page 3 (line 7), omit “1 July 2003”, substitute “1 April 2003”.
- (18) Schedule 1, item 2, page 3 (line 10), omit “1 July 2003”, substitute “1 April 2003”.
- (19) Schedule 1, item 3, page 3 (line 12), omit “1 July 2003”, substitute “1 April 2003”.
- (20) Schedule 1, item 3, page 3 (lines 13 and 14), omit “1 July 2003”, substitute “1 April 2003”.
- (21) Schedule 1, item 4, page 3 (line 16), omit “1 December 2003”, substitute “1 September 2003”.
- (22) Schedule 1, item 5, page 3 (line 18), omit “30 June 2003”, substitute “31 March 2003”.
- (23) Schedule 1, item 6, page 3 (line 20), omit “30 June 2002”, substitute “31 March 2003”.
- (24) Schedule 1, item 7, page 3 (line 23), omit “1 July 2003”, substitute “1 April 2003”.

These amendments will provide a nine-month extension to 1 April 2003. Our preferred position is still 1 January 2003 because I think that is achievable, but I would not dare reflect on the vote of the chamber.

**Senator MACKAY (Tasmania)** (11.42 a.m.)—I do not want to hold up the proceedings, but I do think we deserve some response to the questions that we have raised. I am really advocating this on behalf of Senator Allison because, as I have said, we were not in the loop. Perhaps the government could respond in some way and give us some idea of what progress has been made on the Energy Grants (Credits) Scheme. We appreciate Senator Ian Campbell is not the responsible minister. I do not know where Senator Macdonald is; he is not here today again. Perhaps the parliamentary secretary should be given the opportunity to respond.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (11.43 a.m.)—I will be handling a whole range of tax bills and other measures today because it is the most efficient way to do it. I have all the advisers here working on it. Wherever possible, I have taken over bills from ministers as a way of expediting things. It is purely an efficiency measure. I am sure the relevant ministers would be here if there were a strong requirement for them to be. If the opposition insists that I get the relevant minister down each time we do a bill, I will do so, but I do not think it is necessary.

On the matter of timing: yes, there was work done earlier in the year on these issues. The fuel tax inquiry has overtaken a range of those issues and, from the government’s perspective, we believe that there should be a comprehensive look at it and those processes have been rolled in. That may have caused some delay, but I think we are going to get a better and more comprehensive outcome as a result.

Amendments not agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

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

**BUSINESS**  
**Government Business**

Motion (by Senator Campbell) agreed to:

That intervening business be postponed till after consideration of government business order of the day No. 9, Taxation Laws Amendment Bill (No. 5) 2001.

**TAXATION LAWS AMENDMENT BILL  
(NO. 5) 2001**

**Second Reading**

Debate resumed from 26 September, on motion by Senator Hill:

That this bill be now read a second time.

**Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate)** (11.45 a.m.)—This is, as has been introduced, Taxation Laws Amendment Bill (No. 5) 2001. This bill has not in this chamber been debated for its second reading. Given the constraints of time that we are under, I want to draw the chamber's attention to a speech made by my colleague Mr Kelvin Thomson in the House on this bill. This is not my normal procedure. Certainly, this chamber is entitled to hear the opposition's position on a bill such as this from the opposition in this chamber. However, I do seek the chamber's indulgence, as there are some time pressures upon us. Rather than having me simply repeat a similar point of view in my own words, the opposition's position was adequately set out in the House and, by drawing attention to it, I would like to mark the spot in the *Hansard* for this chamber by indicating the reference to our full position as set out there. I do so, acknowledging that that is not an entirely satisfactory way of proceeding but seeking everyone's indulgence and consideration based on the time pressures upon us.

That having been said, it is appropriate for me to draw the attention of the chamber to the nature of the amendments to the tax acts that this bill seeks to encode. This bill is a general bill, an omnibus bill, and therefore scoops up a lot of what might be regarded as technical amendments to at least five discrete sections of the tax act: one is a section covering the tax treatment of religious practitioners; another is that part of the tax act relat-

ing to a change in the status of constitutionally protected superannuation funds.

In the explanatory note relating to this legislation, chapter 3 refers to 'CGT event E4'—that is, capital gains tax event E4. Because that may be opaque, let me provide a little more explanation. I do so, knowing that ignorance of the law is not a defence. All of us obviously know what this means and, because we do, I know that you will be simply checking my words to see whether it matches your considerations. But the explanation of CGT event 4 is a payment by a trustee to a beneficiary of a trust that is not assessable income of the beneficiary, may reduce the cost base of the beneficiary's unit or interest in the trust, and the amendments that are being proposed here are amendments to prevent CGT event 4 applying to payments out of CGT discount, and to correct the treatment of certain capital gains passing through a chain of trusts. The amendments deal with payments of non-assessable amounts associated with building allowances, and minor amendments are also made.

As I say, apart from that, this bill deals with the tax treatment of gifts and contributions, and also of information and communications technology, et cetera. That is the nature of this bill. I do not have a lot more to say about it but I do want to say a few words about the first part of this bill, that relating to religious practitioners. This is where it is appropriate to refer to the deductibility of entities for gifts—that is, the gifts part of this bill—as the deductibility includes, as well, political parties.

People in this chamber will know that the Labor Party has in question time raised many serious questions concerning the evasion of the GST by the Queensland Liberal Party in the seat of Groom. I do not wish to canvass that and the events surrounding the Minister for Small Business, Mr Macfarlane, in any detail, because we are on the record about that. I notice in the press today there is further reporting of documents seizure and investigation in that case. The obvious political point that we have made consistently is that we have a GST in this country by courtesy of the government. The major coalition partner is the Liberal Party, and a Liberal Party

branch is here actively seeking to evade its tax obligations—and now we have a report of an investigation and the seizure of documents.

While all this is well documented, it does raise the question of whether there is a view being taken here—which we believe there is—that it is appropriate for the Liberal Party to evade the tax while all the rest of us have to pay it. But, with respect to that broader issue, what the proper legal treatment of GST input tax credits is and how they should be properly dealt with at law is a matter which I have also referred to at some length. I might indicate—and I draw the attention of the parliamentary secretary to this—that I have in my possession an opinion by barristers and solicitors about what the proper treatment is, and I can pass it over if he wishes. I simply wish to table it in the parliament, and that would conclude my remarks. But as I say, we have expressed our views on the record at some considerable length.

**Senator Ian Campbell**—I am sorry; I was distracted. What document is that?

**Senator COOK**—I am sorry, I did note that you were distracted. I did not want to take the fact that there is other business to consider as a reason to try to slide something through. That is not what I would try to do. I was referring simply to the position that we have argued. The document that I wanted to examine—

**The ACTING DEPUTY PRESIDENT** (**Senator Murphy**)—I think it would be useful for *Hansard*, Senator Campbell, if you have a question that you ask it through the chair and the response to be through the chair. Senator Cook, if you want to table a document you need leave to do that.

**Senator COOK**—Thank you, Mr Acting Deputy President, but I will do the unusual thing in these circumstances and protect Senator Campbell. He was distracted. I was talking about this matter. Let me now correctly identify the document. It is a legal opinion headed 're GST input tax credits advice'. It is an opinion on the proper treatment in circumstances like those that apply in the Groom FEC case.

**The ACTING DEPUTY PRESIDENT**—Are you seeking leave, Senator Cook?

**Senator COOK**—I acknowledge that I have not shown the document to the parliamentary secretary. I am quite happy to pass it over to him to do that.

**The ACTING DEPUTY PRESIDENT**—The attendants might take the document to Senator Campbell and he can consider it whilst you continue your speech.

**Senator COOK**—Thank you, Mr Acting Deputy President. I think this is a matter of considerable public interest. This is a legal opinion on this matter. It is not law; it is a view of what the law might be. Nonetheless, we regard it as a substantial opinion and germane to the public debate on the issue of tax avoidance and how the GST is properly implemented. As a consequence, it is the sort of thing that ought to be found in the records of a parliament where these matters of public interest are canvassed and debated. It can be dealt with in that respect. That is one of the reasons I seek leave to table this legal opinion.

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

**Senator Ian Campbell**—I cannot give leave at this stage.

**The ACTING DEPUTY PRESIDENT**—Leave is not granted at this stage.

**Senator COOK**—I understand that call. Will you give leave at some stage? Will it be a matter of a few minutes before you find—

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (11.55 a.m.)—by leave—Normally what happens—and Senator Cook knows this; I am not saying that he is trying to breach protocol—is that you have some time to consider documents. What we have here is a letter to Mr Robert McClelland, a member in the other place, from Higgins Barristers and Solicitors and signed by Mr Walter Hawkins. This person has been briefed by a Labor Party member of parliament to give some advice in relation to some facts that have been set out in relation to the Queensland division of the Liberal Party.

So you have a Labor Party politician briefing a lawyer on a whole range of so-called facts. Individuals are mentioned ad nauseam in this. It is clearly a highly political document comprising 26 pages. It mentions a whole range of people outside this place. I regard it as basically inappropriate for me to be asked, within literally a matter of seconds, to consider whether or not this should be tabled. I think if Senator Cook wants this published for the purposes of a political campaign against the Liberal Party then he should publish it outside. He may be confident that this does not damage the reputations of individuals. I cannot be confident of that from looking at it in a few seconds or a few minutes. I think you have to be fair to those individuals outside. If you are confident that it does not damage their reputations then I suggest that you publish it outside where those people would have defences. So I refuse leave. If Senator Cook wants to take it further and insist on trying to table it, then I am happy to have it taken up later. But at this stage I will be refusing leave.

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (11.57 a.m.)—I take that as a refusal to provide leave. I thank the parliamentary secretary for making that clear. I also note that, in doing so, he has made some remarks about what this document contains. I have no issue that it actually relates to a legal opinion from a firm of solicitors, Higgins Barristers and Solicitors. They were briefed by the shadow Attorney-General, Mr Robert McClelland, on what we believe to be the facts in the case of GST avoidance by the Liberal Party branch in the seat of Groom.

I accept that this is a document over which there may be political debate. That is something that the parliamentary secretary has said. I think it is true that this is a document over which there may be political debate. I think, though, that the question for this chamber is: is it a document that ought to be validly circulated as an assessment of the legal position, based on the facts that have been provided? We are on the cusp of an election, and this is a matter of public interest. Therefore, documents relating to it are

matters that ought to be discoverable in the public interest. I have not sought to incorporate the document in *Hansard*, as that would mean that *Hansard* would set out all of the document. So the length of the document is not germane to this discussion. I do not accept the fact that it runs for 26 pages as a reason not to have it tabled. Tabling simply consists of placing it on the table and incorporating it in the records of this parliament without taking up endless pages of *Hansard*.

There are some parts of this document that I do think the public should be aware of. Let me just refer quickly to some of those and I will conclude my remarks. For example, in clause 2.16.6 of this opinion, the author, a qualified legal counsel, says:

In the present circumstances there is evidence from which an intent to defraud the Commonwealth of revenue may be inferred.

**Senator Ian Campbell**—Mr Acting Deputy President, I raise a point of order. Firstly, I thought I had an agreement with the managers, leaders and whips of the Australian Labor Party that we would try to progress these bills. It is quite appropriate, obviously, to have a few political flicks around the ear on whatever issue you want. But we are now running seriously behind schedule to complete the bills in the way in which the leaders and whips agreed yesterday. Perhaps Senator Cook can be relevant under standing orders. I draw your attention to the standing order in relation to relevance. The only reference to the GST in the entire omnibus bill, which is **Taxation Laws Amendment Bill (No. 5) 2001** before us—and I refer to the general outline at the front of the bill—is ‘activities done in pursuit of a vocation as a religious practitioner and as a member of a religious institution’. That is the only reference to the GST in this bill. I think Senator Cook should be required to make his remarks succinct, firstly, to comply with standing orders but, more importantly, to comply with what I regard as very important undertakings that have been given by the Australian Labor Party—in fact, by all parties and Independents in this place—to ensure that we progress these bills as soon as we can.

**The ACTING DEPUTY PRESIDENT** (Senator Murphy)—Senator Campbell, I

hear what you say. The issue of the allocation of time is not a matter that you would raise on a point of order; that is something to be determined between the parties elsewhere. With respect to the issue of relevance, I am sure that Senator Cook heard your point and will make his comments relevant to the bill.

**Senator COOK**—Thank you, Mr Acting Deputy President. I will be quick because what Senator Campbell says is correct: there has been agreement to expedite these matters.

*Senator Ian Campbell interjecting—*

**Senator COOK**—Yes, and I do not intend to take a lot of time. I do indicate that, in the interests of expediting these matters, I have effectively referred to the speech of my colleague in the other place as the speech I might deliver now.

*Senator Ian Campbell interjecting—*

**Senator COOK**—Yes, I take those interjections. They are fair points, and I do acknowledge that. I do believe that I will not detain the chamber for very long and I do believe these remarks are relevant to the legislation before us. Going on with clause 2.16.6 of this opinion:

In the present circumstances there is evidence from which an intent to defraud the Commonwealth of revenue may be inferred. Deceit and concealment is evidenced by the instructions to the Caterer to “reverse” the transaction and reissue an invoice to the Queensland Division. Once the invoice had been reissued, the Queensland Division proceeded to claim the input tax credit in its December BAS ...

**Senator Ian Campbell**—Mr Acting Deputy President, I raise a point of order. This issue, as much as it is of political relevance, is not relevant to this bill before the chamber. I ask you to draw Senator Cook’s attention once more to the standing order in relation to relevance.

**Senator COOK**—Mr Acting Deputy President, on the point of order: it is relevant.

**The ACTING DEPUTY PRESIDENT**—To save time, I think I can say that this bill, as I am informed by the clerk, has a long title. I am sure that Senator Cook is aware of that and is endeavouring to make his remarks relevant to the bill.

**Senator COOK**—Thank you, Mr Acting Deputy President. It has a long title and it is an omnibus bill. It is a bill under which all elements of the Tax Act can be debated and talked about. But, as the parliamentary secretary has said, there is a particular provision here that refers directly to the GST. In that respect, I am talking about an application of the GST and a legal opinion about how that should be provided. I would hate there to be any suggestion from the other side that, because this is politically inconvenient for them, they would try and quash the ability of this parliament to hear these relevant views. Let me conclude where I was up to:

... the Queensland Division proceeded to claim the input tax credit in its December BAS, thereby prejudicing the ATO’s legal right to revenue.

Also, in clause 2.17.8, it states:

As indicated above, there is evidence of an agreement to use dishonest means in the circumstances which led to the instructions to the Caterer to “reverse” the transaction. On the facts, once the transaction had been reversed and a new invoice issued, the Queensland Division asserted as true its entitlement to the input tax credit. The evidence supports the view that subsequent actions taken by the Queensland Division—with the agreement of the Groom FEC—were, by ordinary standards, dishonest.

Furthermore, although the ATO was subsequently repaid the amount of the GST input tax credit which had been claimed, actual loss is not an element.

Just further at 2.18.4:

Consequently, a statement to a taxation officer would include information included in a BAS lodged with the ATO pursuant to Division 31 of the GST Act. Importantly, a BAS includes a declaration that the information given on the form is true and correct. This declaration is signed by a person duly authorised. By declaring the Queensland Division was entitled to an input tax credit for the catering services, a statement was made to a taxation officer by an officer of the Queensland Division which was clearly incorrect.

Let me bring this to a conclusion with just three other references. At 2.18.10 the opinion states:

Consequently, having regard to the terms of section 8K of the *Taxation Administration Act 1953*, where the amount of input tax credit claimed in the Queensland’s Division BAS was wrong an officer of the Queensland Division would have

made a false statement to a taxation officer and there would be *prima facie* evidence of the commission of an offence. That there may have been no fraudulent or wilful intent would not be relevant.

It further states at 2.18.12:

It is not apparent from the material brief whether the Queensland Division was or was not a corporation at the relevant time, but if it were, there may be potential for it to be prosecuted under the Act.

At 2.18.16 it then states:

The Queensland Division of the Groom FEC has received advice as to whether it was permissible for the Queensland Division to claim the input tax credit in its December 2000 BAS. An available inference is that, by failing to heed this advice, the Queensland Division acted with disregard and indifference. A conclusion may then be open that it was reckless in stating that the information contained in the BAS was true and correct.

Finally, at 3.1, in 'Conclusions', it says:

The material referred to certainly points in the direction of a scheme or schemes having been entered into to which the anti-avoidance provisions of Division 165 of the GST Act applies. As to the commission of a criminal offence, it is necessary to establish all the elements of any offence alleged, including any relevant intent, beyond a reasonable doubt. In the absence of any opportunity to personally interview all the relevant participants, I would not, on the available material alone, attribute criminal conduct as such to any of them or to any body, whether incorporated or not. Nevertheless, it is reasonable to conclude, on the facts as understood, that there is a body of material suggestive of possible criminal conduct which would warrant a proper investigation by the authorities charged with investigating such matters. Ultimately, any decision to prosecute would have to be made having regard to all the circumstances, including any appropriate prosecution policy which may be applicable.

**Senator MURRAY (Western Australia)**  
(12.08 p.m.)—This is a minor omnibus bill with important consequences for the individual concerned. Once again, it is needed, with respect to religious practitioners, to resolve an issue where conflicting legal situations result in tax outcomes which are not necessarily beneficial. I think the government's treatment of this improves matters considerably. I am reminded of the situation in Western Australia, where the state government at one stage tried to get around work-

place relations laws by stating that police officers were not employees. As many people realise, you cannot instruct a policeman or policewoman. They have the right to carry out their duties in terms of their judgment and that means that they cannot be told not to arrest somebody if they wish to do so. That is to prevent there being any improper interference with them carrying out their duties. The government was trying to avoid some employee obligations by saying that they were not employees because they were acting on their own. In this case, you have got religious practitioners who, in the way in which they were functioning, were to be regarded as businesses and were to register for the GST and all sorts of other things. The government is fixing that up and quite properly so. We support that. Their summary of the new law in the explanatory memorandum puts it particularly well. It says:

Under the ABN and GST law, activities performed by a religious practitioner, as a religious practitioner of a religious institution, will be taken to be the activities of the religious institution (and not the activities of the religious practitioner). Consequently, a religious practitioner will not carry on an enterprise by performing these activities. The result will be that these religious practitioners will not be eligible (or need) to register for GST or an ABN for these activities.

This is obviously very sensible. The explanatory memorandum goes on:

Under the PAYG withholding arrangements, an entity will be required to withhold from payments made to a religious practitioner for any activity or series of activities done as a religious practitioner of a religious institution. This will only apply if the paying entity makes the payment in the course or furtherance of an enterprise.

In other words, they are going to be treated for tax purposes as employees, not as businesses, and that is smart. The second area of the bill is about who else should be on the gifts or contributions schedule, and there are some useful additions. There is a change in the status of constitutionally protected superannuation funds which facilitates the change for those that elect to become taxed superannuation funds. That will mean that those members who have changed status will be treated similarly for income tax and superannuation surcharge purposes. There is an item

on information and communications technology. Schedule 5 of the bill amends the Income Tax Assessment Act 1997 to exempt from income tax the income of a non-profit society or association established for the purpose of promoting the development of Australian information communications technology resources. There are a few good items in here to do with capital gains, the treatment of religious practitioners as employees, superannuation funds, gifts and contributions, and information and communications technology. We will be supporting the bill without amendment.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**BUSINESS**  
**Government Business**

Motion (by Senator Ian Campbell) agreed to:

That intervening business be postponed till after consideration of government business order of the day No. 23, **Taxation Laws Amendment Bill (No. 2) 2001**.

**TAXATION LAWS AMENDMENT BILL (No. 2) 2001**

**Consideration of House of Representatives Message**

Consideration resumed from 29 August 2001.

*Schedule of the amendment made by the Senate to which the House of Representatives has disagreed—*

- (1) Page 32 (after line 24), at the end of the bill, add:

**Schedule 7—Other amendments**

**Income Tax Assessment Act 1997**

**1 At the end of Division 51**

Add:

**51-65 Consideration under RFA Private Forest Reserve Program**

Any financial consideration paid under the Regional Forest Agreements Private Forest Reserve Program to the owner of land for registering a perpetual conservation covenant against the title to that land is exempt from income tax.

**2 Section 116-25 (cell at table item D1, fourth column)**

Omit “None”, substitute “See section 116-82”.

**3 After section 116-80**

Insert:

**116-82 Special rule for consideration received under RFA Private Forest Reserve Program**

If you, as a landowner, receive financial consideration under the Regional Forest Agreements Private Forest Reserve Program for registering a perpetual conservation covenant against your land title, the consideration is not \*capital proceeds for the purposes of this Part.

**4 Application**

The amendments made by items 3A, 3B and 3C apply to assessments for the 1999-2000 and 2000-2001 income years and later income years.

House of Representatives reasons disagreeing to the Senate amendment:

This amendment proposes exemptions from income tax and capital gains tax for taxpayers who enter into perpetual conservation covenants under the regional forest agreements private reserve program.

The amendment only applies to the regional forest agreements private reserve program. The Government has proposed taxation incentives in relation to conservation covenants more generally.

The two measures announced by the Government are: firstly, to treat the conservation covenant as a part disposal of the land, which means that land holders who grant conservation covenants are not disadvantaged as opposed to other land holders; and secondly to provide landowners who, for no consideration, have entered into a conservation covenant with a gift deductible recipient, a deduction consistent with the existing gift provisions for gifts of land.

The House considers that the Government proposals provide appropriate concessions for those who grant conservation covenants. The Government's capital gains tax proposal avoids the technical problems with the Senate amendment (which would result in a small but unintended windfall gain to landholders who grant conservation covenants and allow some landholders a capital loss on ultimate disposal of the remainder of the land) while ensuring that many landholders

will not have to pay capital gains tax when they grant a conservation covenant.

Accordingly, the House of Representatives does not accept this amendment.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.14 p.m.)—I table the supplementary explanatory memorandum relating to the government amendments to be moved to this bill. This memorandum was circulated in the Senate today. I move:

That the committee does not insist on its amendment to which the House of Representatives has disagreed.

**Senator BROWN** (Tasmania) (12.15 p.m.)—The Greens insist on the amendment that was made to the *Taxation Laws Amendment Bill (No. 2) 2001*. We do so because, while government amendments have gone some way towards protecting the interests of land-holders who make a covenant on their land, in the case of the Tasmanian regional forest agreements—where money is given to land-holders to protect their bush blocks as areas of prime environmental value—they have not gone as far as we intended when I first brought this matter up before the Senate in November last year and then moved to bring in an amendment which is echoed in the Labor amendment to this bill.

It is a complex matter, but what is not understood here is that the money given under the regional forest agreement is not for a loss in the value of the land when a conservation covenant goes on. I think we are going to live to see the time when the value of land goes up because it is protected, not down. We know in Tasmania that when people actually cut down their bush blocks the value of that land, and indeed the value of adjacent properties, falls. So it is the disturbance or woodchipping of an area that leads to a loss, not the protection of it.

The problem is that under the regional forest agreement, where a landowner is given a consideration for protecting the bush block, that consideration is still subject to the capital gains tax. That is what the amendment sought to remove. As far as I know, this is

the only case, out of the 850 pages of the tax act, where that capital gains tax provision has been levied. It is done so under the argument that the government is gaining a right through giving that money to the landowner who is protecting the area under the regional forest agreement.

The Greens vehemently object to landowners who are doing the right thing under the regional forest agreement being taxed. If you knock down a bush block and put in a plantation with a monoculture where the forest once was, you get a tax write-off for that. But, if you protect your forest block and you get a consideration which helps you to perhaps put in fencing and have a 20-year management plan, you get hit with a capital gains tax. That is a very clear disincentive to landowners who want to do the right thing and are actually making a gift to the nation through protecting rare and endangered species on their bush blocks. That is why we insist on this amendment made in the Senate which went to the House of Representatives.

Question resolved in the affirmative.

Amendments (by **Senator Ian Campbell**)—by leave—agreed to:

(1) Page 32 (after line 24), at the end of the bill, add:

**Schedule 7—Conservation covenants**  
*Income Tax Assessment Act 1997*

**1 Section 12-5 (table)**

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

**Conservation covenants**

..... Division 31

**2 Paragraph 25-5(1)(d)**

After “30-212”, insert “or 31-15”.

**3 After paragraph 26-55(1)(ba)**

Insert:

(bb) Division 31 (which is about deductions for conservation covenants) of this Act;

**4 Section 30-320 (link note)**

Repeal the link note.

**5 After Division 30**

Insert:

**Division 31—Conservation covenants****Guide to Division 31****31-1 What this Division is about**

You can deduct an amount if you enter into a conservation covenant over land that you own and you satisfy certain conditions. The amount you can deduct is the difference between the market value of the land just before and after you enter into the covenant.

**Table of sections****Operative provisions**

31-5 Deduction for entering into conservation covenant

31-10 Requirements for fund, authority or institution

31-15 Valuations by the Commissioner

*[This is the end of the Guide.]*

**Operative provisions****31-5 Deduction for entering into conservation covenant**

- (1) You can deduct an amount if:
  - (a) you enter into a <sup>\*</sup>conservation covenant over land you own; and
  - (b) the conditions set out in subsection (2) are met.
- (2) These conditions must be satisfied:
  - (a) the covenant must be perpetual;
  - (b) you must not receive any money, property or other material benefit for entering into the covenant;
  - (c) the <sup>\*</sup>market value of the land must decrease as a result of your entering into the covenant;
  - (d) one or both of these must apply:
    - (i) the change in the market value of the land as a result of entering into the covenant must be more than \$5,000;
    - (ii) you must have entered into a contract to acquire the land not more than 12 months before you entered into the covenant;
  - (e) the covenant must have been entered into with a fund, authority or institution that meets the requirements of section 31-10.

Note: You must seek a valuation of the change in market value from the Commissioner: see section 31-15.

- (3) The amount you can deduct is the difference between the <sup>\*</sup>market value of the land just before you entered the covenant and its decreased market value just after that time, but only to the extent that the decrease is attributable to your entering into the covenant.

Note: You can spread the deduction over a 5 year period: see Subdivision 30-DE.

- (4) For the purposes of paragraph (2)(a), a covenant is treated as being perpetual even if a Minister of a State or Territory has a power to rescind it.

- (5) A **conservation covenant** over land is a covenant that:

- (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land; and
- (b) is permanent and registered on the title to the land (if registration is possible); and
- (c) is approved in writing by, or is entered into under a program approved in writing by, the Minister for the Environment and Heritage.

**31-10 Requirements for fund, authority or institution**

- (1) The fund, authority or institution:

- (a) must be covered by an item in any of the tables in Subdivision 30-B and must meet any conditions set out in the relevant table item; or
- (b) must be a public fund, or a <sup>\*</sup>prescribed private fund, established under a will or instrument of trust solely for:
  - (i) the purpose of providing money, property or benefits to a fund, authority or institution mentioned in paragraph (a) and for any purposes set out in the item of the table in Subdivision 30-B that covers the fund, authority or institution; or
  - (ii) the establishment of such a fund, authority or institution.

(2) If the fund, authority or institution is not listed specifically in Subdivision 30-B, it must also:

- be in Australia; and
- meet the requirements of section 30-17 (about the endorsement of deductible gift recipients) or be a \*prescribed private fund.

### 31-15 Valuations by the Commissioner

(1) You must seek a valuation of the change in the \*market value of the land

from the Commissioner for the purposes of this Division.

(2) The Commissioner may charge you the amount worked out in accordance with the regulations for making the valuation.

### 6 Section 104-5 (after the table item dealing with CGT event D3)

Insert:

D4 Entering into a conservation covenant	When covenant is entered into	Capital proceeds from covenant less cost based apportioned to the covenant	Reduced cost base apportioned to the covenant <i>less</i> capital proceeds from covenant
--	-------------------------------	--	--

(See Section 104-47)

### 7 After section 104-45

Insert:

#### 104-47 Conservation covenants: CGT event D4

- CGT event D4* happens if you enter into a \*conservation covenant over land you own.
- The time of the event is when you enter into the covenant.
- You make a \*capital gain if the \*capital proceeds from entering into the covenant are *more* than that part of the \*cost base of the land that is apportioned to the covenant. You make a \*capital loss if those capital proceeds are *less* than the part of the \*reduced cost base of the land that is apportioned to the covenant.

Note: The capital proceeds from entering into the covenant are modified if you do not receive anything for entering into the covenant: see section 116-105.

- The part of the \*cost base of the land that is apportioned to the covenant is worked out in this way:

\*capital proceeds from entering into the covenant

\*Cost base of land x

\_\_\_\_\_  
Those Capital proceeds plus the \*market value of the land just after you enter into the covenant

The part of the \*reduced cost base of the land that is apportioned to the covenant is worked out similarly.

- The \*cost base and \*reduced cost base of the land are reduced by the part of the cost base or reduced cost base of the land that is apportioned to the covenant.

Example: Lisa receives \$10,000 for entering into a conservation covenant that covers 15% of the land she owns. Lisa uses the following figures in calculating the cost base of the land that is apportioned to the covenant:

The cost base of the entire land is \$200,000.

The market value of the entire land before entering into the covenant is \$300,000, and its market value after entering into the covenant is \$285,000.

Lisa calculates the cost base of the land that is apportioned to the covenant to be:

$$\frac{\$200,000 \times 10,000}{10,000 + 285,000} = \$6,780$$

*Exceptions*

(6) \*CGT event D4 does not happen if:

- you did not receive any \*capital proceeds for entering into the covenant; and
- you cannot deduct an amount under Division 31 for entering into the covenant.

Note: In this case, CGT event D1 will apply.

(7) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the land before 20 September 1985.

**8 Subsection 109-5(2) (after table item D3)**

Insert:

D4 You enter into a \*conservation covenant as a covenantee when the covenant is entered into

**9 Section 112-45 (before table item E1)**

Insert:

D4 A conservation covenant is entered into over land The total cost base and reduced cost base 104-47

**10 Subsection 115-25(2) (before table item 1)**

Insert:

1A D4 the land over which the \*conservation covenant is entered into

**11 Section 116-25 (after table item D3)**

Insert:

D4 Entering into a conservation covenant 2, 3, 4, 5 116-105

**12 At the end of Division 116**

Add:

**116-105 Conservation covenants**

If \*CGT event D4 happens because you enter into a \*conservation covenant over land you own and you can deduct an amount under Division 31 because you enter into the covenant, the \*capital proceeds from the event are the amount you can deduct.

Note: To get a deduction under Division 31, you must not receive money, property or other material benefit for entering into the covenant.

**13 Subsection 136-10 (after table item D2)**

Insert:

D4 Entering into a conservation covenant The land over which the covenant is entered into 1

**14 Subsection 995-1(1)**

Insert:

**conservation covenant** has the meaning given by section 31-5.

**15 Application of amendments**

- (1) Subject to subitem (2), the amendments made by this Schedule apply to conservation covenants entered into on or after 15 June 2000.
- (2) The amendments made by this Schedule apply to each conservation covenant entered into on or after 1 July 2002 where the covenantor did not receive money, property or other material benefit for entering into the covenant.

(2) Page 32 (after line 24) , at the end of the bill, add:

**Schedule 8—Spreading deductions for property gifts and conservation covenants****1 Subsection 30-5(4B)**

Omit “and 30-DD”, substitute “, 30-DD and 30-DE”.

**2 After Subdivision 30-DD**

Insert:

**Subdivision 30-DE—Spreading deductions for other property gifts and conservation covenants over up to 5 income years****Guide to Subdivision 30-DE****30-249F What this Subdivision is about**

This Subdivision allows you to choose to spread deductions for certain gifts of property or for entering into conservation covenants over up to 5 income years.

**Table of sections****Operative provisions**

30-249G Making an election

30-249H Effect of election

*[This is the end of the Guide.]*

**Operative provisions****30-249G Making an election**

(1) If you can deduct an amount:

- (a) under this Division for a gift that is:
  - (i) made to a fund, authority or institution covered by item 1 or 2 of the table in section 30-15; and

- (ii) of property valued by the Commissioner at more than \$5,000; and

- (iii) not a gift covered by Subdivision 30-DB, 30-DC or 30-DD; or

(b) under Division 31 for entering into a <sup>\*</sup>conservation covenant;

you may make a written election in the <sup>\*</sup>approved form to spread that deduction over the current income year and up to 4 of the immediately following income years.

(2) You must make the election before you lodge your <sup>\*</sup>income tax return for the income year in which you made the gift or entered into the covenant.

(3) You must give a copy of an election for a <sup>\*</sup>conservation covenant to the <sup>\*</sup>Environment Secretary before you lodge your <sup>\*</sup>income tax return for the income year in which you entered into the covenant.

(4) You may vary an election at any time in the <sup>\*</sup>approved form. However, the variation can only change the percentage that you will deduct in respect of income years for which you have not yet lodged an <sup>\*</sup>income tax return.

(5) You must give a copy of a variation for a <sup>\*</sup>conservation covenant to the <sup>\*</sup>Environment Secretary before you lodge your <sup>\*</sup>income tax return for the first income year to which the variation applies.

**30-249H Effect of election**

(1) In each of the income years you specified in the election, you can deduct the amount corresponding to the percentage you specified for that year in the <sup>\*</sup>approved form.

(2) You cannot deduct the amount that you otherwise would have been able to deduct for the gift or the covenant in the income year in which you made the gift or entered into the covenant.

**3 Subsection 30-315(2) (table item 112AA)**

Omit “and 30-DD”, substitute “, 30-DD and 30-DE”.

**4 Application**

The amendments made by this Schedule apply to gifts made, or conservation covenants entered into, on or after 1 July 2002.

Resolution reported; report adopted.

**AIR PASSENGER TICKET LEVY  
(IMPOSITION) BILL 2001**  
**AIR PASSENGER TICKET LEVY  
(COLLECTION) BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Ian Macdonald**:

That these bills be now read a second time.

**Senator HARRADINE (Tasmania)**

(12.20 p.m.)—I move the second reading amendment standing in my name:

At the end of the motion, add:

“but the Senate:

- (a) recognises the right of people to move between states as fundamental to the Federation;
- (b) recognises the limited transport options available to people travelling to and from Tasmania across Bass Strait; and
- (c) is of the view that a National Highway or National Sea Highway should be declared across Bass Strait; and
- (d) calls on the Government to at least offset the effect of this legislation by providing an air travel subsidy of \$10 per airline passenger travelling to and from Tasmania”.

There is a need for the government and for all of us to do something in respect of those former employees of Ansett. This is a measure designed to achieve that end. I have, as have many of us, travelled on Ansett on many occasions both when I became a member of parliament and previously. The staff have always been very impressive: courteous, dedicated and eager to provide travellers with whatever was needed to make the journey pleasant and comfortable. I do understand, and I know we all do understand, the extreme disappointment about what has happened to Ansett. We all feel their pain and understand their expressions of concern. We do have a responsibility, I acknowledge, to help them in whatever way we can. However, as a Tasmanian senator I do have some concerns about the impact of these measures on Tasmania.

My constituents of Tasmania have three choices when it comes to travelling between states: you fly, you sail or you stay at home. Persons going to Tasmania have the same choices. Road travel by bus or car and rail travel are not options for Tasmanians or for others wanting to travel to and from the state of Tasmania. We are already suffering from a greatly reduced air service, and this levy, while small in itself, will nevertheless impose a further burden on travellers to and from Tasmania.

My views on improving access to Tasmania are well known. I have supported the work of the National Sea Highway Committee, which is made up largely of dedicated Tasmanians with support from Tasmanian industry and commerce. It has been attempting to have sea travel across Bass Strait fully equalised so that the costs are the same comparatively as for crossing any other state border. I do hope that the government and others are listening to them. After all, it needs to be recognised that the right of people to move between states is, surely, fundamental to our federation.

I realise also that there are other regional areas which have been seriously affected by the collapse of Ansett. I do not believe it has been helpful at all to try to blame this on the government. That is nonsense. I do commend the government for deciding to assist. I just raise this question of the circumstances of Tasmania and commend the second reading amendment to the Senate.

**Senator BROWN (Tasmania)** (12.25 p.m.)—I thank Senator Harradine for bringing this amendment forward. I wholeheartedly support it. It does go right to the heart of the difficulties that he has outlined for Tasmanians as against people in other states, in particular section (d) of his amendment:

- (d) calls on the Government to at least offset the effect of this legislation by providing an air travel subsidy of \$10 per airline passenger travelling to and from Tasmania.

As you will know, Mr Acting Deputy President Murphy, that is very important. Senator Harradine said that that is a further disincentive to people travelling to and from Tasmania. It is not only a cost on Tasmanians but a

regressive levy as far as Tasmania's tourism industry is concerned. Tough times are ahead. The tourism industry has been knocked for a six by the collapse of Ansett and by prevailing economic conditions as well, and there are 18,000 to 20,000 Tasmanians directly relying on it.

The \$10 levy is an absolute further disincentive for people to travel to Tasmania and then back again. The government would be very wise to heed this amendment of Senator Harradine's, because it removes that disincentive. That is good not just for the airline travellers themselves but for a whole host of small businesses in Tasmania which are facing extremely tough times. There is no doubt that quite a few of them will go to the wall. I thank Senator Harradine for this amendment and I totally support it.

**Senator GREIG (Western Australia)** (12.27 p.m.)—I reluctantly oppose Senator Harradine's second reading amendment. I support and understand the principle. Senator Harradine may be aware that in my speech in the second reading debate on the *Air Passenger Ticket Levy (Imposition) Bill 2001* and the *Air Passenger Ticket Levy (Collection) Bill 2001* more generally I made the point that we Democrats had in fact explored the option of exempting all regional and isolated air services from the ticket tax, partly for the reasons that Senator Harradine has outlined, but we found that that offended section 99 of the federal Constitution and thus could not do it. Perhaps Senator Harradine found that too and that is why he has structured his second reading amendment in terms of a refund.

But I would argue, speaking here for my own state, that there are many places in the vast state of Western Australia that are just as, if not more, isolated and remote as is Tasmania from the mainland. Places such as Wiluna and Leinster and Kununurra in the far north-west of Western Australia are to some degree places of tourism industry but more often places where many workers are located in terms of mining interests. If we were going to look at a rebate on the ticket tax for reasons of disadvantage, then my own state would have an equal claim to that put today by fellow senators who are Tasmanians. On that basis, if we were going to have a

rebate of any nature it should be uniform right across the nation in terms of the more regional and isolated flights rather than being quarantined to Tasmania. On that basis, while understanding what Senator Harradine was trying to achieve, I reluctantly oppose the amendment.

**Senator MARK BISHOP (Western Australia)** (12.29 p.m.)—The opposition will not be supporting this amendment, and I shall just place on the record our reasons. I do not think there is any great offence taken to paragraphs (a) and (b) of the amendment moved by Senator Harradine. In respect of paragraphs (c) and (d) there are some consequences that we would prefer to think through, firstly, in terms of the immediate impact in terms of a declaration of national highways and, secondly, for the reasons just outlined by Senator Greig, that there are large parts of this country suffering immediate disadvantage because of the collapse of Ansett Airlines. Many parts of the country are more remote and more distant from the main centres of Australia than Tasmania is from the mainland, and they are all suffering equal harm. It appears to us that this amendment has a range of consequences for the future which we are unsure of and do not wish to entertain at this stage. The final reason is that the amendment has just been circulated—I am advised by the relevant shadow minister that we have not seen it—and on the basis that we have not had time for consultation with the office of Senator Harradine we are unable to support it.

Amendment not agreed to.

Original question resolved in the affirmative.

Bills read a second time.

**Senator BROWN (Tasmania)** (12.30 p.m.)—I would like to record my opposition to the legislation.

#### In Committee

#### AIR PASSENGER TICKET LEVY (IMPOSITION) BILL 2001

Bill agreed to.

#### AIR PASSENGER TICKET LEVY (COLLECTION) BILL 2001

The bill.

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

- (1) Clause 22, page 14 (after line 9), after paragraph (2)(a), insert:
  - (aa) the basis for determining the eligibility of companies to be covered by the Scheme; and

This Democrat amendment seeks to amend clause 22 of the *Air Passenger Ticket Levy (Collection) Bill 2001*. As the bill currently stands, the minister may make determinations under section 22(1) as to the terms of the scheme, and those determinations under subsection (2) may specify:

- (a) the companies that are to be covered by the Scheme;
- (b) the entitlements to be covered by the Scheme; and
- (c) the terms under which payments under the Scheme are to be made.

This Democrat amendment adds to clause 22 after section 2(a) a provision that allows explanation on the basis for determining which companies will be included in the scheme and which will be excluded. This amendment seeks to improve, we believe, the accountability of this section, which is highly discretionary. The bill does not give any indication as to which companies will be eligible for the scheme. It does not indicate that it will apply to companies in the Ansett group. Will these be wholly owned companies or majority owned companies? This amendment does not go as far as perhaps we would like but, as we have previously noted, because of rushed legislation and a lack of consultation and briefings on legislation, this parliament has produced some clumsy law. But in this case we believe that the object of the bill is good, and we trust that the government does not abuse the intent. I advocate the amendment to the chamber.

Amendment not agreed to.

Bill agreed to.

Bills reported without amendment or requests; report adopted.

### Third Reading

Bills (on motion by Senator Ian Campbell) read a third time.

## INTELLIGENCE SERVICES BILL 2001 INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001

### Second Reading

Debate resumed from 24 September, on motion by Senator Patterson:

That these bills be now read a second time.

**Senator GREIG (Western Australia)**

(12.35 p.m.)—Recent events in the United States have highlighted the need for a strong intelligence service. Threats to national security come not just from foreign countries but also from other organisations such as terrorist groups, as we have seen all too clearly. If Australia is to protect itself from this threat, it must have good intelligence on which we can rely. Good intelligence is necessary for the effective functioning of a range of government departments, most notably those in the areas of foreign affairs and defence. If Australia's security is to be protected, we cannot simply rely on information provided by overseas agencies. We must have our own intelligence and we must be able to critically analyse the intelligence we receive from other sources. This bill deals with a number of agencies involved in providing intelligence services to the Australian government. Significantly, the bill establishes a statutory basis for ASIS, outlining its functions and applicable accountability mechanisms. We Democrats support setting these matters out in legislation. We concur with the report of the Samuels and Codd royal commission which stated that:

ASIS carries out important functions in the national interest. Its operations are usually sensitive and potentially controversial. It is no longer appropriate that the formal conferral of authority for the exercise of these functions should be the exclusive province of the executive arm. The existence of ASIS should be endorsed by Parliament and the scope and limits of its functions defined by legislation.

This bill will bring ASIS into line with similar agencies in the US, the UK, New Zealand and Canada which are governed by legislation. The bill also deals with the Defence Signals Directorate—DSD—detailing its activities and the relevant accountability mechanisms. ASIO, which is already a crea-

ture of statute, is also dealt with by the legislation, although in less detail.

Intelligence is an increasing priority for governments and it is appropriate that there should be stringent monitoring as funding increases. An example of the cost of such intelligence is the US aggregate budget, which in 1998 was a staggering \$US26.7 billion. While Australia does not spend as much—around \$110 million per year, with an additional \$11 million over four years allocated in the last budget—keeping the government accountable for its intelligence spending is definitely an advantage offered by the proposed bill.

The new laws contemplate the role that the intelligence services will play in guiding Australian governments through the 21st century. Traditionally, intelligence officers existed to protect national security by investigating the capabilities and activities of wartime enemies or nations perceived as a threat. But the modern emphasis for Australian intelligence now includes foreign relations and economic espionage in protecting Australia's broader international interests.

However, we Democrats and other critics have expressed some concern that not all was well with the proposed new laws. The Australian Democrats, together with other critics and commentators, recognise the broad immunities conferred by the original bill upon agencies and their operatives, predicting that these new powers will come with an increase in the possibility of abuse. The original bill allowed ASIS and DSD employees to be immune to Australian and international laws with apparent and inadequate defined parameters. If they breach laws as they apply in Australia in the course of their duties, the only limitation is that the illegal actions must be in the proper performance of an agency function. The obvious problem with this provision is the difficulty in deciding what constitutes proper performance. The original bill also provided for ASIS agents to break the law in properly doing their job. But, with the inherent secrecy of ASIS, where an impropriety occurs we may never know about it or, if we do, there may be no-one who can do anything about it.

The original bill allowed for the setting up of a committee to oversee and review the agencies in question, but that committee as then proposed was hamstrung by being expressly prohibited from reviewing any operational matter or procedure adopted by the agencies. The question was: if such a committee were formed, who would be on it, given the levels of secrecy required and the need to avoid any perceived or real political bias? One thing for certain, this overseeing committee should be independent of government but still answerable to parliament.

Following exhaustive and comprehensive Senate committee scrutiny that involved much public involvement and transparency, the now resulting bill is a far improved, better managed, better coordinated and more strongly civil libertarian package that largely addresses the concerns first expressed by the Democrats. The Democrats support this legislation to spell out the activities and responsibilities of our intelligence services. It is important that such legislation is balanced, taking into account the special needs for secrecy in intelligence services but also the demands of the community and parliament for an appropriate accountability framework. We believe that properly considered and constructed legislation can enhance the standing and accountability of our intelligence services.

Part 2 of the [Intelligence Services Bill 2001](#) sets out the functions of ASIS. They include obtaining intelligence about the capabilities, intentions or activities of people or organisations outside of Australia, conducting counterintelligence activities and liaising with the intelligence and security services of other countries. The key function of ASIS is to collect foreign intelligence for the purpose of the promotion of Australia's interests and its security. It is an important qualification that in performing its functions ASIS must not plan for or undertake paramilitary activities involving violence against the person or the use of weapons. ASIS is an important part of the intelligence community. In the financial year 2000-01, it had a budget of \$42.6 million, a significant proportion of the \$120 million estimated as the overall expenses on security and intelligence services.

It is appropriate that its functions now be spelt out in legislation and subject to proper review.

To enhance accountability, the bills propose a new joint parliamentary committee. The new committee will replace the parliamentary Joint Statutory Committee on ASIO. Its jurisdiction will be expanded to include ASIS and DSD and will have functions which are different in some respects. The scope of the committee's terms of reference will be quite limited. It will review the administration of expenditure by ASIO, ASIS and DSD and will consider any matter referred to it by the minister or by a resolution of either house of parliament. It will not be authorised to review the intelligence gathering priorities of agencies within its jurisdiction, it will not review information provided by a foreign government where the government does not consent to the disclosure of that information, and it will be precluded from reviewing a range of other operational matters.

Scrutiny of intelligence services always involves compromise. The full public accountability normally insisted on in relation to government agencies may not be appropriate in the case of intelligence services. Nonetheless, no government agency is above the law and none may be permitted to act entirely outside the scope of parliamentary review. The Democrats welcome the inclusion of ASIS and DSD in the provisions relating to the parliamentary joint committee. We will follow with interest the activities of the committee, with a view to determining whether further refinement of the legal relationship between it and the intelligence agencies is necessary at some point in the future.

The bill imposes a number of limitations on the activities by intelligence agencies. A crucial limitation to which I have referred earlier is that ASIS must not plan for or undertake paramilitary activities or activities involving violence against the person or the use of weapons. Other limitations include the following: ASIS and DSD must not perform police or law enforcement functions except in limited circumstances where such activities are incidental to the performance of

other legitimate functions; ASIS and DSD may not undertake any activity unless it is necessary for the proper performance of their functions; ASIS and DSD must develop rules regarding the manner in which they communicate information about Australian citizens which respect the privacy of those citizens; and ASIS and DSD may only engage in activities in the interests of Australia's national security, foreign relations or national economic wellbeing as they are affected by the capabilities, intentions or activities of people or organisations outside Australia. Some of these limitations are very broad, but nonetheless they offer a useful guide to the limitations on the activities of the agencies. This is preferable to the current state of uncertainty.

However, the Democrats remain concerned about the broad amenities conferred by the bill upon agencies and their operatives. There is potential for these immunities to be abused, particularly given the secrecy surrounding the activities of these agencies. The Australian Democrats is a party that is committed to accountability and a party that strongly opposes secrecy in government.

**The ACTING DEPUTY PRESIDENT (Senator George Campbell)**—Order! It being 12.45 p.m., we proceed to deal with government business orders of the day.

**ROYAL COMMISSIONS AND OTHER  
LEGISLATION AMENDMENT  
BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

**Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs)** (12.45 p.m.)—I commend the Royal Commissions and Other Legislation Amendment Bill 2001 to the House.

Question resolved in the affirmative.

Bill read a second time.

**In Committee**

The bill.

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.45 p.m.)—I table the supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 18 September 2001. I seek leave to move government amendments (1) to (7) together.

Leave granted.

**Senator PATTERSON**—I move:

- (1) Schedule 1, page 3 (after line 11), after item 1, insert:

**1A Subsection 127(5)**

After “subsection”, insert “(2C),”.

- (2) Schedule 1, page 3 (after line 14), before item 3, insert:

**2A Section 3**

Insert:

**official**, in relation to a Royal Commission, means:

- (a) a legal practitioner appointed to assist the Commission; or
- (b) a person otherwise assisting the Commission and authorised in writing by the sole Commissioner or a member of the Commission.

**2B Section 3**

Insert:

**Royal Commission** has the same meaning as in the *Royal Commissions Act 1902*.

- (3) Schedule 1, item 3, page 3 (lines 17 and 18), omit “(within the meaning of the *Royal Commissions Act 1902*)”.
- (4) Schedule 1, item 3, page 3 (line 20), after “has”, insert “, or might have,.”.
- (5) Schedule 1, item 4, page 3 (lines 25 and 26), omit paragraphs (u) and (v), substitute:
  - (u) an official of such a Commission.
- (6) Schedule 1, page 3 (after line 27), before item 5, insert:

**4A Subsection 2(1)**

Repeal the subsection, substitute:

- (1) A member of a Commission may summon a person to appear before the Commission at a hearing to do either or both of the following:

- (a) to give evidence;
- (b) to produce the documents, or other things, specified in the summons.

**4B After subsection 2(3)**

Insert:

- (3A) A member of a Commission may, by written notice served (as prescribed) on a person, require the person to produce a document or thing specified in the notice to a person, and at the time and place, specified in the notice.

**4C At the end of section 3**

Add:

- (4) A person served with a notice under subsection 2(3A) must not refuse or fail to produce a document or other thing that the person was required to produce in accordance with the notice.

Penalty: \$1,000 or imprisonment for 6 months.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.
- (6) It is a defence to a prosecution for an offence against subsection (4) constituted by a refusal or failure to produce a document or other thing if the document or other thing was not relevant to the matters into which the Commission was inquiring.

Note: A defendant bears an evidential burden in relation to the matters in subsections (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

**4D Before subsection 4(1)**

Insert:

- (1A) A relevant Commission may authorise:
  - (a) a member of the relevant Commission; or
  - (b) a member of the Australian Federal Police, or of the Police Force of a State or Territory, who is assisting the relevant Commission;

to apply for search warrants under subsection (3) in relation to matters into which the relevant Commission is inquiring. The authorisation must be in writing.

**4E Paragraph 4(1)(a)**

After “a relevant Commission”, insert “, or a person authorised by a relevant Commission under subsection (1A),”.

**4F Paragraph 4(1)(b)**

After "the relevant Commission", insert ", or the person,".

**4G Subsection 4(1)**

Omit "the relevant Commission may", substitute "the relevant Commission, or the person, may".

**4H Subsection 4(2)**

Repeal the subsection.

**4I Subsection 4(3)**

Omit "by a relevant Commission".

**4J Subsection 4(4)**

Omit "on the application of a relevant Commission".

**4K Subsection 5(1)**

Repeal the subsection, substitute:

(1) An application for a search warrant under subsection 4(1) may be made by telephone if the applicant for the warrant considers it necessary to do so because of circumstances of urgency.

**4L Paragraph 5(2)(b)**

Omit "the relevant Commission", substitute "the applicant".

**4M Paragraph 5(2)(c)**

Omit "the relevant Commission", substitute "the applicant".

**4N Section 6A**

Repeal the section, substitute:

**6A Self incrimination**

(1) It is not a reasonable excuse for the purposes of subsection 3(2B) or (5) for a natural person to refuse or fail to produce a document or other thing that the production of the document or other thing might tend to:

- (a) incriminate the person; or
- (b) make the person liable to a penalty.

(2) A natural person is not excused from answering a question that the person is required to answer by a member of a Commission on the ground that answering the question might tend to:

- (a) incriminate the person; or
- (b) make the person liable to a penalty.

(3)

Subsections (1) and (2) do not apply to the production of a document or other thing, or the answer to a question, if:

- (a) the production or answer might tend to incriminate the person in relation to an offence; and
- (b) the person has been charged with that offence; and
- (c) the charge has not been finally dealt with by a court or otherwise disposed of.

(4)

Subsections (1) and (2) do not apply to the production of a document or other thing, or the answer to a question, if:

- (a) the production or answer might tend to make the person liable to a penalty; and
- (b) proceedings in respect of the penalty have commenced; and
- (c) those proceedings have not been finally dealt with by a court or otherwise disposed of.

**4O Section 6C**

Omit "five or section six of this Act", substitute "3 or 6".

**4P Paragraph 6D(3)(b)**

Repeal the paragraph, substitute:

(b) the contents of any document, or a description of any thing:

- (i) produced before, or delivered to, the Commission; or
- (ii) produced under a notice under subsection 2(3A); or

**4Q Section 6DD**

Repeal the section, substitute:

**6DD Statements made by witness not admissible in evidence against the witness**

(1) The following are not admissible in evidence against a natural person in any civil or criminal proceedings in any court of the Commonwealth, of a State or of a Territory:

- (a) a statement or disclosure made by the person in the course of giving evidence before a Commission;
- (b) the production of a document or other thing by the person pursuant to a summons, requirement or notice under section 2.

(2) Subsection (1) does not apply to the admissibility of evidence in proceedings for an offence against this Act.

**4R Paragraph 6F(1)(a)**

Repeal the paragraph, substitute:

(a) inspect any documents or other things:

- (i) produced before, or delivered to, the Commission; or
- (ii) produced under a notice under subsection 2(3A); and

**4S Paragraph 6F(1)(c)**

Repeal the paragraph, substitute:

(c) in the case of documents:

- (i) produced before, or delivered to, the Commission; or
- (ii) produced under a notice under subsection 2(3A);

make copies of any documents that contain matter that is relevant to a matter into which the Commission is inquiring.

**4T At the end of section 6I**

Add:

(2) Any person who:

(a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement; or

(b) attempts by any means to induce any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 not to comply with the requirement; or

(c) asks, receives or obtains, or agrees to receive or obtain any property or benefit of any kind for himself, or any other person, upon any agreement or understanding that any person who is required to produce a

document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement;

is guilty of an indictable offence.

Penalty: Imprisonment for 5 years.

**4U At the end of section 6J**

Add:

(2) Any person who practises any fraud or deceit, or intentionally makes or exhibits any statement, representation, token, or writing, knowing it to be false, to any person with intent that any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement, is guilty of an indictable offence.

Penalty: Imprisonment for 2 years.

**4V Paragraph 6K(1)(c)**

Repeal the paragraph, substitute:

(c) the person knows, or is reckless as to whether, the document or thing is one that:

- (i) is or may be required in evidence before a Commission; or
- (ii) a person has been, or is likely to be, required to produce pursuant to a summons, requirement or notice under section 2.

**4W At the end of section 6L**

Add:

(2) Any person who intentionally prevents any person who is required to produce a document or other thing pursuant to a notice under subsection 2(3A) from producing that document or thing in accordance with the notice is guilty of an indictable offence.

Penalty: Imprisonment for 1 year.

**4X Section 6M**

Repeal the section, substitute:

**6M Injury to witness**

Any person who uses, causes or inflicts, any violence, punishment, damage, loss, or disadvantage to any person for or on account of:

- (a) the person having appeared as a witness before any Royal Commission; or
- (b) any evidence given by him or her before any Royal Commission; or
- (c) the person having produced a document or thing pursuant to a summons, requirement or notice under section 2;

is guilty of an indictable offence.

Penalty: \$1,000, or imprisonment for 1 year.

#### **4Y Subsection 6N(1)**

Repeal the subsection, substitute:

- (1) Any employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee having:
  - (a) appeared as a witness before a Royal Commission; or
  - (b) given evidence before a Royal Commission; or
  - (c) produced a document or thing pursuant to a summons, requirement or notice under section 2;

is guilty of an indictable offence.

Penalty: \$1,000, or imprisonment for 1 year.

- (7) Schedule 1, page 4 (after line 11), at the end of the Schedule, add:

#### ***Telecommunications (Interception) Act 1979***

#### **8 Subsection 5(1) (definition of *chief officer*)**

After “an agency,”, insert “an eligible Commonwealth authority”.

#### **9 Subsection 5(1) (after paragraph (b) of the definition of *chief officer*)**

Insert:

- (ba) in the case of an eligible Commonwealth authority—the member constituting, or the member who generally presides at hearings and other meetings of, the Commonwealth Royal Commission concerned; or

#### **10 Subsection 5(1)**

Insert:

***Commonwealth Royal Commission*** means a Royal Commission within the meaning of the *Royal Commissions Act 1902*.

#### **11 Subsection 5(1)**

Insert:

***eligible Commonwealth authority*** means a Commonwealth Royal Commission in relation to which a declaration under section 5AA is in force.

#### **12 Subsection 5(1)**

Insert:

***member of the staff of a Commonwealth Royal Commission*** means:

- (a) a legal practitioner appointed to assist the Commission; or
- (b) a person otherwise assisting the Commission and authorised in writing by the sole Commissioner or a member of the Commission.

#### **13 Subsection 5(1) (definition of *officer*)**

After “an agency,”, insert “an eligible Commonwealth authority”.

#### **14 Subsection 5(1) (after paragraph (b) of the definition of *officer*)**

Insert:

- (ba) in the case of an eligible Commonwealth authority—a member of the Commonwealth Royal Commission concerned or a member of the staff of the Royal Commission; or

#### **15 Subsection 5(1) (definition of *permitted purpose*)**

After “an agency,”, insert “an eligible Commonwealth authority”.

#### **16 Subsection 5(1) (after paragraph (b) of the definition of *permitted purpose*)**

Insert:

- (ba) in the case of an eligible Commonwealth authority:
  - (i) an investigation that the Commonwealth Royal Commission concerned is conducting in the course of the inquiry it is commissioned to undertake; or
  - (ii) a report on such an investigation; or

#### **17 Subsection 5(1) (definition of *prescribed investigation*)**

After “a Commonwealth agency”, insert “, an eligible Commonwealth authority”.

**18 Subsection 5(1) (after paragraph (b) of the definition of *prescribed investigation*)**

Insert:

(ba) in the case of an eligible Commonwealth authority—an investigation that the Commonwealth Royal Commission concerned is conducting in the course of the inquiry it is commissioned to undertake; or

**19 Subsection 5(1) (definition of *relevant offence*)**

After “a Commonwealth agency”, insert “, an eligible Commonwealth authority”.

**20 Subsection 5(1) (after paragraph (b) of the definition of *relevant offence*)**

Insert:

(ba) in the case of an eligible Commonwealth authority—a prescribed offence to which a prescribed investigation relates; or

**21 After section 5**

Insert:

**5AA Eligible Commonwealth authority declarations**

The Minister may, by notice published in the *Gazette*, declare a Commonwealth Royal Commission to be an eligible Commonwealth authority for the purposes of this Act if the Minister is satisfied that the Royal Commission is likely to inquire into matters that may involve the commission of a prescribed offence.

**22 After paragraph 5B(h)**

Insert:

(ha) a proceeding of an eligible Commonwealth authority; or

**23 At the end of section 67**

Add:

(2) An officer of an eligible Commonwealth authority may, for a permitted purpose, or permitted purposes, in relation to the authority, and for no other purpose, communicate to another person, make use of, or make a record of the following:

(a) lawfully obtained information other than foreign intelligence information;

(b) designated warrant information.

**24 After paragraph 68(d)**

Insert:

(da) if the information relates, or appears to relate, to the commission of a relevant offence in relation to an eligible Commonwealth authority—to the chief officer of the eligible Commonwealth authority; and

**25 Subsection 95(1)**

After “Commonwealth agency”, insert “, or eligible Commonwealth authority.”.

**26 Subsection 95(2)**

After “Commonwealth agency”, insert “, or eligible Commonwealth authority.”.

**27 Subsection 102(1)**

After “each Commonwealth agency”, insert “, for each eligible Commonwealth authority”.

**28 Subparagraph 102(2)(a)(i)**

After “Commonwealth agencies”, insert “, by eligible Commonwealth authorities”.

**29 Paragraph 102(2)(b)**

After “Commonwealth agencies”, insert “, of eligible Commonwealth authorities”.

Amendments agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

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

**EMPLOYMENT, WORKPLACE RELATIONS AND SMALL BUSINESS LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001**

**Second Reading**

Debate resumed from 24 September, on motion by Senator Patterson:

That this bill be now read a second time.

**Senator JACINTA COLLINS (Victoria)**  
(12.47 p.m.)—The Labor Party is supporting Employment, Workplace Relations and

**Small Business Legislation Amendment (Application of Criminal Code) Bill 2001.** The bill amends a number of Employment, Workplace Relations and Small Business portfolio statutes to ensure conformity with chapter 2 of the Criminal Code Act 1995. This process has been occurring across portfolios, giving Commonwealth criminal offences a standard formulation of the elements of fault, burden of proof and penalty. My main purpose in addressing this bill today is to draw the Senate's attention to, and indeed reiterate, the basis of our support of this legislation, which is that this bill does not—and I stress, does not—create any new offences or remove any existing offences. The Minister for Employment, Workplace Relations and Small Business, Mr Abbott, gave the following undertaking in the House's Main Committee. He said:

I am grateful for the comments of the member for Dickson and I can assure her that this bill does not create any new offences. It does not actually deal with penalties at all in respect of occupational health and safety. It does not change the effect of existing offences. What the bill aims to do is clarify the effect of existing offences and ensure that they operate in exactly the same way after the application of the principles of the code as they have always operated. I understand from my departmental officers that we have advice from the Attorney-General's Department that that is the effect of the bill.

On this basis I commend the bill to the Senate.

**Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.48 p.m.)**—I thank Senator Collins for her contribution. The aim of the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001 is clearly set out in the explanatory memorandum, the second reading speech and the comments in the Main Committee of the Minister for Employment, Workplace Relations and Small Business. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**DEFENCE LEGISLATION  
AMENDMENT (APPLICATION OF  
CRIMINAL CODE) BILL 2001**

**Second Reading**

Debate resumed from 24 September, on motion by **Senator Patterson**:

That this bill be now read a second time.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.50 p.m.)**—The opposition supports the application of the Criminal Code Act 1995 to the relevant acts administered within the Defence portfolio. We support the necessary amendments to ensure that there is compliance and consistency with the general principles of the code. Accordingly, we are in fact supporting this bill. Obviously the Criminal Code and this bill have particular relevance to the Defence Force Discipline Act. We believe it is important that the offence-creating provisions of the DFDA will be set out in a consistent format so that Defence Force personnel can easily understand them and so that those in the ADF who are not legally qualified but responsible for enforcing many of the DFDA provisions are able to do so effectively.

The opposition supports the measures to modernise and improve Defence legislation and in particular, as I have indicated, to bring the operation of the DFDA into line with civilian criminal law. In short, because of the time constraints we have, I indicate that we are happy to support a bill which is consistent with other bills which achieve similar objectives across a range of portfolios and which we believe will give ADF personnel greater certainty, greater protection and greater confidence under the criminal law.

**Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.52 p.m.)**—I thank Senator Faulkner for his contribution and commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**TRANSPORT AND REGIONAL SERVICES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by Senator Hill:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria)—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.53 p.m.)—The Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001 is a noncontroversial bill and all parties in the chamber have agreed to it. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**CYBERCRIME BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by Senator Hill:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria)—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.55 p.m.)—There are some government amendments to the Cybercrime Bill 2001. I have been advised that all parties agree with the bill. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time.

**In Committee**

The bill.

**Senator PATTERTON** (Victoria)—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.55 p.m.)—I table a supple-

mentary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 26 September 2001. I seek leave to move the amendments as a whole.

Leave granted.

**Senator PATTERTON**—I move government amendments Nos 1 to 16:

- (1) Schedule 1, item 4, page 5 (after line 27), at the end of section 476.2, add:
  - (4) For the purposes of subsection (1), if:
    - (a) a person causes any access, modification or impairment of a kind mentioned in that subsection; and
    - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory; the person is entitled to cause that access, modification or impairment.
- (2) Schedule 1, item 4, page 6 (line 12), omit “(the *ancillary act*)”.
- (3) Schedule 1, item 4, page 6 (lines 15 to 22), omit paragraph 2(b), substitute:
  - (b) the act:
    - (i) taken together with a computer-related act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but
    - (ii) in the absence of that computer-related act, event, circumstance or result, would not amount to an offence; and
- (4) Schedule 1, item 4, page 6 (line 23), omit “ancillary”.
- (5) Schedule 1, item 4, page 6 (after line 24), after subsection (2), insert:
  - (2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or telecommunications services in Australia, being:
    - (a) an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part III of the *Telecommunications (Interception) Act 1979*; or
    - (b) an act to obtain information that ASIO could not obtain other than in

accordance with section 283 of the *Telecommunications Act 1997*.

(2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.

(2C) In any proceedings, a certificate given under subsection (2B) is *prima facie* evidence of the facts certified.

(6) Schedule 1, item 4, page 6 (line 29), omit "**computer-related act** means an act or omission", substitute "**computer-related act, event, circumstance or result** means an act, event, circumstance or result".

(7) Schedule 1, item 4, page 7 (lines 2 and 3), omit "device used to store data by electronic means", substitute "data storage device".

(8) Schedule 1, item 4, page 11 (lines 18 to 20), omit the definition of **restricted data**, substitute:

**restricted data** means data:

- (a) held in a computer; and
- (b) to which access is restricted by an access control system associated with a function of the computer.

(9) Schedule 2, item 7, page 15 (lines 15 and 16), omit "an extension", substitute "one or more extensions".

(10) Schedule 2, item 7, page 15 (line 18), at the end of subsection (3B), add "or that time as previously extended".

(11) Schedule 2, item 8, page 16 (after line 9), after subsection (1A), insert:

(1B) If:

- (a) the executing officer or constable assisting takes the device from the premises; and
- (b) the Commissioner is satisfied that the data is not required (or is no longer required) for:

- (i) investigating an offence against the law of the Commonwealth, a State or a Territory; or
- (ii) judicial proceedings or administrative review proceedings; or
- (iii) investigating or resolving a complaint under the *Complaints (Australian Federal Police) Act 1981* or the *Privacy Act 1988*;

the Commissioner must arrange for:

- (c) the removal of the data from any device in the control of the Australian Federal Police; and
- (d) the destruction of any other reproduction of the data in the control of the Australian Federal Police.

(12) Schedule 2, item 12, page 17 (line 8), after "person has", insert "relevant".

(13) Schedule 2, item 23, page 19 (lines 10 and 11), omit "an extension", substitute "one or more extensions".

(14) Schedule 2, item 23, page 19 (line 13), at the end of subsection (3B), add "or that time as previously extended".

(15) Schedule 2, item 24, page 20 (after line 3), after subsection (1A), insert:

(1B) If:

- (a) the executing officer or person assisting takes the device from the premises; and
- (b) the CEO is satisfied that the data is not required (or is no longer required) for:

- (i) investigating an offence against the law of the Commonwealth, a State or a Territory; or
- (ii) judicial proceedings or administrative review proceedings; or
- (iii) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;

the CEO must arrange for:

- (c) the removal of the data from any device in the control of Customs; and
- (d) the destruction of any other reproduction of the data in the control of Customs.

(16) Schedule 2, item 28, page 21 (line 3), after "person has", insert "relevant".

Amendments agreed to.

**Senator MARK BISHOP (Western Australia)** (12.56 p.m.)—by leave—On behalf of Senator Bolkus, I move opposition amendments Nos 1 and 2:

(1) Schedule 2, item 12, page 17 (after line 15), after section 3LA, insert:

**3LB Accessing data held on other premises—notification to occupier of that premises**

(1) If:

- (a) data that is held on premises other than the warrant premises is accessed under subsection 3L(1); and
- (b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;

the executing officer must:

- (c) do so as soon as practicable; and
- (d) if the executing officer has arranged, or intends to arrange, for continued access to the data under subsection 3L(1A) or (2)—include that information in the notification.

- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the executing officer.

- (2) Schedule 2, item 28, page 21 (after line 10), after section 201A, insert:

**201B Accessing data held on other premises—notification to occupier of that premises**

- (1) If:

- (a) data that is held on premises other than the warrant premises is accessed under subsection 201(1); and
- (b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;

the executing officer must:

- (c) do so as soon as practicable; and
- (d) if the executing officer has arranged, or intends to arrange, for continued access to the data under subsection 201(1A) or (2)—include that information in the notification.

- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the executing officer.

**Senator PATTISON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs)** (12.56 p.m.)—I have been advised that the government is supporting the amendments moved by the opposition.

Amendments agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

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

### PATENTS AMENDMENT BILL 2001

#### Second Reading

Debate resumed from 6 August, on motion by **Senator Tambling**:

That this bill be now read a second time.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)**

(12.57 p.m.)—The Australian Democrats are committed to deepening an innovation culture in Australia. We recognise that the development of human and intellectual capital is basic to the success of an innovation society in a global knowledge economy. That means we need robust intellectual property systems that allow for incentives for investment in developing intellectual property, and that enable the rapid diffusion of intellectual property while balancing the needs, of course, of community and consumers.

The **Patents Amendment Bill 2001** strengthens the current patent system. The principal reasons why this needs to be done are that, under the current arrangements, Australian patents are susceptible to costly challenge and there is an increasing risk that Australia will become a dumping ground for patents that do not cut the mustard in other jurisdictions, thus limiting Australian R&D. Currently, about 90 per cent of Australian patents are held by non-Australian entities.

In our view, there are a number of defects in this bill, and we will be moving a series of amendments to it. Our primary concerns are as follows. Firstly, there is an unreasonably high threshold for patents due to the bill's widening of the scope of the required prior art base that a person skilled in the art is likely to possess. The expansion creates interpretative difficulties as patents could be knocked out if applicants were unfamiliar with, say, a Mongolian journal article. However, it goes beyond the Ergas review's recommendations that knowledge should be limited to that which a skilled person could reasonably expect to know, understand or

find. We also will move amendments in relation to an onerous and potentially costly requirement for applicants to provide the commissioner with all searches of the prior art, even if not directly related to the application. This could have major compliance and cost consequences for large research institutions and universities such as the CSIRO. I am delighted that the government have acknowledged and recognised these concerns. They have indicated support for five of our amendments which go to those problems—that is, Democrat amendments Nos 1, 2, 3, 5 and 6.

In addition, the bill allows the introduction of a grace period by regulation to coincide with the commencement of the bill. The intent is to ensure that prior publication, for example in an academic journal, would no longer defeat a patent application because it was in the public domain prior to the application. The concern is that Europe has not instituted or recognised such a mechanism; thus implementation could damage Australian patent applications. The regulation does not form part of the bill before us, but I would like to place it on the record that, while the Democrats support the concept of a grace period, we are likely to disallow any instrument that introduces it prior to the resolution of this particular issue in Europe.

**Senator Patterson**—You cannot disallow it—

**Senator STOTT DESPOJA**—I re-emphasise that government officers and Democrat officers have worked particularly well on this legislation, so I am not quite sure what that interjection was about. There is a further amendment which I understand the government will not be supporting. That is an amendment—as many in the chamber would be aware—that I have moved previously. Certainly my predecessor, Senator John Coulter, has done so. I have also moved a private member's bill seeking to prohibit the patenting of genes and gene sequences. I have placed on record many times before in this place my concerns that we would allow that—that there would be some exclusivity and patenting of genes and gene sequences. I still urge the chamber to consider debating the private member's bill, which I think I

tabled back in 1996. I know that Senator Harradine and other backbenchers on both sides of the parliament have, over the years, indicated support for that private member's bill, but to this day it has not been debated—and certainly not supported.

I understand the government today will not be supporting that, but it remains an issue of concern that genes and gene sequences can be patented. The amendments before us would prevent that from occurring. I make it clear for the record, however, that provided one or other of the processes—the processes by which genes are extracted from the cells, the processes by which the extracted genes are manipulated or the specific uses to which the genes may be put—shows the qualities of novelty or inventiveness, qualities that are required under the act, in sufficient degree, they would be patentable. I am sure the government and others understand that distinction, given that they are not prepared to debate that private member's bill or support the amendment. I endorse that amendment and commend it to the chamber, because in this day and age we should be putting protective mechanisms in place to ensure that people's genes, DNA—and certainly gene sequences—cannot be owned exclusively, cannot be patented. It is a very straightforward amendment; I hope it gets support from the chamber.

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.03 p.m.)—My small outburst was on a matter of procedure. Senator Stott Despoja said that the Democrats would disallow regulations if they came in. I was pointing out that the Senate has the right to disallow regulations. The Democrats may move to disallow them, but it has to be the right of the Senate. I had a small outburst—Senator Stott Despoja is nodding—but just for the record we need to know it is the Senate that actually agrees, even if one individual moves to disallow a regulation. Now that I have got that off my chest I feel better!

**The ACTING DEPUTY PRESIDENT** (Senator George Campbell)—You are ap-

propriately admonished, Senator Stott Despoja!

**Senator PATTERSON**—You have got to pay attention to detail. I was on the Regulations and Ordinances Committee for a long time, and it is a very important factor for me. Despite just having chastised Senator Stott Despoja, I put on the record the government's appreciation for the work that the Democrats have done with the government. I have been advised that they worked constructively with the government to finetune the measures contained in the **Patents Amendment Bill 2001**. To save some time at the committee stage, we will be accepting amendments Nos 1, 2, 3, 5 and 6 and opposing amendment No. 4.

Question resolved in the affirmative.

Bill read a second time.

### In Committee

The bill.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (1.05 p.m.)—by leave—On behalf of the Australian Democrats, I move amendments Nos 2, 5 and 6:

(2) Schedule 1, item 4, page 3 (lines 14 to 25), omit the item, substitute:

#### 4 Subsection 7(3)

Repeal the subsection, substitute:

(3) The information for the purposes of subsection (2) is:

- (a) any single piece of prior art information; or
- (b) a combination of any 2 or more pieces of prior art information; being information that the skilled person mentioned in subsection (2) could, before the priority date of the relevant claim, be reasonably expected to have ascertained, understood, regarded as relevant and, in the case of information mentioned in paragraph (b), combined as mentioned in that paragraph.

(5) Schedule 1, item 14, page 5 (lines 4 to 14), omit the item, substitute:

#### 14 Subsection 45(3)

Repeal the subsection, substitute:

(3) The applicant must inform the Commissioner, in accordance with the regulations, of the results of any documentary searches, whether conducted in Australia or elsewhere, for the purposes of assessing the patentability of an invention disclosed in the complete specification or a corresponding application filed outside Australia that are carried out by or on behalf of the applicant, or the applicant's predecessor in title, prior to the grant of the patent.

(6) Schedule 1, item 19, page 6 (line 24) to page 7 (line 6), omit the item, substitute:

#### 19 Section 101D

Repeal the section, substitute:

#### 101D Commissioner to be given information on searches

The patentee must inform the Commissioner, in accordance with the regulations, of the results of any documentary searches, whether conducted in Australia or elsewhere, for the purposes of assessing the patentability of an invention disclosed in the complete specification or a corresponding application filed outside Australia that are carried out by or on behalf of the patentee, or the patentee's predecessor in title, prior to the issue of a certificate of examination in respect of the patent.

Amendments agreed to.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (1.05 p.m.)—The Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, item 2, page 3 (lines 9 and 10), **TO BE OPPOSED**.

(3) Schedule 1, item 5, page 3 (lines 26 and 27), **TO BE OPPOSED**.

**The CHAIRMAN**—The question is that schedule 1, items 2 and 5 stand as printed.

Question resolved in the negative.

Amendment (by **Senator Stott Despoja**) proposed:

(4) Schedule 1, page 3 (after line 29), after item 6, insert:

#### 6A At the end of section 18

Add:

(5) The following are not to be regarded as possessing the quality of novelty or in-

ventiveness for the purposes of this section:

- (a) naturally occurring genes; or
- (b) naturally occurring gene sequences; or
- (c) descriptions of the base sequence of a naturally occurring gene or a naturally occurring gene sequence.

**Senator MARK BISHOP (Western Australia)** (1.06 p.m.)—I just advise that the opposition supports amendment Nos 1, 2, 3, 5 and 6 and opposes amendment No. 4, the one currently before the chair. We support the Democrats in principle over the gene issue, but we are concerned that tacking this amendment onto a bill at this last minute is an inappropriate way of dealing with the issue, and hence we oppose it.

**Senator HARRADINE (Tasmania)** (1.07 p.m.)—How else? This is a matter of quite grave importance. The longer this parliament puts off this matter, the more involved become the science technologists who want to do anything. I will not speak for long—I wish I could—but I just mention that some of those people who are seeking to obtain patents are from overseas and will seek the patents elsewhere as well. There should be international recognition of the need for action to be taken in this area. We should give the lead, in my view. Yes, it is a question of tacking this onto a piece of legislation such as this. Often very important matters are dealt with in this way, but I acknowledge what was said by the opposition and the government that they seem to be favourably disposed to considering this matter at another stage. Perhaps the sooner we do that the better.

I am concerned also that very often people think, ‘The NHMRC guidelines or the NHMRC’s National Statement on Ethical Conduct in Research Involving Humans covers this.’ They do not. It is not covered by the NHMRC. It is a problem when persons in the portfolio of the department that we are talking about suggest that certain projects involving stem cell research are covered by the NHMRC ethical guidelines on assisted reproductive technology; that is a nonsense. Those guidelines do not go to that matter at all, and nor does the National Statement on

Ethical Conduct in Research Involving Humans. It sounds good—‘We’ll abide by those’—but they do not cover the field.

I have given an undertaking not to speak at length, but I do express my concern that we really need to have a good look at these particular matters. The Department of Industry, Science and Resources ought to have another think as to what they are telling the minister when they say that some of these areas are covered by the NHMRC rules and guidelines. They are not.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)** (1.10 p.m.)—I will just respond to Senator Bishop’s comments on behalf of the Labor Party. There was no intention on my behalf to tack this on or to hijack or gazump this debate in any way. I think I have dealt with both major parties over the years on this particular issue. Back in 1995, former Senator John Coulter moved similar amendments to the Patents Act 1990. In 1996, we introduced a private member’s bill to achieve the same thing. That is why I have basically replicated the same amendments that we have debated previously.

I have to say that I do take heart in the fact that Senator Bishop has put on record that he has sympathy for the Australian Democrats’ position. I think there are some fundamental philosophical, moral, ethical and other reasons why the patenting of genes should be excluded from the realm of patentability. In fact, you could argue that, because they do not possess the qualities of novelty or inventiveness, they would not automatically be excluded from that realm. However, that is not the case, so these amendments and the private member’s bill seek to make that quite explicit.

I think there is a lot of support in the community for the amendments before us—certainly among conservationists, church groups, ethicists and indeed scientists. As I say, we should not confuse the ability to patent genes and gene sequences with the ability to actually patent the processes by which you derive information from those genes, you extract those genes and you use those genes. Those processes can still be patented, but that ownership of individual genetic infor-

mation—whether it is from humans or, I suppose, other species—should be outlawed, and I look forward to the day when the Senate has that debate and indeed passes such amendments.

**Senator PATTERSON** (Victoria)—**Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs** (1.13 p.m.)—The government agrees that the issue of patenting genetic material is an important one, but it does not support this particular amendment. This is a rapidly moving field of technology, and this amendment raises more fundamental concerns, which include moral and ethical issues, the impact on freedom of research in Australia and ensuring Australians have access to the latest technology. It is not clear whether not allowing patenting in this field is the most effective means of addressing the concerns.

I was just sitting here trying to reflect back on the previous investigation—I think it was in 1992—when the House of Representatives Standing Committee on Industry, Science and Technology examined this issue extensively. It found then that no strong grounds existed which justified treating biotechnology differently from other fields of technology under the patent system, and that the Patents Act is not the appropriate vehicle for preventing the development of technologies which society may have an objection to. I was sitting here contemplating whether it is time for the Senate to look at this issue, but we recognise that there have been significant developments since 1992. The issue is highly complex and highly technical, and any amendment could only be contemplated after very careful and detailed consideration. Therefore, we do not believe it is appropriate to support this amendment.

Amendment not agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

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

## INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2001

### Second Reading

Debate resumed from 20 September, on motion by Senator Boswell:

That this bill be now read a second time.

**Senator MARK BISHOP** (Western Australia) (1.15 p.m.)—I seek leave to incorporate a speech on behalf of Senator Carr.

Leave granted.

*The speech read as follows—*

This Bill amends the Indigenous Education (Targeted Assistance) Act 2000 to provide extra funding as announced in the “Australians Working Together” package released on 2 April.

The Bill provides additional funding for projects involving partnerships between communities, industry and education providers, and support for vocational learning for indigenous secondary school students.

It is estimated that around 1600 students will be assisted between 2002 and 2004 through expenditure of \$6 million on early intervention strategies based on the Polly Farmer Foundation ‘Gumala Mirnuwarni’ project in the Roebourne area of Western Australia. This project, which began in 1997, has been improving educational outcomes, with average attendance for project students better than the school average for all students, both indigenous and non-indigenous.

The Bill also provides another \$2.6 million which will be used to support vocational education in schools, entry-level skills training, individual mentoring by local business and community leaders, and case management, according to the particular needs of communities.

Another \$2.86 million will be provided through this legislation over three years to offset the impact on non-profit Aboriginal and Torres Strait Islander organisations of changes to the Fringe Benefits Tax Assessment Act 1986.

Without this assistance, these organisations would be disadvantaged by the changes to Fringe Benefits Tax arrangements, which restrict the eligibility of charities and other non-profit organisations to tax concessions on no more than \$30,000 worth of benefit per employee. The additional funding in this Bill will help non-profit Aboriginal and Torres Strait Islander organisations to continue to attract appropriately-qualified staff through competitive salary packages.

A recent study, commissioned by the Department of Health and Aged Care, found that the FBT changes, if not offset by additional funding, were likely to bring about staff cuts and/or program reductions.

The ALP supports this legislation in its provision of additional funding to assist Indigenous education and training, but we place on record our concerns about the impact this Government's changes to ABSTUDY have had on participation in tertiary education by indigenous Australians.

In 1998, the Minister announced changes to ABSTUDY which he said would "open up more opportunities for Indigenous students to access a wider range of assistance to achieve better education and employment outcomes". He insisted that the changes would be budget neutral, a proposition which defied logic, given the reductions in payments for mature age students which were involved. Now we have the proof that the Minister, in making his budget neutral claim, was either being extremely naive or was seeking to mislead.

Expenditure on tertiary ABSTUDY fell by more than \$5 million between 1999 and 2000, when the changes were implemented, and the total number of indigenous tertiary students in receipt of ABSTUDY fell by 1,568.

This information comes from the Minister's own Department, in response to a number of questions about indigenous education during the Senate estimates process in June this year.

The Department's figures also show that, in 2000, the proportion of indigenous students in higher education fell from 1.2 per cent in 1999 to 1.1 per cent.

In response, DETYA advised that in 2000, the number of indigenous students enrolled in higher education was 7,350 - 651 fewer than in 1999.

They also advised that the number of commencing students was 3,510, which was 630 fewer than in 1999.

Participation of indigenous Australians in vocational education and training also fell in 2000: from 3.1 per cent in 1999 to 3.0 per cent.

There has been, therefore, an across-the-board fall in indigenous participation in post-secondary education and training.

The Department said in its written response that "We are unable to confirm the reason for the decline and are undertaking further research into the issue".

It is extremely difficult to escape the conclusion that the cuts to ABSTUDY are directly responsible for this disastrous decline in participation,

among one of the most educationally disadvantaged groups in our community.

Since records began, the trend has been positive, albeit slow. Now this Minister, and this Government, can claim the dubious honour of actually setting back indigenous education and taking away opportunities from some of our citizens who need the greatest help.

It is time this Government—which is wasting \$172 million this year alone in advertising itsel—got its priorities right, and looked at the real needs of Australia and Australians.

I would like to ask the Minister what further research has revealed, and whether he can deny that his own punitive changes to ABSTUDY provide the only valid explanation of this significant reversal of a trend of increasing participation which extends back as far as records go.

He dismissed claims that the cuts in support to mature-age students would lead to declines in the numbers of indigenous students, and insisted that the changes were budget neutral.

Now we have information from his own Department which shows that the critics were right and the Minister wrong.

Of the \$8.6 million in extra program funds provided by this Bill, \$5 million has already been taken from ABSTUDY.

The Opposition will be supporting this Bill. But we would like more honesty and integrity from the Government and the Minister in dealing with the serious problems facing Indigenous Australians.

**Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.15 p.m.)**—In discussions with the relevant people taking the legislation through, I have been advised that all parties in the chamber agree to the bill. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

#### **OLYMPIC INSIGNIA PROTECTION AMENDMENT BILL 2001**

##### **Second Reading**

Debate resumed from 26 September, on motion by **Senator Hill**:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.17 p.m.)—I have been advised that all parties agree to this bill. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**CUSTOMS TARIFF AMENDMENT BILL (No. 4) 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Hill**:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.18 p.m.)—Again I have been advised that all parties have agreed to this bill. I thank honourable senators for their agreement, and I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**EXCISE TARIFF AMENDMENT (CRUDE OIL) BILL 2001**

**Second Reading**

Debate resumed from 20 September, on motion by **Senator Boswell**:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.20 p.m.)—Again, all honourable senators and parties have indicated their agreement with this bill. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

**ABOLITION OF COMPULSORY AGE RETIREMENT (STATUTORY OFFICEHOLDERS) BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Hill**:

That this bill be now read a second time.

**Senator PATTERTON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.21 p.m.)—I am delighted to take a few seconds to speak on the **Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001**. I know it is non-controversial, but I have to say ‘Hallelujah!’ because, when I sat on the other side of the chamber, every time a bill came in—whether for the maritime museum authority or the national museum authority—with a compulsory retirement age for holders of statutory positions, Senator Baume, I think it was, and I moved a clause systematically, bit by bit, to get rid of that dreadfully discriminatory clause. We were told over and over that it could not be done and we were told over and over that we could not get rid of the compulsory retirement age for public servants. In two parliamentary sessions, one after the other, I put up private member’s bills.

A perfect example is the National Maritime Museum. They had an ex-naval officer with enormous experience on the board who had to retire at 65 and who was not able to continue being a holder of a statutory office. It seemed to me to be a ridiculous system in this day and age when people live longer, when they are healthier and when they have a wealth of experience, they can give back to the community—for example, in positions on statutory boards, government boards and the like and in institutions such as the National Library, the Maritime College and the Great Barrier Reef Marine Park Authority. When I look at all the institutions listed here—there are pages of them—no wonder Senator Baume and I could not get through them all. Every time one of these came up in the chamber and we had a chance to amend it, we did it. Now in government we have been able to include the whole lot.

I was responsible for the government's response to the International Year of Older Persons. As a result of that year, we have seen enormous changes to attitudes to older people. The community is much more accepting and much more positive about the contribution older people can make. During our consultations right round Australia, older people kept saying to us—they did not ask for more money—'What we want is to be seen positively, to be seen as contributors rather than as takers.' In this bill we are saying to people, 'Yes, you have got ability; yes, you have got something to contribute; yes, we have listened to those consultations and we have responded.' I do not often say this about bills, but I am delighted to commend this bill to the chamber.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)** (1.24 p.m.)—I would also like to speak briefly on the *Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001*. The opposition supports this bill. It amends acts which specify compulsory age retirement limits for statutory officeholders by repealing provisions that prevent the appointment of a person over a certain age or for a term that would continue beyond a certain age. We note that the amendments will affect neither the term of existing statutory officeholders appointed before the bill commences nor federal judicial appointments or ADF personnel.

The opposition supported the Public Service Act 1999, which had the effect of removing compulsory age retirement from the Australian Public Service. We see the changes in this legislation as complementing that measure in the Public Service Act. It is overdue, as Senator Patterson said, and is a welcome recognition that age is often an artificial barrier.

**Senator Patterson**—The closer you get, the more you understand it.

**Senator FAULKNER**—I am getting closer and closer, Senator Patterson. The only thing I can say is that it is at the same rate as everybody else. It is important to say that older people can and do make as valuable a contribution as anyone else in a variety of statutory positions. It is for those rea-

sons that the bill is commended and supported by the opposition.

**Senator ALLISON (Victoria)** (1.26 p.m.)—The Democrats support the *Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001*, too. We have always supported sensible legislative change to remove discrimination on the basis of sexuality, gender, race, religion and, in this case, age. The bill abolishes legislative provisions in Commonwealth acts that set compulsory retirement age limits—commonly 65 years of age for statutory officeholders. One pressing issue facing Australia is the need to retain the expertise and life experiences brought to workplaces by older Australians. Statutory officeholders are selected on the basis of specialist expertise or knowledge, and some statutory officeholders reach the age of 65 or are older.

The value of older Australians to society and to the workplace was recognised last year in parliament with the third Senior Australian of the Year award. Last year's winner, Professor Freda Briggs, was a proud campaigner against mandatory retirement age. In her role as an educator, author, scholar and ambassador, Freda has ceaselessly and passionately worked towards her vision to provide a safer and more caring world for children.

Freda Briggs was born in England in the 1930s. Her childhood was lost to the years of war, impoverishment and rationing. Her first job as a filing clerk paid £3 for a 48-hour week. In 1975, Freda and her family moved to Australia so that she could take up the position of Director of Early Childhood studies at the State College of Victoria—a pioneering position and the first course of its kind in Australia. In 1980, Freda was appointed Foundation Dean of the De Lissa Institute of Early Childhood and Family Studies; in 1991, as Associate Professor of Childhood Development at the University of South Australia; and, in 1994, as a professor—a position she continues to hold after winning an appeal against mandatory retirement.

Freda paved the way for many older Australians to retain their positions after the age of retirement. She recalls that many eye-

brows were raised when she was given an employment contract for the post of professor that would take her up to 71 years of age. This was the first time at the university that a professor was contracted beyond the age of retirement. A tireless advocate for children, she still travels the country voluntarily to provide advice on issues relating to the educational needs of veterans' children. She also travels extensively through Asia and the Pacific, at her own expense, consulting on humanitarian aid organisations. Since the age of 60, Freda has published more than a book a year and continues to publish extensively in international journals.

I thought I would mention Freda as one prime example of how older Australians have much to give. In fact, if compulsory retirement in the Senate was 65, we would possibly have to force the retirement of six senators in this place—I will not name them.

The need for action on age discrimination has been noted for some considerable time, but the legislation has been a long time in coming. In launching the report *Age matters: a report on age discrimination* in July 2000, Chris Sidoti, as human rights commissioner, commented:

For over 10 years federal governments of both political persuasions have talked about this but done little. The situation now is that the Commonwealth lags far behind every state and territory in protecting people from discrimination based on age ... it's time to catch up.

The government should be congratulated for catching up, for changing the discriminatory practices that existed in legislation that go against the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Democrats will indeed support this bill and will continue to support any legislation that reduces discrimination, be it based on gender, sexuality, race, age or religion.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

## INTELLIGENCE SERVICES BILL 2001 INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001

### Second Reading

Debate resumed.

**Senator GREIG (Western Australia)**

(1.32 p.m.)—Before being interrupted earlier, I was speaking to the ASIS bill and, in summing up, saying that we Democrats do remain concerned, to some degree, about the broad immunities conferred by the bill upon agencies and their operatives. There is potential for these immunities to be abused, particularly given the secrecy surrounding the activities of these agencies. The Australian Democrats is a party that is committed to accountability and a party that strongly opposes secrecy in government. Intelligence agencies are in many respects the most secretive and most unaccountable of all government agencies. Their ability to abuse their position of trust is a natural cause for concern. However, they clearly have a genuine need to maintain a degree of secrecy.

We acknowledge that this legislation is a step forward in the legitimisation of our intelligence agencies. All major government agencies should be established under statute with the authority of parliament. Intelligence agencies are no different in this regard and the Democrats welcome the establishment of a statutory foundation for the ASIS and DSD for the first time. There is nothing wrong with bringing the Australian secret services under statute. Indeed, there is finally open recognition of the role that these specialist practitioners play in protecting all Australians. But where we are setting the rules for such a dangerous game, these rules should include absolute checks and balances, especially when a mistake could cost lives. We support the bill.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)** (1.34 p.m.)—I am pleased to speak on the *Intelligence Services Bill 2001* and cognate legislation. These bills will place Australia's foreign intelligence collection agencies—the Australian Secret Intelligence Service and the Defence Signals Director-

ate—on a statutory basis. The legislation will also establish a new joint parliamentary committee to oversee the administration and the expenditure of ASIS and the Australian Security Intelligence Organisation. As a result of an amendment to the bill in the House of Representatives, the new joint committee will also cover DSD. Labor is strongly committed to putting both ASIS and DSD on a statutory basis and making them subject to appropriate parliamentary oversight. In the context of the recent horrific terrorist attack in the United States, it is important to note that this legislation will enhance the effectiveness of Australia's intelligence agencies in dealing with threats to our national security.

These bills were introduced into parliament on 27 June this year and referred to the Joint Select Committee on the Intelligence Services. That committee was chaired by Mr Jull. The shadow minister for foreign affairs, Mr Brereton, served as the deputy chair. Together with Mr Brereton, six Labor members and senators served on the committee: Mr McLeay, Mr Melham, Mr O'Keefe, Senator Ray and me. I think this committee worked very well and it is appropriate during this speech on the second reading of the bill in the Senate that I acknowledge the contribution of committee members. It was undertaken in a cooperative spirit—a spirit of bipartisanship. I do not often say that about committee work but, when it can be genuinely said, it ought to be genuinely said. That is the case with this particular committee.

Senator Ray mentioned when the committee report was tabled that Mr Jull had done a very good job as chairman and the committee secretariat had also done a excellent job in producing a substantial report, I suspect, in record time. Labor members of the committee proposed a wide range of recommendations to improve the bill and enhance its accountability mechanisms. All Labor recommendations were adopted by the select committee, which produced a unanimous and bipartisan report tabled and debated in the Senate on 27 August. I am pleased that the government has very substantially accepted all but one of the 18 recommendations of the joint select committee.

The government has accepted the major recommendation of the Labor committee members concerning measures to limit the bill's immunity provisions, to enhance its privacy measures and to include the Defence Signals Directorate in the scope of a new joint parliamentary committee. I also understand that the government put forward amendments in response to Labor recommendations dealing with possible ASIS and DSD intelligence activities concerning Australian persons.

As Senator Ray handed me this note—thank you, Senator Ray—I did detect a certain hint from him in relation to the way the Senate might be able to proceed with its business. Never let it be said that I require the subtlety of Senator Ray; I was intending to take that course of action anyway. I even made a promise to the officials that I would, Senator Ray. Before I take the step of incorporating the remainder of my remarks, given the circumstances, I was going to indicate the approach that the opposition had adopted when undertaking a constructive approach to important legislation like this dealing with the underlying issues of how best to protect Australia's security. Labor did view the central bill as it had been originally drafted. Two have been quite unsatisfactory. We believed that the original bill failed to provide adequate safeguards for the rights and privacy of Australian citizens at home and abroad. The committee's bipartisan report provided a way forward, and I am pleased that the government has seen its way clear to adopt the thrust of the committee's recommendations. The amendments that the government proposed in response to the joint select committee's report will provide a much improved legislative framework and accountability regime for ASIS and DSD operations.

It is not normally my approach to incorporate—in fact, for me, it is almost unprecedented—but given, firstly, the nature of the debate on this bill which, as I have indicated is bipartisan in its nature and, secondly, the pressure on the time we have in the Senate program it is my intention now, having made those brief but, I hope, important introductory remarks to my speech in this second reading debate, to seek leave to incorporate the remainder of what I think would have

been, if I had delivered it, an outstanding contribution—

**Senator Patterson**—You are trying your luck now!

**Senator FAULKNER**—I thought that you would be sufficiently generous, Senator Patterson. I seek leave to incorporate the remainder of my speech.

**The ACTING DEPUTY PRESIDENT (Senator Calvert)**—Is leave granted?

**Senator Robert Ray**—No.

**Senator FAULKNER**—Leave has not been granted, so I intend now to punish Senator Ray.

**The ACTING DEPUTY PRESIDENT**—I cannot recognise that interjection because the person was not sitting in his own seat.

**Senator Patterson**—Senator Faulkner ought always to watch behind rather than opposite.

**Senator FAULKNER**—I have learned that over the years the hard way, I can assure you.

Leave granted.

*The remainder of Senator Faulkner's speech read as follows—*

The Intelligence Services Bill 2001 draws extensively on provisions and precedents drawn from the 1979 ASIO Act and the United Kingdom's Intelligence Services Act 1994. The bill interfaces with the ASIO Act and the Inspector-General of Intelligence and Security Act 1986.

The primary functions of ASIS and DSD are defined in sections 6 and 7 of the bill as obtaining intelligence about the capabilities, intentions or activities of people or organisations outside Australia and communicating such intelligence in accordance with the government's requirements.

ASIS is also empowered to conduct counterintelligence activities and liaise with foreign intelligence and security services. DSD is further empowered to assist Commonwealth and state authorities with respect to information security issues and cryptography and communication technologies.

Section 11 of the bill provides that ASIS and DSD are to perform their functions 'only in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being' and only to the extent that

these matters are affected by the capabilities, intentions or activities of people or organisations outside Australia. ASIS and DSD functions do not include police functions or law enforcement.

Section 12 of the bill provides that ASIS and DSD must not undertake any activity unless the activity is necessary for the proper performance of their functions or authorised or required by another act.

This evening I would like to highlight a number of features of the bill which have been of concern to Labor and which the government has agreed to amend.

Subclause 6(1)(e) of the bill further empowers ASIS to undertake such other activities as the responsible minister directs relating to the capabilities, intentions or activities of people or organisations outside Australia.

This subclause is intended to provide a degree of flexibility for the government in its tasking of ASIS. It will allow the government to modify ASIS' functional activities, under very limited conditions, should the need arise. Subclause 6(2) details these limited conditions.

The responsible minister must consult other ministers with related responsibilities prior to directing ASIS to undertake any other activities under subclause 6(1)(e). The minister must be satisfied that there are arrangements in place to ensure there are defined limits to the activity in question and that acts done in relation to the activity must be reasonable. A direction under subclause 6(1)(e) must be in writing.

Very importantly, subclause 6(4) provides that, in performing its functions, ASIS must not plan for or undertake paramilitary activities or activities involving violence against the person or the use of weapons.

The joint select committee recognised the necessity for the 'other activities' provisions of subclause 6(1)(e) and endorsed the constraints imposed by the bill, especially the prohibition on violence against the person and paramilitary activities.

However, in order to establish an appropriate measure of parliamentary accountability, the select committee recommended that the bill be amended to require the responsible minister to advise the new joint parliamentary committee of the nature of any other activities to be undertaken by ASIS. The government has accepted this recommendation.

The government has also proposed an appropriate definition of 'paramilitary activities' as 'activities involving the use of an armed unit, or other armed

group, that is not part of a country's official defence or law enforcement forces'.

A major issue of concern to Labor that arose during the select committee's deliberations was the scope of possible ASIS and DSD intelligence collection related to Australian persons. Sections 6 and 7 of the bill will empower ASIS and DSD to obtain information in respect of foreign persons and organisations overseas and Australian persons and organisations overseas.

In evidence to the select committee, both ASIS and DSD emphasised that, in the normal course of operations, neither agency targets Australian citizens overseas for intelligence collection. Both agencies stated their purpose as being foreign intelligence collection. They also emphasised the significance of the nationality rules that place constraint on the handling of information relating to Australian citizens that may be obtained incidentally in the course of foreign intelligence operations.

Both ASIS and DSD did acknowledge, however, that, in certain limited circumstances, it could be appropriate and permissible under current practice to collect intelligence concerning an Australian person overseas.

While this may not be common practice, intelligence collection activities focused on Australian citizens and organisations overseas will be allowable under the bill. The communication of such intelligence would be subject to rules made by the responsible minister in accordance with section 15 and having regard to the need to ensure that the privacy of Australian persons is preserved as far as is consistent with the proper performance by the agencies of their functions.

It is clearly possible to envisage circumstances in which intelligence collection related to an Australian person would be appropriate and desirable. An Australian person engaged in terrorist activities overseas is one obvious possible example. However, reliance on the nationality rules, which are not incorporated into the bill and can be changed by responsible ministers, appears to us to be an insufficient long-term safeguard for the privacy and the interests of Australian citizens overseas.

This is especially so when comparison is made with the stringent legislative controls on covert intelligence collection within Australia for national security purposes that are in the ASIO Act 1979, the Telecommunications (Interception) Act 1979 and the Telecommunications Act 1997.

Accordingly, at the initiative of Labor members, the joint select committee recommended that the bill be redrafted to include a requirement for spe-

cific ministerial authorisation of any intelligence collection, or other activities relating to Australian persons for such collection or other activities, to relate to national security and that such authorisations not exceed six months duration, unless renewed by the minister. Such an approach would be broadly comparable to the special powers warrant provisions of division 2 of the ASIO Act 1979.

The government has accepted the overall thrust of these recommendations; however, developing an acceptable definition of national security has proved fraught with difficulty. We can all put forward definitions of national security, but it is very difficult to achieve agreement on a definition that is sufficiently inclusive to cover relevant contingencies but not so expansive as to open the door to undesirable possibilities.

It is also noteworthy that the term 'national security' is used without definition in no fewer than 53 other acts of parliament and 22 separate regulations. In these circumstances, the government has asserted that a definition of national security in this bill could have uncertain and wide-ranging implications for other legislation.

Following very constructive and detailed discussions that the Shadow Minister for Foreign Affairs had with the Director-General of ASIS, Mr Allan Taylor, the Director-General of ASIO, Mr Dennis Richardson, the Director of DSD, Mr Ron Bonighton, and officers of the various agencies and the Attorney-General's Department, an alternative approach has been developed.

Instead of trying to define 'national security', new clauses specify precisely the circumstances in which a minister may give an authorisation concerning an Australian person. This approach is to be set out in proposed new subclauses 8(1) and 9(1)(a) and (1)(b), which will require ASIS and DSD to obtain ministerial authorisation under section 9 before undertaking any activity for the specific purpose of producing intelligence on an Australian person who is overseas or before undertaking an activity that will have, or is likely to have, a direct effect on an Australian person overseas.

Before a minister gives an authorisation for an ASIS or DSD operation specifically directed towards, or likely to directly affect, an Australian person overseas, the responsible minister will have to be satisfied that the person in question is or is likely to be involved in one or more of a limited number of activities. I will list these activities for the benefit of the Senate. They are:

- activities that present a significant risk to a person's safety;

- acting for, or on behalf of, a foreign power;
- activities that are, or are likely to be, a threat to security;
- activities related to the proliferation of weapons of mass destruction or the movement of goods which are or would be subject to Australia's defence export controls;
- committing a serious crime by moving money, goods or people;
- committing a serious crime by using or transferring intellectual property; or
- committing a serious crime by transmitting data or signals by means of electromagnetic energy.

A number of aspects of this new approach are of significance. The proposed new subclause referring to activities that present a significant risk to a person's safety covers risk of death, injury, kidnapping or imprisonment. An Australian person engaged in terrorist activities overseas, whether directed against our nation or any other country, would clearly be a legitimate intelligence target.

The term 'foreign power' will have the same meaning as in the ASIO Act 1979—that is to say, a foreign government, an entity directed or controlled by a foreign government or a foreign political organisation.

'Acting for or on behalf of a foreign power' will include Australian persons holding office in or working for a foreign government or a foreign political organisation. Mere membership of a foreign political party will not in itself amount to acting for or on behalf of a foreign power. 'Security' has the same meaning as in the ASIO Act 1979; that is, the protection of Australia from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence system or acts of foreign interference.

The proposed new subclause referring to the proliferation of weapons of mass destruction and the movement of goods subject to Australian defence export controls will effectively cover Australian persons who may be engaged in nuclear, chemical or biological weapons proliferation or in conventional arms trafficking. This provision is clearly in the interests of both our national security and international efforts to combat proliferation in terrorism.

'Serious crime' will be defined as conduct that, if engaged in within or in connection with Australia, would constitute an offence against the law of the Commonwealth, a state or a territory punishable by imprisonment for a period exceeding 12 months. All authorisations of intelligence activity

under the proposed new subsection 9 will be subject to the restrictions of section 11 that provide that the functions of the agencies can be performed only in the interests of Australia's national security, Australia's foreign relations or Australia's national economic wellbeing.

Thus, for example, authorisation of activities for the specific purpose of collecting intelligence on an Australian person suspected of involvement in a serious crime must also relate to Australia's national security, foreign relations or national economic wellbeing. People-smuggling would be covered, as it relates to an aspect of national security, that is, our border control.

It is also of note that the proposed new subsection 9 will require the agreement of the Attorney-General for any intelligence activity concerning an Australian person and a threat to security as defined by the ASIO Act. The involvement of the Attorney-General is an additional safeguard, and this provision will preserve the existing relationship between ASIS and DSD on the one hand and ASIO on the other. It further mirrors ASIO's foreign intelligence collection role inside Australia, which is subject to authorisation by the Minister for Foreign Affairs and the Minister for Defence.

Overall, these proposed new provisions provide a satisfactory framework to give effect to the intention of the joint select committee recommendations and provide appropriate limits and safeguards on intelligence activity concerning Australian persons.

In the absence of an overall definition of 'national security', the government has also agreed to Labor's proposals for two new clauses which, drawing on comparable provisions of the ASIO Act, make it clear that the agencies have no role in respect of legitimate Australian political activity. To be incorporated in sections 11 and 12 of the bill, these new provisions include an explicit statement that the functions of the agencies do not include undertaking any activity for the purpose of furthering the interests of an Australian political party or other Australian political organisation.

Furthermore, both the Director-General of ASIS and the Director of DSD will be duty-bound to take all reasonable steps to ensure their agencies are kept free from any interference or considerations not relevant to their legislated functions and that nothing is done that might lend colour to any suggestion that either agency is concerned to further or protect the interests of any particular section of the community or to undertake any activity beyond their legitimate roles.

Potentially extensive immunities from civil and criminal liability for ASIS and DSD under section 14 of the Intelligence Services Bill and division 476.5 of the associated act were the subject of lengthy consideration by the joint select committee. ASIS and DSD asserted that immunities were required on the grounds of global technological change and Australian laws that impose unintended constraints on intelligence collection overseas. Labor members of the joint committee spent considerable time exploring precisely what activities the immunity provisions would cover and how immunity might work in practice.

The joint select committee report made a number of important recommendations that will significantly narrow the potential scope of the immunities provided by the bill and establish safeguards and protocols for their operation. In this, the joint select committee was assisted by the valuable drafting input of the Office of Parliamentary Counsel.

Amongst other safeguards, the committee recommended that the bill be amended to make it clear that the immunity provisions do not permit any act inside Australia which ASIO could not do without proper authorisation under the ASIO Act 1979, the Telecommunications (Interception) Act 1979 or the Telecommunications Act 1997. Such a measure will ensure that there is no backdoor for covert intelligence collection in Australia outside the established legal checks and balances.

The committee further recommended that the Inspector-General of Intelligence and Security have the responsibility of certifying that an act has been done in proper performance of an agency's functions and may therefore be covered by the provisions of section 14.

The government has accepted these recommendations and made amendments to both the Intelligence Services Bill, division 476.5 and the Cybercrime Bill. The government has also accepted the recommendations of the joint select committee that protocols for the operation of section 14 and division 476.5 should be developed and approved by responsible ministers and the Attorney-General and that these protocols should be provided to the Inspector-General of Intelligence and Security before the commencement of this legislation.

Overall, these proposed amendments and accompanying measures should provide a satisfactory framework for the operation of immunities for ASIS and DSD operations.

With regard to other provisions of the bill, the government has accepted the select committee's recommendation that arrangements for briefing

the Leader of the Opposition about ASIS are the same as those relating to ASIO.

The government has also accepted a range of recommendations by the joint select committee to ensure that the new joint parliamentary committee will operate along the same lines as the present joint committee on ASIO. The new joint parliamentary committee will not deal with operational matters but will have oversight in relation to expenditure and administration. It will have a significant oversight role in relation to the privacy rules, protocols and the operation of section 14 immunities and any direction to ASIS to undertake other activities.

The government has also accepted Labor's recommendations that the scope of the committee's functions be expanded to include the Defence Signals Directorate. Parliamentary scrutiny of DSD is, we know, highly desirable. The joint committee will consequently be known as the Joint Parliamentary Committee on ASIO, ASIS and DSD. With these amendments, this bill will significantly enhance parliamentary oversight of Australia's intelligence collection agencies.

One joint select committee recommendation not accepted by the government relates to the provisions excluding operational activities and subjects from the functions of the new joint parliamentary committee. Section 30(3) of the bill provides that the functions of the committee do not include 'reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO or ASIS'. The joint select committee report recommended deletion of the words 'have been' from the subclause. As this relates to operational matters, albeit in the past, Labor does not consider it imperative to press for the acceptance of this recommendation.

Operation of the legislation will require careful scrutiny. Should Labor be elected to government at the forthcoming poll, we will commission a review of the operation of the act after two years.

In the context of the terrible tragedies in New York and Washington, some commentators have suggested that democratic societies must sacrifice civil liberties and privacy in the interest of national security. Labor does not believe this is the case. With the major amendments proposed, this bill shows that it is possible to strike a proper balance between accountability and transparency and the secrecy required for effective operations in the national interest.

The bill has been greatly improved by the amendments that have been proposed by the Select Committee. Labor has initiated them, and we are pleased to have played a part in that. We will

be very pleased to support the outcome. We will have achieved this through both sides of politics working through important national interest issues in a very constructive and bipartisan fashion. It is a matter of regret that that has not always been the case in the government's handling of some other recent national interest legislation in this Parliament.

The Labor Party will support this legislation.

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

**Sitting suspended from 1.43 p.m. to 2.00 p.m.**

#### **QUESTIONS WITHOUT NOTICE**

##### **Goods and Services Tax: Living Standards**

**Senator HOGG** (2.00 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the minister confirm that on page 46 of the ANTS package the Treasurer, Mr Costello, promised that the GST would 'ensure that all Australians—especially low and moderate income families—have much stronger incentives to work and save'? Can the minister explain then why the household savings ratio was 5.2 per cent when Mr Howard came into office in March 1996 but has fallen to 3.1 per cent in the June quarter this year?

**Senator KEMP**—There are two aspects to that question—the relationship with what was promised in the ANTS package and the assistance that was given to low and middle income families. Let me say, Senator, this government has delivered on its promise.

**Senator Sherry**—Wrong.

**Senator KEMP**—I refer Senator Sherry to a recent study by NATSEM which showed in fact the very substantial gains that Australian families made as a result of tax reform. It is not surprising, to be quite frank, that that would happen, because tax reform delivered the largest tax cuts in Australian history. The tax reform included a special package for families of the order of \$3 billion. So those benefits alone were able to deliver very substantial gains to Australian families after allowing for the effects of the GST. It is not hard to see that many families will be \$40, \$50 or \$60 a week better off as a result of the ANTS package.

But when you look at the macro scene, you can also see how this government has been able to deliver very substantial gains to Australian families. To Senator Hogg I point out that one of the biggest gains has come through the lower interest rates that have been delivered. When we came into government, the home mortgage rate was 10 per cent-plus; it is now under seven per cent. The difference that this makes, Senator Hogg, on an average mortgage is very, very considerable indeed. So that is another way that we have been able to deliver for Australian families.

I have mentioned the tax changes which assisted Australian families and the interest rate changes which have assisted Australian families. Another area where we have assisted Australian families is that of real wages, which have increased under this government. Senator George Campbell, in a very important study that he did on this issue, pointed out that one of the great failings of the former Hawke and Keating governments was that real wages fell in a number of years. In fact—and I think Senator George Campbell would certainly confirm my comments, because I have read his study carefully—real wages barely increased in 13 years under Labor. Let me just summarise: we have the very big tax changes which have helped Australian families, the interest rate changes which have helped Australian families and the real wages increase which has also helped Australian families.

The savings ratio—which was the second part of the question—jumps around from quarter to quarter. If Senator Hogg viewed the statistics over a period of time, he would see how that particular ratio has jumped around from quarter to quarter. But I think we have been able to deliver—and this government takes real pride in this—real benefits to Australian families. As for the final benefit—I do not know that I have time, perhaps Senator Hogg could ask me a supplementary—that is another very important area where we have been able to deliver substantial gains to Australian families. As my time is on the wing, perhaps if I could have a supplementary I could add to the answer. (*Time expired*)

**Senator HOGG**—Madam President, I ask a supplementary question. If, as the government claims, the GST has been so successful in lifting incentives to save, could the minister explain why credit card debt has now risen 21 per cent since the introduction of the GST and has increased from \$6.7 billion in February 1996 to \$18.7 billion in July this year—an astounding 178 per cent increase since the election of the Howard government? Could the minister also explain why the average credit card debt has blown out from just \$964, when the Howard Government was elected, to almost \$2,000 per card in July this year? Isn't that because the GST has put a squeeze on family budgets and led to massive job losses, particularly in the retail and housing sectors?

**Senator KEMP**—The other point to mention is the very large rise in job creation under this government. Madam President, I refer Senator Hogg to a report issued in August by the Reserve Bank of Australia which, among things, dealt with the issue of household debt. The report did point out that—and I am quoting from the Reserve Bank report fairly I think—the increase in household debt was to levels comparable with other developed countries. The important point that the Reserve Bank made was that the increase in household debt has been accompanied by a substantial increase in household wealth, particularly financial assets. One of those areas we can point to is the very strong rise in super, and Senator Sherry knows very well that one of the great growth sectors under this government has been superannuation. *(Time expired)*

#### **Economy: Performance**

**Senator MASON** (2.06 p.m.)—My question is to the Leader of the Government in the Senate, Senator the Hon. Robert Hill. Will the minister inform the Senate of the outlook for the Australian economy under the responsible management of the Howard government? How well is our economy placed in relation to the international economic uncertainty created by the recent terrorist attacks in the United States? Is the minister aware of any alternative approaches to economic management?

**Senator HILL**—I thank the honourable senator for his most important question. The International Monetary Fund has released its latest outlook for the Australian economy. The report shows that the Australian economy is expected to continue the strong growth it has experienced under the Howard government. It predicts the Australian economy will again outperform the global economic growth rate. The IMF also expects inflation to fall in Australia and for there to be a further drop in the unemployment rate.

Whilst that is unquestionably good for Australia, we must sound a note of caution. The IMF's report was compiled before the terrorist attacks on the United States. Those attacks have thrown the global economy into considerable uncertainty. There will no doubt be a significant impact on the US economy and that will have implications for the rest of the world. Thanks to this government, we are taking the steps that are necessary to meet that uncertainty. Most importantly, the budget is in surplus. I remind Senator Cook that the budget has been in surplus for four years in a row and we are now expecting a fifth year—a stark contrast to the previous Labor government.

Because we have balanced the books, we can now confidently expect to meet unexpected challenges such as protecting our borders from illegal immigrants and playing our role in the global war on terrorists. It also means that we have been able to deliver the lowest home interest rates in 30 years. We have been able to create more than 880,000 new jobs. We have delivered in full, and on time, \$12 billion worth of tax cuts. When we make promises on tax cuts, we deliver—again in contrast to Labor. We have supported rural and regional Australia and achieved record exports.

I am asked whether there is an alternative. Mr Beazley did a press conference today on the alternative. He was asked if he was ready for government. He said, 'Yes, we're ready to go.' If you are a wise opposition, you always get yourselves in that circumstance. He said, 'Our basic policy is out there.' What is he talking about? Nobody knows any policies of the Labor Party. There was a suggestion of some roll-back of taxation and there

was some 'noodle nation' stuff, but nobody knows of any policies from the Labor Party. All they know of Mr Beazley is that he flip-flops according to the issue. For example, he was asked today about Ansett and what the government was doing. He said, 'If I'm Prime Minister in 12 weeks, I'll be going for a permanent fix.'

*Government senators interjecting—*

**Senator HILL**—I wonder too. I have to say that if nothing happens in the next 12 weeks that will give us a permanent fix, I think the show will be in a great deal of trouble. He has suddenly worked out that Ansett is in a great deal of trouble. That is not bad for Mr Beazley. Labor has no policies, so all we can do is go back to the record. Labor's record, when Mr Beazley was in government, was one of high interest rates—17 per cent and higher—big budget deficits, \$80 billion of debt, one million unemployed, and tax increases when it promised tax cuts. That is the alternative for Australia under Labor. That is no alternative, and it is time to back out. *(Time expired)*

#### **Economy: Australian Dollar**

**Senator CHRIS EVANS** (2.12 p.m.)—My question is directed to Senator Kemp, the Assistant Treasurer. Can the minister confirm that the Treasurer, Peter Costello, declared on 30 June 1995:

A nation's currency is a mark of how its economy is perceived in international markets ... The mark that has been given to our currency and to this Prime Minister's economic management is a fail—an absolute fail?

Is it not true that when Mr Costello said this, the Australian dollar was worth US71c and is now worth US49c—about 30 per cent lower? Can the minister also confirm that the Treasurer, in his document *A New Tax System*, predicted that the GST would lead to a moderately stronger exchange rate over time? Can the minister then explain why the Australian dollar has fallen against the major currencies since the introduction of the GST to a record low of 46.6 on the trade weighted index and why, when Mr Costello is so fond of comparing Australia to Botswana, the Australian dollar has fallen against the Botswanan pula by six per cent in the same period?

**Senator KEMP**—My first advice to the senator is to get a new joke writer. The record of the performance of this government on the management of the Australian economy is second to none. Let me draw out some particular features of how well we have been able to manage the Australian economy—

*Honourable senators interjecting—*

**The PRESIDENT**—Order! There is too much noise in the chamber and the conduct of some senators is clearly disorderly.

**Senator KEMP**—I think it is well known that the Labor Party has spent five years trying to talk down the Australian economy. By any measure, the Australian economy is one of the world's best performing economies. The recent figures put out on the national accounts show that the Australian economy is one of the world's high growth economies at present. I draw attention to the fact that when we came to government we inherited massive debt from the Labor Party and a massive deficit. The Treasurer has recently announced that the budget continues in surplus. This is in complete contrast to the budgetary mess that was left to us by the Labor Party when we came to office.

If you take other measures on the productivity performance of the Australian economy, again you will see that the productivity in Australia is the envy of the world—a very strong performance, because we have had the courage to make the reforms which are needed. On all these reforms, whether you are talking about pulling the budget back into surplus or reforming the waterfront or communications, the Labor Party has opposed the government tooth and nail.

I would point out to the senator that, when you look at the measures of the performance of this economy and compare that with other countries, the Australian economy is up there in the top league. Let me contrast this with the performance of the previous government.

**Senator Chris Evans**—Madam President, I raise a point of order. My point of order goes to the question of relevance. The minister has spoken for more than three minutes now and has not once mentioned the Australian dollar, the subject of the question. I

would appreciate your drawing his attention to the question and asking him to provide the Australian people with an answer about the falling value of the Australian dollar.

**The PRESIDENT**—I am sure the minister is aware of the question and I would draw his attention to it.

**Senator KEMP**—Thank you, Madam President. I was asked about the performance of the Australian economy, and the matter that was raised was the issue of the Australian dollar. I have pointed out to the senator how well the economy has performed. It is very clear that in the last year or so the US dollar has been very strong, against all currencies. So to pretend that the Australian dollar is out there on its own is, of course, quite wrong. A fairer survey would show that the world economy, and particularly the American economy, has experienced very high demand for the US dollar, and that of course has resulted in changes in the exchange rate.

I might also add that one of the advantages of a floating exchange rate is that Australia has a super-competitive economy. If you ask the exporters about the export performance, one assistance to the export sector has been the very competitive Australian dollar. I am surprised, and I think many would be surprised, that the senator has chosen to stand up today and attack the management of the Australian economy—when most respected observers say that the management of this economy has been absolutely outstanding. We contrast that with the recession that we had to have under the Labor Party. If you ask what people recall about the Labor Party—*(Time expired)*

**Senator CHRIS EVANS**—Madam President, I ask a supplementary question. I note that the Treasurer did not address the fact that the trade weighted index was at a record low. That is the index that measures the value of the currency, and so his answer was a bit misleading. Can he at least address the supplementary question, which goes to whether the minister does agree that, with the recent tragedy in the United States and the resulting dive in US share prices, currency markets could have expected a rise in the Australian dollar against the US dollar? How

does the minister explain, then, that the Australian dollar has fallen relative to the US dollar from 52c before the terrorist attacks to 48.7c this Tuesday, and that the Australian dollar is the only currency in the world to do so, other than the Indonesian rupiah and the Afghan afghani?

**Senator KEMP**—The first point I would make is that we all in this chamber have mentioned our great concern about what has happened in the US and the uncertainty that that has caused. That uncertainty has come through in a variety of ways, not least in consumer confidence. It has obviously affected the currency markets. So I would draw the senator's attention to that. It is not the practice of the Assistant Treasurer or the Treasurer to make a day-by-day comment on the value of the Australian dollar. That was also the practice of Labor treasurers and assistant treasurers in the past, and it is a practice that I will continue to follow.

#### Rural and Remote Australia: Postal Services

**Senator CALVERT** (2.19 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. What actions has the coalition government taken to improve postal services for Australians, particularly those in rural and remote Australia? Is the minister aware of any alternative policy proposals? What would be the ramifications if these were to see the light of day?

**Senator ALSTON**—As Senator Calvert well knows—and as I hope others on the other side of the chamber are aware—we have actually done a great deal in the area of postal service delivery, particularly from the consumer perspective. We introduced the customer service guarantee and the postal charter, which protects consumers and ensures that they get their mail in a timely manner. Not only that, which was something that Labor did not do in 13 years—presumably because the unions will not have a bar of performance pay and, if you actually had to deliver on time, they would be in all sorts of difficulty, and so one should not be particularly surprised that they did not deliver on that one—we have maintained some 700 licensed post offices by providing vital sub-

sidies. We have, through our Rural Transactions Centre program, been able to fund electronic banking and bill paying in over 100 LPOs. Senator Macdonald has been launching that policy, to great acclaim around regional Australia.

Labor's position is simply to maintain existing banking and bill-pay services. Presumably, they are still embarrassed at the fact that they closed down 277 postal outlets during their time in government. We hear a lot about how little the Labor Party seems to be interested in policy. That is why I was particularly attracted to something that came across my desk the other day. It is a letter from Senator Jan McLucas, writing to the community on behalf of the Australian Labor Party's Government Service Delivery Caucus Committee. She is seeking community input into the likely impacts of a fully competitive postal service. There you go! I had no idea they were going down this path. I have been misled by Senator Mackay, because I thought that she would not have a bar of that. But here it is; the cat is out of the bag. It is very interesting: why on earth would you be seeking feedback on a fully competitive postal service unless you were looking at introducing that policy?

They are not just doing it so that they can bag us and say that it is our policy—because, in her letter, she makes it plain that her fear is that we will reintroduce the Postal Services Amendment Bill, which almost constituted a fully competitive environment. In other words, the proposal she is asking for feedback on goes much further than the bill that she criticises. It is quite obvious what the Labor Party is on about here: a very cunning little plan for after the election.

Some people are probably breathing a sigh of relief because if there is one thing Mr Beazley has been really clobbered for it is standing for nothing. But at long last we have something. I must say that it is a welcome relief even though it is one of those policies that comes out of left field. Nonetheless, the fact remains that what Mr Beazley has done at long last is show his colours on this issue.

You might have seen a couple of newspaper articles today saying what a shocking run

of good luck the coalition government has been having. I do not remember that sort of story being written when the Queensland and WA elections were being converted into federal referendums. But, no, all of a sudden we are being told that Labor has been having a shocking run of bad luck. Anyone who knows what has been going on knows that it is having a run of bad luck because it does not have any policies.

I was fascinated to read a reminder of that old John Wheeldon story the other day about going along to a branch meeting and asking why there were so few people there, and the branch president saying, 'Because they do not know what we stand for,' and Wheeldon saying, 'Well, you should be grateful; if they knew what you stand for, no-one would turn up.' So I do not know which way you go from here. You have a couple of weeks left. You have one policy—a fully competitive postal service. It certainly deserves widespread coverage, and we will make sure it gets that. But beyond that, I am afraid you have run out of time and it is all your own work.

#### **Information Technology Outsourcing**

**Senator LUNDY** (2.24 p.m.)—My question is addressed to Senator Kemp, the Assistant Treasurer. Can the minister confirm that the Australian Taxation Office has been charged extraordinarily high prices for basic information technology and office equipment under their outsourcing deal with the multinational company EDS? Can the Assistant Treasurer also confirm that the ATO is reported as paying \$821.12 for a scanner-printer-fax copier normally available at \$357; \$163.40 for a \$31 ergonomic keyboard; \$172.45 for a \$69 sound card; and \$460.65 for a \$300 15-inch monitor? Are these not just more on the ground examples of these outrageous overcharging practices identified by the Auditor-General as being rife throughout the Howard government's failed IT outsourcing exercise?

**Senator KEMP**—The only outrageous overpricing identified by the Auditor-General that I am aware of is the rent being paid to the Labor Party for Centenary House. Senator Lundy is of course naturally concerned about efficiency in government. Can I

bring to Senator Lundy's attention the concern of the Auditor-General about the very high—

**Senator Lundy**—Answer the question.

**Senator KEMP**—You have asked me about the Auditor-General and his concern about high prices. Centenary House is a Labor Party rort. It is no more or no less. It is a Labor Party rort: \$36 million of taxpayers' money is being funnelled into Labor Party coffers as a result of a grubby deal done by the former government and the excess rents being paid. That can be solved quite easily, Senator. If you are worried about overpricing, the way to solve this is one phone call from Mr Kim Beazley saying, 'The contract no longer applies and we will charge market rents.' That is all that has to be done.

I have some advice from the tax office on the matters that have been raised by Senator Lundy. It is correct that the ATO sometimes does pay prices that are at the higher end for IT equipment. But I am advised that it is not possible to directly compare the retail prices quoted in the *Australian* with the prices paid by the ATO because—

**Senator Lundy**—Why not?

**Senator KEMP**—Why not? Let me tell you. Firstly, the ATO always buys recognised brand names and, secondly, the prices have to be considered in the context of the overarching contract with EDS and the ATO's IT supplier. The price that the ATO pays includes delivery anywhere in Australia and the installation, maintenance, support, removal and retirement of the equipment. So you are effectively comparing apples and oranges, Senator Lundy.

*Senator Lundy interjecting*—

*Senator Cook interjecting*—

**Senator KEMP**—Senator Lundy, it is very hard to get the message across when your colleagues are shouting out all the time, I have to say. If you are worried about hearing could you ask your colleagues to keep quiet.

I am told that about 5,000 products and services are covered by the EDS agreement. It is not appropriate to look at the prices of particular pieces of equipment in isolation.

There is a whole range of charges for networks, call centres, and mainframes—which are big ticket items—and these have varying prices. On balance, I am advised by the ATO that the ATO believes that it has a good deal. The ATO has also advised me that it is not prepared to compromise the integrity of information technology and telecommunications infrastructure by forgoing the assurance of quality and compatibility and the liability on the part of the EDS should equipment fail. I think that is a detailed answer to Senator Lundy's question.

Senator Lundy has raised the question of overpricing. What is the most overpriced product or service in Canberra at the moment? It is the rent being paid to the Labor Party by the Auditor-General. Frankly, if the Labor Party is concerned in this area, what they should do is cancel that outrageous contract, which is nothing more than a Labor Party rort.

**Senator LUNDY**—Madam President, I ask a supplementary question. I was pleased to hear the minister make the point that the tax office was not prepared to compromise on quality. I would like the minister to also confirm that EDS received a financial penalty of \$1.1 million or 1.5 per cent of service charges paid for failing to meet contracted service levels. Given these revelations of overcharging and poor service quality, does the minister stand by the tax office's submission to the Senate inquiry into IT outsourcing that said, 'The ATO/EDS alliance is outcome focused and cost conscious'?

**Senator KEMP**—The answer is: the ATO of course is very cost conscious. The ATO must be cost conscious and it must deliver an efficient service. Where it does not, we would like to hear about it so that it can be addressed. Senator Lundy has spent a lot of time in this chamber over the last number of years attacking IT outsourcing, which I understand is still part of Labor Party policy, despite all the efforts of Senator Lundy. Let me make the final point to the senator that this government is always concerned to make sure that departments operate in the most efficient manner possible. Nothing that the Labor Party has said gives any hope to anybody that the Labor Party would not go back

to its bad old ways of high spending and government waste. I again draw the Senate's attention to the outrageous contract with Centenary House. *(Time expired)*

**Social Security: Welfare Payments**

**Senator STOTT DESPOJA** (2.31 p.m.)—My question is addressed to the Minister for Family and Community Services. Is the minister aware that the final budget outcome 2000-01 reports a lower than forecast expenditure of \$499 million on social security payments? Is it the case that this lower expenditure is due to the breaching of Newstart allowance clients? Does the minister agree with the ACOSS estimate that \$258.8 million was withheld in breaches by punishing unemployed Australians in many cases for issues totally beyond their control? Is it the case that much of the underspend is because of the government's failure to pay the \$1,000 age pension savings bonus and self-funded retiree supplementary bonus to older Australians, as promised, instead choosing to pay as little as one dollar or even nothing to those Australians who were expecting to receive that \$1,000 payment?

**Senator VANSTONE**—Senator, in relation to the first part of your question, my answer is no. In relation to the second part of your question, my answer is yes, I believe there would be the amount that ACOSS indicates not paid out because of breaching. This government, as you know, is determined to ensure that people who are entitled to welfare get every penny they are entitled to, but we are equally concerned to ensure that those people who are entitled to welfare do not get any more.

Senator, there has been considerable debate in the community and in this chamber in relation to breaching. I will perhaps use an example—and you may not have been in the chamber when I last used it—of the difficulty that Centrelink faces in handling welfare payments. The example is of someone who does not respond to a letter. I posed the proposition last time this matter was raised: what would happen if Centrelink kept sending that person money, sending that person money, sending that person money and then, 18 months later, we find that they have moved somewhere else and got a job?

Senator, you may be the first up to say that the administration was slack and not in order. In other words, when someone does not reply we are expected to find out what is going on—and that is not always easy if they have moved and they have not told you where they are going. So Centrelink does have considerable difficulties in dealing with people who do not necessarily advise that they have either received additional income or moved.

Added to that difficulty is the group of people who have, for one reason or another, difficulty in responding to correspondence. It may mean that they have just become homeless and it is very difficult to find them. We have some pilot programs in working with the homeless shelters to try and get them to help us to locate these people. It may mean that someone has some sort of mental disability. Senator, I am sure you can understand that, if you were a lot older than you are and you had a mental disability, and you went to the counter and there was a young person at the counter—20-something, much younger than you—you might not feel like saying you didn't reply to the letter because you had a reading problem, a processing problem or a mental disability. Or you might not want to say, 'Yes, I've been kicked out of a house and I'm homeless.' It is not always true that people with a genuine problem feel comfortable in fronting that in the first instance.

We are working very hard on that particular group, and there is a range of people who might be affected there and who are difficult for us to help in the best way possible. But we are doing the best we can. We are also doing the best we can to catch out those people who earn extra income and who do not tell us.

**Senator STOTT DESPOJA**—Madam President, I thank the minister for her answer and ask a supplementary question. Given that the minister said yes to the second question—that was whether she agreed with the ACOSS estimate—does she agree with the ACOSS comment that that \$258.8 million was withheld in breaches by punishing unemployed Australians in many cases for reasons beyond their control? Given that the minister has said she is keen for the govern-

ment to do its best to assist these people, given that a lot of this money has come from unemployed—particularly young unemployed—Australians, many of whom have low levels of literacy and suffer from mental illness, et cetera, which the minister referred to, is the government prepared to commit to actually channelling that money, that saving—actually reinvesting those millions of dollars—that you have recouped from those people into emergency housing programs and health programs to get those very people back on their feet?

**Senator VANSTONE**—Senator, the short answer to your question is no, I do not agree that the breaching that has been undertaken is a punishment and is, as you describe it, a ‘saving’, money that can otherwise be allocated elsewhere. Budgetary estimates are made on the basis of those people who are entitled to get money—that is, those who comply with the rules and fit the various criteria—getting that money. If people get extra, it is not a saving in that you get it back; it is a loss that you have not made. I am not sure whether you understand that. But when you get money back that should not have been paid out, it is a loss that you have not made and not a saving that you can therefore appropriate in another place.

Senator, if you want a briefing on the Australians Working Together package, a \$1.7 billion welfare spend, I am happy to organise that for you. There is an enormous amount that the government is doing to help the sorts of people that I have referred to. In the past, some in your party, certainly some in the community sector and certainly some of our friends opposite have steadfastly refused to acknowledge the enormous amount of work that this government is doing to help those people. *(Time expired)*

#### Taxation: Superannuation

**Senator SHERRY** (2.37 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Is the minister aware that the final budget outcome released yesterday shows that the taxes collected from superannuation rose from \$3.9 billion in 1999-2000 to \$5.3 billion in 2000-01, an increase of 35 per cent in one year? Is the minister able to explain or attempt to justify this massive increase in the

taxation of the retirement savings of Australians? Isn’t this tax grab at the expense of the retirement incomes of Australian workers further proof that this is the highest taxing government outside wartime in our nation’s history?

**Senator KEMP**—I will make a couple of comments in relation to Senator Sherry’s outrageous claim that this government is the highest taxing government. The facts of the matter are that this government has been very prudent in its tax collections and has delivered major tax cuts to Australian people. We take great pride that we are a low tax government. Senator Cook, in what I think is his fourth most famous quote, went on record in the *West Australian* newspaper as saying that the Labor Party is a high tax party. It is. In those days, Senator Cook, you were prepared to be quite straightforward and quite honest and you mentioned that the Labor Party is a high tax party. Of course it is, because it is a high spending party. This government is a low tax government which is prudent with its spending.

I now turn to the superannuation part of the question. There has been a very substantial growth in superannuation under this government and we take considerable pride in that. When we came into office, the assets under management in superannuation were \$260 billion. Today, that figure is closer to \$500 billion. In 5½ years, the funds under management in superannuation have almost doubled. Senator Sherry well knows the current taxation arrangements on superannuation. In fact, Senator Sherry has spent a lot of time thinking about the tax arrangements on superannuation. Senator Sherry and I have had numerous debates on that issue and he knows that the taxation on superannuation has not changed over the last year. He is quite aware of the contributions tax and the surcharge. If Senator Sherry is proposing to change the taxation arrangements on superannuation, that is a very big policy announcement. I hope the press gallery have their pencils and paper poised. Senator Sherry, if you are proposing to change the taxation arrangements on superannuation, you have made a very major statement. On the other hand, I suspect what is true is that

the Labor Party accepts the current taxation arrangements on superannuation, which, as Senator Sherry knows, are very concessional. I point to the fact of the strong growth in super under this government. I think we can take some pride in the fact that the superannuation industry has shown such extraordinarily strong growth.

**Senator SHERRY**—I note, Assistant Treasurer, that you could not explain why the tax take from super went up by \$1.4 billion dollars in one year. Since the minister and the Treasurer are so fond of comparing the coalition government with the former Labor government, could you explain why the average tax take under the coalition government has been 23.8 per cent of gross domestic product when it was only 21.8 per cent in the last five years of the Labor government? Is it because, contrary to your incorrect assertions, it is the Liberal and National parties which are the parties which stand for higher taxes in Australia?

**Senator KEMP**—It is not only Peter Cook and Peter Costello who have mentioned—

**The PRESIDENT**—Senator, you should refer to them by their proper titles.

**Senator KEMP**—It is not only Senator Cook who has mentioned that the Labor Party is a high tax party. It is also Mr Kim Beazley himself. We well remember the comments that Mr Beazley made during the Aston by-election when he said that he thought that Australians did not feel that they pay too much tax. That was a major comment by your leader and it gives the lie to the impression that you are trying to create, Senator Sherry. You have already gone on record that you are going to massively increase spending. If you increase spending and you have made commitments on the surplus, there is only one thing you are able to do, and that is to raise taxes. That is precisely what the Labor Party proposes to do. (*Time expired*)

#### DISTINGUISHED VISITORS

**The PRESIDENT**—Order! I draw the attention of the honourable senators to the presence in the chamber of a parliamentary delegation from Kuwait, led by Dr Abdul

Mohsen Al-Mad'ej. On behalf of honourable senators, I have pleasure in welcoming you to the Senate and trust that your visit to this country will be informative and enjoyable.

**Honourable senators**—Hear, hear!

#### QUESTIONS WITHOUT NOTICE

##### Refugees

**Senator HARRADINE** (2.44 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs. Is it a fact that our humanitarian program, including the relatively small number of our refugee intake, has not changed for several years? Given the situation in the world today, where there is an increasing number of refugees around the world, is the government intending to increase that figure in the near future? Could the minister also indicate what improvements are being made to the detention centre system to avoid situations like the situation concerning a Vietnamese girl that occurred just recently?

**Senator ELLISON**—I thank Senator Harradine for that question. The question of the intake of refugees into Australia has been the subject of comment lately. In particular, in today's *Australian* there was an article which quotes a spokesman for the minister as saying that increasing the humanitarian program from 12,000 places would be considered as 'part of an international response' to the Afghan refugee crisis.

I can say that the government is monitoring closely the current refugee situation in Afghanistan and neighbouring countries. Our current view is that the most timely and cost-effective means of alleviating the situation is by providing financial and other aid to countries neighbouring Afghanistan which are sheltering fleeing Afghans. This month the government has agreed to provide an additional \$14.3 million to assist in alleviating the situation of displaced Afghans. It is the government's view that there should be an international effort to resettle Afghan refugees as a result of the current crisis. Australia, as it has done in the past, will of course play its part in any burden-sharing exercise. I would stress to Senator Harradine that this is being monitored closely by the government.

It is a serious situation, and one which the government is concerned about.

In relation to the death that Senator Harradine referred to, I am advised that there was a death at the Villawood Immigration Detention Centre in the early hours of 26 September this year. I understand that the circumstances surrounding that death are being investigated by the New South Wales police. The cause of death has not yet been determined and, of course, the matter has been referred to the coroner. The government will closely monitor that inquest and ascertain the circumstances surrounding that death and if there is anything that can be done by the government to avoid any future risk in regard to that.

In relation to the mandatory detention that we have in this country, we have adopted, consistent with the UNHCR's guidelines and conclusions concerning the detention of asylum seekers, appropriate circumstances for the detention of those people. I might add that in Woomera there is a pilot scheme being considered by the minister regarding the detention of women and children. Of course, the government treats that with concern, and we are monitoring how that pilot program is developing. But, in relation to that particular death, though, I do not think I can really say much more than that. We will be following the coroner's inquest closely.

**Senator HARRADINE**—Madam President, I ask a short supplementary question. This death occurred within the last few days. Is the minister aware that the death of the young girl occurred after she had been in a distressed state and crying for over a period of three or four days and was obviously in need of special care? Is the minister making a special investigation as to whether that special care was offered?

**Senator ELLISON**—That and other matters will no doubt be canvassed during the coroner's inquest. I can say that that detainee had been in detention since 23 September as a result of a major compliance operation in Sydney targeting several premises associated with the sex industry and people smuggling within that industry. I do not think it is appropriate for me to comment further

about the circumstances surrounding the person who died, but suffice it to say that the coroner's inquest will no doubt be a thorough one and the government will be watching closely.

#### **Goods and Services Tax: Queensland Liberal Party**

**Senator COOK** (2.49 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Can the minister confirm media reports, inspired by leaks from certain members of the federal parliamentary Liberal Party, that officers of the Australian Taxation Office have interviewed several Queensland Liberal Party members over their GST scam? Can the minister further confirm that, after interviewing these party members, the tax office seized documents relating to the scam pursuant to notices issued under section 65 of the Taxation Administration Act 1953? Will the minister confirm that this is now a full-blooded investigation, not simply a standard audit, and will he provide details of exactly how wide this investigation now is?

**Senator KEMP**—When this issue arose there was an indication that the tax office would do an ATO audit of the Queensland division of the Liberal Party. The challenge was put out to the Labor Party, because of questions which, I think, had been validly raised about issues to do with the Labor Party in Victoria, about whether the Australian Labor Party would agree to an audit of the Victorian division. Mr Beazley, during question time—if my memory serves me correctly—nodded that he was happy for that audit to be carried out. But not surprisingly there was the old flip-flop on this issue. By the time Mr Beazley had walked out of question time, undoubtedly the Secretary of the Labor Party of Victoria had got on to him. So there was no agreement, as it then turned out, for Mr Beazley to allow an audit to occur of the ALP in Victoria. So there is another example of flip-flop—of how Mr Beazley simply cannot stick to a line on anything. I am therefore grateful to Senator Cook for that particular part of the question.

I have some advice on this. I am aware that the ATO has spoken to people in Groom about this issue. The fact is that this is an

audit. The ATO will carry out the audit properly, efficiently, fairly and impartially. The ATO will do what it has to do to make sure that it carries out the audit in a satisfactory manner. I do not propose to add anything further to that. But I do draw attention to the fact that, as part of this arrangement, there was going to be an ATO audit of the Victorian division of the ALP. The permission to carry that out was apparently withdrawn by Mr Beazley. That does raise the question of what the ALP in Victoria has got to hide, and I put that challenge out again.

The government believes that the ATO should carry out its functions properly. The government indicated that there would be an ATO audit of the Queensland division. That is being carried out, and the ATO will carry that out in an efficient and impartial manner. But I throw the challenge out to the Labor Party because of questions raised about compliance issues with the GST by the ALP in Victoria. When Senator Cook stands up to ask me a supplementary question could he indicate whether the ALP would agree to an ATO audit of the Victorian division. I look forward to hearing the response from Senator Cook.

**Senator COOK**—Madam President—

**Senator Carr**—Where is Herron?

**The PRESIDENT**—Senator Cook has the call. Other senators should allow him to proceed.

**Senator COOK**—I ask a supplementary question. Can the minister confirm that, as the minister responsible for the Australian Taxation Office, he has been given a likely date upon which the Australian tax office will report on its investigations into the Queensland Liberal party GST scam? Will the minister provide that date to this chamber? Will the minister also provide his personal assurance that the Liberal Party will waive the legal obligation upon the ATO not to disclose the outcome of this investigation and allow the ATO to release its report directly to the public?

**Senator KEMP**—I do not think Senator Cook knows much, but he would be aware of the fact that I do not control the ATO in relation to audits. The ATO will carry out the

audit, as it is required to do, and make its report. I just make the point that the challenge is out there for the Labor Party to clear up the confusion regarding the GST compliance in Victoria with your own division. Let me conclude by making the point that this may be the last time that Senator Cook will be able to ask me a question in this parliament. No-one has been luckier with his opponent than I. I extend my appreciation to you, Senator Cook.

#### **Refugees: Afghanistan**

**Senator BOURNE** (2.55 p.m.)—My question is addressed to Senator Hill, Minister representing the Minister for Foreign Affairs. Is the minister aware that one-quarter of the world's refugees are now Afghans? Does the minister recall that Australia spent about \$100 million assisting Kosovar refugees? Does the government intend to give at least \$100 million to assist the Afghan refugees in the current humanitarian crisis there?

**Senator HILL**—Obviously, the Australian government is deeply concerned about the humanitarian situation in Afghanistan and its neighbouring countries. We are working with the UN and international relief agencies to monitor the situation and develop an appropriate response. It is the case that the UN agencies now estimate that up to 7.5 million Afghans may eventually be affected, with up to 1.4 million additional refugees attempting to move out of Afghanistan. The civil war and extended drought in Afghanistan have already meant that over three million people were dependent on international aid. On 23 September, Mr Downer, our Minister for Foreign Affairs, announced \$14.3 million for the provision of humanitarian assistance to displaced and refugee populations in South-West Asia. In the past 12 months Australia has provided humanitarian assistance totalling \$9.5 million for Afghanistan and for refugee programs in South-West Asia. It follows that Australia will certainly be doing its bit to assist this very serious humanitarian issue.

#### **Superannuation Funds**

**Senator GIBBS** (2.56 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware that in the last financial

year APRA, the body responsible for superannuation funds, suddenly found an extra 1,485 funds of which it was previously unaware? Is the minister aware that these funds that APRA recently discovered included 18 extra public sector funds? Can the minister explain how APRA could be unaware of so many superannuation funds, including funds established by government, until now?

*Senator Vanstone interjecting—*

**Senator KEMP**—Let me say to Senator Vanstone that it is possible. This is a matter for Mr Hockey, the minister who is responsible for APRA. Senator Gibbs, I will refer your question to him and at the earliest chance I will come back and respond to you.

**Senator GIBBS**—Madam President, I ask a supplementary question. Thank you, Senator. While you are referring that to Mr Hockey, could you also ask him: if APRA is not even sure how many funds it regulates, how much faith can Australian employees have in the security of their retirement savings? Is this what Treasurer Costello had in mind when he created APRA and promised ‘best practice, leading edge financial regulation’?

**Senator KEMP**—I do not think Senator Gibbs is aware that she in fact voted for the establishment of APRA. Senator Gibbs and her colleagues were very supportive of the establishment of APRA, and that might not have been clear to people who were listening to her question. The other thing I deplore about your supplementary question was the attempt to talk down superannuation. We have had an attempt to talk down the industry, to undermine confidence in the Australian economy and now we have another attempt to undermine confidence in super. It is a pretty poor performance on the part of Senator Gibbs and her colleagues. Senator Sherry should be required to ask his questions, Senator Gibbs; he should not pass them to you.

#### Ansett Australia

**Senator EGGLESTON** (2.59 p.m.)—My question is for the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Will the minister advise the Senate of the steps the coalition

government has taken to restore air services to regional areas following the collapse of Ansett. Is the minister aware of any alternative policy approaches following Ansett’s collapse?

**Senator IAN MACDONALD**—Senator Eggleston, as a Western Australian, will be pleased to know that last week the government assisted Skywest with a \$3.5 million loan to resume services; on Monday we helped Hazelton with a \$3 million loan; on Tuesday we helped Kendell with a \$3.5 million loan; and of course last night we announced that by helping the administrator we would get five Ansett aircraft into the air this weekend, with another six expected next week. That means that 1,500 Ansett employees will get jobs and, with the other things the government has done, across the network almost 3,000 people will be back in work. This has been done in the face of very severe union obstruction and obstruction by Mr Beazley and the Labor Party. There has been maximum disruption from the union, with an outrageous web site that said only union members would be employed, a campaign of misinformation and a refusal to adopt productivity gains. In fact, Mr Combet said:

The planes will fly with Ansett crew under existing Ansett certified agreements. That has always been the position.

Everyone knows that the airline cannot continue under that. What did Mr Flip-Flop do? What did Mr Beazley do about this union activity? He said:

It has actually been a noble hour for the union movement.

A noble hour for the union movement in trying to keep Ansett out of the air. Mr Beazley’s lack of leadership in this issue has been compounded by the Labor and Democrat controlled Senate Rural and Regional Affairs and Transport References Committee. Three of the department’s most senior people, people who have been working day and night, minute by minute, with the administrator to try to get people back into work have been tied up in a useless Senate committee for three hours this morning—three hours!—in spite of pleas by me to allow those bureaucrats to get back to the real work of getting Ansett flying again. In

spite of that, Labor and Democrat senators in this chamber kept those people from real work. Nothing came out of it. There was no purpose in it except to cause maximum disruption. That is why Labor are so reviled in the bush. In fact, as one senior frontbencher has said, 'We are on the nose in the bush.' A Labor frontbencher said that.

*Senator Mackay interjecting—*

**Senator IAN MACDONALD**—Senator Mackay will know about this. That frontbencher is quoted as saying, 'We are going to have to win some seats we did not expect to win, we might need some of those caffé latte people to get us over the line.' They have given up on the bush, and it is because of the sort of activity they have indulged in in trying to hold public servants back from getting air services back into country Australia.

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

#### **ANSWERS TO QUESTIONS WITHOUT NOTICE**

##### **Information Technology Outsourcing**

**Senator LUNDY (Australian Capital Territory)** (3.04 p.m.)—by leave—I move:

That the Senate take note of the answers given by the Assistant Treasurer (Senator Kemp) in response to questions without notice asked by Senator Lundy today relating to information technology outsourcing.

What an interesting day it is today. The question I asked of the coalition government related to the extraordinarily overpriced items as part of the Australian Taxation Office IT outsourcing deal. It is not actually surprising that this information is coming to light now, by virtue of leaks to newspapers, because the coalition have got so much to hide. All these horror stories are now going to come filtering out. Through the last two years, through a Senate inquiry and through Senate estimates, the coalition have gone to great lengths to prevent information and detail about these IT outsourcing contracts from coming to light, including the need for an interim report into the IT outsourcing Senate inquiry dealing with the issue of commercial-in-confidence. It is not surprising that they are putting so much effort into

hiding this information, because now we find that in just one of these deals the government are paying six times the market retail price for IT services and products. In another case we had documented, they are paying more than double the price of significant items in IT outsourcing. It begs the question: what else is overpriced within these contracts?

I would like to focus specifically on the answer provided by Senator Kemp when he used a brief provided, presumably, by the Australian Taxation Office. He said things like, 'This is on balance the best offer,' and, 'It is appropriate that they go for recognised brand names,' and, 'These products can be delivered anywhere any time.' In other words, the government has been captured by a contractor and is being forced to pay way over the market price, and it cannot justify it in any other way than by admitting that it has been caught out promoting an arrangement where no savings are being made and government departments are being forced to pay way over market price.

This issue of IT outsourcing and these horror stories we now see coming out will just get the government into further trouble. By virtue of the Australian National Audit Office report and the independent Humphry inquiry, we know that the government was completely caught out in putting in place a very bad arrangement on behalf of many agencies and departments. We know now that between now and the election, and presumably after the election if Labor is fortunate enough to gain the support to win government, we will have to go through and sort this mess out. I ask the coalition now, 'Why don't you come clean and show us what is in these contracts and show us just how much Australian taxpayers are being ripped off by these deals?'

It is also worth making mention of the alleged savings arising out of these contracts. Today, we have heard that the government is paying way over market price for a whole range of IT products and services. That does in fact stack up with the findings of the Australian Audit Office which said the government is not making the savings that they have claimed and are not achieving the service outcomes that they have claimed. In

fact, despite the government pretending or claiming that they were going to make \$100 million worth of savings out of a \$500 million contract, investigations of the taxation department show that that contract will barely make \$40 million of that \$100 million dollars of savings—40 per cent of the promises put forward by Minister Fahey. Indeed, the Audit Office report found that they were making barely half of those savings.

In their inability to actually deliver savings, they have managed to create a circumstance where the tax office has effectively been captured by a multinational corporation providing these IT deals for the next five years. It is also worth focusing on the fact that the savings claims by the coalition are no longer able to be substantiated in any way at all. It has got to the stage now—and I note that Senator Eggleston is probably going to speak on this matter—that despite the government's continued insistence that IT outsourcing in some way has a future, we know by virtue of so many independent reports that they blew it significantly. It was with some satisfaction that we saw the coalition government do their own backflip in ditching their outsourcing policy—at the urging of the opposition, I am proud to say.

*(Time expired)*

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (3.09 p.m.)—It must be very amusing for people to listen to a member of the Australian Labor Party here, on 27 September, five days after the anniversary of the Centenary House lease, the greatest waste of taxpayers' money in contractual—

**Senator Hill**—Tell us about it.

**Senator IAN CAMPBELL**—I am feeling as if I should, Senator Hill. It is the greatest waste of taxpayers' money in an out-sourced contract that you will ever find. The Australian Labor Party built a building and through a shonky deal—proved to be shonky by a royal commission, if you read the report—is now reaping a nine per cent annual increase. Every year on 23 September, under a shonky deal between the Australian Labor Party and the Auditor-General, the rent goes up. On Sunday 23 September, this very week when Senator Lundy has the audacity to get

up in this place and talk about a computer contract, the rent went up by \$400,000 for one year—a \$400,000 rent rise. Rents are not rising at the moment around the place but, regardless of what happens to rent, it goes up by \$400,000. And another nine per cent next year and another nine per cent the year after. In fact, they are getting \$36 million in cream sieved out of the back pockets of taxpayers through this shonky Centenary House lease.

As Senator Abetz has made very clear, all you need to do to end that rort—the biggest rort in Australian political history bar none—is one single phone call from Mr Flip-Flop, Mr Kim Beazley. He needs a ticker and he needs a 45c phone card to make one phone call to the Auditor-General and say, 'We will be fair about this.' Australians believe in a fair go and they believe in a fair rent. If you are a landlord ripping off a tenant in the suburbs of Australia, any politician on both sides will stand up and say, 'That is unfair. We should have a mediation; we should have a fair rent. If there is a disagreement, bring in a mediator; bring in a valuer and strike a fair rent.' But if it is the Australian Labor Party ripping off people in every suburb in Australia—stealing \$36 million out of their back pocket—they say no. This is a man with no ticker. He talks about fairness but when we ask him to be fair to the Australian taxpayer he says, 'No. I want the \$36 million in the Australian Labor Party's coffers.' What a joke and what a disgrace.

And this senator opposite has the audacity to come into this place and talk about the price of computers. That senator voted to try to ensure that there was a 22 per cent tax on every single computer in this nation. If you were a person struggling on low to middle income earnings and you wanted to get into the Internet economy, Senator Lundy was going to say, 'We will take 22 per cent on top of the cost of the computer.' If you wanted to buy yourself a modem, she was going to keep a 22 per cent tax on the modem. And on the CD-ROM drive and on any single piece of computer equipment. The Labor Party's policy is a 22 per cent tax on computers. And they talk about Knowledge Nation. What a great way to encourage people to get into the

Internet economy: put a 22 per cent tax at the gateway! The hypocrisy is astounding.

Senator Lundy actually said we saved \$40 million in this project. That was not enough for her. What she wants and what the Australian Labor Party want is to bring all of the IT outsourcing back in again. They do not particularly care about savings; what they care about are jobs for their friends in the CPSU. The government have created a burgeoning and booming IT industry in Canberra. Canberra has become one of the leading IT economies on the globe. There are more Internet connections per capita in Canberra than in virtually any other city in the world—more than New York; more than Washington; more than London. We have an Australian home bred IT industry that is now providing services to the world.

The Australian Taxation Office, which Senator Lundy wants to pick on, is one of the greatest departments in the world when it comes to providing services online. Australian taxpayers and Australian businesses have reaped the benefits of the IT outsourcing because Australians can now lodge their tax returns online and save themselves money, and businesses can lodge their tax returns online. The ATO is a leading IT provider in Australia and a leader in terms of providing government services online right around the world. I congratulate the ATO for that. Instead, from Senator Lundy we get this carping, whingeing, whining opposition to an office that is actually a leader in the IT world. *(Time expired)*

**Senator SHERRY (Tasmania)** (3.14 p.m.)—We are taking note of the answers to questions to Senator Kemp. I want to refer to the question that I asked today that Senator Kemp, as usual, did not answer, and that relates to the huge increase in tax revenue on superannuation funds in this country. I refer to the final budget outcome 2000-01 yesterday released by the Treasurer, Mr Costello. This is the government's own document. If we look at that document, on page 87 we see that the revenue raised from taxation on superannuation in one year went up from \$3.9 billion to \$5.3 billion. So this government is collecting an extra \$1.4 billion in tax in one year off Australian superannuation funds.

The worst aspect of this is that the increase in tax this government is collecting from Australian superannuation—an extra \$1.4 billion in tax—reduces the final retirement income of contributors.

It gets worse. If we look at the government's final budget outcome, we see that the government are fond of claiming—and it is false—that they are a low tax government. The facts show in this document that this is the highest taxing government in Australian history outside wartime. Let me just give a couple of examples. In the revenue raised in the last financial years, income tax went down. I agree with the government; they cut income taxes. The revenue from income tax on individuals went down from \$76.5 billion to \$74 billion. The revenue from income tax as a result of the government's tax cuts went down by just over \$2.5 billion. The government also got rid of the wholesale sales tax, which collected \$15.5 billion. So they got rid of \$15.5 billion in wholesale sales tax, and there was a \$2.5 billion reduction in income tax. That adds up to about \$18 billion in tax reductions or removal of taxes.

But they replaced those with the GST. We have had an \$18 billion reduction in tax from income on individuals and the wholesale sales tax. What did the GST collect? It collected \$23.8 billion. They reduced taxes by \$18 billion and then introduced the GST, which collects \$23.8 billion. If we look at this document, there are two levels of significant dishonesty about the presentation of these papers. What the government does not disclose and what Senator Kemp avoided at all costs to mention was that a large part of the reason we have a \$1.4 billion increase in taxation on superannuation is the new tax—they called it a surcharge—that this government introduced in 1997. Most Australians do not know about this new tax on their superannuation, because most Australians do not, unfortunately, look at their superannuation accruals and see that the tax rate has gone up. The so-called surcharge that they introduced is one of the reasons why the tax take on superannuation has gone up.

I have referred to the GST and I have referred to the total tax collections. If we look at page 83, we see that the traditional meas-

ure of determining the level of tax take by the Commonwealth government is taxation revenue as a percentage of gross domestic product. It is 21.8 per cent, but they exclude the GST. They exclude their own new tax from the table of tax revenue as a percentage of gross domestic product. This government boasts that the GST is a growth tax. It is certainly that; it is a growth tax. One of the big problems with the GST is that the compensation for the GST is static. You have static compensation for the GST, but the GST is a massive growth tax, and that is why taxes under this government have now reached, if you include the GST, 23.8 per cent of gross domestic product. *(Time expired)*

**Senator KNOWLES (Western Australia)**  
(3.19 p.m.)—What a whole lot of gobbledegook. Isn't it amazing? To listen to Senator Sherry now, one would suspect that within the next few days the Labor Party will come out and say, 'We are going to get rid of the GST.' Oh, no, it is quite the reverse: 'We are going to keep the GST.' More importantly, if you just listened to Senator Sherry then, you would think that the revenue from the GST came to the Commonwealth government. At no time did I hear Senator Sherry mention one syllable of the fact that every single solitary cent raised by the goods and services tax goes to the states. The state Labor government in Western Australia, the state Labor government in Queensland, the state Labor government in Victoria, the state Labor government in New South Wales, the state Labor government in Tasmania, the territory Labor government in the Northern Territory—that is where the GST goes.

Isn't it fascinating? Senator Sherry did not mention one single syllable about that, and yet there is not one state Labor premier who is saying, 'Get rid of the GST, we do not want it.' Oh, no, it is quite the reverse. They signed on faster than Flash Gordon to the GST and they want it. That is why Mr Beazley is keeping it. Then you would go further and suggest, 'Maybe they're going to be serious about this roll-back nonsense. Let's wait and see what the policy is.' I have been keeping a little list for quite some time of the issues on which the Labor Party have

been bleating that there should not be any GST. Let us see if they roll back GST on things like children's solar swimsuits, all the sanitary products, trucks, cars, petrol, local government, charities, deposits, insurance, clothing, shoes, beer, registration levels, levies, libraries—there is not a GST on libraries, mind you, but they kept on about taxing libraries, that is how much they know about it—swimming pools, sportsgrounds, hats, printing, books, et cetera. Let us wait and see whether all of those things are going to have roll-back attached to them. These are some of the things that have been talked about so extensively here as being so inequitable that we should not have a tax on. Let us test the temperature. Here we are, presumably on the last day of sitting before the election is called, and still the Labor Party have not said what they are going to roll back.

Let us take as an example the last one that I mentioned—books. Dear little Senator Stott Despoja has said, 'That's the most important thing that you can roll back goods and services tax on. We'll just take the tax off books.' Wacky-doo! Let us have a look at that proposal. If you want to take the tax off books, it is not just a case of taking the tax off books: you have to take the tax off books, magazines, booklets, pornography, stationery, newsletters, books on CD-ROM, online books, academic journals, diaries, cookbooks, year books, books on tape, newspapers—and on it goes. It is not just a book; it is all those sorts of different books.

But it goes further than that because there are people who actually produce books. This is how little the Democrats and the Labor Party understand the whole tax system. If you exempt books per se—all sorts of books, magazines and so forth—then you have to look at how you exempt publishers, bookstores, newsagents, paper manufacturers, ink suppliers, photographic studios, stationers, tourist shops, online bookshops, universities and schools—and on the list goes. Let us see if the Labor Party is really fair dinkum about this roll-back on books. Let us see Senator Stott Despoja, in all her years of maturity and understanding the tax system and busi-

ness, explain her way out of taking a tax off books.

**Senator Sherry**—She supported the GST.

**Senator KNOWLES**—No, she did not support the GST. She voted against the GST. Senator Stott Despoja voted against it, and she thinks books are the most important thing. Let us see her explain how the roll-back on books is going to occur, because it includes all those other commodities. The next few weeks will be very interesting. Having kept a very careful list of the things that have been raised in this place, I will be very interested to debate on the campaign trail exactly what Labor are going to roll back, how they are going to roll it back and how they are going to compensate people. *(Time expired)*

**Senator LUDWIG (Queensland)** (3.24 p.m.)—I wish to take note of the answer given by Senator Kemp to Senator Cook in relation to what is now commonly called the GST scam in Minister Macfarlane's electorate of Groom. Some time ago, on 27 August, the *Canberra Times* reported:

Prime Minister John Howard has referred the Queensland division of the Liberal Party to Tax Commissioner Michael Carmody for a full audit—to “demonstrate it has nothing to hide on taxation matters”.

But we now have a notice, pursuant to section 65 of the Taxation Administration Act 1953, to the Liberal Party in Queensland requiring two things: firstly, ‘for the purpose of applying a new tax system, Goods and Services Act 1999, in relation to the Liberal Party, to give evidence’—in other words to call them in to give evidence; and, secondly, ‘to further direct them to produce those documents described in the schedule which are in your custody or under your control’. We now have an audit which seems to have gone further than a simple ‘we’ll audit the books and you’ll provide full cooperation’ scenario. The tax office raid begs the question: why is there no full cooperation from the Queensland Liberals? Why does the ATO feel it necessary to issue a notice to get the Liberal Party in Queensland to produce and to give evidence in relation to the Groom GST scam? Was it necessary? It seems that the ATO felt it was extremely necessary to

get to the bottom of this, so you wonder whether or not there is the full cooperation that Mr Howard has outlined. Are people producing everything that they might have in their possession? Have they gone to the extreme of saying, ‘Perhaps we are not going to cooperate’? Those questions remain unanswered.

We heard from Senator Kemp about this, and it was a very circumspect answer when you look at it. He said—and I am happy for him to correct me—‘The ATO has spoken to some people in Groom. It is an audit and the ATO will do what it has to do.’ His answer did not really go much further than that. So what we are left with is a tax raid in the Groom electorate in Queensland, trying to get to the bottom of this shocking fiasco involving the only business, it seems, that is not paying the GST. This is all during a period when Minister Macfarlane, as the Minister for Small Business, has been trying to announce a small business plan. We do not have a plan from him; what we have, it seems, is the Queensland Liberal Party as the only organisation in the country still able to use the ultimate GST simplification of simply avoiding the tax.

Senator Hill was a little more forthcoming on this when he answered a question I asked him on 28 August. He indicated that there would be a full audit and that the results of that should be made public. We hope not only that it will be made public—and we have not heard anything to that effect yet; they have not produced any documents yet—but that they will then provide what the ATO report provides so that the public can judge for themselves what the GST scam of the Liberals in Queensland is all about. It is a sad and sorry time when we find Minister Macfarlane, it seems, being part of a scam to avoid GST instead of getting on with the plan to ensure that the GST is made simpler and fairer.

The denials by this government are starting to sound extremely hollow. We were told it was an audit, but it seems that the audit is a little bit more than that. We are now hearing that the matter has gone further—into a demand for evidence and information to be

provided—so it makes you wonder about the denials from the other side. (*Time expired*)

Question resolved in the affirmative.

#### DOCUMENTS

##### Department of the Senate: Annual Report 2000-01

**The DEPUTY PRESIDENT**—In accordance with the provisions of the Parliamentary Service Act 1999, I present the annual report of the Department of the Senate for 2000-01.

Ordered that the report be printed.

##### Australian National Audit Office: Annual Report 2000-01

**The DEPUTY PRESIDENT**—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: *Australian National Audit Office—Annual Report for 2000-01*.

#### House Monitoring Service

**The DEPUTY PRESIDENT**—In accordance with the resolution of the Senate of 13 February 1997, for the information of honourable senators I table an updated list of persons and organisations in receipt of the external House Monitoring Service and the applicable terms and conditions.

#### PARLIAMENTARY ZONE

##### Proposal for Works

**Senator HILL** (South Australia—Minister for the Environment and Heritage) (3.31 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to the refurbishment of the Communications Centre in the John Gorton Building in the Parliamentary Zone. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

**Senator HILL**—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the refurbishment of the Communications Centre in

the John Gorton Building in the Parliamentary Zone.

#### DOCUMENTS

##### Final Budget Outcome 2000-01

**Senator HILL** (South Australia—Minister for the Environment and Heritage) (3.32 p.m.)—I table a document entitled *Final Budget Outcome 2000-01*.

#### COMMONWEALTH ELECTORAL AMENDMENT (PREVENTION OF DISCRIMINATION AGAINST MEMBERS OF LOCAL GOVERNMENT BODIES) BILL 2001

**Senator HILL** (South Australia—Leader of the Government in the Senate) (3.32 p.m.)—I table on behalf of Senator Boswell a proposed bill entitled *Commonwealth Electoral Amendment (Prevention of Discrimination against Members of Local Government Bodies) Bill 2001* and seek leave to incorporate in *Hansard* Senator Boswell's proposed second reading speech.

Leave granted.

*The speech reads as follows—*

Madam president

The Commonwealth Electoral Amendment (Prevention of Discrimination against Members of Local Government Bodies) Bill 2001 is a government bill.

Its purpose is clear, unambiguous and precise. This is a bill to remove any discriminatory legal barriers imposed by a state or territory on members of local government bodies who seek to stand as candidates at a federal election.

This bill states that 'a law of a state or territory has no effect to the extent to which the law discriminates against a member of a local government body on the ground that.

- (a) the member has been, is, or is to be nominated; or
- (b) the member has been, or is to be declared; As a candidate in an election for the House of Representatives or the Senate.'

This bill is about democratic freedoms. Some states such as Queensland have tried recently to restrict those freedoms by legislating to prevent local councillors from standing for parliament while a councillor.

Being a member of a local government body should not restrict a person from nominating for a federal seat in the upper or lower house.

Local government councillors should be able to stand for parliament without having to resign from their position. That is their democratic right and that is what this bill seeks to facilitate.

Many parliamentarians gain their first experience of political representation at local government level.

They should not then be penalised for having that experience and grass roots knowledge of their communities.

I urge the Senate to pass this bill and restore those democratic freedoms to members of local government bodies who have contributed so much and have the potential to contribute so much to our Commonwealth parliament and democracy

#### BUDGET 2000-01

#### Consideration by Legal and Constitutional Legislation Committee

##### Additional Information

**Senator CALVERT (Tasmania)** (3.33 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present additional information received by the committee relating to hearings on the additional estimates for 2000-01.

#### COMMITTEES

#### Foreign Affairs, Defence and Trade References Committee

##### Report

**Senator HOGG (Queensland)** (3.33 p.m.)—I present the report of the Foreign Affairs, Defence and Trade References Committee on the disposal of Defence properties, together with the *Hansard* record of the committee's proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator HOGG**—I seek leave to move a motion in relation to the report.

Leave granted.

**Senator HOGG**—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

*The statement read as follows—*

This is the final report of the Committee on its inquiry into the disposal of Defence properties.

On 3 January this year, the Committee presented, out of sittings, an interim report which dealt specifically with the disposal of the Artillery Barracks, Fremantle. The Defence Estate Organisation (DEO) had proposed a priority sale of the site to the University of Notre Dame and the relocation of the Army Museum of Western Australia to Hobbs Hall at Irwin Barracks, Karrakatta, Perth. These proposals had generated considerable public and political opposition and were the reason for the reference to this Committee.

The Committee recommended that the Artillery Barracks be transferred to the Western Australian Government and that Defence review its proposed move of the Museum from the Barracks to Hobbs Hall. The Committee is pleased to note that the Commonwealth Government did offer the Barracks to the Western Australian Government and that Defence decided to leave the Museum at the Barracks.

The Committee's terms of reference included not only terms which dealt specifically about the Artillery Barracks but also those which focussed more generally on the way DEO disposes of surplus Defence properties.

Earlier this year, the Committee conducted inspections in Brisbane, Sydney and Melbourne of sites that either had been divested by Defence or were in the process of disposal. It also took evidence in those cities and in Canberra. It also used the evidence taken in the latter part of last year in relation to the disposal of the Artillery Barracks, Fremantle.

One of the elements of the DEO disposal process that the Committee criticised in its interim report was the lack of adequate consultation with stakeholders in the disposal of the Artillery Barracks, Fremantle. The Committee, however, made no recommendations until it was able to consider DEO's consultation processes in the second half of the inquiry.

The Committee found that where DEO consulted with stakeholders early in the disposal process and where there was no fundamental difference of opinion between both sides on the nature of the redevelopment, the sale process appeared to proceed smoothly. In the case of Ermington, the Residents Committee went further by making suggestions to DEO, which were adopted as part of the redevelopment plan. This co-operative approach allowed all parties to have some ownership of the redevelopment, which facilitated the disposal process.

Even if DEO begins its consultative process with a clean slate and is prepared to listen to stakeholders, it is likely, in many cases, that the

views of the stakeholders are in conflict with DEO's ultimate goal of optimising revenue. Where there is a strong difference of opinion between DEO and stakeholders as to the end use of a property once it is no longer owned by the Commonwealth, consultation seemed to break down.

Overall, it is very clear, however, that DEO's consultative processes leave much to be desired, particularly in respect of sites where there is no fundamental agreement over the planned redevelopment. Inevitably, there will be disagreement over the future of some sites, whether it is the nature of the proposed use to which they are to be put, or for the protection of heritage or environmental values. In such cases, consultation should be increased, not reduced.

The Committee notes that DEO is already obliged to consult stakeholders (including residents in the local area) in the disposal of surplus properties and recommends that DEO fulfils its obligations in respect of all properties for which it has responsibility for their disposal.

The Committee also recommends that DEO continues to consult stakeholders throughout the disposal process.

The Committee noted that, in respect of a number of properties, DEO undertook some development of them before sale to increase the sale price.

In considering this issue, the Committee noted that pre-sale development of surplus Defence properties is not government policy and did not have the support of the Department of Finance and Administration. It was, however, not inconsistent with government policy. The Committee came to the view that it does not object in principle to DEO adding value to properties and increasing revenue for the Commonwealth and Defence. However, in undertaking development of a property prior to sale, DEO should consider carefully the extent to which it develops a property, the nature of that development and the revenue likely to be obtained from that development. DEO should remember that its function is to sell surplus properties and not to become a community planner. DEO is very dependent on consultants to conduct developmental work and, arguably, does not have the expertise within its own ranks to oversee it, particularly should consultants mis-judge the extent or nature of a proposed development. While Mr Corey believed that DEO had sufficient experience to manage the development work, DEO is also dependent on retention of that experience, particularly at senior levels.

The Committee's guarded acquiescence to DEO's development of properties before sale is also

based on DEO taking greater cognisance of State government, local government and other community views. The Committee does not believe it is in Defence's interests for DEO to try to secure the last dollar out of a sale when, by doing so, it alienates a lot of people and organisations. That is not to say that DEO should capitulate in the face of differences of opinion on its development strategy in each and every case where such criticism occurs. It should, however, try to be more accommodating of stakeholders, when they have particular concerns about specific DEO proposals, than seems to have been the case. Ultimately, it is the local government and the community that have to live with the decisions made about the end use of a divested Defence property.

Although DEO should, where possible, seek to get market value for properties, there is a strong argument in support of concessional sales for relatively low value properties where protracted sales, as a result of disputes with councils or residents, are not in the interests of Defence. This applies particularly to sites where there might be Defence-related activities but not restricted to those sites. The DEO disposal units are not staffed sufficiently to deal with protracted sales and, even from a financial point of view, an early settlement avoids all the staff, consultant and ancillary costs of a long and drawn out sale.

The Committee also believes that Defence cannot afford to alienate communities by trying to sell small properties for an end use incompatible with the interests of those communities. Defence depends on positive perceptions of Defence. Once Defence alienates a community, it may have longer-term ramifications for Defence, such as for Defence recruiting. The dogged pursuit of the dollar at community expense may, therefore, be false economy.

Where a property has or is proposed to have a function associated with the military, such as a military museum or a cadet depot, the Australian Defence Organisation, including the new Defence Cadet Directorate (and not just DEO), should give special consideration to the continuation or commencement of such functions through priority or concessional sales.

With the move away from capital and regional cities, the ADF needs other means to have a presence in those cities, so that the ADF is not removed entirely from community consciousness. What might be revenue foregone in the short term might be more than compensated for in less tangible ways in the longer term. The housing of military-related activities in heritage-listed former Defence buildings provides a link to our military heritage.

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

Leave granted; debate adjourned.

**Economics References Committee  
Report**

**Senator MURPHY (Tasmania)** (3.34 p.m.)—I present the second report of the Economics References Committee on mass marketed tax effective schemes and investor protection, entitled *A recommended resolution and settlement*.

Ordered that the report be printed.

**Senator MURPHY**—I seek leave to move a motion in relation to the report.

Leave granted.

**Senator MURPHY**—I move:

That the Senate take note of the report.

I would like to say thank you to the secretariat of the committee for the effort that they have put in in respect of what has been a very difficult task. I also thank my committee colleagues for arriving at a unanimous report on this occasion. It was a very significant effort, and I thank them. I seek leave to have my tabling statement incorporated in *Hansard*.

Leave granted.

*The statement read as follows—*

I present for tabling a report of the Senate Economics References Committee on its Inquiry into Mass Marketed Tax Effective Schemes and Investor Protection. It is the second of three reports the Committee intends to table on the matter.

The title—*A Recommended Resolution and Settlement*—reflects both the reason for and the content of this report. As with the Interim Report tabled in June this year, a major concern to the Committee has been the plight in which many thousands of investors in mass marketed schemes now find themselves as a consequence of having their deductions disallowed by the ATO. Also, as indicated in the Interim Report, the Committee has been equally concerned to find ways to address those scheme promoters who lured so many taxpayers to invest in good faith in schemes with few or no redeeming features.

The Committee has made several recommendations that are designed to resolve and settle the situation facing many taxpayers. Essentially the Committee is proposing two options. The first option is to await the outcome of test cases or

individual appeals. If investors choose this course, they remain eligible for the interest rate concession announced by the ATO on 23 July 2001. If they lose their cases, however, they remain liable for repayment of the full primary tax plus penalties that should be capped at five per cent.

The second option that the Committee recommends is for investors and the ATO to settle on the following terms. First, the ATO is to agree to full remission of penalties and interest on mass marketed investment scheme debt arising from deductions claimed in 1998/99 and earlier years. Second, the Committee extends the ‘cash outlays basis’ of settlement, already adopted by the ATO, in two directions. Whereas the ATO currently limits this settlement model to investors in schemes with an underlying business activity, the Committee recommends it be available to all eligible investors regardless of the viability of the scheme. This reflects the Committee’s view that most investors were not in a position to distinguish between schemes that had genuine underlying businesses and those that did not, and that many were also victims of unscrupulous promotion techniques.

The Committee also extends the cash outlays basis model by recommending that in profit-making schemes the ATO allow the original deduction to stand. The Committee proposes criteria for assessing the commercial viability of a scheme, and that the assessment of the commercial viability of schemes is to be made by an independent group of experts agreed between the ATO and scheme representatives.

To provide an incentive to encourage taxpayers to settle their debts quickly, the Committee recommends that, for all eligible investors, there be an interest free period of two years on debt to be repaid under the concessional arrangements. The Committee further recommends that, for all eligible investors, interest be charged in later years at a rate reflecting the time value of the money.

It is expected that the vast majority of affected taxpayers will be eligible for the remission of penalties and interest unless they fall into the following categories:

- scheme promoters, including the directors and office bearers of the entity which managed the investments;
- tax advisers, financial planners and tax agents; and
- taxpayers with a tax history pattern of reducing their incomes to very low levels (thereby avoiding Medicare levy, superannu-

ation surcharge, claiming social security benefits, etc).

Investors in these categories, including those who participated in schemes over three or more years, are not automatically eligible for the concession and would need to have their circumstances considered on a case by case basis. The Committee considers that the ATO should retain the discretion to vary rates of penalties and interest payable for these investors.

The Committee strongly believes that it is crucial that any concession for investors be matched by tough measures to deter and penalise promoters of aggressive tax planning arrangements. Sanctions are necessary to prevent future raids on the revenue and outbreaks of large scale tax minimisation. However, evidence to the Committee indicates that the resources of the existing regulatory regime may not be adequate to identify and prosecute wrongdoing in the tax effective schemes market. To address these concerns, the Committee makes four recommendations.

First, the Committee recommends that the Government consider amending Section 16 of the *Income Tax Assessment Act* or Section 3E of the *Taxation Administration Act* to allow the ATO to provide information relating to civil cases or to non-tax related offences to appropriate regulatory agencies, such as ASIC or the ACCC.

The Committee notes that amendments to the secrecy provisions would represent a significant policy change. Accordingly, the Committee notes that any amendments to the secrecy provisions would need to be justified on public interest grounds. That is, it would need to be demonstrated that the interest in making certain information available outweighed the public interest reflected in the current secrecy and privacy provisions.

Second, the Committee recommends that the Government either amend the guidelines for funding public interest cases by the Attorney-General's Department, or that it make available funding for such actions by investors through ASIC and/or the ACCC. This is designed to allow funding for class actions against scheme promoters in public interest cases.

Third, the Committee recommends that the Government establish a special prosecutorial task force to investigate cases arising from the MMS episode. The task force should be designed to deal with promoter cases that involve inter-agency issues, and be backed by specialist resources and legal provisions for overcoming secrecy and other intelligence sharing issues. The Committee considers such a taskforce to be necessary to over-

come some of the problems that arise in prosecuting cases that cut across agency lines.

Fourth, the Committee recommends that the Government expeditiously implement measures designed to control and monitor the promotion of tax effective schemes. The ATO has advised the Committee that it is currently consulting with community and industry representatives to finalise recommendations it has already made to the Government in this regard. The Committee sees such measures as crucial for deterring and combating aggressive tax planning behaviour by some elements in the promoter market.

In conclusion, I believe the concession package outlined in the Committee report will, if adopted, offer hope to many investors who should be able to extricate themselves with dignity from what had seemed to be a desperate situation leading inevitably to bankruptcy. It also offers a much simpler approach for the Government and the ATO to resolve the matter.

I should also emphasise that the Committee believes the package to be very generous. It represents a 'bottom line' approach, and the Committee will not be recommending any further concessions. The Committee condemns promoters seeking to divert attention from their own culpability by urging investors to subscribe to 'fighting funds', on the basis that they will not have to pay more than 5 cents in the dollar. This is simply not supportable.

While this second report concentrates on, in the Committee's view, the two most pressing issues confronting all those involved in the mass marketed schemes episode, I note in closing that a number of broader systemic issues have emerged during the course of the inquiry. These will be covered in the Committee's third and final report on the matter, to be tabled shortly.

**Senator CHAPMAN (South Australia)**  
(3.35 p.m.)—As a member of the committee, I welcome this unanimous report. I seek leave to have the balance of my remarks incorporated in *Hansard*.

Leave granted.

*The speech read as follows—*

It is significant and pleasing that this Second Report of the Senate Economics References Committee on mass-marketed tax effective schemes, entitled "A Recommended Resolution and Settlement" is a unanimous Report.

This is in marked contrast to the Interim Report in which Senator Gibson and I had to table a Minority Report to bring some balance to consideration of the issues involved in the unprecedent explo-

sion of mass marketed tax effective schemes in the 1990's. The Interim Report of Labor Senators overstated the culpability of the Australian Taxation Office, all but ignored the concessions to investors which the ATO had made to that point and grossly understated the culpability of scheme designers and promoters in fostering the explosion of schemes.

In contrast, this Second Report is a balanced Report. It draws clear distinctions between the role of the ATO and promoters, as well as between investors who were unwitting victims of unscrupulous marketing practices and more sophisticated investors who should have known better.

The Second Report therefore no longer promotes the "line in the sand" concept, aspects of which raised concerns among Government Senators on the Committee. Instead it applies what could fairly be described as a "proportionality" concept.

Proportionality is evident in our unanimous adoption and recommended extension of the cash outlays basis of settlement for those caught up in the schemes. Under our proposal, investors will be allowed a deduction to the extent of funds which actually went into a scheme, irrespective of the subsequent success of the underlying business. For those schemes that have proven their commercial viability, we have recommended that the full deduction claimed be allowed.

Importantly, the Report finds that no stone should be left unturned in flushing out and prosecuting, where possible, promoters of these schemes. We make recommendations for amendments to the Tax Act and other legislation to ease this task, as well as the establishment of a special, cross-agency, prosecutorial task force.

The achievement of this unanimous Report would not have been possible without the cooperation of the senior officers of the Australian Taxation Office in the evidence they have given to the Committee in recent weeks and the cooperative way in which they have engaged in dialogue with the Committee in our efforts to lay out a path to resolution of the problems arising from the development of these schemes; a resolution that is fair to all – taxpayers unwittingly caught up in the schemes as well as taxpayers who did not become involved and in whose interests it is important to protect the tax revenue base.

May I urge the Australian Taxation Office to continue that much appreciated co-operation with the Committee by implementing those of our recommendations which are within its capacity, while I also urge the Government to implement those recommendations which come under its and this Parliament's jurisdiction.

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

Leave granted; debate adjourned.

**Treaties Committee  
Report**

**Senator LUDWIG (Queensland)** (3.35 p.m.)—On behalf of Senator Cooney and on behalf of the Joint Standing Committee on Treaties, I present the 43rd report, entitled *Thirteen treaties tabled in August*, together with the *Hansard* record of the committee's proceedings, minutes of the committee's proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

**Senator LUDWIG**—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**Membership**

**The DEPUTY PRESIDENT**—The President has received a letter from a party leader seeking a variation to the membership of certain committees.

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

That senators be discharged from and appointed to committees as follows:

**Economics Legislation Committee**—

Substitute member: Senator Conroy to replace Senator George Campbell for the consideration of the provisions of the Commonwealth Inscribed Stock Amendment Bill 2001

**Legal and Constitutional References Committee**—

Substitute member: Senator Lundy to replace Senator Cooney for the committee's inquiry into the Australian Customs Service's information technology and communications systems

Participating member: Senator Cooney for the committee's inquiry into the Australian Customs Service's information technology and communications systems.

## **BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Messages received from the House of Representatives returning the following bills without amendment:

Family Assistance Estimate Tolerance (Transition) Bill 2001

Migration Legislation Amendment (Judicial Review) Bill 2001

## **INTELLIGENCE SERVICES BILL 2001**

### **INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001**

#### **Second Reading**

Debate resumed.

**Senator ROBERT RAY (Victoria)** (3.38 p.m.)—The *Intelligence Services Bill 2001* before us at the moment proposes for the first time to put ASIS and DSD under legislative control. There was a similar bill drawn up in 1995 on the basis of the Samuels and Codd report that looked at all aspects of ASIS. That legislation did not proceed, mostly for lack of time. There were two delays with it, however. Firstly, some of the penalties involved in the bill caused some controversy that had not been resolved and, secondly, the government of the day had a desire to see whether D-notices could be resurrected as an effective method of protecting agencies. I was actually given the responsibility of convening a meeting of most of the editors of newspapers and television and radio stations and I did so in 1995. I found on that occasion that, whilst there was an agreement in the macro that certain matters of a high security basis should be protected, there was no real commitment because if any one of those organisations—and I think that the Australian Broadcasting Corporation was the worst—came across such material they would use it and scoop the others. I basically reported back to government that I thought D-notices were dead.

This legislation has appeared in its current form five years later—I do not know why the interregnum. I do not know why a five-year gap occurred in taking this matter forward. I suspect one of the reasons was in some of the evidence given to the committee: that Mr McLachlan spent two years trying to resur-

rect D-notices. If that is the case, I am partly at fault: I should have briefed him on the absolute uselessness of attempting to do so. What took him two years of failure to do took me only a day because I realised that D-notices were no longer available. Nevertheless, this legislation came forward. The government's response to this legislation was to set up a joint select committee to look at it. It was a very sensible act, I thought, by the government, to have an all-party, both-chamber committee examine the legislation and report back to the parliament. Tight time lines for reporting were put on us but, nevertheless, we needed only one brief extension before we reported to this parliament.

Let me tell you what test the committee put on this bill. Most of the committee members understood the quality of individuals that we have heading up our security organisations. We know that Mr Dennis Richardson from ASIO is a talented, dedicated public servant with a very high sense of integrity, exactly the same qualities shared by Mr Taylor, who heads ASIS. Mr Bonighton from DSD is a very esteemed public servant and Mr Bill Blick, as Inspector-General, is one of the most talented public servants I have met. So all the stars are in alignment here: we have excellent individuals in charge of all our security agencies. So do you know what test we put to this bill: what if they were not there? If we did not have that quality there, how can the legislation then protect the rights of Australian individuals? It is true to say that the committee made some recommendations to government to tighten up certain sections of the bill. I previously publicly acknowledged that we were assisted in that process by the officials from ASIS, ASIO and DSD. We did not run into a bureaucratic wall of resistance; we raised issues and they responded. We were able to bring down a report that did recommend several changes, tightening up for the most part. As a result of that, the report that came into this chamber was a unanimous report.

The aims of the legislation are to give a legislative basis to ASIS and DSD. The legislation outlines for the first time ever, other than by way of ministerial instruction, what the functions of these agencies are. It also

places limits on agencies and specifies those in the legislation. The one potential area of controversy is that this legislation does give some immunities to ASIS employees and their agents in terms of some aspects of Australian law. It is not carte blanche: they are prescribed and highly necessary if ASIS is to do its job properly. This legislation very tightly defines them and I think that in no way could one argue that this infringes on the civil liberties of Australian citizens.

The legislation also provides for parliamentary oversight for ASIS and DSD, and this is most welcome. Previously, the only area for oversight was ASIO. We now have three of the key agencies being overseen by the same committee, and I confidently predict DIGO will join them as soon as their miscellaneous legislation comes before this chamber. Then over time, even though it is not as urgent, ONA and DIO will come before the committee. Therefore, we will have a committee very similar to the British or US oversight. I welcome that.

I also welcome the fact that there is slightly more power given to that committee to oversee the agencies. It is true to say that the ASIO committee, especially in a technical sense, was fairly highly restricted in what it could look at. But I think that, as that agency develops a trust with the committee, we can get more genuine parliamentary oversight—which is not just of benefit to the parliament but of benefit to the agencies as well, as the confidences build. As far as I know, in the years that the ASIO committee has existed, it itself has never revealed any confidences that have been given to it, and I hope that is always the case.

Let me say one other word about the current international situation. People have raised in the media the failure of intelligence agencies to predict the events in New York and Washington. I have to say that this is based on the fallacy that intelligence agencies can know everything. They simply cannot know everything. It is impossible. It is equally difficult in the modern era, with so much concentration on technology, because your average terrorist knows not to use the phone or a high frequency radio or anything else. So you cannot expect intelligence agen-

cies, through SIGINT at least, to pick up on these things. From the more extreme organisations, it is very hard to get human intelligence fed into the system. So before we condemn these agencies, let us not set the bar too high or at an impossible height. It is simply not possible for them to predict everything.

I want to talk briefly about bipartisanship in this area. This country has had a pretty good track record in that regard, and it is something I would like to see fostered further. I have said previously that bipartisanship is not about agreeing on everything but about agreeing on the broad and general principles and, especially in this area of security, extending trust to what are tantamount to our political opponents—and that is how it should be, especially in this area. We have to extend a degree of trust. In return, a degree of responsibility is extended to the opposition, through briefings of the Leader of the Opposition and through our participation on oversight committees. That should be fostered.

Every now and then, out of political opportunism, someone breaks ranks. I think that is a great pity. For instance, on 30 August this year, a parliamentary secretary, someone who is sworn in on the Executive Council, described Labor Party members, the entire caucus, in the following terms:

They are traitors to Australia. They are not fit to govern and they are certainly not even fit to be in the parliament.

I have been in this chamber for 20 years and I have never in that time asked for any description of me to be withdrawn. I have dished it out and I have copped it. No matter what has been said, I have never got up on my feet and asked for something to be withdrawn. This, of course, was not said within a parliamentary chamber; this was said at a doorstop outside this parliament. I am here to tell you, Madam Deputy President, that I resent being called a traitor, and so does every member of my political party resent being called a traitor. We have many faults; we have many foibles. It is proper and justified to criticise and analyse us on a whole range of areas. But I have never seen any evidence that any member of the Labor Party

in this 38th Parliament is a traitor to this country—never in any way whatsoever.

I am deeply disappointed that no person in leadership in the Liberal Party has publicly rebuked that parliamentary secretary for that statement. I could imagine that, if anyone in the Labor Party described any of our colleagues in the Liberal or National parties as traitors, the Leader of the Labor Party would be on the phone within five seconds, demanding that they go outside and retract. So this sort of attitude does not promote bipartisanship. Fortunately, I think it is an isolated view, a view which has not necessarily found any sympathy in the rest of the coalition parties. But if I thought that this individual had only made one mistake, we have only to move on to the second statement. By the way, I especially resent being called a traitor by a former National Party member of this parliament who transferred over to the Liberal Party. I do not like being called a traitor by someone who, out of political opportunism, switched political parties for his own careerist ambitions. Leaving that aside, we then had the statement on 19 September 2001. This relates to the bill, because our agencies have the very crucial role, much more enhanced in the last two weeks, of trying to deal with the threat of terrorism. What do we get from Mr Peter Slipper, parliamentary secretary? We get the following statement:

It is not beyond the realms of possibility that the Taliban regime could well be sending people to Australia as terrorists under the guise of illegals.

I know that one or two members of the ministry have hinted at that but have never batted on with it. It has been a sort of throw-away line. But this statement represents the culmination of two or three doorstops. I could go through paragraph after paragraph of the different doorstop interviews and show similar statements being made. Basically, is there any evidence for this? I am not going to embarrass our security organisations by asking them about it or revealing any briefings I may have received. What I want is for Mr Slipper to put down some evidence. What he is doing is combining two very emotive issues: illegal asylum seekers and the terrorist events of 11 September. What crass political

opportunism; what grubby politics that is. It really sickens me.

Can you imagine someone in Afghanistan as a potential terrorist wanting to infiltrate Australia. So what do they do? They walk down the Khyber Pass, all the way to Pakistan; they spend six months in a refugee camp in Pakistan; they then try to devise a way of getting to Indonesia; and they then get on a leaky boat, having paid between \$3,000 and \$30,000. They risk the high seas. They get intercepted by an Australian patrol boat and get transferred to Woomera for one or two years, where they are rigorously cross-examined in detail about their past, and then they go on and become part of a terrorist cell in this country. I would have thought that they would have either bought a false passport or, indeed, probably applied for a visa and flown in here by business class in 12 hours time. Why wouldn't they? You would have to say, even though you cannot sift between what is true and what is false, that the emerging evidence in the US is that nearly all these terrorists entered the US legally or on false passports. I do not recall one of them applying for refugee status in the United States.

The crass linking of these two issues—illegal asylum seekers and potential terrorists—is political opportunism at its worst, and this parliament should reject it. It does not contribute to a bipartisan attitude on security issues to do this. It is the worst false analysis. What Mr Slipper has done is just false analysis. It has not promoted the public debate. I really should not spend any more of my time on someone I regard as an absolutely worthless political individual.

Let me commend the government for bringing this legislation forward. Let me thank them for setting up a select committee. Let me thank them for being so open-minded to accept the unanimous recommendations of the committee. The government have handled this issue extremely well. It is a sensitive area, yet we have not had large public revulsion on the bill. They are to be congratulated, and I wish the bill a speedy passage.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (3.54

p.m.)—The government acknowledges and thanks the opposition for its support for the Intelligence Services Bill 2001 and the Intelligence Services (Consequential Provisions) Bill 2001, which go to the very heart of the national interest of Australia. As Senator Ray has mentioned, there has been a history of a bipartisan approach to these matters. For the future, the government and, I am sure, the opposition would want that to be the case. I acknowledge the comments made in relation to these bills.

It is important legislation which deals with the functions and responsibilities of the Australian Secret Intelligence Service, the Defence Signals Directorate and the Australian Security Intelligence Organisation. The legislation provides an appropriate balance between the ability of ASIS and DSD to conduct their functions and the limited immunities necessary for this. It also provides desirable oversight and essential accountability for the agencies and protects the rights of Australians while maintaining the secrecy necessary to protect operations, sources and staff.

These bills have been examined in detail by the Joint Select Committee on Intelligence Services. The committee, comprising coalition, Labor and Democrat members—many from this chamber—adopted a clear bipartisan approach. The committee was given considerable information about the work of these agencies so that it was able to make balanced and educated judgments about the legislation. The committee made 18 key recommendations, and the government accepted substantially all but one of the recommendations, which resulted in some 70 amendments to the legislation. These amendments have greatly enhanced this proposed legislation. On behalf of the government, I thank the members of that committee, particularly those who are members of the Senate, for their hard work and their support for the work of the intelligence agencies at this critical time. I commend the bills to the Senate.

Question resolved in the affirmative.

Bills read a second time, and passed through their remaining stages without amendment or debate.

**STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL (No. 2) 2001**

**Consideration of House of Representatives Message**

Message received from the House of Representatives returning the States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001, and acquainting the Senate that the House has not made the amendment requested by the Senate.

Ordered that the message be considered in the committee of the whole immediately.

**Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.58 p.m.)**—I move:

That the committee does not press its request for an amendment not made by the House of Representatives.

The situation is that this very important bill, the States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001, has been rejected by the opposition. It is an important bill which provides funding for establishment grants. If this legislation does not pass through the Senate now, those schools who are affected by the legislation will not receive the payments that they are legally entitled to next week. This morning in the House of Representatives the shadow minister said, ‘Our highest priority is needy schools throughout Australia, whether they are in the government or the non-government sector.’ On 6 August this year, the Leader of the Opposition, Mr Kim Beazley, said in a personal explanation:

... the Minister for Education, Training and Youth Affairs has said ... that I am threatening the funds to Catholic schools and to low income private schools. We are not; we support the grants that go to those schools.

If that is what the Leader of the Opposition said, and if he means it, now is the chance for the opposition to prove it. Without speedy passage of this bill, new schools will be denied their entitlements, which will defeat the purpose of the grants in assisting new schools with their recurrent costs in their formative years.

Next Monday will be 1 October and, unless Labor changes its mind, the 54 new non-government schools with an entitlement for an establishment grant will not be able to be paid it. I give some examples. The Nyikina Mangala community school in the Kimberley will not receive \$4,500 owed to it—a great concern to the people in that community. Some might regard that amount of money as small, but to a community school like that in the Kimberley it is indeed a large amount of money. The Lumen Christi Catholic College in the Eden-Monaro electorate will not receive its \$17,750. The Bentleigh Chabad Jewish Day School in the Hotham electorate will not receive its \$6,000. The Living Faith Lutheran Primary School in the Dickson electorate will not receive its \$23,792.

We have here a situation where this funding has been blocked from reaching these needy schools. This is a situation where Labor's amendment has no justification. Of the specific schools initiatives in this year's budget, 87 per cent of the funding is directed to the 69 per cent of students in the government sector, demonstrating the government's commitment to government schools. I said that when this was last before the Senate. On a proportionate basis, this is \$50 million more than government schools could expect on the basis of their enrolments—\$20 million more than is being requested by the opposition in this request. Total funding for government schools in 2002 is \$2.2 billion, some \$669 million or 43 per cent more than Labor provided in its last year of office. In the four years to 2004, total funding to government schools will be around \$9 billion.

These schools are legally entitled to these payments; it is now up to Labor to decide whether or not they are going to get them. I appreciate that Senator Carr has been passionately involved with the education sector and deeply committed to it. In fact, I would say that he has shown a great deal more commitment than others in his party have shown. I would urge him to reconsider this and to look at just some of the examples I have mentioned as being indicative of the plight of these schools and of the effect that the non-passage of this bill will have—be-

cause it will stop that funding reaching those needy schools.

I again commend the bill to the Senate and urge senators opposite to reconsider their position and, in particular, to have regard to these schools. I am pleased to see that Senator Allison from the Democrats is here in the chamber, and I would also ask the Democrats to reconsider their position and have regard to these schools. These schools are not wealthy schools; they have parents who are average, ordinary Australians, who have made a choice to send their children to these schools. That is a choice that the government believes they should be allowed.

**Senator CARR (Victoria)** (4.03 p.m.)—The opposition's view on these matters has been spelt out and detailed in the previous contributions I have made. So, given the hour and the pressure of business that is before us, I will not go through the entire case again. But I will state a couple of matters. First of all, the government says that the opposition are blocking the funding. That is not true—it is just not true. We are proposing here that a request be made to the House of Representatives for an additional \$30 million for public education. It is not a request that blocks money; it is a request for increases in money for the public education system. The government can ensure that these payments that are due can be made next week by agreeing to the request. It is pretty straightforward. It is the government that is choosing not to make those payments. Presumably, given what the minister has said today, it is the government that is choosing to withdraw the bill. That is the threat being made to us: that the government will withdraw this bill. The actions of the government are the responsibility of the government. It is our job as an opposition to draw attention to the deficiencies in the government's policy. No doubt we will have plenty of opportunity to do that in the run-up to this next election, which I understand is to be announced in a few days. This will be a matter that will be debated in the community at large, and we are more than happy for that matter to be pursued.

The government says that it does enormous amounts to assist government educa-

tion. That is the argument. Whatever statistics the minister reads out there, he cannot get around the basic fact that the level of funding in real terms, in real dollars, has not kept pace with enrolments in the government education system, the public education system. The Commonwealth contribution towards public education in 1996 when this government took office was 43 per cent—43 per cent of the total outlays for the Commonwealth went to the public education system. By 2004, under the policies being pursued by this Liberal government, this conservative government, that figure will fall to 34.8 per cent. So there is a drop in the Commonwealth contribution towards public education from 43 per cent in 1996 to 34.8 in 2004. That is the measure of the government's commitment to public education. The statistics are very clear on that; they have been reaffirmed by Commonwealth department officials time and time again through the procedures of this parliament. I have been persistently pursuing this issue. It is very difficult to get statistics that can actually be measured over a period of time, and that is one of them. Seventy per cent of Australians choose to send their children to public educational facilities, yet under this government's policies those facilities receive 34 per cent of the education resources coming from the Commonwealth government. That is the measure of the Commonwealth's commitment, and that is a fact that needs to be borne in mind.

What our requests do is reinforce Labor's policy of saying that we are in the business of providing resources from the public purse, on the basis of need, to all Australians. It is an evening-up measure, a small token—\$30 million in an education budget of billions. This government cannot agree to a request to increase public education spending by \$30 million when it is increasing, under this bill, the amounts of money going to non-government schools for this particular allocation by 330 per cent. It is pretty straightforward that the government's priorities are wrong.

**Senator Forshaw**—They spend more on ads.

**Senator CARR**—You are quite right, Senator Forshaw. This government spends more advertising—for political purposes—its claimed achievements than it is prepared to spend on this particular measure. That is the sense of priority perhaps we should be having a look at.

My second concern is the administration of this program. I will not go over it again other than to say this: I think it is wrong, in public policy terms, for a Commonwealth government of any persuasion to rely upon a state administrative instrument to administer Commonwealth programs. That is what is happening here. When we cut through all the palaver, what is happening is that the Commonwealth says that if the state registers a school—no matter in what circumstances it registers the school—it automatically gets access to this program, when you have a situation where public document after public document highlights that the school is in fact not a new school but a campus of an existing school or a school that has changed its name and is therefore outside of the guidelines.

We have the answer that was handed back to me today, and I thank the minister for honouring the commitments that were made yesterday for the answers to be delivered. We are talking about schools such as the Brighton Montessori School, which applied for Victorian registration in 1998. At its special general meeting on 20 April 1999, the school amended its statement of purpose to include the word 'school' where previously the word 'kindergarten' had appeared. A kindergarten is not eligible, but if you change the name from 'kindergarten' to 'school' then you make it eligible and it gets registration as a school. That is the thrust of the answer that you have given me. I asked about another school—the Fern Valley Montessori School—and whether it had operated before. The department was not aware of it; therefore, it must not have happened!

We have schools that are having 25-year reunions and we are being told that these are new schools. It is not reasonable. A commonsense approach would say to you that the Commonwealth, if it had the capacity, could do the job. It no longer has the regional structure; it no longer has sufficient officers

to be able to properly do the job of protecting Commonwealth revenues, not to mention the fact that I do not think too many of the Commonwealth officers are encouraged to look behind the registration of these schools. We have a problem. We have got a Commonwealth program effectively at the mercy of a state administrative instrument—the registration of schools. I think that is wrong. There are numerous examples which suggest to me that the evidence is very strong that the schools are receiving money outside of the guidelines, but because there is this legal fiction that they are a new school because they have got state registration the Commonwealth argues that it is a bona fide payment.

**Senator Lightfoot**—Let the bill through and challenge it later.

**Senator CARR**—The government has the opportunity to let the bill through, Senator. The government has the option of accepting the request and it is choosing not to. I have demonstrated the argument quite clearly. It is a mistake that the government has pursued this line of logic. Payments can be made to schools next week if the government accepts the request. We cannot support your motion here today, Minister. We will not be supporting your motion here today. We remind the schools that we are committed to making payments on the basis of need. We will not be withdrawing from that position. We will not be supporting the government's position on this until such time as the government agrees to the request for an additional \$30 million to public education in this country.

Question resolved in the negative.

Resolution reported; report adopted.

**MOTOR VEHICLE STANDARDS  
AMENDMENT BILL 2001**

**Second Reading**

Debate resumed from 26 September, on motion by **Senator Hill**:

That this bill be now read a second time.

**Senator FORSHAW (New South Wales)**  
(4.14 p.m.)—The **Motor Vehicle Standards Amendment Bill 2001** was recently considered by the Senate Rural and Regional Affairs and Transport Legislation Committee.

Mr Acting Deputy President, as I am sure you and all senators are aware, the committee has been very busy in the last couple of weeks dealing with a number of pieces of legislation that have been introduced into this parliament at the eleventh hour by the government. This is one of them. As I speak, I know the references committee is sitting to deal with another important matter.

The legislation committee sat last Thursday and again on Monday of this week to hear evidence from quite a number of witnesses who had made submissions on the bill. Indeed, even though there was only a very short time for advertising the committee's hearings, the committee nevertheless received over 50 submissions from a range of interested groups. These included submissions from the major manufacturers and retailers in Australia, such as Ford Australia, as well as from small businesses who are involved in the importation, modification and retail of imported used vehicles. These also included evidence from two associations that represent such businesses—namely, the Vehicle Importers and Converters Association of Australia and the Australian Auto Importers and Manufacturers Association.

The committee took the opportunity to examine as best it could, given the tight timetable, the impacts of this legislation. I want to say at the outset that the opposition support the bill, and we do so for good public policy reasons which I will come to shortly. But I also repeat that it is unfortunate that the committee did not, and the Senate does not, have more time to consider some of the implications of this legislation which, if the claims come true, could have a serious impact upon small businesses in this country.

The **Motor Vehicle Standards Amendment Bill 2001** will amend the Motor Vehicle Standards Act 1989. It will fundamentally change the nature of the scheme that exists at the moment under which used vehicles are allowed to be imported into Australia. The changes are set out in the committee's excellent report, which was tabled yesterday, I think. I will not go into detail about the various changes the legislation makes, but I can summarise that by stating that the bill will establish a register of specialist and enthusi-

ast vehicles—referred to as SEVS. That register will list those makes and models of vehicles that will be able to be imported into Australia as used vehicles in the future. In turn, that list will identify the range of models of used vehicles that can be imported and subjected to modifications, such as changing from left-hand to right-hand drive and so on, to ensure that they comply with Australian safety standards and can then be registered and sold for use in Australia.

A second key element of this change will be to require that any such vehicle will need to be inspected by registered automotive workshops on a vehicle by vehicle basis. Currently what happens is that vehicles can be imported under what is known as the low volume scheme and, once a particular type of vehicle has been approved for compliance and then sale as a used imported vehicle, all other vehicles that fit into that category or that type are recognised as having a blanket approval. The new system will ensure that registered automotive workshops will inspect such vehicles. That will be done, as I have said, on an individual vehicle by vehicle basis—a major improvement on the current administration. It is acknowledged by all the witnesses who appeared before the committee that the bill will have a significant effect in limiting and indeed reducing the number and types of used vehicles that will be able to be imported into Australia in the future.

I summarised a moment ago what the major changes to the legislation are as contained in this bill. I would also like to summarise the major arguments that are put forward in favour of the legislation. Firstly, it has been argued by the Department of Transport and Regional Services, which appeared before our committee, and by the major motor vehicle manufacturers in Australia that there has been a huge increase in recent years in the number of used vehicles being imported into Australia under the current arrangements.

It is further argued that, if that rate of increase is allowed to continue, it will have serious effects on the viability of the Australian vehicle manufacturing industry. The committee was provided with statistical evidence from the Department of Transport and

Regional Services, which was also reflected in the submission from the Department of Industry, Science and Resources and backed up by the motor manufacturers, that used vehicle imports into Australia have increased from 1,037 in 1993 to over 16,800 in 2000. That is a substantial percentage increase. The statistics set out in chapter 2 of the committee's report show that the major growth in the number of used vehicles that have been imported into Australia is to be found in passenger motor vehicles, which increased from 992 in 1993 to 10,094 in the 2000. Further, there has been a substantial growth in four-wheel drives such as Toyota Surfcs and Nissan Toranos. The figures there show an increase from three such used four-wheel drives being imported into Australia in 1993 to some 5,705 four-wheel drive vehicles being imported in 2000.

This, it is argued, is a substantial increase which could have an effect upon the future viability of our manufacturing industry. We were also told that similar increases had occurred in New Zealand and that they had had a major impact on the New Zealand retail market for new cars and also on the sale of used vehicles which had started out as new cars in New Zealand. Whilst we were presented with that statistical evidence, and it is clear that there has been a major increase, I am not entirely convinced that the disastrous impact predicted by the industry if the scheme were allowed to continue unchecked would necessarily come about.

I say that because, whilst we were being told in the committee hearing—and this is contained in the arguments put forward by the government for this legislation in the second reading speech and in the explanatory memorandum—that this dramatic increase in the number of imported used vehicles was going to have a deleterious effect upon the future of our own local vehicle manufacturing industry, we at the same time have been hearing on a regular basis from Senator Minchin, the Minister for Industry, Science and Resources, that there has been, in fact, a tremendous growth in the vehicle manufacturing industry in this country, that our exports have increased and that sales of new

vehicles have increased. They both cannot be right.

Unfortunately, that is an area that has not really been explored sufficiently because of, as I said, the lack of time available to the committee. Whilst I make that observation, there is nevertheless no doubt that imported used vehicles coming into this country in increasing numbers must be having some effect and will have some effect upon our local industry. This is particularly important because there is a substantial element of unfair competition involved. If, for instance, the vehicles that are being brought in here as imported used vehicles and then modified for compliance are in the nature of specialist or enthusiast vehicles, then clearly it will not have a major effect. We are talking here about vehicles that are imported for individual buyers who have a particular interest in owning such a vehicle, whether it be a sports car or whatever.

But of course if the vehicles that are being brought in here are competing against either new vehicles or used vehicles that are sold in the normal course of events, then there is a potential major problem for the Australian industry. The unfairness in the competition in that regard comes about because those used vehicles, particularly those four-wheel drives or standard passenger vehicles that are imported into Australia as used vehicles, come into this country without all of the charges and other costs that are applied to the vehicles sold under what is known as the full volume system. That means that the vehicles can be imported at a much cheaper cost, then modified and sold at a much cheaper price than vehicles that are locally manufactured, sold as new vehicles and then enter the used car market here in Australia. That is certainly a concern that we have, to ensure that there is not unfair competition arising from a scheme which was originally designed for a limited number of vehicles to be available as specialist or enthusiast vehicles.

The argument put forward in support of changing the current arrangements is that there has sprung up an industry of what is called 'backyard dealers' who operate largely unfettered. That, in turn, raises serious concern about the safety standards of the vehicles

that are being on-sold in the Australian market after being modified. That is the major reason why the system of registered workshops has been proposed, I understand—to ensure that we are not allowing cars that do not really comply with our strict safety standards to go onto the market here in Australia as used vehicles.

It is also important to note that, as we were told in the committee hearings, a lot of cars are being imported from Japan as used vehicles, particularly in recent years. The picture has been put to us that, after around two to four years of use, cars—which had been bought as new vehicles in Japan—are very hard to get re-registered in Japan. It seems that a lot of these vehicles, because they cannot continue to be used in Japan, end up being sold as vehicles for importation into Australia. Certainly the strong implication of that is that we have a system of what could be described as 'dumping' of those vehicles onto the Australian market. That is a matter of concern and we think that that needs to be tightened up.

I have to say as a matter of criticism of the government that some of these problems have occurred because of slack administration of the current system. It appears, certainly to me, that more resources need to be allocated under this new system to ensure that those backyard operators are driven out of business so that the legitimate small businesses importing used vehicles into this country can exist as appropriate businesses in this limited market.

So we find that, on balance, there is much merit in supporting the passage of this bill, but we are not entirely convinced—I am certainly not entirely convinced—that all of the arguments that were put to us by the vehicle manufacturing industry did not contain a certain degree of exaggeration. We are prepared to support this bill but we are concerned, as I think has been acknowledged by the department, that some legitimate small businesses may become unviable as a result of the passage of the bill. We recommend that the department look very closely and monitor the impact of this scheme over the next 12 months to two years to ensure that legitimate businesses that have been operat-

ing quite appropriately under the current arrangements do not get driven out of business because of these changes.

The government has provided for a time period of up to 7 May 2002 next year to enable those businesses with current approvals to switch over to looking at importing vehicles that will be on the new list in order to cope with the changes. I am concerned that that may not be enough time and I hope that, if it appears that some of those legitimate businesses are going to fold because of these changes, that time period will be looked at and possibly extended.

The final point I make is that, whilst even the organisations representing the legitimate businesses—that is, the importers of used vehicles; the Vehicle Importers and Converters Association and the Australian Auto Importers and Manufacturers Association—indicated support for the legislation, they drew attention to some serious concern with the regulations. The draft regulations have only recently become available and the committee had access to them, but they are quite lengthy and detailed. The industry had a only limited time to look at those regulations. The committee notes—and this is a unanimous recommendation of the committee—at the conclusion of its report:

Further consideration is required relating to certain aspects of the regulations and the committee intends to make supplementary comment to the Senate on the regulations.

I wholeheartedly support that and I ask the minister—and the government, in the remaining short time that it has available to it as the government—to take that on board. When we are back here in government in a few months time we will certainly be giving effect to that recommendation of the Senate committee with regard to the regulations. So with those remarks I indicate the opposition will support the passing of the bill.

**Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)**  
(4.33 p.m.)—I seek leave to incorporate a speech on the second reading of this bill for my colleague Senator Aden Ridgeway.

Leave granted.

*The speech read as follows—*

The motor vehicle industry plays an essential role in the Australian economy. Not only is it a major employer, but it has become a major exporter and important provider of training for thousands of Australian young people.

Providing the Automotive industry with a stable environment in which to invest and grow is an important objective. So to is the need to provide Australian consumers with access to cars they desire at the lowest sustainable prices.

The Motor Vehicles Standards Amendment Bill goes some way towards providing improved certainty and choice in the Australian automotive industry.

In introducing the Bill, the government advised that its purpose was to:

‘balance the government’s commitment to the local automotive manufacturing industry, full volume importers, franchised motor vehicle dealers, importers and converters of used vehicles and consumers of genuine specialist and enthusiast vehicles.’

The government also said that it sought to:

‘return the low volume scheme to its original intent of catering for the importation of genuine specialist and enthusiast vehicles and to prevent unchecked growth in the importation of used vehicles that are very similar to vehicles already marketed in full volume.’

While the Democrats support these intentions, we are not convinced that this Bill is as effective as possible in striking the right balance.

The Bill is important because it effects a large number of Australians, both directly and indirectly. It is estimated that around 400 individual businesses will be affected by the tightening of used car import eligibility.

The number of second hand passenger motor vehicles imported in Australia in 2000 exceeded 10,000. While this is only a small percentage of the Australian car market, it is, without doubt, a significant niche market.

The Democrats have a range concerns with the Bill. The Australian Democrats, like the majority of members of the Committee, are concerned at recommending the passage of the legislation. The main reasons for this view are the difficulties in being able to properly scrutinise the legislation at short notice and to assess the competing claims of the subcommittees who have given evidence to the Committee.

Similarly, the Australian Democrats are concerned at the apparent absence of a direct relationship between the legislation and the regula-

tions. In particular, much of the government's policy proposals are contained within the regulations and not the main body of legislation. In this regard, I foreshadow a number of amendments that will be moved by the Democrats.

First, we propose to remove the requirement that a "registered automotive workshop" be a corporation. By referring to 'entities' compliance cost will be reduced.

Second, we propose to change the definition in Section 13 D(1) by adding the words "that is not a model of a variant of a model of a standard vehicle". This brings the scheme back to the recommendations of the Taskforce investigating the Act.

Third, we seek to delete term "Specialist and Enthusiast Vehicles" and replace it with "Low Volume Imported Vehicles".

The Democrats have a range of other concerns that we feel have not, as yet, received, sufficient attention. In particular, the Australian Democrats are of the view that a '1800' telephone number for parts is essential to protect consumer interest. In our minority report we recommend that the Government make participation in the service compulsory and consider providing a small grant to promote and expand the service.

The issue of insurance companies refusing insurance on vehicles is a serious matter. This needs to be urgently investigated, and questions asked as to why companies are refusing policies.

Furthermore, the regulations should also be the subject of extensive review before being enacted. For the Senate to play its proper role in providing oversight of legislation it is important that regulations are available for close scrutiny at the time of the Bill.

**Senator MINCHIN (South Australia—Minister for Industry, Science and Resources)** (4.33 p.m.)—I thank all senators for their contributions. I appreciate the support for this very important legislation.

Question resolved in the affirmative.

Bill read a second time.

### In Committee

The bill.

Amendments—(by **Senator Stott Despoja**, on behalf of **Senator Ridgeway**)—by leave—not agreed to:

- (1) Schedule 1, item 6, page 6 (line 1), omit "a corporation", substitute "an entity".

- (2) Schedule 1, item 31, page 10 (line 30), after "vehicle", insert "that is not a model of a variant of a model of a standard vehicle".
- (3) Schedule 1, item 37, page 17 (line 1), omit "Specialist and Enthusiast Vehicles", substitute "Low Volume Imported Vehicles".
- (4) Schedule 1, item 37, page 17 (line 2), omit "Specialist and Enthusiast Vehicles", substitute "Low Volume Imported Vehicles".
- (5) Schedule 1, item 37, page 17 (line 4), omit "Specialist and Enthusiast Vehicles", substitute "Low Volume Imported Vehicles".
- (6) Schedule 1, item 38, page 17 (line 25), omit "A corporation", substitute "An entity".
- (7) Schedule 1, item 38, page 18 (line 9), omit "a corporation", substitute "an entity".
- (8) Schedule 1, item 38, page 18 (lines 11 to 16), omit ":" and paragraphs (1)(a), (b) and (c), substitute "the applicant meets the criteria prescribed by the regulations.".

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

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

### BANKRUPTCY LEGISLATION AMENDMENT BILL 2001

### BANKRUPTCY (ESTATE CHARGES) AMENDMENT BILL 2001

### Second Reading

Debate resumed from 20 September, on motion by **Senator Boswell**:

That these bills be now read a second time.

**Senator BOLKUS (South Australia)** (4.36 p.m.)—I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

*The speech read as follows—*

### Introduction

The Bankruptcy Legislation Amendment Bill 2001 and the Bankruptcy (Estate Charges) Amendment Bill 2001 were introduced in the House of Representatives on 7 June 2001.

In introducing the principal Bill, the Attorney-General stated that bankruptcy had been devised "as a shield that might be used, in the last resort, by an impecunious debtor to seek relief from his or her overwhelming debts. Over the years, some unscrupulous debtors have learned to use bank-

ruptcy as a sword to defeat the legitimate claims of their creditors".

That sentiment—the idea that bankruptcy is used by the rich rather than the broke—has been on the rise over the previous year given the prominence which has been given in the media to high-profile bankrupts, including a number of lawyers who appear to be living the high life while officially being bankrupt—some of them more than once.

If the bankruptcy law is being abused, it is appropriate that it be reviewed and amended to ensure that loopholes cannot be exploited.

Labor certainly supports those measures in the Bill which will make it harder for otherwise well-off people who are using bankruptcy improperly.

However, despite the hype generated by the Attorney-General, there is little in this Bill which will have any substantial impact on cracking down on the top end of town.

To the contrary, much of the 'reform' is squarely directed at low income people who are forced to go into bankruptcy because they can't pay the debts they have incurred.

It is a Bill which is typical of a government that protects the greedy, not the needy.

#### **Background**

The last major overhaul of bankruptcy legislation was in 1996, shortly after the Coalition came to office. The 1996 Bill was substantially based on Labor's 1995 Bill and incorporated amendments recommended by the Senate Legal and Constitutional Legislation committee in September 1995.

This Bill does a number of things.

It repeals the existing optional 7 day cooling-off period introduces a mandatory 30 day cooling-off period.

It gives Official Receivers a discretion to reject a debtor's petition where it appears that, within a reasonable time, the debtor could pay all the debts listed in the debtor's statement of affairs and that the debtor's petition is an abuse of the bankruptcy system.

It abolishes early discharge from bankruptcy.

It will make it easier for trustees to lodge objections to a person's discharge from bankruptcy and harder for bankrupts to sustain challenges to objections.

It clarifies that a bankruptcy can be annulled by the Court whether or not the bankrupt was insolvent when a debtor's petition for bankruptcy was accepted.

It doubles the current income threshold for debt agreements, to allow and encourage many more

debtors to choose this particular alternative to bankruptcy.

Other changes proposed by the Bill streamline the operation of the Act or are a consequence of the Insolvency and Trustee Service of Australia (ITSA) having become an executive agency.

The *Bankruptcy (Estate Charges) Amendment Bill 2001* amends the *Bankruptcy (Estate Charges) Act 1997* to exempt any surplus in a bankrupt estate from the scope of the realisations charge, remove current payment obligations for the interest charge and the realisations charge if the amount otherwise payable is less than \$10 in a charge period, close some charge-avoidance opportunities and simplify some machinery provisions of that Act. These amendments are technical and facilitative in nature and Labor will support them.

While Labor supports the need for bankruptcy reform, there are a number of aspects which are less than satisfactory which I now wish to touch on.

#### **Consultation**

First, concerns were expressed during the Senate Committee hearing on this Bill that, in drawing up the reforms, the government paid little attention to those organisations who most closely represent the interests of those people for whom the bankruptcy legislation exists—low-income people.

When somebody comes to the realisation that they can't meet their debt repayments—it may be that they have too many credit cards and they just can't cope with the financial situation in which they find themselves—one of the first people they often see is a financial counsellor.

These people are at the coalface of our personal insolvency system. Often, by visiting a financial counsellor, it is possible to provide people with assistance to budget their way out of debt. Other times, the only option is bankruptcy.

I would have thought that, in framing a personal insolvency system, one of the most important groups of people to listen closely to would be financial counsellors. But the Wesley Community Legal Service expressed its view that "financial counselling organisations were not consulted properly" and that "proper consultation with interested and relevant community based welfare organisations did not occur but rather lip service was paid to a few select organisations."

The detailed provisions of the Bill—which are targeted more at the low-income bankrupts who are in over their heads than the bankrupt barristers who sit back in their harbourside mansions—re-

flect that lack of interest in the experience of financial counsellors. As the Wesley Community Legal Service submitted, the Bill will "disadvantage many of the poor in society and their families" while debt collectors stand to gain.

That is a shocking indictment of a government which has professed to govern for all Australians but instead has been caught time and time again knocking down those who are least able to stand up for themselves.

#### **Cooling off period**

While Labor will support the government's proposal to repeal the existing optional 7 day cooling-off period in favour of a mandatory 30 day cooling-off period, this proposal will not come without potential problems.

First, it should be noted that not all debtors are subject to the cooling off period.

Debtors excluded from the requirement for a cooling off period are:

- partnership debtors;
- deceased estates;
- debtors who carried on a business at any time in the 30 days preceding the petition;
- debtors the subject of a creditor's petition or of a specified legal proceeding which is scheduled for substantive hearing within 60 days of the date of the debtor's petition; and
- debtors who, in the 12 months before petitioning, unsuccessfully attempted to make alternative arrangements under the Act.

One of the effects of these exclusions is that, while business people who go broke will not be required to conduct further negotiations with creditors in the 30 days subsequent to lodging a bankruptcy petition, low income creditors—who make up the bulk of the work performed by ITSA—will.

As the Law Council of Australia pointed out, it is difficult to see the need for what they described as "a complex and administratively difficult procedure which will act as a condition precedent to becoming bankrupt".

In fact, the Law Council of Australia went further than this—to seriously doubt that these provisions would have any positive effect for those who it is most intended to benefit—the creditors:

"What will happen is that people will simply file their debtor's petition, go away and forget about it, and 30 days later they will be bankrupt and they will be none the wiser and the creditors will be none the better off."

While this is one scenario, credit counselling groups have raised the spectre that the amend-

ment will lead to greater harassment of genuinely broke individuals by debt collectors within the 30 day period.

Credit counselling agencies are already stretched to the limit will be even further tested by clients who come back to seek assistance during this 30 day period when approached by creditors to withdraw their bankruptcy petitions and to make alternative arrangements.

In this respect, the proposals probably fail to give full weight to the fact that bankruptcy is already an absolute last resort for people who are unable to pay their debts. The fact that bankruptcy carries with it very serious consequences not only in relation to one's own creditworthiness for years to come, but also the social stigma, means that it is genuinely a last resort and not entered into lightly. ITSA already provides information to potential bankrupts on a range of less draconian alternatives to bankruptcy.

While the government has not made out a convincing case either for the need for an extended cooling off period or its likely effectiveness, Labor will not oppose this change. We will, however, be very interested to see whether in the next few years it has any positive effects on arresting the rate of bankruptcies throughout Australia.

#### **Early discharge**

The Bill also proposes to abolish the provisions which allow early discharge for low income bankrupts.

The first point to make is that those who will be affected by this measure will be among the most vulnerable in our society. Therefore you would think that the government should present compelling evidence why it is necessary for the good operation of bankruptcy law in this country that the provisions be abolished.

The government has not made a convincing case at all for the abolition of early discharge.

Administrative early discharge provisions were introduced in 1992 in response to concerns that low-income earners did not have any real capacity to avail themselves of the existing early discharge provisions that required an application to the Federal Court. At that time, only a very small proportion of bankrupts availed themselves of the early discharge provisions, because of the costs involved with making an application to the court. In almost all cases where early discharge was sought, the order was granted.

In respect of early discharge, the second reading speech tabled by Senator Bob McMullan on 22nd August 1995 stated:

"Commonly, persons who succeed in obtaining orders for discharge have become bankrupt as a result of failed business activities, and seek early discharge so as to enable them to resume such activities. These are usually also persons who have the capacity to contribute to the estate from income, but do not do so. The proposals in the Bill will restore equity to the operation of the early discharge system, and the eligibility and disqualification criteria are designed to ensure that where a person has become a bankrupt because of commercial culpability, he or she is disqualified from early discharge."

Under the current early discharge provisions, a bankrupt may apply for early discharge after 6 months from the time when he or she files a statement of affairs with the Registrar.

The eligibility criteria are that:

- the bankrupt has no or insufficient divisible property to enable a dividend to be paid,
- the bankrupt has not disposed of property in a transaction that is void against the trustee, and
- the bankrupt earns an income that is less than the actual income threshold amount applicable to him or her at the time the application for early discharge is made.

Disqualifying criteria include where:

- the bankrupt has previously been a bankrupt;
- the unsecured liabilities of the bankrupt exceed 150% of his or her income in the year prior to the date of bankruptcy;
- more than 50% of the bankrupt's unsecured liabilities are attributable to the conduct by the bankrupt of business activities; and
- the bankrupt has given false or misleading information about his or her assets, liabilities or income.

From these qualifications and disqualifications, it is clear that the abolition of the early discharge provisions will **only** affect low-income earners and **only** in respect of their first bankruptcy.

Early discharge is **not** available in respect of second and subsequent bankruptcies.

There is no evidence that these provisions are being abused.

Public hearings by the Senate Legal and Constitutional Committee into the Bills were characterised by a complete lack of evidence as to the need for the abolition of the early discharge provisions. Mr Donald Costello, Acting Adviser, Insolvency and Trustee Service Australia, who provided evidence to the Committee on the policies underlin-

ing the proposed changes, summed this up when he said:

"There are no statistics which would be available to help make a decision as to whether or not early discharge is an appropriate regime to have. All we can provide is feedback from Credit Union Services Corporation of Australia Ltd, which is a significant lending group representing a substantial number of credit unions, plus persistent correspondence from mainly small business creditors over the years who say that it is too easy for people to walk away from their debts."

I believe that the abolition of these provisions is actually an expression of this government's attempt to divide Australians by scapegoating the most disadvantaged.

I am confident that Australians will reject the negativity of this government—just as Northern Territorians rejected attempts by Brian Burke to divide the Northern Territory community by running on race issues.

The key feature of the early discharge provisions is that they were designed to deal with the increasing number of consumer bankruptcies which were due "more to misfortune than misdeed".

This is happening to Australians across the country. With an explosion in the use of credit cards over the last decade, more and more people have access to easy credit and more and more people are running into financial trouble—so much more so now that Australians are faced with paying an extra 10% on everyday items whenever they go to the cash register.

And what is this government's approach? Instead of recognising that their policies have forced greater financial hardship on individuals and small businesses—and in many cases sent them to the wall—this government is now in denial that people run into debt trouble not because they are irresponsible about spending their money because the pressure on them is so great that they are driven into debt.

In introducing this Bill, the Attorney-General said:

"The provisions were targeted at a new category of bankrupt—consumer debtors with low asset backing who over-extend and then cannot repay their debts. **However, many believe that bankruptcy in this group is due more to lack of financial responsibility than to misfortune.**"

This is a cold and heartless statement from a cold and heartless government—one which has inflicted so much hardship on struggling Australians and which then seeks to blame them for that hardship.

Well, Australians are sick and tired of this heartless government, and they are responding to Labor's message that more needs to be done to improve their living standards, to increase their access to public health services. Labor will not blame struggling Australians for the hardship that this government has visited upon them. We recognise the problems they are facing and will act to fix them.

So Labor does not support the heartless philosophy behind the abolition of these early discharge provisions and believes that no compelling justification has been advanced for their abolition.

Instead, Labor will seek to amend the Bill to retain the early discharge provisions but to allow early discharge only after two years.

This proposal will create a greater incentive for potential bankrupts to enter into alternative arrangements—such as debt agreements—to avoid bankruptcy while still providing some relief for low-income debtors who have bitten off more than they can chew by virtue of the increased difficulties forced upon them by this government.

**Offence of incurring debts in two years prior to bankruptcy**

The Bill also seeks to amend section 265(8) of the Bankruptcy Act, which provides that:

A person who has become a bankrupt and, within 2 years before he or she became a bankrupt and after the commencement of this Act, has contracted a debt provable in the bankruptcy of an amount of \$500 or upwards without having at the time of contracting it any reasonable or probable ground of expectation, after taking into consideration his or her other liabilities (if any), of being able to pay the debt, is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding 1 year.

The Bill proposes to amend this section by removing the minimum threshold requirement of \$500.

The government says that the amendment will prevent the situation arising where a person could not be prosecuted where, before bankruptcy, they went on a spree and ran up a number of debts of less than \$500 each but who at the time had no "reasonable or probable ground or expectation of being able to pay the debt".

The government also claims that the amendment will bring the Bankruptcy Act into harmony with the equivalent Corporations Law provision.

Labor's concern is that the abolition of the threshold may result in the prosecution of debtors who have incurred small debts—of amounts less

than \$500—for example, in respect of unpaid utility bills or overdue rent payments.

This is more evidence that the government is out of touch with the basic needs of struggling Australians. The inability to meet the costs of these necessities of life should not result in the possibility of prosecution.

While there is an interest in bringing the insolvency law into harmony with the Corporations Law, the approach should not be inflexible. After all, corporations do not have to incur basic personal expenses necessary to live. People do.

Accordingly, Labor will seek to amend the section so that a person cannot be prosecuted for incurring a debt in respect of a reasonable or necessary personal or household expense without any reasonable ground of expectation of being able to pay the debt.

**Senator COONEY (Victoria)** (4.37 p.m.)—This is a busy day. It is the final day on which debate is taking place in this house and in this parliament. The **Bankruptcy Legislation Amendment Bill 2001** and the **Bankruptcy (Estate Charges) Amendment Bill 2001** deal with very important legislation. I see some representatives of ITSA here, and I pay tribute to them for the work they have done over the years. Bankruptcy is a difficult business in the sense that it tries to balance the need to have debts paid and for people to be responsible for the positions they put themselves in and at the same time it tries to get people back to a normal life so that they can go on free of debt and obligations. There are great issues of what is morally right as well as what is financially right in those areas, and I think over the years that has been kept in mind.

The Senate Legal and Constitutional Legislation Committee prepared a report on these bills, and it is in keeping with the usual high standard that has been set by the committee. On this occasion the committee was chaired by Senator Payne. Observations were made, and I want to take some time to mention one particular aspect. Those who gave evidence to the committee did so in a splendid way, but there were two groups who gave evidence that I want to mention: the Wesley Community Legal Centre and the West Heidelberg Community Legal Service. Both of those groups had some concern about how this legislation will affect the sorts of people

they act for—that is, the people who are struggling within this community, struggling with their finances and struggling with their social position, because money problems also bring social problems. I want to talk about those two groups, the Wesley Community Legal Centre and the West Heidelberg Community Legal Service. I want to say something about them because they represent a group of institutions and people in society who do splendid work for people in need, for people who are disadvantaged, for people who are not as fortunate as you and I, Mr Acting Deputy President, or as fortunate as all those who are in this chamber. Even though we are pressed for time on a day such as this, I think some time should be taken to acknowledge the work that a whole series of people and a whole series of groups do throughout society. For example, the churches have committees and institutions which do tremendous work, and I wish to acknowledge that. When we come back to a new parliament I will use some occasion to name some of these people.

On a topic such as bankruptcy it is not only, as it were, the large companies, the large banks and the people who are dealing with large sums of money that count, but also those who are affected by bankruptcy laws but are very modest in circumstance or, indeed, almost in abject poverty. So I take this occasion to mention those people, to mention those institutions and to mention those groups that go about trying to help not only society as a whole but also particular parts of it so that society as a whole may become a better and fairer place.

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (4.42 p.m.)—I thank honourable senators for their contributions, and I commend the bills to the Senate.

Question resolved in the affirmative.

Bills read a second time.

**In Committee**

**BANKRUPTCY LEGISLATION  
AMENDMENT BILL 2001**

The bill.

**Senator MURRAY (Western Australia)** (4.43 p.m.)—I seek leave of the Senate to incorporate a speech.

Leave granted.

*The speech read as follows—*

The Democrats are generally supportive of the Government's program to reform bankruptcy law. The Government is attempting to encourage people to consider alternatives to bankruptcy and to clamp down on those who are abusing the bankruptcy system.

The revelation that senior Sydney barristers have been using bankruptcy as a means of tax evasion has highlighted the need to ensure the integrity of the bankruptcy system. I note that some provisions in these bills increase the powers of regulatory bodies to deal with high-income earners who use bankruptcy for debt-avoidance purposes.

Unfortunately, the Government's legislation is unlikely to put an end to the some of the more outrageous abuses of the bankruptcy system. Ordinary Australians are rightly angry to see former corporate high-flyers claiming bankruptcy and avoiding creditors despite having substantial wealth at their disposal through some third party such as a family member or a Swiss friend.

These people should not be able to avoid creditors through artificial arrangements that secure their own financial well-being but result in great hardship to others who have entered into business arrangements with them in good faith.

While it is true that the bankruptcy system must prevent against abuse, care must be taken not to prevent access to bankruptcy by those with a genuine need to do so. Most bankrupts are low-income earners who owe relatively small amounts of money. Those who genuinely require recourse to bankruptcy should not face artificial barriers or be subject to unduly punitive measures. These are matters which will be pursued further at the committee stage.

I note that this Bill proposes to address bankruptcy law, but not the root causes of bankruptcy. Terry Gallagher, the Inspector-General in Bankruptcy, has commented that:

“While it is no easier to go bankrupt now than it has been for many years it is likely that excessive borrowing prompted by ready credit availability, perceptions of attainable living standards and a lessening of the stigma of bankruptcy have contributed to this increase.”

Another cause of bankruptcy and financial difficulty is gambling. I would like to read some correspondence we have received from the Inter-

Church Gambling Task Force regarding this legislation:

"The Inter Church Gambling Task Force has for a number of years been concerned about the impact of bankruptcy provisions on the seeking of assistance by people who have developed a problem with gambling. This has become particularly evident since the mass availability of gaming machines in Victoria since 1992. Numbers of people presenting to services for assistance have gambling problems and should be encouraged to consider bankruptcy as a means of financial stabilization. This stabilization is often necessary before the gambler can consider other personal and family support services to deal with other long-standing difficulties, which may have contributed to the gambling behaviour.

The current provisions of the Act serve to discourage people from seeking assistance and certainly from disclosing their gambling difficulties if they are considering bankruptcy. Section 271 of the Act as we understand it provides that a person commits an offence if, in the 2 years prior to the presentation in which the persons bankruptcy occurred they gambled or speculated rashly or hazardously, other than in connection with a trade or business.

While few people are recorded as reporting gambling as contributing to their financial distress the reports from services with which the Inter Church Gambling Task Force is associated indicate that in fact gambling is a factor in many bankruptcies of individuals where there are relatively small amounts owing. The Act as it currently stands appears to be doubly punitive to people with gambling addictions and who have got themselves into financial trouble. It fails to give recognition to the vast changes in public policy, which have not only legalised mass gambling and ensured mass exposure but also legitimised it in the minds of the public as a means of getting money when times are desperate. In the absence of mandated adequate information on gaming machines about the chances of winning and the losses accumulating, it almost seems entrapment on behalf of Governments to then keep in place provisions which preclude gamblers from seeking relief through bankruptcy under the legislation.

The Inter Church Gambling Task Force believes that even though section 271 is little used for prosecution, The Act should be

amended to remove reference to gambling and thus allow transparency for individuals with problems and the services, which support them."

The Democrats are concerned about the existence of section 271 of the Act, which provides for a maximum one-year prison term for people who become bankrupts partly as a result of gambling. The provision dates back at least to the early twentieth century and reflects attitudes towards gambling that are not consistent with contemporary views.

Bankruptcy is not a crime. It is a legitimate option for some people, and an important way of allowing people in dire financial difficulty to make a fresh start.

In the process of going bankrupt, some people commit crimes. They steal or commit fraud in attempts to pay their debts. They are quite properly subject to punishment for those crimes, but not for the fact that they have gone bankrupt.

Inconsistently, gamblers CAN BE punished simply for going bankrupt, possibly with a jail term. It is inconsistent to punish bankrupts with gambling addictions but not people with alcohol or drug addictions or, for that matter, any one else who goes bankrupt.

My office has been contacted by a number of groups who counsel gamblers, and the view that has been strongly presented to us is that this punitive approach to gambling does not assist the process of helping gamblers to deal with their problems. For many gamblers, petitioning for bankruptcy provides the stability and the fresh start that they need as part of the recovery process. If they cannot take advantage of the bankruptcy system for fear of imprisonment, their progress can be significantly hampered.

The Democrats will be moving an amendment to remove section 271 from the Act, so that gamblers are no longer liable to imprisonment for bankruptcy.

We will also be moving an amendment to make related companies liable for the debts of an insolvent company, in certain circumstances. That amendment is in accordance with the 1988 Report of the Law Reform Commission into insolvency. We have moved that amendment on 3 occasions in the past. We are looking to avoid a repeat of the Ansett/Air New Zealand situation, where one company manages another company and runs it into the ground and simply walks away from employees and other creditors.

Finally, we will be moving an amendment that will enable a liquidator to obtain repayment of bonuses paid to directors in the 12 months pre-

ceding the collapse of a company. This is an amendment which was foreshadowed by the Prime Minister on 4 June of this year, but on which he has not delivered. The context of the Prime Minister's comments was the One Tel collapse—those directors ultimately repaid their bonuses—but it isn't looking like the directors and senior managers of Air New Zealand are about to repay their bonuses.

The "bonuses" amendment is retrospective back to the date of the PM's announcement.

In relation to these last two amendments, I acknowledge that these bills are an unusual vehicle for the moving of such amendments. The situation I face is that the Government has made a commitment to address the matters that form the substance of the amendments but has failed to do so. This is my only opportunity, until some unknown date next year, to put this to the chamber in legislative form.

The Government made a commitment on this issue nearly four months ago. If they can produce a border protection bill in 24 hours, they can address this issue within a four-month time frame. More importantly, they can address my amendment between now and whenever we will be considering this legislation in committee. I am happy to accept changes the Government may suggest to my amendments that preserve its substance.

I understand the ALP will also be moving amendments which we will address when we reach the committee stage.

**Senator MURRAY**—I move Democrats amendment No. 1 on sheet 2372, revised:

(1) Page 59 (after line 23), at the end of Schedule 1, add:

**Part 3—Amendments relating to bankrupt corporations**

***Corporations Act 2001***

**267 Section 9**

Insert:

***performance-related bonus*** includes any amount paid to a director or executive officer of a company that is determined by reference to, or is paid contingent on, the performance of any of the following:

- (a) an individual person;
- (b) a group of individual persons;
- (c) a part of the company;
- (d) the company as a whole
- (e) a group of companies that includes the company.

**268 After subsection 588FE(6)**

Insert:

(6A) The transaction is voidable if:

- (a) it is a transaction involving the payment of a performance-related bonus; and
- (b) it was entered into, or an act was done for the purpose of giving effect to it, during the 12 months ending on the relation-back day; and
- (c) the amount of the bonus is more than \$40,000; and
- (d) the total remuneration paid by the company to the director or the executive officer during 12 months preceding the payment of the bonus is more than \$100,000.

**269 Application**

The amendments made by items 267 and 268 apply to performance-related bonuses paid after 7.30pm, by legal time in the Australian Capital Territory, on 4 June 2001.

**270 After Division 6 of Part 7.5B**

Insert:

**Division 6A—Liability of a company for the debts or liabilities of a related body corporate**

**588YA Liability of a company for the debts or liabilities of a related company**

- (1) When a company is being wound up in insolvency, the liquidator, a creditor of the company, a nominee of a creditor of the company or the ASIC may apply to the Court for an order that a company that is or has been a related body corporate pay to the liquidator the whole or part of the amount of a debt of the insolvent company. The Court may make such an order if it is satisfied that it is just to do so.
- (2) In deciding whether it is just to make an order under subsection (1) the matters to which the Court shall have regard include:
  - (a) whether the company provided services for or on behalf of the related body corporate; and
  - (b) whether the company occupied premises which are owned by the related body corporate; and
  - (c) the extent to which the related body corporate took part in the management of the company; and

- (d) the conduct of the related body corporate towards the creditors of the company generally and to the creditor to which the debt or liability relates; and
- (e) the extent to which the circumstances that gave rise to the winding up of the company are attributable to the actions of the related body corporate or an officer or officers of the related body corporate; and
- (f) any other relevant matters as the Court considers just and appropriate.

(3) An order under this section may be subject to conditions.

(4) An order shall not be made under this section if the only ground for making the order is that creditors of the company have relied on the fact that another company is or has been a related body corporate of the company.

The amendment has two parts, and I will deal with them separately. The first part of the amendment deals with the repayment of performance related bonuses. Subsequent to the collapse of One.Tel earlier this year, it was discovered that at least a couple of the directors had received substantial bonuses. There was a public outcry at the time, and ultimately those directors repaid their bonuses. On 4 June, and as a result of the One.Tel events, the Prime Minister—quite properly, in my view—committed the government to passing legislation to amend the Corporations Act which would require directors' bonuses to be repaid in certain circumstances. Three-and-a-half months later we have not seen those amendments, and in the meantime we have had another major failure, Ansett—obviously there have been other failures—and, as we understand it, substantial bonuses were paid to Air New Zealand directors this year, at least partly as a result of incompetence which they showed in controlling Ansett.

Those directors seem to have made substantial errors of judgment as directors and, while doing so, pocketed substantial bonuses. That should not be allowed to occur in relation to Ansett or One.Tel or any other company that goes broke and leaves creditors with anything less than 100 per cent of their entitlements. The Democrat amendment

makes a transaction voidable if it involved the payment of a performance related bonus to a director or executive officer, if it was entered into in the 12-month period before the commencement of the winding up, if the amount of the bonus was more than \$40,000 and if the total remuneration of the director or officer in the preceding 12 months was \$100,000, excluding the bonus. If a transaction fits those criteria, it will be voidable on application by a liquidator to the court.

The second amendment is one I have already moved on three previous occasions—twice in 1998 and once last year. I must stress that on each of those occasions, the Labor Party, as the alternative government party, have indicated strong support for its intent. On one occasion they supported the amendment concerned, and on one other occasion they put up a similar amendment themselves. It will make related companies liable for the debts of an insolvent company in certain circumstances set out in the amendment. Those people who have involved themselves with these matters—Senator Campbell and Senator Conroy, who are in the Senate chamber, are familiar with the work—have been aware of the background to it, originating in the 1988 Harmer Law Reform Commission.

In one respect I wish to apologise to the government concerning these amendments. They plainly would have been better set to other legislation. I understand that. However, this is the only legislation to which we could attach what we regard as extremely important public interest bills. If the government had come forward and fulfilled the statement of the Prime Minister in the first place, we would not be in this situation late on the last day of this sitting. That is as far as I will go with an apology, because I will never apologise for acting in the interests of Australians, and this is in the interests of Australians and has a great deal of public interest support.

**Senator CONROY (Victoria)** (4.47 p.m.)—Labor supports these amendments. I seek leave to incorporate a speech outlining the Labor Party's position.

Leave granted.

*The speech read as follows—*

**Democrat Amendments***Items 267 -269*

Labor supports these amendments.

Items 267-269, are putting into effect what Prime Minister Howard said he would do but has failed to do so.

When One-Tel collapsed, Prime Minister Howard was very quick to suggest in the media that the *Corporations Act* should be amended so that bonuses paid to senior management when their companies then subsequently collapse, can be recovered.

The Prime Minister said:

“We’re looking at various options and in the time available we haven’t been able to settle on those various options. But, we do think the law should be changed to stop this sort of thing occurring in the future.....Well, we’re not going to waste any time getting it ready but precisely when it might get through I don’t know but I would imagine that the Opposition would give it support.”

That was on 4 June this year.

Since then, we have seen a number of further corporate collapses—including Ansett—and in number of those cases, employees entitlements have been lost.

And yet, the Prime Minister has not presented legislation to Parliament to put into effect what he promised he would do—a change in the law which would help employees recover their entitlements.

We have to ask why the Prime Minister hasn’t been able to present legislation.

Why, having made those statements in the media, he has not followed up on it

Did it just get too hard for the Prime Minister?

Did he realise that he couldn’t protect employees without getting tough on senior management?

Did he decide that he didn’t want to make any changes which may adversely affect his brother and director Mr Stan Howard?

Well, Labor is prepared to act to help employees and to put into effect what Mr Howard said he intended to do.

*Item 270*

I also wish to say some specific comments on Item 270.

On Monday, Kim Beazley introduced a Private Members Bill entitled the Corporate Responsibility and Employment Security Bill 2001, which amends the Corporations Act in the way envisaged now by Item 270.

That Bill was introduced because Labor wants the government to legislate to prevent companies from rearranging their corporate structures so as to avoid having to pay what they owe their employees.

The Government, however, has refused to do this. That refusal has been to the great cost of working people and their families.

This amendment today aims to do what the Government should have done years ago.

It outlaws the kind of behavior that was pioneered in the Patricks dispute—and encouraged by this Government—and has been used in cases of corporate collapse ever since.

This amendment will provide security to employees and employee entitlements.

This amendment is necessary.

It should have the support of the Government if they are serious about protecting employee entitlements

Amendment agreed to.

**Senator MURRAY (Western Australia)**

(4.48 p.m.)—Before I move the next Democrat amendment, I want to inject a light and decent moment into these proceedings. In the government box is Rose Webb. It is apparently her last day in this function. She is going back to ASIC. Rose has acted with great courtesy and professionalism with regard to my office, and I wanted to put on the record the good wishes of the Democrats to her.

**The CHAIRMAN**—Thank you, Senator Murray. As the official cannot say anything, I will thank you on her behalf.

**Senator MURRAY**—I appreciate that, Madam Chair. I move amendment No. 1 on sheet 2366:

(1) Schedule 1, page 51 (after line 3), after item 208, insert:

**208A Section 271**

Repeal the section.

My office has been in consultation with the Attorney-General’s Department about our concerns with regard to that matter. The issue is one of allowing the approach to gamblers to be retained in its present form. I will move it on that basis. If there are questions, I will take them.

**Senator BOLKUS (South Australia)** (4.49 p.m.)—For the reasons given by Senator

Conroy in his earlier contribution, the opposition supports this amendment.

Amendment agreed to.

**Senator BOLKUS (South Australia)** (4.50 p.m.)—by leave—I move opposition amendments (1) and (2) on sheet 2418 together:

- (1) Schedule 1, item 154, page 39 (lines 25 and 26) omit the item, substitute:

**154 Subsection 149S(1)**

Omit “6 months”, substitute “2 years”.

- (2) Schedule 1, item 205, page 50 (lines 28 and 29) omit the item, substitute:

**205 Subsection 265(8)**

After “has contracted a debt”, insert “(other than in respect of reasonable and necessary household or personal expenses)”.

The first amendment goes to the early discharge provisions. Under the administration of early discharge provisions, low income bankrupts who have never previously been bankrupt may apply for early discharge after six months from the time that he or she filed a statement of affairs with the registrar, provided that they meet very strict eligibility criteria. The government has made no compelling case for the abolition of the early discharge provisions, so our amendments seek to retain those provisions but provide that the early discharge will be available only after two years, not six months.

The second amendment goes to offences in respect of incurring debts in the two years prior to bankruptcy. The bill is intended to prevent a situation arising whereby a person could not be prosecuted where, before bankruptcy, they went on a spree and ran up a number of debts of less than \$500 each but at the time had no ‘reasonable or probable ground or expectation of being able to pay the debt’. The amendment will also bring the Bankruptcy Act into harmony with the equivalent Corporations Law provision.

The problem that we have here is that this may force people into an unnecessary situation that makes it more difficult for them to resume honest participation in life. We are concerned that the abolition of the threshold may result in the prosecution of debtors who have incurred small debts, for example, in

respect of unpaid utility bills, overdue rent payments and so on. The inability to meet those costs, we believe, should not result in the possibility of prosecution. While there is an interest in bringing insolvency law into harmony with the Corporations Law, corporations do not have to incur basic personal expenses necessary to live, and that is the distinction that we draw between this law and the Corporations Law.

**Senator MURRAY (Western Australia)** (4.52 p.m.)—Could we please vote on the amendments separately?

**The CHAIRMAN**—The question is that opposition amendment No. 1 on sheet 2418 be agreed to.

Question resolved in the affirmative.

**The CHAIRMAN**—The question is that opposition amendment No. 2 on sheet 2418 be agreed to.

Question resolved in the negative.

Bill, as amended, agreed to.

**BANKRUPTCY (ESTATE CHARGES) AMENDMENT BILL 2001**

Bill agreed to.

Bankruptcy Legislation Amendment Bill 2001 reported with amendments and Bankruptcy (Estate Charges) Amendment Bill 2001 reported without amendment; report adopted.

**Third Reading**

Bills (on motion by Senator Ian Campbell) read a third time.

**GREAT BARRIER REEF: SEISMIC SURVEYS**

**GREAT BARRIER REEF: OCEAN DRILLING PROJECT**

**Return to Order**

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts)** (4.54 p.m.)—I table documents in response to two orders of the Senate—seismic surveys and the assessment of ocean drilling.

**BUSINESS**  
**Routine of Business**

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.55 p.m.)—by leave—I move:

That valedictory statements may be made today, and a senator shall not speak for more than 10 minutes.

Just so that all honourable senators know where we are at, we have finished dealing with the bills that we had listed for consideration today. I thank all senators for their contribution towards that. We do have to wait for a couple of messages to return from the other place. While we are waiting for messages on those bills to come back from that other place, we will move forward with valedictory speeches and the adjournment debate. The whips have prepared a list but I know that, for example, Senator Tambling is intending to not come back here after the next election and I know a number of people will want to say some things about that. I want to make some contributions as well. I have spoken with Senator Carr, Manager of Opposition Business, who has indicated that a number of opposition speakers wanted to make adjournment speeches. This would be a useful way of filling in time while we are waiting for documentation from the other place.

Question resolved in the affirmative.

**VALEDICTORY**

**Senator TAMBLING** (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (4.57 p.m.)—It is with a great deal of both pleasure and regret that I stand to address the Senate for the last time. Fourteen years of memories are not easy to summarise in 10 minutes. My staff have prepared sheets of memories to prompt me with respect to personal and electorate issues and federal and Senate highlights. I will have to print them in newsletters and in other places to do them justice. Certainly it will be a pleasure to go back and reflect from time to time on such an important contribution.

I was also very privileged in government to spend time in the Darwin City Council in the early 1970s; in the Legislative Assembly of the Northern Territory in the 1970s and, associated with that, the Darwin Reconstruction Commission; to come here to Canberra in the early 1980s in the last years of the Fraser government in the House of Representatives; and to come here into the Senate in 1987.

At the outset, can I just say thank you to thousands of people who have worked so collaboratively and with such cooperation and friendship. I will start to name a few and I will feel strongly about them, but I am sure that I will miss many.

I will reflect for a moment on this parliamentary precinct and the parliamentary village, as I call it. I was pleased to come from the former Parliament House to this building when it was first established. What makes a precinct and a village like this really work and be so crucial is the fact that it comprises people—not the buildings, not the committees, not all of the other things we do in parliament. Can I pay tribute to the clerks, in particular to Harry Evans and Anne Lynch, and to all of the people who work for and support them, particularly Frank and Lorna in this chamber who, along with their colleagues, service us so admirably and so well.

There are so many other services right through the building. I think in particular of Kate and the staff in the dining room who try to keep my weight in measure and advise me on diet and control. I think of the nursing station on which I reflect so well because, since my open heart surgery in 1998, I have needed and depended on them. There are also so many other facilities right through the building, from the library to the gardens, and so many areas in which I have been pleased to have been involved. I would be pleased if Madam President could convey to the Canberra host community my pleasure at having developed so many friends in the wider Canberra community. It has been a pleasure to spend time here, particularly on weekends between sitting weeks, and to develop hundreds of friends across the Canberra community. This is a beautiful city, it is full of won-

derful facilities and it has been a pleasure to have been part of it and to have felt hosted at all times.

I would also like to pay tribute to the Commonwealth Public Service and administration servants, and I describe them like that very particularly. Whether it is the people who came before us in Senate estimates and so many other committees or those who worked with us in opposition through to government, I think it is incredibly important to recognise that we have a very professional, very dedicated Commonwealth Public Service and administration.

There are so many other people who serve parliamentarians. I think particularly of the cumulative days, weeks and months I must have spent on aircraft and travelling. When you think of the people of both Ansett and Qantas who have served both me and my staff in our travel on those long journeys to and from the Northern Territory or within the Territory, you realise how important they are.

Let me reflect for a few moments on what has been my most pleasurable activity and that has been being part of the Howard government since 1996. I was very pleased to serve previously in shadow ministries, from 1990 to 1996, but that does not equal the task of being a member of the ministry and a parliamentary secretary, firstly in Transport and Regional Development, then in Social Security and for the last few years in Health and Aged Care, working so collaboratively and cooperatively. It was a particular pleasure to work with Senator Newman in Social Security and with Dr Wooldridge in Health and Aged Care. It has been a real pleasure to be part of government.

Importantly, it is the Northern Territory electorate and constituency that I have been so pleased and proud to represent. It is a very diverse community and, as I said yesterday when I listed the unfinished business I hope other people will pick up, there are sheets and sheets of issues that have arisen over the 14 years. I will not take time to talk about those now: I will do that at the Darwin Press Club on 11 October, when I will look particularly at and pay tribute to my electorate, my constituency and my community.

The members of my personal staff who are in Canberra are here in the gallery. To Julianne, to Lisa, to David, to Craig, to Anne, and also to Chris and Sharon in the Darwin office, I say thank you for being my latter-day servants. I took out a list of my staff and saw that in my 14 years here I have engaged some 45 people. Eighteen of those were permanent, 10 were casuals, 10 were university students or interns, six were departmental liaison officers and there was a whip's clerk on one occasion. I still have a phenomenal relationship with those people, who dedicated themselves to their work and served me so well. To them I pay tribute.

I would also like to reflect upon my own particular circumstances and those of my political party. In 1974 I was a founding member of the Country Liberal Party in the Northern Territory. Until this year, I have enjoyed a phenomenal relationship with that party. I have been an integral part of it, and I became its godfather. Perhaps that had its own consequences this year, when we had a divorce, if you like, or a parting of the ways over an issue where I felt national priorities were more important than parochial or local Territorian ones—that issue being gambling. But the Country Liberal Party is still a great party, because it is an amalgam of the Liberal and National parties elsewhere in Australia. While we may be having a few struggling moments at the moment, I have been pleased to be associated with its achievement in a long period of government in the Northern Territory and to recognise so many parliamentary colleagues, particularly the chief ministers of the Northern Territory with whom I have had very special relationships in that period.

I also acknowledge very importantly that in this chamber I have worked with and been supported, criticised and cajoled by two very important Senate colleagues on the other side of the fence. Over a long period, former Senator Bob Collins and I developed a very special relationship, and in the last year or so I have developed a similar relationship with Senator Trish Crossin. I acknowledge that as being important and as being also the sort of team that we can form and bring to this place from the Northern Territory. I trust that my

successor, who I trust will be Nigel Scullion, will equally develop very special relationships in the future.

I would also like to take the opportunity to pay a very special tribute to my family. As I have been packing the memorabilia from my office, I have reflected on a collage of photographs on top of my cabinet. It shows my wife Sandy, my son Coryn and my daughter Amalia, and the pictures were taken in 1987, which was the year I came here. Gee, how they have changed!

**Senator Patterson**—So have we.

**Senator TAMBLING**—All of us. My public exposure in this place has had a different impact on all of us—me, Sandy, Coryn and Amalia. I thank them for their love and support, their criticism and their differences. My son and I have very important political differences. My daughter and I are probably closer in a political sense, but there are areas where our vision of the future is equally shared with that of so many other Territorians. It is only because of that dedicated and very close personal family support that I have been able to do the job I have done in this place.

I said a few moments ago that I had counted up the number of staff I had engaged: the 45 of them. I also asked the library to prepare for me a running sheet of the number of senators in this chamber with whom I have shared the debates and the activities of this particular place. I look forward to seeing that number and then keeping in touch with everybody in the future in so many other ways. It is not so much a matter of thanks; it is a matter of pulling together those areas of complementary activity that are so very important to all of us. I leave this place with many memories and I am sure that as I reflect on them in years to come I will miss this place. At the same time, I hope that Territorians will feel that they have had value for my contribution here.

#### COMMITTEES

##### Economics References Committee Report

**Senator MURRAY (Western Australia)**  
(5.08 p.m.)—I seek leave to have my speech

on the Mass Marketed Tax Effective Investment Schemes incorporated in *Hansard*.

Leave granted.

*The speech read as follows—*

I would firstly like to thank the members of the Committee secretariat. Thank-you to Peter Hallahan, Alistair Sands and Sarah Bachelard.

This was a lengthy inquiry. It was complex inquiry and aspects of it were very emotional.

I want to reiterate that the Committee accepts that the great majority of investors in these schemes were not aware of the tax mischief in the schemes—to put it simply, they are not tax cheats. They are ordinary Australians trying to provide for things like their retirement and the cost of educating their children.

Along side the financial burden which has fallen on many people as a result investing in these schemes, the act of being branded a tax cheat has been the most distressing aspect of this whole mess.

I visited Kalgoorlie about 6 weeks ago. You only need to sit down with a few of the residents who invested in the schemes and chat with them on a one-to-one basis to realise that these people do not deserve to be penalised and they don't deserve to be involved in this debacle.

A significant aspect of the inquiry was seeing the emotional damage that these schemes have caused. They have caused substantial financial harm to many people and that is a matter of dollars and cents. I understand that officers of the tax office are trained and expected to protect the revenue and work by the rule and not by emotions.

As a Committee that is trying to determine a solution to these problems, I think it was necessary for us to understand all aspects of what those involved have experienced. That ranges from understanding the nature of the schemes and the amounts involved, to the collection methods of the ATO and then to the emotional trauma that has damaged families.

In arriving at the recommendations contained in the report the Committee has searched high and low to find solutions that minimise the burden on the taxpayers whilst at the same time recognising some tax must be paid.

My sincerest congratulations and thanks extend to the Chair, Senator Murphy. I know that Senator Murphy has taken it on himself to be as generous as he could to the disaffected taxpayers whilst at the same time being realistic about what the gov-

ernment would accept and what was fair to taxpayers generally.

I anticipate that the Committee may be criticised from both sides—some saying that the recommendations are too lenient and other that they don't go far enough. To those people I would say that this was a tremendously difficult inquiry. We have done our absolute best to find a fair solution so that as many people as possible can put this behind them and move on with their lives as soon as possible.

#### VALEDICTORY

**Senator CROSSIN (Northern Territory)** (5.08 p.m.)—I stand here this evening in the chamber to pay tribute to Senator Grant Tambling as I feel it is not only my duty but something I personally want to do on behalf of all Territorians—and not just those Territorians who have backed Senator Tambling through the Country Liberal Party or through a vote at the ballot boxes but all of us who have known him and have got to understand and work with him. That particularly includes me in the last couple of years.

In preparing for tonight's recognition of his work, I had a look back through some of the things that Senator Tambling has done and some of the words he has said. There are a few things that go unrecognised perhaps in Senator Tambling's work and that is that he is one of the few Australians ever to have sat in a chamber at all levels of government: at local city council level, in the assembly in the Northern Territory, in the House of Representatives and in the Senate. In talking to his former colleague today—the former Senator Bob Collins—as Bob was wont to do, he tried to make a light-hearted comment about your going, Senator Tambling. His comment to me was that until you hit the Senate with him in 1987 you were known as the 'one term Tambling', having spent only one term in each of those places. But Bob Collins did ask me to pass on to you today his thoughts and his best wishes for your future. He was calling me from the outback regions of Jabiru, as he is wont to do from time to time these days.

I also had a look at Senator Tambling's first speech in this chamber. At the time, you pointed out that it was not in fact a maiden speech because you had given that sort of

speech a number of other times. At that time, you mentioned a wide range of businesses that were just starting to get developed in the Northern Territory. I do not know if you remember that. But it is interesting to have a look back at the businesses that Senator Tambling mentioned in 1987—those that were just starting to get going—and how fruitful and profitable those businesses are in the Territory and how much they have contributed to Territory life.

When I first was sworn into this chamber in 1998, Senator Tambling was one of the many people who came up to me and offered me all sorts of advice and assistance. You often hear from time to time, as we step outside this place, a bit of a public perception that, as we are on different sides of the political fence, they cannot possibly see how we can get on with each other and work with each other. But that has not been the case between me and Senator Tambling. Probably some people in this place might be quite surprised about that. I must say a thank you to you, Senator Tambling, for the assistance you gave me when I first came into this place. I much appreciate that support and that help. The times when Senator Tambling and I would be talking to each other in corners or in the corridors, we were known to be having a 'Territory caucus' and people would often be suspicious about what we were up to. But it was always, and this is to Senator Tambling's credit, in the best interests of Territorians, no matter what their background was and no matter what they did in the Territory—but particularly for businesses.

In concluding my remarks, I also want to pay tribute to your staff, Senator Tambling, and to your wife, Sandy. Former Senator Bob Collins reminded me today that probably she is the better half of your relationship. That could well be said about a number of us when they look at our partners and make a comment about that. I have known Sandy to provide support to my husband and family and that has been much appreciated. To your staff: they have never knocked back a request from my office when we have rung for assistance with finding our way through the paperwork and the trails of the bureaucracy,

particularly in the initial stages when we first got started and tried to set up an office.

On behalf of all Territorians right across the Territory, even our colleagues and constituents in Christmas and Cocos (Keeling) Islands, and on behalf of former Senator Bob Collins and the people you have worked with, I wish you well. I just want to finish with one little quip: when my family heard about what had happened to you in the last few months, it struck a raw nerve with them, given my experiences earlier this year, and they could relate very well to what you had gone through. It was my five-year-old, little Katie, who said to me, 'Mummy, I hope it wasn't your fault when you put Senator Tambling's name on that chair next to you.' I hope that was not the case. I hope—and I will take this opportunity to say it publicly—it was the short-sightedness of your colleagues in the Country Liberal Party in the way in which they treated you during that episode, particularly since you had won pre-selection earlier this year. But they will have to live with their conscience for the rest of their days.

We see leaving this chamber a person who has given more than 100 per cent of his time to the Territory and much more than 100 per cent of his efforts in trying to improve the lifestyle of people in the Territory and to provide some equity for the different groups in the Territory, particularly for Aboriginal people. I think not only the Territory but this chamber will see your going as a sad loss. All the best; good luck, no matter where your path takes you; and, on behalf of Territorians, thanks for the work you have done for them.

**Senator SANDY MACDONALD (New South Wales)** (5.15 p.m.)—I want to address some words about Senator Grant Tambling, my friend and colleague. He leaves here with a lot of friends and a very commendable record of public service, in the Northern Territory assembly as the member for Fannie Bay between 1974 and 1977, in the House of Representatives as the member for the Northern Territory between 1980 and 1983 and of course in the Senate, where he was elected in 1987, 1990, 1993, 1996 and 1998. He has been in the federal parliament 17

years, which is a very long time. Of course, as Senator Crossin mentioned before, he had in fact served a time in local government before that. It is quite unique to have that experience of four levels of public service and public representation.

Unlike the rest of us, as we all know, Territory senators are up every three years. For that reason, and others, Senator Tambling has always considered his role as very similar to that of a member of the lower house. Of course he had been a member of the lower house for three years. He always worked extremely closely with the coalition if we had a coalition representative in the Northern Territory, as we did for three years with the Hon. Nick Dondas. When Labor has represented the lower house, as it does now, Senator Tambling's office has carried a substantial constituency load. He is, as a result, one of the most recognised and respected faces in the Territory.

One of the jobs he has particularly enjoyed on behalf of Territorians has been as a reconstruction commissioner in the rebuilding of Darwin after Cyclone Tracy. For somebody who has connections with the Territory which go back about 70 years with his father, this was an experience that was particularly suited to somebody who had such a long record as a Territorian. The work of that commission is a fantastic legacy left both by Senator Tambling and by the commission. Darwin was rebuilt with substantial thought and improvement, and the Darwin we see today is very much a legacy of the particular efforts of the commission.

Senator Tambling has served on many Senate committees. His particular interests, as we all know, have been in areas which have actually improved people's standards of living, their quality of life. Senator Crossin did mention his commitment to Aboriginal people in the Northern Territory, but the great driving force in his public service has been his commitment to people. He has a very keen interest in social issues—issues which actually improve the prospects of average citizens. He is a very nice person, a very compassionate man. This came out often in his committee work. He served widely on committees with a social policy bent. I

particularly note his work in the Senate Community Affairs Committee.

The highlight of his long career has been his work in both the Howard ministries, as the Parliamentary Secretary to the Minister for Transport and Regional Services, the Parliamentary Secretary to the Minister for Social Security and, most recently, the Parliamentary Secretary to the Minister for Health and Aged Care. I have sat behind Senator Tambling now for many years, and I have never seen a more diligent parliamentary secretary. Not a question time goes by without those files being pored over by Senator Tambling. I suspect, Grant, that that will be one responsibility of your public life that you will not miss. You were diligent.

Wherever I had a problem—and, I expect, any other senator had a problem—in the areas of responsibility that Senator Tambling had you could not have found a more helpful person in terms of briefing notes or finding information. He was also very receptive to ideas—a very good politician in that regard. Before 1996 he served with some diligence and distinction in what could only be described as the dog days of opposition, in the John Hewson years, and his policy work there stood the strength of time.

He also has represented Australia with distinction overseas on many occasions, and as we all know he would be the sort of face of Australia that we would all be very proud of. He is the sort of person you feel very comfortable doing things with. He is a very reliable person, a very honest person, and I have enjoyed his company. I say to him and his wonderful wife, Sandy: all the very best for the future from me, my colleague Senator McGauran and my leader, Senator Boswell, who unfortunately cannot be here today. Godspeed, Tambo. Your family has every right to be very proud of you.

**Senator TCHEH (Victoria)** (5.20 p.m.)—I rise also to speak in praise of Senator Tambling. In some respects, because I am only a recent acquaintance of Senator Tambling, perhaps I am not all that well qualified to speak about him. Unlike many members in this chamber that have known Senator Tambling for many years, I only came across him when I arrived here less than three years ago.

We could have met earlier, I guess, because some years ago—it seems a lifetime ago—after Cyclone Tracy I applied to become a public servant in Darwin on the reconstruction authority. Whoever vetted the applicants probably made the right decision in not choosing me, because I have subsequently been to Darwin in winter and found that the heat is extremely oppressive.

I did not have the honour of meeting Senator Tambling until I came to this chamber. But I do not feel discouraged in getting up to say something about him, because the mark of a good man or woman is not only that they are liked and valued by someone who has known them for a long time but also that someone who has known them for only a short time has also been enormously impressed by the personality and the goodness of that person. Certainly Senator Tambling is such a person, and I feel that I am well justified in getting up and saying something about him despite my limited knowledge.

I will give one example of the contact I have had with Senator Tambling. Because of my background, rightly or wrongly the Chinese community look to me to represent their interests. One area in which the Chinese community is trying to promote our cultural background and knowledge to benefit the Australian community is the application of traditional Chinese medicine and also traditional Chinese medicinal therapeutic goods, which are in Senator Tambling's portfolio. About a year or so ago, I was approached by the Chinese community's practitioners seeking Commonwealth support for some of the projects they were doing.

Even though I personally know very little about traditional Chinese medicine, I hardened my resolve and I approached Senator Tambling to seek his support. I was both delighted and chagrined to find that Senator Tambling knew a great deal more about traditional Chinese medicine and therapeutic goods than I ever thought possible. He was very supportive—in an objective way, not in an uncritical way—of what I presented to him. In a very short time frame and without a lot of complication, he gave his support where it was deserved. I think that is a very good indication of the way the man works.

*Government senator interjecting—*

**Senator TCHEN**—Okay, chuffed, not chagrined—but I was chagrined! I feel honoured to be present at this remarkable occasion, even though I know that it is an untimely retirement for Senator Tambling. Nevertheless, I am happy to be here to witness all his friends—and perhaps some of his would-be political enemies—say the truth about his value as a man and as a politician, a servant of the people. I wish you all the best in your life after politics, Senator Tambling. I am sure that you will be every bit as successful and as well regarded as you have been while you were here.

**Senator COONEY (Victoria)** (5.25 p.m.)—I would like to endorse all that has been said up till now. Senator Tambling, may I say—and this is a bit of an ‘in’ joke, I suppose—that the heart-to-heart conversations that we have had have been reassuring to me, both in a semijocular way but also in a very serious way. I would like to put that on the record: they have been very reassuring.

You have always graced this place. Your contributions were contributions of substance, without the nastiness that very rarely but sometimes creeps into this place. You go away leaving the place a better place than that which you came to. I think that is something that is often said, but it is often said in circumstances like this because it is true. I am very pleased to have met you and I wish you all the best in the future.

**Senator COONAN (New South Wales)** (5.27 p.m.)—I of course wish to associate myself with the comments of all the previous speakers in wishing Senator Tambling all the very best. He has had a most distinguished career in another parliament and also in this place. If members of the public could actually know the dedication that Senator Tambling has put into his job, he would be right at the forefront of a public rethink on how politicians behave and their value to the Australian people and to this nation.

Senator Tambling has always had an absolute passion for everything he does and for his portfolio. His portfolio area is one that others might have considered rather dry; he has turned it into an art form and manages to

make it all sound very exciting and relevant, as indeed it is. It is a very important area, and he has developed it and made it very much an area of expertise. I am sure it will be a fertile field for him to look to for an occupation beyond this place, and he will carry it out with his usual distinction.

I have always admired his great passion and dedication to indigenous issues and to the people of the Northern Territory, be they black, white or any other colour. Senator Tambling is truly colourblind in the way in which he approaches those issues, and for that he will be remembered and commended. He is a real people person, and he is someone whose company I have enjoyed on many occasions. His warmth, his intelligence and his great sense of humour in this place will be sorely missed, and I wish him all the best.

#### PETITION

**Senator COONAN (New South Wales)** (5.29 p.m.)—by leave—I present a petition on behalf of 1,632 signatories urging the Minister for Defence to resolve issues relating to the North Penrith urban investigation area and the impact on two historic homes, Thornton Hall and Combe Wood, should the proposed development proceed in its current form. The petition was not presented to me in the proper form but the issue is of great significance to the petitioners. I thank my colleagues for leave to table the petition.

Petition received.

#### VALEDICTORY

**Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs)** (5.30 p.m.)—I am going to be very brief because there are other colleagues who wish to follow. I know Senator Tambling will thank Senator Crossin privately, because he is not allowed to get up and speak again, but I want to put on the public record my appreciation—and I am sure I can speak for Senator Tambling—of the very gracious contribution that Senator Crossin made. Those sorts of things do not happen in the chamber very often, and I think they do help the public to know that we are humans when it comes down to it. Somebody just gave a

very funny look across the chamber, but there is a human element. When the chips are down and there is sickness, illness, you realise that humanity does prevail in this place. It should happen more often. I thank Senator Crossin for that contribution.

Senator Tambling and I came into the Senate at the same time—1987. It has been said here today that he has an absolute commitment to the Northern Territory. There is no doubt about that. One of the things that was very obvious for those of us who came from the south—and we do not often talk about ‘the north’ in the south—was that in the north they talk about ‘the south’. We had not ever experienced the north—and I had never been to the Northern Territory—and Senator Tambling felt it was important that all of us got to know the Territory and the issues that he was talking about. When people criticise us for travelling and using our travel allowance, I have to say that I think it is absolutely imperative that we travel and see Australia from other people’s points of view, that those of us who are in large metropolitan cities try to understand, from visiting, the issues that affect places like the Northern Territory.

I remember a visit I did with Senator Tambling in which we travelled in a light aircraft. I am not good in light aircraft, and I admire anybody from the Territory or Western Australia who spends a lot of time on them. Thank heavens I can get around Victoria by driving, because the last thing I like doing is getting into light aircraft. It hails from my childhood and flying in Cessnas when I was a little girl.

**Senator Knowles**—They’re thrill-seekers.

**Senator PATTERSON**—I just want to be a nice calm Victorian who drives. I was then shadow minister for everything. It seems like I often get everything. I was shadow minister for women, the arts, aged care and senior citizens, so Senator Tambling was going to make sure I saw all connected with those on this trip. So we flew in this light aircraft and the first place we went to was a remote station, and we had to actually fly over the airstrip to get the cattle off it before we landed.

**Senator Crossin**—An airstrip?

**Senator PATTERSON**—It was a sort of airstrip. It was carved out of the dirt and dust. Women had driven something like 400 kilometres to come and have a morning tea with me. That emphasised to me the difficulty those women had in accessing health services in the remoteness, and how isolated they were with small children with their husbands gone for days off the property. It gave me a real sense of respect and admiration for the people of the very remote parts of Australia—not just remote but very remote parts, parts that most Australians in metropolitan Australia never get to see and never get to understand. I got to understand them because Senator Tambling said to me, ‘You can’t look at issues affecting women and families if you don’t visit remote places,’ so I thank him for that.

Somebody has already spoken about his commitment to indigenous people. He was absolutely emphatic that I should meet people from the Aboriginal community in the Northern Territory, and we went out with the Julikari night patrol—the grandmothers of Tennant Creek who had taken it upon themselves to address the issues of alcoholism and of people not necessarily adhering to the law. We went around with them—I sat in the back of their night patrol—and I saw them face some very difficult situations of dealing with some people who, because they had had too much to drink, were abusive. These women were there with a certain respect because they were elders in their community and were able to do and achieve things that nobody else could achieve. Again, I gained great respect for and greater understanding of the way in which indigenous communities can actually assist themselves and work to better their own communities. Again, that was because Senator Tambling took the time out.

We went to look at arts in Alice Springs. We looked at the issue of AIDS in remote areas. It was a fabulous opportunity, and Senator Tambling gave me an enormous amount of time because he wanted me to understand the issues affecting people in the Territory and to put that understanding of the issues into implementing our policies.

You have these memories in parliament. I have some memories of going to the Antarctic with Senator Knowles—that was remote—and of flying on that trip to the Territory in a tiny plane in the night. You could not see any lights on the ground but you could see the stars in the sky. I felt that Senator Tambling and I and the pilot were in a little capsule. When he told us ours was the only plane flying in South Australia or the Northern Territory at that time—the only plane in the air—I suddenly felt very isolated. I realised how isolated it was, and that there was nobody to come to help us if something happened. It was one of those magic moments when you experience something that you most probably will never experience again.

I suppose Senator Crossin and Senator Tambling are saying, 'So; we do that all the time,' but, for those of us who do not even see the stars in metropolitan Melbourne, to be up there and to be able to see so clearly and just realise how small we are and how really unimportant we are was one of those very special moments. I thank Senator Tambling for his friendship. When I became a parliamentary secretary he had more experience than I had, and he gave me some very good advice about dealing with some issues. When I had a problem I would ask him about it and he would say, 'This is the way I've dealt with it.' I have been able to implement some of the things he has done in my portfolios, and I appreciate that.

I also thank Sandy and Grant for their friendship, for their hospitality in their home when I have been in Darwin. Their home is always open to all of us. It is not always the case when someone leaves this place that they will remain a friend. Sometimes in work situations they are friends but cease to be friends when they leave. I hope and pray that Sandy and Grant will remain friends of mine. I thank his family for letting him do this job, because without families helping you to do this job it makes it pretty tough. I am sad the way he is leaving. Some of us get to choose the time we leave this place—others do not. He did not choose to leave. I believe his party made a very bad decision. I regret the way in which he is leaving but he will do so

with great grace, with no bitterness that I have seen and I think that speaks volumes for the man that we are saying farewell to in the chamber. I thank him for his friendship. I wish him all the best. I wish him and Sandy a long and very active new career path.

**Senator KNOWLES (Western Australia)** (5.38 p.m.)—I would like to join with my colleagues in saying farewell to Senator Tambling. We have had a great time together over the years. He was National Party Whip when I was Deputy Whip with you as Whip, Madam President. The three of us had a fair bit of work to do but we had a fair bit of fun as well. I remember many a day sitting in here when the days were pretty dim and dark for us in opposition and they seemed to never end. Yet Senator Tambling and I were able to share a joke or three or six or twelve, and he was always as reliable as clockwork and terrific to work with.

You have been an excellent parliamentary secretary, Senator. Many of us thought that you really deserved even much more than you ever got in your career. I think you have excelled yourself in the positions that you have held. You have been superbly supported—

**Senator Ian Macdonald**—He chose the wrong party.

**Senator KNOWLES**—That probably is right, Senator Macdonald. You have been excellently supported, Senator Tambling, by your very good staff—and you have had terrific staff and I believe that is the mark of a person who has been able to obtain and keep good staff. You have been supported by no-one better than your dear wife, Sandy. I hope that we can always stay in touch because—as Senator Patterson has said—there are occasions in this place where you meet people who you think are terrific people. You, Grant, would certainly fall into that category in the minds and the hearts of so many of us. You and Sandy will certainly remain friends of all of us. Good luck Tambo. Good wishes. We look forward to keeping in touch. I hope what is in store for you is very exciting and fulfilling.

I also want to thank one other person who will not be here when we come back after the

election. I do not wish to embarrass him but he just happens to be sitting in the chamber tonight as well, the Usher of the Black Rod. Some people might not know that Rob is leaving us before we come back. Rob Alison was Usher of the Black Rod when I came here in 1984. I thought, 'Here's a guy who knows everything about this joint and sizes everyone up as they come through the door and gets to know them pretty well.'

**Senator Ian Macdonald**—That's just to straighten you out.

**Senator KNOWLES**—Yes. He has straightened me out a few times, I can tell you. He has straightened a few of us out at times. It is rather sad when we see someone who has played such a vital part in this building, riding off into the sunset of his own choice. Rob, may I wish you the best of everything, and on behalf of my staff as well say a huge thank you for the work you have done for all of us. You have always been prepared to do anything that we have asked—almost—and if you haven't you always had a damned good excuse as to why you haven't or couldn't. It has been terrific to have someone who is as knowledgeable and supportive as you are because this place can be very difficult to find your way around when you are new but it can also be tricky when you have been here for as long as I have. Thanks, Rob, for everything. I wish you a great time, wherever you go, and I hope we can remain in contact. Good luck to you.

**Senator EGGLESTON (Western Australia)** (5.43 p.m.)—I would like to join other colleagues in expressing my appreciation to Grant Tambling for the work that he has done during the time he has been here in the Senate. Grant Tambling has been a great voice for the north of Australia. He is one of the most pleasant, friendly and decent people that I have met, not only in the federal parliament but anywhere at all. Grant Tambling is an extremely nice man with very sound and wholesome values and it has been a great pleasure to know him.

I have often referred in the time I have been here to the trio of senators representing the north: Grant Tambling from the Northern Territory, Ian Macdonald from the north of Queensland and for the last 5½ years I have

been here representing the north-west of Western Australia. The north is a very unique and special place with enormous potential. It has problems of its own. For many years, Grant Tambling was the sole voice of the north in the federal parliament. As Kay Patterson said, while people in the south of the country often do not understand the north or refer to the north as a distinct region—and it is a distinct region—the problems which occur in the north and the issues of the north are common across all three state and territory jurisdictions. From 1987, Grant Tambling was the sole voice of the north in the federal parliament. He represented the north in a very effective and strong way and brought to the attention of people like Senator Patterson—as she herself has outlined today, illustrating the point very well—the problems of the north and the fact that the north is different and does have a different approach to dealing with issues.

I have always found, whenever I have visited Darwin, that Senator Tambling has made his office available to me to use, and his office staff have always been extremely pleasant and helpful. I have to say that his office is unique, in that it is one of the most attractive and beautiful offices that any senator or member of parliament I know has. Senator Tambling's office is a townhouse which was built by Lord McAlpine in the unique style of the architecture of Darwin, as was characteristic of Lord McAlpine wherever he went. For example, in Broome he spent a lot of money recreating the old Broome 'tin sandwich' of corrugated iron with insulation in the buildings that he built there, and in the Northern Territory and Darwin he recreated the stone building style of the Northern Territory, with its beautiful woodwork. Grant Tambling's office is, I must say, a unique and very beautiful office.

Last year I attended the Northern Policy Forum in Katherine which Ian Macdonald organised and which brought a focus onto the problems of the north. Afterwards I drove from Katherine back to Darwin with Grant Tambling and I was struck by how similar the country of the Northern Territory was to the Pilbara, where I lived for 25 years, and to the Kimberley, and how similar the problems

in the two areas were. I must say that I felt a great sense of kinship with Grant Tambling in terms of the issues which he sought to bring to the attention of people in the federal parliament about the Northern Territory, because they were very similar to issues in the Pilbara and Kimberley.

As has been said, Grant Tambling has a unique relationship with the indigenous people of the Northern Territory and has always shown a great deal of understanding of the special needs of the indigenous people. A couple of years ago I opened in Darwin a meeting of the Area Consultative Committees from across the north of Australia. Grant Tambling came to that meeting and spent a lot of time there as the needs of especially the indigenous people of the north of Australia were discussed and, most particularly, their need to be able to gain employment. Grant, I understand, has a particular love of indigenous art and has a very fine collection of indigenous art.

As I said at the beginning, Grant Tambling is one of the most pleasant people I have met. He has certainly been a very pleasant colleague to work with. I believe that the Northern Territory has lost a great representative with his departure and I know the Senate has lost a great senator. Grant, I wish you well in the future.

**Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government)** (5.49 p.m.)—Yesterday in the course of another debate I mentioned my high regard for Grant Tambling—or Senator Tambling, I suppose I should say, as we are still in the chamber—in the role he undertook as parliamentary secretary. Had I sat down and thought about it, I could have spoken pages on the work that Grant has done in that role, but I will not: suffice it to say that in all respects Grant has been an exemplary parliamentary secretary. He has done a great job in the health portfolio.

Senator Tambling and I, as Senator Eggleston has mentioned, do share a constituency, and that is a northern Australian constituency. I guess that over the years that is where Grant and I have had most interaction. We also share a constituency in Christmas

and Cocos islands, and Grant has been my eyes, ears and brain as far as Christmas and Cocos islands go, in the time that I have been the territories minister. Of course, as territories minister, I also had a little, not much, to do with the Northern Territory, but I have to confess—perhaps I should not—that nothing I did in the Northern Territory was ever done without receiving Senator Tambling's approval and consent to it, insofar as the Commonwealth's role in the Northern Territory is concerned.

I want to briefly repeat what others have said, that is, on a personal level Grant Tambling is simply a very decent fellow. He has a complete absence of the humbug and hypocrisy that are regrettably associated with many politicians. Grant has been a true friend to many of us. We share, as well as the same constituency, the same heart operations. I always tell Grant that my heart operation was more serious than his, in that I had a valve replaced, but I think he did too. So we have been exactly the same. We have been able to compare notes on the various drugs we take to keep our blood thin so that we keep living. But that does make you feel a little closer to someone, when you have had that fairly close association with the hereafter during those sorts of operations. Grant has always been very reliable and solid, as well as being decent. Whenever Grant said that he would do something, he did. That is not an attribute I have, and I must say it is not an attribute that many of Senator Tambling's colleagues have; but you always know with Grant that, if he said he would do it, he did do it.

I agree with another speaker: I really think Grant has been underused in this place. He should have gone on to bigger and better things. As I have often said to him privately—and I know Senator McGauran will not mind me saying this—if Grant had chosen to join the Liberal Party rather than the National Party when he came here as one of those hybrid politicians from the Country Liberal Party in the Northern Territory, I am quite confident that he would have been a minister in the government now. That is no reflection on the National Party; it is simply a question of the numbers that were around.

I conclude my remarks by extending best wishes from me and Lesley to Grant and Sandy. I must say that I do not often agree with Senator Crossin or former Senator Bob Collins, but perhaps I could agree with them on one point: that is, Sandy might well be the better part of the combination. She is certainly a very fine lady. Lesley and I hope to see a lot more of you in your future career.

**Senator McGAURAN (Victoria)** (5.53 p.m.)—I too would like to recognise the work of my good colleague Senator Tambling and endorse the comments of all those who have spoken before me. We are a small band of Nationals.

**Senator Ferris**—And a merry band of men.

**Senator McGAURAN**—Yes, a merry band of men who, perhaps through necessity, have bonded very well. Perhaps that is one of the secrets of politics: strike up a friendship and develop a friendship, be it through necessity or not. We four Nationals have been very good friends. I came into the Senate with Grant in 1987, but I had a three-year spell. Basically, I have known Grant as far back as then.

He is easy to befriend because he has an even temperament—unlike me and certainly unlike Senator Boswell; Sandy Macdonald is not too bad. Grant has the outstanding characteristic of an even temperament. I can assure you that is a great quality to have in politics, with all its ups and downs, highs and lows and pressure points. That is something that Senator Forshaw could work on. The even temperament that Senator Tambling has means he develops great friendships. Perhaps this has been developed through his professionalism.

He first entered politics in the Northern Territory in 1974. He was a founding member of the Northern Territory parliament. To be one of the first parliamentarians is a tremendous feat and something to truly remember. In fact, many of those who went into that small parliament with him in 1974 were those who actually turned the knife on him many years later. They were friendships that did not hold.

Senator Tambling has been in politics so long that we can probably say that another quality of his, other than his even temperament, is that he is a truly professional politician. That is indeed a compliment because this place is full of so many amateurs. I would say that the Northern Territory parliament has many amateurs. Senator Tambling is truly a professional politician, not just because of his long service to politics but because he has studied the art and science of politics. He is a professional politician in not just holding down a portfolio—

*Senator Carr interjecting—*

**Senator McGAURAN**—Senator Carr, we are in the middle of valedictories. We do not need you walking across the chamber bad mouthing this side of the parliament.

*Senator Carr interjecting—*

**Senator McGAURAN**—Senator Tambling, this is an example of the parliament that you will be leaving. Senator Tambling is a professional politician and received from his senior minister, Dr Wooldridge, one of the great compliments one can receive from a minister. Dr Wooldridge has had many parliamentary secretaries work with him. As we know, the health portfolio is the busiest. I believe they get more mail in a week than the Prime Minister's department does. Dr Wooldridge paid Senator Tambling the highest compliment by saying that he was the best parliamentary secretary he ever had, the hardest working parliamentary secretary he ever had and the best problem solving parliamentary secretary he ever had. I know that ministers do not want parliamentary secretaries running to them with problems that they can solve themselves. Senator Tambling had his own patch given to him by Dr Wooldridge, the minister, and rarely, if at all, did he need counsel from Dr Wooldridge.

That was one element of his professionalism. The fact that he has survived in politics from 1974 shows that he is a professional and very shrewd politician. That is a long stint in politics, given that the average life of a politician is only six years. He never seemed to fit with the CLP. I know that he was born and raised in the Northern Territory and he is going to return to the Northern Ter-

ritory. He never seemed to fit with those cowboys in the CLP. Yet he was loyal to them to the end. Even this evening he has been loyal to the CLP. He is one of the founding members. He grew up with them. That is another element of this man's professionalism.

As Senator Ian Macdonald said, he was loyal to the CLP probably because for so long they were the mouthpiece for the Northern Territory. I did not know, until Senator Macdonald mentioned it, that Senator Tambling rebuilt Darwin post Cyclone Tracey. He can walk away and look back on that part of his public life with pride. I cannot let this moment pass without having a passing shot at his party, the CLP, because I have a history with them, as Senator Tambling knows only too well, concerning issues like East Timor and euthanasia. Their judgments were always, in my opinion—and I know Senator Tambling probably will not thank me for this—conceited and self-centred. Look at their actions in disendorsing Senator Tambling when he had spent so many years working hard and being loyal to them. Loyalty should surely have meant something to them. It did not. In the end, they disendorsed him just to help one of their mates, the odious Marshall Perron and his casino connections. That is my opinion. Again, Senator Tambling, with his even temperament, has never spoken badly of his party and of the people within that party, but I have.

Senator Tambling is leaving, having seen the highs and lows of politics. He has had a terrific career. If we could all leave after such longevity, we would probably be happy—because he has seen the highs and lows with the long term in opposition and the joys of government, the wins and losses. For that he can be thankful. The people of the Northern Territory have benefited from his public life going back as far as his rebuilding of Darwin, with his heading of the commission post-Cyclone Tracey. He has been true to his oath of office, which is taken at the beginning of every parliament, and we should not forget the importance of that oath of office. Sometimes we slip through that oath as just another ritual or ceremony and then get on with the business of opposition or govern-

ment. But it is an important point for any politician to reflect upon when they take that oath of office at the commencement of every parliament. I would say that Grant Tambling definitely has been true to it, and you cannot ask for much more than that at the end of the day—and, of course, he has been a good and decent man.

**Senator BARTLETT (Queensland)** (6.01 p.m.)—I would like to add my voice to the voices of others in expressing congratulations to Senator Tambling on his achievements over so many years, particularly in this chamber, and offering best wishes in his future life. Life does exist outside this place, which often is easy to forget, and I am sure that in many ways he will have more opportunities to do some of the other things, constructive as well as pleasurable, that he has not been able to do because of the constraints and responsibilities he has had in this role. It has also been interesting to see him juggle the obvious pressures he was getting from different sides, in relation to the issue that has obviously led him to be in the situation he is in at the moment that has meant we are giving all these speeches. Certainly, at least from my vantage point—and obviously that is nowhere near the inside of it all—he has seemed to handle that extremely well, because it would have been an extremely stressful, painful and difficult experience for him.

I would like to take the opportunity also of acknowledging his contribution. As I have said a few times in this place, one aspect of the work of politicians that is often completely undervalued and ignored is the legislative work, the committee work and the work on the administrative side of things. That sort of aspect, amongst many others, is probably the most important part of our jobs, but the part that tends to get all the focus is the political positioning, the conflicts, the fights and some of the promotional types of things, if you like. The real substance, the nitty-gritty, is not examined or acknowledged a lot of the time.

I would have to say that I would not be aware of a lot of what Senator Tambling's achievements are in this place; he has obviously been here a lot longer than I have been.

But I am sure that, in the space of what is now 14 years, he has achieved a lot in terms of work in the chamber—parliamentary work, amendments and the like—both in opposition and in government, through committees and through his other responsibilities as parliamentary secretary, and I am sure that work has made a significant positive difference. From my perspective, I would suggest that some of the things he has done probably might have been not so positive.

Senator Tambling's efforts have been most effectively employed in the nitty-gritty of actually trying to ensure that his constituents and, more broadly, the Australian people are better off than they otherwise would have been, that the laws that are passed are more effective than they otherwise would have been, and that community understanding of, and involvement in, issues is more effective than it would have been. I think such things should be acknowledged as part of the often unsung but crucial part of the work of all of us in this place. As others have said, in his time here, Senator Tambling has obviously been in that group that is amongst the most effective at performing those roles for his constituency and for the policy focus that he is committed to. I congratulate him for that and I thank him for his work. I am sure that the sacrifice he has made, particularly his coming from Darwin to Canberra all the time, would have been a difficult thing to get used to. That would add to the distress and the difficulties experienced in terms of the time consumed, and then obviously there is the separation from family, friends and community that happens so much when you are stuck in Canberra so far away from where you live and the people you represent. I thank him for the contribution he has made in relation to that and pay tribute to his time in this place.

As I have said, I am sure that he will continue to be an effective contributor to the community. Just as former Senator Bob Collins, a colleague of sorts of his, has continued on to play very effective roles in the Territory community, I am sure that Senator Tambling, with his vast experience and contacts at all levels of the community in the

Territory, will also in some ways now be freed up to go out and be more effective in other areas. I wish him well in that regard and, at least in some respects, he will be able to do so without having to worry about upsetting people in the CLP so much anymore. He will be freed up in that regard as well, which I am sure would be a relief for him.

I wish Senator Tambling well. If I and others can achieve as long a career in the parliament as he has had and be as effective from our policy side of things, that would be something that we could be well proud of. And I am sure he is proud and should be proud of what he has managed to achieve—and I would say that also applies to the way he has handled his current situation, because that would be extremely difficult. I know that a lot of people in similar situations would not have handled them with anywhere near as much grace and dignity, at least in public and, I am sure, in private as well. I think that is something worth noting as well, because obviously politics can put up some pretty ugly experiences that people have to confront—and sometimes they are not of their own choosing or are really difficult for them to avoid. Part of the test and mark of people, I guess, is how they handle those difficult situations and those difficult choices. Certainly, as I say, Senator Tambling has handled this situation with good grace and goodwill. Certainly, in comparison, a few others I can think of in this place who have run into difficulties with their own party were not quite so graceful in relation to how they spoke about such situations—and I think that should be noted and acknowledged as well.

**Senator BROWN (Tasmania)** (6.07 p.m.)—In my five years in here, I have always found Grant Tambling a very reasonable and friendly character. We have locked horns on a few issues, but it has always been in a political way and has never been personal. I appreciate that great way of carrying out parliamentary affairs that he has had. I think we could all emulate that. I particularly want to say that he can be proud of the stand he took that caused some of his party colleagues back in the Northern Territory to take umbrage. I know he was going through

a great deal of pressure there, but he withstood that and will be able to look everybody in the eye over it. I congratulate him on his 14 years here and wish him well for the next 40, 50 or 60 years or however long it is.

*(Quorum formed)*

**Senator CALVERT (Tasmania)** (6.10 p.m.)—In the spirit of saying farewell to Tambo—

**The PRESIDENT**—Senator Tambling, surely.

**Senator CALVERT**—Yes, Senator Tambling—affectionately known as Tambo. Senator Crossin was very generous in her remarks. She worked with Senator Tambling in the Northern Territory and would be very well aware of the work that he did, as would former Senator Bob Collins. Like others, I was astounded when I saw his luxurious office, but I guess in Darwin one needs an office with plenty of room and circulating air, because of the heat. I think the luxury of his office was matched by the apartment that he had up there. I have not had the pleasure of visiting the new one yet, but I have been to Darwin a few times and have enjoyed Senator Tambling's hospitality and I certainly got to know a bit about him and the amount of work he did in that area. As has been said by other members from the Territory that have to travel to Canberra, the travelling alone to get here and to get back is very difficult and, being the whip now, I know how difficult it has been for Grant and for Sandy to keep up the work.

I recall seeing recently in an exhibition in the Northern Territory parliament some photos of some of the old parliamentarians. There was a classic there of Senator Tambling with a Beatles look, or a sixties look, with the long sideburns and the long hair and the flared pants and all the rest of it. He was a very handsome man. Mind you, his looks have not changed since, but the hair might have got a bit thinner. They must have been exciting days up there working in the Territory.

The contribution you have made—as Senator Crossin said—to be in all tiers of government during your career is something that not many of us have the opportunity to

do. If I may, Grant, I would like to pass on best wishes from Jill and me to you and Sandy in your retirement. I guess we will catch up. I do not think there is any doubt about that. As a member of the Public Works Committee, I spend a fair amount of time in Darwin, as you know. I will take the opportunity to call in and perhaps you might have something cold in the refrigerator. All the best, and I hope everything goes well in your retirement and whatever you seek to do in the future.

**TAXATION LAWS AMENDMENT BILL  
(No. 6) 2001**

**Consideration of House of Representatives  
Message**

Message received from the House of Representatives returning the Taxation Laws Amendment Bill (No. 6) 2001, and acquainting the Senate that the House has disagreed to the amendments made by the Senate and requesting reconsideration of the Senate amendments.

Ordered that consideration of the message in committee of the whole be made an order of the day for a later hour of the day.

**VALEDICTORY**

**Senator ELLISON (Western Australia—  
Minister for Justice and Customs)** (6.15 p.m.)—I rise this evening to join with others in farewelling Senator Tambling from the Senate. It is with sadness that we say goodbye to Senator Tambling. I believe that Senator Tambling has been a formidable advocate for the Northern Territory during his time here, particularly times when I have dealt with Senator Tambling on a number of issues. I remember the native title issue in particular. The Northern Territory can be very thankful that they had Senator Tambling, who led the debate, here for his work in relation to native title. That was something which affected the Territory so greatly. Another issue was euthanasia. I had a different position from Senator Tambling on that issue; nonetheless, he represented the Northern Territory strongly. I have always respected the way he conducted that debate and the strength with which he held to his views. When I have gone to Darwin, I have always relied on Senator Tambling for inside infor-

mation as to what is going on in the Territory. I am going to miss that greatly because it has always been of tremendous assistance to find out from Tambo what the view was, what was going on and where everything lay with respect to issues in the Territory.

I would like to make special mention of Sandy, Senator Tambling's delightful wife, whom I have always enjoyed catching up with. My office has enjoyed a close relationship with Senator Tambling's office over the period I have been in the Senate. There have been many issues that we have shared in common. As a senator from Western Australia, it has always been good to have someone who understood regional issues which touched on matters of geography and similarity—indigenous matters not being the least. In fact, Senator Tambling had a keen interest in relation to those issues. When I was minister for schools, indigenous education was a key issue. I found Senator Tambling to be of great assistance in that area and in other areas in which I have been involved.

Senator Tambling, thank you very much for all the help you have given me and my office. We do farewell you with sadness and we regret the circumstances that brought about this situation. I think some people in the Territory do not understand just how lucky they were in having you in this chamber. I do not think they realise the force—albeit always in a considered manner, which I think was never abrasive or aggressive—with which you conducted or argued their case. I wish you and Sandy all the best in your next endeavours, and I look forward to catching up with you when next I am in Darwin.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)** (6.19 p.m.)—On behalf of the opposition, in perhaps a more formal way, I take this opportunity to wish Senator Tambling well for the future. I am one of those senators who, for the entire time that I have been in this chamber, has shared their parliamentary career with Senator Tambling. I suspect it is fair to say that we do not know each other that well; but, regardless, over the years, one learns to respect and understand many of the

concerns that our parliamentary colleagues have. One unusual thing I can say about Senator Tambling is that I do not think we have ever had a major blue or dispute in the chamber, and that must make you a very unique person.

**Senator Kemp**—He must be the only one.

**Senator FAULKNER**—I think you are probably right, Senator Kemp. There would not be many—most of them on my own side, I quickly add. I put you and Senator Tambling probably in the same category in that regard. Senator Tambling, I am sure all those senators here who are members of political parties understand that what has occurred to you over recent months is something that we all face. What has happened to you in relation to the way your parliamentary career has come to an end could happen to any person in this chamber, and that is the truth of it. I think at times like these, given the circumstances of a hard-fought preselection—two hard-fought preselections in your case—we ought to acknowledge that that is the situation. This is not unique to Senator Tambling; it is something all of us face. A number of senators in this chamber have faced tough preselections. Usually we do not face two tough preselections for the same election. That is a bit unusual. I think Senator Tambling set something of a record in that regard.

**Senator Robert Ray**—Two and a half.

**Senator FAULKNER**—Two and a half might be a fairer way of saying it. I think we understand the situation. We in the Labor Party know it well. I think members of the coalition parties would also acknowledge that. No-one thinks any the less of any person representing any political party who finds their parliamentary career comes to an end as a result of a preselection—particularly, in your case, one of quite unusual circumstances. Sometimes in valedictory debates like this we should say that. It is probably easier in many ways, Senator Tambling, for your opponents on the other side of the chamber to make that comment, and I say that to you in a very generous way.

Senator Tambling, you have had a long career in this chamber. I am sure, as I have listened to you speak about your experiences, that it has been a very fulfilling career in this chamber. You are right to be well satisfied with some of your achievements over that long period of time. I do acknowledge, as my colleague Senator Crossin has acknowledged, that you have taken seriously not only your commitment to the party that you have represented in this chamber but your special commitment to the Northern Territory.

The concept of the Senate being the states house probably still applies more to our territory senators than it does to many of the rest of us who represent the six states in this chamber. I think we now know that this is no longer a states' house. I do not really stand before you as a representative of the state of New South Wales; I am here as a representative of the Australian Labor Party. I look over at members of the coalition and see that the same is true there. But with the territory senators I genuinely believe it is a little different. You do bring more of that perspective of your local community, that geographical area that you represent. I agree with Senator Crossin that you have done that in a way that brings credit upon both you and the party that you represent in this chamber.

Let me finally say to you, Senator Tambling, that I do believe that it is appropriate at this time to congratulate you for a job well done on behalf of those that you have represented well in this chamber and say to you that we wish you well in the future, however it may evolve and develop for you. To you and your family, on behalf of the opposition, I offer our best wishes and hope that you enjoy many long, interesting and exciting years ahead. I say formally on behalf of the opposition that we recognise your contribution and we wish you well for the future.

**TAXATION LAWS AMENDMENT BILL  
(No. 6) 2001**

**Consideration of House of Representatives  
Message**

Consideration resumed.

Motion (by Senator Ian Campbell) proposed:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

**Senator BROWN (Tasmania)** (6.27 p.m.)—Before determining what my position is on this, I ask the government: what else is on the schedule for the rest of this evening's sittings?

**Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate)** (6.27 p.m.)—The government's intention is to deal with the message from the House of Representatives relating to **Taxation Laws Amendment Bill (No. 6) 2001**. When consideration of that is concluded we would like to deal with the **Taxation Laws Amendment (Research and Development) Bill 2001** message. At that stage I will be moving that the Senate adjourn.

**Senator ROBERT RAY (Victoria)** (6.28 p.m.)—Madam Chairman, I have a question for you to assist the committee: what is the maximum amount of debate that we can have on this committee stage?

**The CHAIRMAN**—Until 8 o'clock.

**Senator ROBERT RAY**—So we could have a very productive discussion on this until 8 o'clock. I hope that the people over there understand that.

**Senator SHERRY (Tasmania)** (6.28 p.m.)—As much as I would like to give a lengthy speech on **Taxation Laws Amendment Bill (No. 6) 2001**, which I think at the end of every sitting I have dropped into the habit of doing—for good reason, I might say—

*Honourable senators interjecting—*

**Senator Robert Ray**—If you want to debate it, get Robert Hill, the leader of yours, back.

**The CHAIRMAN**—Order!

**Senator Carr**—Can't keep his word.

**Senator Robert Ray**—Doesn't keep his word.

**Senator Carr**—Cannot be trusted.

**The CHAIRMAN**—Senator Carr, please—

**Senator Robert Ray**—Hill the rat; simple as that! Not the first time; won't be the last!

**Senator Carr**—He's off and leaves other people to scab on his word.

**The CHAIRMAN**—Order! I am trying to call Senator Sherry to speak.

**Senator SHERRY**—My colleagues are obviously a little bit worked up about our great success in moving these amendments.

**Senator Murray**—Madam Chairman, on a point of order: at no stage in the proceedings have I actually heard what bill we are dealing with.

**The CHAIRMAN**—We are dealing with Taxation Laws Amendment Bill (No. 6).

**Senator SHERRY**—As I was saying, it seems that at the end of every session over the last year and a half we have been dealing with GST legislation of some sort or another and I have found myself speaking on it. I do not think I am going to be speaking as late tonight as I have on previous occasions. I can recall a 6 o'clock in the morning speech and a 2 o'clock in the morning speech, dealing with the 1,800-odd amendments we have had to the GST since 1 July last year. This chamber has dealt with 1,800 amendments to the GST since 1 July last year! Those GST amendments that have been moved and supported by the Democrats in the Senate chamber have of course included a wide range of roll-back. They have included amendments on beer, caravan parks, charities and swimming lessons. Senator Kemp well remembers the debate we had here at 6 o'clock in the morning about swimming lessons. At the government's initiative, we rolled back the GST on swimming lessons. There has been one series of roll-backs after another by this government on the GST.

I was very pleased today that the Labor Party, with the support of the Democrats—and I will come back to that briefly—was successful in its amendments to the GST in a number of areas. The Labor Party amended the **Taxation Laws Amendment Bill (No. 6) 2001**, which we are currently considering, in respect of the GST on funerals, caravan park rents and women's sanitary products. I am a bit reluctant to say this, but we did have a worthy contribution from the Australian

Democrats, who have discovered GST roll-back all of a sudden. The Democrats discovered GST roll-back and supported the Labor amendments that were successfully moved to this bill, and the worthy contribution they made was in regard to lactation devices.

**Senator Murray**—It was a 'lact' of grace!

**Senator SHERRY**—Thank you, Senator. I did not know a great deal about lactation devices until July or August last year, when my wife and I had a baby. Since then, I have learnt a lot more about lactation devices than I would normally have considered necessary. So moving an amendment to make lactation devices GST-free was a worthy contribution from the Democrats. It is important to touch on the Labor Party amendment on funerals, from a Tasmanian perspective. The Liberal Party in Tasmania have endorsed the candidates for their Senate ticket, and I will not go into all the horrible details. Senators Abetz and Watson are well aware of those.

**Senator Forshaw**—Why not?

**Senator SHERRY**—No, I am not going to do that. I am going to stick to the issue, which is funerals. The Liberal Party have endorsed the national president of the Funeral Directors Association as Liberal Senate candidate on their ticket in the forthcoming federal election.

**Senator Forshaw**—He would be a dead cert, wouldn't he?

**Senator SHERRY**—I will just conclude on this point. The Liberal Party have endorsed the national president of the Funeral Directors Association, and when our leader announced the commencement of roll-back on funerals about two weeks ago, we were very pleased indeed to see the national president of the Funeral Directors Association, who is a Liberal Senate candidate in the forthcoming election, endorse Labor Party policy. Endorsement from Mr Parry, a Liberal Senate candidate, was a great start to roll-back, and I congratulate him on coming out and supporting Labor policy.

The amendments we moved in the areas that I have outlined were supported by the Australian Democrats. I have a very brief comment about the Australian Democrats.

After the Lees-Howard deal on the package that they supported on the GST last year, there seems to have been something of a conversion among the Democrats. I will not go into the detail of that, it is pretty horrible for the Democrats, and I know that it is the last evening of the session—

**Senator Ian Campbell**—It's nearly night. It's shifting from evening into night.

**Senator SHERRY**—Yes, it is shifting from evening into night. But we are very pleased to see that the Australian Democrats have suddenly discovered Labor's roll-back on funerals, caravan park rents, women's sanitary products and lactation devices. We are very pleased. It is just a pity that at the time they did their deal with the government the Australian Democrats did not identify the serious problems the GST was going to cause for a wide group of people in the community. I will leave my comments about the Democrats at that point.

**Taxation Laws Amendment Bill (No. 6) 2001** is important. It contains a number of very important provisions including the alienation of personal services income, the extension of listed investment and the tax treatment of HIH rescue payments. Having successfully moved a number of amendments in respect of GST roll-back, with Democrat support, if we now insist on our GST amendments, the bill will probably be defeated and the important matters I have just mentioned will be defeated along with it. Given we are so close to an election and the electorate will be considering the issue of the GST, among others, the Labor Party will not be insisting on its amendments. In a few weeks, whenever we know the date, the Australian electorate will make a decision about GST roll-back and the areas we successfully moved amendments to will, I am sure, be included in our roll-back package, which will have further detail released. I am not aware of that detail, but certainly funerals, caravan park rents, women's sanitary products and lactation devices are a good start. So the Labor Party, as I indicated, regards as important the amendments in relation to contractors, the HIH rescue package and some tax changes in respect of local governments, and we will not insist on our

amendments and will allow the legislation to pass.

**Senator BARTLETT (Queensland)** (6.37 p.m.)—I will put on the record the Democrats position in relation to this: given that Labor have just indicated that they will not be insisting on these amendments—their amendments and indeed the Democrats amendment to this bill that were passed earlier today—obviously the bill will go through unamended; the Democrats acknowledge the numbers in relation to that and will not be kicking up too much of a fuss.

But I thought I had best correct some of Senator Sherry's perceptions and the comments he has made in relation to the Democrats. I could adopt the Senator Schacht line of argument to legislation in this place and say that the legislation was totally the government's legislation and it is completely unfair to blame anybody else for the outcome. But I do not take that approach, and that is because the Democrats were the first to do GST roll-back. We engaged in enormous changes to the original GST package, making it immensely fairer and immensely less environmentally damaging.

The pleasing part of this is that the ALP has now shifted its position to actually accepting and considering amendments to the tax laws surrounding GST. If we had had the ALP's support at the time for other amendments that we would like to have moved, then we would have actually been able to roll it back even further than we could do at the time. It was because the ALP insisted on opposing every single amendment that the Democrats put up at the time that we were unable to get the support of the Senate to improve the package even further.

The Democrats will continue to work not just in that area of the tax law—the GST area—but every area of the tax law to make it fairer, to make it more workable, to make it more environmentally sustainable and to make it more appropriate in terms of the levels of revenue it needs to raise. We would appreciate the cooperation of all other parties in doing that. It is pleasing to see that the ALP have changed position to now taking a responsible approach and looking to consider

amendments. They have supported a Democrat amendment today in relation to roll-back, if you like. Indeed, they have supported previous amendments.

I should say that, even after the initial package went through, the Democrats were actually the first to ensure that GST was taken off an additional item, and that was in the area of time-share resorts. I do not know if Senator Sherry remembers that particular debate. It was a disallowance motion that ended up not needing to go ahead but we spoke about it a bit anyway. That was a Democrat initiative and again was an example of us working constructively to always try and improve the legislation and improve the taxation system and its operation—whether it is in the GST or any other area—and to try to ensure that it did not have unfair consequences or anomalies.

In that sense—although I do not necessarily think roll-back is the best description for improving tax laws of any type, whether it is GST or others—I welcome the ALP's conversion to that approach. I wish they had been more constructive in considering amendments and improvements to the tax laws at the time they were first being debated. We may have been able to get an even better package at that stage. The Democrats are obviously on the record as being strongly committed to further improving the tax act in a range of areas. This is just one of them. We are pleased that the ALP are on the record in support of our suggestion to exempt lactation devices and the other ones that were on the record today as a result of this particular debate.

We will not kick up a fuss in relation to the Democrats amendment and the other ALP amendments. They clearly will now not be insisted upon and the legislation will go through unamended. As I understand it, the primary bill was a positive one, so in that sense we would not want to hold it up. I do think it is important to correct the impression Senator Sherry gave about the Democrats' approach to taxation in general and the GST more specifically. I hope that it is a sign that if the ALP do get into government they will work constructively with other parties to ad-

vance the effectiveness of the tax act in a whole range of areas, GST being just one.

Question resolved in the affirmative.

Resolution reported; report adopted.

**TAXATION LAWS AMENDMENT  
(RESEARCH AND DEVELOPMENT)  
BILL 2001**

**Consideration of House of Representatives  
Message**

Message received from the House of Representatives returning the Taxation Laws Amendment (Research and Development) Bill 2001, and acquainting the Senate that the House has disagreed to the amendments made by the Senate but has made amendments in place of the Senate amendments, and requesting reconsideration of the bill in respect of the amendments disagreed to and the concurrence of the Senate in the amendments made by the House.

*Schedule of amendments to be made by the House of Representatives in place of Senate amendments disagreed to—*

- (1) Schedule 1, item 1, page 3 (line 15), omit “and”, substitute “or”.
- (2) Schedule 1, item 2, page 4 (line 12), omit “and”, substitute “or”.
- (3) Schedule 1, page 4 (after line 20), after Part 1, insert:

**Part 1A—Report on access to tax offset  
*Industry Research and Development Act  
1986***

**2A After paragraph 46(2)(c)**

Insert:

(ca) must set out:

- (i) the total number of applications during the financial year for registration of eligible companies under section 39J that specified an intention to choose a tax offset under section 73I of the *Income Tax Assessment Act 1936*; and
- (ii) the total amounts of the offsets involved;

and must include an analysis of the tax offset scheme, including the tax offset thresholds, for that year; and

**2B Application**

The amendment made by this Part applies to reports in relation to the financial year commencing on 1 July 2001 and all later financial years.

(4) Schedule 1, Part 2, page 5 (lines 2 to 11), omit the Part.

(5) Schedule 1, item 6, page 6 (lines 13 and 14), omit “pm, by legal time in the Australian Capital Territory, on 29 January 2001”, substitute “am, by legal time in the Australian Capital Territory, at the start of 1 July 2002”.

(6) Schedule 1, item 7, page 6 (after line 23), after subsection (1), insert:

(1A) In formulating the guidelines, the Board must ensure that, having regard to the size and complexity of the activities that are to be carried out in accordance with the plans, the guidelines will not impose undue burdens on eligible companies that are small.

(7) Schedule 1, Part 4, page 8 (lines 2 to 13), omit the Part.

(8) Schedule 2, item 11, page 14 (lines 1 to 34), omit subsections (4) and (5).

(9) Schedule 2, item 11, page 15 (lines 15 to 33), omit the definitions of *eligible feedstock percentage*, *eligible feedstock profit*, *feedstock input* and *feedstock output*.

(10) Schedule 2, item 11, page 16 (lines 3 and 4), omit the definition of *research and development activities*.

(11) Schedule 2, item 11, page 16 (lines 11 to 13), omit paragraph (1)(a).

(12) Schedule 2, item 11, page 16 (line 14), omit “that definition”, substitute “the definition of *plant* in section 42-18 of that Act”.

(13) Schedule 2, item 54, page 39 (line 24) to page 40 (line 25), omit subsections (5) and (6).

(14) Schedule 2, item 54, page 41 (lines 6 to 24), omit the definitions of *eligible feedstock percentage*, *eligible feedstock profit*, *feedstock input* and *feedstock output*.

(15) Schedule 2, item 54, page 41 (line 26), omit “73BH”, substitute “73BC”.

(16) Schedule 2, item 54, page 42 (lines 7 to 9), omit paragraph (a).

(17) Schedule 2, item 54, page 42 (lines 11 and 12), omit “that definition”, substitute “the definition of *depreciating asset* in section 40-30 of that Act”.

(18) Schedule 4, item 5, page 77 (after line 26), insert:

*start grant* means a subsidy or grant paid to an eligible company:

(a) under an agreement between the company and the Board entered into under the program known as the R&D Start Program; and

(b) in respect of a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

(19) Schedule 4, item 5, page 78 (after line 33), at the end of section 73Q, add:

For the purposes of paragraph (1)(b), subsection (2) of this section and subsection 73R(1), the eligible company or any of its group members is treated as if it had deducted or can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for a year of income if the company received a start grant in respect of that year of income.

Ordered that the message be considered in the committee of the whole immediately.

**The CHAIRMAN**—The amendments made to the bill by the House of Representatives are identical to the amendments made by the Senate on the motion of the government. The government amendments were mistakenly circulated by the government as amendments in the Senate when they should have been requests, and were not checked by Senate officers. Agreeing to the amendments made in the House will have the same effect as the Senate’s amendments to the bill.

Motion (by Senator Ian Campbell) proposed:

That the committee agrees to the amendments made by the House of Representatives to the bill.

**Senator CARR (Victoria—Manager of Opposition Business in the Senate)** (6.44 p.m.)—On the basis of the message and the advice you have given us on behalf of the clerks, the opposition will be supporting these changes.

Question resolved in the affirmative.

Resolution reported; report adopted.

#### **BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives returning the following bills without amendment:

Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001

Interactive Gambling Amendment Bill 2001

Family and Community Services Legislation Amendment (Application of Criminal Code) Bill 2001

**ADJOURNMENT**

Motion (by Senator Ian Campbell) proposed:

That the Senate do now adjourn.

**Member for Lindsay**

**Senator FORSHAW** (New South Wales) (6.46 p.m.)—I rise in the chamber tonight to talk about representation. I believe it is a fitting theme, because as this parliament closes tonight we recognise that it is probably the final sitting day before the next federal election. We are all in politics and in parliament to represent the people, our constituents. Tonight I would like to reflect upon what I believe has been the abject failure of the Minister for Sport and Tourism, the member for Lindsay, Jackie Kelly, to carry out that vital and indeed noble role. The Minister for Sport and Tourism, the member for Lindsay, Jackie Kelly, obviously shares my belief in the concept of representation and its importance. In her first speech to the House of Representatives, she said:

The people of Lindsay ... want a representative who is part of a truly representative government, a government which has input from all walks of life, all ethnic groups, all generations and all denominations.

It is unfortunate, I believe, that the trust that the people of Lindsay placed in their member, Jackie Kelly, to take their interests to the federal parliament has been appallingly ignored.

There is no more forthright way of representing people, particularly in your electorate, than to use the forums of the parliament to reflect and air their concerns. Therefore, it gives me no pleasure tonight to highlight the abysmal failure of the member for Lindsay to utilise this parliament to represent the interests of her electorate. An analysis of the *Hansard* of the House of Representatives reveals shocking statistics in regard to the member for Lindsay's failure to represent her electorate. If honourable senators opposite are honest with themselves, the statistics I am about to detail will appal them. In the course of this parliament—our 39th parlia-

ment since Federation—the member for Lindsay has racked up a truly shocking record of inactivity. The sum total of her speeches to this parliament amounts to 69 minutes. That is not 69 minutes in sittings this year; that is a total of 69 minutes speaking in the parliament over the course of the last three years.

I understand, as we all do, that as the member for Lindsay and as a minister Miss Kelly has two roles. One of course is as a local member; the other is to represent and carry out the duties of her portfolio. We note that ministers sometimes will have difficulty in finding the time required to reflect the interests of their constituents, particularly if their ministerial duties intervene. But, when you look at the record of all the members of this government, the one that stands out for the greatest inactivity on behalf of the constituents of their own electorate is the member for Lindsay.

I think it is important to note, as we did earlier in the valedictory speeches, the fine contribution made to this chamber by the senator for the Northern Territory, Senator Grant Tambling. Senator Tambling, as all speakers noted, not only was a person who carried out responsible duties as a parliamentary secretary but also spent a lot of time in this chamber speaking on behalf of his constituents in the Northern Territory. He certainly spent a lot more time than 69 minutes raising the interests and concerns of the constituents in his electorate, notwithstanding the fact that he had other parliamentary duties as a parliamentary secretary. In the total of those three years—that 69 minutes—the Minister for Sport and Tourism, the member for Lindsay, Jackie Kelly, has made some 16 speeches. Not one of those speeches has ever dealt with the issues of concern for the people of Lindsay in Western Sydney. No doubt the member for Lindsay has been more involved in worrying about her extensive share portfolio, which was commented on in an article in the *Australian* only a few weeks ago.

The minister's performance in relation to the collapse of Ansett and the subsequent knock-on effects on the tourism industry were referred to by this minister as a 'blip'.

Quite rightly, the minister was castigated and reprimanded by the Prime Minister for such an insulting and indeed ridiculous assertion about the collapse of one of this country's two great domestic airlines. It demonstrates that not only has the member for Lindsay, the Minister for Sport and Tourism, not been focusing upon her own electorate—as her parliamentary speaking record demonstrates—but she has not been focusing too closely on the interests of her portfolio either. Indeed, of the 69 minutes of speeches that the minister has bothered to come into parliament to give over three years, just 25 minutes have related to the minister's responsibilities for tourism. What an absolutely disgraceful record. Sixty-nine minutes adds up to the equivalent of about 3½ full speeches. This, frankly, is an absolute disgrace. Out of that total of 69 minutes, the minister has spent only 27 minutes speaking about her other responsibilities as the minister for sport. Clearly, in both her portfolio responsibilities of sport and tourism, the minister has been an abject failure, just as she has been a failure in representing in this parliament the interests of her constituents.

I would like to put this a bit more into context. Recently, the former President of the United States of America, Bill Clinton, visited our shores for a number of speaking engagements. It is widely reported that Mr Clinton was paid some \$200,000 per speech. It is not a bad job to get paid \$200,000 for an hour's work, as we all would recognise. It is not bad work if you can get it. But when you compare what was apparently paid to Mr Clinton for, say, one speech of an hour—some \$200,000—with what has been paid to the Minister for Sport and Tourism over three years for her total speaking engagements in this parliament of 69 minutes, she has been paid the equivalent of about \$450,000, which is nearly 2½ times what former President Bill Clinton gets. That translates into a pay rate of some \$6,546.52 per minute for the speeches made in this parliament by the member for Lindsay and the Minister for Sport and Tourism, Miss Kelly. That is approaching the earning capacity per minute of Kerry Packer or even Bill Gates. It is not bad work if you can get it, and clearly the member for Lindsay—who

curries favour with the Prime Minister—is able to get away with it. Unfortunately, the Parliamentary Secretary to the Minister for Health and Aged Care, Senator Grant Tambling, was unable to get the support of the Prime Minister to assist him in retaining his position in this parliament, notwithstanding the outstanding service he has given as a senator to his government and to his state.

Finally, I draw attention to Miss Kelly's web site. There is a heading which refers to 'Jackie's Speeches'. Unfortunately, you will not find any of Miss Kelly's speeches under that heading. What you will find is a speech by the minister for finance and one by Senator Helen Coonan. What an insult to the people of her electorate. I have no doubt that at the next election the people of Lindsay will pass their judgment on the appalling performance of Miss Kelly.

**Environment: Native Vegetation**

**Police Remembrance Day**

**Howard Government: Tasmania**

**Regional Forest Agreements Legislation**

**Senator ABETZ (Tasmania—Special Minister of State)** (6.56 p.m.)—I seek leave to incorporate a statement by Senator Robert Hill, a speech by Senator Chris Ellison and a speech by Senator Paul Calvert.

Leave granted.

*Senator Hill's statement read as follows—*

**Reversing the decline in our native vegetation**

Madam President.

Five years ago, the Governments of Australia set the goal of reversing the decline in the quality and extent of our native vegetation by June 2001.

This was an ambitious goal. It required turning around the trend, mindsets and policies of more than a century.

Clearly the goal has not been reached. The rate of land clearing continues to be high at over 400,000 hectares a year across Australia, and the condition of many areas of remnant native vegetation continues to degrade.

Endangered ecological communities and species are declining as a result of current land clearing, and also as a consequence of the fragmentation and degradation resulting from the past clearing of the regions in the south-west and the south-east of the country.

Yet the goal of turning around the loss of native vegetation must be pursued. Much is at stake: ecosystems that harbour our precious native flora and fauna; the soils and water that underpin the productivity of many of our farming regions; and important greenhouse gas 'sinks'.

The Commonwealth continues to lead and has strengthened its commitments to restoring and protecting our natural assets. We are extending the Natural Heritage Trust by five years and \$1 billion to continue the good work of thousands of people and to build on the \$1.5 billion already invested. Recognising that land clearing is the fundamental cause of dryland salinity, the Commonwealth together with the States and Territories are implementing the \$1.4 billion National Action Plan for Salinity and Water Quality that commits all parties to, among other things, preventing land clearing leading to unacceptable land and water degradation. The Commonwealth is also pursuing many of the opportunities our vegetation offers to help us meet our greenhouse emission abatement commitments.

Over the past five years, the Australian community has been engaged in protecting and restoring native vegetation like never before. The Trust has supported over 300,000 people to protect and rehabilitate native vegetation on private land through programs like Bushcare. The Trust has been directly responsible for:

- Work on 600,000 ha of degraded land through re-establishment of vegetation cover and changes to land use, including establishment of more than 15 million seedlings;
- 12,000 km of fencing to protect remnant vegetation; and
- 5,000 km of fencing to protect waterways.

The Natural Heritage Trust and National Action Plan have and will continue to mobilise the enthusiasm of the community and support on-ground projects with grants, technical information and other incentives.

However, clearly this is not enough. Without effective state-based controls on land clearing—that is, a regulatory bottom line—these efforts, and the major private and public investments they represent, will be wasted.

Now, five years on with the experience of the Trust investment, all Australian governments need to maximise efforts to turn around the decline.

Our first priority must be to protect and rehabilitate our existing native vegetation to prevent problems or degradation before they occur. Protecting remnant vegetation provides multiple pro-

ductivity, biodiversity and greenhouse returns. The diversity and function of our Australian bush is virtually impossible to replicate or fully restore once lost.

Re-vegetation is an important means of rehabilitating the landscape where there is no remaining native vegetation. Even so, plantations of exotic and native species cannot replicate the full range of functions of native vegetation. Furthermore, even the increasing rate of re-vegetation stimulated by the Trust is not offsetting the current large areas of native vegetation lost to clearing.

The collaborative efforts of the Commonwealth, States and Territories in the National Action Plan and the Natural Heritage Trust will achieve significant results. However, the key reforms needed to achieve the national goal are action by the States and Territories to implement comprehensive land clearing controls that:

- prevent all clearing and degradation of remaining native vegetation except where it is consistent with best practice native vegetation management, catchment management and regional biodiversity objectives;
- address all ecosystem types including grasslands;
- use a precautionary approach to assess the risk of degradation and biodiversity loss;
- include full monitoring, evaluation and enforcement;
- support management strategies to assist landholders halt the decline in the condition of remaining native vegetation; and
- protect all threatened species and vegetation communities.

This statement first sets out the Commonwealth's approach and achievements in pursuing the national goal, and then makes a call to action for the States and Territories.

#### **The value of our native vegetation**

Australia is one of the world's seventeen centres of 'mega-diversity' of plants and animals. Our native vegetation cover is a precious natural asset, essential for maintaining our native flora and fauna species, water resources, soils and greenhouse sinks. Its depletion and degradation threatens the long term ecological health and economic productive capacity of our landscapes. It also diminishes the cultural heritage values that are inherent in Australia's unique native vegetation.

While broadscale land clearing for agricultural and urban development is a critical threat, the loss caused by clearing is compounded by the degradation of remnant bush through 'death by a thousand cuts' of grazing pressure, insect attack, dis-

ease, weeds, salinity, firewood gathering and lack of positive management.

#### **The national goal**

The Commonwealth, State and Territory Governments committed themselves, through the Natural Heritage Trust, to the national goal of reversing the decline in the quality and extent of Australia's native vegetation cover by June 2001. Under the Natural Heritage Trust Partnership Agreements, States and Territories have committed to prevent any clearing of endangered ecological communities, any clearing which changes the conservation status of a vegetation community, and any clearing which is inconsistent with the sustainable management of biodiversity at a regional scale. This follows a similar commitment in the National Strategy for the Conservation of Australia's Biological Diversity, signed by all Governments in 1996, which stated that by 2000 Australia would have arrested and reversed the decline of remnant native vegetation.

Thus the commitment is clear, and there has been significant progress towards meeting the national goal in many respects through the programs of the Natural Heritage Trust and individual State and Territory initiatives.

But a national goal can only be achieved by national action.

The exceptionally high rate of land clearing in Queensland is still the single most substantial factor in the failure to achieve the national goal. The Queensland Statewide Landcover and Trees Study estimates that an average of 425,000 hectares of remnant and regrowth native vegetation has been cleared each year over the 1997 to 1999 period. Indications are that there has been little abatement in the rate over the subsequent two years.

The New South Wales rate also remains high. Although estimates vary widely, it has been claimed that clearing in that state may be as high as 80,000 hectares per year.

Tasmania has a high rate of clearing relative to its size, estimated at close to 16,000 hectares in 1999-2000, with over 60,000 hectares cleared since 1996.

The impacts of native grassland clearing and modification are unknown.

#### **Re-vegetation—progressing well but cannot offset clearing**

Landholders and community groups all over Australia are investing significant effort in planting trees and other plants in re-vegetation and forestry projects.

Over the life of the Natural Heritage Trust, the area of trees and shrubs planted on agricultural

land is estimated to have risen from around 32,000 hectares in 1995-96, prior to the establishment of the Trust, to approximately 109,000 hectares per annum in 1999-2000.

However, the restoration task is huge. The total area of land revegetated is well below the area of native vegetation lost to broadscale clearing. For example, the area revegetated is considerably less than the area cleared each year in Queensland alone.

In addition, re-vegetation cannot substitute for the diversity of plants and animals lost through clearing. In almost all cases, replanted vegetation is a poor substitute for the natural complexity of the vegetation cleared and there is a net loss in vegetation quality. Re-vegetation can only be part of the solution in meeting the national goal.

#### **The Commonwealth's approach and achievements**

The Commonwealth Government takes its national role seriously and has provided unprecedented leadership to ensure a consistent and effective approach to native vegetation management.

I am pleased to be able to say that many of the new directions I foreshadowed in my statement Bushcare: New Directions in Native Vegetation Management tabled in Parliament on 8th December 1999, have been progressed in both the Natural Heritage Trust and new initiatives. The Trust has invested substantially in regional capacity and progressed many incentives for conservation such as revolving funds and rate rebates. The government also introduced new philanthropy taxation measures last year. Investments made through the Trust are now more strategic, with an increased distribution of funds through devolved grants to strategic regional initiatives—over half of the Bushcare One Stop Shop grants are now delivered in this way.

The Commonwealth has invested more than ever before in pursuit of the national goal of reversing the decline in our native vegetation cover. It has done this through unprecedented levels of funding for vegetation management, and embraced its national leadership responsibilities through innovative native vegetation strategies and programs.

#### **The Natural Heritage Trust—empowering communities**

The \$1.5 billion Natural Heritage Trust is the foundation of the Commonwealth's approach to conserving Australia's native vegetation, land, biodiversity, water resources and seas. The 1999 mid term review of the Natural Heritage Trust estimated that about 300,000 Australians had been involved in the Trust to that time. Many more thousands have been involved since.

The Trust has increased awareness, knowledge and skills in natural resource management, which are essential prerequisites to achieving changes on the ground. Trust programs have provided increased community access to technical advice, training and education related to native vegetation management, and generated a land stewardship ethic.

#### **Bushcare**

The Bushcare program is the largest of the Trust programs and funds on-ground improvements to protect and enhance Australia's native vegetation, by working with community groups, land managers, industries and Government agencies. Since 1997, over \$228 million has been approved under Bushcare to support more than 2,180 projects throughout Australia.

Bushcare provides much of its funding as 'devolved grants' to regional bodies and organisations such as Greening Australia to help deliver regional strategies. The share of 'devolved grant' funding has now increased to approximately half of total Bushcare funding. This trend will continue in the extension of the Natural Heritage Trust with a greater emphasis on regional funding and delivery.

#### **Vegetation information on the Internet**

As anticipated in my 1999 Ministerial Statement, the Commonwealth has made a range of vegetation information available to the community on the Internet.

The Bushcare web site at <http://www.ea.gov.au/land/bushcare/index.html> now provides extensive information resources including on Australian native vegetation and its management, the Bushcare program and how to apply for funds, project management guidelines, extensive lists of contacts and publications, and advice on various policy issues. The Natural Heritage Trust web site at <http://www.nlwra.gov.au/> has additional information on applying for funds and other issues.

The National Land and Water Resources Audit, another program of the Natural Heritage Trust, is developing a comprehensive national appraisal of Australia's natural resource base. Information products produced so far and reports on progress are available at <http://www.nlwra.gov.au/> which relate to the seven Audit themes of water availability, dryland salinity, vegetation, rangeland monitoring, agricultural productivity and sustainability, capacity for change, and ecosystem health.

Much of the data collected through the Audit is available to the public through the Australian Natural Resources Atlas web site at [http://audit.ea.gov.au/ANRA/atlas\\_home.html](http://audit.ea.gov.au/ANRA/atlas_home.html).

The Atlas contains an interactive Internet mapping tool that allows the data to be viewed spatially and queried, and provides links to other information such as reports, graphs and pictures. Additional information, such as vegetation coverage, will be added to the Atlas as it becomes available.

#### **Reserves**

The Commonwealth has been working with all levels of government, industry and the community to further develop a comprehensive, adequate and representative National Reserve System. Acquisitions and conservation management agreements covering over 8.6 million hectares, including 3.6 million hectares of Indigenous Protected Areas, have been approved under the National Reserve System.

There are now a total of 15 Indigenous Protected Areas in Australia, with declarations in each State and Territory except for the ACT. These Indigenous Protected Areas are managed by their Traditional Owners working through community based Indigenous land management organisations. The development of Indigenous Protected Areas has brought together contemporary land management practices with the land management knowledge of the Traditional Owners to better manage these often remote biologically and culturally important areas. The Indigenous Protected Areas program stands as a significant Commonwealth achievement bringing together Indigenous and non Indigenous Australians to protect our biodiversity.

In addition, the Commonwealth and State's Regional Forest Agreements have added just over 2.8 million hectares of native forests to Australia's network of protected areas.

#### **Innovative approaches to vegetation management**

The Commonwealth has developed or supported a number of innovative approaches to vegetation management through its Natural Heritage Trust and greenhouse abatement programs.

#### **Revolving funds**

Under the national Revolving Funds program, another Natural Heritage Trust program, the Commonwealth is engaging organisations to set up Revolving Funds across the country to secure land with significant wildlife and habitat conservation values. Based on the very successful Victorian Trust for Nature scheme, it will purchase land, place a conservation covenants on the land and then on-sell it to a landholder committed to conservation, with the proceeds reinvested to fund further purchases.

The Commonwealth has negotiated a contract with Western Australian state agencies and an

NGO to establish a new revolving fund, and encouraged the establishment of conservation trusts in Queensland and New South Wales to administer revolving funds. Contracts are expected to follow in these and other states.

#### **Local Government initiatives**

The Natural Heritage Trust has supported a range of local government initiatives. There are more and more rural councils making excellent progress in the use of planning tools and mechanisms to conserve native vegetation. For example, the Coonabarabran Shire Council in western New South Wales received the New South Wales Award for Excellence in Environment, sponsored by the Natural Heritage Trust, for its Vegetation Management Plan. The Plan provides for better decision-making for the long-term management of native vegetation, by making a direct link with development control policies, the Council's planning scheme and on-ground management activities to ensure protection of valuable remnant vegetation.

#### **Native vegetation as greenhouse sinks**

Limiting the loss of native vegetation and increasing greenhouse sinks through re-vegetation and plantation establishment provide effective and practical means for Australia to reduce emissions to help meet its international commitments, as a critical part of a wider greenhouse abatement strategy. There are important synergies to be captured between reducing net greenhouse gas emissions, mitigating dryland salinity, protecting water quality and improving biodiversity conservation at a landscape scale.

The Commonwealth has committed \$400 million to the Greenhouse Gas Abatement Program which is funding a range of major projects to deliver large, cost-effective emission reductions. Projects funded under the program include several regional re-vegetation projects that deliver multiple economic, social and environmental benefits.

Reducing the rate of land clearing in Queensland remains one of the most significant opportunities to address our greenhouse emissions. The Commonwealth has offered Queensland unprecedented financial assistance to implement an improved land clearing regime that would deliver substantially reduced clearing rates and a significant greenhouse outcome beyond that resulting from the existing Queensland legislation and reform commitments. In order to meet our greenhouse commitments, certainty of outcome is essential. The delivery of this certainty, and a sustained reduction in greenhouse emissions, can only be achieved through the implementation of state-wide caps on clearing of native vegetation.

#### **Commonwealth taxation incentives**

The Commonwealth has examined the use of the tax system to remove disincentives and provide appropriate incentives for nature conservation on private land.

#### **Philanthropy taxation measures**

The Government has introduced several taxation measures to encourage philanthropy that will contribute to the conservation of native vegetation, and has amended the Income Tax Assessment Act 1997 to promote philanthropy and stronger partnerships between business and community groups. There are four changes that relate to gifts made to environment and heritage bodies from 1 July 1999:

- allowing tax deductions for gifts of property (including land) valued at more than \$5000 by the Taxation Commissioner, regardless of when or how it was acquired;
- allowing five year apportionment of deductions for these gifts of property, where the donation is made to environment and heritage bodies;
- providing a capital gains tax exemption for testamentary gifts; and
- providing a new category of 'private funds' eligible to receive tax deductible donations.

#### **Incentives to support conservation covenants**

The Commonwealth has announced tax measures, which encourage private land holders to place native vegetation under the protection of a conservation covenant.

The Treasurer announced in June 2001 that the Commonwealth would remove disincentives in the capital gains tax treatment of any payment to a landowner as a consideration for registering a perpetual conservation covenant on land title.

The Prime Minister announced in August 2001 that any loss in the value of land as a result of entering into a qualifying conservation covenant without consideration would be tax deductible.

#### **National policy initiatives**

##### **National Vegetation Framework**

Since the 1999 release of the Australia New Zealand Environment and Conservation Council National Framework for the Management and Monitoring of Australia's Native Vegetation, it continues to be a vehicle for coordinated reform of native vegetation management legislation and regulation. It sets out best practice procedures for the management and monitoring of native vegetation and is implemented by Work Plans established by each of the Commonwealth, State and Territory governments. In February 2001 progress

against the Native Vegetation Framework was independently evaluated. The Work Plans were assessed as to their appropriateness, effectiveness and efficacy for achieving long term sustainable native vegetation management. The independent evaluation acknowledged the significant achievements that have been made by all jurisdictions under the Native Vegetation Framework, but recognised that increased effort is required to achieve the national goal of reversing the decline in the quality and extent of Australia's native vegetation cover. All jurisdictions agreed to review and update their Work Plans to address the comments raised in independent evaluation and to develop strategies to link the Work Plans to the Native Vegetation Framework.

The Native Vegetation Framework was adopted by the new Natural Resource Management Ministerial Council in August 2001. The Natural Resource Management Ministerial Council also agreed that the next step is to translate the national outcomes of the Native Vegetation Framework into regional targets. The new National Framework for Natural Resource Management Standards and Targets being developed under the National Action Plan for Salinity and Water Quality, will provide the ideal platform for such targets.

#### **Firewood collection and use**

In 2001 the Australian and New Zealand Environment and Conservation Council endorsed the National Approach to Firewood Collection and Use in Australia. The National Approach responds to mounting scientific evidence that firewood collection which is estimated to amount to some 6 million tonnes per year, is having a detrimental impact on Australia's native vegetation and wildlife. The firewood strategy encompasses several elements to make the firewood industry more sustainable, such as more information to improve policies and target actions, educating the community, introducing a Voluntary Code of Practice for Firewood Merchants, increasing protection for species threatened by firewood collection, encouraging a firewood industry increasingly based on plantations, sustainably managed forests and waste wood, and improving firewood efficiency and encourage alternative firewood sources.

#### **Commonwealth legislative reform**

The Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1999 supports the sustainable management of our natural resources. The EPBC Act promotes the conservation of biodiversity including native vegetation by providing strong protection for matters of national environmental significance. It provides for: the

identification of key threatening processes; the protection of critical habitat; the preparation of recovery plans; threat abatement plans; wildlife conservation plans; bioregional plans; and conservation agreements; and the issuing of conservation orders. A number of threatened native vegetation communities have been identified for protection under the Act.

In April 2001 the Commonwealth also listed land clearance as a key threatening process under the Act, in view of the evidence that land clearing has been the most significant threatening process in Australia since European settlement. If land clearing is not controlled it will lead to additional species and ecological communities becoming threatened.

The Government has undertaken a major program to map the locations and habitats of protected species and communities. By using the best available technology, we have been able to provide interactive, on line access to the relevant data from all over Australia in a form that allows users, whether they be farmers, planners or researchers, to determine which protected species or communities potentially exist in their area. The Government has also produced guidelines to allow affected people to self-assess the likely impacts of their activities on protected species and communities and on how to refer an action for a decision on whether or not approval is required. Our reforms have also ensured a streamlined approach to decision-making on whether or not a Commonwealth approval is required.

#### **Strengthened Commonwealth commitment**

The Commonwealth has re-confirmed and strengthened its commitments to reversing the long-term decline in the quality and extent of Australia's native vegetation, and to meeting the national goal in new initiatives.

#### **National Action Plan for Salinity and Water Quality**

The Natural Heritage Trust focuses on supporting community action, but many of the natural resource management challenges we face are of such scale and complexity that they are beyond the capacity of community groups alone to address.

The problem of dryland salinity is perhaps the most pressing. Salinization of land and water is a symptom of inappropriate land use and management, often over large areas and long periods of time. Recognising that land clearing in salinity risk areas is the primary cause of dryland salinity, effective controls on land clearing are essential. Solutions to dryland salinity are likely to require

far greater changes in land management practices than we had previously anticipated.

Extensive areas are likely to need large-scale re-vegetation to help mitigate dryland salinity. Appropriate incentives and integrated delivery mechanisms driven by regional communities will be crucial to harness the investment and momentum necessary for the scale of re-vegetation required. These actions have to be directed at the catchment scale, beyond the individual property. Through new land uses, many involving more native vegetation and plantations, regions can develop more diverse economies, landholders can gain alternative income sources, and Australia will reap environmental improvements.

The Commonwealth, States and Territories have allocated \$1.4 billion to the National Action Plan for Salinity and Water Quality. It is a plan for decisive salinity and water quality related action to ensure that our land and water management practices will sustain productive and profitable land and water uses and will protect our natural environment.

To date, the Commonwealth and all State and Territory Governments except Western Australia have signed the Inter-Governmental Agreement to implement the National Action Plan.

Commonwealth funding for the Plan is contingent on the States and Territories committing to implement the whole package of measures outlined in this Agreement, which includes policy reform relating to land and water resource management.

The Agreement commits the States and Territories to put in place controls which at a minimum prohibit land clearing in the 21 priority catchments and regions where it would lead to unacceptable land or water degradation.

The National Action Plan is a major shift in our approach to natural resource management. Its focus is on regional delivery, to address problems at the catchment or landscape scale rather than merely at the farm scale. Regional bodies will be funded to implement accredited integrated catchment management or regional plans. Continued funding of regional plans will be contingent on performance in meeting regional targets.

The Agreement also commits all parties to the development of standards on salinity, water quality and associated water flows by December 2001, and standards on biodiversity by December 2002. These are to be implemented through a National Framework for Natural Resource Management Standards and Targets which will include national outcomes and regional targets for natural resource condition, and a requirement for regional targets for native vegetation retention and restoration.

The integrated plans, initially developed and supported under the National Action Plan, will also be used to guide funding from other sources. The Natural Heritage Trust would fund biodiversity, sustainable land management, enhancing the capacity of people and institutions and other elements, and programs such as Commonwealth greenhouse programs are likely to support some greenhouse emission abatement activities under these plans. Thus the regional delivery model developed through the National Action Plan presents the opportunity for government and community investments to capture multiple productivity and environmental benefits.

Further, trials of economic and market-based mechanisms will be funded under the National Action Plan for several pilot regions. These are likely to involve 'cap and trade' systems for salinity and nutrients and the development of environmental credits, such as for carbon and salinity, and biodiversity.

#### **Natural Heritage Trust extension**

The Government has recently agreed to extend the Natural Heritage Trust for a further five years and \$1 billion from July 2002 which provides an opportunity to build on this outstanding community action and improve the way the Trust operates.

The extension of the Trust will build on the success of the original Trust, using the lessons learnt from the mid-term review and extensive feedback from the community and other stakeholders, and will draw on the framework being developed under the National Action Plan for Salinity and Water Quality.

Delivery of the Trust will be simplified under a revised structure, which focuses on three strategic themes:

- the promotion of sustainable agriculture and natural resource use to maintain the productivity, profitability and the sustainability of these resource-based industries;
- the conservation of Australian biodiversity through the protection and restoration of ecosystems; and
- individuals, industry and communities equipped with skills, knowledge and information, and supported by institutional frameworks that promote the conservation of biodiversity and sustainable agricultural production.

These strategic themes will be addressed by four programs broadly covering land, water, vegetation and coastal and marine activities.

Trust investments in these programs will be delivered through National, Regional and or Entry-

level Grant components. Overall, the revised Trust structure will progressively allocate more funding directly to regional organisations to deliver agreed outcomes that address the Trust's strategic themes. Investment priorities and outcomes for the Trust are being developed to reflect its strategic themes.

The Commonwealth will also look at ways of better securing its Trust investment to ensure an overall improvement in native vegetation management on the ground, by including requirements for institutional and policy reforms.

#### **States and Territories—a call to action**

The States and Territories have made significant advances in relation to vegetation management over the past few years but clearly there is a long way to go in many parts of the country.

While a number of States have effective regulatory systems for land clearing in place, the main reason why the national goal has not been achieved is that many States have not contributed sufficiently to the national endeavour. The goal cannot be achieved as long as Queensland land clearing rates remain at current levels, and New South Wales clearing rates also remain too high. Significant improvements in other States and Territories are also required.

#### **Key actions and reforms**

There are a number of key required actions and reforms common to most jurisdictions. These include:

##### **1. Reduction of land clearing rates, particularly in Queensland, New South Wales and Tasmania.**

To protect the values and ecosystem services that vegetation provides, remaining native vegetation should be maintained in the landscape as much as possible. In a number of states the benefits of investment under initiatives such as the Natural Heritage Trust and National Action Plan addressing the protection of native vegetation are and will be undermined by unacceptable large-scale land clearing. This may require education and awareness raising so that communities—and governments—continue to value the importance of native vegetation in protecting environmental values and sustaining productive uses of the land.

##### **2. Land clearing regulations should protect all threatened ecological communities and endangered species**

Without effective regulatory protection, threatened ecological communities and endangered species are at a grave risk. Many of these communities and species only exist in 1 % of their former range before white settlement. All states need to ensure that no further clearing of these

threatened communities and endangered species habitats occurs.

##### **3. Land clearing regulations should address all native vegetation types, not just tree cover.**

Native vegetation is more than just trees. Natural ecosystems are complex and varied, and also contain a range of other plants including shrubs, forbs and grasses. Land clearing regulations and management controls need to take a broader ecosystem approach, addressing all vegetation types including grassland, shrub land and grassy woodland, as well as woodland and forest. States also need to ensure that the full spectrum of native vegetation types is covered in mapping, monitoring and reporting activities.

##### **4. The ‘precautionary principle’ approach has to guide clearing regulations and management controls.**

Australia's Intergovernmental Agreement on the Environment (1992) signed by all States and Territories states that: “where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.

Given the weight of evidence on the negative ecosystem impacts of clearing, the precautionary principle, requires that decisions on clearing should be deferred until sufficient information is obtained to demonstrate no unacceptable environmental impacts will result, including biodiversity loss or land and water degradation. Nevertheless, broadscale clearing continues in Queensland, New South Wales and Tasmania. All states need to ensure that every precaution is taken in assessing clearing applications, especially where insufficient information is available on the likely impacts of clearing on land degradation, salinity and biodiversity. The precautionary principle is not just a fine sentiment to include in policy statements - it is a guiding principle for actions.

##### **5. Monitoring, evaluation, reporting and enforcement should be enhanced.**

There is no consistent and efficient methodology for the monitoring and reporting of land clearing across Australia, although data from the National Carbon Accounting System, due for release later this year, may provide a national overview of Australia's vegetation extent.

Where monitoring is undertaken, there is an emphasis on monitoring vegetation extent only. The capacity to assess condition must be improved. Also, in some States, monitoring focuses on forest and woodland, not broader vegetation types.

While legislative frameworks may be sound in many States, these must be supported by effective

monitoring of and enforcement of compliance with clearing approvals.

#### **6. Greater support for management of remnant vegetation should be provided,**

This is a significant problem in all agricultural regions due to a combination of fragmentation, salinity, dieback, overgrazing, lack of natural regeneration and weed invasion. Governments must provide appropriate support and guidance for positive management by landholders to protect and enhance remnants, and thereby prevent 'passive clearing'.

#### **7. Integrated landscape planning for vegetation management**

Governments need to ensure that planning for vegetation management takes into account the full suite of environmental values and the desirability to achieve multiple benefits such as enhancing biodiversity, enabling sustainable production, arresting salinity and improving water quality at the landscape scale. This integrated approach to landscape planning will achieve far better outcomes than for example a reliance on simple offset schemes, which allow re-vegetation to replace clearing, and generally fail to reverse the decline in the quality of native vegetation. Replanted vegetation is a poor substitute for the natural complexity of the vegetation cleared, and there is consequently a net loss in quality and biodiversity, as well as in ecosystem services. Remedial re-vegetation measures should ensure that like is replaced with like as much as possible.

#### **Conclusion**

Land managers and community groups across the country, with the support of Australian governments, have made considerable progress in the conservation and sustainable management of our precious native vegetation cover, but there is still clearly much to be done.

Land clearing remains the biggest obstacle to achieving the national goal of reversing the decline in the extent and quality of our native vegetation cover.

All State and Territory Governments must complete the establishment, implementation and enforcement of comprehensive native vegetation legislation that covers all tenures, all land uses and all vegetation types, and mitigates against all environmental risks.

Australian governments will also continue our work in improving native vegetation management and re-vegetation through joint national initiatives including the Natural Heritage Trust, the National Action Plan for Salinity and Water Quality, and the National Framework for the Management and Monitoring of Australia's Native Vegetation.

The benefits from effective and comprehensive vegetation management will accrue across society and the economy—including in the environmental, cultural, scientific, agricultural and urban spheres—and can continue to accrue to future generations of Australians.

The concept of 'inter-generational equity' means we are mere custodians of our precious Australian bushland for future generations. We must fulfil this responsibility.

Now is the time for all governments and communities to work together to create much more effective mechanisms to conserve our native vegetation. We must not shirk hard or difficult decisions and must show the necessary resolve to reach the national goal.

*Senator Ellison's speech read as follows—*

This Saturday, 29 September 2001 not only marks the feast day of St. Michael, the Patron Saint of police officers, but also Police Remembrance Day. Services will be held around Australia tomorrow to commemorate police officers from Australia, New Zealand, Fiji and Papua New Guinea, who have lost their lives in the course of their duty. As Minister for Justice and Customs I would like to take this opportunity to commemorate those fallen officers and pay tribute to the work of police everywhere in Australia.

Policing is a unique profession that requires that an officer to make a commitment to the fundamental principles of duty, fraternity and charity.

The demands made on police officers and their families are great. Whilst policing engages the tools of forensics, intelligence, research and investigation, it is always ultimately about people.

When police officers swear an oath to perform their duty they give a most remarkable commitment to all of us. In the performance of their duties, police officers give a commitment to provide every assistance no matter how difficult the circumstances or how severe the consequences for themselves.

Policing also involves :

- ~ a commitment to assist people and protect them from fear and aggression;
- ~ a commitment to make communities better and safer places in which to live;
- ~ a commitment to provide people with order under the rule of law

Though we all strive toward a society that minimises the risks the loss of life is a sad reality in the proud history of police service.

In the past 12 months in Australasia and the South West Pacific, the following officers were killed in the performance of their duty:

Victoria	
Senior Constable Ivonne HAGENDOORN	5 February 2001
Western Australia	
Detective Senior Constable Michael Raymond JENKINS	27 October 2000
Senior Constable Donald Richard EVERETT	26 January 2001
Senior Constable Philip Gavin RULAND	26 January 2001
First Class Constable David Adrian DEWAR	26 January 2001
Constable Gavin Ashley CAPES	26 January 2001
Queensland	
Senior Constable David Andrew SHEAN	5 April 2001
New South Wales	
Senior Constable Ronald Walter McGOWAN	10 June 1998
Senior Constable James AFFLECK	10 January 2001
Papua New Guinea	
Constable Peter AKUSA	30 December 2000
Constable MOAP	6 April 2001
Chief Sergeant H TOVARTOVO	2 July 2001
First Constable Albert KAPALA	27 July 2001
Constable Tony STANLEY	4 August 2001
Fiji	
Constable Dharam RAJ	28 July 2001
Corporal Semesa QARAU	9 August 2001
Constable Taroro TAMOA	20 August 2001

The commitment of these officers is not lost on the Australian community. Since the concept of a Police Remembrance Day was devised in 1988, 29 September has come to be an important day of quiet remembrance, community support and appreciation for our police officers.

The services this Friday will provide an opportunity to remember those officers killed in pursuit of their policing duties. It will also be a time to reflect on our American law enforcement colleagues who were killed in the terrorist attacks on the United States.

Our thoughts go out to the families of the men and women of the New York City and New Jersey Police Departments and the Port Authority of New York who lost their lives. These brave officers were part of a great law enforcement community and I know that Australian policemen and women in Australia feel a deep sorrow at their loss.

The following list of the dead and the missing was provided to the Police Federation of Australia by their American colleagues:

**Port Authority of New York and New Jersey Police Department (37 Officers)**

Officer Dominick Pezzulo Deceased  
 Officer George Howard Deceased  
 Officer Christopher Amoroso Missing  
 Officer Maurice Barry Missing  
 Officer Liam Challahan Missing  
 Officer Robert Cirri Missing  
 Officer Clinton Davis Missing  
 Officer Donald Foreman Missing  
 Officer Gregg Froehner Missing  
 Officer Thomas Gorman Missing  
 Officer Uhuru Houston Missing  
 Officer Steve Huczko Missing  
 Officer Anthony Infante Missing  
 Officer Paul Jurgens Missing  
 Officer Robert Kaulfers Missing  
 Officer Paul Laszcynski Missing  
 Officer David Lemagne Missing  
 Officer John Lennon Missing  
 Officer John Levi Missing  
 Officer James Lynch Missing  
 Officer Kathy Mazza Missing  
 Officer Fred Morrone Missing  
 Officer Donald McIntyre Missing  
 Officer Walter McNeil Missing  
 Officer Joseph Navis Missing  
 Officer James Nelson Missing  
 Officer Alfnse Niedermeyer Missing  
 Officer James Parham Missing  
 Officer Bruce Reynolds Missing  
 Officer Antonio Rodrigues Missing  
 Officer Richard Rodriguez Missing  
 Officer James Romito Missing  
 Officer John Skala Missing  
 Officer Walwyn Stuart Missing  
 Officer Kenneth Tietjen Missing  
 Officer Nathaniel Webb Missing  
 Officer Michael Wholey Missing

**New York City Police Department (23 Officers)**

Officer Timothy Roy Missing  
 Officer Glenn Pettit Missing  
 Officer Mark Ellis Missing  
 Officer Ramon Suarez Missing

Officer James Leahy Missing  
 Officer Moria Smith Missing  
 Officer Fazio Robery Missing  
 Officer John Perry Missing  
 Sergeant Rodney Gillis Missing  
 Sergeant Michael Curtin Missing  
 Sergeant John Coughlin Missing  
 Detective Claude Richards Missing  
 Detective Joseph Vigiano Missing  
 Officer Walter Weaver Missing  
 Officer Vincent Danz Missing  
 Officer Jerome Dominguez Missing  
 Officer John Dallara Missing  
 Officer Thomas Langone Missing  
 Officer Ronald Kloepfer Missing  
 Officer Santos Valentin Missing  
 Officer Stephen Driscoll Missing  
 Officer Paul Talty Missing  
 Officer Brian McDonnell Missing

**New York Office of Court Administration (3 Officers)**

Court Officer Thomas Jurgens Missing  
 Court Officer Mitchell Wallace Missing  
 Captain William Thompson Missing

To the families, friends and colleagues of all officers killed in the line of duty, I offer my condolences and those of the Government. We have the example of those whom we remember today to inspire us. For those of us who remain behind, it is for us to build a better community in their honour.

*Senator Calvert's speech read as follows—*

I rise tonight to speak about the record of the Howard Coalition Government, and to remind those assembled in this place, and those who are listening, of the many achievements of this Government that have secured Australia's future. In particular, I wish to address my comments to Tasmanians and remind them of the specific initiatives that have benefited our home state.

I have come into this place and heard, on a number of occasions, Labor Senators mouthing complaint after complaint of how the Howard Government has failed regional Australia. My purpose in this adjournment debate is to point out, as I have done so in this place previously, the facts about the substantial programme of assistance to regional Australia and, specifically, Tasmania.

The hypocrisy of Senator Mackay—as recently as last night in this place—about this very issue is astounding. Referring to the collapse of Ansett, she postured:

Regional Australia has just witnessed what it regards, I believe, as the final blow in the long list of failures by the coalition government to maintain basic services in regional Australia.

The problems within the operation of Ansett, a private company, are not the result of any failure by the Howard government. For Labor to claim this is not only fanciful, it ignores the facts and it shows they don't understand the complex issues surrounding the demise, themselves. We end up with this truly appalling outcome, on which the Government has worked overtime—and then Senator Mackay comes into this place and accuses the Government of—and I quote—"complicity in the destruction of this great Australian icon." A New Zealand-owned company. I quote again—she said the Government was "prepared to walk away from the many thousands of people caught in this crisis."

Well, the Government rejects that, and it has been doing everything that it can to help those people. The fact is, that if Labor had been in Government, they would have done absolutely nothing about Ansett. And, closer to home, the Tasmanian State Labor Government has done next to nothing to help Tasmanian workers and businesses that have been affected by the collapse. What a disgrace.

Senator Mackay has such a nerve to come in here and bleat about maintaining basic services—when it was a Labor Government that closed two hundred and seventy-seven postal outlets. And again, only today, my colleague Senator Alston has revealed the duplicitous sham of Labor's long adhered-to position of opposing the deregulation of the postal market. Labor has again misled regional communities, through their now discredited scare campaign on Australia Post. In addition, Labor has failed to commit to the continued provision of Australia Post's Community Service Obligation (CSO) that subsidises the delivery of mail to rural and regional Australia. Basic services, which the Howard government has maintained—and strengthened, and Labor just doesn't have the ticker to support.

This is just another example of Labor doing, and saying, anything—in a desperate attempt to get re-elected—even by disguising their real intentions from regional Australians.

It was Labor, after all, who reneged on their notorious L-A-W tax cuts. It was Labor who broke a pledge to not sell off all of the Commonwealth Bank. And they tried to sell Telstra to the then

BHP. Talk about back flips. What do they stand for?

My home state of Tasmania is an excellent example of how the Howard Government has put in place a series of measures, which have strengthened rural and regional Australia. The combination of strong, consistent, stable economic management together with a range of Tasmania-specific initiatives has resulted in substantial benefits to Tasmanians.

We have continued to deliver low home loan and small business interest rates and record periods of low inflation. Since coming to Government, the Coalition has restored Australia's finances, delivered almost 900,000 jobs, abolished taxes on exports, slashed personal income tax rates by \$12 billion and has paid off the bulk of government debt left to the taxpayers by previous Labor governments. Labor have a poor record as economic managers, and deservedly so.

I wish to put on the record, in closing, my support for the hard-working endeavours of Tony Bennsworth, Alan Pattison, Geoff Page, Peter Hodgman and Tony Steven. They will provide Tasmanians with genuine representation in the other place during the next term of the Howard Coalition Government—rather than the embarrassing duplicity of the current Labor members. I also hope to be welcoming, in the new term, a new Senator or two in Richard Colbeck and Stephen Parry, who will work hard for the best interests of all Tasmanians. The Howard Government has achieved much so far, but there is still more to be done.

**Senator ABETZ**—Tonight in the adjournment debate I want to quickly revisit the situation that has occurred, shamefully, as a result of ALP tactics on the **Regional Forest Agreements Bill**. Their attempt to rewrite history would make even Stalin blush. Labor can run, they can duck, they can weave, they can grease around and use all the slippery language under the sun to try to explain what they have done, but one thing they cannot explain is the fact that we as a government tonight gave them the following motion:

I declare that the **Regional Forest Agreements Bill 2001** is an urgent bill and I move that the bill be considered an urgent bill.

We then also were going to move:

That the time allotted for the remaining stages of the **Regional Forest Agreements Bill 2001** be 30 minutes.

The Labor member for Lyons put out a press release earlier today saying:

We won't give up on the RFA until parliament closes. All the government has to do is introduce it. They should do so now to show good faith. This opportunity must not be missed.

We accepted what the Labor member for Lyons said, but the simple fact is that he has no sway in the federal parliament in Canberra. He makes himself a hero at home but a coward in Canberra, because he cannot convince his colleagues to accept—

**Senator Schacht**—God, you're a scumbag, Eric.

**The PRESIDENT**—Withdraw that, please.

**Senator Schacht**—I withdraw.

**Senator Robert Ray**—Thank you for that appropriate withdrawal, Senator Schacht. Madam President, I rise on a point of order. Please ask Senator Abetz to withdraw the word 'coward'.

**Senator ABETZ**—I withdraw. The simple fact is that he has called on the federal parliament to pass this legislation, but his colleagues in Labor have dudged him. We in this parliament gave the Labor Party these motions; they were handed to the Labor Party. The people of Australia, and especially Tasmania, should know in relation to these motions that we were told by the ALP that they would not allow our last two taxation bills to get through if we were to proceed with the RFA Bill. Indeed, Senator Ray made one of the greatest faux pas of his political history by getting up during the committee stage and asking the chair, 'Madam Chair, how long do we have to debate this issue?' Senator West said, 'Forever if you want,' or words to that effect. Then Senator Ray made a comment to this effect: 'We can be in for a very interesting and long debate.' The threat and the thuggery that has gone on in relation to this legislation is now quite clear.

The Labor Party were given the opportunity to vote on the Regional Forest Agreements Bill, and they have declined the offer. It is now recorded in the *Hansard* because I have read out the motion that we as a government were prepared to move after the consideration of government business—and

the Labor Party squibbed. We had the Labor Party speaking with forked tongue. Mr Adams tries to sell the message in Tasmania to say, 'I will do everything I can,' but as for Senator Sherry, Senator O'Brien, Senator Mackay, Senator Murphy and Senator Denman, all of them were absolutely silent on this because they had never wanted the regional forests agreement legislation to get through this place.

We brought this legislation into the parliament in 1999, and my good friend Senator Calvert and my good friend Senator Watson both know how we as Liberal senators for Tasmania fought and worked for that legislation. The reason it did not proceed further was that the Labor Party insisted on amendments, amendments which were condemned by the union movement, Timber Communities Australia and the state Labor Premier of Tasmania, Jim Bacon. Interest groups from the timber resource area condemned the Labor Party and told us as a government not to proceed with the legislation, so we did not.

Now, in the dying stages of this parliament, we have the Labor Party allegedly coming around to say, 'We will now support the regional forest agreements legislation without amendment,' and so that is what we put up. We have given them the opportunity again tonight to move this bill through very quickly, and they have squibbed. This is the typical tactic of the Australian Labor Party. Senators Calvert and Watson will know that in Tasmania the shadow minister goes visiting, and in the *North-Eastern Advertiser* he and his friend Senator O'Brien say, 'The Regional Forest Agreements Bill? What's being talked about? It has been carried by the Senate. There are no problems.' But, unfortunately for Senator O'Brien, the very next week in the north-western newspaper in Tasmania, the *Advocate*, Mr Ferguson was on record saying, 'The bill has to be introduced and passed, and Mr Tuckey ought to be doing it.' So it is one message for the north-east, a completely different message for the north-west, and you were hoping that the people of Tasmania would not read both newspapers and expose the horrid nonsense that the Australian Labor Party go on with.

It is the forked tongue of the Australian Labor Party that needs to be condemned. They have deliberately scuttled the Regional Forest Agreements Bill and guess what: they will undoubtedly get green preferences as a result at the next election. But in so doing they have sold out the forest workers—and 10 per cent of Tasmanians rely on their income from the forest industries. That will be the message to them over the next weeks and months by my colleagues Senators Calvert and Watson and our excellent team of House of Representatives candidates in Alan Patison, Tony Benneworth, Geoff Page, Peter Hodgman and Tony Steven. They will sell that message.

The Australian Labor Party have now committed themselves to acknowledging that they will not win votes in rural and regional Australia. In fact, a senior shadow spokesman is now on record in the *Sydney Morning Herald* as having said, 'We are on the nose in the bush. We now have to try and get some café latte votes.' And of course, the Labor Party are quite right: there are not many café latte votes in Eden-Monaro, Corangamite, McEwen or McMillan, or indeed in the seat of Bass, Braddon, Lyons, Franklin or Denison in Tasmania, nor in the electorate of Page. You people have sold out the forest workers—you know it. Indeed to think that a former forest union boss, Senator Shayne Murphy, represents the Labor Party in this place, and has squibbed on them!

It seems to me that travel sickness must come upon the Labor senators from Tasmania because they somehow get a bit green when they travel from Tasmania. They say all the nice things in Tasmania to the forest workers. They get a bit of motion sickness and they turn up here a bit green and then squib on the workers and the voters who put them in here. Mr Adams puts out a statement saying, 'We won't give up until the parliament closes'—what a joke. He and the Labor Party have deliberately ensured that this legislation does not get through. They have sold out the workers.

Let me tell those who might not fully understand what this regional forest agreements legislation is about. It was a scientific basis for getting a good balance between resource

security and conservation. At the end of the day, if we do not have forest resources, what do we use? What are they? Senator Brown knows this: forest resources are renewable. They are reusable, recyclable and at the end of the day they are biodegradable. But if we do not use forest products, as Senator Brown and others would have us do, what would we—and they—use? Their substitutes are the products of the petrochemical industry, mining and smelting—non-renewable, polluting products which will do the environment damage. The defeat of this motion will damage the environment, the workers and the economy of Tasmania—and the Labor Party stands condemned.

#### Regional Forest Agreements Legislation

**Senator ROBERT RAY (Victoria)** (7.06 p.m.)—What a shallow opportunistic view we have heard from the Liberal Party on this tonight, so let us set the record straight. Firstly, if the Liberal Party and the National Party were serious about this issue, they would not have left the legislation till the last moment. They knew these were the last two weeks of parliament. You knew it the moment Mr Reith, as manager over the other side, signalled that the House of Representatives would not meet when it normally did and that they would put it off for a week. That was a signal these were the last two weeks. Did they give the RFA bill priority over there? They only considered it mid-week. The message only came in yesterday. They never, ever took it seriously. So that is point one. Point two is that it arrives here and Senator Bartlett moves it not be part of the exemption motion, that is put and not one Liberal or National objected—no division, nothing. You did nothing. You were asleep at the wheel. If you had called the division, it would have survived the cut-off point. Point three is that your missing leader and the rest of the negotiating crew made the offer to Senator Brown and the Democrats to put off this legislation. It was not a request from the Labor Party—never a request from the Labor Party.

Our request was that you dump that festering, stinking, self-interested piece of legislation to do with the Commonwealth electoral bill, which is lining the national secre-

tariat's pocket at the expense of all the state divisions. That was our request. It was acceded to, just as you acceded to the request from the Democrats and Greens not to have the RFA stopped.

**Senator Abetz**—That is not true.

**Senator ROBERT RAY**—You say I am wrong: let me quote your own leader from last night. Senator Hill said the following:

Senator Faulkner tells me that the Labor Party wishes for the bill—

meaning the RFA Bill—

to be debated and the Labor Party would vote for it.

Those are Senator Hill's words. He also added:

However, with the weight of legislation before the Senate in these last two days and the urgency of much of the legislation that is before the Senate, because this bill is strongly contested by other parties and Independents in the Senate, it was the view of the government that the other legislation should take precedence and that this bill ... would therefore have to wait for the first day of the next sittings ...

Your own absent leader said that last night in this chamber. He admitted that it was your policy to put off these bills at the request of the Independents and the Democrats. It is no use coming in here today and saying at the last minute, in the absence of Senator Hill and Senator Alston, 'We will rat on the agreement between the Democrats and the government, and between Senator Brown and the government.' That is what was at stake. Why wouldn't we be surprised—that Senator Hill would scuttle out of here, and that his word would be devalued to the point that we can regard him as no more than simply someone who cannot keep his word. That is where we are at. This place works on agreements and on conventions. Little opportunists like to slime around and sneak out with their press releases, undermining the deals that their very own leaders have done if they think they can get some brownie points. That is exactly what has happened in this situation.

*Government senators interjecting—*

**The PRESIDENT**—Order! There are too many interjections.

**Senator Watson**—Will you support the bill?

**The PRESIDENT**—Order! Senator Watson, I call you to order.

**Senator ROBERT RAY**—You are right to discipline Senator Watson, Madam President, but he has assisted me by asking a reasonable question. He has asked us: will we be supporting this legislation?

**Senator Watson**—Will you provide the mechanism for getting it through?

**Senator ROBERT RAY**—Will we support this legislation when it comes back? Can you understand this, Senator Watson?

**Senator Watson**—I can.

**Senator ROBERT RAY**—No, you cannot understand this point. We had five amendments to the bill. Had the guillotine been carried you would need two hours notice to circulate the amendments in this chamber. We would not have been in a position to move any amendments to the bill in the 30 minutes you intended—by ratting on your leader—to allocate to us. But, as you asked me the question, the Labor Party will pass this legislation, given the opportunity.

**Senator Ferris**—Pass it now.

**Senator ROBERT RAY**—Pass it now, says Senator Ferris. What is your word worth? Your leader goes to a negotiating meeting, gives his word, and you want to rip it up. Sure, rip it up, because it is not worth having. This place works on agreement and conventions, and what happens? We cooperate and today the government gets 20 bills through this chamber and it gets several messages back. Having taken all of that it says, ‘Well, that is not enough. Even though we gave our word to the Democrats and Greens that this would not be debated today, we will draw up, for cheap opportunistic reasons, a guillotine.’ And they actually have the guillotine. Guess which gutless wonder won’t even get to his feet and move it? The previous speaker. Senator Abetz, you were here for an hour or two hours. You have the power, as a minister, to get to your feet and move such a motion whenever you like. You sat there mute. All you could do was wonder what sort of sleazy, opportunistic press release you could develop. You were not inter-

ested in getting this through. You were interested in playing politics. You stand here and start to extol the virtues of the Senate team when all you did for the previous six months was try to stab Senator Watson in the back.

**Senator Abetz**—No, I was not.

**The PRESIDENT**—Senator Abetz, cease interjecting.

**Senator ROBERT RAY**—Yes, you were. Don’t you deny it. Of course you were. At least have the gumption—

**Senator Abetz**—I rise on a point of order. Madam President, you are quite right: I should not be interjecting, but Senator Ray does sometimes provoke when he directs his comments straight across the chamber and not through you.

**The PRESIDENT**—Interjections on both sides are disorderly and the Senate will come to order.

**Senator ROBERT RAY**—As I was saying, it is very difficult to take the minister seriously when he starts this gumpf about the wonderful Tasmanian Senate team when he spent the previous six months trying to undermine Senator Watson and trying to defeat him. If he wants to deny that, let him deny it. But he got done like a dinner because the Liberal Party of Tasmania have worked out what poison this individual is. Premier Robin Gray woke up to it years ago. You might wonder how he came to be a minister. There are only five Tasmanians; one of them has to be a minister. Senator Newman has gone, she has retired. Senator Abetz had his chance.

**Senator Abetz**—Madam President, I raise a point of order. There is a standing order about boring repetition. I think Senator Ray has given this speech a number of times now in this place. Of course, he has run out of things to say, because he knows nothing about forestry, nothing about the RFA. He now wants to spend his time repeating previous speeches that he has delivered to the Senate.

**The PRESIDENT**—There is no point of order.

**Senator ROBERT RAY**—I agree. My knowledge of forestry is nowhere near as good as my ability to divine a cheap, sleazy

opportunist in politics. I have always had the ability to sniff out that sort of person. Of course, we cannot name anyone. The fact remains, Madam President, that twice yesterday someone sitting in your position questioned whether Senator Bartlett's amendment to exempt a bill from the motion should have been put in the way it was. Guess what? No Liberal said anything.

**Senator Abetz**—That is wrong.

**Senator ROBERT RAY**—Not one Liberal said anything. I was sitting here.

**Senator Abetz**—That's wrong. You guys said yes.

**Senator ROBERT RAY**—I beg your pardon; we did not. Absolutely not. We did not. So what are we reduced to? This sort of misleading nonsense. The fact is that Senator Abetz's speech tonight is quintessential opportunism—absolutely. They gave their word; they broke their word. That is typical behaviour from the coalition parties in this place or, should I say, certain individuals amongst them. Senator Hill should be here tonight to defend himself. He gave his word, not to us but to other individuals in this chamber, and his own political party broke that word.

At any point in the hour and a half or the two hours tonight Senator Abetz could have got to his feet and moved his motion, but he did not. Why didn't he? It was not for a lack of courage. It was because he wanted to put out the cheap press release and try to get some brownie points on this particular subject. If you were serious about the RFA Bill, you would have introduced it in the House of Representatives on Monday a week ago. It would have been here on Tuesday a week ago and it would have been disposed of by now. But you were obsessed with getting the Commonwealth electoral bill through. You were obsessed with meeting the demands of Lynton Crosby. You failed in that and you will fail in this. If you give up your word in this chamber, you are nothing in politics. I will say this for you, Senator Abetz: you are nothing in politics.

**Tambling, Senator Grant**

**Senator WATSON (Tasmania)** (7.16 p.m.)—I wish to join with my colleagues in

wishing Senator Tambling good health and a long and happy retirement. Coming from opposite ends of the continent—

**Senator O'Brien**—Madam President, I raise a point of order. Senator Watson has had a speech incorporated. I understand that means that he has spoken.

**Senator Abetz**—No, he has not; it was Senator Ellison.

**Senator O'Brien**—I thought you said Senator Watson.

**Senator WATSON**—No, I have not. Sit down.

**The PRESIDENT**—Order! There is no point of order.

**Senator WATSON**—Coming from opposite ends of the continent, our committee paths have rarely crossed, apart from the period on the JCPA when Grant was a member of the House of Representatives. The Senate's status has certainly been enhanced as a result of his presence. He came in here with a high reputation and integrity, and maintained that throughout his tenure. From the generous tributes to him tonight, he leaves with the full respect of his colleagues on both sides, and that is indeed a remarkable record. I say thank you, Senator Tambling, for your contribution to the conservative side of politics in Australia. I understand the President wishes to make some comments about certain staff and others, so I seek leave of the Senate to incorporate what I intended to say in this adjournment debate in terms of the handling of the RFA and the Tasmanian forestry industry.

**The PRESIDENT**—Is leave granted?

**Senator Faulkner**—No, leave is not granted.

**The PRESIDENT**—Leave has not been granted because it has not been seen.

*Opposition senators interjecting—*

**Senator WATSON**—No, I have not shown it to them. Do I get leave or do I not?

**The PRESIDENT**—Order! Leave is not granted.

*Opposition senators interjecting—*

**Senator WATSON**—All right. If leave is not granted, you will pay that price when we come back. That is disgraceful.

**The PRESIDENT**—Senator Watson, resume your seat. It may be, Senator Watson, that, if the speech had been shown, permission would have been given for it to be incorporated, as has happened with other speeches.

**Woomera Detention Centre: Child Detainees**

**Senator COONEY (Victoria)** (7.19 p.m.)—I know that time is short, but I want to raise a matter that has been brought to my attention and which I think ought to be mentioned this last evening. Recently a report by the Community Affairs References Committee on child migration was brought down here. It talked about children who came here during the war and were badly treated, and I think the committee that Senator Crowley chairs has done much about that. But I am instructed that we have people who are equivalent to child migrants present in Australia now, behind razor wire at Woomera, and I want to put that report in this context. I am told, for example, that a 12-year-old Afghan boy and a 13-year-old Afghan boy are both in Woomera. I understand that there is a 15-year-old Iranian girl in Woomera and an 11-year-old boy, who may be her brother, also in Woomera. These four children are examples of several others who may be there.

If that is so—and the Department of Immigration and Multicultural Affairs can confirm whether or not it is—it is a disaster. It is a disaster that we have unaccompanied children locked up in our detention camps throughout Australia. I want to put that on the record, Madam President. Thank you for the opportunity of raising this matter. I hope that DIMA can give an answer on this, because if it is true that these children are there then I think it is outrageous and we are living in a country that really ought to be looking at what we are doing to young children in this world.

**Valedictory**

**Retirement of Mr R.W. Alison, Usher of the Black Rod**

**The PRESIDENT** (7.21 p.m.)—Before the Senate concludes, I wish to make a few remarks. I think this is the longest session of the longest parliament since 1964, and who knows when it will finish? But, in case this should be the last sitting, I certainly want to convey my thanks to various people within the parliament for what they have done for us during this time. Particularly, those within the Senate—the clerks, Table Office staff, Black Rod and his staff and the attendants in the chamber—give outstanding service and have done so during this whole period. Staff from Senate transport, security, the Procedure Office, the Parliamentary Education Office: there is a vast range of people, many of whom are not usually seen about the chamber but we know make the wheels turn, including those who run the committees and provide the reports, often against seemingly impossible deadlines.

There are the other departments: the Joint House Department, which virtually runs the building; the Department of the Parliamentary Reporting Staff, particularly the members of Hansard who work in the chamber, and the Parliamentary Library—they all contribute to the way the parliament runs and enable those of us who are members to do our jobs here. I personally convey my thanks to the whips in the chamber for the way they do their job. Whips in a sense do not have any formal status, as I know from having been in the job. But, in fact, without whips running things well, nothing much happens in the way it should—and I include the managers of government and opposition business in that also.

Tonight I wish particularly to refer to the service of Robert Alison as Black Rod. He has indicated his intention to retire in November. He may decide that he cannot live without us and stay. But, in case he should adhere to the view that he will retire in November, and in the event we are not here between now and then, I wish to make some observations. I note that he is the longest serving Black Rod in the history of the Senate, having served since 26 June 1984, more

than 17 years ago. He was a national serviceman in the Australian Army, including in that time a tour of duty in Vietnam. He subsequently studied agricultural economics at the University of New England and then joined the Commonwealth Public Service in 1973. He came to the Senate Committee Office in May 1975, became a clerk of committees in 1978 and was transferred in 1981 to be Deputy Usher of the Black Rod. So, in fact, he has been in the Black Rod's office for 20 years.

Rob has been responsible for many significant events in the Senate: openings of parliament, the joint sitting in 1988, the opening of this building, the centenary sittings in Melbourne on 9 May and the related events on 10 May of this year—to mention just some of them—and many other things as well. He has managed the security of the Senate, entitlements and, perhaps the most controversial task of all, room allocation. I do not think any of us would volunteer to take that job from him. He has been Deputy Black Rod, as I said, and Black Rod to six Presidents of the Senate, starting with Sir Condor Laucke. Rob has carried out his responsibilities with professionalism and good humour—though I detected a little sardonic humour from time to time. He has been a staunch guardian of the institution of the Senate. As President and on behalf of the

Senate, I wish Rob all the best for his future. He leaves the chamber with our best wishes and our grateful thanks for his excellent service to the institution and to senators past and present.

**Senate adjourned at 7.26 p.m. until Monday, 22 October 2001, at 12.30 p.m.**

#### DOCUMENTS

##### Tabling

The following documents were tabled by the Clerk:

Broadcasting Services Act—Broadcasting Services (Events) Notice No. 1 of 1994 (Amendment No. 2 of 2001).

Christmas Island Act—List of applied Western Australian Acts for the period 24 March 2001 to 21 September 2001.

Cocos (Keeling) Islands Act—List of applied Western Australian Acts for the period 24 March 2001 to 21 September 2001.

Health Insurance Act—

Health Insurance Determinations HS/01/2001 and HS/04/2001.

Section 19AB guidelines.

Telecommunications Act—Exemption from Industry Development Plan Requirements Determination (No. 1 of 2001).

Therapeutic Goods Act—Therapeutic Goods Orders Nos 64A and 69.

### QUESTIONS ON NOTICE

The following answers to questions were circulated:

#### **Employment, Workplace Relations and Small Business Portfolio: Value of Market Research**

##### **(Question No. 3387 Amended Answer)**

**Senator Robert Ray** asked the Minister representing the Minister for Employment, Workplace Relations and Small Business, upon notice, on 29 January 2001:

- (1) What was the total value of market research sought by the department and any agencies of the department for the 1999-2000 financial year.
- (2) What was the purpose of each contract let.
- (3) In each instance: (a) how many firms were invited to submit proposals; and (b) how many tender proposals were received.
- (4) In each instance, which firm was selected to conduct the research.
- (5) In each instance: (a) what was the estimated or contract price of the research work; and (b) what was the actual amount expended by the department or any agency of the department.

**Senator Alston**—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator's question:

- (1) The total cost of market research conducted by the department during 1999-2000 was \$944 671 and by its agencies \$187 282.

Details relevant to (2), (3), (4) & (5) are summarised in the following table.

2. Purpose of contract let	3. (a) No of firms were invited to submit proposals (b) No of tender proposals received		4. Firm selected	5. (a) Contract price (b) Amount expended	
	(a) Five	(b) Four		(a) \$65 358 (b) \$50 374	
Research the current market for Business Entry Point Services and the potential for customisation of the Business Entry Point website	(a) Six (b) Five	Andrews Marketing Group	Queensland University of Technology, in partnership with Marketshare Pty Ltd and f5 Web Architects	(a) \$115 000 (with travel and accommodation expenses to be reimbursed). (b) \$127 423 (including \$12 423 for travel and accommodation expenses).	(a) \$35 900 (b) \$35 900
Undertake research and development in relation to the redevelopment of the department's internet site	(a) Nine (b) Three	Lawler Davidson Consultants Pty Ltd	Taringa Waters Pty Ltd	(a) 4 (b) 4	(a) 4 (b) 4
Survey industry association views and awareness of the Franchising Code of Conduct					
Survey small business regarding the Wage Assistance element of the IEP	(a) One (b) One				
Promotion of the Indigenous Employment Policy (IEP) to Small Businesses	(a) One (b) One				
Survey attitudes of un-	(a) Five		Environmetrics Pty Ltd	(a) \$23 660	

2. Purpose of contract let	3. (a) No of firms were invited to submit proposals	4. Firm selected	5. (a) Contract price
	(b) No of tender proposals received		(b) Amount expended
employed job seekers to Harvest Work	(b) Three		(b) \$23 660
Market research of employers, job seekers and Job Network members to assist in the development and implementation of advertising and marketing material for Job Network	(a) Five (b) Three	Worthington Di Marzio Pty Ltd	(a) \$160 287 (b) \$160 287
Work for the Dole baseline research	(a) Four (b) Four	Wallis Consultancy Group Pty Ltd	(a) \$140 000 (b) \$140 000
Gauge public reaction to the suitability of the Multimedia Payphone for the delivery of a number of online government services in rural and remote locations	(a) Five (b) Four	MMP evaluation market research	(a) \$59 000 to be shared equally between three agencies – DEWRSB, Centrelink and the Health Insurance Commission. (b) \$19 350 was expended by DEWRSB.
Award and agreement coverage survey	(a) Three (b) Three	AC Neilson Pty Ltd	(a) \$53 995 (b) \$37 421 difference due to first payment made in 98/99
Case study to investigate the activities of job seekers in Intensive Assistance	(a) Three (b) Three	Colmar Brunton Research Ltd	(a) \$87 577 (b) \$48 074 difference due to final payment made in 00/01
Survey of departmental stakeholder satisfaction with Centrelink services	(a) Five (b) Three	Colmar Brunton Research Ltd	(a) \$27 464 (b) \$18 200 difference due to final payment made in 00/01
Implementation review of the Employment Services Market Job Network evaluation	(a) Open (b) Twelve	Environmetrics Pty Ltd	(a) \$402 000 (b) \$69 238 difference due to payments made in 98/99
Employability of mature age workers	(a) Open (b) 17	Keys Young Pty Ltd	(a) \$49 970 (b) \$27 470 difference due to payments made in 98/99
Year 2000 survey of job seeker satisfaction with Centrelink services	(a) Open (b) 13	Market Solutions Pty Ltd	(a) \$97 569 (b) \$97 569
Year 2000 Survey of service provider satisfaction with Centrelink services	(a) Open (b) Four	Tavner Research Company	(a) \$47 497 (b) \$31 888 difference due to final payment in 00-01
Direct engagement for specialist expertise on market research for AJS on the Internet	(a) One (b) One	Market Share Pty Ltd	(a) \$40 897 (b) \$40 897
Test the content, usability and accessibility of the NOHSC web site for	(a) Nine (b) Five	Performance Technologies Group Pty Ltd	(a) \$45 030 plus relevant GST. In the event that the work was undertaken

2. Purpose of contract let	3. (a) No of firms were invited to submit proposals (b) No of tender proposals received	4. Firm selected	5. (a) Contract price (b) Amount expended
small business owner/operators and provide best practice advice of online delivery of OHS information based on the findings of literature review			in the financial year 2000/2001. (b) \$50 782 including \$1190 for additional goods and services and \$4562 for GST. The commencement of the contract was delayed by NOHSC with bulk of it being undertaken in that year.
To develop a great recognition of the role of safe design in improving OHS performance in the workplace	(a) Seven (b) Five	McGregor Tan Research	(a) \$63,000 (b) \$64,5000 including \$1,500 for additional face-to-face interviews.
Evaluate the effectiveness the 1999 advertising campaign of AWAs and freedom of association.	(a) One (b) One	Brian Sweeney and Associates	(a) \$70,000 (with travel and accommodation expenses to be reimbursed). (b) \$72 000 (including \$2,000 for travel and accommodation expenses).

**Child Care: Rebate**  
**(Question No. 3502 Amended Answer)**

**Senator Chris Evans** asked the Minister representing the Minister for Community Services, upon notice, on 8 March 2001:

- (1) As at 1 July 2000: (a) how many families with children in care during the 1998-99 and 1999-2000 financial years were eligible to claim a back payment of child care rebate and how many children were eligible for the back payment (please provide a breakdown of the eligible number of families and children by family income brackets of \$10 000 bands); (b) what is the total back payment payable by the Commonwealth if all eligible families submitted claims; and (c) what was the average back payment: (i) per family, and (ii) per child, based on all eligible families submitting claims.
- (2) Between 1 July and 29 December 2000: (a) how many families claimed a back payment of child care rebate (please provide a breakdown of families claiming the payment by family income brackets of \$10 000 bands); (b) what was the total back payment made by the Commonwealth; and (c) what was the average back payment made (i) per family; and (ii) per child, over this period.

**Senator Vanstone**—The amended response to the honourable senator's question is as follows:

Childcare Rebate was only available as a retrospective payment on presentation of receipts for care already paid for. All rebate payments were therefore "back" payments.

- (1) (a) Available data on Childcare Rebate customers relates to those families who have claimed the rebate. It is difficult to estimate those families who were eligible to receive the rebate because in the normal course of events they only identified themselves by actually making a claim.
- (b) Data not available

- (c) (i) 1998/99 - \$447  
1999/00 - \$471
- (ii) Data not available

(2) (a) As at June 2001, 157,180 families claimed Childcare Rebate from 1 July 2000 to the end of December 2000. (This includes families whose claim was received prior to the end of December, but was not processed until after that date).  
A breakdown of families claiming the rebate by income brackets of \$10,000 bands is not available. However, approximately 86,449 families received the 30% rebate and 70,731 families received the 20% rebate. A rebate percentage of 30% applied to families whose taxable income was below the Family Tax Initiative income cut-offs (\$70,000 for one child families plus \$3000 for each additional child).

- (b) As at June 2001, the total amount of rebate for the period 1 July 2000 to the end of December 2000 was \$22,540,884. (This figure also takes into account the rebate paid for claims received prior to the end of December 2000 but not processed until after that date).
- (c) (i) The average rebate payment for that period was \$143.  
(ii) Data not available.

### **Regional Forest Agreement: Tasmania**

#### **(Question No. 3626)**

**Senator Brown** asked the Minister representing the Prime Minister, upon notice, on 18 June 2001:

With reference to the answer to question on notice no. 3538 (Senate *Hansard*, 22 May 2001, p.23759):

- (1) Why is the Commonwealth not aware of jobs shed at the Burnie paper mill, in Forestry Tasmania or other forest industry entities since the Prime Minister signed the Regional Forest Agreement (RFA).
- (2) (a) What was the number of direct employees at the Burnie mill, in Forestry Tasmania and overall in the Tasmanian forest industry when the RFA was signed in 1997; and (b) in each of these, what is the current jobs number.
- (3) Why has the Australian Bureau of Statistics classified the amount of woodchip exports as confidential and does the Prime Minister agree; if not: (a) what is the 1999-2000 amount; and (b) what is the amount for each quarter since.
- (4) Is the Prime Minister satisfied that the job figure for export woodchipping are not available.
- (5) Why does the Prime Minister view the loss of 41 jobs in Forestry Tasmania as not being 'forestry jobs having been shed'.

**Senator Hill**—The Prime Minister has provided the following answer to the honourable senator's question:

I am advised by my department as follows:

- (1) Short-term fluctuations in employment can occur for a variety of reasons. The Tasmanian RFA provides the framework to give industry long-term certainty, to underpin the capacity for forest-based industries to expand, develop exports and create ongoing employment.
- (2) (a) and (b) The Commonwealth does not collect data on employment within individual forestry companies. My department has been informed by Tasmanian Government officials that there were 589 direct employees at Forestry Tasmania in 1997 (this corrects the erroneous figure of 627, provided in the response to Question 3538) and 596 direct employees on 30 June 2001.

There is insufficient information available to provide accurate data on the number of employees in the entire Tasmanian forestry industry. Available ABS survey data provides partial information on forest sector employment - ABS data on employment in "forestry and logging", as defined by the Australian and New Zealand Industry Classification, does not include those employed in such areas as management, forest industry transport, forest road construction/maintenance and research.

- (3) Data on non-coniferous woodchip exports from Tasmania have been derived at least in part from Customs documents. From February 2000, disclosure of this information by the Australian Stat-

istician is prevented by the operation of Clause 2 of the Statistics Determination in force under Section 13 of the Census and Statistics Act 1905.

The Statistics Determination (a disallowable instrument) enables "information in the form of statistics relating to foreign trade, being statistics derived wholly or in part from Customs documents" (sub-clause 2(2)(b)) to be disclosed, except where a person or organisation "has shown that such disclosure would be likely to enable the identification of that particular person or organisation" (sub-clause 2(1)).

- (4) It is not possible to disaggregate broad forest industry employment to the level of the export wood chip sector, because companies that export woodchips are usually engaged in other forest-related activities.
- (5) As noted in the response to Question 2 above, Tasmanian Government officials advise that there has been a small increase in the number of people directly employed by Forestry Tasmania over the period 1997 to 2001.

**Tracy Aged Care, Darwin: Complaints  
(Question No. 3670)**

**Senator Crossin** asked the Minister representing the Minister for Aged Care, upon notice, on 29 June 2001:

With reference to complaints about Tracy Aged Care in Darwin:

- (1) On what dates in August 2000 were complaints received by the Complaints Resolution Scheme that were subsequently accepted and referred to the Aged Care Standards and Accreditation Agency.
- (2) (a) What was the nature of the complaints accepted by the Complaints Resolution Scheme; and (b) what actions were taken to investigate each of the complaints by the Complaints Resolution Scheme itself.
- (3) (a) On what dates were these investigations undertaken; (b) what were the findings; and (c) what actions were taken.
- (4) Did any matters raised by this complainant or group of complainants go to the suitability of the key personnel at Tracy Aged Care, as laid out under the relevant principles of the Approved Provider Principles (Part 2 Division 2 sections 6.6 to 6.11) of the Aged Care Act; if so, what action was taken by officers of the department in relation to this matter.
- (5) Has the department received any complaints or allegations of financial impropriety or fraud either through the Complaints Resolution Scheme or through referral to other officers of the department, officers of the Aged Care Standards and Accreditation Agency or the Northern Territory Police; if so, were these matters referred to the Australian Federal Police; if not, why not.
- (6) If such complaints were received, did the department take any other action in relation to these complaints; if so, what were they.
- (7) Which of the complaints accepted by the Complaints Resolution Scheme in August 2000 were referred to the Aged Care Standards and Accreditation Agency.
- (8) Were any of these complaints investigated by the Aged Care Standards and Accreditation Agency during its accreditation site audit on 24 and 25 August 2000; if not, why not; if so; (a) what matters were investigated; (b) what were the findings; and (c) what action was taken.
- (9) (a) How many site visits have been made to the facility by the Aged Care Standards and Accreditation Agency since the accreditation site audit in August 2000; and (b) what was the purpose of these visits.
- (10) Were any of the August 2000 complaints referred to the Aged Care Standards and Accreditation Agency investigated during these site visits; if so: (a) which matters were investigated; (b) what were the findings; and (c) what actions were taken.
- (11) Have any site visits been made by the Complaints Resolution Scheme since receiving the August 2000 complaints; if so, on what dates.
- (12) Were complaints received during August 2000 investigated during these visits; if so: (a) which complaints were investigated; (b) what were the findings of the investigations; and (c) what action was taken.

(13) For each of the visits made by the Complaints Resolution Scheme and the Aged Care Standards and Accreditation Agency, was advance notice given of the intended visit.

**Senator Vanstone**—The Minister for Aged Care has provided the following answer to the honourable senator's question, in accordance with advice provided to her:

(1) and (2) The complaints were received by the Complaints Resolution Scheme over the period 16 August 2000 to 30 August 2000, and subsequently referred to the Aged Care Standards and Accreditation Agency on 1 September 2000 and 11 September 2000. The Scheme wrote to the Board of Tracy Aged Care on 23 August 2000 notifying it of the complaints and seeking a formal response to the issues raised. A response was received from the Board on 5 October 2000. The Scheme undertook negotiation on the issues that culminated in the complaints being finalised at that time to the satisfaction of the parties.

The nature of the complaints is protected information under the Aged Care Act 1997.

(3) to (6) Refer to (1) and (2)

(7) All matters raised in the complaints were notified to the Aged Care Standards and Accreditation Agency.

(8) The outcome of the accreditation site audit was that all Standards and Outcomes were found to be satisfactory with the exception of Medication Management, where the team rating was Unacceptable. A timeframe and plan to address this issue was put in place.

(9) (a) Four, including spot checks and support visits.  
 (b) To monitor compliance with the Accreditation Standards and compliance with the Act and to assist the service to undertake its continuous improvement against the Plan for Continuous Improvement.

(10) See (7).

(11) Up to July 2001, five site visits were conducted.

(12) See answer to (1) & (2).

(13) Notice given varied from no notice for spot checks to 2 months for scheduled support visits.

### **Work for the Dole: Advertising Campaign (Question No. 3781)**

**Senator Faulkner** asked the Minister representing the Minister for Employment, Workplace Relations and Small Business, upon notice, on 27 July 2001:

(1) Has the Government decided to proceed with an advertising campaign for the Work for the Dole scheme?

(2) Which advertising agency has been contracted for this campaign?

(3) Was the contract let under open tender? If not, why not?

(4) What is the total cost of the campaign?

(5) (a) What is the total cost of the media buy for this campaign?  
 (b) What is the cost for the media buy in:  
 (i) metropolitan television;  
 (ii) metropolitan radio;  
 (iii) metropolitan newspapers;  
 (iv) other metropolitan media (please specify);  
 (v) non-metropolitan television;  
 (vi) non-metropolitan radio;  
 (vii) non-metropolitan newspapers; and  
 (viii) other non-metropolitan media (please specify)?

(6) (a) What is the cost of research for this campaign?  
 (b) Has this cost been increased from the original figure of \$4.2 million provided during the estimates hearings?

- (7) (a) What is the nature of the research for this campaign; ie. quantitative or qualitative?
- (b) Will tracking research be conducted for this campaign?
- (c) Who has been contracted to undertake the research?
- (8) (a) On what date does this advertising commence?
- (b) Over what period is the campaign expected to run?
- (9) Will the advertising campaign use paid models in the advertisements rather than work for the dole scheme participants?

**Senator Alston**—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator's question:

- (1) Yes.
- (2) Vinten Browning (a.c.n. 057 020 096).
- (3) The contract was let under a select tender. Agencies which wish to undertake work for the Commonwealth must register with the Government Communications Unit (GCU). The GCU then provides individual departments with a select list from the register. The select list is made up of agencies who have the necessary skills to undertake the department's work. This select list and the department's brief were approved by the Ministerial Committee on Government Communications (MCGC).
- (4) The total cost of the campaign will be \$4.5 million.
- (5) (a) As at 6 September 2001, the media buy commitment is \$3 374 701 (including GST, rebates and fees).
  - (b) The cost for the media buy<sup>1</sup> in:
 

(i) metropolitan television	\$1 306 124
(ii) metropolitan radio	nil
(iii) metropolitan newspapers	\$376 248
(iv) other metropolitan media outdoor activity	\$376 132
NESB press	\$72 927
(v) non-metropolitan television	\$330 544
(vi) non-metropolitan radio	nil
(vii) non-metropolitan newspapers	\$441 629
(viii) other non-metropolitan media rural publications	\$35 217
indigenous press	\$4 197
(ix) other:	
SBS and Pay TV	\$263 891
Classifieds	\$136 277
Internet	\$31 515
- (6) (a) The cost of research for the campaign is \$173 316.
- (b) The total cost of the campaign has increased from the notional figure given at the estimates hearings.
- (7) (a) Qualitative.
- (b) No.
- (c) Wallis Consulting Group Pty Ltd (A.C.N. 053 963 358).
- (8) (a) The advertising commenced on 19 August 2001.
- (b) The campaign will run for a period of six weeks.
- (9) The campaign uses paid actors in the advertisements, rather than either former or current Work for the Dole participants. The advertising scripts reflect comments made by actual participants in particular projects. Decisions on the recruiting of talent for the advertising were at the discretion of the contracted advertising agency creating the campaign.

<sup>1</sup>Including GST, rebates and fees.

**Tasmania: Logging  
(Question No. 3828)**

**Senator Brown** asked the Special Minister of State, upon notice, on 7 August 2001:

What correspondence has the Minister received or sent in relation to logging issues in Tasmania since 1 January 2001. In each case, what was the name of the correspondent, his or her organisation and position, the date of the correspondence and what did it deal with.

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

Odgers' *Australian Senate Practice* (9th ed.) makes it clear that questions to Ministers must relate to matters for which the Minister is responsible (p.488). The Chair has repeatedly ruled that questions must relate to matters within Ministerial responsibility, or public affairs with which the Minister is officially connected (p.492).

It is plainly obvious that the question asked by Senator Brown does not meet either of these criteria.

For the record, however, 'Nill' and 'Not Applicable'.

**World Summit on Sustainable Development  
(Question No. 3830)**

**Senator Brown** asked the Minister representing the Prime Minister, upon notice, on 7 August 2001:

- (1) (a) What is Australia's program to prepare for the Rio+10 Summit in Johannesburg in 2002; and  
(b) what are the key dates and consultation procedures, both within Australia and within the Asia Pacific region.
- (2) Has Australia appointed a national preparatory committee; if so: (a) who is on it; (b) how and when were they appointed; and (c) who do they represent and what are their qualifications.
- (3) How is Australia's national assessment report being prepared.

**Senator Hill**—The Prime Minister has provided the following answer to the honourable senator's question:

- (1) (a) The Commonwealth has initiated a domestic consultation process to seek the views of key stakeholders and the Australian community so that they may inform the development of the Australian approach to the World Summit on Sustainable Development (WSSD).  
The Government will be working with countries in the Asia-Pacific region to ensure that issues of particular concern to this region are examined in the context of the WSSD. The Government is of the view that the WSSD agenda should be balanced and should focus on achieving real progress on the implementation of sustainable development actions and policies over the next decade. The Government will be working with like-minded countries in pursuit of such an agenda.
- (b) I am advised that the Commonwealth Department of the Environment and Heritage convened public consultation forums on Australia's preparations for the WSSD in six capital cities from 27 August to 3 September 2001. A public discussion paper has also been released and written submissions have been invited by 28 September 2001.

There are a number of formal and informal processes within the Asia Pacific region designed to facilitate non-government stakeholder input to regional preparations for the WSSD. These processes are not the responsibility of the Australian government.

Key activities relevant to the Asia Pacific region's preparations for the WSSD include:

- 3-5 September 2001 – Regional Forum on Business Opportunities and Sustainable Development: Partnerships Strategies (Jakarta, Indonesia);
- 5-7 September 2001 – Pacific sub-regional preparatory meeting (Apia, Samoa); and
- 27-29 November 2001 – Asia-Pacific Regional Preparatory Committee (Siem Reap, Cambodia).

- (2) No.

(3) I am advised that the Department of the Environment and Heritage is currently undertaking an assessment of progress made in the implementation of Agenda 21.

**Australian Federal Police: Mr Francis Day**

**(Question No. 3835)**

**Senator Harris** asked the Minister for Justice and Customs, upon notice, on 10 August 2001:

- (1) Was Mr Francis Day nominated by any member of the Australian Federal Police (AFP) for reprofiling.
- (2) (a) Was Mr Day told he had a future in the AFP but not advised to the contrary of this until the non-renewal of his contract; and (b) what action is the Minister taking in relation to this.
- (3) Why was Mr Day not advised by the new General Manager of Northern, F/A Overland, of a non-renewal of his contract.
- (4) What action is the Minister taking in relation to the failure by F/A Overland not to nominate Mr Day for reprofiling.
- (5) Why did F/A Overland fail to provide counselling or remedial training or to discipline Mr Day during his 4-year contract.
- (6) Why did F/A McKnight, during his unauthorised supervision of Mr Day, not discipline Mr Day at the time of his observations at which time he should have provided counselling and remedial training.
- (7) (a) Why did both F/A Overland and McKnight allow Mr Day's alleged poor performance to continue unabated for 4 years; and (b) what action is the Minister taking in relation to this.
- (8) Why did Mr Day's Team Leader and Directors sign his PMPs for this period as meeting the required standard, given F/A Overland's stated concerns in the same period.
- (9) (a) Why was Mr Day never made aware of F/A Overland's concern, and not given the opportunity to address any alleged shortcomings; and (b) what action will the Minister take in regard to this.
- (10) (a) Will an investigation be conducted into F/A Overland's stated allegations; and (b) why were Mr Day's Team Leader and Directors (Gordon Williamson and Tony Negus, among others) promoted, if they failed to carry out their duty in relation to Mr Day to a satisfactory standard or to follow regulations.
- (11) (a) As Mr Day was caught in the middle of this chaos of contradictions by senior officers, why did the AFP take action against him alone; and (b) what action is the Minister taking in relation to this injustice.
- (12) Did the Review Panel, which supposedly reviewed Mr Day's case, have the following conditions:
  - (a) Mr Day would not be allowed to speak except to answer questions;
  - (b) Mr Day's accusers would not be attending the Review Panel and, therefore, would not have to answer questions from either Mr Day or the review panel; and
  - (c) Mr Day was denied legal representation.
- (13) (a) Does the Review Panel adhere to government policy by treating all employees in Australia equally; if not, why; (b) was Mr Day treated differently; and (c) does the Government support the above procedure for all employees.
- (14) (a) Why was Mr Day not notified of the review until 1400 hours on 19 November 1999; (b) why did F/A Overland repeatedly fail to answer Mr Day's requests up until that date for an explanation of his non-notification on 17 November 1999, along with members of Northern Regions; and (c) what action will the Minister take in relation to this matter.
- (15) Did the AFP deny Mr Day the opportunity to properly defend himself against the allegations in that Mr Day was denied the right to speak at the Review Panel hearing.
- (16) What action is the Minister taking in relation to those members reprofiled as being unsuitable for continued employment with the AFP who were employed by the Criminal Justice Commission in Queensland.
- (17) How was it possible for Mr Day to pass his evaluation assessments during the 18 months that F/A McKnight allegedly observed Mr Day, while in another department.

(18) (a) Did the AFP fail to provide Mr Day with the information he required to make a proper submission, taking into account that he was denied the right to speak at the review, which resulted in his refusal to take part in such a pretence of alleged justice; and (b) was some information not known by Mr Day until months after the review; if so, can the Minister confirm that the AFP advised the Minister or department that the Review Panel investigated all the above, and can detailed accounts of the investigations conducted by the Review Panel, such as the interviewing of relevant personal, reviewing of files, resources allocated, etc. be provided.

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

- (1) In 1998 the Australian Federal Police (AFP) set in train a strategy to re-skill the organisation, particularly in the areas of computer and communications crime and forensic accounting. This program included the targeted early cessation of personnel who were assessed as being unable to adapt effectively in the present and emerging work environment, or unable to be retained for the new and emerging roles in the national teams work environment. The number of people included in the re-profiling program was governed by the \$3.5 m set aside to fund it. Federal Agent Francis Day was not nominated for re-profiling by another member but he made an application on his own behalf.
- (2) to (18) The remaining questions address issues surrounding the internal employment regime of the AFP particularly in respect of the employment of Mr Day.

At the relevant time, employment in the AFP was governed by the provisions of the Australian Federal Police Act 1979 (the Act) and regulations made under the Act. Employment decisions made under the Act may be reviewed under the Administrative Decisions (Judicial Review) Act 1977.

The Minister for Justice and Customs has no role in the internal employment processes of the AFP. In particular, I do not review employment decisions. I will not investigate the matters raised in the question.

**Human Rights and Equal Opportunity Commission: Discrimination  
(Question No. 3846)**

**Senator Schacht** asked the Minister representing the Attorney-General, upon notice, on 23 August 2001:

With reference to the report of 4 September 1997 on religion in Australia, in which the United Nations Special Rapporteur, Mr Abdelfattah Amor said: 'Although a citizen cannot apply for a remedy on the basis of the 1981 Declaration [on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief], such an application is possible in the context of HREOC. In this connection, HREOC representatives said that, because of their limited jurisdiction, only few of such remedies had been applied for under the 1981 Declaration (fewer than 10 since 1993)':

- (1) On what basis can an individual apply to the Human Rights and Equal Opportunity Commission (HREOC) for a remedy in respect of discrimination on the basis of religion.
- (2) Why is the jurisdiction of HREOC limited with respect to the protection of individuals against discrimination on the basis of religion.

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

- (1) There are two ways that an individual can apply to HREOC in relation to discrimination on the basis of religion.

Firstly, a person may request HREOC to inquire into and attempt to conciliate a complaint that an act or practice by the Commonwealth or a Commonwealth authority may be inconsistent with or contrary to any human right (see s.11(1)(f) of the Human Rights and Equal Opportunity Commission Act 1986 (the Act)). 'Human right' is defined in s.3 of the Act to mean "the rights and freedoms ... recognised or declared by any relevant international instrument". The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief has been declared to be a relevant international instrument for the purposes of the Act.

Secondly, a person may request HREOC to inquire into and attempt to conciliate an act or practice that may constitute discrimination in employment or occupation (see s.31(b) of the Act). The Act defines "discrimination" to include "any distinction, exclusion or preference made on the basis

of...religion...that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

Matters that are the subject of complaint as set out above do not constitute unlawful discrimination. If HREOC finds that a complaint is substantiated and conciliation is not appropriate or has been unsuccessful it provides the Attorney-General with a report on the matter. This report must be tabled in Parliament.

(2) In its report entitled Article 18: Freedom of religion and belief (the Article 18 Report), HREOC recommended that federal anti-discrimination legislation be enacted to prohibit discrimination on the basis of religion and belief.

The Government has not accepted this recommendation as it is not convinced that there are wide-ranging problems associated with freedom of religion and belief that require such a legislative response. Australians have a broad range of religious beliefs and there is a very high level of tolerance in the community concerning this diversity. Australia does not experience widespread religious persecution and there is no evidence that a significant number of complaints are made about discrimination or vilification on the basis of religion or belief.

The Government considers that practical educative initiatives can promote tolerance for different religious beliefs and assist in minimising discrimination on the basis of religion. HREOC already carries out an important role in increasing community awareness about rights and responsibilities, including freedom of religion and belief. Therefore, a legislative response may not necessarily be the best way of preventing discrimination on the grounds of religion or belief. I note that in its Article 18 Report, HREOC states that during its inquiry into freedom of religion and belief it received significantly more responses opposed to legislation prohibiting discrimination on the ground of religion and belief than in favour.

**Family Court of Australia: Counsellors**  
**(Question No. 3847)**

**Senator Harris** asked the Minister representing the Attorney-General, upon notice, on 23 August 2001:

With reference to the Family Court of Australia:

- (1) What level of training and ongoing training is required to be completed by counsellors of the Family Court of Australia in relation to Parental Alienation Syndrome, an extremely severe, divisive and life-threatening form of mental and emotional abuse, affecting not only children but also adults.
- (2) How many counsellors, and with what qualifications, have been specifically educated in Parental Alienation Syndrome.
- (3) For counsellors who are not qualified psychologists or psychiatrists: can details be provided of the method and number of interviews required for the counsellors to be able to identify Parental Alienation Syndrome.
- (4) How many studies have been completed by the Family Court of Australia since the publication of papers by Dr Richard Gardner (United States), Dr Kenneth Byrne (Melbourne), Dr Ira Turk (United States), Dr Douglas Darnell and Peggie Ward, PhD, amongst many professionals worldwide since 1985.
- (5) How many cases of Parental Alienation Syndrome have been identified by counsellors since 1989, following the article published in the Australian Family Lawyer by Dr Kenneth Byrne.
- (6) What training has been provided to Family Court of Australia justices and judicial registrars on Parental Alienation Syndrome.
- (7) (a) How many cases of Parental Alienation Syndrome have been identified by the justices and judicial registrars; and (b) what are the directions and orders which have been made.
- (8) In how many cases has the Family Court of Australia ordered its own experts to inquire into and produce a report before the court and to give evidence in person and be able to be cross-examined by all parties, under order 30A rule (3) of the Family Law Rules 1984.

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

- (1) Counsellors are not trained specifically in relation to 'Parental Alienation Syndrome'. They are, however, provided with training and development on the full range of behaviours children may demonstrate during and after the period of their parents' separation.
- (2) Family Court Counsellors are either psychologists or social workers. They are provided with training and development on the full range of behaviours children may demonstrate during and after the period of their parents' separation.
- (3) There is no distinction in the training and development provided to Court Counsellors who are social workers or psychologists.
- (4) The Family Court has not conducted specific research in relation to 'Parental Alienation Syndrome'.
- (5) The Family Court does not collect data specifically on 'Parental Alienation Syndrome'.
- (6) Family Court Judges and Judicial Registrars participate in a broad program of continuing judicial education, however, there is no specific focus on 'Parental Alienation Syndrome'.
- (7) Statistics on 'Parental Alienation Syndrome' are not kept by the Family Court.
- (8) Order 30A expert reports may relate to any issue on which the Family Court of Australia may require expert opinion (whether made of the Court's own motion or on application of a party), including financial and children issues. The Court's Case Management System does not record the issues to which orders for reports relate; including Parental Alienation Syndrome.

**Royal Australian Air Force: Salt Ash Weapons Range**  
**(Question No. 3861)**

**Senator Brown** asked the Minister representing the Minister for Defence, upon notice, on 29 August 2001

- (1) Have any studies been performed to determine which substances are emitted from fighter aircraft (and at what levels) whilst flying missions over the Salt Ash air weapons range; if not, why not; if so, can the Minister release these studies and give an assurance that there are no adverse health impacts that these substances would have on the residents of the Salt Ash, Tanilba Bay, Malibula, Swan Bay, Oyster Cove and Lemon Tree Passage communities.
- (2) Have any studies been undertaken on toxic accumulation in oyster farms in the run-off area under flight paths of the aircraft using the Salt Ash air weapons range; if so, can the Minister give an assurance that the range is not contributing to the levels of toxic substances found in oysters harvested from these farms.
- (3) Can the Minister explain why defence personnel fuelling aircraft at the Williamtown RAAF base, in preparation for flights over the range, are issued with protective clothing.
- (4) Can the Minister explain why the defence personnel cleaning aircraft at the Williamtown RAAF base, after returning from missions over the range, are issued with protective clothing.
- (5) (a) Can the Minister explain why the range relocation study rejected Singleton and Tea Gardens; and (b) does the Minister accept these reasons as being sufficient.
- (6) Does the Minister agree that the reasons outlined in the current range relocation study identify the inappropriateness of the present location of the Salt Ash air weapons range.
- (7) Is it a fact that that noise levels in some residences and businesses in Salt Ash and other areas, resulting from RAAF aircraft flying missions over the air weapons range, reach levels that exceed occupational health and safety standards that exist in most workplaces; if so, can the Minister explain why the continued operation of the Salt Ash range is acceptable in a residential neighbourhood.
- (8) Have any risk analysis studies been performed on the likelihood of a severe or life-threatening accident involving aircraft using the Salt Ash air weapons range and residents of adjacent communities; if so, will the Minister release these studies to the local communities affected.

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

- (1) No definition studies have been undertaken to date. Defence is currently preparing an Environmental Management Plan for RAAF Base Williamtown which, amongst other things, will consider the emissions from aircraft operations at both the base and Salt Ash Air Weapons Range (SAWR).

The range is used on approximately 115 days each year. The aircraft jet engines have similar emissions to commercial aircraft, cars and many parts of industry. Although the Management Plan has not been finalised, it is estimated that the substances emitted in the vicinity of SAWR are not significant in comparison to total emissions from other sources.

- (2) No.
- (3) It is a requirement for Defence personnel involved in refuelling RAAF aircraft to wear overalls, gloves and hearing protection when refuelling aircraft.
- (4) Defence personnel wear protective clothing because of the cleaning chemicals used in the aircraft wash.
- (5) (a) Singleton and Tea Gardens were rejected as sites for a relocation of the SAWR for the following reasons:
  - Singleton: The area was subject to a very heavy level of open-cut mining, with associated activities, making it unsuitable for siting a weapons range, and the site has significant potential conflict with commercial air traffic.
  - Tea Gardens: Considerable residential development may take place around the study area in the next 5-10 years and would result in problems similar to those at Salt Ash arising very quickly, and disturbance to internationally important habitats (including Myall Lakes National Park) including the breeding colony of Goulds Petrel could cause significant impacts.
- (b) Yes.
- (6) For Defence purposes, the Salt Ash Air Weapons Range is ideally situated given its proximity to RAAF Base Williamtown. Since the range was first gazetted in 1953, there has been a progressive increase in urban expansion in the vicinity of the Base and the Range. In more recent times, Defence has acknowledged the need to manage the impact of its operations at the Base and the Range on the local community. RAAF Base Williamtown is a significant major investment in Australia's military capabilities and is an important element of the regional economy. In the absence of a suitable alternative site, Salt Ash is the best location for a weapons range.
- (7) The impact of aircraft noise on people is measured in a different way to noise in a factory or other workplaces. Aircraft noise impacts are forecast by the Australian Noise Exposure Forecast (ANEF) computer modelling system. The ANEF takes into account a number of factors including aircraft engine noise and the cumulative effects of short duration exposures. Noise in other work places is normally experienced for a much longer duration and is not readily comparable to aircraft noise. The ANEF is also a planning tool which local government should use when assessing development and building applications. Australian Standard AS2021 Acoustics- Aircraft Noise Intrusion- Building Siting and Intrusion stipulates the type of construction which is permitted within the various noise zones. The Department of Defence has provided ANEF and Noise Exposure Forecast (the forerunner to ANEF) information to Port Stephens Council since 1976 to assist it with its land planning responsibilities.
- (8) No. While all aircraft operations have a level of risk, RAAF aircraft are maintained to a high standard and the training of pilots is carried out under strict, proven procedures.

#### **Nuclear Tests: Compensation**

##### **(Question No. 3865)**

**Senator Allison** asked the Minister for Industry, Science and Resources, upon notice, on 31 August 2001:

- (1) What is the total amount spent by the Commonwealth on legal matters relating to nuclear testing compensation, broken down as follows:
  - (a) Comcare cases, including awards;
  - (b) Common law cases, including breakdowns for:
    - (i) judgements or verdicts, including any costs assessed against the Commonwealth;
    - (ii) settlement amounts, including any costs borne by the Commonwealth;
    - (iii) all costs associated with Commonwealth witnesses;
    - (iv) all studies and reports prepared for the Commonwealth as part of, or associated with, the litigation;

- (v) all barrister costs; and
- (vi) an estimate of costs associated with government lawyers already on the payroll involved in the action; and

(c) schemes such as the Act of Grace Scheme or any similar scheme involving payments or benefits to those exposed to nuclear tests, including breakdowns for:

- (i) all payments made under any scheme involving payment to persons exposed to nuclear testing including, but not limited to, the Act of Grace Scheme,
- (ii) the costs associated with review of claims made under the scheme, and
- (iii) the costs associated with the day-to-day operation and administration of the scheme.

(2) Was there a contribution from the British Government for this compensation; if so, how much; if not, was the British Government asked to make a contribution; if not, why not.

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

(1) \$5.1 million was spent by the Commonwealth under the Defence of Common Law special appropriation. This appropriation was established by the Government in September 1989 to provide funding for legal costs and compensation associated with the Commonwealth's defence of litigation arising from the British Nuclear Tests.

- (a) \$3,251 was spent by Comcare on legal matters relating to nuclear testing compensation.
- (b) I am advised that the level of resources required to answer this question would represent an unwarranted diversion of the resources of my department. It is also unlikely that further efforts to provide this information would provide a complete and meaningful response. Accordingly, the Government is unable to provide the Senator with an accurate and detailed breakdown of legal expenses associated with the common law cases.

- (i) Four substantive cases have been heard by the court (Johnstone 1989, Dingwall 1994, Cubillo 1995 and Dinnison (2001)). The Commonwealth has won all cases with the exception of the one matter in which the plaintiff awarded by a Supreme Court jury and Justice Enderby \$867,100 less \$237,813 for compensation already received resulting in a final payment of \$629,286. Costs were awarded against the Commonwealth. A decision on the Dinnison matter is pending.
- (ii) Under the Act of Grace Scheme, established in September 1989, claimants with common law actions issued and served on the Commonwealth in 1988 and up to September 1989 can apply to have their cases assessed on merit outside the court system. Two payments, totalling \$0.6 million, have been made under the Act of Grace Scheme. In 1991/92, \$0.6 million was paid to 18 aborigines as a once-off payment to settle their claim for personal compensation related to the Atomic Tests.

The operation of the Privacy Act 1998 restricts the Government disclosing further information relating to these payments.

- (iii), (iv), (v), (vi) and

(c) I am advised that the level of resources required to answer this question would represent an unwarranted diversion of the resources of my department. It is also unlikely that further efforts to provide this information would provide a complete and meaningful response. Accordingly, the Government is unable to provide the Senator with an accurate and detailed breakdown of legal expenses.

- (i) Under the Act of Grace Scheme, established in September 1989, claimants with common law actions issued and served on the Commonwealth, in 1988 and up to September 1989, can apply to have their cases assessed on merit outside the court system. Two payments totalling \$0.6 million have been made under the Act of Grace Scheme.

The Special Administrative Scheme (SAS), established in 1989, originally provided compensation to any nuclear test participant who subsequently developed multiple myeloma or leukaemia (other than chronic lymphatic leukaemia). Since February 1995, the scheme has provided compensation if leukaemia (other than chronic lymphatic leukaemia) developed within the first 25 years of participation in the tests. Twelve payments, totalling \$1.1 million, have been made under the Special Administrative Scheme.

In 1991/92, \$0.6 million was paid to 18 aborigines as a once-off payment to settle their claim for personal compensation related to the Atomic Tests. Under the administrative scheme administered by Comcare, a total of \$0.2 million was paid in 1989 to five indigenous participants in the tests.

The operation of the Privacy Act 1998 restricts the Government disclosing further information relating to these payments.

- (ii) The Act of Grace Scheme and the Special Administrative Scheme are administered by the Department of Industry, Science and Resources. The costs associated with reviewing and administering the Schemes are funded by Departmental running costs and have not been individually identified.
- (iii) The Act of Grace Scheme and the Special Administrative Scheme are administered by the Department of Industry, Science and Resources. The Administrative Scheme is administered by Comcare. The costs associated with reviewing and administering the Schemes are funded by Departmental running costs and have not been individually identified.

(2) Yes, the Australian and British Governments signed an agreement on 11 December 1993 under which Britain agreed to pay Australia £20 million in an ex gratia settlement of Australia's claims concerning the British nuclear test program in Australia.

Revised ISR input to Question on Notice 3625

Further investigations have revealed that previous information provided by the Department of Industry, Science and Resources (ISR) as a contribution to the Hon Bruce Scott MP's response to Senator Allison's question on notice (number 3625) was incorrect.

An additional compensation payment, outside of the litigation and dispute resolutions schemes, was not included in ISR's contribution to the response. In 1991/92, \$618,000 was paid to 18 aborigines as a once-off payment to settle their claim for personal compensation related to the Atomic Tests. In addition, new information has come to hand concerning the final payment made to the successful plaintiff against the Commonwealth. Whilst a jury awarded the plaintiff \$867,100, the final payment was \$629,286 reflecting a deduction for compensation already paid to the plaintiff.

ISR has provided this information to the Department of Veterans' Affairs which will be preparing an amendment to this response.

**Immigration: Palestinian Nationals**  
**(Question No. 3874)**

**Senator Brown** asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 7 September 2001:

With reference to the 10 Palestinian nationals deported to Syria from Australia in August:

- (1) What has been their fate.
- (2) Were they arrested by the Syrian Security Agency.
- (3) (a) Were Australian officials at the Damascus arrival port; and (b) did they give Syria information or papers about the 10 Palestinians; if so: (i) what information or papers, and (ii) who were the officials.
- (4) What representations has Australia had with Syria to ensure the wellbeing of the Palestinians.

**Senator Ellison**—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator's question:

- (1) The Australian Government is not able to monitor non-citizens resident outside Australia.
- (2) There is no available information to confirm whether the Syrian Security Agency arrested the removees on their return. However, it is likely airport authorities detained them for a short time.
- (3) (a) Yes (b) Yes (i) Syrian issued travel documents (ii) Australian based immigration officers from the Australian Embassy in Beirut; a locally engaged staff member from the Australian Embassy, Beirut and; an officer from the Unauthorised Arrivals Section, Department of Immigration and Multicultural Affairs, Canberra.

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- (4) Australian and Syrian officials have discussed previously the issue of treatment of persons returned to Syria. The Syrian authorities advised that persons who depart lawfully do not attract official interest. Persons who depart illegally and thus break Syrian immigration laws may be interviewed on return. Penalties for unlawful departure may include a short period of detention.

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