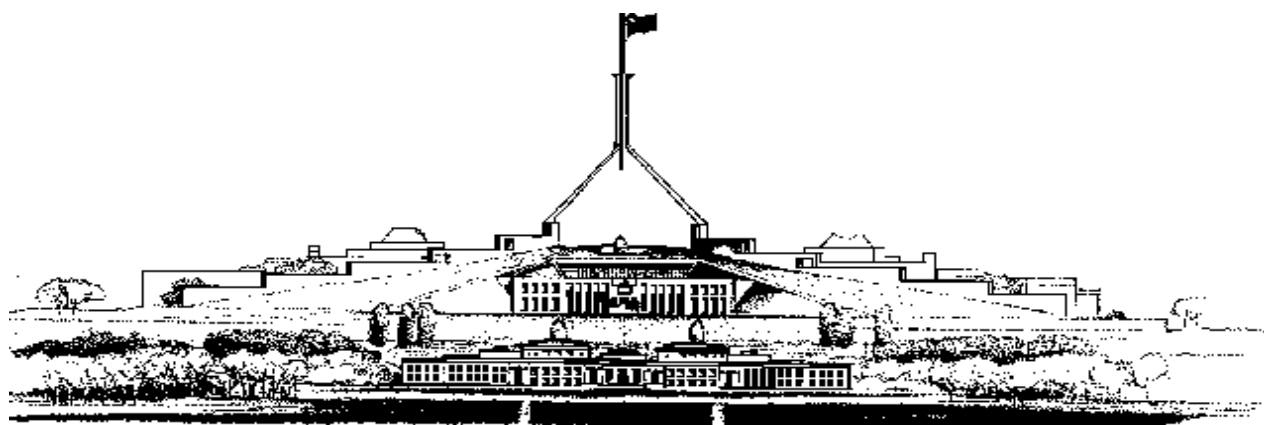




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 5, 2001**

**WEDNESDAY, 4 APRIL 2001**

THIRTY-NINTH PARLIAMENT  
FIRST SESSION—EIGHTH PERIOD

BY AUTHORITY OF THE SENATE

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### SITTING DAYS—2001

Month	Date
February	6, 7, 8, 26, 27, 28
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December	3, 4, 5, 6, 10, 11, 12, 13

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<i>PERTH</i>	585 AM
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*Wednesday, 4 April 2001*

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

#### NOTICES

##### Withdrawal

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (9.31 a.m.)—I withdraw government business notice of motion No. 1, proposing the exemption of a bill from the bills cut-off order.

#### MEASURES TO COMBAT SERIOUS AND ORGANISED CRIME BILL 2001

##### First Reading

Motion (by **Senator Ian Campbell**) agreed to:

That the following bill be introduced: A Bill for an Act to amend the *Crimes Act 1914*, and for other purposes.

Motion (by **Senator Ian Campbell**) agreed to:

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

Bill read a first time.

##### Second Reading

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (9.31 a.m.)—I table the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This Government is committed to a modern, effective approach to law enforcement. In the twenty-first century we cannot afford to assume that laws and procedures that were adequate 5, 10 or 15 years ago are appropriate today. Some parts of Commonwealth investigation and procedural law are in need of updating and reform, so I have brought forward the Measures to Combat Serious and Organised Crime Bill.

The Bill contains a wide-ranging package of measures to facilitate the investigation and prosecution of serious and organised crime.

#### Controlled Operations

Schedule 1 to the Bill contains a new scheme for the conduct of controlled operations. In a 'controlled operation', law enforcement officers allow criminal activity to proceed, in order to gain evidence of the broader criminal scheme. Modern criminal enterprises are often complex and sophisticated. Controlled operations are, therefore, a vital criminal investigation tool. A central objective is to allow the apprehension and prosecution of the organisers and financiers of serious criminal activity. These people hide behind couriers and intermediaries, hoping that if anything goes wrong these small fry will take the fall.

The importance of controlled operations as an investigative tool has been recognised in a number of forums, both national and international. For example, Article 20 of the recently negotiated United Nations Convention Against Transnational Organised Crime urges State Parties to take measures to allow for the appropriate use of controlled delivery. In an Australian context, the Wood Royal Commission into the NSW Police Service was supportive of controlled operations legislation on the basis that it would introduce greater regularity and certainty into undercover operations and resolve concerns about the criminal and civil liability of officers and civilians assisting them.

The existing provisions were enacted in 1996, in the aftermath of the High Court's decision in *Ridgeway v R* (1995) 184 Commonwealth Law Reports 19. Since then New South Wales and Queensland have joined South Australia in enacting much broader provisions. The Parliamentary Joint Committee on the National Crime Authority has also issued the 'Street Legal' Report on controlled operations, containing numerous recommendations that are picked up in this Bill.

Under the existing Part 1AB of the Crimes Act 1914, controlled operations can only be authorised in relation to the investigation of certain narcotics offences. Controlled operations certificates can only continue for a maximum of 30 days with no scope for variation. Furthermore, the resulting immunity from criminal liability only extends to narcotics offences, and only to law enforcement officers. There is no provision for a civil indemnity.

This means that the important controlled operation technique is unavailable to investigate other forms of serious criminal activity, including

money laundering, various forms of trafficking and smuggling, and corruption and bribery. Nor is there any ready means to infiltrate criminal groups on a longer term basis, or to reassure informants or civilians that if they are needed to participate in an operation, they will not be criminally liable.

The new regime removes these limitations. An operation would be able to be initiated in relation to any Commonwealth offence, as long as detailed authorisation criteria are followed. There would be scope for a certificate to remain in force for up to 6 months, subject to a mandatory review after 3 months, and certificates would be able to be varied. Law enforcement officers, and other persons specified in a certificate, would have access to criminal immunities and civil indemnities, subject to appropriate limitations.

Under the broader arrangements, senior officers of the Australian Customs Service would join senior officers of the Australian Federal Police and National Crime Authority in having the capacity to authorise operations.

These powers are necessary; but so are adequate controls and safeguards to reassure the community that the powers will be exercised in a responsible manner. The prohibition on entrapment would remain. There would be no scope to authorise sexual offences or the causing of death or serious injury. Certificates would be able to lay down binding conditions on those participating in operations, and would have to specifically identify any non-law enforcement officer and describe the nature of the activities in which he or she may engage.

Another important stipulation in the legislation is that controlled operations indemnities and immunities cannot be used as a de facto means to avoid other requirements of criminal investigation law, for example, relating to search warrants, forensic procedures or listening devices. More broadly, unlawful activity would be limited to the maximum extent consistent with an effective operation.

Consistent with the broader scope of the new provisions, more detailed operating requirements would apply. The Australian Federal Police, National Crime Authority and Australian Customs Service would be required to report to the Minister every 3 months, within two weeks of the end of the relevant 3 month period. The report would have to separately identify each ongoing operation, and outline (among other things) the reasons for each decision relating to authorisation, variation or review during that period. As an additional amendment, the Minister would be able to request additional information from the reporting

agency. The existing requirements for reporting to Parliament under section 15T of the Crimes Act 1914 would remain but would also cover the extra material to be reported to the Minister.

#### **Assumed Identities**

Schedule 2 to the Bill contains a framework to govern the use of assumed identities where there is a Commonwealth agency involved, either as the issuer of the identity or as the agency authorising the use of the identity.

Assumed identities are false identities adopted to facilitate intelligence and investigative functions, or infiltration of a criminal, hostile or insecure environment with a view to collecting information and investigating offences. Law enforcement and intelligence agencies require assumed identities to protect officers and others in the course of performing their functions. Criminals increasingly seek to verify commonly carried identification, such as Medicare cards. It is proposed to amend the Crimes Act to permit law enforcement and intelligence officers, and other approved persons, to obtain and use assumed identities to support their activities.

The Commonwealth currently lacks specific legislation permitting the acquisition and use of assumed identities by law enforcement and intelligence agencies. The need for legislation to regularise the creation and use of false identities by undercover officers was recognised by the Wood Royal Commission. The New South Wales Law Enforcement and National Security (Assumed Identities) Act 1998, which was enacted the year following the Wood Royal Commission, makes available evidence of identity from New South Wales Government agencies (such as birth certificates and driver licences) and non-government bodies. However, the New South Wales Act cannot be used to obtain essential Commonwealth documents (such as passports and Medicare cards) required to support investigations involving assumed identities.

The agencies expressly authorised to use the scheme under the legislation would include the Australian Federal Police, National Crime Authority, Australian Customs Service, Australian Security Intelligence Organisation, Australian Secret Intelligence Service, and State and Territory Police Services and anti-corruption agencies.

Law enforcement and intelligence functions are often performed jointly on State/Territory and international bases. The proposed legislation would also enable Commonwealth, State and Territory agencies to obtain evidence to support assumed identities in such cases, and use them overseas as appropriate.

Officers and others who use an assumed identity in an authorised manner would not be criminally liable for that deception, and, where such use is authorised by a Commonwealth agency, they would be indemnified by the Commonwealth for any civil liability. This means that a third party who suffers loss would have a right of recovery against the Commonwealth.

Commonwealth to Commonwealth requests for the issuing of assumed identities would be binding, so that there is a clear and straightforward line of decision making authority within the Commonwealth. In the case of State or Territory to Commonwealth and Commonwealth to private agency requests, the issuing agency would have a discretion whether to comply.

Underlying controls and safeguards, such as police disciplinary regimes, would be supported by a number of specific provisions in the legislation. There would be no authority to exercise a specialised skill or qualification attaching to an assumed identity, such as a pilot's licence, that the person does not have in their true identity. Misuse of an assumed identity would be an offence carrying up to 12 months imprisonment. Misuse would also mean that criminal immunity and civil indemnity would be lost.

Commonwealth agencies would have to retain relevant records while an authorisation is in force and for 12 months afterwards and cause those records to be audited at least once in every 6 months while the authorisation is in force and once in the 6 months afterwards.

Costs to a Commonwealth agency would be met from existing agency budgets and agencies that seek documentation would pay fees and any additional, related costs incurred by issuing bodies.

#### **Child Witness Protections**

Schedule 3 to the Bill contains important new protections for child victims and child witnesses in Commonwealth sex offence trials. The proposed protections would apply to witnesses and victims under the age of 18 in proceedings for Commonwealth sexual offences, including child sex tourism and sexual servitude offences. Children will often be vital witnesses in proceedings for these offences and it is important that they are able to give their evidence as freely and openly as possible.

The protective provisions recognise that child victims and child witnesses in sex offence proceedings are particularly vulnerable because of their age and the nature of the crime involved. The provisions are intended to minimise the distress and trauma experienced by child victims and

child witnesses in giving evidence and to protect the privacy of child victims and witnesses.

In recent decades, States and Territories have developed provisions to protect children from inappropriate cross-examination and make the process of giving evidence less intimidating. However, although Commonwealth sex offence trials are held in State and Territory courts, State and Territory child witness protections apply only to State and Territory offences and not to Commonwealth offences. The proposed provisions would remedy the absence of safeguards for child witnesses in Commonwealth sex offence trials.

The proposed protections are analogous to those already existing in many State and Territory jurisdictions and are consistent with recommendations in the Model Criminal Code Sexual Offences Against the Person Report.

Evidence relating to the sexual reputation or sexual experience of child victims and child witnesses would only be able to be admitted with the leave of the court. It is well documented that sexual offence trials have often involved the use of evidence of sexual activity unconnected with the alleged crime to inflict unjustifiable damage on the character and reputation of a complainant and cause inappropriate humiliation and embarrassment. The requirement that the court be satisfied that such evidence is of substantial relevance to the facts at issue in the trial before allowing it in, would ensure that child victims and witnesses are protected from the misuse of such evidence.

Child witnesses would be able to give evidence by means of closed-circuit television. If the court is not equipped with such facilities, alternative arrangements such as screens and planned seating arrangements would be used to restrict the child's contact with the defendant and members of the public. A child witness can be intimidated and distressed by having to appear in an open court. Allowing a child witness to testify by means of closed-circuit television would minimise the trauma of giving evidence by enabling the child to give his or her evidence in a less formal and more private environment. As a consequence, the child would be better able to focus on questions being asked.

Children giving evidence in a proceeding would also be able to be accompanied by an adult of their choosing, including while giving evidence by means of closed-circuit television. The role of the accompanying adult would be to provide the child with reassurance and support while he or she is testifying. Any prompting or influencing of the child's answers by the accompanying adult would be expressly prohibited and the court

would be able to veto a child's choice of adult if it is inappropriate.

Under the amendments, it would be an offence for a person to publish details which identify a child witness or child victim, unless the court gives the person leave to publish. The offence would attract a maximum penalty of 12 months imprisonment and/or a \$6600 fine. The prohibition on publication is to protect the privacy of child victims and child witnesses and prevent them from being subjected to further victimisation as a result of being identified in connection with sex offence proceedings. The onus is placed on a person who wishes to publish identifying details to apply for leave to do so, as the prevention of the further trauma to the child victim or child witness would in most cases outweigh any public interest in knowing the identity of the child.

#### **Part 1C Amendments**

Most of the amendments in Schedule 4 to the Bill are the result of a review of Part 1C of the Crimes Act. Part 1C allows investigating officials to lawfully detain suspects for questioning and confers a range of rights and protections on suspects. The amendments to Part 1C seek to clarify the operation of the Part and improve the effectiveness of existing mechanisms.

One of the objectives of clarifying the operation of Part 1C is to ensure that safeguards contained in the Part are given full effect. For example, Part 1C distinguishes between persons who are lawfully arrested and those who are deemed to be arrested for the purpose of applying certain rights and protections under the Part. Police are only authorised to detain persons who are lawfully arrested. The distinction is important in ensuring that persons who believe they would not be able to leave if they wished to do so are afforded the same rights and protections as persons who have been lawfully arrested. The existing Part 1C does not make this distinction as clearly as it could. Proposed amendments would provide the desired clarity.

The amendments to Part 1C would also enhance some safeguards in the legislation. For example, the amendments would clarify that a suspect cannot be detained on the pretext of 'holding charges' and would allow greater rights of communication with consular officials for foreign nationals and stateless persons.

Some problems that have hampered effective law enforcement would be addressed. For example, one of the proposed amendments would remove the existing barrier to re-arrest and detention of a suspect within 48 hours of a prior detention pe-

riod, if a new offence or suspicions relating to a new set of circumstances arise.

Schedule 4 also contains minor amendments to Crimes Act provisions other than in Part 1C. These would clarify when a search warrant ceases to be in force, allow for recording of a telephone application for a search warrant and clarify the relationship between strip search and forensic procedure powers.

#### **Listening Device Warrants**

Schedule 5 to the Bill contains proposed amendments to the provisions in the Customs Act 1901 for use of listening devices in relation to narcotics offences and the analogous provisions in the Australian Federal Police Act 1979 for use of listening devices in relation to specified serious offences. The amendments would permit the issue of a warrant authorising the use of a listening device in respect of a particular item where a suspected offender cannot be identified. Existing provisions only allow listening device warrants to be issued in respect of a particular person or particular premises.

The Supreme Court of Victoria recently held in *R v Nicholas* that a warrant identifying a person only by reference to their anticipated collection of a particular item did not sufficiently identify a particular person, and therefore was not authorised by the Customs Act warrant provisions. The Nicholas decision meant, for example, that where law enforcement authorities knew a particular bag or other item contained drugs but did not know the identity of the person who was to collect them they were unable to use a listening device. The proposed new provisions would overcome practical problems caused by this decision.

#### **FTR Amendments**

Schedule 6 to the Bill contains proposed amendments to the Financial Transaction Reports Act 1988 to clarify and update the operation of the Act. Most notably, the definition of a 'cash dealer' would be amended to cover persons who are in the business of exchanging or converting currency, or transferring currency or commercial instruments such as cheques into or out of Australia on behalf of other persons. This amendment would ensure that the reporting obligations under the Act cover so-called 'underground bankers'.

The Western Australian Anti-Corruption Commission and the Queensland Crime Commission would be deemed to be law enforcement agencies to enable them to have access to financial transaction reports information. Other law enforcement agencies that perform similar functions already have access to this information. It would



also be made clear that foreign intelligence information provided to AUSTRAC by a foreign country is to be treated as financial transaction reports information and afforded the same strict secrecy and access regime that applies to all other information received by AUSTRAC under the Act.

#### **Spent Convictions**

Schedule 7 to the Bill contains a proposed minor amendment to section 85ZL of the Crimes Act to provide that the exemption allowing the use and disclosure of 'spent conviction' information previously held by the National Exchange of Police Information will now be held by the new Crim-Trac agency.

#### **Conclusion**

I am pleased to bring the Bill before the Parliament. It contains a well-rounded package of measures, enhancing investigatory powers in important areas where this is necessary; but also enhancing and clarifying safeguards and protections where appropriate. These measures would help to keep Commonwealth law enforcement methods up to date.

Ordered that further consideration of this bill be adjourned to the first day of the 2001 budget sittings, in accordance with standing order 111.

### **PARLIAMENTARY ZONE**

#### **Approval of Works**

Motion (by **Senator Ian Campbell**, at the request of **Senator Minchin**) 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 the design and siting of a services pavilion associated with Commonwealth Place and the material, colours and finishes to Commonwealth Place.

Motion (by **Senator Ian Campbell**, at the request of **Senator Minchin**) proposed:

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 final text and images for the Magna Carta monument in Magna Carta Place.

**Senator BROWN** (*Tasmania*) (9.33 a.m.)—Are there are any further monuments to the historical development of democracy and freedom—such as Greek democracy and/or the Australian milestones in democ-

racy, such as the gaining of the vote by women and the secret ballot, which are very important parts of Australian history—to be memorialised in the same precinct and in the same way? Could I have a response from the government on this question?

**The PRESIDENT**—It is a formal motion, Senator. You may ask the question but the parliamentary secretary is not obliged to respond to it.

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (9.34 a.m.)—I take the question seriously because it is a very serious issue. I will seek to get a detailed response prepared for Senator Brown.

Question resolved in the affirmative.

### **ELECTORAL AND REFERENDUM AMENDMENT BILL (No. 1) 2001**

#### **In Committee**

Consideration resumed from 3 April.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

#### **Third Reading**

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

### **CRIMES AMENDMENT (AGE DETERMINATION) BILL 2001**

#### **First Reading**

Bill received from the House of Representatives.

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

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

Bill read a first time.

#### **Second Reading**

**Senator ABETZ** (*Tasmania—Special Minister of State*) (9.36 a.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This Bill contains important measures to provide for a person to be tested with prescribed equipment (for example, an x-ray) to determine their age, where it is not possible or practicable to determine age by other means.

The measures are strictly identification procedures (specifically, powers to conduct wrist x-rays to determine the age of a suspect or defendant). Consequently, it is proposed to insert the amendments into Part 1AA of the Crimes Act, which already contains provisions relating to the taking of identification material (such as fingerprints, photographs, recordings, and samples of handwriting).

The Bill meets two required outcomes:

- (1) determining a suspect's age at the outset or during the course of an investigation; and
- (2) resolving doubt as to a defendant's age that arises during court proceedings.

At the outset I would like to indicate that the measures can only be used if a person is suspected of having committed, or is charged with, a Commonwealth offence. So the measures will affect offenders and not, for example, unauthorised boat arrivals. It is not a criminal offence to enter Australia unlawfully. Unlawful non-citizens arriving in Australia will continue to be dealt with under existing procedures in the *Migration Act 1958*.

It is important to determine a person's age, particularly if they are juveniles, so that their interests can be properly safeguarded throughout the investigatory stage and subsequent criminal proceedings. The question of whether a suspected offender is an adult or juvenile impacts upon many areas of the criminal justice process, including:

- (1) the lawful arrest of a suspect;
- (2) the lawful questioning and interviewing of a suspect;
- (3) the rights to which a suspect is entitled;
- (4) the decision to institute criminal proceedings against a suspect;
- (5) the admissibility of resulting evidence;
- (6) for sentencing purposes; and perhaps most importantly
- (7) the safe detention of a suspect.

Because such important considerations are at stake, the Government is right to take its obligations in this area very seriously.

Determining the age of a suspect is particularly important in relation to people smuggling offences, where foreign nationals (such as the crew

on a vessel containing suspected unlawful non-citizens) refuse to provide details of their age, or make false claims that they are under 18 years old, and there is no documentation or means to prove otherwise.

Existing provisions are inadequate for this purpose.

Previously, reliance was placed on section 258 of the *Migration Act 1958*, which provides that where a person is in immigration detention, an authorised officer can do anything reasonably necessary to photograph or measure the person for identification purposes. X-rays were used as an identification procedure in many cases, and the results employed as evidence of the suspect's age. However, *R v Hatim, Kadir and Others* [2000] NTSC 53, a case decided late last year, Justice Thomas of the Northern Territory Supreme Court held that section 258 did not authorise the use of an x-ray. This ruling was confirmed in a subsequent case. In any case, there are cases where the necessary prerequisites for employing section 258 do not apply, for example, a suspect is not in immigration detention or an x-ray is not necessary to determine their identity.

Part 1D of the *Crimes Act 1914* makes provision for obtaining evidence to confirm or disprove that a suspect has committed a relevant offence. In most cases, evidence of age is only relevant for the purpose of determining whether a defendant should be dealt with according to legislative provisions applicable to persons under the age of 18. No express provision is made in the *Crimes Act* for the use of equipment to determine the age of a person.

Therefore, there is currently no means of determining a person's age in circumstances where no documentation is accessible. This is entirely unsatisfactory. Bringing certainty to this critical question will be achieved by this Bill, which fairly balances the public interest in equipping law enforcement with the means to determine age so that, among other things, adults will be detained separately from juveniles, against the competing interest of upholding a person's physical integrity.

The age determination powers contained in the Bill will send a strong message to those engaged in people smuggling that they cannot circumvent or abuse the Australian legal system by deceptively claiming they are under 18 years old. It will also avoid the undesirable situation of placing adult suspects in juvenile detention facilities or vice versa.

The proposed amendment will contain appropriate safeguards consistent with those applicable to

identification and forensic procedures in section 3ZJ and Part 1D of the Crimes Act. The right of a suspect to communicate with a friend, relative or legal practitioner, to which existing section 23G of the *Crimes Act 1914* refers, is expressly retained. In the context of foreign nationals apprehended as suspects for a Commonwealth offence, the right to communicate with their relevant consular office in Australia, to which existing section 23P of the *Crimes Act 1914* refers, is another important safeguard expressly retained by the Bill.

Criminal sanctions along the lines of existing provisions in Part 1D, which carry maximum penalties of 2 years' imprisonment, will deter unauthorised disclosures of age determination information.

The Bill is predicated on informed consent - use of the prescribed equipment for investigation and related purposes will only be permitted where the informed written consent of both the detained person and an appropriate independent adult has been obtained; or by order of a magistrate. Among the most important matters required to be explained to the persons giving consent are the following:

- (1) the purposes and reasons for the prescribed procedure;
- (2) the fact that the persons giving consent can withdraw that consent; and
- (3) that the person on whom the procedure is to be carried out may have, so far as is reasonably practicable, a person of his or her choice present while the procedure is carried out.

During trial, a court would be able to order the use of prescribed equipment. In either case, the use of equipment will be explained to the person, in a language in which the person has reasonable fluency.

In those instances where the age of a suspect or defendant cannot be accurately determined the current legal position will prevail. Unless the prosecution can discharge the burden of establishing on the balance of probabilities that a defendant is an adult, the defendant will be treated as a juvenile. This ensures that no injustice will occur if a defendant's age is still in doubt at the time of trial.

The Senate Legal and Constitutional Legislation Committee reported on the provisions of the Bill on 27 March 2001. The provisions of the Bill were only referred to the Committee on 7 March 2001 and I would like to record my thanks for the Committee's diligent and hard work in releasing a report less than 3 weeks after that initial refer-

ence. In the course of the debate in the House of Representatives most of the Committee's recommendations were accepted and incorporated into either the Bill or the Revised Explanatory Memorandum, pursuant to the Committee's recommendations.

The Committee, in recommendation 9 of its report, requested that a statement from the Attorney-General's Department or the Australian Federal Police be incorporated into Hansard. I intend to make such a statement before the Senate now, confirming that the needs of special groups are met throughout the investigatory stage, but particularly when being questioned by law enforcement officers.

AFP officers are bound by the requirements of Part 1C of the *Crimes Act 1914*. Many provisions in Part 1C relate specifically to meeting the needs of special groups, such as children, people of Aboriginal or Torres Strait Islander background, and people of non-English speaking backgrounds. Specific safeguards include:

- (1) in section 23C, a 2 hour investigation period for children or people of Aboriginal or Torres Strait Islander background (rather than a 4 hour period applicable to other people);
- (2) in section 23H, a requirement for an interview friend to be contacted and be present while a person of Aboriginal or Torres Strait Islander background is being interviewed;
- (3) in section 23K, a requirement for an interview friend to be contacted and be present while a child is being interviewed, where a child is a person under 18 years of age;
- (4) in section 23N, a requirement for an interpreter to be contacted and be present during an interview in cases where an investigating official believes a person is unable to communicate with reasonable fluency in English, whether because of inadequate knowledge of the English language or a physical disability.

In addition to these safeguards, AFP officers also comply with the AFP Practical Guide on Interpreters and Translators. The Guide requires that (and I quote) "where a member proposes to interview, interrogate or take a statement from any person who, for any reason, has difficulty in understanding or speaking with reasonable fluency in the English language, the member shall arrange for the services of an interpreter competent in that person's language" (end quote). In practice, this

policy extends to all situations where AFP officers are required to provide information to a suspect who does not appear to understand English with reasonable fluency.

In respect of carrying out forensic procedures under Part 1D of the *Crimes Act 1914*, AFP officers are bound by section 23YDA. Under this provision, if an AFP officer believes on reasonable grounds that the suspect is unable to communicate orally with reasonable fluency in English, because of inadequate knowledge of the English language or a physical disability, the officer must arrange for the presence of an interpreter, and, until the interpreter is present must not do any of the following:

- (1) ask the suspect to consent to a forensic procedure;
- (2) order the carrying out of a non-intimate forensic procedure on the suspect;
- (3) apply to a magistrate for a final order or an interim order for the carrying out of a forensic procedure on the suspect;
- (4) caution the suspect;
- (5) carry out, or arrange for the carrying out, of a forensic procedure on the suspect; or
- (6) provide the suspect with an opportunity to view a video recording of a forensic procedure.

These safeguards and this Bill demonstrate the Government's commitment to ensuring young persons are appropriately treated by the criminal justice process and not subjected to procedures or standards applicable to adults.

*(Quorum formed)*

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (9.39 a.m.)—This is described as a filler. I am very pleased to say that I did want to make a contribution to the second reading debate myself on the *Crimes Amendment (Age Determination) Bill 2001*, but I know that Senator Bolkus will make a better one than I will, so needless to say he is on.

**Senator BOLKUS** (South Australia) (9.39 a.m.)—I thank the leader for that introduction but I have to confess that, in this case at least, he has it wrong. I am not so sure that my speech would be a lot better than his. We are debating the *Crimes Amendment (Age Determination) Bill 2001*. It is a bill that has attracted some degree of interest in the community. It amends the Crimes Act to al-

low for prescribed procedures to be used to determine a person's age where that person is suspected of having committed a Commonwealth offence and where it is not practical to determine that person's age by other means.

Prescribed procedures are understood in this legislation to mean X-rays of the wrist bones, which set in adult form at about the age of 18. The bill allows for an official to arrange for an age determination procedure to be carried out with either the consent of the suspect or by a magistrate's order. There must be reasonable grounds to suspect the person has committed a Commonwealth offence and uncertainty as to whether that person is under 18. There is the necessity that the uncertainty be resolved in order to determine the application of the rules governing the person's detention, the investigation or the institution of criminal proceedings. The distinction between adult and juvenile is an important one as there are many protections afforded juveniles in investigation, detention, trial and sentencing procedures.

It is the government's claim that there is a growing need for an age determination measure as many people who are subject to investigations, because they are suspected of having committed a Commonwealth offence, are either not Australian citizens and, therefore, cannot readily prove their age, or there are other circumstances. The government has identified people smuggling and drug importation as two criminal enterprises where it is hard to determine the age of suspects. It should be noted that the procedures provided for in this bill will be able to be used in investigations for the range of criminal offences against the Commonwealth, not just for the people targeted and those involved in people and drug smuggling. The bill requires the suspect to be informed of the purpose and nature of the procedure and any equipment or risk involved, and the seeking of the consent is recorded. Reasonable and necessary force is allowed in order to carry out the procedure. The bill also contains penalties for the improper disclosure of age determination information and requires that the information be destroyed 12 months after the investigation.

When this legislation was first introduced, the opposition suggested to the government that it was appropriate that it be referred to the Senate Legal and Constitutional Committee for its review. The bill, like many others that this parliament has considered recently, utilises new technology for law enforcement. While we should be taking advantage of new technology as it arises across the spectrum of government policy, it is also important that we ensure that the legislation empowering the use of this technology and the actual use of the technology have appropriate safeguards for the protection of individual rights.

The bill was referred to the Senate Legal and Constitutional Committee for review. The committee's report contained a number of recommendations for amendments to the bill and its explanatory memorandum. After discussions between the government and the opposition the bill has now been amended so as to implement most of these recommendations. I should at this stage note the important work done by the Senate Legal and Constitutional Committee that has led to the following amendments being included in the legislation.

These amendments provide, firstly, that a person undergoing an age determination procedure may be accompanied by a person of his or her choice. Secondly, they require that the consent for the carrying out of an age determination must be obtained from the person undergoing the procedure and from an independent adult. Thirdly, they require that a person must be informed of the reasons and purposes for the carrying out of the procedure. Fourthly, they require that a person who has given consent must be advised by appropriate means that this consent may be withdrawn. Fifthly, they specify that age determination equipment must be operated by an appropriately qualified person. Sixthly, they specify that the procedures must be carried out in a manner consistent with either appropriate medical standards or other appropriate relevant professional standards.

The committee also made a number of representations which, although they do not require amendment to the bill, do require some government action. The opposition

anticipated that during his speech today the minister will, firstly, confirm that the explanatory memo has been revised so as to make it clear that this bill applies to all Commonwealth offences and that it will only apply to age determination in respect to young people and when it is a matter of law that the prosecution must establish that the person is or is not a juvenile for the purpose of the case being prosecuted; and, secondly, will make a statement confirming that the needs of special groups are met at all interview and other processes. The committee also recommended that the information including radiological studies relevant to the age determination of young persons of various racial and cultural backgrounds, including women, be regularly sought and used in order to ensure that the prescribed procedures are of maximum use. The opposition endorses this recommendation and we expect that the government will follow it. On the basis that the bill has been extensively and appropriately amended so as to incorporate the recommendations from the committee's report, the opposition is supporting the legislation.

**Senator COONEY (Victoria)** (9.45 a.m.)—As Senator Bolkus has said, this **Crimes Amendment (Age Determination) Bill 2001** deals with procedures for determining people's ages. It is part of the equipment that we need to keep the criminal law system as it should be kept. Policing is always difficult because we are the sort of society that says that although the detection of crime is very important it must be done in conformity with the standards of decency which we as a nation are proud of. We must suppress crime. Society crumbles if crime is allowed to proliferate. At the same time, society is also affected if we go about the detection of crime in an oppressive and cavalier way. This bill, now that it is amended, strikes that balance which is so essential if we are going to continue to be the sort of society that we are. Senator Bolkus mentioned the work done by the Senate Legal and Constitutional Committee in this matter. A report was also put in by the Scrutiny of Bills Committee, which the minister answered, and I thank him for that.

You can have the best system in the world, but if it is not staffed by good people then that system is no good. You can have a fairly ordinary system but if you have the right people in charge it can work well. This particular procedure will be carried out by the Australian Federal Police. I take this opportunity to say that body has been well staffed over the years and has a high reputation—as it should. Mr Mick Palmer, who was in charge of that force, has recently left, and I would like to pay tribute to the work that he did when he was leading the force. I would also like to welcome the new commissioner of the Federal Police, Mr Mick Keelty, whom I have had the pleasure of knowing over the years and who has done outstanding work as a policeman. As a country we should have every confidence that he will continue to be a great policeman and a great leader of the police force. We in the Legal and Constitutional Committee have had great cooperation from the Federal Police over the years. Very recently we were taken to the headquarters in Sydney and shown how things operate there. I acknowledge the presence today in the advisers box of Victoria Linabury and Annie Davis, who looked after us on the occasion when we were there, showing us how the complexity of the system works. Mr Geoff McDonald is here, who has guided this legislation through its reasonably smooth path—

**Senator Bolkus**—You'll never get picked up for speeding in Canberra.

**Senator COONEY**—That is a very cynical comment, Senator Bolkus, especially after you overlooked our Scrutiny of Bills report. I am not going to acknowledge any more of the comments that you make.

When this bill started off, it needed some correction. The work of the Legal and Constitutional Committee has led to that change, and it is now a piece of legislation that strikes that balance that we need in the community. What we were really seeking was the curbing of arbitrary power. Criminals exercise arbitrary power the whole time in the sense that they go about their mischief in a very unrestrained way, ignoring the laws that bind this country. Therefore they need to be caught and brought to book. At the same

time, the administration of investigations can itself become arbitrary, as I said, and that situation needs to be controlled as well. This piece of legislation will, especially in the hands of the Australian Federal Police, do a great deal for this community.

**Senator GREIG (Western Australia)** (9.51 a.m.)—The **Crimes Amendment (Age Determination) Bill 2001** is a bill that has been through considerable and comprehensive Senate Legal and Constitutional Legislation Committee procedures. The report into the bill is available and has considerable suggestions and recommendations. The bill, more importantly, follows up on recent Crimes Act amendments establishing a national DNA database and empowering authorities to take DNA samples in various circumstances. This bill amends the Crimes Act to authorise the carrying out of procedures to determine the age of people suspected of committing Commonwealth offences.

The bill will allow the carrying out of prescribed procedures to determine age where there is uncertainty as to whether a suspect is an adult or a juvenile. Juveniles are treated differently to adults at the investigative, trial and sentencing stages of our criminal justice system. As such, it is important to be able to determine the age of a suspect where there is uncertainty. Age determination has been particularly problematic in investigating and prosecuting drug importation and, more recently, people smuggling operations. We Democrats recognise the importance of being able to determine the age of suspects. Juveniles are afforded significantly greater protection under our criminal justice system and, if there is an accurate and effective way of determining whether someone is a juvenile, then that naturally assists in ensuring that the full rights of that person are recognised and respected.

In saying that, I am mindful of the fact that age determination procedures are more likely to be invoked in an effort to establish that someone is not a juvenile rather than the other way around. The common law position is that the onus is on the prosecution to establish that a person is an adult rather than a juvenile where there is uncertainty. In effect,



at common law you are a juvenile until proven otherwise on the balance of probabilities. Nonetheless, we Democrats support in principle the use of appropriate age determination technology to assist in the smooth functioning of our criminal justice system. We recognise that adults do sometimes falsely claim to be juveniles in an attempt to access the greater protections and less severe punishments often given to juvenile suspects and offenders. The real issue then is whether this bill is an appropriate means of achieving its objective.

I note that a considerable amount of work has been done on this in a relatively short period of time. The Senate Legal and Constitutional Legislation Committee, as I said from the outset, has examined this bill recently and raised a number of concerns relating to, in particular, civil liberties and fundamental rights. The government has since made some amendments to the bill to reflect the concerns of the committee. To the government's credit, I acknowledge that these amendments do contribute to a fairer age determination regime. However, there remain unresolved issues.

Of particular concern to the Democrats are the relatively nebulous provisions relating to prescribed procedures. These prescribed procedures are those that may be used to determine the age of a suspect. What procedures are possible is determined differently, however—that is, by regulation. While the material accompanying the legislation strongly emphasises the anticipated role of wrist X-rays, the legislation permits alternative procedures to be authorised by way of regulation. We share the concern raised by the Committee for the Scrutiny of Bills that this may permit the use of experimental or invasive procedures. Even though such procedures are subject to disallowance, we are of the view that the provision authorising procedures to be carried out is a core provision and at the very least should, in a positive way, be able to specify some limits on what procedures are permissible. The Committee for the Scrutiny of Bills went further, stating that 'any new prescribed procedure should be provided for in primary legislation rather than in regulation'. We acknowledge that

legislation needs to be flexible to accommodate new technologies but do remain concerned about the introduction of new technologies in law enforcement through the back door.

We have recently debated amendments to the Crimes Act relating to the use of DNA evidence. That debate was necessary because the legislation as it stood was too inflexible to accommodate the government's desire to collect and use DNA evidence in a variety of controversial ways. We regard that inflexibility as positive because it permitted a full debate on the issue. New technologies such as DNA testing are frequently controversial and warrant the scrutiny of the full legislative process. We consider it inappropriate that this bill permits new technologies, possibly affecting the fundamental rights of people in this country, to be employed without parliamentary approval.

I also note with concern that the government has not accepted some of the recommendations of the Legal and Constitutional Legislation Committee. For example, the government does not accept that a person should be entitled to make a submission in proceedings in which authorities are seeking an order from a magistrate to carry out an age determination procedure. This seems to be a basic element of procedural fairness that should be allowed where it is practicable. A number of other proposals along similar lines have been rejected by the government. While we do acknowledge that the government has made some progress in terms of improving this bill, we consider that there is still a considerable way to go. As such, we are opposing this bill. We have not proposed amendments because those amendments that we would propose have already been rejected by the government in its response to the Legal and Constitutional Legislation Committee report. We share and echo the concerns of the many civil liberties groups which contributed to debate on this. Those concerns are reflected in this report.

**Senator ELLISON (Western Australia—Minister for Justice and Customs)** (9.59 a.m.)— I firstly thank senators for their careful consideration of the **Crimes Amendment (Age Determination) Bill 2001** and, in par-

ticular, the Senate Legal and Constitutional Legislation Committee for the consideration of the bill and the recommendations which it has made to the government. This bill was considered speedily by that committee and I thank the members on that committee for that. I also wish to acknowledge the contribution made by the Scrutiny of Bills Committee, which Senator Cooney, who is the chair of that committee, touched on earlier.

The committee made a number of recommendations concerning this bill. The government has accepted most of those recommendations. Changes requiring legislative amendment were made with the support of the opposition in the other place and are contained in this bill before the Senate. Other recommendations only require changes to the explanatory memorandum. Appropriate changes have been therefore included in the revised explanatory memorandum, and I believe this covers the question raised by Senator Bolkus when he mentioned special needs. Additional recommendations do not require any changes to the bill or the explanatory memorandum.

I will briefly address each of the committee's recommendations. In relation to the committee's first recommendation, there are three separate points. The first has been accommodated by the government. That expressly preserves the rights of suspects at the preliminary stages of investigations, when an age determination procedure may well occur. The second point is also accommodated. The government accepts that the person on whom the procedure is to be carried out should have as far as reasonably practicable a person of his or her choice present while the procedure is carried out. The government will not adopt the third point of the first recommendation as it considers this is not necessary. Magistrates can be relied upon to deal with these matters fairly. I should add that, unlike forensic procedures, age determination procedures are not about gathering evidence to establish that a person committed a crime; they are about ascertaining a person's age so that they can be afforded the appropriate safeguards as soon as possible. This really is the basis for this bill, that when people are brought in and there is some

question as to their age a quick determination can be made as to their age so that they can be dealt with appropriately. The community at large would not want a juvenile to be treated as an adult or an adult to be treated as a juvenile.

In the bill, effect is given to the second recommendation by making it clear that only an independent adult person can provide consent. The government will not accept recommendation 3, which would restrict the powers to seek consent for an age determination procedure to federal, state and territory police officers. There is no logical reason why other investigators who already have parliament's imprimatur to investigate and arrest a suspect should not have the same ability to determine that suspect's age.

Recommendation 4 of the committee contains four discrete points. The first relates to problems of comprehension confronting law enforcement officers every day in the field. The bill requires informed consent to be sought in a language in which the person communicates with reasonable fluency. The government has made an amendment to give effect to the committee's second point. Now, both the purpose and reasons for the procedure must be fully explained to the suspect. The government considers that the third point is already covered by the requirement to inform a suspect of the nature of the procedure and of the equipment that will be used. The government accepts the fourth point of recommendation 4. It is not necessary, however, to change the bill because proposed section 3ZQE already ensures that video or audio recordings of the informed consent process are taken where practicable. Otherwise, a written record must be made.

The first two matters in recommendation 5 are no more than standard procedural fairness considerations which are regularly applied by judges and magistrates. The government does not consider that it is necessary to expressly legislate in this area. The government supports the committee's third point and has included a new proposal to make sure that a person is informed that they can withdraw consent at any time. The government considers that the fourth point is already covered by the existing law of reason-



able and necessary force, and believes the comprehensive training of AFP officers in relation to this is adequate.

In relation to recommendation 6, the first part of that would require investigators to exhaust all other avenues before determining a person's age under the bill. Of course, in practice all reasonable alternatives would be pursued before using these measures. The results of any prescribed procedure would complement other information about a person's age—for example, their general appearance. However, an express requirement for investigators to exhaust all other avenues merely opens the door to unwarranted technical legal challenges and will frustrate the intention of the bill, which is to determine a person's age early in the investigative process so that children are treated and detained as children. It is very important that be done as early as possible. The government will not therefore amend the bill to accommodate this part of the committee's recommendation. However, it does agree with the second part of recommendation 6, and there has been a subsequent amendment such that, if prescribed equipment is to be operated to determine a person's age, an appropriately qualified person must operate that equipment.

In relation to recommendation 7, the government has recast section 3ZQH to give effect to the committee's first point relating to the application of appropriate medical and/or professional standards. The government accepts the second point made in recommendation 7, although amendment will not be made to the bill itself. This kind of issue is one that can be dealt with effectively in the regulations. Recommendation 8 of the committee calls for changes to the explanatory memorandum, and the government has incorporated statements along the line proposed in the revised explanatory memorandum, which I mentioned earlier. The government believes the statement made during the second reading speech has responded to recommendation 9 made by the committee.

The government accepts the committee's recommendations 10 and 11. The medical profession is active in ensuring that medical procedures are appropriately used for per-

sons of different racial backgrounds. The fact that the Minister for Health and Aged Care must be consulted, who, in turn, will liaise with the Therapeutic Goods Administration and relevant medical colleges, will ensure that only established and researched procedures will be used. The regulations prepared by the government will specify the qualifications, experience and expected role of those persons involved in carrying out these procedures.

Recommendation 12 calls for additional research on the pre-sentencing assistance available to people with special needs. A substantial body of work in this area already exists, including the Australian Law Reform Commission's comprehensive report on the rights of children throughout the federal criminal justice system, including at the investigative and pre-trial stages. This report, entitled *Seen and heard: priority for children in the legal process*, reflects the legal position as at September 1997 and is therefore still current. The Australian Law Reform Commission also addressed problems experienced with our criminal justice system by Australia's migrant population in its 1992 report entitled *Multiculturalism and the law*.

The exhaustive analysis in the Royal Commission into Aboriginal Deaths in Custody report still provides significant guidance for law enforcement agencies when dealing with Aboriginal and Torres Strait Islander peoples in the investigative and pre-trial stages. The Human Rights and Equal Opportunity Commission's *Report of the national inquiry into the human rights of people with mental illness* identified a number of steps that could be taken to alleviate difficulties experienced by the mentally ill in the investigative and pre-trial processes. This sets out in detail the issues faced by people with special needs. The government remains committed to ensuring that people with special needs are fairly dealt with and it will initiate further research as required.

The Standing Committee for the Scrutiny of Bills considered that the type of age determination procedures should more appropriately be included in primary legislation rather than in regulations. I have responded to the recommendations of the committee,

stating that the prescription of procedures in regulation is appropriate in this case. It is envisaged that the regulations will provide considerable detail on the wrist X-ray procedure, including reference to appropriate medical standards and required safeguards. They will not just deal with the operation of an X-ray machine; the regulations would be drafted in consultation with the Minister for Health and Aged Care. I believe that is an added safeguard. This will ensure that a new medical device would be prescribed only if it were approved by the Therapeutic Goods Administration. The Therapeutic Goods Administration is conservative about matters of this nature and widely acknowledged throughout Australia to be a body of integrity and professional standing. If a new procedure is considered too invasive, the parliament will have an opportunity to reject the prescription of such a procedure by way of disallowance.

That comprehensively covers the government's response to the Senate committee's recommendations. The government acknowledges that this has been a thoroughly worthwhile exercise. This is a very important piece of legislation and will ensure that juveniles are not dealt with as adults and, just as importantly, that adults are not dealt with as juveniles. This is a very important part of law enforcement and the administration of justice. This bill has achieved a balance between individual liberties and rights and the requirement for effective law enforcement, which the committee requires. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

#### **In Committee**

The bill.

**Senator GREIG (Western Australia)** (10.11 a.m.)—Senator Ellison, can you give an explanation of what opportunities for appeal might be available to someone whose age has, theoretically, been determined under this procedure but who has a grievance with that and who claims the opposite? Is there an opportunity for some kind of appeal? How would that operate?

**Senator ELLISON (Western Australia—Minister for Justice and Customs)** (10.12 a.m.)—The advice I have is that, depending on the state or territory in which it occurs, the normal appeal process would apply to the person aggrieved. In some cases, that would be from a decision by a magistrate to the district court. It would follow the normal appeal processes laid down by the state jurisdiction.

**Senator GREIG (Western Australia)** (10.12 a.m.)—Minister, how would that work in the—I accept, difficult—cases where we deal with people smuggling and people from non-English speaking backgrounds? How does the law come into effect to protect the rights and liberties of those people, in particular, in relation to informed consent? The committee noted in its report, in item 3.88:

As was noted in the discussion above relating to informed consent, it is essential that individuals are aware of their full rights and also understand these.

Minister, can you confirm whether that opportunity is properly built into this bill? Is there a procedure where it is determined that they fully understand their rights and obligations with regard to this? What does that mean, particularly, for people from non-English speaking backgrounds?

**Senator ELLISON (Western Australia—Minister for Justice and Customs)** (10.14 a.m.)—A person subject to the proceedings has a right to legal advice, of course, and also access to the consul official available to them, depending on where they are from. That would be communicated to them, so that would give them, in an effective manner, an avenue to seek legal advice on the matter. I mention that in relation to recommendation 4, which deals with informed consent. The bill already requires informed consent to be sought in a language in which the person communicates with reasonable fluency. So there is that practical requirement at the outset. Their access to legal advice is as I have outlined, and they have access to any consular official or diplomatic post that is available.

**Senator GREIG (Western Australia)** (10.15 a.m.)—I would like to make reference to comments made by the Tasmanian antidis-

crimination commissioner, amongst others, in terms of the appropriateness of the qualifications of those people using technologies to determine age. It also stands to reason that technologies can and do change rapidly, so we may well be looking in the future at technologies which we have no particular concept of now. The advances in DNA technology, for example, are rapid, as are the advances in complementary sorts of information technologies and other scientific areas. It is argued by some—the Tasmanian antidiscrimination commissioner in particular—that there ought to be strong safeguards ensuring that only those people appropriately qualified to deal with new technologies in this particular circumstance should do so. What protections, guidelines or stipulations are there to ensure that a person is appropriately qualified when we are talking about technologies which may not yet exist?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.16 a.m.)—I was just checking that the recommendation had dealt with this, but it was more by way of general submission. What I mentioned at the conclusion of my remarks was in relation to the regulations which would deal with any change in the type of process that would be used. Senator Greig has stated that technology changes, and that would be dealt with by way of regulation. Certainly, if that warranted a change in qualification—for instance, if there was a new device that was used—that could well be covered by regulations, and you would have corresponding technical qualifications to deal with that.

Those regulations are subject to review by the parliament and can be disallowed. If regulations are thought not to be sufficiently comprehensive, that could be addressed at that stage. When you look at the fact that it has to be done in consultation with the Minister for Health and Aged Care and the Therapeutic Goods Administration, you see you have a combination both of technological requirement and of who should be dealing with that procedure. I think it was recommendation 7 where the government recast section 3ZQH to give effect to the committee's first point regarding the application of

appropriate medical and/or professional standards. In relation to both that and the regulations, we can cover adequately the question of sufficient qualifications to meet changing technology in the future. So I think that would address the point that Senator Greig raised.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

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

**Senator Greig**—Could I just ask that *Hansard* record that, as that vote went through, the Democrats voted against the bill on the third reading.

### AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001

#### Second Reading

Debate resumed from 8 February, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator FORSHAW** (New South Wales) (10.20 a.m.)—The *Australia New Zealand Food Authority Amendment Bill 2001* is a testament to the Howard government's arrogance, ineptitude and blatant disregard for the Australian community's right to be consulted and heard on matters that involve public health and safety. Before I start listing the specific incidents that will illustrate my opening comments, I would like to state that the opposition will be moving amendments later, in the committee stage, to improve this flawed piece of legislation. These amendments, which I will outline later, will take into account the evidence and information provided by various consumer and public health organisations and peak bodies to the inquiry by the Senate Community Affairs Legislation Committee. We will do what this government has not: listen to the concerns of the community and its representatives and seek to address them where possible.

I would like to spend some time at the outset informing the Senate about the recent hearing of the Senate Community Affairs Legislation Committee into the *Australia New Zealand Food Authority Amendment*

Bill 2001. That hearing took place last Thursday afternoon and the report was tabled in the Senate yesterday. This will illustrate to senators just how the way this inquiry operated and the rush with which it was held mirror the government's abysmal process for the development of the new food regulatory model.

It is interesting to note that one of the major issues raised in submissions and at the inquiry was the lack of public consultation on the development of the new food regulatory model. The government policy of non-consultation extended to the inquiry itself, where we and the Democrats got a taste of this government's blatant arrogance and disregard for informing the public and indeed the parliament. It seems that as a result of a drafting error the government was in the process, at the time the inquiry was held, of making an amendment to the legislation. This proposed amendment reinstated references to consumer rights on the general list of criteria for membership of the FSANZ board, the Food Standards Australia New Zealand board.

In the bill, as published on the web site and tabled in the Senate, consumer rights were listed only in the mandatory section, not in the general list of criteria for membership of the board. It is unfortunate that while the department, the government and indeed the chair of the committee, Senator Knowles, were aware of this amendment—and I refer to page 13 of the *Hansard* in that regard—no-one else at the inquiry, including the witnesses from the consumer groups, the opposition senators and the Democrats senator, Senator Stott Despoja, had any knowledge of any proposed amendment. This situation resulted in a great deal of confusion at the outset of the hearing, as the chair most unfairly sought to undermine the evidence of witnesses on the basis of knowledge of this amendment that no-one else had. To give the chair the benefit of the doubt, I can assume only that she was also the victim of government non-consultation and did not know that she was in possession of information that no-one else outside the government and the department had. Senator Knowles might like to

take that up with her colleagues in the government.

I want to move on to the general issue of non-consultation. In their opening statements and evidence given to the Senate committee, the Australian Consumers Association, the Dietitians Association of Australia and the Public Health Association of Australia all expressed concern about the lack of consultation on the new food regulatory model. These concerns were also put on the record in a written submission from the Australian Medical Association. These groups are all well-respected, reputable organisations that, without any doubt, are more than qualified to comment on food regulation and food safety arrangements as they pertain to the health and safety of Australians.

The chair of the committee and other government witnesses attempted to rebut these groups' concerns by raving on endlessly about the broad public consultation associated with the food regulation review process. That process was known as the Blair review. There is no denying that this consultation occurred during the Blair review, and both the Labor Party and the consumer groups at the hearing applauded the extent of consultation that occurred during the Blair review. The crucial point, however, is that no formal consultation occurred in the two years after that draft report was submitted to COAG. The government was quite happy to have these groups involved extensively in the public consultation process during the Blair review, which was the lead-up to the preparation of the legislation, but it ignored their vital interests after that point. The Blair review recommendations, which, in the department's own words, 'were pretty general in terms of how arrangements might be streamlined', were submitted to COAG in 1998 in the form of a final draft report. Unfortunately, that was the last time the public saw those recommendations, and at that stage they were only in draft form, in any event.

The objective of the Blair review was to recommend to government how to reduce the regulatory burden on the food sector and improve the clarity, certainty and efficiency of the current food regulatory arrangements

whilst at the same time protecting public health and safety. Somewhere and somehow between August 1998 and February 2001 a senior officers working group developed an intergovernmental agreement based on its recommendations. This IGA, intergovernmental agreement, became the basis for the drafting of the [Australia New Zealand Food Authority Amendment Bill 2001](#), the bill that we are debating today.

In evidence, the Department of Health and Aged Care even stated that major changes to the structure of the Australia New Zealand Food Authority were not outlined in the Blair review, yet they suddenly appeared in the [Australia New Zealand Food Authority Amendment Bill 2001](#). Further, the department has stated that in the years between the submission of the Blair review and the introduction of the ANZFA Amendment Bill 2001 there was no detailed or formal consultation process with the Australian public or public health consumer groups. To add insult to injury, the department chose to deal with major consumer and public health stakeholders only after the legislation had been drafted, just to let them know that the process was over, the result was before them and it was tough luck if they had any problems with it. In doing so, the department and this government were saying to the Australian public, 'We have changed your primary food safety regulator without your knowledge or participation, and if you do not like it you will just have to lump it.'

As submissions to the inquiry, media reports and letters from Australian voters indicate, Australians do not like it and have very good reasons for not liking it. They do not like having the board of what is supposed to be an independent, scientifically based food safety regulator potentially stacked by food industry representatives. The department has admitted that hypothetically that could be the case. Labor will not allow this to happen either hypothetically or in reality, and we will be moving amendments that will reassure the Australian public that their food regulatory body will have independence and integrity. Labor will also move amendments to ensure that the general make-up of the board comes from a human health and sci-

ence base and that it is mandatory to include a representative of the National Health and Medical Research Council on the board.

This is the body responsible for Australia's nutrition policy and public health and research in this country. It is also responsible for convening the Transmissible Spongiform Encephalopathy Expert Committee that deals with the issues of BSE and CJD. Given the overlap between the areas of responsibility, this group must have a voice on the Food Standards Australia New Zealand board. Furthermore, Labor will look at ways it can make tougher and more transparent provisions for board member disclosure of direct and indirect pecuniary interests, particularly in regard to the position of the chair of the board.

Australian consumers also do not want the ministerial council to lose its power to amend proposals and applications put before it by the FSANZ board. These powers enabled state health ministers to prevent Prime Minister John Howard's attempt to water down requirements for labelling of genetically modified foods at the behest of the powerful industry lobby. To say that Prime Minister was upset about being rolled so very publicly by Australian and New Zealand ministers is an understatement. And perhaps a situation I will now describe is part of what Geoff Strong from the *Age* recently described as 'payback'. A senior bureaucrat in the Department of Health and Aged Care Mr David Borthwick, who also sat on the Senior Officers Working Group, made the following comments to the Senate committee about removing the ministerial council's power to amend all applications and proposals. He said:

The intention [of the legislation] is to reject or amend. I remember the discussion of senior officials on this point.

If it was only a power to reject then you are left in limbo. What applies then? Nothing applies.

So the intention was at the end of the day, the ministerial council had the power to put up an amendment and say: this is the standard.

Hear, hear, Mr Borthwick. We agree with you. It was well said and we support him entirely on those points. It is a pity, however, that this government apparently does not

agree with those points. It may surprise people in this place to know that just yesterday I received the following answer to one of my questions on notice in relation to this particular aspect of the legislation. The answer from the department to the question on notice stated:

With regard to this issue Mr Borthwick provided advice on the basis of his understanding and recollection of the intent of the Senior Officers Working Group and COAG senior officers.

However there was not consensus on this matter and the outcome was that the SOWG report and the Food Regulation Agreement provided only that the Ministers could reject a standard upon second review. This is what is provided for in the Bill except in relation to standards developed as a matter of urgency.

So what is actually provided for in this bill is a ministerial council with only the power to review or reject, not to amend. As Mr Borthwick so succinctly put in his answer during the inquiry, that leaves them in limbo. What applies then? To use Mr Borthwick's words, nothing applies. Either the government is happy for its legislation to do just that or it will support the opposition in its amendments to pick up the views of one of its most senior bureaucrats by amending the bill to give back to the ministerial council the power to amend all applications and proposals. However, I think that is not necessarily what the Prime Minister intended originally.

Australians do not want to be kept in the dark about policy that will drive their food safety regulator. The Gene Technology Act 2000 policy framework, set by its ministerial council to guide the Interim Office of the Gene Technology Regulator—also a statutory authority—is in the form of policy principles. These principles are disallowable instruments, which means that the public can, through the Senate process, have some scrutiny of and input into this framework. In this weak bill, the ministerial council will determine the policy framework for FSANZ through guidelines which are not disallowable instruments and therefore cannot be properly scrutinised. Labor will propose an amendment to fix this situation, providing an exception for policy principles that are urgent and required for immediate protection of public health. The Australian public do

not want to have restricted access to public information about Food Standards Australia New Zealand decisions and call for submissions on those decisions.

Unlike the Gene Technology Act and the current ANZFA processes, this bill proposes that most of the information I have referred to will be available only on the Internet. This is totally unacceptable and discriminates against those Australians who do not have access to this technology. Accordingly, we will move an amendment to ensure that public notification is available through multiple media sources.

Australians want confidence in the food they and their families eat. They do not want to live with the crisis of confidence that can be found throughout Europe, a direct result of the UK and other European governments' handling of the BSE situation. To have that confidence, they must trust the government and the regulator responsible for the protection of their health and safety. Part of that trust is about the independence and integrity of the regulator. In ANZFA's case the fact that it is a statutory authority should add to that feeling.

At this point I would like to make a personal observation. At the two previous committee hearings relating to ANZFA amendment bills—and I was present at those hearings—the only government witness was ANZFA. ANZFA gave detailed evidence on the legislative changes proposed in those earlier bills. On those occasions, in stark contrast, the authority was clearly subordinate to the Department of Health and Aged Care. In addition, ANZFA was not originally listed to attend the public hearings to provide evidence and its presence had to be specifically requested by the opposition.

The process by which this bill was drafted, the contents of the bill and the arrogant way in which this government has tried to push it through the parliament do not inspire trust; rather, they suggest contempt, because: there was no formal consultation on major changes to food regulation; the inquiry that scrutinised this bill was given just half a day for hearings and less than two working days to digest the evidence and draft a report; the government's own officers were not



able to supply answers to questions on notice that were crucial to the consideration of the legislation until the day after the Senate report was tabled, which was 24 hours after senators were required to submit minority reports; and because of the way witnesses at the inquiry, representing some of Australia's leading consumer and public health groups, were treated. A representative of the Food and Grocery Council, the one group that did support the government, stated:

In conclusion, notwithstanding our great respect for the institutions of this parliament, this comprehensive, laborious and inclusive process of review that has delivered this bill has been signed off by all those jurisdictions directly affected by it. It simply begs the question: why the need for this committee to review this bill?

The need for the committee to review the bill has been adequately demonstrated. I remind the Senate of what happened to another government that chose to make decisions relating to the health and safety of its community under veils of secrecy. In response to the Phillips report into the British government's handling of BSE and the resultant spread of the disease to humans in the form of variant Creutzfeldt-Jakob disease, the Blair government made the following statements:

The Inquiry Report contains a number of key findings in relation to trust and openness:

- To establish credibility it is necessary to generate trust.
- Trust can only be generated by openness.
- Openness requires recognition of uncertainty, where it exists.

These conclusions are strongly endorsed by the Government. The Government recognises that there has been a significant loss of public confidence in the arrangements for handling food safety and standards, in large part due to the events surrounding BSE. It is committed to a policy of open and transparent working.

Those words should be closely studied by this government and should be adopted as the policy upon which the development and changes to the food regulatory authority in this country is based. At a later stage, the opposition will move amendments which will pick up the issues of concern raised during the inquiry and which will substantially improve this piece of legislation.

**Senator STOTT DESPOJA** (South Australia—Deputy Leader of the Australian Democrats) (10.40 a.m.)—Senator Forshaw is quite right when he suggests that this debate on the [Australia New Zealand Food Authority Amendment Bill 2001](#) goes to the very heart of issues of confidence and public faith and trust in our food regulatory system, just as the [Gene Technology Bill 2000](#) debate last year was about ensuring a national regulatory framework that inspires that confidence, specifically in light of new and emerging technologies such as gene technology and GMOs. The debate about public safety and confidence in relation to food is particularly relevant because of GMOs. As Senator Forshaw mentioned, the whole BSE issue and the European and UK situations are examples from which we should learn. Indeed, I endorse his comments that the government should read the findings and recommendations of the Phillips report, with great attention to detail.

The [Australia New Zealand Food Authority Amendment Bill 2001](#) amends the Australia New Zealand Food Authority Act 1991 to implement arrangements for a new food regulatory system. This system is set out in the intergovernmental Food Regulation Agreement, agreed to by members of the Council of Australian Governments on 3 November last year. The new food regulatory system was developed by senior officials—a working group of COAG—and was formed in response to the Food Regulation Review Committee, chaired by Dr Blair. One of the important findings of that particular review—and one argued by the food industry—was that the current system is perceived as inefficient, not least of all because of inconsistencies in the regulatory approaches of the states, territories and local governments.

This bill establishes a new statutory body, Food Standards Australia New Zealand, FSANZ, which is based on the existing Australia New Zealand Food Authority. It separates out the responsibility for policy direction, which will be the domain of a new ministerial council, and the setting of food standards, which will be the responsibility of FSANZ. The Australian Democrats acknowledge that this bill goes some way to

addressing problems in the current regulatory environment, identified particularly in the Blair review. However, while it is important to eliminate unnecessary impediments to business, the core purpose of food regulation is and must always be health and public safety. The government asserts that the new system provided for in this bill strengthens the focus on public health and safety. This assertion is not without merit in some cases. However, the Democrats believe that the bill in its current form is flawed and should not be supported by the chamber. Accordingly, the Australian Democrats intend to move a number of amendments to the bill in the committee stage to ensure that the primacy of public health and safety is upheld in the new system.

One of the major concerns the Democrats have with the legislation is the proposed membership of the FSANZ board. This issue was raised by six of the 10 non-departmental submissions provided to the inquiry and was discussed at some length in the public hearings to which Senator Forshaw referred. The bill removes one of the current positions on the ANZFA board—the member who is an officer of a state or territory authority having responsibility for matters relating to public health—and increases the number of other members from the current two to between one and five. At the same time the bill, by including international trade, small business, the food industry and primary food production, increases the field of expertise by which other members can be appointed. A concern raised in submissions and discussed at length with witnesses at the public hearing is the list of fields of expertise, which potentially allows an undesirable overrepresentation of commercial interests on the board. This point was made in Senator Forshaw's opening remarks. I am glad to hear that he is thinking along similar lines to the Democrats in relation to moving an amendment to rectify that.

Even the department acknowledged that the board could be 'stacked' with five members, all with industry interests. We acknowledge that is not necessarily likely to happen, but it is something we should guard against and, therefore, we should consider amendments to change such a possibility. The

Democrats believe that there is a good case for some food industry representation on the FSANZ board and acknowledge that it is unlikely a board would be completely stacked with industry interests. However, that is no excuse for complacency. As I mentioned, the board's primary interest is and should be public health and safety; it is not an instrument for the food industry and it is even less acceptable for it to be an instrument for advancing WTO interests or agendas.

The Democrats believe a very good case was made in a number of submissions and by a number of witnesses for increased representation from medical science, public health and food science areas, including a representative of the National Health and Medical Research Council. The Democrats are conscious of the very serious medical consequences and ongoing stress arising from food anaphylaxis. We are also well aware of the increasing efforts of food producers to develop and commercialise so-called novel foods. Accordingly, we believe that a number of changes to the proposed FSANZ board must be considered in the committee stage of this debate. These should include: increasing the size of the board; specifying additional fields of expertise in either or both the mandated and other member components of the board, including, for instance, expertise in medical science and microbiology; limiting the number of members with commercial expertise; and establishing two lists of fields of expertise—firstly, food industry and, secondly, science and public health—and specifying minimum representation from both.

One problem identified at the Senate inquiry is that changes to the board mean that, while one member with expertise in consumer rights was mandated for, the extended list of fields of expertise for non-mandated members deletes consumer rights. Again, Senator Forshaw made reference to this in his remarks on behalf of the opposition. In the course of the public hearing, the Department of Health and Aged Care acknowledged that this was a drafting error and foreshadowed a government amendment to reinstate this position. I note that Senator Tambling has foreshadowed a government



amendment to that effect. It should be noted that this is not the only drafting error unearthed by the Senate inquiry. It was also revealed that the Department of Health and Aged Care is confused about its own legislation in relation to the power of the ministerial council to amend standards and proposals. In evidence given to the committee, the Deputy Secretary of the DHAC, Mr Borthwick, suggested that a new ministerial council would have the power to reject or amend a new standard after the second review. This was certainly the interpretation of the Australian Food and Grocery Council. However, subsequent advice from the department—again referred to by Senator Forshaw in his remarks—makes it clear that this is not the case and that the ministerial council can reject or amend an urgent application but can only approve or reject a new standard. As the additional advice states:

The reason for this position in relation to the majority of standards was to provide for a sensible balance between ministerial responsibility and accountability through transparent policy setting and evidence based standard setting by the FSANZ board.

The distinctions are important and we are conscious of them, but the Democrats, along with the opposition, believe this situation needs to be rectified. The ability of the council to amend standards is something we will be examining in the committee stage debate on this bill. The Democrats are committed to substantially improving the accountability and transparency of ministerial appointments to public authorities. This is not a new issue. As many people in this place will know, the Democrats, and Senator Murray in particular, on a number of occasions have moved amendments in relation to scrutiny, merit and probity being the core principles when it comes to appointments to public authorities. The Democrats have some concerns with the process by which ministerial appointments to the FSANZ board will be made. Specifically, we have concerns about the extent of scrutiny of such appointments. There is also the question of whether it will be preferable for at least some of the board members to be nominated by peak public sector bodies as distinct from ministerial appointments. For instance, in the case of an NHMRC repre-

sentative, there is merit in allowing a process by which nominations are presented for ministerial approval.

The inquiry raised some uncertainties about whether the new act is satisfactory in relation to board members' declarations of interest. The Democrats are satisfied that the provisions of the Commonwealth Authorities and Companies Act are broader than those that exist in the current ANZFA Act in respect of the onus on board members to declare material interests. The question remains, however, as to whether material interest does or does not include academic or research associations. Given the importance of public confidence in such science, the Australian Democrats will seek further advice, with a view to additional amendments if required in this particular area.

At the inquiry there was extensive discussion about the distinctions and value of incorporating the precautionary approach or the precautionary principle or the notion of precaution into the legislation. Evidence provided to the committee by Mr Lindenmayer, of ANZFA, argued that the term 'precaution' itself, or a 'precautionary approach', adequately describes the approach that is now in place. The Democrats note concerns that the precautionary principle is ambiguous. However, we are unimpressed that one particular line of criticism of the precautionary principle is its implications for trade. I reiterate my earlier comment about the WTO—that is, WTO arguments do not deserve a place in consideration of a bill concerned primarily with public health and safety. I hardly need remind the Senate that the precautionary principle was adopted in the [Gene Technology Bill 2000](#). The Democrats argued vigorously for the inclusion of this principle, and we believe that a similar approach being adopted in this bill has merits. I think we should be doing everything we can to ensure a nationally consistent approach to food regulation. When it comes to not only gene technology but also GMOs, there should be a nationally consistent framework in which food is assessed and approved.

Senators are aware that precaution is being examined in the context of food stan-

dards in the Codex Alimentarius, the code of international food standards. At this stage the Democrats are satisfied that the concept of the precautionary approach, as understood in the gene technology legislation, is broadly applicable to food legislation and food regulation. At the very least, there appears to be no good reason why implicit notions of the precautionary approach should not be made explicit in section 10 of the bill.

An issue raised by the Australian Consumers' Association is the adequacy of notification processes. The Democrats accept this point and will seek to amend the bill so that FSANZ will be required to publicise routine and urgent applications in the printed media as well as on the Internet. I acknowledge the comments by Senator Forshaw on behalf of the opposition in this area as well. It looks as though we are going to have rather similar amendments. Given that, I think the government should be on notice to incorporate some of these issues. Good evidence was provided at the hearing as to why this should be the case, and I think it is very clear that both Labor and the Democrats will be moving amendments. I hope that the government will incorporate some of those changes and put forward further amendments during this second reading stage.

The lack of consultation in relation to this legislation was discussed at length by a number of witnesses during the committee process, and it was also reflected in most of the submissions we received. The Democrats do not accept the government's view that the Blair review process was sufficiently consultative. We acknowledge that those consultative processes were very broad ranging and in depth over a number of years, but there has not been adequate public consultation. We place that on record just as we have in our supplementary report into this legislation. We believe that this bill is substantially different from the Blair review's recommendations and therefore the argument that there has been sufficient consultation is a furphy.

Perfunctory efforts by the government, through the department, to tell some key public health and consumer rights groups that this is what is going to happen is, we believe, poor process. It was clear from the

discussions in the committee last Thursday that it was the view of public health and consumer and advocacy organisations that they had not been adequately consulted. If they had been, it was by accident not design, and it was certainly not an in-depth consultation process.

Senator Forshaw commented that it was also quite disappointing to have the rationale for a Senate inquiry on this issue queried by a peak body representative—a food industry peak body lobbyist. In response to questions from me he explained that he did not mean to subvert the process in any way or adversely reflect on the right of senators to examine the legislation but, as Senator Forshaw remarked, the expression 'begs the question' was used in relation to why this bill was being examined by a Senate committee. One consequence of the hearing was the exposure of drafting problems and the department consequently foreshadowing the need for two government amendments. This reinforces the crucial role that Senate inquiries play in the legislative and consultative processes.

This broadly outlines the Democrats' views and concerns with this bill. We look forward to detailed discussion of the necessary amendments during the committee stage. I place on record once again that this process has been rushed through, and not only in terms of inadequate consultation with peak groups. This has been a very rushed committee hearing and reporting process. It is very hard to write a minority report when you have not even got the *Hansard* back from your Senate committee deliberations the previous Thursday. Should anyone get me wrong, that is certainly not a reflection on *Hansard* and the wonderful job that they do, but it is very difficult to have a turnaround time of not even three days when dealing with a report and legislation such as this.

I think everyone would acknowledge that this is an important piece of legislation. The general debate about food regulation and public health and safety in Australia is an ever pressing concern for a majority of Australians, and it will be increasingly so, for all the reasons that both Senator Forshaw and I

have explained. Whether it is the increasing interest in and use of GMOs or whether it is issues such as BSE and CJD, I think we have to get this process right. If that means more consultation, discussion and negotiation, then so be it. I am glad that we are dealing with only the second reading at this stage. I look forward to the committee stage—in May, I presume. In the meantime, I urge the government to consider adopting the recommendations made by the opposition and the Democrats. Perhaps they will even foreshadow some amendments to the effect that the Democrats have outlined today.

**Senator CROWLEY (South Australia)** (10.57 a.m.)—I rise to speak today on the [Australia New Zealand Food Authority Amendment Bill 2001](#). When I looked through my office for background information on this, I was interested to find a *Bills Digest* for this bill dated 1999. It is, as Senator Forshaw said, something that has been run up and run down and talked about but not proceeded with over some time. Therefore, it is particularly interesting to hear my colleagues reporting today about the significant, if not almost total, lack of serious public debate and consultation on this issue. I do not think you have to be paranoid to note the change in emphasis in this legislation. The previous ANZFA process covered public health and safety, but the legislation now would require the impact on business to be a significant part of the legislation. The *Bills Digest*—the 1999 version—says, in its concluding comments:

The new 'objectives' clauses contained in the Bill represent an attempt to alter the balance. The philosophy underlying the Bill is that the Act currently gives primacy to the benefit of protecting of public health without acknowledging costs imposed on business.

That certainly sends a shiver up my spine. I had the opportunity of chairing the inquiry into the gene technology legislation, and the evidence at that inquiry made it absolutely clear that some businesses regard regulation as a fly of distraction to be swatted out of the way or ignored. It is quite interesting that, with all the discussion about the implications of the supervision of research into genetic modification of crops and so on in this country, we found in the course of our in-

quiry that there was significant infringement of the current guidelines. They have been flouted in an extraordinary way since our bill was reported on and since the legislation to establish the Interim Office of the Gene Technology Regulator was put in place. The regulator is not established for another month or so.

That Monsanto and Aventis could behave in the cavalier fashion they have, particularly with the evidence that has now emerged from Tasmania, suggests that we have every reason to be super suspicious and cautious about trusting large companies. We have very big reasons to be suspicious. Over and over again large companies give us reasons not to trust them. They continue to flout the rules, to sail close to the wind and to pretend that the evidence did not show that there was something to worry about. We have only to look at the behaviour of the tobacco industry over the last 50 years or so, claiming absolutely that they had no evidence to show that, for example, nicotine was addictive or smoking was addictive and then suddenly saying, 'Oh, well, we'd better give up that fight.' Now, after whistleblowers and all sorts of court cases, it turns out that they were simply lying.

I can understand people in the food industry saying, 'Cut it out, Senator; we're not the same as the tobacco industry.' But I would say to them that their job is to prove to us that they are not. We know of many examples of the food industry fighting against labelling of foods, arguing that it will be too expensive and that no-one will be able to read it and asking what information is required and whether the community will understand the difference between carbohydrates and sugar—as though the community is basically daft. The community has made it very clear that it wants to be treated as intelligent. It wants to be given the information. It wants the opportunity to decide for itself. And it certainly does not like being treated as too stupid to know or, worse still, being patronised and told, 'We'll tell you what is good for you.'

This legislation moves in the direction of taking away the priority emphasis of public health and safety for Australian people in

terms of their food. I think we have every reason to be very concerned about that shift in emphasis. That is why I am very happy to strongly support the Labor Party's proposed amendments to ensure, amongst other things, that the balance on the board allows for fair representation, particularly of consumers—or at least some representation of consumers—that the process will be open and that public consultation will be extensive.

You would think that people would learn. You would think that the messages of the last few years, particularly in relation to food, would have been picked up. But it seems that this government has not got the message. Certainly any time I mentioned BSE in the previous inquiry people said, 'That is not fair; don't talk about it.' BSE is a classic case in point. What has emerged since a change of government in the UK is that information was known and held back, to the detriment of the health of the people in the UK and, more particularly, to the detriment of the trust that the people in the UK might have had in what governments say when they say things. That trust has taken a savage blow. Interestingly, that kind of concern has been picked up across the world.

I have heard people who have that kind of concern being described as 'those fringe nutters', 'those lunatics who believe in organically produced food' and whatever other sorts of swear words we want to attach to them. They probably do not wear beads and long skirts any more—they have moved on from being hippies—but they are a group of people to whom all sorts of derogatory adjectives are applied, in the hope that, by doing so, what they think will not be taken seriously. I think it is about time we reflected on what the community out there thinks. I do not know what percentage of the community it would take—51 per cent certainly was not enough at the last election. Is it the case that a concern is taken seriously only if there are a significant number of people with the same concern? I think a significant number of people are concerned. I cannot tell you whether the percentage of people in Australia who are concerned about food safety is 25 per cent, 51 per cent or 55 per cent, but I can tell you that a growing number of people are

very concerned about the food they eat and what goes into their mouths, and they are very concerned about the health impacts.

I am particularly interested to take up this perspective on behalf of a part of the community called women. Women have been particularly discredited over the years for their concerns. I will give you one example that I have been interested in for many years through my interest in health. For many years mothers said that if their children ate certain food they became hyperactive. Some of you would know that I am not wrong when I say that most of those mothers were treated as liars or dolts or both until, finally, it turned out that food and food additives, in particular, do contribute to a state of hyperactivity in a lot of children. Gradually that evidence has been accepted. I appreciate that there is a need to do some scientific testing and to test it a bit rigorously, but it would have been better if we had started by taking notice of what people had said and then testing it instead of starting by presuming that most people who have those kinds of worries or concerns are liars or fools.

We in the community have learned that large companies do not instinctively trust what we say or even take seriously what we say. That is why we want legislation that regulates or protects on behalf of we the people. Businesses have shown over and over again that they cannot be left to their own devices because they will say, 'We have to balance the economics of this against the risk.' We would probably all say, 'Yes, but you are pushing the economics up and the risk down, and we don't like the way that balance is now skewed.' That is the principal concern we have about this piece of legislation. The public has not been taken seriously and has been excluded in a significant way from consultation on this legislation. I think it is very important that we ensure that the community can trust that their government's legislation will ensure that they are protected and that the standards are not being lowered.

The community is also, I think, very worried about BSE and foot-and-mouth, and there is a lot of evidence to suggest that there is an element of confusion in all this. I agree with that, because, as I understand it, foot-

and-mouth is not a disease that is very damaging to human health. At the edge it might be a little bit, but it is not a major worry. But when the community have concerns of that sort and, day after day, headlines in newspapers say that the food we used to trust is no longer safe for us or that bad things are happening with it, then we need to make sure our legislation picks up and reflects that concern. We have debated the gene technology legislation, we know of the concern in the community about adequate labelling—indeed, I suspect that will continue—we have seen a very significant growth in this country of so-called organic foods and we have seen the market for those organic foods grow considerably. But to those people who say, ‘Oh, well, we have to balance cost against risk. People would much rather buy the cheaper product,’ I say that they should do some time in our supermarkets. If they did some time in our supermarkets they would find that increasingly people are prepared to pay a little bit more if the food is organic. If it is differently labelled, if it is safer, people will do that. If these people spent time in our supermarkets they would even find that people now are being encouraged to pay a bit more if the product is made in Australia. I cannot remember the name of the food chain in the UK—if anybody can help me, I would be appreciative—which watched what people were doing at those particular shelves in their supermarkets. I am sorry I cannot remember the name of the chain. Senator Tambling, if somebody over there can tell me the name of the chain I would be very pleased. That chain watched people deliberately read the labels and, if the food was not organic or if it was a GM food, the people put it aside. As a result, that whole chain said, ‘Right, we will not have any more GM foods. Nobody in our supermarkets buys it. If they read the labels, they will pick it up. If they see it’s genetically modified, they put it back.’

**Senator Calvert**—Sainsburys?

**Senator CROWLEY**—Sainsburys, is it? I am not absolutely sure it is. Tesco has been suggested. I beg the pardon of the community listening and everyone listening here. I cannot affirm that it is either of those.

**Senator Calvert**—Tesco banned kangaroo meat.

**Senator CROWLEY**—Thank you very much for that contribution, Senator Calvert. That is significantly interesting and probably of absolutely no relevance at all! But I do know that this large chain in the UK actually did the exercise of watching what people in their supermarkets were doing. They found people did pick out the products, they did read the labels. The chain found that if the labels said ‘genetically modified’ people put the item back. This chain has now said, ‘It’s clear to us. We’re not going to waste our time or our customers’ time. We are removing all genetically modified products from our shelves in our stores across the country, and we’re going to make that public so people need not worry. They can read the labels for sugar, for fats, for carbohydrates, for protein, for whatever, but they will not have to worry about whether or not it is GM; we will not have GM products in our stores.’

You could say therefore that all those people have lost the plot or are worrying unnecessarily. The evidence before our gene technology inquiry was that people certainly are very concerned. Again and again we were told, ‘There is no evidence that these foods are a worry.’ But we had experts say, ‘Of course there is no evidence; no research has been done.’ When you get very senior virologists in this country saying, ‘I’ve been working with genetically modified cells for many years. I’m not unhappy about us doing the research, but I can assure people, when others say that there is absolutely no reason to fret, that there is no evidence that this causes anything, that of course there is no evidence it causes any damage, because no research has been done.’ In the end it may be true that the majority of people will cope. But what the community now says is, ‘Thanks very much. We want the research done now, beforehand. We don’t want to be promised it’ll all be okay for us. We have had those promises before and we have learnt not to trust.’

That is why this legislation is such a critical piece of legislation: people do not trust. They need to be given the assurance that the legislation that is designed to protect them,

to assure them that the food provided throughout Australia is safe for them to eat, seriously understands their concerns, seriously takes their thoughts and concerns into consideration and seriously gives them an opportunity to contribute to the discussion. That will only happen with significant and serious public discussion. I think it was Senator Forshaw who said that the only way the public will know about it is to look on the Internet. That is not fair. Again, look at the people in the supermarkets. Many of the people in supermarkets do not have access to the Internet, do not want access to the Internet. The last thing they are going to do is check the Internet for public health statements: 'Good morning, world. I'm just dialling up the Internet to see what I have to worry about today.' No, that is not the way most people operate in this world. Even if there are people who will check the latest take-care notice on the Internet, that is not how most of us work. Most people would prefer that the information is provided in a much broader, more accessible way. We need to look at some of the other campaigns to have an understanding of what better way there is that we can inform people so that they do have an understanding of the concerns or the safety issues on their behalf.

In evidence to the recent Senate inquiry—which, I understand, is the second one on this bill—the Department of Health and Aged Care itself admitted that, in theory, under the proposed arrangements ANZFA's new board could be 'stacked' with, say, five members, all with industry interests. That is one of the lines that is of grave concern to Labor and to the people of Australia; that is to say, those who are not necessarily in the business of providing food. Labor will move amendments to ensure that this cannot happen in theory or in practice. Labor will move additional amendments that address the issue that has confused the government and its department: the ministerial council's ability to amend proposals and applications. I have said over and over but I say again: the continued health of the food industry depends on public confidence in food regulation as well as clear, certain and efficient regulatory arrangements. I think that is a point that we cannot stress enough. This piece of legisla-

tion is about ensuring that there are regulations to give people in Australia and New Zealand the confidence that their food is up to scratch and that nothing bad will come of eating it. It is also a mechanism by which the significant changes happening within food and food manufacture can constantly be supervised.

It ought to be clear to the government. It ought to be beyond doubt to the government that you have got to take the public into account. It sometimes seems to me that it is as though the government is not aware that the community have learned to read and write and are very aware, through television and all sorts of other mechanisms, of why they should be properly concerned. Just watch the news each night. Just read the headlines. The quote that Senator Forshaw read needs to be read again. The Blair government made the following comments in response to the Phillips report:

The Inquiry Report contains a number of key findings in relation to trust and openness:

- To establish credibility it is necessary to generate trust.
- Trust can only be generated by openness.
- Openness requires recognition of uncertainty, where it exists.

These conclusions are strongly endorsed by the Government. The Government recognises that there has been a significant loss of public confidence in the arrangements for handling food safety and standards, in large part due to the events surrounding BSE. It is committed to a policy of open and transparent working.

I remind people that this is the Blair government's report:

The aim is to provide consumers and others with timely, accurate and scientifically based information and advice enabling people to make informed decisions and choices. The Government recognises that its efforts to build and sustain trust through openness cannot succeed unless it is fully prepared to acknowledge uncertainty in its assessment of risk.

It is important to remember that under the ambit of this legislation ANZFA had as its priority objective the health and safety of people. Any move away from the highest priority for health and safety should be done

very grudgingly and only to protect that safety. (*Time expired*)

**Senator DENMAN (Tasmania)** (11.17 a.m.)—I rise to speak on the [Australia New Zealand Food Authority Amendment Bill 2001](#). The Australia New Zealand Food Authority, ANZFA, is the body that deals with regulation of food. Its primary role is to protect public health and safety. It also includes consumer information and fair trading. As my colleague Senator Crowley has just said, the trust from the public is of paramount importance here. I will come back to that later. I had an interesting discussion with the Comcar driver this morning about this particular issue. In the chairman's foreword to the annual report, particular attention is given to consultations. The paragraph on page xii starts with these words:

In these consultations ANZFA is setting out to actively listen and to learn from our stakeholders and in this the forums are proving very useful.

However, from what we have observed, the policy is more a reflection on an internal COAG process than actually taking on any arguments expressed by the public forums. This has been expressed by the media and more recently at the Senate inquiry by the Australian Consumers' Association, the Dieticians Association of Australia, the Public Health Association of Australia and the Australian Medical Association. Those organisations all expressed concerns not only about the lack of consultation but that even when they were consulted their ideas were only given token attention.

Consultation is not just a box to be ticked on performance indicators or in a strategic plan. It must be a genuine endeavour to arrive at the best policy concerning food safety in our country. This will only be achieved when we have realised that consumer concerns must be weighed equally with—some say more equally than—industry demands. In other words, there are people who think that consumer demands should be taken more into account than industry demands. We have seen some examples of that in my home state recently. Thus the ALP notes with concern that some of the proposed amendments are doing everything but that. Indeed, some parts of this amendment seem to have

been written solely with industry interests in mind. This is not to say that Labor has a Luddite view on these matters. Having a vibrant food industry in Australia is in the interests of everyone. Labor aims for a balanced outcome with a particular slant towards safety. This is what the public expects, and Senator Crowley has spoken eloquently about that.

ANZFA is the body charged with the primary role of protecting food safety and when in doubt to err on the side of caution, not on the side of industry. The GMO debate is an example of what can result from a lack of caution. This issue is particularly pertinent in Tasmania. Many Tasmanians feel they were duped by big food companies such as Monsanto and Aventis. That has been a big issue in my state and still is. We were told that a GMO would not species jump—and it did. Now our beekeepers are worried that their honey will contain GMO residue from crosspollination and thus their honey may lose its pure brand image. We suspect that is only the tip of the iceberg. When many of us on the Labor side raised concerns in a report called *Fish don't lay tomatoes*, we were labelled 'Luddites', 'against development'—and on and on it went. I have had a lot of requests in my office for that particular report, from people who are concerned by these issues. In fact, I have to get six more to take back with me this time. The silence from those supporting unfettered GMO technology at the behest of industry-funded science is deafening at the moment—as it would be if contaminated food was allowed into the country as a result of the lack of scrutiny by the industry biased ANZFA board!

We must remember that this inquiry is at a time when foodstuffs in Europe have been severely compromised by inattention to dangers. We must learn from others' misadventure. We need not repeat their mistakes, and yet this bill will water down consumer representation at a time when the world is in desperate need of more. Perhaps, had there been consumer representation on boards in England and Europe, they may not have had the problems they are now having there.

Caution in a competitive world where time is money may not sit well with some of



those trying to make a living from food related industries. But an undetected contamination entry point has the potential to reduce profits far more than the time delays a cautionary attitude may evoke. Again, Labor is concerned that an attempt to streamline or rationalise the approval process for foods or their labelling will inevitably compromise safety. Additionally, Labor is concerned that ANZFA is trending away from broad representation towards an overreliance on trade and industry advice. I do not think it would be outrageous to suggest that this may have been Europe's problem.

Indeed, Miss Rebecca Smith, from the Australian Consumers' Association, in her verbal submission to the Senate inquiry on 29 March this year, stated:

In fact, we believe that it will herald a new era in poor consumer relations, creating a regulatory and public relations nightmare similar to the United Kingdom's MAFF regulatory system for food regulation that has been experienced over the past decade.

Dr Rosemary Stanton, from the Dieticians Association of Australia, suggested that food regulation should go way beyond merely protecting against microbiological organism contamination, and used Australia's rise in obesity as a case in point. Dr Stanton suggested that it was also the role of ANZFA—and Food Standards Australia New Zealand, as it will be called—to ensure consumers receive an accurate description of what the food contains, including additives, sugars, fats and GMOs.

We want discerning consumers and it seems that consumers themselves want more information. Perhaps then we will see the end of such labelling as '60 per cent less fat'. Less fat than what? Another example is a kilo of butter with a label saying 'salt reduced'. Reduced to less than perhaps Lake Eyre? We are not given the information. We are given '40 per cent less fat' and '60 per cent less salt' but the labels do not say 40 per cent or 60 per cent less than what. If they did, then we would see the end of such deliberate subterfuge.

This will only happen if the members of the new board are appointed in a fully transparent way. Dr Stanton expressed her con-

cern that this would not be possible under the current amendments. Part of the reason Dr Stanton is concerned is that there appears to be little restriction on those who may be appointed to the board. It is quite probable that they will be heavyweighted towards the food industry itself. This invariably leads to a question mark hanging over the decisions they may make. This is why Labor will move amendments. We have no option if we want to protect the health of the Australian consumer.

Thus, part of the amendments Labor will move tries to fix the weighting given to industry and trade over safety and accountability—and that was the real concern of a lot of the alternative groups who gave evidence to the inquiry held last week. Therefore, Labor's amendments seek to ensure that membership is increased from 10 to 12, with a focus on including more people from public health and/or scientific backgrounds by making such appointments mandatory. Labor is not saying who should be appointed. Rather, it is suggesting that these appointments must come from a nominated pool and at least include some from the backgrounds mentioned above—people who know their work as far as nutrition and diet are concerned and are well aware of the sorts of things that ought to be in the labelling and are not included at present.

The bill in fact removes the current mandatory requirement that one of the members of the board be an officer of a state or territory authority with responsibilities related to public health. This is why Labor has insisted in its amendments that four of the six members in non-mandatory positions come from public health or science fields and no more than two come from the industry representatives.

The conversation I had with the Comcar driver this morning was about an allergy his son has: he is allergic to peanuts. The driver and his wife go around the supermarkets trying to find foods that do not contain anything that is related to peanuts, and they have great difficulty. Quite often, they buy a product, get it home and give it to their child and he immediately develops an allergic reaction which is traced back either to a small com-



ponent of peanut oil or the residue of peanuts maybe left over from when the machine was used for a peanut product before it was used for the product they purchased. These are the sorts of concerns the public have: their labelling is not taking into account those sorts of allergies. That was the concern expressed by Dr Stanton. It is very important for the public, particularly for people who have allergies. Labor would also like to maintain the current conflict of interest provisions for general membership and beef up the conflict of interest provisions for the chairman.

True community consultation can only occur if various communication mediums are utilised. The Net may be a useful tool: however, this does not mean that other medium should not be used. The Net is only a useful tool to those people who have it, and I think Senator Crowley touched on that too. Labor addresses this point by insisting that consumer information must be communicated via established daily and national papers and urgent proposals communicated via press releases. Why Labor has to fix up dodgy policies so often when the Howard government is tasked with the responsibility is a question we are asking more and more. Our amendments are only stating the obvious, when we all should be able to see the obvious.

Although Labor is not in government, we will not relinquish our responsibility to the Australian people, especially in the vital area of food knowledge and safety. Labor has insisted in its amendments that a focus on health safety must be more than apparent in its decision and policy setting process. Thus we have suggested that the ministerial council should set policy principles that are disallowable instruments and not just policy guidelines. We want to ensure that the ministerial council has power to amend, not just reject or review, applications and proposals and that all members of the ministerial council are to inform the Food Standards Australia New Zealand in writing if they intend to request or to reject a review. Only if these amendments are accepted will the true role of FSANZ be achievable.

In addition, Labor will seek to improve and refine the roles of FSANZ via identify-

ing gaps in the policy or operational direction of the committee. We recognise that, with the spread of new technologies and the pressures of globalised corporations on sovereign nations to water down approval processes, only a well and objectively informed regulatory body will be up to the task. The new food authority must always be aware that their role is nothing to do with world trade agreements, foreign account deficits or industry pressures; neither is their role to unnecessarily hinder or derail those agreements or concerns. But when the authority have been given the vital task of both protecting consumers and ensuring they are adequately informed on the contents of the food they imbibe, all other concerns must be secondary to the safety and wellbeing of Australian citizens. Our amendments aim to make this outcome more achievable in the interests of public safety and the public's confidence in its food.

**Senator O'BRIEN (Tasmania)** (11.32 a.m.)—In addressing the [Australia New Zealand Food Authority Amendment Bill 2001](#) I note that it amends the Australian New Zealand Food Authority Act to implement those aspects of the new food regulatory system agreed to by all Australian jurisdictions. The bill reflects the arrangements for the new system that are set out in the Food Regulation Agreement agreed by council members in November last year. This agreement establishes a new ministerial council—the Australia and New Zealand Food Regulation Ministerial Council—which will develop policies for the regulation of food and food standards. The bill also establishes a new statutory authority—Food Standards Australia New Zealand—whose main task will be to develop national food standards. These standards are to be developed in accordance with the objectives set out in section 10 of the act.

These changes, to be developed in accordance with the objectives set out in the act, together with the [Australia New Zealand Food Authority Amendment Bill 1999](#) represent this government's response to the Blair review. The objective of that review was to recommend to the government how to reduce the regulatory burden on the food sector and

improve the clarity, certainty and efficiency of the current food regulatory arrangements while at the same time protecting public health and safety. A formal response from the government to the findings of the Blair review was expected in April last year. That was to cover the review itself, the Model Food Act and four food safety standards for inclusion in the ANZFA Food Standards Code. However, instead of a composite response, the government's response has been piecemeal.

We have not seen a cogent response to the Blair review, but a disjointed approach which has precluded effective public debate about these changes to Australia's prime food safety body and the potential implications for the health of Australians. This lack of transparency in the process is exactly what has led to the loss of consumer confidence in government and government regulatory bodies in the United Kingdom and Europe in relation to the handling of BSE issues.

This bill was only made available on 8 February. I understand that even the ANZFA board had not had an opportunity to consider it prior to that date. As with a large number of bills that are introduced by the government, this bill was hastily drafted and therefore contained a number of errors. And, as with many bills introduced into the Senate, it has been the Senate and its committee system that have had to sort out the mess. This bill was referred to the Community Affairs Legislation Committee on 28 February and that committee reported back to the Senate yesterday. The process of that committee also had to be rushed to meet its timetable, with just one 3½-hour public hearing on 29 March.

There is another important matter not addressed in this bill, and that is the relationship between ANZFA and the national registration authority. The National Registration Authority for Agricultural and Veterinary Chemicals establishes and revises maximum residue levels for pesticides and veterinary chemicals in food and feed commodities. The national registration authority maximum residue levels are published in the maximum residue levels standard. ANZFA maintains a list of maximum residue levels for food

commodities as standard A14 within the Food Standards Code. But this government has no systematic method of ensuring that the two sets of maximum residue levels agree. At best, there is an informal communication at officer level between the two authorities. It is not obvious to me that the national registration authority-ANZFA interface will change or be strengthened under the new regime which is proposed to be implemented in part through the passage of this bill.

The problems that flow from this lack of effective organisation between these two bodies are highlighted in a report prepared for the Queensland Department of Primary Industries. That report was completed on 15 June last year. The study compared the two sets of maximum residue levels, and 657 anomalous maximum residue level entries were identified. The study found that the largest proportion of anomalies, 31.5 per cent, related to a National Registration Authority maximum residue level having no corresponding ANZFA maximum residue level for the commodity in question. One quarter of the anomalies were the result of a National Registration Authority temporary maximum residue level set in conjunction with what is described as an off-label permit or a trial permit with no corresponding ANZFA maximum residue level. There was a range of other causes of anomalies. I will go back to this issue in more detail in the committee stage of this bill to enable the minister to tell the Senate what the government plans to do to fix the problem.

These anomalies cause considerable problems for all stakeholders. State and territory governments are being forced to apply two standards for maximum residue levels under two separate regulations that are administered by two separate departments. I would like some advice from the minister on what would happen where there is a case against a person, an organisation or an entity for the possible misuse of an agvet chemical in the form of a residue above the maximum residue level but where the level of residue is below the ANZFA maximum residue level under the A14 standard. I am aware of serious concerns within the rural sector about the

implications of anomalous maximum residue levels for the HACCP based quality assurance programs in the meat industry, and this problem is also highlighted in the report. Consumer confidence in food safety is also eroded. The report states:

... it would be difficult to explain publicly that one government agency approves the use of pesticides, and if the user follows the instructions exactly the food produced will be in breach of the food regulations administered by another Government agency.

That is quite an alarming proposition.

There are also problems for exporters. According to the report, Codex maximum residue levels are based on data submissions from pesticide companies and national governments. I would like the minister to advise whether Australia's data submissions are based on the maximum residue levels from the maximum residue level standard or those from standard A14. I would like to know what is the official maximum residue level standard that we use in our dealings with Codex. If the standard is A14, how do we explain the difference between the two standards that we apply domestically? Can the minister consider this—I do not want to surprise him in the committee stage with these questions, so I am raising them now—and can the minister also advise whether there are situations where the data is submitted to Codex, which I assume would include national registered uses as defined by the National Registration Authority, but the actual maximum residue level is determined by ANZFA? In that case, there would be an inconsistency between the data and the actual maximum residue level.

I would like clarification as to whether or not that situation can occur under the current system and, if that is the case, what the government plans to do about it. Under such circumstances, Australia could leave itself exposed to the claim that it is doctoring maximum residue levels. The Blair review process and related work provided this government with the opportunity to improve food safety standards and the administration of those standards for both food consumers and food producers. But it appears that, as with many other areas that are in need of

reform, another opportunity has been lost. I look forward to addressing this matter in the committee stage.

**Senator TAMBLING** (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.42 a.m.)—Today, we are addressing the [Australia New Zealand Food Authority Amendment Bill 2001](#). I am pleased to note the contribution by senators to this debate and also the contribution by the Community Affairs Legislation Committee in the report which that committee tabled yesterday. I note the questions just posed by Senator O'Brien and will be pleased to address those when we get to the committee stage of the legislation.

There are three important points that I would like to make very briefly before I address some of the concerns raised by other senators. The first is that public health and safety remains the number one priority under the Australia New Zealand Food Authority Amendment Bill 2001. This is clearly stated in section 10 of the act and is obviously of prime importance to the government. The Minister for Health and Aged Care will chair the council, and health ministers are lead ministers for all states and territories and New Zealand. Consumer representatives are the only mandated positions on the board of the new Food Standards Australia New Zealand.

The second point is that, on 3 November last year, every Australian government signed off on these arrangements when they signed the Intergovernmental Agreement on Food Regulation. The Prime Minister and all Australian premiers and chief ministers, including Labor premiers, signed the agreement. It therefore puzzles me somewhat that the Labor Party in this place hold a divergent view from many of the Labor premiers and from their own colleagues. I would trust that, in the intervening month, we will see some collaboration and cooperation between the Labor Party in this place and their colleagues in the various state governments. The third point is that these arrangements are also supported by our New Zealand partners as a major advance in strengthening the safety of the food chain.

The Blair process involved extensive submissions and consultation. It was then up to governments to decide what to do to give effect to those recommendations, rather than to have a further round of consultations. The Blair committee comprised industry, consumer and government representatives from Australia and New Zealand. During the Blair process, there were public meetings in Rockhampton, Brisbane, Albury-Wodonga, Canberra, Sydney, Tamworth, Hobart, Bairnsdale, Melbourne, Darwin, Adelaide and Perth. Also during the Blair process, there were in total 176 written submissions, 227 participants in public hearings, 177 participants in focus groups, 135 participants in workshops and 143 comments on the draft report.

The Blair report, into which there was such strong input, recommended new arrangements based on a government-industry partnership. The intergovernmental agreement reflects that recommendation. The senior officials working group—SOWG—was largely intergovernmental and reliant upon the consultation process conducted during the Blair review. However, there were some limited consultations or information sessions conducted after the Blair review was released. The department did have discussions on the actual amendments to the act with, in particular, the Australian Consumers Association, the Public Health Association, the Australian Food and Grocery Council, the National Farmers Federation and the Australian Chamber of Commerce and Industry. All of these groups were contacted.

The Department of Health and Aged Care has been in close consultation with ANZFA during the SOWG process and in the implementation of the new arrangements. In particular, the department has ensured that ANZFA has been involved in every step of the amendment bill. In fact, the department has ensured that a senior ANZFA executive participated in every meeting on the drafting of the amendment bill. The new arrangements put ministers in the driver's seat. The ministerial council will set a proactive policy framework rather than just react to ANZFA recommendations. This is a fundamental element of the new arrangements. For the

first time, ministers will also be supported by a high level standing committee of officials and an external consultative council. Further, any one jurisdiction can ask for a first review of a standard developed by the authority.

The ministerial council has the power to reject a draft standard or variation after a second review—and this is set out in section 23 of the bill. The reason for this position in relation to the majority of standards was to provide for a sensible balance between ministerial responsibility and accountability through transparent policy setting and evidence based standard setting by the Food Standards Australia New Zealand board. The exception is for the urgent standards, where ministers may revoke or amend the standard or variation after a second review, which is set out in section 28C.

The composition of the ministerial council is not covered in the act, as the ministerial council is not created under legislation but by the intergovernmental agreement which was signed by all state and territory governments. There is a need to cover the whole food chain—therefore, it is important to have all the players involved in food safety talking to one another. Health ministers must be on the council, which will be chaired by the Commonwealth health minister, as specified in the intergovernmental agreement. All jurisdictions have nominated their health ministers as lead ministers. Jurisdictions also have the opportunity to nominate other ministers—like consumer affairs, not just agriculture—as some jurisdictions have done. It could be very difficult to achieve a coherent and comprehensive approach, including for agriculture and fish products, if those ministers are not engaged in the process.

The members of the new Food Standards Australia New Zealand board will be appointed by the Commonwealth Minister for Health and Aged Care, but only with the agreement from the ministerial council. Currently, the council only has to be consulted on board appointments. The Council of Australian Governments' Intergovernmental Food Regulation Agreement specifies that, in making Food Standards Australia New Zealand board appointments, the health minister will seek to ensure that there is an appropri-

ate balance of skills covering the listed areas of expertise. The Food Standards Australia New Zealand board will include members with a vital interest in consumer and health issues. It maintains as mandatory a person with a consumer rights background, and it may include people with expertise in public health, human nutrition and government regulation. Consumers will not lose representation on the board under the new system.

As with the current ANZFA board, the Food Standards Australia New Zealand board may also include members with an expertise in food industry issues. As agreed by all states, territories and the Commonwealth, through the Council of Australian Governments, the Food Standards Australia New Zealand board membership will be drawn from people with expertise in the fields of consumer rights, public health, food science, human nutrition, government, food regulation, the food industry, food processing or retailing, primary food production, small business and international trade. The government will be making a minor technical amendment to ensure that more than one person with a consumer rights background can be appointed to the board. This will also enable New Zealand to nominate a consumer rights representative as one of their representatives.

I note the Democrats and opposition argument in favour of adding a provision requiring a precautionary approach. This will not add to the rigour or the precaution already embodied in the food safety assessment process. I also note that the Labor Party has foreshadowed amendments relating to the ministerial council amending all proposals and applications. The government will closely examine these amendments when the Labor Party makes them available.

FSANZ is already obligated to develop standards that are based on risk analysis, using the best available scientific evidence. I draw attention to section 10(2)(a). The exercise of precaution is already part of the risk analysis process. The first objective of FSANZ when developing standards and codes of practice—food regulatory measures—will be the protection of public health and safety. In particular, I draw attention to

section 10. It is expected that this objective will be implemented in a manner similar to that currently used by ANZFA.

The safety of the Australian and New Zealand food supply is regulated effectively through a risk and evidence based approach that includes conservatism and caution. These elements are incorporated into both the risk assessment and risk management stages, require the utilisation of rigorous scientific data and include procedures to address uncertainty in the conclusions that can be drawn from scientific data. This approach is exemplified by the different regulatory requirements for foods and food ingredients which have a history of safe use and those that do not. An explicitly cautious approach is applied to foods and food ingredients in the latter group, and these must undergo a premarket safety assessment. Products that must meet this requirement include substances added to food for technological purposes, novel foods and foods produced using novel processes and unintended contaminants.

Within the food safety arena, there is already provision in the international regulatory framework to take action, if necessary, in circumstances in which there is not full scientific certainty. This provision is a key element in the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures, to which Australia is a signatory. Article 5.7 of the agreement states:

In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

ANZFA applies this clause to address potential hazards for which there is scientific uncertainty. The amendments now bring the act in line with the provisions set out in the Commonwealth Authorities and Companies Act with regard to the issue of disclosure of

interests. The CAC Act overrides the ANZFA Act with regard to this issue, and disclosure is well set out in the CAC Act. This removes any ambiguity between the two acts. The current ANZFA legislation requires notification of a board member's 'direct or indirect pecuniary interest'. This provision was inserted into the ANZFA Act some time before the introduction of the Commonwealth Authorities and Companies Bill in 1994.

The provision of the CAC Act contains a similar requirement in section 27F, which is that board members are required to notify 'any material personal interest'. A person is generally understood to have a material personal interest in an issue if that person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss depending on the outcome of the issue. An associate is understood to encompass a spouse or other member of a person's household, an entity of which the person or person's nominee is a member, a partner of the person or an employer of the person's services. From this, it can be seen that the CAC Act provision actually requires notification of a range of interests including, but also over and above, pecuniary interests. Indeed, it was said during the passage of the CAC Act through parliament that this provision covers the widest possible scope of responsibility in public office.

The bill proposes that section 50 of the ANZFA Act be amended in order to remove the inconsistency with the CAC Act and to remove any doubt that the more onerous responsibility for the reporting of interests is required—that is, the CAC Act requirement. In relation to public notification, key groups have access to the Internet and will now bring any significant issue further into the public domain. When inviting submissions on proposed standards, FSANZ will, like ANZFA, be obliged to:

... give public notice ... by public announcement and dissemination in a form the Authority considers will be effective in alerting interested parties to the proposal and which will make the details of the proposal generally accessible.

It also gives written notice of these matters to appropriate government agencies and may also give such notice to other bodies and persons, and I refer particularly to section 14 of the act. ANZFA currently must publish the text of standards that have been adopted by the ministerial council in the Australian *Gazette* and the New Zealand *Gazette*. However, it does not publish the text of these standards in newspapers or notify of their adoption in newspapers. These arrangements put Australia and New Zealand at the forefront in public health and safety. The objectives under section 10 of the act clearly state the priority objective of the protection of public health and safety and the need to cover the whole food chain. Therefore, it is important to have all of the players involved in food safety talking to one another. We are ahead of Britain, as their BSE crisis came from agriculture ministers not talking to health ministers. We have created a forum for this to happen in Australia and New Zealand.

The impetus for the new food regulatory reforms was the Food Regulation Review, generally referred to as the Blair review, which reported in August 1998. COAG expects the government to implement these reforms as soon as possible. Any legislation required for Australia to meet treaty obligations must be in place by the time Australia consents to be bound by the treaty amendments. The bill has therefore been introduced in these autumn sittings to ensure that it is in place before Australia consents to be bound by proposed amendments to the treaty between Australia and New Zealand relating to joint food standards.

The system for the development, tabling and consideration of treaty amendments is a lengthy one. The government is aiming to table amendments to the treaty, depending upon the progress of negotiations with New Zealand on 7 August 2001. The Intergovernmental Agreement on Food Regulation was signed on 3 November 2000. The legislation was introduced into the Senate on 8 February 2001. We are now dealing with the speeches in the second reading debate on 4 April 2001. The bill will, of course, be further debated in the committee stage in May.

The legislation has not been rushed. The details of this legislation are vital and important to many stakeholders throughout Australia, and I certainly commend the legislation.

Question resolved in the affirmative.

Bill read a second time.

Ordered that consideration of this bill in committee of the whole be made an order of the day for the next day of sitting.

**FAMILY AND COMMUNITY  
SERVICES AND VETERANS' AFFAIRS  
LEGISLATION AMENDMENT (DEBT  
RECOVERY) BILL 2000**

**Consideration of House of Representatives  
Message**

Message received from the House of Representatives acquainting the Senate that the House has agreed to certain amendments, has disagreed to others and has made amendments in place thereof, and requesting the Senate's reconsideration of the bill in respect of the amendments disagreed to and its concurrence in the amendments made by the House.

Ordered that the message be considered in committee of the whole immediately.

*House of Representatives amendments—*

- (1) Clause 2, page 2 (line 3), omit "1 January 2001", substitute "1 July 2001".
- (2) Schedule 1, item 12, page 10 (after line 33), at the end of subsection (4), add:
  - ; (c) if a request for review has been made within 90 days after the receipt of a notice issued under subsection 1229(1)—90 days after the day on which an authorised review officer makes a decision in respect of the request.
- (3) Schedule 1, item 14, page 12 (line 23), omit "1 January 2001", substitute "1 July 2001".
- (4) Schedule 1, item 16, page 13 (after line 16), at the end of section 1230C, add:
  - (2) Subject to subsection (3), a debt due to the Commonwealth under this Act is recoverable by means of a method mentioned in paragraph (1)(d) or (e) only if the Commonwealth:
    - (a) has first sought to recover the debt by means of a method mentioned in paragraph (1)(a), (b) or (c); and

- (b) can establish that the person who owes the debt:
    - (i) has failed to enter into a reasonable arrangement to repay the debt; or
    - (ii) after having entered into such an arrangement, has failed to make a particular payment in accordance with the arrangement.
- (3) If the Secretary determines that the recovery of the debt by means of a method mentioned in paragraph (1)(a), (b) or (c) is not appropriate having regard to the circumstances of the case, paragraph (2)(a) does not apply in respect of the recovery of the debt.
- (5) Schedule 1, item 34, page 18 (line 16), omit "1 January 2001", substitute "1 July 2001".
- (6) Schedule 1, item 34, page 18 (line 18), omit "1 January 2001", substitute "1 July 2001".
- (7) Schedule 1, item 34, page 18 (line 22), omit "1 January 2001", substitute "1 July 2001".
- (8) Schedule 1, item 34, page 18 (line 25), omit "1 January 2001", substitute "1 July 2001".
- (9) Schedule 1, item 34, page 19 (line 2), omit "1 January 2001", substitute "1 July 2001".
- (10) Schedule 1, item 34, page 19 (line 11), omit "1 January 2001", substitute "1 July 2001".
- (11) Schedule 1, item 34, page 19 (line 13), omit "1 January 2001", substitute "1 July 2001".
- (12) Schedule 3, item 3, page 23 (line 15), at the end of subsection (4), add:
  - ; (c) if a request for review has been made within 90 days after the receipt of a notice issued under subsection 77(1)—90 days after the day on which an authorised review officer makes a decision in respect of the request.
- (13) Schedule 3, item 5, page 25 (line 8), omit "1 January 2001", substitute "1 July 2001".
- (14) Schedule 3, item 17, page 29 (line 12), omit "1 January 2001", substitute "1 July 2001".
- (15) Schedule 3, item 17, page 29 (line 23), omit "1 January 2001", substitute "1 July 2001".
- (16) Schedule 3, item 17, page 29 (line 29), omit "1 January 2001", substitute "1 July 2001".
- (17) Schedule 3, item 17, page 29 (line 33), omit "1 January 2001", substitute "1 July 2001".
- (18) Schedule 3, item 17, page 30 (line 2), omit "1 January 2001", substitute "1 July 2001".



- (19) Schedule 4, item 9, page 37 (lines 3 and 4), omit "1 January 2001", substitute "1 July 2001".
- (20) Schedule 4, item 9, page 37 (line 6), omit "1 January 2001", substitute "1 July 2001".
- (21) Schedule 4, item 9, page 37 (line 8), omit "1 January 2001", substitute "1 July 2001".
- (22) Schedule 4, item 9, page 37 (line 24), omit "1 January 2001", substitute "1 July 2001".
- (23) Schedule 4, item 9, page 38 (line 19), omit "1 January 2001", substitute "1 July 2001".
- (24) Schedule 4, item 9, page 39 (after line 2), at the end of the item, add:
  - (6) The amendments made by items 5A and 8A apply to:
    - (a) debts that are owed at the commencement of 1 July 2001; and
    - (b) debts that arise after that time.

Motion (by **Senator Tambling**) proposed:

That the committee:

- (a) does not insist on amendment no. 19 made by the Senate to which the House of Representatives has disagreed; and
- (b) does not insist on amendments nos 2, 7, 11, 13, 21 to 27, 32, 36, 41, 42, 44 to 46 and 56 to 61 made by the Senate to which the House has disagreed and agrees to the amendments made by the House in place of those amendments.

**Senator BARTLETT (Queensland)** (12.02 p.m.)—Given that this came on at reasonably short notice, I have not had a look at the debate on it in the House of Representatives. I would appreciate it if the minister could provide a bit of an elaboration on the record about the rationale behind the motion.

**Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women)** (12.02 p.m.)—Senator, this matter was debated at length here and in the other place. You can see by the motion put that there is one amendment that we are asking the Senate not to persist with. That was a Labor Party amendment. We have had discussions with Labor and have agreed that the issue they wanted to address through the amendment needs to be looked at. We believe it would have been a mistake to go ahead with the amendment they moved but, nonetheless, the issue they were raising needs to be looked at. We have

given an undertaking that we will look at that in consultation with them and with welfare rights groups. With respect to the remaining amendments, alternative and better amendments have been made in the other place, and we want them to proceed.

Question resolved in the affirmative.

Resolution reported; report adopted.

### **ADMINISTRATIVE DECISIONS (EFFECT OF INTERNATIONAL INSTRUMENTS) BILL 1999**

#### **Second Reading**

Debate resumed from 2 April, on motion by **Senator Ellison**:

That this bill be now read a second time.

*(Quorum formed)*

**Senator LUDWIG (Queensland)** (12.07 p.m.)—I rise to speak on the **Administrative Decisions (Effect of International Instruments) Bill 1999**. The matters to be considered in the bill have been somewhat truncated. The last time the bill was debated in the chamber, Senator Cooney's contribution was helpful in providing some background to the bill. He suggested that I might undertake the task of dispelling some of the myths that surround it.

Before I do that, it is perhaps worth while recapping what this bill is about. In short, the bill seeks to deal with the rationale of the decision by the High Court in the Minister for Immigration and Ethnic Affairs v. Teoh. It is referred to generally as the Teoh case. This bill has been referred to as the Teoh bill. The case establishes that, when the executive enters into an international agreement, convention or the like, a legitimate expectation may arise that the executive will act in accordance with that convention, treaty, protocol or agreement. This is not the first time that the introduction of the bill has been sought. On two occasions, the bill lapsed upon the calling of elections. It seems more likely than not that this bill will pass before the next election is called. The Teoh case was decided by the High Court in April 1995.

Basically, when the executive government ratifies an international agreement or instrument, a legitimate expectation is created that



administrative decisions will be made in accordance with the provisions of the agreement. If they are not, procedural fairness will impose a requirement that the person affected by the decision be given an opportunity to persuade the decision maker otherwise. Perhaps it is worth while going to some of those terms. As I understand it—and it seems to be an extension of the famous Lord Denning decision in *Smit*—legitimate expectation could be equated to a reasonable basis upon which a decision maker may inquire into the position of a person that has complained before them.

Procedural fairness allows a person the opportunity to present to the decision maker the reasons that they should be heard in respect of the matter, rather than the decision maker making a decision without the opportunity to hear from the complainant or the person seeking to appear before the decision maker. In other words, complainants should be given an opportunity to persuade the decision maker not to take a particular course. It does not mean that they have a right to win or that the decision maker should pass judgment their way; it merely affords them the opportunity to present certain information to the decision maker so that consideration can be given to it if the decision maker so chooses.

The Teoh decision, when it was handed down, caused great concern amongst human rights activists, lawyers, the department of immigration, the government and the opposition. In a convoluted way it seems that, with the passage of time, both sides of politics have come to almost the same view about the matter. The international instrument at the heart of this debate was the United Nations Convention on the Rights of the Child, particularly article 3. It is part of Australian law. Australia ratified the Convention on the Rights of the Child—colloquially known as CROC—in December 1990, and it entered into force in January 1991. The central paragraph that is worth examining in the Teoh case is that the best interests of the child shall be a primary consideration. It is not the only consideration but the United Nations, in article 3 of the Convention on the Rights of the Child, believes

that the best interests of the child should be a primary consideration when considering these issues.

The background to the case is that, at the time, Mr Teoh had a few problems, to put it mildly. I understand that he was a Malaysian citizen who arrived in Australia and was granted a temporary entry permit in about 1988. He married and then had responsibility for seven children. He applied for permanent entry status in November 1989. However, he was convicted of importing and possessing heroin and was sentenced to six years in prison. He then obviously had a little difficulty satisfying the Department of Immigration and Multicultural Affairs that he was of good character, which I understand is a requirement for residency. The Immigration Review Panel consequently rejected his application. However, that was not the end of the matter.

Through a series of decisions, the matter ended up in the High Court. It is worth while looking at the High Court decision. There were, perhaps, other ways the matter could have been progressed: the minister at the time may have had the discretion to invoke article 3 of the Convention on the Rights of the Child and, in view of the number of children involved, allow Mr Teoh to stay. However, that was not the case. The decision of the review panel was subsequently challenged in the Federal Court and, on appeal, in the High Court. The decision of the High Court was not unanimous. Chief Justice Mason and Justice Deane provided a joint judgment. Justices Toohey, Gaudron and McHugh provided separate judgments, with Justice McHugh being the dissenting judge. Chief Justice Mason and Justice Deane and Justices Toohey and Gaudron, although adopting slightly different reasoning, came to the conclusion that the appeal should be dismissed.

That brings us to the point of what the current state of the law is. As I understand it, international conventions provide a positive statement that the government will act in accordance with the relevant convention—in this case, article 3 of the Convention on the Rights of the Child. That is an adequate foundation for a legitimate expectation in the

absence of a statutory or executive indication to the contrary, which I think is worth underscoring. It is not a matter that is a right or that can occur, even where you may have a statutory or executive indication to the contrary. That is as I understand it, but I am happy to be corrected if that is not the way the law currently operates. I go to this issue in some detail because I think confusion has arisen in the minds of a number of people over the effect of both this bill and the Teoh case itself. My office has received a number of emails, faxes and letters about this bill. They are headed along the lines of 'the administrative decisions bill and human rights'. One facsimile states:

I write to you to express concerns over the current Administrative Decisions Bill being debated in the Senate. It is my view that this Bill will seriously impede human rights within Australia and cause breaches with International treaties that Australia has signed.

If the Bill is successful, government departments will no longer be required to take international treaties that are currently enacted into consideration.

There is then a request for action. I will come to the effect of this bill later, but I have carefully gone through the Teoh case and its effect. The Teoh case allows statutory executive indication to the contrary, which I think is an important point to make. In other words, the executive has the ability, either through policy or through statutory enactment, to say that this is a matter the decision maker should or should not take into consideration. I think that point should also be underscored: the executive can say a convention should or should not be taken into consideration when affording procedural fairness to an applicant in respect of a matter they wish to complain about.

The legitimate expectation itself in the Teoh case does not mean a legal right—and, again, I am open to correction by the learned lawyers who appear to be in abundance on the other side of the chamber. As I understand it, the administrator can conform to the convention but this is not equivalent to, or the same as, incorporation of the convention into domestic law. It simply does not follow from the Teoh case that the convention would be incorporated into domestic law. It

seems that the person affected should be given notice of an opportunity to present a case, and that is the area where legitimate expectation takes us. As I have said, it can be destroyed by statutory revisions imposing a precondition. Procedural fairness itself cannot dictate the policy the decision maker adopts in exercising that statutory discretion.

Our position is a little clearer. The Teoh case provided some guidance in relation to how a legitimate expectation should be taken by a decision maker, and we have help from Chief Justice Mason and Justice Deane. In their decision they say, at paragraph 34:

... ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention. That positive statement is an adequate foundation for a legitimate expectation, absent statutory or executive indications to the contrary.

The key to their decision, where they depart from Justices Lee and Carr in the Federal Court, can be found at paragraph 37 where they dispose of the matter by saying:

But, if a decision-maker proposes to make a decision inconsistent with a legitimate expectation, procedural fairness requires that the persons affected should be given notice and an adequate opportunity of presenting a case against the taking of such a course.

There we have what could be described as the current state of the law in respect of this matter. The matter that is raised within this bill, as we know from Senator Cooney, was raised in a similar form in the Administrative Decisions (Effects of International Instruments) Bill 1995. The bill was referred to the Senate Legal and Constitutional Legislation Committee for a detailed report and examination. That dealt with the High Court's judgment, the doctrine of legitimate expectation—as I have gone through and sourced where Lord Denning outlined what it meant—and the incremental expansion of that by the High Court in the Teoh case, together with the government's response to that at the time.

Dealing with the current position, perhaps the best way of describing it is to refer to the

second reading speech of the Attorney-General, Mr Williams. He said:

The Court also said that where a decision maker intends to act inconsistently with a treaty, procedural fairness required that the person affected by the decision be given notice and an adequate opportunity to put arguments on the point.

If not, the decision could be set aside on the grounds of unfairness.

He went on to say:

It is a longstanding principle that the provisions of a treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated.

That is one of the myths that was in the facsimile I referred to earlier. It is clear that, under the Australian Constitution, the executive government has the power to make Australia a party to a treaty. The Attorney-General goes on to say:

Indeed, the bill complements the treaty reforms this government initiated on coming into office.

We also have an interplay between the process of the treaty committee, its purpose and its role, and it has been able to take a view, by the department or the government through a national interest analysis of a treaty, about how it best benefits Australia. The treaties committee can then make recommendations as to whether the treaty meets the national interest analysis and whether it should be passed. The ability of the treaties committee to examine the treaties in more detail is now a reality.

The amendments that Labor proposes dispell two other matters of concern and make it plain that the Teoh case will not have any effect on the areas of common law or customary international law in relation to international instruments.

**Senator BARTLETT (Queensland)** (12.27 p.m.)—I rise to speak on this important, and completely inappropriate, piece of legislation, the *Administrative Decisions (Effect of International Instruments) Bill 1999*. I wish to add my personal concerns and put on the record my personal opposition to the legislation. The bill as it stands is, in my view, set up to undermine Australia's commitment and implementation of human rights and our commitment to observing our obligation under international instruments.

We do have to seriously question why this bill is before the Senate today, why we are debating this matter and what the agenda is behind the legislation. It has been stated by a number of speakers already that the genesis of this bill stems from the Teoh decision in the High Court some years back. A similar bill was put forward by the previous Labor government and again in a similar form by an earlier phase of the Howard government. Then we have this bill, which was initially introduced in 1999. It has taken until mid-2001 to come on for debate, and it is a shame, in many ways, that it has come on for debate. In my view, it would have been far better left in the bottom drawer or at the bottom of the agenda, where it belongs. At least it gives us an opportunity to dispense with it once and for all by voting against it, and that is certainly what my Democrat colleagues and I will do.

The Democrats do not believe that this bill is required. We believe very strongly that this bill will actively undermine Australia's international obligations. It will tarnish and undermine our standing in the international community and will make a mockery of any effort Australia might make to negotiate human rights treaties in the future. The bill must be rejected. The bill tries to implement a principle that we as a nation and as a government can agree to any international treaties—particularly human rights treaties—while implementing legislation saying that we can ignore them in our administrative operations here in Australia, which is an appalling message to send. Apart from being an appalling message, it will mean that people have even fewer protections in terms of basic human rights.

Decisions made every day in areas that I am quite regularly involved in—that is, the immigration area and the refugee area in particular—often stem from international treaties. The refugee convention is often mentioned. That is incorporated or at least recognised to some extent in Australian legislation. So this bill will not have any impact on that. But there are other related treaties and conventions—for example, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punish-

ment—which are particularly prominent. Australia is a signatory to the convention against torture and we have ratified it. There is a UN based committee that oversees the operation of this convention. But we have not incorporated that convention in our Australian law. So even though we have signed up to that convention, which obliges us not to send somebody back to a situation where there is a reasonable likelihood that they will face torture, there is actually no legal impediment should the government or a minister choose to do just that.

We have seen the government, particularly the Minister for Immigration and Multicultural Affairs, get more and more annoyed that some people are actually trying to use their rights under the convention against torture to prevent them being sent back to face torture. I would have thought that it would be quite reasonable for someone to try to exercise their right under the convention against torture—a convention Australia is a signatory to—to remain in Australia if they seriously and genuinely believed that they were likely to face torture if they were sent to a certain country. Yet the fact that people have tried to use that convention has been a source of great annoyance to the Minister for Immigration and Multicultural Affairs—so much so that his departmental officials said to a Senate estimates committee that the minister is under no obligation and will not necessarily in future follow decisions made by the UN committee that oversees the convention against torture.

Here we have before us a piece of legislation that relates to administrative procedures which again says the same thing: we as a government or as a nation and government departments will be able to ignore obligations and people's rights under conventions and treaties that we as a nation have signed up to and agreed to support. This is a clear trend that follows on from the government's previously stated opposition and annoyance at people actually trying to use the treaties and conventions that we have agreed to. This bill quite clearly follows on from that opposition and annoyance—that state of mind of the government—and will weaken the ability

of people to protect and exercise their basic human rights.

The views of legal and human rights organisations that provided evidence to the Senate committee inquiring into this bill should not be ignored. Organisations whose reputations rely on their giving truthful and consistent evidence to such committees should be respected and listened to. The Human Rights and Equal Opportunity Commission, which specialises in ensuring that people's rights are based on international conventions, such as the Convention on Civil and Political Rights—which fundamentally underpins human rights around the world—specifically expressed concern at any legislative moves in the direction in which this government is trying to take this bill. The National Children's and Youth Law Centre, the Law Council of Australia, the Australian Council for Overseas Aid, Amnesty International and the International Commission of Jurists expressed extreme concern at what this bill tries to do. I think the Senate would agree that these organisations are concerned only with upholding the law, upholding procedural fairness before the law and, most importantly, advocating that Australia work to promote, protect and uphold human rights.

Their view and the view of others who provided evidence to the Senate committee on this issue is that the High Court's decision on Teoh does not compromise the role of the parliament because it does not give effect to the substantive rights in an international treaty but merely provides for procedural rights. As I have already stated, the convention against torture and many aspects of the International Convention on Civil and Political Rights are not incorporated in any substantive way in Australian legislation—more is the pity. I remind the Senate and the government in particular that the Senate Legal and Constitutional Reference Committee's recent report on Australia's system of refugee determination specifically recommended that the convention against torture be incorporated as a substantive component in Australian law so that people have that legislative protection. But, again, the government has chosen not to go down that path and not to follow that recommendation. The Teoh

decision does not require that international conventions and human rights conventions be incorporated in Australian law; it just provides for procedural rights—and even then does not prevent the parliament from passing legislation to curtail or circumscribe those procedural rights.

The migration area is a classic example. I think that many Australians would be very surprised and shocked to know that because of legislation passed by this parliament there is no requirement for natural justice to be used. It is specifically excluded in decision making procedures by the Refugee Review Tribunal and cannot be used as grounds for appeal. That is specifically legislatively excluded. I am not saying the RRT do not follow natural justice—I am sure that they seek to do that as much as possible—but the point is that legislatively they are not required to and legislatively, if they do not, there is no legal recourse or protection. We have legislated away people's right to natural justice in that area of administrative decision making, much to our shame, I believe.

Many Australians would be shocked, as I certainly was, to discover that in an area as crucial as refugee determinations—quite literally a life and death issue—natural justice is not required. But extraordinary as that is, it is still able to be done and is not affected by our signing up to any conventions on civil and political rights, or as any consequence of the Teoh decision that this bill stems from. It is just one example of the dangerous approach in terms of undermining basic human rights and civil liberties that both of the larger parties have pursued over past decades, and not just in the migration area. It shows why basic standards are so important and why we should always be vigilant if there appears to be any attempt to water them down or wind them back. This bill is clearly an attempt to wind back some of those rights. Just because the government and government departments are required to act consistently with the treaty does not usurp parliament's power to pass legislation.

We have seen other examples of how the government and government departments can ignore obligations under international conventions, and detention centres is a clas-

sic case. I was speaking in this chamber fairly recently about the recent report—and it is not the first—from the Human Rights and Equal Opportunity Commission specifically stating and coming to a finding after extensive investigation that operations in various detention centres had clearly breached people's human rights under the international Convention on Civil and Political Rights and under the Australian human rights act as well.

The government can still say, and did, 'We disagree and we are not going to do anything about it. Go away.' It shows how weak human rights protections are in any case when quite clearly and repeatedly findings have been made that people's fundamental human rights have been breached. Indeed, our whole mandatory detention policy with detention centres and detaining of asylum seekers often for long periods of time—a policy that is supported by the coalition and the ALP and opposed very strongly by the Democrats—has been found to quite clearly breach that convention. Any fair reading of that convention would show that it is an undeniable and blatant breach—and it is continuing to occur now.

The Teoh decision in the High Court, unfortunately in some respects, does not change the situation that governments can ignore our obligations under these conventions and that parliaments can pass laws that override them or degrade them. Unfortunately, they do override them. If that were not the case we would not have legislation like mandatory sentencing legislation, truth in sentencing laws, or a host of other regressive so-called 'law and justice' policies in this country passed by state and federal governments.

Standards for human rights in Australia are, ironically, derived from the standards set by the United Nations under various conventions and instruments which seek to ensure that people's human rights are protected no matter where they live. That is the job of the Human Rights and Equal Opportunity Commission. Unfortunately its powers to enforce people's rights have been curtailed and limited as well. Indeed, Australia was an important player in the development of the United Nations and some of the significant

human rights conventions after the Second World War and we have been a respected international player in world politics, especially within our region, partly for this reason. Sadly, the last few years have seen that reputation challenged and undermined, and this legislation will simply go another step down that path. From my own experience in the refugee area, and through work on the Senate Legal and Constitutional Affairs Committee, I have seen how influential Australia can be in shaping world opinion on some of these crucial areas. We may not be the largest country in the world but we are certainly influential in some of these areas and evidence was provided repeatedly to the committee to demonstrate that.

That puts us in a position to do great good, to set a positive example, to really show the way particularly in our Pacific and the South-East Asian regions. But it also puts us in a position where we, as the nation, can do great harm if we undertake actions such as we have with our strident and hardline approach on asylum seekers. That can be very influential and, sadly, is being influential in altering the views of other nations who are basically saying that, if Australia can behave so appallingly towards asylum seekers, they may as well do the same thing. And there is no particular evidence that our hardline policies are producing any positive outcomes for anybody, including the Australian public.

So the Democrats believe that this government has responded—as did the Labor government before them—to the Teoh High Court decision out of all proportion to the actual decision itself. Quite simply, it overreacted. It was a fairly modest decision of the High Court and I think it should be recognised and celebrated rather than attacked and undermined, as this bill seeks to do. It is clearly not an urgent matter. If the government really did need to find an urgent legislative response to the Teoh decision it would have done so sooner than six years down the track. It is quite clear that the sky has not fallen in as a result of the Teoh decision. It has not led to huge alterations in the way government departments have had to operate. It has not led to perversions of justice or fairness or perversions of the will of gov-

ernment or the will of parliament. It should be respected and administered and implemented and not opposed.

Debate interrupted.

#### **MATTERS OF PUBLIC INTEREST**

**The ACTING DEPUTY PRESIDENT (Senator Sherry)**—Order! It being 12.45 p.m., I call on matters of public interest.

#### **Law Enforcement: Funding**

**Senator McGAURAN (Victoria)** (12.45 p.m.)—As the Senate would be aware, the government has in place its Tough on Drugs program, a program that philosophically has at its heart to take the fight right up to the peddlers of menace and sorrow in our society. The government, by its very nature, does not accept legalisation of heroin or safe injecting rooms or decriminalisation of drug offences. The Tough on Drugs program has an integrated three-prong approach. Firstly, there are funds provided to educate the community and especially the young about the dangers of drug taking. Secondly, there is funding for the establishment of national treatment and rehabilitation centres. Thirdly, there is the law enforcement aspect aimed specifically at the drug pushers and drug lords.

As a member of the National Crime Authority Joint Committee, I have witnessed first hand the law enforcement aspect of the government's Tough on Drugs program. The National Crime Authority's record in combating organised crime drug syndicates is outstanding. Society should be greatly encouraged: the war against drugs is not lost. Most people would be unaware of the role of the National Crime Authority and its effectiveness since it was first established in 1984. I am convinced that the National Crime Authority is one of the finest institutions serving our national interests. As Australia's sole national law enforcement agency it is the agency best placed to investigate major and complex organised crime and, moreover, to pursue those at the pinnacle of the criminal organisation. Evidence of the success of the National Crime Authority was reported as recently as last weekend's newspapers, when a notorious Mr Big of the drug trade was captured and sentenced to 12 years

imprisonment for trafficking over half a billion dollars worth of heroin. Using a small Chinese restaurant as a front the perpetrator was slowly increasing his syndicate, with connections stretching as far as south-east China and Hong Kong, and distributing heroin throughout Australia. He was the NCA's number one target. Since October 2000, nine persons, including long-term targets of Australian law enforcement agencies, have been sentenced to significant periods of imprisonment—over 13 years each—on drug trafficking charges. This is a snapshot of the success of the NCA.

One of the benefits of having a peak crime fighting authority is that it pulls together the cooperation of the state police, the Federal Police and the customs authorities. The NCA and partner law enforcement agencies have continually disrupted organised crime syndicates involved in the international and interstate trafficking of heroin, amphetamines, cocaine and cannabis. Included was the second largest seizure of cocaine in Australia—over 317 kilograms. As well, the exchange of intelligence allows each body to be individually successful. For example, the Australian Customs Service is bringing enormous results at the border in terms of drug seizures. Australia's largest seizure of cocaine was intercepted on a yacht from New Zealand—last year, I believe. A total of over 502 kilograms was located in 15 bales, and six people associated with the importation were arrested. In October the year before last, a shipping container of timber from Indonesia was inspected by Customs and a false bottom in the container was found to contain 219 kilograms of high grade heroin. Another example is a container from the Netherlands which was seized and over 70 kilograms of ecstasy and 10 kilograms of cocaine found.

These seizures show that, despite the sophisticated attempts by drug dealers to evade detection, the calibre of our law enforcement personnel is excellent and the technology that backs them up is very formidable indeed. The annual report of the National Crime Authority gives further benchmarks in the areas of number of persons charged and number of seizures. Of course, the statistics are not the definitive measure of the success

or failure of the National Crime Authority but they demonstrate the halting of the once seemingly unfettered drug trade in Australia. This Tough on Drugs approach has produced the best benchmark of all: on the street the supply of heroin has been so reduced as to have a positive affect on the number of overdoses this year.

Given the nature of this never-ending fight, we can only indulge ourselves with cautious optimism as without vigilance the fight could be lost tomorrow. Two related factors are evident in winning each round of this never-ending fight. The first is the resources for the various institutions fighting crime. Simply put: the greater the resources the more that can be achieved. Resources cover areas such as manpower, technology and research. For example, in the Customs agency recent investment in surveillance has produced great success. That investment includes a whole new fleet of Bay class Customs vessels, totalling \$52 million, and nearly \$10 million towards sophisticated X-ray machines. The National Crime Authority are no different from Customs or any other crime fighting organisation: their success is directly correlated to the amount of funding that they receive, particularly given the NCA's focus on surveillance, which is the most costly area of crime fighting. It follows that, for the NCA to act effectively, long-term strategic funding is essential.

To make this point, the getting of American Mafia eighties and nineties crime boss John Gotti was achieved through the art of surveillance. The cost of the surveillance technique was so great that at one point the task force were asked to shut down. But they continued on, found the funding and arrested America's greatest crime boss of the time. So the rewards are great, albeit that the cost is also great.

The second factor is that in winning this never ending fight against the drug barons, institutions like the National Crime Authority must have the full powers of surveillance, search, questioning and arrest. The difficulty for society is to balance these powers against the civil liberties of its citizens. While tough policing may be seen as an intrusion on civil liberties and the problem of attacking organ-



ised crime does present legitimate concerns to those who are defenders of such liberties, it has to be remembered that the actions and directions of the crime bosses affect the civil liberties of all Australians. After all, it was not until increased powers and resources were given to the United States and Italian anti-Mafia forces that the real breakthrough during the last decade occurred. Today, organised crime in both of those countries is greatly reduced, if not crushed.

In those countries, people had had enough of the fear, intimidation and destructiveness of organised crime, so their society was only too willing to trust the police forces with all the powers they needed. Equally, Australian society is making the same call for increased powers for our crime fighting bodies. Legislation that will come before the Senate some time this year—the National Crime Authority Legislation Amendment Bill 2001—increases the National Crime Authority's electronic tapping, search warrant and—most importantly—interrogation powers. It is in the area of interrogation that the drug barons have been able to use their expensive lawyers to avoid questioning and investigation. That will now stop under these amendments.

I refer to the minister's second reading speech when tabling this bill in the other house. The minister said:

The Authority's task in investigating organised crime has been particularly difficult because of the way persons under investigation have manipulated existing legal rules and procedures to defeat the investigation. If a person refuses to answer a question in a hearing, it is possible for that refusal to be litigated through the courts, with delays of months or even years. In the interim, an investigation might be entirely frustrated ...

Accordingly, one of the amendments in the bill will increase the maximum criminal penalty for failing to answer a question at a hearing from six months prison and a \$1,100 fine to five years imprisonment and a \$20,000 fine. Other criminal penalties relating to non-compliance with the authority's investigatory powers will be increased to the same level. The minister went on to say:

In addition, the Bill will remove the uncertain defence of 'reasonable excuse' for conduct such as failing to answer a question, and replace it with more clearly defined Criminal Code defences

such as intervening event and sudden emergency. The removal of the defence of 'reasonable excuse' will also mean that a witness is no longer able to delay the Authority's hearing process by challenging, in the Federal Court ...

The Bill will also introduce a contempt regime to enable the Authority to deal immediately and effectively with conduct that interferes with or obstructs its hearing ...

I have just given you a minor outline of the bill that will be coming to the Senate in due course. These amendments, I know, must sound very legalistic and procedural—and they are, quite frankly. But they are areas that have allowed the drug traffickers to wheel in their expensive legal representation to frustrate, delay, avoid and get off justice. I believe we have reached a point where the liberalising of these policing laws has become necessary and that the National Crime Authority has gained the public confidence to have these powers. In fact, the public confidence is such that they are urging that the National Crime Authority have all the possible and reasonable powers available to it to tackle the drug problem and those who perpetuate it.

From when the National Crime Authority was established in 1984—naturally with caution and limited powers—we have reached a point now where I believe that the powers of the National Crime Authority have reached their optimum. Of course, there is always more you can do. The unshackling of the National Crime Authority by the pending legislation will go a very long way towards its fight against this insidious drug problem. Without tackling the drug barons, the flow of drugs into this country will continue. I wish to bring that matter to the attention of the Senate to give hope and inspiration to our society that the three prongs of the Tough on Drugs approach are effective—most of all, the attack on the drug barons. We have a National Crime Authority that is working and that has now been given the powers to do even more. To that end, I think it gives a great deal of hope to society.

#### **Aged Care: Places**

**Senator CHRIS EVANS (Western Australia)** (12.59 p.m.)—I rise today to speak on some aged care issues, in particular some

concerns I have about developments occurring in the aged care industry. Those concerns have been heightened by the Minister for Aged Care's failure to publicly reveal the latest allocation round of aged care beds. For over a month or so after they were formally announced, we were unable to get the details, and the industry was unable to get the details, of those allocations, which are worth millions of dollars. I must say that that did make me suspicious, and I think it caused a great deal of concern in the community as to why the government was hiding that information. We have finally got that information, and people are trying to absorb what it means and what the minister was trying to hide.

Yesterday we revealed that there were 15,600 phantom beds in Australia—that is, of the minister's claims about the nursing home beds operating in this country, 15,600 of them were not actually available to be used by people in need of aged care. They had been announced by the minister but were not operating and were not able to be accessed by people in need. This is at the heart of why so many people in this country are on long waiting lists or stuck in hospitals unable to get the aged care beds that they desperately need. So 15,600 beds—which would solve the problem if they were actually available—are not available and are not able to be accessed by elderly people needing aged care in this country.

I want to concentrate today on some concerns I have about the direction the Minister for Aged Care, Bronwyn Bishop, has been taking in terms of the allocation process and what this means for aged care in this country. I want to look briefly at the Mornington Peninsula as a case study on how that system is working. My colleague Senator Mackay has joined me, and she has been quite helpful in providing some information for me on this subject. We now know that, according to the government's own targets on the beds needed in the Mornington Peninsula area, there is a shortage of 400 aged care beds. So there is a critical need for more aged care beds in the area, and people are unable to access nursing home care when they need it.

The minister announced in November 1999 that Lestlin Nominees Pty Ltd was given 140 bed licences to operate on the Mornington Peninsula in Victoria. At the time, the people running Lestlin Nominees did not appear to have any experience in operating an aged care facility. There is nothing that I can find that indicates they have any experience in the industry. The company itself is a \$2 shelf company based, interestingly enough, in Queensland but they won bed licences in Victoria. The persons nominated as director and secretary of that company currently reside, as far as I can tell, in Queensland. The 140 beds granted to Lestlin represent the single largest allocation of bed licences in the last two years across the country. It is a remarkably large allocation. Sixty beds as an allocation is considered to be a large one; this company got the record, with 140 beds.

It appears that the government put all its eggs in one inexperienced, out-of-state basket. Why? I really do not know. I cannot tell from anything I have read or any inquiries we have made why the government would make such a decision: a \$2 shelf company based in another state with no record in aged care got the single largest allocation. On the face of it, there seems to be no explanation. At the time the government handed the 140 beds to Lestlin Nominees, the company had no land even to build them on; they had no property on which to develop the facility. I understand now a planning application may have gone in in the last few days, but essentially the government handed a licence to a company with no history in aged care. These licences, by the way, are worth up to \$35,000 a piece, so to win a licence from the government in the annual aged care bed allocation lottery is a very valuable commodity. So 140 beds times \$35,000—and my mental arithmetic fails me at the moment—is an awful lot of money, as senators would well be aware. This is a very valuable asset.

There is obviously no chance of those beds coming on line in the next six months in time for the two-year limit. There is a suggestion that the company has been granted an extension, but I cannot confirm that. What I can say is that, more than 18 months after

these beds were allocated and after the minister has been using the figures as proof that the Mornington Peninsula does not have an aged care problem, we now know those facilities have not been built, there is no sign of them being built and there are serious doubts about the capacity of the company to build those aged care beds.

Another of the things we know is that increasingly the aged care sector are saying that the finances, the funding provided by government both in terms of recurrent funding and capital funding, are not sufficient to support the provision of aged care beds in this country. A lot of very reputable and long-term providers are saying that they cannot afford to build high care beds, in particular, and yet it seems that companies with no experience claim they will be able to do it. I guess we will see.

One of the things that does concern me, though, is that under the government's system they do not even interview the applicants, check their suitability or establish their bona fides. Thousands of new aged care beds have been allocated purely on the basis of a written application, and there is real concern in the aged care community about the efficacy of this process. Very good providers with long histories of providing good quality care cannot seem to get a bed, but a \$2 shelf company from out of state can get the largest allocation ever. Why? What is it about the system that allows that to occur? The Uniting Church cannot get a bed in Victoria; the Baptists cannot get a bed in WA. But, if you are a shelf company with no experience, you can get a huge allocation. I am raising the questions because I do not know what the answer is. I cannot make head nor tail of why this is the case.

I know the minister has a bias towards for-profit providers. She has made that very clear over time, and we know that for-profit providers received, I think, 55 per cent of the last allocation when they represented only 27 per cent of the existing industry. So the bias towards for-profit providers is, I think, acknowledged by the minister. It is something that has been prevalent under her administration over a number of years now. In Victoria, the for-profit providers got about 2,500

licences and the not-for-profit providers got only about 500. So you can see that the minister is driving a change in the industry towards the for-profit sector.

But even that does not explain how the situation on the Mornington Peninsula was allowed to develop. We know, for instance, that there are a number of good quality, not-for-profit providers already operating in that region who had applied for beds and were knocked back. They would have had them up and running by now. They had the capacity to build on their existing operations and bring beds on. They would have been helping solve the crisis in aged care on the Mornington Peninsula now. But, instead, a \$2 shelf company from Queensland was given a huge allocation. Those beds are still not built. There is no sign of them being built. The elderly on the Mornington Peninsula cannot get access to aged care beds because those beds have not been brought on line. The community sector there are unable to understand why, with their good records as aged care providers, they cannot get extra beds and yet this company can win a huge allocation.

These are legitimate questions for the community to ask. They are legitimate questions for me to ask. I cannot at this stage get any sensible response as to why these sorts of decisions have been made—even allowing for what is a very obvious bias towards for-profit providers by the current minister. We also know that a community run facility in Gippsland has twice been overlooked in its application for eight extra beds while a nearby private provider, with no prior history of delivering care in the area, has been granted 109 new beds. In this case, there is also some suggestion that the department has admitted it made a mistake in assessing the application.

Again you have a very committed, local not-for-profit provider of aged care, with a history of providing good quality care well and being supported in the community, not being able to win bed licences under this government's allocation round. Companies with no experience in the region and/or no experience in health care are able to get huge allocations, many of which just fall into the

phantom bed pool because they are beds that are never actually delivered. Years on, those services are still not being provided. We therefore have waiting lists going through the roof as the elderly wait at home or in public hospital beds because they cannot get access to nursing home care—because the bed licences are phantoms, not real services provided in local communities.

We have had further evidence in the last few days that the Moran Health Care Group, who are a well-established, long-term provider of aged care, have handed back 250 of their licences, because they say they cannot deliver care profitably in the regions in which they won those bed licences. So you have further evidence of the phantom nature of these bed licences as some providers actually start to hand them back and acknowledge that they will never be built and will never come on line.

The minister continues to quote the figures saying that those beds are out there, but 15,000 of them are just not there. They are not providing care for the elderly; they are just figures used by the minister in announcements with great fanfare about new bed licences, trying to reassure people that they should not worry about the fact that they cannot get their mum or dad a place in a nursing home, when in fact 15,000 of those licences are not real: they are allocations never taken up; allocations that will never provide a bed for an aged person in need. There really do have to be some very serious questions asked about what is happening in the aged care industry and what is happening under this minister in terms of meeting the needs of our elderly. There are serious questions about allocation decisions and the department's operation of allocation rounds that really do need very serious answers.

Other things are going on in the industry, too, that are a cause of some concern. We know that on the Mornington Peninsula an aged care facility that was formerly run by a convicted criminal has been taken over, as one of about six nursing homes, by a new group. Again, they are people with no experience in the industry, as far as I can tell, and with no experience in delivering quality care. One of the homes they have taken over has

now been subject to an adverse report that says the residents are at serious risk. Another of the facilities run by this group, the Belhaven hostel, failed accreditation but was granted an exemption from the care standards by the minister.

People are coming into the industry who, it seems on the face of it, are not able to provide quality care but who are being allowed to purchase five or six licences and be responsible for the care of a couple of hundred of elderly Australians, and yet two of their homes are clearly not meeting standards. The others were granted accreditation on what seem to be, on reading the reports, fairly flimsy promises that care will be brought up to standard and that new systems will be put in place. It does make you wonder what is going on in the aged care industry when people with no experience and no record of providing care are getting big holdings in the sector but the community sector and good for-profit providers are not able to get licences or are not able to operate economically.

One of the other interesting developments is that, while Moran Health Care is handing back licences, organisations like the Uniting Church in New South Wales are also making it clear that they cannot properly extend their role in high care aged care. Because they cannot afford to build beds, they share the view about the government's failure to properly fund the sector. But at the same time we have organisations like Prime Life, who are big in retirement homes, acquiring more than 900 licences on the open market, picking up 230 or so in the allocation round and moving into aged care in a big way. They are big developers with an interest in retirement homes moving into aged care. That may or may not be a good thing; I am not sure. I am interested in how they finance those operations. I understand that the companies do not actually own the land and the building. They sell them, and there are some sort of complex financial transactions in place.

But it does make you wonder what is going on in aged care when you have organisations like Moran Health Care saying that they cannot afford to operate high care licences, you have the Uniting Church in New

South Wales saying that they cannot afford to do it, and yet we have people with no experience winning bed licences, entering the industry with no experience and then being unable to deliver on the assurances they have given when they access beds—and then, as I say, you have big retirement village type companies coming into the market as well. There are issues of serious concern in the aged care industry in terms of the ownership and the allocation of bed licences. This is one of the most important issues for our community, because how we care for our elderly and make proper provision for their care is one the most important things that we can do as a society. (*Time expired*)

#### Forestry: Tasmania

**Senator BROWN (Tasmania)** (1.14 p.m.)—I want to speak on a number of issues relating to the forestry debate in Tasmania. The first issue is a particularly aggrieved letter I have received from a scientist in Tasmania, Kevin Bonham, about comments I made earlier in the parliament on the delisting of a rare species in Tasmania and woodchipping by the woodchipping industry, which has been able to log in areas in the North-East Highlands east of Launceston where it would not have been able to log had that delisting not occurred. Without going into the long letter, which can speak better for itself, I ask that Mr Bonham's letter be incorporated in *Hansard*.

Leave granted.

*The letter read as follows—*

3/54 Duke Street.

Sandy Bay Tas 7005

5 February 2001

Senator Bob Brown,

Parliament House,

Canberra, ACT 2600

Dear Bob,

I recently encountered your comments on the north-east forest snail (*Anoglypta launcestonensis*) in *Hansard* of the Australian Senate, specifically 13 May, 23 June, and 25 August 1999. I am deeply displeased by the inaccuracy of these comments and the use of parliamentary privilege to make misleading and personally insulting claims about my research.

Specifically:

- You claimed at pp 6147, 7753 and 7760 that the species is (as of 1999) listed as endangered, when you knew its true listing was vulnerable, a lower category on the Tasmanian Threatened Species List. You made similar claims about several other species.
- You claimed at p. 6147 that Forestry Tasmania "have now gone so far as to move into a process of delisting", when you knew that some months before you said these words, I stated publicly that I, not FT, had nominated *Anoglypta* for delisting.
- You claimed at p. 5060 that logging would completely destroy all habitat for the snail within a coupe, whereas it is known that the species survives in any suitable patches left unlogged within coupes, including patches as small as 20 metres wide.
- You stated at p. 7760 that the snail was creating jobs as a tourist attraction. If there is any tourist industry around *Anoglypta*, which I doubt, then I have never encountered any tourist material mentioning the species, and I am very confident that *Anoglypta*-based tourism has not created a single job.

Moving on to more personal matters:

- You stated at p. 7763:
- "However he gives the game away by saying that the species should be delisted. He is employed by the agent of the loggers and says the species should be delisted."

I have been employed by Forestry Tasmania and Forest Practices Board on four separate contracts dealing with the keeled snail *Tasmaphena lamproides*. The keeled snail occurs on about as much forest as, and considerably more production forest than, *Anoglypta*. How did it get on the list? I nominated it, in the same batch of nominations as the *Anoglypta* delisting. The keeled snail's listing is a major inconvenience to Forestry's plantation plans. If I were the bribed agent of Forestry you make me out to be, would I have nominated the keeled snail for listing? Of course not.

- You state that "the loggers, post signing of the RFA ... want the area which the habitat of this species. So Forestry Tasmania gets in a consultant who says 'Let's change the boundaries'." A nice conspiracy theory, but the time scale is wrong. I completed all Forestry-funded research on *Anoglypta* in 1996, before the RFA was signed.
- You imply that I call scientists who disagree with me "ignorant". I may call them (at last count, they numbered about three) overcautious, misguided or naive, but I have not

called them "ignorant", especially not in my *Mercury* letter where I used that term only for green activists. Strictly speaking, "ignorant" was overly kind—I could have considered the possibility that activists knew the facts and were lying.

- You suggest that if I were a scientist in the full sense of the word, I would not publicly call greens ignorant. Your own party has repeatedly proclaimed that scientists have a responsibility to participate in public debate, to honestly protect the public from misinformation by vested interests, to be public citizens and to educate the public—instead of hiding in cloisters. I agree with such sentiments, and I'm doing it. In this case, my research (as a person qualified both in natural and political sciences) indicated that a group were denying the facts in their public statements for political reasons.

The effect of green actions in this issue upon the Tasmanian scientific community has been quite severe. Many scientists are now reluctant to nominate species for listing because of the risk that they will be defamed in the media if their research is politically inconvenient to some activist somewhere, or that they will be dragged into lengthy court cases. One senior zoologist is boycotting the Threatened Species List entirely. I recently nominated a snail for listing, and went through some agony deciding whether to do so, even though that snail is nearly extinct, simply because I so feared the listing would be abused by the Tasmanian Conservation Trust and their allies, and that such abuse would be harmful in the long run to species conservation.

Having known you personally to some small degree, having even helped your party in the past, having respected your stand on many issues, and having talked about snails with you just as I would with any interested member of the public, I feel betrayed that you would place so little value on my honesty as a scientist and make me look like a liar and a corporate slave simply because I was an honest messenger on behalf of a real world which failed to suit your purposes. Indeed, had you made these remarks outside the protection of the Senate, they would have been defamatory. As a person who has experienced groundless vilification for your views, I wonder why you are encouraging those who visit it on me.

I appeal to you to apologise for and retract those remarks about me on page 7763, in the same forum in which they were made.

Yours sincerely,  
(signed)

KEVIN BONHAM.

**Senator BROWN**—I thank the Senate. I am sure Mr Bonham will be pleased that he is able to put his case in his own words that way.

The second issue I want to refer to is a very important clearing of the air by another scientist in Tasmania, Dr Peter McQuillan, who is at the School of Geography and Environmental Studies at the University of Tasmania. It has been maintained by the woodchip industry that it has never caused the extinction of any species, and the comments from this scientist are particularly pertinent to that debate. I will read only some parts of this letter from Dr McQuillan. Under the heading 'Animal species which meet the IUCN'—that is, International Union of Conservation of Nature—'50-year definition of extinction', he says:

The following forest-dwelling animals have not been seen in Tasmania for more than 50 years and timber-harvesting/woodchipping cannot be ruled out as a cause of their demise, especially since most land clearing for agriculture had occurred some time prior to their last recorded occurrences.

Then he lists a moth which was last recorded in north-west Tasmania in the 1930s. He notes that this moth was also recorded in the Otway Ranges in southern Victoria around 1907 but that attempts by him to relocate it in Tasmania in the 1990s have been unsuccessful. He lists another moth which was last recorded prior to the 1950s in south-east Tasmania, and then two beetles: one recorded in 1915 in the Huon Valley by entomologist A.M. Lea and a second which was last recorded in 1915 in north-west Tasmania. He notes that both these beetles are predators of small animals living in forest leaf litter and mosses, and says:

It is unlikely that land clearing for farming is involved in these 4 cases as most such clearing occurred prior to 1920. They have been subject to survey by myself and students since 1992, using a range of specialised techniques but without success ... Other recent biodiversity surveys in Tasmanian forests by entomologists from CSIRO and state agencies also failed to record these species.

Dr McQuillan also says:

I propose that the rapid increase in habitat loss and fragmentation in the last few decades—

that is, from the woodchip industry—

is the most likely explanation.

He says he intends to nominate all four species as extinct under the act. Under the heading 'Concentration of habitat loss on highly productive sites', he points out:

Most such sites—

that is, sites for highly productive natural communities—

were long ago converted to farmland following European settlement, leading to much local extinction by the early twentieth century. Many of the remaining fertile sites protected from agriculture by their steepness or remoteness are now being targeted for woodchip resource and plantations.

Such sites are hotspots for biodiversity and typically support much higher numbers of both species and individuals of invertebrates, birds and arboreal mammals, compared to less fertile sites.

Dr McQuillan goes on to make the interesting observation that forestry companies do not carry indemnity insurance against causing species to become threatened. He says:

I believe the Chilean government in the 1990s required Trillium Corporation (a USA-based forest company exploiting the *Nothofagus* forests of the southern Andes) to have such cover to indemnify it against uncertainties in their EIS.

As you will know, Acting Deputy President Sherry, there are also nothofagus forests being destroyed by the woodchip corporations, notably now by Gunns Pty Ltd in Tasmania. Dr McQuillan says:

At the very least, Government should require that these enterprises—

that is, the logging enterprises—

carry indemnity insurance to cover the cost of species recovery in the event of species decline due to commercial activities. After all, it has cost the public more than a million dollars to recover the orange bellied parrot. The other advantage would be that it would introduce a third party into the assessment process—insurance companies would have to invest effort in an actuarial assessment of the risks and would have to call upon and heed expert evidence. By this route, good ecological knowledge would get taken notice of, instead of being largely ignored as at present.

.....

Epidemiological evidence from all over the world is sufficient to make the case that woodchipping has caused, and will continue to cause, extinctions of native species.

After all, this approach is fully accepted in demonstrating the impacts of smoking or air pollution on human health. i.e. that smoking is bad for your health is beyond reasonable doubt, but no individual can be absolutely proved to have died prematurely from smoking or air pollution. Similarly, it is spurious to demand the names of the extinct species (i.e. absolute proof) when the consequences of habitat loss are beyond doubt. We know that habitat loss leads to declining populations and fragmentation of populations, which are the strongest predictors of extinction.

The extraordinary claim being made in this debate is not that some species have gone extinct due to woodchipping, but the claim that woodchipping is benign and has not had the same effect as clearing for agriculture which the industry happily concedes has caused extinction. Why should habitat loss due to forestry clearfelling be any different?

I would add to that: why indeed? Dr McQuillan says there should be a reversal of the onus of proof. He writes:

Claims that forestry activity has not caused the extinction of any species exploit the desperate lack of resources available for adequate levels of biodiversity survey. We know from experience all over the world that habitat destruction and fragmentation are the major causes of extinction. The onus of proof must properly be shifted from biologists to industry: (i) to prove how clearfelling for forestry is different from land clearing for agriculture (an acknowledged cause of extinctions); and (ii) prove that clearfelling is not causing extinctions and loss of biodiversity.

That is a very compelling, cogent and clear rationale about the process towards extinction for many species in which the woodchip industry is involved in Australia but which is totally discounted. They do not pay for it, they are not indemnified for it, and the scientists who would like to work in this field are simply not being funded to do the work that would account for the destructive impact on species of woodchipping, which involves the total logging, fire bombing and poisoning of ancient forest habitats at the greatest rate in the history in Tasmania, under Prime Minister Howard's regional forest agreement.

The last issue I want to talk about is the enormous rally that took place in downtown Hobart last Saturday opposing Forestry Tasmania's proposed Southwood project at Jud-



bury. This project, as speakers at the rally pointed out, is essentially a woodchippers project. There is a look for overseas financing by the Tasmanian Bacon Labor government to get this woodchipping process up and going. It involves a forest furnace which would burn 300,000 tonnes of the wild forests of southern Tasmania, including the Styx Valley, the Valley of the Giants, and convert that into electricity to be sold through Basslink into the Melbourne market as renewable energy—when it is not renewable, because the forests are not renewable. The whole thing is a process of deceit of the consumers but is aimed at continuing the rapid destruction of Tasmania's forests as wood-chip prices tumble around the world.

As you will know, Mr Acting Deputy President, woodchipping in Tasmania is happening at the greatest rate in history under the arrangement by Prime Minister Howard and Premier Bacon, called the regional forest agreement, whereby the extraordinary onrush of destruction that followed the Prime Minister's signing of this agreement has meant that this year alone up to 150,000 log truck-loads of the ancient forests, including rainforests of Tasmania, will be taken to their destruction and, with them, the loss of wild-life habitat and the inevitable push to extinction of many species, including many unrecorded by science, in the Tasmanian forests.

The media recorded that 3,500 to 5,000 people were at that rally. It was the biggest turnout for a conservation rally in Tasmania for more than a decade. That is the equivalent of a rally of 100,000 people clogging downtown Melbourne or Sydney, but it was not conveyed by the Australian Broadcasting Commission to the mainland. It was not taken up and shown to mainland audiences. We have heard a lot about bias in the ABC, but when you have a rally of that dimension occurring on an issue of that importance in a capital city of this country and it is not shown in the national news in Sydney, Melbourne, Brisbane, Perth, Adelaide or other cities around this country, there is something very remiss.

I believe a drift to the right towards the Bacon government in Tasmania is being inadvertently echoed in this matter. The issue

is highly political. It is totally unforgivable that that rally was not covered in Tasmania. During the weekend, I saw on Tasmanian television coverage of much smaller rallies on the mainland. I have approached the ABC to find out why that occurred, and some argument about that will be forthcoming. But I reiterate: it is not fair to viewers around the country, and it is not fair to those people who see the news that a rally of that sort and size was censored either by those who were producing the story in Tasmania or by those who should have received it on the mainland.

I remember many years ago when news of a big Franklin rally likewise failed to show up on the mainland because it was not considered news at the time. I have learnt that if you sit back in these matters then it happens time and time again. Let me say that I will not accept the argument coming from the ABC—at least from one source in the ABC whom I have spoken to—that this issue has not hit its straps and has not yet become a matter of national importance. That is not for people in the ABC to determine. The fact is that, when you get a turnout of so many thousands of people concerned about their environment, their neighbourhood, their quality of life and the mega projects which are being foisted on them by the faceless people in Forestry Tasmania and the Tasmanian government itself which are destroying their forests, livelihoods and lifestyles and they object to them, they should get the coverage that such a giant turnout deserves.

This is a matter of national importance. The great forests of Tasmania are nationally and monumentally significant and the people of Australia had a right to know that that enormous rally took place in Tasmania. I hope the ABC will look very carefully at what happened there and make sure that it is not repeated. I cannot be the arbiter of what they do or do not do, but I believe on this occasion they have fallen well short of the mark of giving fearless, open and honest coverage of national news of importance that occurred on Saturday.

#### **National Competition Policy**

**Senator COONAN (New South Wales)**  
(1.29 p.m.)—Included in a communique following the meeting of the Council of Aus-

tralian Governments on 3 November 2000 was a commitment of all governments and territories to the importance of National Competition Policy to sustaining the competitiveness and flexibility of the Australian economy and contributing to higher standards of living. Significantly, however, the heads of government agreed to several measures to clarify and finetune implementation arrangements. They also flagged some changes that would serve to address a number of community concerns identified in the Productivity Commission's *Report into the impact of competition policy reforms on rural and regional Australia* and by the Senate Select Committee on the Socio-economic Consequences of the National Competition Policy on which I served. The significance of the communique is that, although the long-term benefits of this five-year-old policy are manifest, there is a recognition that there needs to be a long-term commitment to safeguard the benefits that it is delivering to Australians as a whole.

Amongst the measures to be adopted is an enhanced public interest test to take account of the broader impact of deregulation of an industry sector on the community. Underlying this discussion was the acknowledgment that, although the nation as a whole is better off as a result of the changes that have occurred, there are concerns that the benefits have not been fairly distributed. In a recent research paper *Distribution of the economic gains of the 1990s*, the Productivity Commission found that, overall, Australians were wealthier in 2000 than they have ever been. But it has become accepted wisdom and, indeed several recent research projects identify, that wealth and income distribution vary significantly between urban and rural and regional Australia. So whom are we talking about?

We have often been described as a nation of coastal dwellers, and indeed Australia's eight state and territory capitals are home to about 63 per cent of our total population with 6.7 million Australians regarded as non-metropolitan. Those who live outside the major metropolitan centres live in townships, villages and regional centres, with about 150,000 occupied as rural producers on the

land. The average wealth of those who live in non-metropolitan Australia is growing more slowly than in metropolitan areas. The disparity is stark. By 1996 household incomes, for example, in my home state of New South Wales averaged only 81 per cent of those in metropolitan Australia. The Productivity Commission's *Report into the impact of competition policy reforms on rural and regional Australia* in 1999 concluded:

Comparisons made over time show that household incomes in almost all country regions declined, (relative to the national average), between 1981-1996.

The same Productivity Commission report found that the largest single source of structural change was a decline in agricultural employment.

Many factors contribute to the disparity between metropolitan and non-metropolitan areas but perhaps the most compelling one is the loss of jobs from rural industries. The significance of this decline extends beyond those directly employed in agriculture. As recent ABARE research shows, for a town of less than 1,000 people farming expenditure represents around one-third of the total economic activity of the town. It follows that changes in the nature of employment opportunities in a region will have a major impact on wider job security in the area. Failure to continue with national competition policy reforms would not stop these effects but it certainly would deny the community, including country people, the benefits.

With high levels of structural change and limited employment opportunities in rural and regional communities, there is not much choice but to relocate to where the jobs are, so the population drift to the coast continues. How can this trend be arrested? As part of national competition policy, more than \$16 billion has been or is in the process of being paid to the states and territories in compensation payments in return for reform performance consistent with the obligations set out in the three intergovernmental agreements. Currently, these lump sum payments are made into general state and territory coffers but more of that money needs to be directed to funding adjustment packages for people affected by structural changes and

industry deregulation. Rather than lump sum payments, the primary need appears to be for retraining and reskilling programs, especially to address the decline in agricultural employment and the lack of available jobs in other sectors. For regions in decline, coping with change can be difficult enough and even within growing regions there are people who do not have the required skills to take advantage of employment opportunities, even if there are some available. In these cases retraining may be an option. This may be sought through university or TAFE courses or through government sponsored training programs.

A range of Commonwealth programs exists to provide retraining and reskilling, which many listening to this broadcast may not know about. These programs include the Dairy Structural Adjustment Program, which offers structural adjustment payments to eligible dairy farmers; the Farm Management Deposit Scheme, which provides funds of up to \$300,000 to improve the financial management tools of farmers; the national plan for women in agriculture and resource management, which provides practice guidelines to support women in agriculture and grants to rural women's NGOs; the New Industries Development Program, which provides \$3.1 million over three years to assist agribusiness develop new high value products and services; and the Skilling Farmers for the Future program, which provides \$167.5 million and includes the Farm Business Improvement Program and property management programs to help farmers improve their skills in business and natural resource management. I am quite sure that many listening have probably not heard of these programs. However, governments can also assist those who become the victims of the closure of a large industry employer based in areas without diverse employment opportunities by promoting and allowing easy access to information about employment opportunities in surrounding regions.

Traditionally the social safety net tends to rely on welfare and income support rather than adjustment mechanisms such as retraining and reskilling. To cover a wider range of circumstances, the Commonwealth

provides a range of measures to assist people to maintain an adequate standard of living during periods of unemployment and more permanent measures which seek to offset particular social disadvantages. These can include study assistance such as Austudy and Abstudy, Newstart allowance, various pensions, mobility allowance and remote area allowance.

In addition to these are schemes designed specifically to assist people in the rural sector, and I will mention a few. The exceptional circumstances relief payment provides income equivalent to Newstart for farmers in a region or industry identified by the Commonwealth as suffering an exceptional downturn in income as a result of a discrete or rare event. The Family Farm Restart Scheme provides support for low income farmers experiencing hardship who are unable to borrow further against their assets. That is a familiar story. It provides income support and adjustment assistance of up to \$45,000 to farm families. There is also retirement assistance for farmers, which provides assistance to low income and pension age farmers living in hardship, helping them exit from farming by gifting their farm to their dependants without affecting access to the age pension. Gifting can include the value of the farm, net of debt, up to half a million dollars. The department of education and training is also responsible for schemes relating to education, English language courses, apprenticeships, job pathways, professional development and career information.

These measures are general but essentially address the net effects of reform and concentrate on those in genuine need. They are substantial initiatives taken by this government. It is possible for one region to both positively benefit and experience the negative effects of different reforms. If competition policy is to continue to provide benefits to Australia as a whole, as I argue it should, more imaginative ways may need to be found to help those bearing the brunt of the efficiency changes. While the \$16 billion in competition payments made to the states and territories are made pursuant to the COAG agreements, in theory, at least the payments

should not only compensate the states for financial loss through monopoly rents foregone by deregulated state enterprises opened up to competition through the process but also make some provision for those left behind in the reforms.

In my home state of New South Wales, for instance, the New South Wales government has received \$474 million in competition payments already and is set to receive an estimated \$1.5 billion more until the year 2006. The competition payments give the states and territories the capacity to directly address the impact of competition policy reforms on specific industries, regions or parts of the community. They ought to be called to account for their apparent failure to do so while the federal government unfairly gets the blame. This is particularly apparent with dairy deregulation.

I appreciate that any requirement for the money to be more specifically targeted is not explicitly provided for in the COAG agreements. However, there may be considerable scope for opening up for further discussion in COAG the issue of how the state and territory governments are using the payments. Certainly, the finger can be pointed at the states for not sharing in a more fair manner with local government, industry and community groups the benefits of competition reform through the compensation payments they receive. In addition, the states and territories now receive every cent of the GST. It is an expanding revenue base. Isn't it about time the states also assumed some part of the financial obligation to compensate those who bear the greatest burden of reform so the rest of the nation can prosper?

#### **Television: Impact on Children**

**Senator GIBBS (Queensland)** (1.41 p.m.)—I rise to speak today on an important matter for many in the community regarding children and their exposure to television programs and advertising. The issue of children and television programming is certainly not a new one. Indeed, the debate over the likely impact of a child's exposure to television violence or sexually explicit material continues to rage without any end in sight.

A number of inquiries have also reported on this issue. In 1997, the Senate Select Committee on Community Standards pro-

duced a report on the portrayal of violence in the electronic media. The report contained a number of recommendations, including: the need for a more balanced and realistic portrayal of the long-term effects of violence; a requirement for the Australian Broadcasting Authority to review television program promotions during prime time; a hotline for the public to register complaints; stiffer penalties for breaches of the code of conduct; and, finally, a requirement that news items containing disturbing footage be shown only during later evening bulletins and not during prime time.

Despite all the debate and committee efforts towards this end, it seems that little ground has been made on this important issue affecting our children. The government rejected the key findings of the report. In spite of this, one group of people from Queensland has decided enough is enough. I am referring, of course, to a group of concerned parents known as Caring for Children in the Media Age. In their own words, Caring for Children in the Media Age, or CCMA, is a group born out of frustration and a deep concern for the emotional and mental wellbeing of all children. As parents, they believe it is increasingly difficult to sit down and watch television together as a family.

The group considers the current system for program classifications to be largely redundant because of inappropriate advertisements shown during commercial breaks that do not conform with the current program's classification. CCMA feels that television broadcasters seem to be ever more likely to escape without reprimand in committing a breach and considers the code of practice to be largely insufficient in keeping television stations in check. The group's experience is one of a difficult and lengthy complaints handling process which lacks teeth and where broadcasters found to be in breach of the practice are given nothing more than a slap on the wrist.

Caring for Children in the Media Age is not an extremist political pressure group. It is a group of concerned parents who want nothing more than to protect the interests of their children. Their message is simple: change the code of conduct so that commer-

cials and promotions for future programs have the same classification rating as the program being shown at the time. They also ask that promotions for news and current affairs programs not be shown during children's television viewing times and that recommendations from the Senate inquiry of 1997—particularly in relation to the establishment of a hotline, changes to G-classification zones and stronger action from the ABA—be adopted.

In getting their message across, I must say that this small group of people have worked very hard and they have certainly managed to produce some astounding results. The group have made numerous phone calls and written letters of complaint to the television stations, the Federation of Australian Commercial Television Stations and the ABA. CCMA have also written to the Minister for Communications, Information Technology and the Arts, Senator Alston, to express their concerns, but the minister has not been forthcoming with any solution to rectify the situation. However, the lack of action from all parties has not deterred the group. Despite having next to no funding, the CCMA group have managed to put together a petition with over 8,000 signatures. I tabled this petition in December last year in the hope of providing assistance and support in furthering the arguments put forward by the group and, indeed, by the many thousands of people around the country who obviously share their concerns.

In a sense, this issue is one of peace of mind. Community awareness on this issue is warranted because parents should be able to feel confident in the knowledge that the G-rated programs their children are watching do not require adult supervision. This also goes for advertisements and promos featured during G-rated viewing times. As demonstrated by the size of the petition collected, the members of the CCMA, along with many others in Queensland—and, indeed, around Australia—rightly expect a better outcome for their children.

In looking at the broader context of this debate, there are three key issues to consider. The first issue relates to the amount of time children spend in front of the television each

day. There seems to be a growing realisation that children today are spending an ever-increasing amount of time sitting in front of the television. Where a child was once encouraged to go outside and play or read a book, for example, children now prefer—or perhaps are encouraged—to simply plant themselves in front of the box for hours on end.

Concerns over the health of children under such circumstances must be warranted. As parents, we have probably all been guilty at some point of choosing to use the TV as a babysitter in exchange for a moment of peace and sanity. However, in light of growing concerns over changing behaviour patterns and obesity among children today, the issue of spending excessive amounts of time watching television requires urgent attention from parents and other key figures in a child's development. As noted in the *Australian* on 20 July 1999:

... four-month-old children spend around 44 minutes a day watching television, and by their 18th birthday will have spent more time sitting 'before the tube' than in a classroom.

Indeed, research points to a growing realisation that television viewing habits could have a detrimental impact on children's health. According to one US study reported in the *Australian* on 12 May 1999, more than 50 per cent of the factors underlying obesity could be attributed to TV viewing.

The second issue of importance in this debate is that of the content and quality of television programming. I refer in particular to the level of violence and aggression which children are exposed to when viewing some television programs. As I mentioned earlier, this particular issue is by no means a new one, but it is blatantly apparent that little or nothing has been done to give new direction to and set better standards for addressing this issue. The reports from America in particular paint a terrifying picture of a school system which can no longer protect students from the ongoing spate of classroom shootings, many of which have been attributed, at least in part, to violence portrayed on television. As noted in the *Sydney Morning Herald* of 20 January this year, one American study estimated that children in the US would see

200,000 acts of violence on television alone by the time they turn 18. The author notes:

... one reason Hollywood keeps reaching for ever-more obscene levels of killing is that it must compete with television, which today routinely airs the kind of violence once considered shocking in movie theatres.

However, moderation is the best option. As a media lecturer at Deakin University, Dr David Ritchie, was quoted as saying in the *Sydney Morning Herald* on 16 January this year:

... children would benefit from watching less television, but it is up to parents to change viewing habits.

Finally, the third important factor in considering the broader issues of this debate relates to enforcement. More specifically, attention should be squarely focused on the capacity of the Australian Broadcasting Authority and on the willingness of the television broadcasters to ensure that the code of practice is adhered to and effort is made towards improving the quality and content of programs generally. It is interesting that, of the 63 commercial television breaches reported in the last financial year alone, not one breach has brought sufficient reprimand from the ABA. The reason for this is that, under the act, the scheme puts the regulatory onus on the broadcasters themselves and compliance with the code of practice is not a condition of licence. To put it simply, the ABA has no teeth to deal with complaints.

In conclusion, there can be no doubt that this issue is one of great importance and worthy of urgent attention. Television and the media in general play an important and useful role in a child's development. Together with other forms of electronic media, television quickly provides children with the tools to develop a greater awareness of the outside world that were not available to generations of the past. However, the flip side of this new-found technology, and with it greater information provision and learning capacity, is the threat of exposing children to the harsh realities of the world. No-one is denying that our young people be sheltered unnecessarily from such realities. Indeed, to do so would undoubtedly do them more harm than good in the long run.

It would be preferred, however, that television not act as a substitute parent in teaching children about life. In most circumstances, parents know best how to educate their children on such matters—education and counsel that will equip them for the future without unduly frightening them or, worse, inspiring them to become aggressive or commit illegal acts which, sadly, television has the potential to encourage. In saying that, however, I stress that this is not an argument about censorship. Indeed, as noted in the CCMA's recommendations:

We have no problem with M and MA rated programs depicting language, violence, drugs, sex and nudity. We are only suggesting that there is a time and a place for everything and it is not during our children's and family viewing times.

Frankly, I could not have put it better myself, and I applaud this concerned group of parents for having the courage and conviction to go to such lengths to be heard on this important matter. I call on the ABA and television broadcasters to take note of their concerns and those of the many thousands of others around Australia who have joined their cause. An improved set of standards in programming and advertising—together with a greater adherence to them generally—is worthy of adoption if for no other reason than for the sake of Australian families and the health and development of all of our children.

**Sitting suspended from 1.55 p.m. to 2.00 p.m.**

#### **QUESTIONS WITHOUT NOTICE**

##### **Goods and Services Tax: Small Business**

**Senator SCHACHT** (2.00 p.m.)—My question is to Senator Alston, the Minister representing the Minister for Small Business. Minister, when the Prime Minister promised to slash red tape for small business by 50 per cent, was he referring to the addition of 2,473,845 words of new taxation law, accompanied by 2,605,800 words of explanatory memorandum, as well as the thousands of GST and other related rulings? Is the minister also aware that these additional 5,079,645 words have seen the tax act explode from 3,000 pages in 1996 to nearly 8,500 pages today? How does the minister reconcile this 183 per cent increase in the tax

act and an additional 5,079,645 words with the Prime Minister's promise of slashing red tape by 50 per cent?

**Senator ALSTON**—Well, I certainly do not expect Senator Schacht to have read any of that—he would be stuck on word one, I would have thought. What the Prime Minister had in mind was very much the burdens that are placed on small businesses, particularly in terms of bureaucratic compliances. If Senator Schacht is seriously arguing—

**Senator Schacht**—You did a real good job with the tax act, boofhead!

**The PRESIDENT**—Senator Schacht, would you withdraw that.

**Senator Schacht**—I withdraw.

**The PRESIDENT**—You have asked a question and the minister has the call.

**Senator ALSTON**—No wonder the South Australian division had to unload him, Madam President. We all know policy is not your long suit, Senator Schacht.

*Senator Schacht interjecting—*

**The PRESIDENT**—Senator Schacht, I ask for that to be withdrawn as well. And you are out of order in the way you are behaving.

**Senator Schacht**—I withdraw.

**Senator ALSTON**—If Senator Schacht's alternative is to leave enormous discretions with the tax office in respect of what are often very important issues for businesses large and small, then I would have thought he would be provoking an absolute revolt. People want as much certainty as possible; they want the detail spelt out. They do not simply want a general statement which they then find after the event they are liable to pay tax on when they had not expected it. It is clearly an inevitable consequence of the sort of the legislation you started with—I can recall—when you introduced capital gains tax and superannuation guarantee—

**The PRESIDENT**—Senator, address your remarks to the chair, not across the chamber.

**Senator ALSTON**—Yes, Madam President—when the Labor Party in government introduced fringe benefits tax, capital gains tax and a whole raft of other taxes. You can-

not have a one-line item that says, 'Just comply with the spirit of the law and, if you don't, the tax office has an unlimited discretion to come down on you like a tonne of bricks.' You actually have to spell it out. So if Senator Schacht is seriously suggesting that taxpayers should not be given as much detail as they need to be able to ascertain their position, then he is even stupider than I thought. And that is really saying quite a lot, because he has demonstrated over a period of years that the last thing he would ever do is look at a policy issue seriously.

I hope that Senator Schacht will understand the importance of taxpayers getting certainty. That is not what small business are concerned about. They want the certainty. What they are concerned about is the sort of mindless bureaucracy that requires them to wait much longer than they would like for answers on issues or for applications to be processed or for information that has to be provided. That is red tape. Legislative provisions in relation to people's positions under the tax act are not red tape. And if you think they are then you are redefining policy once again.

**Senator SCHACHT**—I ask a supplementary question. Can the minister name one specific area where red tape has been reduced by 50 per cent for small business?

**Senator ALSTON**—I do not know on what basis Senator Schacht asks that question. I do not think we ever gave a commitment—

**Senator Schacht**—It's what you promised at the last election.

**Senator ALSTON**—Just a minute.

**Senator Schacht**—Name one area.

**Senator ALSTON**—You have not heard my answer. I do not think we ever gave a commitment in respect of any particular form of red tape—

*Opposition senators interjecting—*

**Senator ALSTON**—You may care to try and narrow it down.

*Opposition senators interjecting—*

**The PRESIDENT**—Order!

**Senator ALSTON**—There is always more that can be done, Madam President. We



certainly accept that small business is still labouring under the Labor years. All of the burdens that were imposed on them take a while to wind back, and we are certainly committed to going as fast as we can in that regard. But to suggest that somehow we have given a commitment in respect of each and every discrete area is a complete nonsense and therefore the question does not deserve to be addressed further.

#### **Families: Interest Rates**

**Senator NEWMAN** (2.06 p.m.)—My question is directed to the Assistant Treasurer, Senator Kemp. I ask: will the minister inform the Senate of the benefits to Australian families flowing from today's interest rate announcement by the Reserve Bank of Australia? Will the Assistant Treasurer inform the Senate how the government's sound economic management has helped deliver these benefits to Australian families? Is the minister aware of any alternative approaches to economic management?

**Senator KEMP**—I thank Senator Newman for that extremely important question. Senator Newman is well known from her time on the front bench for showing a particular concern about the wellbeing of families, so it is not surprising to receive such a question from you today, Senator Newman. Today the Reserve Bank announced a further cut in official interest rates, by half a per cent, and the government—some people would have heard the Treasurer today—has called on banks and other lenders to pass the rate cut on in full.

Once we see this done, we would expect home loan mortgage rates to fall to around 6.8 per cent. It is worth recording in this chamber that this is one of the lowest home mortgage rates in the last 30 years—a great achievement. It is worth recalling that, when this government came to office, home loan interest rates were in the order of 10.5 per cent. If you translate the difference between those figures into dollars, it means that on a \$100,000 mortgage a home owner would now be saving approximately \$3,700 a year in interest costs compared with what they were paying when Labor left office in March 1996. This is another way in which this government is able to help Australian families.

Senator Newman will know—because of her important role in this—that this comes in addition to the \$12 billion in personal tax cuts delivered by the Howard government on 1 July last year. As the Treasurer said, these are historically low interest rates. I would say to young home buyers: you now have the opportunity to get a \$14,000 grant for the construction of a new home and an interest rate in the order of 6.8 per cent. This is why we say to Senator Newman and to others that this is particularly good news today. The government's policies have delivered more jobs, low inflation, cuts to interest rates and the biggest income tax cuts in our history. No attempt by the Labor Party to talk the economy down can hide that fact. Australian families are now better off under this government, which has cut unemployment, reduced interest rates and cut taxes. These are the benefits which flow from sound management of the Australian economy. The alternative would be to return to the failed policies of the Labor Party, which we know from history would lead to high interest rates, high taxes, high spending and deficits.

#### **Vocational Education and Training: Funding**

**Senator CARR** (2.09 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. Minister, is it a fact that Mark Paterson, the chief executive of the Australian Chamber of Commerce and Industry and one of the government's principal sources of advice and support in the area of vocational education, wrote to the Prime Minister on 7 March 2001, expressing that organisation's concern that, if there were a failure to renew the ANTA agreement, there would be a crisis in business confidence in the vocational education and training system? Why has this government rejected ACCI's proposed initiatives worth \$130 million per year and instead offered the states a paltry \$25 million a year? Is the Prime Minister concerned at the continued failure of the Minister for Education, Training and Youth Affairs to reach a national agreement on the future of vocational education and training funding?

**Senator HILL**—This might come as a surprise to the honourable senator, but I was

unaware of the letter written by Mark Paterson to the Prime Minister. I sincerely regret my failure in that regard and I will take the question on notice and get some information.

**Senator CARR**—Madam President, I ask a supplementary question. Since the minister has taken that question on notice, would he also provide us with advice as to why this government has failed to recognise the importance of vocational education and training to this country's national creativity and innovation, insofar as the Prime Minister's statement on innovation failed to even mention vocational education and training—a failure further highlighted by the absence of meaningful growth funding for this sector?

**Senator HILL**—I can confidently advise the honourable senator that the government have not failed to appreciate the importance of vocational education. It is a very important part of the total education package and I am sure it is being adequately funded as well. Perhaps the problem is that we are not getting quite the degree of cooperation from the states that we would like. But I will get further information on that and see if I can add to the answer that I am going to provide.

#### **Economy: Policy**

**Senator BRANDIS** (2.12 p.m.)—My question is directed to the Minister for Communications, Information Technology and the Arts, representing the Minister for Employment, Workplace Relations and Small Business, Senator Alston. Minister, in light of the 0.5 per cent fall in interest rates to five per cent announced by the Reserve Bank, how is the government's low interest rate, low inflation economic policy benefiting Australia's small business community? Are there alternative policies which could jeopardise this positive environment for continued, sustained growth in the Australian economy?

**Senator ALSTON**—This is a very important question indeed from Senator Brandis. If there is one thing that small business really want it is a low interest rate environment. Today's announcement is very good news for all Australian small businesses. Since this government was elected, the aver-

age mortgagee has saved some \$3,700 a year on their mortgage payments. The variable overdraft rate under Labor and the 'recession we had to have' was 20.5 per cent. Assuming an overdraft rate of \$25,000, monthly interest payments now would be down from about \$427 a month to about \$186 a month, so there is a huge difference. When you couple those savings with a reduction in the company tax rate of 30 per cent and the \$12 billion in tax cuts generally, Australian small businesses now have the best economic conditions that they could wish for.

If there is one thing that really terrified the pants off small businesses, it was that brilliant promise Labor made last time to require everyone with pre-1985 assets to go out and have them valued. Do you remember that little one? Talk about boosting the paper industry overnight—it would have become one of the leading growth sectors in the economy if Labor had had a chance to get their hands on that one! There is a whole raft of initiatives where the Labor Party simply want to wind the clock back in relation to small businesses.

If we take unfair dismissals, for example, I do not think anyone in this chamber would know this: how many times has the Labor Party voted down attempts by this government to reform that particular area? Ten times! Yet we had an article in the *Financial Review* the other day saying:

Fear of unfair-dismissal claims keeps 58 per cent of small business owners awake at night ...

It is quite clear it is a very important issue to them. Just as important is the Labor Party's threat to tighten up the Trade Practices Act and to restore secondary boycott legislation. They have already blocked amendments to the Trade Practices Act that would have given the ACCC more power to take action on behalf of small businesses.

When it comes to workplace relations, as far as workplace agreements are concerned, the average weekly total earnings for those under AWAs in Australia is \$895 compared with average weekly total earnings for those under federal collective agreements of \$711—in other words, there is about \$180 a week difference. We are talking here about a very stark choice; a return to those bad old

days, winding the clock back. If you look at their role model Mr Blair, what did he do? He actually had the courage to tidy up his own house. He stood up to the trade union movement. When was the last time Mr Beazley stood up for anything? The last time I heard about was when he was opening a call centre for Telstra recently, and someone put a plate of doughnuts in front of him. He elbowed them aside so he could Hoover up as many doughnuts as he could get his hands on. I do not call that standing up for small business, although it might boost the pastry industry. The doughnuts are very symbolic because they are just like Labor Party policies: they have a very big hole in the middle.

Quite clearly, the Labor Party is pandering to those who pull the strings. As Mr Latham has said about Labor's negativity, it is no wonder you get this when the inner circle consists entirely of ALP state secretaries and ex-union secretaries. That is the problem: they are totally unrepresentative of Australia, with not a clue about how small business operates—except poor old Mr Joel Fitzgibbon's wife, who has been pleading with him now for many months to repeal the unfair dismissal legislation. (*Time expired*)

*Senator Robert Ray interjecting—*

*Senator Calvert interjecting—*

**Senator Robert Ray**—No, I am not going to withdraw.

*Honourable senators interjecting—*

**The PRESIDENT**—I did not hear what was said. I was speaking to somebody else at the time. Senator Ray, if you have used an unparliamentary remark, it should be withdrawn.

**Senator Robert Ray**—It will be withdrawn, but I do not think it is suitable in the chamber to reflect on members' wives or introduce them into it—and Senator Alston did so. If I was unparliamentary, I do withdraw, even though I said I would not, because that is the procedure in this place and you must obey it.

#### **Goods and Services Tax: Small Business**

**Senator LUDWIG** (2.17 p.m.)—My question without notice is to Senator Kemp, the Assistant Treasurer. What is the minis-

ter's response to the findings of the survey conducted by the National Association of Retail Grocers of Australia, which found that retail grocers with a turnover of up to \$5 million paid an average \$6,199 in ongoing GST compliance costs for the six months ended 31 December 2000? This did not even include the costs of BAS preparation. Didn't these compliance costs for small retailers represent 28.25 per cent of GST collected versus only 1.25 per cent for large retailers? Don't these survey results prove that the GST has been a boon for the Howard government's big business mates and an absolute disaster for small business?

**Senator KEMP**—I will mention what has been an absolute disaster for small business: a Labor government for 13 years. In view of the comments by the senator, let me recall to the Senate that under the Labor government interest rates for small business at times rose to over 20 per cent—very bad for small business. Then, of course, we had the recession we had to have, and tens of thousands of people were thrown out of jobs. Many small businesses just could not survive as a result of this recession—very bad for small business. Then, of course, under Labor we had not only high levels of interest rates but also high taxes. We had trade union power, and the senator—more than anyone in this chamber—would know just how effectively and ruthlessly that was exercised under the Labor government. What is bad for small business—and the record of 13 years of mismanagement of the economy shows it—is a Labor government.

I would invite anyone in small business to just look around this chamber and the other place and see the number of people in the Labor Party who have come out of the trade union movement. I would like people in small business to ask: how much in common with and how much real feeling for the concerns of small business do these former trade union bosses have? The answer is: not much at all. The Labor Party hold themselves up as being concerned about small business but, as they are—as my colleague Senator Alston says—a fully paid-up subsidiary of the trade union movement, and as most of their senators come from the trade union movement, I

think there is no sympathy at all for the concerns of small business.

Let me now turn to the specifics of the question that was raised. I point out that of course people in business have incurred some start-up costs associated with the goods and services tax. These costs will vary from business to business, and many of the costs are lower for those companies which have good computer systems and accounting systems. Many people in business will benefit from the updated equipment that will assist in their general business activities. Further—and I think this is a point worth making—as businesses become more familiar with the GST system, the government expects a substantial reduction in compliance costs. Probably not included in the survey is the fact that many start-up costs associated with making accounting systems compatible with the GST will be tax deductible, which the senator may not know. I make the point, in the light of the tenor of the argument and the question that was put forward by the senator, that what is really bad for small business is a Labor government. You only have to look at the record—(*Time expired*)

**Senator LUDWIG**—Madam President, I have a supplementary question. Can the minister confirm that the government's big business mates spent \$4 million promoting the GST on behalf of the government? Isn't it now small business who are paying the bill via skyrocketing compliance costs, small business closures and increased time on being an unpaid tax collector for the Prime Minister and the Treasurer?

**Senator KEMP**—I make the point that the premise that underpins the question is quite wrong. If the senator believed that—and I have thrown out this challenge before—why is the Labor Party proposing to keep the goods and services tax? Why is the Labor Party standing up day after day attacking the goods and services tax when it will form the central part of its tax policy at the next election? If I am wrong, Senator Ludwig can stand up after question time and put it on the record. I have thrown out the challenge to Senator Cook, Senator Crossin

and Senator George Campbell to stand up after question time and say I am wrong and not one of them has fronted.

#### **Environment: Climate Change**

**Senator WOODLEY** (2.24 p.m.)—My question is directed to the Minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Alston. Is the minister aware of the evidence heard for the Senate's *The heat is on: Australia's greenhouse future* report whereby Australian climate scientist Dr Barrie Pittock stated that Australia is the most vulnerable OECD country to the impacts of climate change? Is the minister further aware that reductions in rainfall of 30 per cent, predicted in the Murray-Darling Basin by 2050, are likely to dramatically reduce the production capacity of the basin? What commitment will the minister give rural Australians in the face of this dramatic drop in rainfall?

**Senator ALSTON**—It is probably no surprise to Senator Woodley to know that I have not been following the debate with that degree of intricacy, nor have I been following the evidence given to that particular Senate committee. But, to the extent that that is one scientist's view, I am sure that members of the committee will be interested to know the extent to which there are others of similar views and the extent to which that constitutes a reasonable assessment of the situation.

#### *Opposition senators interjecting—*

**The PRESIDENT**—Order! Senator Woodley is entitled to hear the answer.

**Senator ALSTON**—I suspect that it is really the case, Senator Woodley, as you would well know, that you will get a range of views. You will get those in the extreme who predict doom and gloom and others who will, in your view, significantly diminish the seriousness of the problem. At the end of the day, hard judgments have to be made about all these matters. Clearly we are concerned about the impact on the Murray-Darling Basin and elsewhere where problems might be particularly concentrated. Beyond that, if you are asking me for a government policy on the run in response to the evidence of one witness before a Senate committee, I hope that is not a precedent, because we would be

asked to come up with any number of policies a day because of the number of Senate committees that have hearings. I will see if the minister has any further response to make to you on that issue. If he does, it will be communicated.

**Senator WOODLEY**—Madam President, I have a supplementary question. I thank the minister for his commitment on that. I wonder if the minister is aware of a press report today which says:

Australian Ambassador to the United States, Michael Thawley, will reinforce to the Bush administration national concerns about the Kyoto Protocol ...

Would the minister find out if the Australian ambassador will raise these issues which are of great concern to rural Australia when he raises that matter?

**Senator ALSTON**—I do not think there is any doubt that the government places high priority on effective domestic greenhouse action to meet Australia's greenhouse gas emissions and the reduction targets set under the Kyoto protocol. One would certainly expect that Mr Thawley will be pursuing the matter in the light of the statements made by the minister, Senator Hill, and I have no doubt that in elaborating on Australia's particular concerns he will be in a position to give those sorts of examples and to illustrate the very significant differential impact that some of these proposals will have on countries like Australia as opposed to a range of other countries. In other words, I think he will be making it plain where Australia's interests lie, as well as our commitment to endeavour to meet the greenhouse gas emission reduction target. So I have no doubt that Mr Thawley will go into that level of detail if required, and I have no doubt that he is fully briefed on the matters you have raised. (*Time expired*)

#### **Goods and Services Tax: Family Supplement**

**Senator JACINTA COLLINS** (2.28 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Could the minister explain why the large-family supplement was increased from \$7.90 to just \$7.98 per fortnight per eligible child with the introduction of the GST? Does

the minister believe that just 8c a fortnight is enough to compensate for the massive GST burden faced by a large family?

**Senator VANSTONE**—I thank the senator for the opportunity to highlight yet again the changes in benefits to families—in particular, for large families—as a consequence of this government being re-elected in 1998 and introducing a GST on 1 July 2000. I use as an example a family with an income of about \$33,000 who have about seven children. The Labor Party have complained on a number of occasions that this family—it is a particular family—have only received a small amount of increased assistance. The plain facts are that their allegations are simply not true. I would like to answer in the general—

**Senator Robert Ray**—Because you cannot answer in detail.

**Senator VANSTONE**—I would like to answer in the general, Senator Ray, for a particular reason. The reason is this: when certain details about a family—or an individual, for that matter—in relation to welfare payments are raised in the media, it is often very difficult to respond with respect to the specific family without revealing other information—

**Senator Jacinta Collins**—She was thrown out of Charles's office.

**Senator VANSTONE**—Senator, just bear with me. I will go on: without revealing other information that the family may not want revealed. I make a perfect offer in relation to the Zank family and any other individual case that members opposite want to raise. If you want to raise individual cases, and have them responded to in terms of individual cases, then what you will need to do is get the family or person to approve the release of all their details. You cannot have it both ways; you cannot come into this place and discuss one part of what is happening with a family and not the other parts, because you can—as I am sure you know, Madam President, from your past practice in law—tell an untruth by not telling the whole truth. I just want to make it particularly clear. If we look at the example of a family with seven children under 11 and with an income of

about \$33,000, you will find that they are \$35.51 better off in each payment under this government. In relation to payments, that is 8.6 per cent. In addition to that, the family would have tax benefits that would take their total increase to something like \$72 under this government. If a family had other reasons for getting less, and they were to be explained publicly, the family would have to agree to release the file.

**Senator JACINTA COLLINS**—Before I go specifically to my supplementary question, which is about the large-family supplement, I will indicate that one of the families that the minister was referring to was booted out of Bob Charles's office.

**Senator Hill**—Madam President, I raise a point of order. This is a time for opposition senators to be asking questions and supplementary questions, not entering into debate. The issue was raised the other day. Ever since then, opposition senators have continued to disrespect the standing orders in this way. I would suggest to you, Madam President, that this senator should be brought to account.

**Senator Faulkner**—On the point of order: I can understand why Senator Hill is embarrassed by the excellent point that is being made by Senator Collins in the supplementary. Let me say on the point of order that this has become regular practice from government senators in this chamber. Madam President, if you are to exercise your authority in relation to the standing orders on this matter, we would expect you to be as clear in your directions to government senators as you would be to any opposition senators. But there is a clear pattern emerging on the part of government senators in their questions to editorialise before they get to the substance of their questions.

**The PRESIDENT**—There has been a growing tendency for preamble to questions on both sides, and I think everybody knows that this is not consistent with the standing orders. Any comment should be kept to an absolute minimum if made at all. This is not an appropriate time to debate answers; that can be done after question time. Please go on with your supplementary question, Senator.

**Senator JACINTA COLLINS**—Thank you, Madam President. What possible empirical data could lead the Howard government to believe that 8c extra a fortnight is sufficient compensation for the extra burden of the GST on large families with the new federal tax on clothing, books, toys, electricity, petrol et cetera? The list goes on. Isn't it the case, Minister, that one of the specific families you referred to was booted out of Bob Charles's office?

**Senator VANSTONE**—Madam President, I repeat my answer—

**The PRESIDENT**—Senator, you should refer to the member as Mr Charles. Senator Vanstone.

**Senator VANSTONE**—Madam President, do you want to give the senator the opportunity to correct herself?

**The PRESIDENT**—I have corrected it.

**Senator VANSTONE**—As I have indicated, I am not going to go into individual family circumstances unless the family agrees to release the file. But I will say that a family with seven children under 11 and a principal income of \$33,000 would be receiving \$446 a week. That is \$23,187 in assistance. I do not think that is mean. They would have had tax cuts of \$17 a week. If you make the comparison at the appropriate time—that is, at the time of the shift from the old system to the new one; from 30 June to 1 July last year—that family would be \$55 a week in payments and \$17 a week in tax better off. There are some complications in this because of changing indexation points during the year, but a fair and appropriate comparison is from the old system to the new one, when it changed. That is \$55 more—(*Time expired*)

**Senator Robert Ray**—Madam President, I rise on a point of order. Senator Vanstone defied you there. She spoke for about 15 seconds beyond the time when you called her to order. She did hear you. I know you have been fairly strict on this of late, but I really do think you have to be stricter.

**The PRESIDENT**—Thank you, Senator.

### Immigration: Refugee Status Applications

**Senator HARRADINE** (2.36 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs.

*Honourable senators interjecting—*

**The PRESIDENT**—Order! I did not hear to whom Senator Harradine was addressing his question because there is so much noise in the chamber. Please start again, Senator.

**Senator HARRADINE**—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs. Minister, isn't it a fact that the man who attempted self-immolation on Monday was a refugee who we had accepted had a well-founded fear of persecution or death if returned to his home? Isn't it a fact that for six years he has been pleading with the department to allow his wife and family to come here? There are many other such cases. Why does it take so long to reunite families who have suffered persecution? Isn't this a pro-family government? What is this government doing to speed up the processes to limit the appalling hardship in those particular cases? Don't the statements by the department about this refugee having a child with a disability smack of discrimination? (*Time expired*)

**Senator ELLISON**—I understand that Mr Kayani, to whom Senator Harradine refers, was granted a protection visa in 1996. He subsequently was made an Australian citizen in 1999. This matter has attracted a lot of publicity. The matter has been a great shock to the government and particularly to the Minister for Immigration and Multicultural Affairs. These sorts of matters—where a person who has a protection visa or is in that category and is seeking a family reunion—have placed a great burden on the department. There are 55,700 applications of this sort receiving consideration within an onshore program of some 8,000 places. That places a significant burden on the department to assess them. There is a time average in relation to these applications of some 28 months.

**Senator Abetz**—What would Labor do?

**Senator ELLISON**—We might well ask the opposition what it would do, because a

great deal of pressure is being placed on the system in relation to the applications. The pressure on the special humanitarian program has arisen as a result of the increase in the number of asylum seekers onshore who have subsequently been granted protection visas and immediately propose their family for entry.

The introduction of the new temporary protection visa regime has eased the pressure slightly for the time being by removing the right to propose family members from those unauthorised arrivals granted protection. However, the pressure created by permanent protection visa holders remains. Senator Harradine seeks some detail on this matter, and I think it is best the department give him a briefing in relation to that. His concern seems to be about the time it takes for such applications to be made. For a normal family migration application it takes 26 months. That is a global average; it varies from post to post. A family refugee reunion application takes in the region of 28 months.

There is no provision under the refugees convention for automatic family reunion rights, and that has to be borne in mind when considering this problem. Australia does allow for family reunions. However, this has to be done in the context of applicants meeting certain requirements such as health and character.

**Senator Bolkus**—It is despicable.

**Senator ELLISON**—Senator Bolkus asks, 'What are we saying here?' What we are saying here is that the convention does not allow—

**Senator Bolkus**—No, I said it's despicable.

**The PRESIDENT**—Senator Bolkus, you are not supposed to be debating the matter at the present time or asking questions across the chamber. There is an appropriate time for you to express your views, and it is not now.

**Senator ELLISON**—This is a serious matter, and the government and the minister concerned consider it to be so.

**Senator Bolkus**—You've cut back resources. That is what you have done.



**Senator ELLISON**—Senator Bolkus asks what I am saying. I am saying that the convention that applies to this does not have any family reunion provision but, despite that, Australia has one. That says a lot, because what we have done is in excess of what the convention says, despite what the opposition might say about lack of action on this matter. If Australia were to accept anyone who applied to come here from overseas with serious health problems, there would indeed be a considerable cost to the community. In recent years, decisions have been made in special circumstances to waive the health requirements. *(Time expired)*

**Senator HARRADINE**—Madam President, I ask a supplementary question. I understand that the minister and the immigration minister have a supportive view of the family, as do most Australians, which is why I am raising this point. Why does it take six years to be reunited? Would you agree that a child does have the right to be reunited with his or her father, whether that child be disabled or otherwise? If not, what are we saying to people who are suffering persecution? Do we say, 'Don't bother to apply if you happen to have a child with a disability'? I am sure you do not agree with that yourself. I ask for clarification of what I read—I could not believe it—in the media.

**Senator ELLISON**—There is an application pending in relation to this particular matter. As I have said, the department can give Senator Harradine a briefing on that. In situations where there has been an application for waiver in relation to health matters, the minister has agreed to 93 per cent of those waivers.

**Senator Carr**—Ninety-three per cent? Why are you doing this to them?

**The PRESIDENT**—Order! Senator, it is out of order to be shouting in that fashion.

**Senator ELLISON**—In fact, in 1999-2000, the estimated total cost was more than \$25 million and would have been much higher if the government had waived the health requirement every time someone had sought an exemption. This government and, in particular, Minister Ruddock are approaching this matter in a very humanitarian

vein. For anyone to say otherwise is spurious.

#### **Goods and Services Tax: Small Business**

**Senator HUTCHINS** (2.44 p.m.)—My question is directed to Senator Kemp, the Assistant Treasurer. Is the minister aware of recent media reports that thousands of small businesses are paying their quarterly tax instalments on credit because of cash flow problems caused by the GST? Is the minister also aware that banks and other lending institutions have confirmed significant lending to small and medium businesses to allow them to pay GST instalments? Why are small businesses having to use credit to pay the GST when the Prime Minister and Treasurer repeatedly claimed that the GST would be good for small business cash flow?

**Senator KEMP**—The fact of the matter is that, for many people in small business, the GST is good for cash flow. That does not mean there are not some people in small business who are not experiencing some problems but, for many people in small business, one of the many advantages of the goods and services tax system is that it provides a cash flow advantage. That is probably one of the reasons why the Labor Party have decided to incorporate the GST as part of their policy. Madam President, if I am wrong, my challenge goes out to Senator Ludwig and to Senator Hutchins to stand up after question time today and say, 'Senator Kemp is wrong; the GST will not form a part of the Labor Party tax policy at the next election.' Day after day, I put out that challenge. We are seeing part of a Labor Party campaign to pretend to small business that they are particularly concerned about small business. With their record on small business, how could a Labor Party be concerned? How could a Labor Party, essentially comprised of trade union bosses in this chamber—

*Opposition senators interjecting—*

**Senator KEMP**—That is true; they all jeer, but the facts are there. Senator Cook, a former secretary of the Western Australia Trades Hall Council, laughs. That is a point I make. In relation to Senator Hutchins's comments, I think these are relevant facts:

quarterly payers do not have to pay their GST until 28 days after the end of a quarter, which, in effect, can give them up to four months use of that money. That is one of the advantages of the GST. Businesses that claim net refunds—and I think this may be the group that Senator Hutchins is talking about, if he could be bothered listening. Senator Hutchins, I am trying to answer your question; would you mind listening? Senator Hutchins, you have asked me a question, and it is very rude and discourteous when you go away and talk to people while I am answering it. Businesses that claim net refunds each period—and I think this may have been one of the groups that Senator Hutchins was talking about—can minimise cash flow effect through a variety of methods. For example, they can lodge claims on a monthly basis, choosing between cash and accrual methods to do accounts, which, as Senator Hutchins would know because he is an expert in this area, allows them to claim an input tax credit on receipt of an invoice.

Businesses with a turnover of less than \$1 million can choose to account on a cash basis, which means they pay GST only on the money they have actually received in that period. That is one of the advantages of the new tax system. They can also claim credits on all purchases they have paid for. An enormous amount of effort has gone into informing people in small business about the new tax system and about the advantages of the new tax system. There is no doubt that Australia now has a world-class tax system. *(Time expired)*

**Senator HUTCHINS**—Madam President, I ask a supplementary question. Is the minister also aware of a report in Sydney's *Daily Telegraph* on 16 March in which small business operators claimed that the new tax system had slowed payments to businesses and crippled economic activity? How much more damage will it take for this out of touch Prime Minister to understand the disastrous impact his GST has had on small business?

**Senator KEMP**—I think this is a very good debate that we can now have because of the particular interest that Senator Hutchins has in this. I may have said this once or twice in this chamber before: if the GST does

have those effects, which I dispute and reject, why is the Labor Party proposing to keep the GST as part of their tax policy? Within 10 minutes we will be in a debate to take note of my answer and I put out this challenge to Senator Hutchins, as I do to Senator Ludwig and Senator Collins: stand up and be honest with the Australian people for a change.

#### **Kakadu National Park: Indigenous Communities**

**Senator PAYNE** (2.50 p.m.)—My question without notice is directed to the Minister for the Environment and Heritage, Senator Hill. Will the minister inform the Senate of the progress being made in efforts to improve the social and economic conditions of indigenous communities within Kakadu National Park?

**Senator HILL**—I am pleased to do so. The Howard government has a strong commitment to working with the Northern Territory government and local stakeholders within the Kakadu region to improve social and economic conditions for indigenous communities. The start of this process was the establishment by this government of the Kakadu Region Social Impact Study, which allowed indigenous people in Kakadu to tell their own stories and to set their own priorities. To respond to this study, the government established an implementation team headed by former Labor government minister Bob Collins. Importantly, this team includes indigenous representatives and consults closely with indigenous communities on its work proposals. The support and cooperation of the local indigenous organisations have been central to the successes already achieved by the team.

The KRSIS team has already achieved impressive results, with new housing; a major upgrade in a number of Kakadu outstations; improvements to basic infrastructure, such as power, sewerage and water reticulation; and better employment and training opportunities. One of the initiatives of the KRSIS process is a hospitality traineeship program, which gives young members of indigenous communities a chance to train at both the Crocodile Hotel and the Cooida Lodge. In the second intake of this program,

20 new trainees are currently undertaking a 12-week course which will see them gain hands-on experience and nationally recognised qualifications.

To further build on education opportunities in Kakadu, the Howard government has announced an investment of \$600,000 in an indigenous education unit at the Jabiru Area School. To help further develop tourism opportunities within Kakadu, we have committed almost \$3.2 million to upgrade tourist infrastructure in key areas such as Jim Jim Falls and the Yellow Water boardwalk. Last year the KRSIS team published its first community report detailing the work it was undertaking. Apart from acknowledging the achievements already made, the report identified a number of areas where further effort would be required. One of these was the need to improve health services for indigenous communities. The Howard government has responded positively, and recently my colleague Senator Tambling announced funding of \$1.4 million for improved health care services. Indigenous communities within Kakadu will now benefit from improved programs for the prevention, early detection and best practice management of preventable chronic disease. The funding will also provide for a health service manager, a linguist, two drug and alcohol workers, a health educator, a maternity nurse and a women's refuge coordinator.

I congratulate those involved with the Kakadu Region Social Impact Study, in particular the Jabiluka Association, for their initiative in securing this funding for local residents. I would urge those indigenous associations which have chosen not to be a part of the KRSIS process to reconsider their position and join in a cooperative approach which will bring major benefits to their members.

**Sydney Airports Corporation Limited:  
Sale**

**Senator MURPHY** (2.54 p.m.)—My question is to the Minister representing the Minister for Finance and Administration, Senator Kemp. Now that the Howard government has made the decision to sell Sydney Airports Corporation Ltd, can the minister confirm how the sale proceeds will be

accounted for in the budget papers and in which financial year?

**Senator KEMP**—I make the point to the senator that the sale of the airport now will go ahead. After a scoping study, the government made an announcement last week which I think was an extremely important announcement.

**Senator Sherry**—You made it.

**Senator KEMP**—I am confirming that the sale will go ahead. The sale does not add to the fiscal balance or to the cash balance. The accounting procedures, which will always be followed and which are followed in this case, will continue.

**Senator MURPHY**—Madam President, I ask a supplementary question. I am not sure whether there was an answer in there or not. In light of what you have just said, Minister—I will not call it an answer—can you also confirm the government's commitment that 100 per cent of the proceeds will be applied to debt retirement? Yes or no?

**Senator KEMP**—The practice of this government has been to use the proceeds of major sales for debt retirement. In relation to Telstra, there was a provision which was made to the Natural Heritage Trust, but I am informing you that that has been the practice of this government.

**Environment: Kyoto Protocol**

**Senator ALLISON** (2.57 p.m.)—My question is to the minister for infrastructure. Has the minister seen the comments made by the Property Council yesterday saying Kyoto will go ahead and the US position should not be used as an excuse to not do anything and that the main responsibility lies with developed countries such as the US and Australia? Minister, do you now concede that your hardline position on not ratifying Kyoto ahead of developing countries has less and less support from Australian industry?

**Senator Alston**—Madam President, I rise on a point of order. I think it might be a bit unfair to allow this question to reach its conclusion without it being clear who it is directed to. There is no minister for infrastructure.

**The PRESIDENT**—I am aware of that. Could you indicate to whom your question is addressed, Senator?

**Senator Allison**—To Senator Minchin—who, I understand, has the infrastructure portfolio, amongst others. Minister, isn't it also the case that the Property Council, as well as most of the business sector, is looking to your government for leadership on this issue? Isn't it the case that they want to know where they are going, they want an domestic emissions trading system in place and they want recognition of early abatement?

**Senator MINCHIN**—I am the minister for industry, not infrastructure, so I missed the first half of the question. But I gather it is an accusation that Australian business wants us to sign up and ratify Kyoto immediately, without qualification. If that is really what Senator Allison believes, she obviously has had no contact whatsoever with Australian industry and has no idea what Australian industry actually thinks and believes on the issue of greenhouse gas abatement. I want to congratulate Australian industry for its cooperation with us in pursuing sensible, reasonable measures in accordance with our budget commitments to contain greenhouse gas emissions. The Greenhouse Challenge program, for example, in which we work closely with industry to contain greenhouse gas emissions, is a considerable success. Indeed, today we launched five new projects with Australian industry under the International Greenhouse Partnerships program.

The Democrats should be under no illusion as to the considerable concern and fear that Australian industry has about Australia leaping ahead of the rest of the world into any situation involving greenhouse which involves a carbon tax or caps on greenhouse emissions. That would be a disaster for Australian industry, and Australian industry knows that. If Senator Allison does not know that, she had better start talking to Australian industry. The fear the Australian industry has is that a Labor government will introduce a compulsory domestic emissions trading scheme ahead of the rest of the world which would amount to no more than a carbon tax. That would be particularly disastrous for Australia. As an energy intensive exporting

country, Australia would be penalised more than any other developed nation on earth by such a situation. It would be particularly disadvantageous for the people the Labor Party professes to support—workers in those energy intensive industries, particularly the aluminium industry. It would be particularly disadvantageous for the state that Senator Allison purports to represent, Victoria, which would suffer more than any other state from such a proposition.

While acknowledging the great contribution industry is making in working with us to achieve sensible outcomes, I think Senator Allison should spend more time with Australian industry to understand its real concerns about any pre-emptive action by any Australian government on this issue.

**Senator ALLISON**—Madam President, I ask a supplementary question. The minister suggests that industry will be disadvantaged. Is he aware that ABARE said that it would cost Australia 0.6 per cent of GNP to meet our Kyoto commitments by 2010—and they did not take into account the cost of not acting or the savings on energy efficiency? Minister, why is it that you want to create uncertainty for business by hiding behind developing countries?

**Senator MINCHIN**—I suggest that Senator Allison look more widely at the sorts of reports that have been done on the impact of unilateral action by Australia to implement Kyoto without the important qualifications that we placed on our ratification—that is, the engagement of developing countries, adequate movement on sinks and the flexibility mechanisms. Without those, the impact on Australia would be the equivalent of a massive recession, costing thousands of jobs right across Australian industry. I suggest that Senator Allison get her head around that.

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

#### ANSWERS TO QUESTIONS ON NOTICE

(Question Nos 2883, 2885, 2913, 2924,  
2934, 3116 and 3163)

**Senator CHRIS EVANS** (*Western Australia*) (3.02 p.m.)—Under standing order No.

74, I ask Senator Vanstone, the Minister representing the Minister for Aged Care, as to the reasons why a series of questions on notice have not been answered. The questions are Nos 2883—which dates back 216 days—2885, 2913, 2924, 2934, 3116 and 3163. Over 100 days have elapsed since those questions were submitted. As I say, the greatest time elapsed is 216 days. I would like an explanation as to why we have not been provided with answers.

**Senator VANSTONE** (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—I may have missed it, but I did not hear Senator Evans say that the questions were not to me; they are in fact to the Minister for Aged Care.

**Senator Chris Evans**—I did say that they were to the Minister for Aged Care, Mrs Bronwyn Bishop.

**Senator VANSTONE**—Senator Evans says that he did say that. Senator Evans, I got notice from your office that you intended to ask this question. Someone in my office has spoken to Mrs Bishop's office. Mrs Bishop's office, not she personally, has indicated that, of the 10 questions that are outstanding, seven should be able to be answered by close of business today. Apparently, some simply needed to be changed because they were ready for Senator Herron to give you. I understand there are a few others that might take a little bit longer than that. I do not have anything in writing, so I cannot tell you which questions are which. But I indicate that I will endeavour to get something in writing from Mrs Bishop for tomorrow, if all the questions cannot be answered by close of business tomorrow.

#### **CENTENARY OF FIRST SITTING OF THE COMMONWEALTH PARLIAMENT**

**The PRESIDENT** (3.04 p.m.)—Order! I wish to make some comments to senators about the arrangements for the ceremonial meeting of the parliament in Melbourne on 9 and 10 May when we celebrate the 100th anniversary of the first parliament and the first sitting of the Commonwealth parlia-

ment. By now, I believe, all senators would have received the invitations appropriate to the week. If any have not, I would be glad if you could let me know.

There are three main activities in which senators will be involved. On 8 May a function will be hosted by the Premier of Victoria, Mr Bracks, at the Melbourne Museum. I am informed that the museum will remain open after that function until 9 p.m. if senators wish to avail themselves of the opportunity to have a closer look at it. On the following day the commemorative meeting of the two houses of the Commonwealth parliament will take place at the Royal Exhibition Building. It is asked that senators arrive at about 1 p.m. that day. The program will start at 1.15 p.m. The joint meeting of the two houses will commence at 2 p.m. and will conclude at approximately 2.40 p.m.—after which the celebratory component of the gathering will commence. That is anticipated to finish at about 4.15 p.m. I believe the event will be televised from 2 p.m. until 4 p.m. The events in relation to the celebration, while not being kept a close secret, are being kept quiet, I think, to create some air of excitement about what will happen during that time, perhaps especially for the television audience. The event is being organised by the appropriate committee in Victoria.

On 10 May, senators are asked to be at the Victorian parliament by about 9.40 a.m. The session will commence at 10 a.m. and conclude shortly after 11 a.m. Official photographs are planned to be taken, and I hope that all senators will participate in that. There will then be the unveiling of a historic plaque in the gardens of Parliament House in Victoria to commemorate the joint sitting taking place 100 years after the first sitting.

Other events during the week are: 'Women leading the nation' at the Victorian parliament on the morning of Monday, 7 May; and a service at the Royal Exhibition Building entitled 'A sense of place', which is an interdenominational celebration of the freedoms of speech and worship.

Arrangements for transport during that week are in the hands of the Special Minister of State. I expect all senators will receive information from him quite shortly advising

of those arrangements. I will arrange for more information on these events to be conveyed to senators over the next week or so. I remind senators that the *Biographical Dictionary of the Australian Senate, Volume 1*, which was officially launched in this building, will be launched at 11 a.m. on 11 May in the Queen's Hall of the Victorian parliament. The presiding officers of the Victorian parliament felt that that was an appropriate event to take place during that week, and I shall certainly be there on that occasion.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (3.07 p.m.)—by leave—I move:

That the Senate take note of the statement.

I would like to make a few brief comments on the statement that you have made, Madam President. Firstly, I indicate at the commencement of this brief contribution that the federal opposition certainly hope that the centenary sittings of the Commonwealth parliament are a success. You would be aware, Madam President, that the federal parliamentary Labor Party is taking the Centenary of Federation celebrations seriously. We will, in fact, be celebrating our own centenary on 8 May 2001. The federal parliamentary Labor Party is one day older than the federal parliament itself and it has been in continuous existence since that time.

I note your statement, Madam President, about the joint commemorative meeting of the parliament, and I think it is fair to say that the events in Melbourne will be in two parts. We will have the joint commemorative meeting of the parliament on the one hand and then a range of proceedings that are entitled the Centenary Commemoration Ceremony. There are also other events occurring on the same order of proceedings which are really held under the auspices of the Centenary of Federation Victoria. There are these two elements to the commemoration on 9 May in the Exhibition Building.

The second part is a matter for the Victorian government. We would want to acknowledge that Premier Bracks has worked hard to ensure that it is a broad and representative ceremony, and I wish to make no comment on that aspect of the commemorative events. I do want to indicate one thing, if

I may, Madam President, in relation to those matters that relate directly to the celebrations of the centenary of the opening of the Commonwealth parliament and then the first sittings of both chambers of the Commonwealth parliament. There is a concern in the opposition that there has been a lack of consultation with the parliament about those two events—if you like, that component of the joint commemorative meeting.

I took the view in 1998—and I expressed this view very strongly to the Minister for the Centenary of Federation, Mr McGauran—that the best approach for the parliament would be to establish a joint select committee on these issues so that both chambers of the Australian parliament and the parliament itself could be more engaged in dealing with, and appropriately celebrating, what is a very important occasion, the centenary of the Commonwealth parliament in this country. There has been a lack of consultation with the parliament, in the view of the opposition. You would be aware, Madam President, that I wrote to you about this matter last week and suggested that the sort of statement you have now made to the parliament would be appropriate in the circumstances, and I thank you for the statement. I think it will be of benefit to parliamentarians.

There has been no formal engagement of the federal opposition in these events at all either, and I am disappointed by that. I would acknowledge that the National Council for the Centenary of Federation through its chairman, Archbishop Hollingworth, its deputy chairman, Mr Rodney Cavalier, and its chief executive officer, Mr Tony Eggleton, have worked tirelessly to keep us in the loop in relation to the events that are being held under the auspices of the national council—and I do acknowledge that. They have been very helpful, and I know that Mr Beazley and I have been consulted on a range of those centenary activities.

But there is a weakness here in that the parliament has not had an opportunity to be involved in the celebrations of its own centenary in terms of its opening and the first sittings of both chambers. That is a weakness, and I am disappointed that that is the case, and that goes to part of the joint com-



memorative meeting that is being held in Melbourne. Nevertheless, we hope that these occasions are a success because it is an important event, in the view of the opposition. The opposition, as the longest surviving parliamentary party in the Commonwealth—the only surviving parliamentary party since Federation—is treating the events you have outlined to the parliament very seriously, as it is treating its own centenary very seriously. I am pleased, even at this late stage, that there has been some engagement of the chambers. I think we could have done better in terms of the parliament and the way it has dealt with these matters but let us hope that from this point onward there will be continued interest and involvement in these important events.

Question resolved in the affirmative.

#### ANSWERS TO QUESTIONS WITHOUT NOTICE

##### Goods and Services Tax: Small Business

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

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Schacht today relating to the goods and services tax and small business.

Today I asked a question of Senator Alston about the massive increase in taxation law and regulation, running into nearly 5,000 additional pages, as a result of the so-called tax reform package introduced by this government in the last two years. The minister's response showed a devastating misunderstanding or lack of knowledge of small business. He basically said, 'Well, 5,000 pages of new taxation law has nothing to do with red tape for small business. That is a separate issue.' Unfortunately for him and his out of touch Prime Minister and out of touch government, most small businesses would know that they have had to suffer extra cost and undertake extra activity to meet the compliance arrangement of the GST.

*Government senators interjecting—*

**Senator SCHACHT**—And it is 'red tape', to use that term. I remind the Senate that only a few days ago, on a TV program

last weekend, when the Prime Minister was asked specifically about the reduction of red tape by 50 per cent which he had promised at the 1996 election, his response was:

Well, can I just say before I come to the issue, that was not the biggest promise we made to small business.

We have again had this core and non-core promise variation let loose on small business. This is a disgraceful attitude this government has taken towards small business. It has completely wiped the '50 per cent reduction in red tape' promise of the 1996 election. Not only has it not reduced it; it has increased it by 183 per cent—by the size of the increase in the tax act.

The National Association of Retail Grocers of Australia have conducted a survey. In a press release that only came out today, they said they had 'commissioned Hall Chadwick to survey GST set-up and compliance costs for the independent grocery sector'. That is the independent grocery sector, not the big end of town grocery sector—the small business grocery sector. The survey found, in the first six months to December 2000, the following:

Excluding the costs of BAS preparation, ongoing GST compliance costs (total for six months) across differ sized food and retail grocers were:

- Small (turnover up to \$5 million pa): \$6,199 ...
- Medium (turnover \$5m up to \$20m pa): \$15,300 ...
- Large (turnover more than \$20m pa): \$27,295—

those figures are for the six months, so double them for the year—

Compliance costs as a percentage ... showed the much higher relative burden on smaller stores:

- Small 28.25 per cent

That is compared to:

- Large 1.25 per cent

The extra hours of weekly compliance work imposed on NARGA members with small stores were: average paid hours 12.6; average unpaid hours 5.9; total hours 18.6 extra a week. For medium stores it totalled 30 hours and, for large stores, 69 hours. And the minister says here: this is not something that you can count; this wasn't in the promise to re-

duce red tape by 50 per cent! Yet, in a survey conducted by a professional firm on behalf of the organisation that represents a larger number of small grocery retailers than any other organisation in Australia, they found that businesses have all these extra hours, these extra costs. Remember when the government announced that every small business would get a grant of \$200 to pay for introduction of the GST? Two hundred dollars!

**Senator Ferguson**—That's more than you ever gave them. You didn't give them a thing.

**Senator SCHACHT**—I'm glad you interject. We didn't put the GST on them. We didn't put the BAS on them. We didn't put on the 18 hours extra a week. We didn't put on the \$6,000 a half year extra like you have. They got \$200, and for the smallest businesses it cost \$6,199 every six months. (*Time expired*)

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (3.19 p.m.)—It is of course quite laughable to have this former minister for small business, one of those people we call the 'Keating-Beazley re-treads', a shadow minister who seeks re-election—

**Senator Schacht**—It's a proud title I'm happy to have.

**Senator IAN CAMPBELL**—He likes being called a retread. Indeed, Mr Beazley offers to the Australian people a team of failed eighties and nineties retreads as a government. What a retread to have—this shadow minister for small business! On his watch, interest rates for small businesses were driven up to 20 per cent and up to 32 per cent, wiping out more small businesses than any other government in the history of this nation. That was Senator Schacht's achievement for small business. Madam Deputy President, you will recall the joke about how to create a small business when Senator Schacht was the minister—start with a big business and wait. That resonated throughout the small business community.

What about our achievements in cutting red tape? What a remarkably good record.

When we came to power the first thing we did was to appoint Charlie Bell and say: 'Charlie and your mates, would you please set about cutting red tape on small business like it has never been cut before.' And what did we do? We received the Charlie Bell report and we responded. We accepted and agreed to and implemented virtually every single promise. One of the promises that we wanted to implement was to review the unfair dismissal laws. The small business sector said to Charlie Bell and his committee, 'We want the unfair dismissal laws reformed so that we can actually employ people.' This government, in response to part of the recommendations of Charlie Bell, brought reform of the unfair dismissal laws before this Senate on no less than eight occasions. Only last week, Senator Schacht, who is pretending to be the friend of small business, voted to oppose reform of the unfair dismissal laws. Here he is saying, 'Why didn't you cut red tape?' Small business says, 'We want the unfair dismissals red tape cut,' and Senator Schacht comes in and votes against it. You will never see hypocrisy in action in greater clarity than that of Senator Schacht.

What did Senator Schacht and Mr Beazley's government do when they had the chance? You talk about tax. The fringe benefits tax was one of the first recommendations of Charlie Bell's *More time for business* cutting red tape report. They wanted fringe benefits tax reform. These people opposite thought it was a great idea for small business to put a fringe benefits tax on car parking. They brought in a law that said to small businesses, 'If you are a little grocery store and if the person who comes in to pack the shelves at night dares park in the grocery store car park, we will charge the small business person fringe benefits tax.' What an incredibly sensible idea to encourage small business in Australia! What did this government do in response to that? We got rid of it. We said, 'That is not good for small business and we will get rid of it.'

What did this government say about taxation when Senator Schacht was the Minister for Small Business and Mr Beazley was the Minister for Finance? They said, 'If you are a small business person and you invest your



life savings in a business—you work, toil and employ people—and if you make a capital gain, we will rip half of it off you when you sell it.’ What great supporters of small business are these people opposite!

This government’s reforms to capital gains tax are legion. We have cut the rate by half, given exemptions across the place and ensured that people can actually roll over capital gains from one business to another business. And what did the opposition last say about capital gains tax policy? How friendly are they to small business people in Australia? Their policy on capital gains tax is to get rid of the pre-1985 exemption. That was their policy at the last election and it has not been repealed yet; it is still there; it stands. That policy, of course, would require every small business person to get a valuation, as at October 1998, for every single asset on their register and then to pay tax on the gain. That is Labor’s policy on capital gains tax. That is their view about paperwork for small business: more paperwork for fringe benefits tax.

*Senator Ferguson interjecting—*

**Senator IAN CAMPBELL**—And no \$200, Senator Ferguson. They did not give businesses \$200 to assist in software when they introduced the FBT and the CGT. (*Time expired*)

**Senator LUDWIG (Queensland)** (3.24 p.m.)—I rise to take note of Senator Alston’s answer. What we have just heard is a very hollow message indeed—in fact, it is not an answer because it raises more questions than it gives answers to small business. What has happened? Let us talk about the present, not the past. Let us talk about the survey that we have been talking about: the survey of 285 independent grocers undertaken by Hall Chadwick and commissioned by the National Association of Retail Grocers Australia. It showed that on average, for a small business with a turnover of \$2 million or less, the GST start-up costs were \$18,622.41. Ongoing GST compliance costs were \$6,199.81. That is what this government has given small business.

What does Senator Alston say in answer to the question? He talks about small busi-

ness; he does not talk about how he is going to cut red tape. What he does say is that red tape is not legislation. I have never heard so much rubbish in my life. That is what they are complaining about: they are complaining about the GST. They are not complaining about your policy with empty rhetoric: they are complaining about the GST and BAS, both legislatively based—not based on your policy or on what you would like to do but based on what you are doing.

Here is the choice that the government give people: what they say in the business tax reform implementation timetable released by the Treasurer is:

While some large businesses are prepared and ready for the consolidation regime, consultation—

so somebody has been out there listening to them—

has shown that the majority of business (particularly small and medium enterprises) is not yet ready....

Maybe I can suggest why they are not ready: because they are bogged down paying compliance costs, doing BAS, doing GST returns and with your red tape.

What do we have from the coalition? They promised Australian small businesses before the last election that there would be a cut in red tape by half. Leading accounting firms now claim that the BAS has quadrupled small business red tape, not halved it. This ensures that small business owners have far less time to spend running their businesses and are spending more time on filling out forms. That is what you have given small business.

Let us not leave the National Party out of this debate. You should note the National Farmers Federation view that farmers are now spending twice the amount of time on tax paperwork that they did before the new tax system was introduced. There is also considerable disagreement over whether the booklet put out by the tax office is even accurate. Even in trying to explain your new tax system, you seem to have gone wrong.

Another survey of 775 businesses conducted by the Australian Business Limited—the ABL—has again highlighted the adverse

impact of the GST on small business cash flow. ABL's survey shows that 66.5 per cent of firms with fewer than 25 employees say that the GST had a negative impact on their cash flow situation. Look at the Howard government's promise to small business that the GST would be good for them. That is what he said: 'It will be good for you.' He also said that it would improve their cash flow. The truth is that this tax system is having the opposite effect. It is about time you took note of that and did something about it. It is about time you took your promise and delivered on it.

**The DEPUTY PRESIDENT**—Address the chair, please.

**Senator LUDWIG**—Sorry, Madam Deputy President. It is about time they took their promise to cut red tape by half and delivered on it—not increased it.

The ALP, on the other hand, has been out there listening to the community on this issue. It is currently conducting a BAS inquiry and so far the inquiry has heard the concerns of many small businesses who are seeking relief from the mountain of paperwork that has been placed on them by the BAS. In fact, a hearing will be in the Beenleigh Bowls Club in the Forde electorate on 10 April. I will be there to hear from small business about the problems that they experience with BAS, the GST, the compliance costs and the like. It is only a matter of going to the Yellow Pages small business—

**Senator Ferguson**—So you will remove the GST, will you?

**Senator LUDWIG**—What we will do is make it fairer and simpler, and that is an answer Senator Kemp is not here to hear. (*Time expired*)

**Senator FERGUSON (South Australia)** (3.29 p.m.)—Is it any wonder that Senator Ludwig opens his comments in this debate by saying, 'Let's talk about the present and not the past'? It is any wonder that Senator Ludwig would not want to remember the past and only concentrate on the present? The Labor Party's history in relation to small business and running the economy is well known, and they hate to be reminded of it.

Senator Ludwig says, 'Let's forget the past and concentrate on the present.'

**Senator Ludwig**—I raise a point of order. I did not say, 'Let's forget the past.' I ask the honourable senator to retract that.

**The DEPUTY PRESIDENT**—There is no point of order.

**Senator FERGUSON**—Madam Deputy President, I wrote down what he said. He said, 'Let's talk about the present and not the past.' They were his exact words.

**The DEPUTY PRESIDENT**—And I have ruled there is no point of order.

**Senator FERGUSON**—I said it is no wonder that he wants to talk about the present and not the past because of the past record of the Labor Party in the area of small business. Senator Ludwig and Senator Schacht, who both raised this issue of small business, to the best of my knowledge have never run a small business—unless, of course, the union movement now qualifies as a small business because of its declining numbers, now representing less than a quarter of the Australian workforce. Maybe the union movement does qualify as a small business, Senator Ludwig. If it does, I suggest to you the small business that the union movement has now become is going to become an even smaller business.

It is interesting that Senator Schacht and Senator Ludwig never once talked about the effect on small business of the high interest rates that in the late eighties and early nineties forced so many small businesses to the wall. I would like to remind Senator Ludwig and Senator Schacht—although he is not here—that I happened to be involved in small business at that time. I can tell you that paying 24 per cent interest when you have to borrow money does not make it very easy for small business to continue. As a matter of fact, the effect of the introduction of a GST, compared to the effect of your 24 per cent interest rates, is absolutely minimal. That is why the business expectations survey from Dun and Bradstreet which was published on 23 January 2001 found that 96 per cent of the respondents were reasonably comfortable or extremely comfortable with the new tax system.

So who are these people who are complaining? It is just possible that some of these small businesses who are receiving so much publicity are businesses that have never paid tax. The new tax system was put into place in order to bring everybody into the tax system, including some of those businesses who had been working in the cash economy. I am sure that they do not like the new tax system, because one of the reasons it was put into place was to make sure that everybody paid their fair share of tax. There is no doubt that people in the community who ran businesses in the past and who are now paying tax for the first time certainly do not like the system. All those who have been involved in small business for the last 15 years are far more comfortable under the new tax system under which we pay a GST than they ever were under Labor's high interest rates, which forced so many out of business. It is no wonder that the Labor Party do not want to talk about the past and only talk about the present.

The number of business failures, as measured by bankruptcies or liquidations or people going out of business, varies significantly from year to year. It has always varied significantly, reflecting a range of factors which underlie the failures of small business. For example, the introduction of new competitors is one reason why some small businesses go out of business; interest rate movements is another reason, as is the changing demand that conditions supply, and supply shocks. They are all things that happen, not necessarily related to the GST. They are things that would have happened regardless of whether or not there was a new tax system. Therefore, it is unfair to attribute any changes in business failures to one single factor. There is no one single factor that ever influences whether or not small businesses stay in business or fail. That is something that the Labor Party members on the opposition benches simply do not understand, basically because none of them has ever been in small business. Unless you have been in small business you do not understand the factors that impact on your business and the difficulty of not knowing until the end of the week whether or not you are going to get paid. As union movement secretaries, every

one of you knew that at the end of the two weeks or the month you were going to get—*(Time expired)*

**Senator McLUCAS (Queensland)** (3.35 p.m.)—Well, we have heard the tired old responses today—the same responses we get when this government is feeling a little under pressure. Senator Ferguson's contribution today was the same: the tired old line about how many of us have union backgrounds and how we have never run a small business. I have to say, though, that the people who are coming to talk to our BAS committee are feeling very comfortable with giving our party the information that they want delivered and that they cannot get this government to understand. I am also very tired of Senator Kemp's tired and erroneous comments that the GST is our policy. Senator Kemp knows and the people of Australia know that the Labor Party is undertaking a constructive discussion with small business about how we can make the GST simpler and fairer for their enterprises.

If you follow Senator Ferguson's argument when he said that the purpose of the GST was to bring all business into the tax net, he is saying that anyone who complains about the GST and BAS compliance must therefore have been avoiding tax. That is a fairly offensive thing to be saying to small business across Australia. Small business are right to say that this government is in denial, that it has got its head in the sand and does not know how to deal with what it has given the small business community in this nation.

I wish to turn to some comments that Senator Alston made during question time today. He said that business was looking for certainty and that the amendments to the tax acts that we have dealt with in this chamber—over 5,000 pages of them—were simply the detail that had to be delivered. I do not know that small business will cop that line, to be quite honest. In September last year, the Queensland Chamber of Commerce and Industry Mackay regional manager said that there was still considerable confusion surrounding the new tax system and that about one-third of all invoices forwarded to the Mackay QCCI office were incorrect in some way. So there was not any certainty in

round 1. Then we moved to round 2 and we had the first of the backflips. We are expected to believe that this government wanted to provide the small business sector in Australia with some certainty, but I do not think they were expecting a backflip at that point. Initially, small business said, 'Okay, this government finally knows we are here.' But that was it, that was the only thing they got: a recognition that there was a problem. The solution that has been provided is no solution, if you talk to people in the small business sector.

The New South Wales chamber of commerce country business survey was released in March this year. It surveyed small business in rural New South Wales and showed that 77 per cent of small businesses surveyed said that they had to pay additional fees for professional services to lodge their BAS. Some 40 per cent of those surveyed paid over \$1,000. That is \$1,000 dead money that is not productive in any way at all for the future of this nation. And we heard today of the compliance costs for small family grocery stores, who are paying around \$6,000 a year. In many of those small businesses—and we have been saying this since 1998—the people who are doing this unpaid work are the wives in those small business couples. We know, from the above survey, that in small grocery stores people are having to pay for 12.64 hours of extra administrative costs and we know that there are 5.96 hours per week of unpaid labour in delivering Mr Howard's GST to this nation. This makes an absolute mockery of the three hours that Mr Howard told small business they would have to spend to deliver their BAS. (*Time expired*)

Question resolved in the affirmative.

### PETITIONS

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

#### Petrol Prices

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

The petition of certain citizens of Australia draws to the attention of the Senate the extremely high price of petrol and other fuels and the increase in the amount of tax on fuel due to:

- The Government's failure to keep its promise that the price of petrol and other fuels would not rise as a result of the new tax system, by reducing the excise by the full amount of the GST;
- The fuel indexation increases on 1 August 2000 and 1 February 2001, which will be significantly higher than usual because of the inflationary impact of the GST; and
- The charging of the GST on the fuel excise, making it a tax-on-a-tax.

Your petitioners therefore request the Senate to:

- Hold the Government to its promise that its policies would not increase the price of petrol and other fuel;
- Support a full Senate inquiry into the taxation and pricing of petrol;
- Consider the best way to return the fuel tax windfall to Australian motorists.

by **Senator Ludwig** (from 991 citizens).

#### **Australian Broadcasting Corporation: Independence and Funding**

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

The petition of the undersigned shows:

- (1) our strong support for our independent national public broadcaster, the Australian Broadcasting Corporation;
- (2) our concern at the sustained political and financial pressure that the Howard Government has placed on the Australian Broadcasting Corporation (ABC), including:
  - (a) the 1996 and 1997 Budget cuts which reduced funding to the ABC by \$66 million per year; and
  - (b) its failure to fund the ABC's transition to digital broadcasting;
- (3) our concern about recent decisions made by the ABC Board and senior management, including the Managing Director Jonathan Shier, which we believe may undermine the independence and high standards of the ABC including:
  - (a) the cut to funding for News and Current Affairs;
  - (b) the reduction of the ABC's in-house production capacity;
  - (c) the closure of the ABC TV Science Unit;
  - (d) the circumstances in which the decision was made not to renew the contract of

Media Watch presenter Mr Paul Barry;  
and

- (e) consideration of the Bales Report, which recommended the extension of the ABC's commercial activities in ways that may be inconsistent with the ABC Act and the Charter;

Your petitioners ask that the Senate should:

- (1) protect the independence of the ABC;
- (2) ensure that the ABC receives adequate funding;
- (3) call upon the Government to rule out its support for the privatisation of any part of the ABC, particularly JJJ, ABC On-line and the ABC Shops; and
- (4) call upon the ABC Board and senior management to:
  - (a) fully consult with the people of Australia about the future of our ABC;
  - (b) address the crisis in confidence felt by both staff and the general community; and
  - (c) not approve any commercial activities inconsistent with the ABC Act and Charter.

by **Senator McLucas** (from 46 citizens).

Petitions received.

## NOTICES

### Presentation

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

That the following bill be introduced: A Bill for an Act about interactive gambling, and for related purposes. *Interactive Gambling Bill 2001*.

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

That the following bill be introduced: A Bill for an Act to amend the *Great Barrier Reef Marine Park Act 1975*, and for related purposes. *Great Barrier Reef Marine Park Amendment Bill 2001*.

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

That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 1 April 2002:

- (a) the management of water in Australian cities, including:

- (i) a review of existing reports on the management of water, predominantly in urban areas, and
- (ii) an assessment of what constitutes ecologically sustainable water use and the environmental, health and economic implications and imperatives for achieving this, taking into account:
  - (A) projected population growth and consumption rates,
  - (B) water quality and adequacy,
  - (C) urban planning, and
  - (D) water management systems;
- (b) the progress and adequacy of Australia's policies to reduce urban water use and improve water quality;
- (c) environmental performance in urban stormwater management, including:
  - (i) the effects of accelerated run-off from sealed urban catchments on waterways,
  - (ii) the impact of urban run-off on receiving waters,
  - (iii) the best environmental practice in urban stormwater management, and
  - (iv) clarification of roles, responsibilities and reporting requirements amongst public agencies at state and local government level; and
- (d) the potential for Australia to improve water quality and environmental outcomes, including:
  - (i) the opportunities, constraints and costs of:
    - (A) waste water recycling, grey water use and urban stormwater utilisation, and
    - (B) improved water use efficiency in household, garden, public open space and industrial contexts demand management,
  - (ii) the effectiveness of applying financial, market and other mechanisms to achieve water efficiency,
  - (iii) the effectiveness and relevance of environmental management systems, certification programs and best management practices, and
  - (iv) the introduction of bulk water entitlements and water markets, and

their implications for urban and industrial water consumption.

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

- (1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 27 September 2001:

Whether the current recruitment and retention strategies of the Australian Defence Force (ADF) are effective in meeting the organisation's personnel requirements (including reserves).

- (2) That, in considering these terms of reference, the committee examine and report on the following issues:
  - (a) whether the current recruitment system is meeting, and will continue to meet, the needs of the ADF;
  - (b) the impact of the Defence Reform Program on retention levels and recruiting;
  - (c) the impact of changes to ADF conditions of service, pay and allowances on retention and recruitment of personnel;
  - (d) current levels and categories of specialist personnel in the ADF compared to the organisation's requirements;
  - (e) the impact of current career management practices on the retention of personnel; and
  - (f) any other issues, reasonably relevant to the terms of reference but not referred to above, which arise in the course of the inquiry.

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

That the time for the presentation of the report of the Community Affairs References Committee on child migration be extended to 30 August 2001.

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

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 5 April 2001, from 3.30 pm, to take evidence for the committee's inquiry into the import risk assessment on New Zealand apples.

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

That the following bill be introduced: A Bill for an Act to further advance reconciliation between Aboriginal and Torres Strait Islander peoples and all other Australians, by establishing processes to identify, monitor, negotiate and resolve unresolved issues for reconciliation, and for related purposes. ***Reconciliation Bill 2001***.

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

That the Senate—

- (a) notes, with deep concern, the appearance on 4 April 2001, in one of Australia's leading journals of higher education, the *Australian Higher Education Supplement*, of an advertisement seeking Australian students for Washington International University, a notorious Pennsylvania-based degree mill, one of many pseudo-universities touting for students here and taking advantage of the Australian Government's negligence in protecting Australia's reputation as a quality provider of education;
- (b) notes that this advertisement provides clear evidence of unaccredited universities seeking to deliver degrees in Australia via the Internet;
- (c) calls on the Government to defend the interests of Australian students, as well as Australia's reputation as a provider of quality education, by strictly enforcing the Australian qualifications framework and the national protocols for higher education approval processes; and
- (d) notes the failure of the Minister for Financial Services and Regulation (Mr Hockey) to act since receiving correspondence from the Department of Education, dated 12 October 2000, proposing further safeguards for universities through improved levels of protection for the word 'university', and calls on the Minister to act decisively to reinforce and reaffirm existing safeguards for Australia's tertiary education system.

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

That the following matters be referred to the Parliamentary Joint Committee on Corporations and Securities for inquiry and report by 18 May 2001:

- (a) the provisions of:
  - (i) the *Corporations (Commonwealth Powers) Act 2001* (NSW), and



- (ii) the Corporations Bill 2001 and the Australian Securities and Investments Commission Bill 2001; and
- (b) whether that legislation properly addresses the constitutional issues that have been raised by the High Court and provides the Commonwealth the necessary powers to legislate in this area.

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

- (1) That the following matters be referred to the Community Affairs References Committee for inquiry and report by 25 October 2001:
  - (a) the shortage of nurses in Australia and the impact that this is having on the delivery of health and aged care services; and
  - (b) opportunities to improve current arrangements for the education and training of nurses, encompassing enrolled, registered and postgraduate nurses.
- (2) That the committee specifically make recommendations on:
  - (i) nurse education and training to meet future labour force needs,
  - (ii) the interface between universities and the health system,
  - (iii) strategies to retain nurses in the workforce and to attract nurses back into the profession including the aged care sector and regional areas,
  - (iv) options to the make a nursing career more family friendly, and
  - (v) strategies to improve occupational health and safety.

**Senator IAN CAMPBELL** (*Western Australia—Manager of Government Business in the Senate*) (3.40 p.m.)—I give notice that on the next day of sitting I shall move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Petroleum (Submerged Lands) Legislation Amendment Bill 2001

Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000

Coal Industry Repeal Bill 2000

Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000.

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

Leave granted.

*The statements read as follows—*

PETROLEUM (SUBMERGED LANDS) LEGISLATION AMENDMENT BILL (NO. 3) 2000

PETROLEUM (SUBMERGED LANDS) (REGISTRATION FEES) AMENDMENT BILL 2000

#### **Purpose of the Bills**

The Petroleum (Submerged Lands) Legislation Amendment Bill 2000 is intended to:

- transfer certain powers from the Joint Authority to the Designated Authority, effectively transferring elements of administration from Commonwealth to State/Northern Territory responsibility;
- extend protection from liability of officials under section 140AA to all administrative actions, however described;
- make a technical correction to the amended section 107;
- amend the *Petroleum (Submerged Lands) Act 1967* to bring its geographic positioning provisions into compliance with the Geocentric Datum of Australia;
- make a technical correction to subsection 152(1) so that there is no doubt that decisions made by the Minister pursuant to regulations are reviewable by the Administrative Appeals Tribunal;
- make an editorial correction to one other previous amendment to the Act; and
- make a technical correction to the *Petroleum (Submerged Lands) Fees Act 1994* enabling the prescribing of a flat annual fee for infrastructure licences.

The Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000 is intended to transfer certain powers from the Joint Authority to the Designated Authority, effectively transferring elements of administration from Commonwealth to State/Northern Territory responsibility.

#### **Reasons for Urgency**

When the Bills were introduced in the House of Representatives on 6 December 2000, it was considered likely that debate on them would occur in that chamber early enough for them to be intro-

duced and debated in the Senate well before the end of the 2001 Autumn Sittings. In the event, a query from the Senate Standing Committee for the Scrutiny of Bills led to the drafting of a Government amendment to address the issue raised. This delayed the date of debate in the House.

Given that two States have already amended their offshore petroleum legislation to bring it into conformity with the Geocentric Datum of Australia and that introduction of the Datum should lower costs for the industry, it would be undesirable to further delay amending the Commonwealth Petroleum (Submerged Lands) Act to adopt the Datum.

The Petroleum (Submerged Lands) (Registration Fees) Amendment Bill 2000 is complementary to the Petroleum (Submerged Lands) Legislation Amendment Bill 2001 and needs to come into force at the same time.

(Circulated by authority of the Minister for Industry, Science and Resources)

#### COAL INDUSTRY REPEAL BILL 2000

##### **Purpose of the Bill**

The purpose of the Coal Industry Repeal Bill 2000 is to:

- repeal the Coal Industry Act 1946 to withdraw Commonwealth involvement in the Joint Coal Board;
- and transfer all the resources of the Joint Coal Board to NSW so they can continue to carry on the important functions of the board under NSW administration.

##### **Reasons for Urgency**

With the Joint Coal Board being instituted under parallel Commonwealth and NSW legislation there is the need to coordinate legislative actions by the Commonwealth and the NSW Governments to wind it up. This is particularly important to ensure that there is a smooth transition of functions and resources, including staff, from the JCB to the new State based entity being established under NSW legislation.

The NSW Government is aiming to have the new entity up and running by 1 July 2001.

The Coal Industry Repeal Bill 2000 was introduced into the House of Representatives on 28 June 2000. For the coordination reasons noted above, the Commonwealth's intention has been to wait for the NSW Government to introduce its legislation before progressing the Coal Industry Repeal Bill 2000. The Bill was set down for consideration in the Autumn sittings but an actual

date was kept open pending the presentation of NSW legislation.

In the event there have been various delays in the NSW legislative program. NSW legislation is now expected to be presented into NSW Parliament soon after Easter in order to activate the new entity on 1 July 2001.

To support this timetable, the passage of the Coal Industry Repeal Bill 2000 now needs to be progressed ahead of NSW legislation. Accordingly it has become necessary that the Coal Industry Repeal Bill 2000 be considered by the Senate in the current session.

(Circulated by authority of the Minister for Industry, Science and Resources)

#### FOREIGN AFFAIRS AND TRADE LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2000

##### **Purpose of the Bill**

The Purpose of the Bill is to apply the Criminal Code (which is part of the Criminal Code Act 1995) to all offence-creating and related provisions in Acts falling within the Foreign Affairs and Trade portfolio, and to make all necessary amendments to these provisions to ensure compliance and consistency with the Criminal Code's general principles.

##### **Reasons for Urgency**

The Criminal Code is scheduled to be applied to all Commonwealth criminal offences and related provisions on 15 December 2001.

The Bill is part of the process designed to prepare all Commonwealth criminal offences and related provisions on a portfolio-by-portfolio basis for the Criminal Code's application.

Given that the 2001 Winter sittings will take place in a relatively short sitting period and are already heavily burdened with the passage of Criminal Code Bills from eight other portfolios, the Autumn sittings are the best opportunity for the passage of the Department's Bill through the Senate.

Accordingly, it is therefore preferable that the introduction and passage of the Bill occur in the Autumn sitting period.

(Circulated by authority of the Minister for Foreign Affairs)



**COMMITTEES**  
**Selection of Bills Committee**  
**Report**

**Senator CALVERT (Tasmania)** (3.42 p.m.)—I present the fifth report of 2001 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

*The report read as follows—*

**SELECTION OF BILLS COMMITTEE**

**REPORT NO. 5 OF 2001**

1. The committee met on 3 April 2001.

2. The committee resolved to recommend –

(a) That the following bills be *referred* to a committee as follows:

Bill title	Stage at which referred	Legislation committee	Reporting date
Maritime Legislation Amendment Bill 2000 (see appendix 1 for a statement of reasons for referral)	Immediately	Rural and Regional Affairs and Transport	19 June 2001
Sydney Airport Demand Management Amendment Bill 2001 (see appendix 2 for a statement of reasons for referral)	Immediately	Rural and Regional Affairs and Transport	23 May 2001

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

- Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001
- Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001
- Therapeutic Goods Amendment (Medical Devices) Bill 2001
- Therapeutic Goods (Charges) Amendment Bill 2001

*The committee recommends accordingly.*

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

(deferred from meeting of 3 October 2000)

- Human Rights (Mandatory Sentencing for Property Offences) Bill 2000

(deferred from meeting of 6 February 2001)

- New Business Tax System (Simplified Tax System) Bill 2000

(deferred from meeting of 27 March 2001)

- Excise Tariff Amendment Bill (No. 1) 2001
- Customs Tariff Amendment Bill (No. 2) 2001

(Paul Calvert)

**Chair**

4 April 2001

Appendix 1

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

**Name of bill(s):**

Maritime Legislation Amendment Bill 2000

**Reasons for referral/principal issues for consideration**

Change in jurisdictional basis for shipping safety from voyage based/interstatedness to tonnage based.

Adequacy of arrangements between states for interstate voyages of ships under 500 tons gross tonnage.

Constitutionality of new jurisdiction.

Opt out guidelines and numbers affected.

Amendment to s284 - rationale

**Possible submissions or evidence from:**

MUA, AIMPE, AMSA, DOTRS, DEWRSB

**Committee to which bill is referred:**

Rural and Regional Affairs and Transport Legislation Committee

**Possible hearing date:**

25 May 2001

**Possible reporting date(s):**

19 June 2001

(signed) Kerry O'Brien

Appendix 2

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

**Name of bill(s):**

Sydney Airport Demand Management Amendment Bill 2001

**Reasons for referral/principal issues for consideration**

Impact of changes with respect to Trade Practices Act

Discussion paper on changes to Slot Management System replaced this week

ACCC decision on Ansett takeover of Hazelton Airlines

Impact on capacity at Sydney Airport and access of regional airlines.

**Possible submissions or evidence from:**

Airlines, regional communities

**Committee to which bill is referred:**

Rural and Regional Affairs and Transport Legislation Committee

**Possible hearing date:**

**Possible reporting date(s):** 26 June 2001

(signed) Kerry O'Brien

**NOTICES**

**Postponement**

Items of business were postponed as follows:

General business notice of motion no. 893 standing in the name of Senator Brown for today, relating to the proposed development of the Australian Defence Industries site at St Marys, postponed till 5 April 2001.

**AWARD OF VICTORIA CROSS FOR AUSTRALIA BILL 2001**

**First Reading**

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

That the following bill be introduced: A Bill for an Act to award the Victoria Cross for Australia to certain persons.

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

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

Bill read a first time.

**Second Reading**

**Senator SCHACHT (South Australia)** (3.43 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

The effect of the bill is to raise the profile and recognition of three ordinary Australians, who displayed outstanding bravery. There has been an

ongoing campaign by veterans' groups and others pressing the case to award VCs to Ordinary Seaman Teddy Sheean, Private John Simpson Kirkpatrick and Gunner Albert Cleary, in recognition of their outstanding acts of valour. It provides an opportunity, particularly for young Australians, to learn about and develop an appreciation of such outstanding bravery.

Why pick out Ordinary Seaman Teddy Sheean, Private John Simpson Kirkpatrick and Gunner Albert Cleary? Sheean is an outstanding case of individual bravery. The awarding of the VC to Sheean would be the first to the Australian Navy. Simpson's story is of self-sacrifice to save others and is now part of our history. Cleary is the hero who reminds us all of the appalling deaths of 1700 Australian POWs at Sandakan in North Borneo in 1945.

*Ordinary Seaman Edward 'Teddy' Sheean*

Sheean was born at Barrington in Tasmania on 28 December 1923. His family moved to Latrobe shortly thereafter, where he received basic schooling at the local Catholic school. Sheean went to work with his father as a carpenter and woodcutter, before enlisting in the Royal Australian Navy aged 17 on 24 April 1941. After initial training Sheean was posted to the naval depot HMAS DERWENT in Hobart, where he was attached to HMAS COOMBAR an auxiliary mine-sweeper. He was posted to HMAS CERBERUS in Victoria for further training on his 18<sup>th</sup> Birthday and from there to HMAS PENGUIN in Sydney on 11 May 1942. Once at PENGUIN Sheean was posted to the Australian built, 'Bathurst Class' corvette HMAS ARMIDALE as part of her commissioning crew. Having served nineteen months in the Royal Australian Navy, six of which were on the ARMIDALE, Sheehan was killed in action on December 1, 1942.

Sheean was a junior sailor on HMAS ARMIDALE when she was attacked and sunk by Japanese aircraft off Timor on December 1 1942. During the attack, two torpedoes struck ARMIDALE and the Captain ordered the crew to abandon ship. Mr Frank Walker best relates the detail of the ensuing action in his book 'HMAS ARMIDALE: The ship that had to die.' According to the testimony of some of the Armidale survivors, there was mayhem as soldiers that were being transported on the ARMIDALE and survivors of the ship's company scrambled to release sufficient flotation devices and get away from the rapidly sinking ship. The Japanese pilots continued their attack, and having finished with the ship turned their attention to the survivors struggling in the water. They came in with guns and cannons blazing, cutting a swathe through the strug-

gling men in the water. Sheean was still on board the sinking ARMIDALE while this was happening, and although he was uninjured and free to take whatever shelter he could find either in the water or onboard the sinking wreck, instead he made his way to the oerlikon gun, strapped himself into the mount and fired at the incoming planes. Sheean shot down one Japanese fighter and other planes were forced to swerve away from their deadly pursuit or risk being damaged as well. Sheean had his chest and back ripped open when he was hit on a number of occasions, but still he fought on, aiming streams of bullets at the incoming planes as the ship sank beneath him. Even when there was no part of the ARMIDALE still above the water, bullets continued to pour from the gun Sheean was firing. From the moment he took the decision to strap himself into the gun mount Sheean must have known he was not going to survive. His actions were pure, selfless heroism.

*Private John Simpson Kirkpatrick, of the Anzac Legend of 'Simpson and his Donkey'*

While his actions have become synonymous with the tragedy of Anzac Cove, they have remained to this point insufficiently recognised in terms of Military decoration. Although his story is one of the most famous from the First World War Anzacs, Simpson was neither an Australian nor a New Zealander.

John Simpson Kirkpatrick was born to Scottish parents, Robert and Sarah Kirkpatrick, in County Durham, England on July 6, 1892 and died aged just 22 on the blood-soaked cliffs at Anzac Cove in May 1915. An accident put a stop to his father's work as master of a coastal vessel, and meant at the age of thirteen John was responsible for supporting the family, which comprised his parents, himself and a younger sister, Annie. Having had experience with a team of donkeys giving children rides in the beach, he found work delivering milk from a horse-drawn cart. Shortly after John turned 17, his father died. Two days later, John signed on as a seaman on a tramp steamer. He worked his way as a stoker on a voyage to South America and then on to Australia. In Newcastle he jumped ship in May 1910, and worked cutting cane, cattle droving, and mining and joined the Western Australia gold rush. All this time he continued to send money home to his mother and sister in England, still strongly attached to his family despite dropping his surname to be known as John Simpson in an effort to conceal his less than auspicious arrival in his new country.

Simpson was among the first to enlist when WWI broke out, and was assigned to the 3<sup>rd</sup> Field am-

bulance, Australian Army Medical Corps as a stretcher-bearer. His unit was sent to Egypt on November 1, 1914. From Egypt, they sailed to the Greek island of Lemnos. Some of the Anzacs purchased a couple of donkeys from the locals with the idea of using them to carry their heavy weapons from Gallipoli to Constantinople. These donkeys along with many others were loaded on to the transport ships with Simpson and the rest of his comrades, bound for Anzac Cove. Simpson landed amid the carnage and confusion at Anzac Cove on 25 April 1915. Separated from his unit at the landings, Simpson immediately set about bringing in the wounded.

Soon after landing, Simpson commandeered a donkey named 'Murphy' and started his mission of extricating wounded soldiers who were still under enemy fire on the cliffs. He worked in the infamous 'Shrapnel Valley', a deep, winding, narrow fissure from which attempts to rescue the wounded soldiers were impossible without placing the rescuer in extreme peril. Stories abound of Simpson, often stripped to the waist, walking along this section of the front line with a donkey, to attend to the wounded soldiers lying in the heat and the dust. While exposed to enemy fire, grenades and artillery bombardment, Simpson would attend to their immediate needs, applying bandages as best he could before lifting them up onto the little donkey and turning to start the trip back along the treacherous track to relative safety behind the lines. This exercise continued for twenty-four days, in which time Simpson rescued as many as 300 soldiers. Stories of Simpson's rescue missions were common knowledge among the Anzac diggers including the highest ranked officers. The commanding Officer of his unit, Captain Lyle Buchanan, remarked that Simpson had earned the Victoria Cross fifty times over, and he was said by General Sir John Monash to have been worth more than a hundred men.. Simpson was on one such mission into 'no man's land' when he was shot and killed in the afternoon of May 19, 1915.

*Gunner Albert Cleary*

Albert Neil Cleary, Neil to his family, was born in East Geelong, Victoria in 1923. Her served with the 2/15 Field Regiment, Royal Australian Artillery. Cleary was imprisoned by the Japanese after the fall of Singapore, and was murdered while a prisoner of war in Borneo on 20 March 1945 at the age of 22.

Gunner Cleary, along with thousands of his fellow British and Australian prisoners of war, was forced to march on the now infamous 'Death Marches' through the jungles of Borneo. Having survived the first of these marches from Sandakan

to Ranua, Cleary escaped with another Australian soldier, Gunner Wally Crease. He was captured four days later by some locals who turned him over to the Japanese in return for a substantial reward.

Upon being handed back to the Japanese, Cleary was subjected to a sustained regime of torture and mistreatment. For the first afternoon and all of the next day Cleary was forced to kneel with a log tied behind his knees and his hands and feet tied behind him. While in this kneeling position he was kicked, punched and beaten with rifle butts and sticks by his captors. Cleary was kicked under one of the huts overnight, still tied to the log and without medical attention or food.

The following day Cleary was stripped of his clothing and tied by the neck to a tree. Cleary was beaten, kicked and urinated upon by the guards, with each change of shift bringing on a new round of torture. He was left tied to the tree, battered and bleeding and suffering from dysentery, without shelter from the blistering heat of the day or the freezing cold of the night.

After enduring this treatment for eleven days, and more dead than alive, Cleary was untied from the tree and 'dumped like garbage awaiting disposal' near a gutter next to a track. He was picked up by some of the Australian POWs and carried to a stream where he was given a drink and washed. His mates then carried him back to one of the prisoners' huts where he finally died.

The courage displayed by Gunner Cleary in his attempt to escape and throughout the subsequent ordeal was an inspiration to those with whom he was imprisoned.

The three profiles are based on the best available sources. I have made every effort to paint a fair and inclusive picture. It is more than possible that others may have a different version of events. Some may place different emphasis on contemporary reports - others may have sources of information that I haven't seen. Given the passing of time none of us can claim 100% accuracy. But the facts remain indisputable - Sheean, Simpson and Cleary each in his own way performed outstanding acts of valour.

Since 1856, 1351 British and Commonwealth soldiers have been awarded the Victoria Cross. The Cross is only awarded "for the most conspicuous bravery, or some daring or pre-eminent act of valour or self-sacrifice or extreme devotion to duty in the presence of the enemy".

The Victoria Cross of Australia was established on 15 January 1991 as the highest Australian operational gallantry award. It supersedes the Victoria Cross instituted in 1856 and conferred as an

Imperial award. The Cross now has Australian Letters Patent signed by the Queen of Australia, and its regulations reflect the criteria for the original award of the same name. It may be awarded posthumously as it was by King Edward in 1906. No awards have yet been gazetted. Gallantry awards are made by the Governor-General on the recommendation of the Minister for Defence.

At the end of major military conflicts, it is usual for an end of war list to be established. This process involves assessing and reassessing gallantry recommendations but, most importantly, when completed, it finalises awards and honours for that conflict. The end of war list for the Second World War was completed in 1948 and King George VI declared that no further awards would be made. Queen Elizabeth II reaffirmed this position in 1965.

It could be argued that an Act conferring a Victoria Cross may be beyond the legislative power of the Parliament. This is because the creation and award of such honours are a Crown prerogative and therefore any legislative action would be contrary to the doctrine of the separation of powers. On the other hand, it is my belief that, under section 51(vi) of the Constitution, the Parliament has authority to legislate with respect to "naval and military defence of the Commonwealth" and that conferring awards and honours is a valid exercise of this head of power.

There is widespread support in both the veterans' and the wider community for the awarding of posthumous Victoria Crosses to three ordinary but very great Australian heroes. Our history and remembrance of the service given by all veterans will be greatly enriched by the awards.

This year we celebrate the centenary of Federation. Without doubt the contribution of our service men and women in various conflicts in the first 100 years of Federation, more than any other, has ensured that our Federation has survived. They have made a major contribution to the development of the Australian character with its commitment to equality and a fair go for all. Nothing could be more appropriate as part of our centenary celebrations than that three very ordinary, but very brave, Australians are personally rewarded for their bravery. Just as importantly, the awards can also be taken as a broad recognition of the contribution that our service men and women have made to Australia. This award is as much an award for every service man and woman as it is for these three.

The awards will enrich our history, foster further the remembrance of those who lost their lives in

service for Australia and the evolution of the Australian character and national identity.

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

#### **ENVIRONMENT: KYOTO PROTOCOL**

**Senator BROWN (Tasmania)** (3.43 p.m.)—I ask that general business notice of motion No. 887, which calls on the government to ratify the Kyoto protocol, be taken as a formal motion.

Leave not granted.

#### **Suspension of Standing Orders**

**Senator BROWN (Tasmania)** (3.43 p.m.)—Following that objection from Labor, and pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent Senator Brown moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 887.

I do this because this is an important matter. One thing that cannot be argued here by either the government or the opposition is that the matters of global warming and, in particular, the ratification of the Kyoto protocol are not urgent matters for consideration. We have in the last week seen the commitment of President George W. Bush in the United States that the United States will withdraw from the Kyoto protocol. We have seen every minister who has spoken on the matter here in the federal parliament, including the minister for the environment, use exactly the same excuse—that is, that developing countries are not aboard. But they were never intended to be, and that is not what the Kyoto protocol is about—putting Australia in roughly the same position. That is not consistent with the feeling of the Australian people, who want to see the Kyoto protocol ratified.

It is an urgent matter that this Senate speak on this. There will be a conference in Bonn in July, where the world was due to, and I hope will still, move to finalise the small print, preparatory to the ratification of the Kyoto protocol by at least enough countries from the developed world—and around 55 per cent of global warming gases are coming from the developed world—to bring the protocol into global law. What is holding

the government back? The coal industry, the aluminium industry, the woodchip industry and all their minions—against the feeling of Australians.

There is a heaven-sent opportunity in this climate for the opposition to be stating a different point of view from that of the government; a view which is not just different in sentiment but also different in action orientation. The Kyoto protocol, if ratified, would come into law next year. There will be an election before the end of this year. If the Howard coalition government will not fulfil its obligations to the world and to future generations by taking a lead and saying, 'We got the best deal out of Kyoto; we can be the worst polluters under the Kyoto protocol. We'll at least take a lead in seeing that the world signs up to it and ratifies it,' then the opposition should be seizing this opportunity to say, 'In government, that's exactly what we will do.' There is the excuse that the fine print is not sorted out, but everybody who knows about the progress of the Kyoto protocol knows that that can be done, particularly now that the United States has turned its back on its obligations.

The process ought to be one of Australia joining with Japan, Europe, Russia, New Zealand and the other countries who want to bring this protocol into force. If the Beazley Labor opposition is to give Australians the feeling that it really does think the environment counts, that its politicians are in tune and that there is a real opposition, it will move to support this motion. As you know, Madam Deputy President, the best way for Labor to duck a motion like this is to block formality, as we have just seen happen, and then vote against the debate proceeding and coming to a conclusion. That is called ducking; that is called copping out; that is called an opposition failing to be an opposition at a time when it should be speaking up on this matter and making a difference.

**Senator Calvert**—You still give them your preferences. You're still on their side.

**Senator BROWN**—We have Senator Calvert from Tasmania opposite coming to Labor's support here, but they can speak for themselves.

**Senator Ian Campbell**—No, he's attacking you for being a hypocrite.

**The DEPUTY PRESIDENT**—Order! Senator Campbell and Senator Calvert, would you please withdraw your unparliamentary language.

**Senator Calvert**—I withdraw.

**Senator Ian Campbell**—Ditto.

**Senator BROWN**—This is a matter of huge importance to all Australians, to all people around the world and to all future generations. The planet is at stake in terms of the future of the environment, our economy, social cohesion and the happiness of future generations. It is our responsibility, and the Senate—and particularly the opposition—should be supporting this motion. (*Time expired*)

**Senator BOLKUS (South Australia)** (3.50 p.m.)—The opposition has sought to defer this resolution today by not allowing it formality, because we believe it is a bit premature at the moment to make this particular call. I know Senator Brown would like us to support it.

**Senator Brown**—It's been going on since 1998.

**Senator BOLKUS**—It has been going since 1998, but we need to take into account at the moment that, as the US is seeking to distance itself from the protocol, moves are going on internationally to try and see what can be resurrected in the process. Reading, for instance, the emails this morning and the news reports from overseas, there are a lot of endeavours going on to get a coordinated world position to put to the US. At this stage, for instance, the US has indicated that it will probably be at the subsequent hearings post-The Hague in Bonn in the middle of the year, and other nations are working very hard.

Minister Pronk, for instance, who chaired the meetings at The Hague, indicated in the most recent press report, which I saw just a few hours ago, that it was his aspiration to have something prepared by 10 April to be put to the United States by 21 April, an agenda that was being developed by European nations. At the same time, it is quite clear that reaction within the United States has been pretty solidly against the Presi-

dent's position. The important thing is that even people like Minister Pronk have said in their releases this morning that, although it is possible and although other nations will move towards ratifying the Kyoto protocol in that period until 2002, it is not desirable to do that without having the US on board. That is a statement coming from a leading European spokesman on the issue. We have to take all this into account and we have to recognise—

**Senator Brown**—It's better than doing nothing at all. It's better than having no protocol.

**Senator BOLKUS**—Senator Brown, I believe having a call like the one you want to make right now, at a time when even European nations are trying to work out where to take the agenda over the next few weeks, is somewhat premature. As a statement of principle, nations are saying that they want to see this protocol implemented within the time period recognised, but they are also saying that there is a lot of work to be done in clarifying those outstanding issues. They are substantive issues. President Bush has laid on the table two major issues: the role of developing nations and the issue of sinks and other mechanisms. They were issues at The Hague. They are stumbling blocks. For instance, Minister Pronk has indicated that he has a way through those, but we are not in a position to see what the formula is and to make a judgment on it. It may very well be that that formula is acceptable.

Basically, at this stage, given the uncertainty with respect to the protocol, we think it is desirable to wait even a few weeks. We have problems with respect to the Australian government's position. It goes in all directions. We have stated from our side of the parliament that we are committed to the Kyoto protocol process. We want the United States to stay in it. We want an outcome. We want to be in a position where the nations of the world can sign up within that period. We also want to say that our position will not depend on what the US does at the end of it. We can foresee circumstances where we can ratify the protocol, and there is a huge and substantial body of international opinion in support of it. That looks like happening, and



it may very well be that, domestically and internationally, the USA will be forced to come back in a serious way to the negotiating table. But, at this stage of process, there are too many uncertainties for the Senate to pass this motion. Let us continue the call for the US President to come back to the negotiating table in a constructive way.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.54 p.m.)—The government will be opposing this suspension of the standing orders for a couple of reasons. Firstly, it is entirely unclear as to why this issue, which is obviously one of the most important international environmental issues, needs to be decided today in the Senate. Secondly, I would endorse many of the remarks made by Senator Bolkus. I have been listening to Senator Brown's intervention in the debate and his interjections to Senator Bolkus. Senator Brown is effectively saying that it does not really matter what the United States does and that Australia, regardless of any perceived difficulties with the protocol itself and regardless of what the United States does, should just sign the protocol. He tells us that he cares about the planet.

In a way, this five-minute intervention and then another five minutes of interjections by Senator Brown tell us about Senator Brown and the environment and raise the question: does he care more about the planet or about cheap political stunts? He is effectively telling us today to sign the protocol regardless of the effect on the planet. He is saying we should do what President George Bush has refused to do. President Bush has said, 'We have problems with the protocol.' Senator Bolkus has said that President Bush has put these issues on the table, and they are very important issues. In some respects, they are concerns that Australia has had—the issue of developing nations, for example. Those who suggest that you go ahead with a protocol that does not include mitigation in relation to developing countries—

**Senator Brown**—Why did you sign up to it if you do not agree with it?

**The DEPUTY PRESIDENT**—Order! Senator Brown, would you please cease interjecting.

**Senator IAN CAMPBELL**—If you do not address that as a serious problem, you cannot care about the planet. If you ignore those issues, quite clearly you are ignoring the best interests of the natural environment and the living environment for all creatures on the planet. Saying that we should go ahead with this without the greatest greenhouse gas emitter in the world being part of it is absolutely ludicrous and patently silly. Senator Bolkus spoke very constructively about where we should move from here. I make the point that Australia has not changed its position on climate change and remains absolutely committed to dealing effectively with the issue.

The government, as all senators know, have a substantial domestic program to reduce greenhouse gas emissions, and we will continue to implement that program. On the international scene, the Australian Minister for Foreign Affairs, Alexander Downer, discussed climate change with senior members of the Bush administration during his most recent Washington visit. I reiterate the fact that the Australian government hold the view that, to be effective, any global framework to address climate change must include the United States. I for one welcome the comments of Senator Bolkus, who recognises that reality. It is absolutely absurd to suggest that Australia should immediately go ahead and sign the protocol in full knowledge that the participation of the United States is now subject to a comprehensive review of that nation's climate change and energy policies. The Australian government regard it as appropriate, sensible and responsible to work closely with the Bush administration during this policy review and to move climate change mitigation forward through this process, not through advocating what could only be regarded both domestically and internationally as a very cheap and ineffective political stunt.

**Senator BARTLETT** (Queensland) (3.58 p.m.)—The Democrats strongly support this motion to suspend standing orders to enable

us to have a vote on the substantive motion, which is quite simply:

That the Senate calls on the Government to ratify the Kyoto Protocol on climate change.

We strongly support the motion and the call to ratify the Kyoto protocol. It is worth emphasising, though, the reason we are debating this. The Senate will not be able to have a vote on the motion to ratify the protocol because of the Liberal Party and the Labor Party combining to prevent us having a vote, following the Labor Party's refusal to grant the motion formality.

Why they have done that is beyond me. I thought it was to prevent them showing their hand on whether they think we should ratify it, but Senator Bolkus's comments have made that quite clear: he says we should not. The Labor position is, as stated by their environment spokesperson just now, that Australia should not ratify the protocol. 'It is premature to make this call,' to use Senator Bolkus's words. At least their position is on the table. It is one the Democrats fundamentally disagree with. We believe that, whilst it is an absolute tragedy that President Bush has pulled the US out of the Kyoto process, it provides an opportunity for Australia to reposition itself.

Prior to now, the Australian government had taken a position of just hiding behind the US and saying, 'We can't move until it does, so we'll just sit here.' Now the government are in a position where, because the US has pulled out altogether—unless Australia pull out altogether, which is absolutely unacceptable—we have a chance to forge our own identity and path on this. We can take those other nations, such as Canada, with which we have been hiding behind the US, move across and work in with the Europeans to force this protocol forward rather than have it pulled backward. A lot of the problems and uncertainties about the content and implementation of the protocol have been because of stalling tactics and obfuscation by the USA, aided and abetted by Australia. Now the US is out of it we have a chance to push it forward. Obviously it is best if the US is in there, but it does not have to be in there at the start. One of the ways to get it back in

there is to force the issue by ratifying it, with or without it.

The Democrats strongly support the motion that the Kyoto protocol should be ratified as soon as possible. We note with disappointment the ALP's position against that, stating that we should not ratify the protocol. Why the ALP acted to prevent the Senate specifically voting on a call to ratify the protocol is beyond me. Given that their position is now quite clear—that they do not support that—why they did not enable us to have that vote on the direct motion, rather than try to prevent a vote on it by refusing formality and refusing to support a suspension of standing orders, is baffling. I think it is clear that they are still hoping that an illusion will be created that there is some commitment to ratifying. Clearly, at this stage anyway, there is not. I can only hope that what is supposedly premature—in the Labor Party's opinion—ceases to become premature very soon and they move their position to support ratification.

It is important to emphasise that it is only one step in addressing climate change issues. Even if the US were to come on board gleefully and happily and embrace Kyoto in all its forms, it would still be only one step; it would not be the solution to all the issues relating to climate change and greenhouse control. But it is an important step and it is one that Australia should urgently push forward. Australia should not use the concerns of the US or of anyone else as an excuse for holding back. Now more than ever is the time to move forward on this issue. It is an urgent issue, which is why it is urgent that we suspend standing orders. It is disappointing that the Labor Party and the Liberals have combined to prevent a vote on the direct motion. But it is quite clear from comments from both of those larger parties that neither of them support ratifying the protocol. That is something that is of concern to the Democrats, and it is a position that the Democrats do not share at all. We believe this is an incredibly urgent matter. It is not just a crucial environmental matter but a crucial economic matter, for future generations in particular. It is one that we need to act on immediately. It is a tragedy that neither La-



bor nor Liberal at this stage share those views. (*Time expired*)

Question put:

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

The Senate divided. [4.08 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes.....	10
Noes.....	<u>44</u>
Majority.....	34

#### AYES

Allison, L.F.	Bartlett, A.J.J.
Bourne, V.W *	Brown, B.J.
Greig, B.	Lees, M.H.
Murray, A.J.M.	Ridgeway, A.D.
Stott Despoja, N.	Woodley, J.

#### NOES

Bishop, T.M.	Brandis, G.H.
Buckland, G.	Calvert, P.H.
Campbell, G.	Campbell, I.G.
Collins, J.M.A.	Cook, P.F.S.
Coonan, H.L.	Cooney, B.C.
Crane, A.W.	Crossin, P.M.
Crowley, R.A.	Denman, K.J.
Eggleston, A.	Ferris, J.M.
Forshaw, M.G.	Gibbs, B.
Gibson, B.F.	Herron, J.J.
Hogg, J.J.	Hutchins, S.P.
Knowles, S.C.	Lightfoot, P.R.
Ludwig, J.W.	Lundy, K.A.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Murphy, S.M.	Newman, J.M.
O'Brien, K.W.K *	Patterson, K.C.
Payne, M.A.	Reid, M.E.
Schacht, C.C.	Sherry, N.J.
Tambling, G.E.	Tchen, T.
Troeth, J.M.	Vanstone, A.E.
Watson, J.O.W.	West, S.M.

\* denotes teller

Question so resolved in the negative.

#### COMMITTEES

##### Environment, Communications, Information Technology and the Arts References Committee

##### Extension of Time

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

That the time for the presentation of the report of the Environment, Communications, Informa-

tion Technology and the Arts References Committee on telecommunications and electromagnetic emissions be extended to 20 April 2001.

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

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on the Environment and Heritage Legislation Amendment Bill (No. 2) 2000 and two related bills be extended to 8 May 2001.

#### Economics References Committee

##### Extension of Time

Motion (by **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 24 May 2001.

#### Scrutiny of Bills Committee

##### Report

**Senator COONEY (Victoria)** (4.12 p.m.)—I present the fifth report of 2001 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills *Alert Digest* No. 5 of 2001, dated 4 April 2001.

Ordered that the report be printed.

#### Senators' Interests Committee

##### Report

**Senator DENMAN (Tasmania)** (4.13 p.m.)—I present report No. 1 of 2001 of the Committee of Senators' Interests, being its annual report for 2000.

Ordered that the report be printed.

**Senator DENMAN**—I seek leave to incorporate a short statement in *Hansard*.

Leave granted.

*The statement read as follows—*

The Committee of Senators' Interests oversees the requirements of the Senate scheme for declaration of pecuniary interests and conflicts of interest.

Declaration ensures that the Senate and the public are aware of relevant private interests at the time when a conflict with public duty may have arisen.

Although serious penalties may be imposed for wilful disregard of the requirements of the Senate scheme, it is, in many respects, a self-policing procedure.

It relies on the integrity, commonsense and efficiency of each senator to make timely and accurate declarations.

As such, the credibility of the scheme is highly dependent on the credibility of senators themselves, on their self-imposed standards of conduct in political life, and on public perception of the appropriateness of those standards.

A scheme for the declaration of pecuniary interests is the more effective when it is complemented by arrangements which protect and improve standards in political life.

To this extent, many believe that a statement of principles or a code of conduct would be a significant adjunct to the current declaration scheme.

Since 1998 I have taken the opportunity to encourage the Senate and senators to consider adoption of a statement of such principles, as has been done in other parliaments.

I did so again in the Senate on 7 December 2000, when I tabled for senators' information a draft statement of principles of parliamentary life.

I note that the Finance and Public Administration Legislation Committee is now considering proposed bills, initiated by Senator Faulkner and Senator Murray respectively, one of which includes reference to a parliamentary code of conduct.

The future of an appropriate statement of principles of parliamentary life for senators, is now a matter for that committee and the Senate to determine.

#### **Treaties Committee Report**

**Senator COONEY (Victoria)** (4.14 p.m.)—On behalf of the Joint Standing Committee on Treaties, I present the 38th report, entitled *The Kyoto protocol: discussion paper*, together with the *Hansard* record of the committee's proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

**Senator COONEY—I move:**

That the Senate take note of the report.

The discussion paper I have just tabled highlights the major issues presented to the Treaties Committee during its inquiry into the Kyoto protocol. The committee has heard differing opinions from the community about whether ratification of the protocol is in the

national interest. Advocates of the protocol have argued that ratification is an important step towards successfully managing the impact of global warming. They also claim that ratification would offer economic opportunities through greater energy efficiency and new technologies. On the other hand, opponents have argued that the costs to Australia of meeting its emission targets under the protocol are too great. They expressed concern about possible negative impacts of implementing emission controls on business and industry.

The recent announcement by the Bush administration to abandon the Kyoto protocol was unfortunate. However, I am pleased to note that the Australian government will continue to be involved in negotiations on the Kyoto protocol and will continue to take a lead role in a coordinated international response to climate change. As the Kyoto protocol is an agreement of such significance globally and locally, the committee considers it important to take every opportunity to promote community understanding of, and debate on, the various complex issues involved. The Treaties Committee will continue to receive evidence on whether ratification of the Kyoto protocol is in Australia's interest. We will consider the issues further in a final report later this year. I commend the discussion paper from the Treaties Committee to the Senate.

I would like to thank the inquiry's secretary, Susan Cardell, who wrote the speech I have just given—that is why it is such an eloquent speech that fits together so well, in contrast, perhaps, to my usual style—the secretary, Grant Harrison, and the administrative officer, Lisa Kaida. I noted there were additional comments to the paper by Senator Andrew Bartlett, and I presume he wants to say some words about that.

**Senator BARTLETT (Queensland)** (4.16 p.m.)—I thank Senator Cooney, who I think is the deputy chair of the committee. I would like to speak briefly to this report. I did include some additional comments as an appendix to the discussion paper. I did that because, while I think the document is useful and I do not wish to be seen as dissenting from it in a direct way—because a lot of ef-

fort was made to present all views from all sides—I and the Democrats are still of the view that the Kyoto protocol is an urgent issue and that addressing climate change is an urgent issue, as I was just saying during a debate on a different motion. I believe a strong statement that emphasises this fact needs to be made by any parliamentary body looking at climate change.

Clearly there are differing views on some of the scientific evidence, but it is also quite clear that there is widespread agreement and broad scientific consensus throughout the world that human induced climate change is a reality. There are a few people who have given evidence to date, most notably the Lavoisier Group, who seek to dispute that. Obviously they have a right to put forward their views, but the Democrats believe there is no serious doubt about the reality of human induced climate change. We should not let the fact that there is still debate about the precise causes and extent of that change be a reason for not moving forward now in a strong and concerted way. While this inquiry of the Treaties Committee is ongoing—this is really like an interim discussion paper—I nonetheless believe that the evidence, both before the committee and more widely, is well and truly clear that we should continue the inquiry in the context of making a strong statement about the reality of climate change and a strong statement about the need for significant action now.

We can continue to debate the fine print. In relation to the Kyoto protocol itself that certainly is appropriate, and it is helpful that this discussion paper has the text of the protocol in it. Nonetheless, I think it is important to emphasise that there is still very substantial and important argument about some measures in the protocol and how they will be implemented, interpreted, measured and enforced, and that is a legitimate debate. But, again, that debate should not be used as a reason not to move forward until it is all resolved. The excuse many people are hiding behind is that we cannot move forward at all until every single detail is worked out. Well, every single detail is never going to be worked out, because it is quite clear that the Kyoto protocol is not the be-all and end-all

to addressing climate change. It is one very important step but it is not going to be the last step; it will be a first step. That is also why it is important that this be a matter of urgency.

I believe it is important that I include some additional comments simply to indicate my personal view, and I believe the view of the Democrats as a whole, that this matter is urgent. While it is appropriate to continue to look at the details and differing views on some aspects, that should not be used as a reason to sit back and wait. The statement on the protocol just recently by Senator Bolkus, the Labor Party shadow environment minister, identified the dangers of that problem. He basically stated that it was premature—to use his precise word—to move towards ratification at this time. The Democrats' view is that it is not premature; it is actually very urgent. That is the context I felt was needed in addition to some of the other useful information in this discussion paper.

Having said that, I should say that this is a useful document that contains a good outline of some of the issues and differing viewpoints not only of witnesses and in submissions but also of the members of the committee. As a member of the committee, I have not been able to participate in all of the hearings of the inquiry as fully as I would have liked because, like many others in this place, I am on a multitude of committees and, unlike many others in this place, I have a multitude of portfolio responsibilities as an individual. So, unfortunately, I was unable to devote the time I would have liked to all of the hearings, but I have certainly read the submissions, attended some of the hearings and followed the evidence with interest. Useful information has been provided, and I think it is appropriate and useful for the committee to examine the protocol. I think it is a good practice and I hope the committee will continue to engage in the practice of examining some of these major treaties and international instruments before the government is at the stage of ratifying and signing them rather than after, which tends to be the case.

That being said, this is one treaty that the Democrats believe the government should be

moving to ratify, regardless of how fast or otherwise this particular inquiry progresses. As senators would be aware, towards the end of last year the Senate environment committee brought down a comprehensive report on not just the Kyoto protocol but climate change more broadly. It is called *The heat is on: Australia's greenhouse future*, and it is a very substantial and worthwhile document that I would recommend to anybody who wants a comprehensive overview of climate change issues and actions that need to be taken. That report contains a significant number of recommendations about actions that need to be taken to address climate change, on a much broader scale than whether we should or should not ratify the Kyoto protocol and how the measures in the protocol should work.

The protocol itself is worth examining in detail, and I think it is useful for the Treaties Committee to do that. Obviously my view, and the Democrats' view, is that the protocol should be ratified as soon as possible, and the detail of some of the unresolved issues needs to be worked out as soon as possible—certainly by the next meeting, which is in Bonn in June, I think. Whilst it is a tragedy that the US government has chosen to move away from the protocol, it provides extra urgency for Australia to move forward, embrace it and push the issue more firmly. I think that is one of the only ways to force the issue in terms of the US government's position. If the rest of the world gets on board, I believe that the US government will have no option but to catch up. That is why it is such an urgent issue for Australia, even if we are looking at this purely as a national interest issue.

In my view, this is a global issue that should be looked at in terms of global interest. It is the perfect example of an issue where national boundaries become less important. Even if we look at it solely in terms of national interest, which the Treaties Committee does, it is clearly in Australia's economic and environmental interest to be at the forefront on climate change issues, including with the protocol. The protocol not only assists in averting a major economic threat by trying to minimise climate change

but also provides us with an opportunity to be at the forefront of significant shifts in the nature of economic activities—particularly in transport and energy—and technological development. Australia can be at the forefront and gain the economic advantage, or we can be trailing the field and having to play catch-up. We will then be less well placed to deal with any impacts of climate change, of which there will undoubtedly be many, and the longer we leave it, the more immediate any corrective action will have to be.

We are better off leading the way rather than having our response dictated to us by other nations or by the environmental imperative of major changes. I think we are already starting to move into that situation. There is certainly some credence to the suggestion that some of the more severe weather circumstances that are occurring may be due in part to climate change. There is a major risk to the Great Barrier Reef in my home state of Queensland, and it would have a major economic impact if that were severely damaged by coral bleaching. It is an urgent issue.

I commend the paper. I commend the secretariat—the inquiry secretary in particular—for their ongoing work and for their ability to get together an interim discussion paper, giving the wide range of views of members on the committee. I look forward to the ongoing activity of the committee, and I certainly encourage people to examine this discussion paper as well as the previous Senate committee report, and try to push the debate more firmly in a positive direction.

**Senator COONAN (New South Wales)**  
(4.26 p.m.)—I rise as a member of the Treaties Committee to add some brief comments on the tabling of what has been described as a useful discussion paper—and I agree with that—on the Kyoto protocol. It is fair to say that the Kyoto protocol is an evolving story. I think it is also fair to say that it excites a range of responses—from those who are convinced of the scientific arguments about global warming and are insistent upon Australia ratifying it as a means of moving towards greater energy efficiency to those who are reluctant to make the commitment be-

cause they are concerned about the cost to business and because they are doubtful about the validity of the scientific arguments and the utility of the protocol.

There does seem to have emerged from the committee's deliberations a consensus that a recommendation that truly reflects the national interest cannot be made until issues such as flexibility mechanisms, compliance and the involvement of developing countries are resolved. In my view, the committee responsibly decided not to pre-empt the outcome of further inquiries and further evidence. It is an evolving story, with the United States now announcing that they will not be ratifying it.

The Kyoto protocol was signed in 1997. It requires more than 30 industrialised nations to cut or restrict their gas emissions by the year 2012. The committee has received submissions which point out that developing nations, which account for about 40 per cent of the planet's greenhouse emissions, are exempted from the reductions. It has been argued by both the United States and Australia that this leads to a non sequitur, an absurd situation, because once the industrialised countries scale down energy burning industries and bear the considerable cost burden of doing so, offending industries could simply shift their businesses to a developing nation where the restrictions do not apply.

The protocol arguably has many flaws. Perhaps fundamental to the whole argument is that if the protocol were ratified by the required number of nations, and if they all complied—these are serious 'ifs'—it just might shave 0.07 degrees Celsius off the extent of global warming. Quite simply, no-one knows, and we do not know, what the global cost benefits of committing to the Kyoto protocol would be—on jobs, on outputs and, indeed, on the environment.

As the committee's discussion paper clearly demonstrates, the Kyoto protocol has achieved—and I think this is acknowledged by people across the spectrum of the debate—a legitimate focus on the need for a healthier planet and the need to encourage countries to look at more efficient use of energy as a global commitment. The delay in

commitment to Kyoto—for legitimate reasons—has not prevented Australia from implementing its own domestic programs towards achieving the targets agreed at Kyoto. A lot of speakers in this debate seem to forget the fact that Australia had made this commitment even before Kyoto. In late 1997 the Prime Minister announced a program of domestic reforms for Australia and agreed to fund that program by \$180 million. That program has since been expanded. So the total funding is in the order of \$1 billion. Australia is already accepting a fair share of what was the global commitment at Kyoto.

In my view, the Joint Standing Committee on Treaties was justified in issuing an interim report while so many issues remain unresolved. Indeed, I think it would have been irresponsible of the committee to have done otherwise. While those issues are unresolved, those who advocate ratification cannot claim to be green saviours nor should those who oppose ratification be characterised quite unfairly as environmental vandals. Australia is making a commitment quite irrespective of the Kyoto protocol, as indeed it should. As my colleague Senator Cooney said, the Treaties Committee will continue to receive evidence as to whether ratification of the Kyoto protocol is in Australia's interests and we will consider the issues in a final report later this year. To have done otherwise would have been to pre-empt the outcome. I commend the interim report to all of those interested in this most complex and evolving story.

**Senator TCHEM (Victoria)** (4.32 p.m.)—I welcome the tabling of this discussion paper from the Joint Standing Committee on Treaties. As Senator Cooney so succinctly described to the Senate, global warming due to the influence of human activities poses a potential catastrophic environmental problem for the world community. Although there are still some serious disputes over the degree of scientific certainty regarding both the processes involved and the range of outcomes possible, the pattern of consistent out of cycle heating of the lower atmosphere of the earth is an increasing phenomenon. After some 30 years of intense scientific debate, few people today do not accept the likeli-

hood of global warming. The question is: what should we do about it? The Kyoto protocol is part of a process in the continuing international discussion in search of a consensus approach to deal with this threatening phenomenon. But I must emphasise that it is a process; it is not necessarily a solution in itself.

Earlier, Senator Bartlett and Senator Coonan put the various political positions with respect to the argument and Senator Bolkus, speaking to Senator Brown's motion on the Kyoto protocol, indicated that the Labor Party has a very similar position to the government's—although we do not know what the details are. I would like to draw the Senate's attention to two things. Firstly, I would like to speak about the nature of the Kyoto protocol and the context in which it was drawn up. This is quite often lost in the debate—perhaps because some people regard the Kyoto protocol as a fait accompli rather than a process. Page 12 of the discussion paper talks about the objective of the Kyoto protocol. It says:

Such a level should be achieved within a time-frame sufficient to allow eco-systems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development proceed in a sustainable manner.

That is the important part. The underlying philosophy of the Kyoto protocol is that changes should occur but they should occur in a sustainable manner—not damaging to the economy nor the social structure of the nations of the world.

The second thing I would like to bring to the Senate's attention is that, after this discussion paper had been completed, the Treaties Committee had the opportunity last night to have a brief discussion with Professor Schneider of Stanford University. Professor Schneider is a major contributor to the Intergovernmental Panel on Climate Change. He is the coordinating lead author of one of the chapters and the lead author of another chapter of that panel's third assessment report. So he is very much directly involved. He provided the Treaties Committee with a nine-point summary of what he thought were the emergent findings from that third as-

essment report. Five of those findings refer to the scientific aspects. I will read those findings into the *Hansard* record. They say:

1- Human influence on climate is even clearer than five years ago (at the time of the SAR).

2- Warming by 2100 likely to range from 1.4 to 5.8 °C, but regional projections of climate change much more uncertain.

3- Many climatic extremes likely to increase.

4- Stabilisation of CO<sub>2</sub> concentrations requires net emissions to drop to near zero over the next century or so, depending on the final stabilization level.

This is a finding which many people ignored. In fact, if we stopped emissions completely for 100 years, it would take that 100 years to make a difference to the CO<sub>2</sub> levels. I go on:

5- The impacts of recent temperature trends are clearly discernible in observations of plants, animals and other environmental systems.

These are the scientific facts. The other four findings refer more to how we deal with it. Finding No. 6 is that:

Adaptation can help to minimise negative, and take advantage of positive, climate impacts, especially up to a few degrees warming.

In other words, we need to be adaptable so that it is not necessary to treat all changes as dangerous or bad. No. 7 says:

Poorer nations or groups within nations are likely to be the most vulnerable to climatic change up to a few degrees.

That is because of the inability to adapt. No. 8 says:

There are many low cost technological options to reduce emissions, but barriers to their deployment exist.

These barriers are mainly social and perceptual barriers. No. 9, which is the most important one, summarises:

Near term mitigation that goes beyond the available low cost opportunities is likely to be less cost-effective than gradual abatement, provided that development of low cost, low carbon options is pursued.

The scientific report on the second assessment report of the IPCC actually supports the approach that this government has pursued—that is, we seek a gradual structural change without social and economic upheaval to our own society. We also encourage the rest of



the world to undertake the same process. It is not a case of charging out and taking rapid drastic action without regard for consequences, as some people might advocate.

I note also that, although the United States administration has declared it will not ratify the Kyoto protocol, it has undertaken to continue to participate in the dialogue amongst other nations on future process. That, in fact, is the spirit of the Kyoto protocol—that we will have continuous dialogue and searching for solutions. It is not, by any means, the determination of further actions. I think this discussion paper is also in that spirit. It presents both sides of the arguments so that we can proceed forward. I commend this report to the Senate.

**Senator LUDWIG (Queensland)** (4.41 p.m.)—In relation to the report *The Kyoto Protocol—Discussion Paper*, I just wish to add a couple of words. The members of the committee who are in the Senate have provided a scope on what the protocol is about and where the issues may be heading. I wish to add just a bit more on where the terms of reference might take the Joint Treaties Committee. What is clear, notwithstanding what the President of the United States has said—and notwithstanding what appears to be Senator Minchin's or the government's position in respect of climate change as a generic term—is that there is a good and cogent reason for the matter to continue to be looked at and examined.

The terms of reference of the committee give scope for some of those matters to be further expanded on and dealt with. They deal with issues such as what definitions and criteria Australia should develop and actively pursue in its national interest with regard to grandfathering trading credits, carbon credits, sequestration, revegetation, land management and definitions. I go to that point because I detect an unusual note and perhaps it can be corrected. When I hear Senator Minchin answer questions during question time from the opposition on the important issue of emissions trading and carbon credits, it seems that the concept of emissions trading is one that has escaped him. I hope I am wrong about that but, to be on the safe side, I have also taken the opportunity to help the

government understand that emissions trading is not a new concept. Emissions trading dates back to the United States as early as 1980. I am sure if I looked a bit harder I might find it before then. There are some articles about emissions trading that could be brought to the government's attention. One such article is about the US sulfur dioxide emission allowance trading program, which is a mechanism to achieve emissions reduction cost-effectively. The article was produced by a Sharon Saile. She was a policy analyst for the US Environmental Protection Agency in Washington, DC.

One of those wonderful stories within it was about reducing the acid rain that the United States were suffering at that time. They developed an emissions trading system to deal with that pollution. They did that through a publication which resulted in the 1990 Clean Air Act. The original emissions trading concept obviously predates that but the Clean Air Act of the United States picked up on those concepts, refined them and allowed emissions trading to be a matter that could be pursued and utilised in the domestic forum. It is not something I am advocating; I am simply ensuring that this government understand that, although they may have a view about the Kyoto protocol and a view about international emissions trading, that does not rule out looking at the issue of domestic emissions trading. It does not rule out concepts of a cap and trade in a domestic market, which is effectively one way the US have adopted to assist in dealing with their problems of acid rain. It may not be the best solution. It may not be the only solution. It certainly is a way, though, that Senator Minchin seems to have overlooked or ignored in the answers to his questions. Maybe he did not have time to be able to do that. I merely raise those issues for his attention and perhaps further study, in order to help industry deal with pollution on a broader level and also perhaps to ensure industry can understand the Kyoto protocol a little better and understand how emissions trading, which is one of the issues covered within the Kyoto protocol, can come about within a price competitive market where price might be a determinant or a driver for change within the industry.

I also want to draw the government's attention to their own site, the web site of the Australian Greenhouse Office, which has put out significant information on emissions trading, dealing with carbon trading, emissions trading and carbon credits. It provides a general overview and, without going into it in any great detail, it talks about general questions, such as: what is this government doing to establish a carbon credit trading scheme in Australia? The short answer it gives is that Australia has not made any decisions on the introduction of a national emissions trading system. The Australian Greenhouse Office, AGO, which was established in April 1998 as the lead Commonwealth government agency on greenhouse matters, has been asked by the government to provide advice on the feasibility of a national greenhouse gas emissions trading system. So on one area it appears we have Senator Minchin not being fully conversant with emissions trading. That might be understandable from an industry perspective. I was hopeful that Senator Hill might have been able to correct him and enlighten him in relation to what the Australian Greenhouse Office had advised and tell him what is actually happening. Hopefully, the issues that I am drawing to the attention of this government might assist them in understanding the matters more fully.

But, as the proverbial saying goes, there is more. ABARE, another government agency, has produced *Emissions trading in Australia: developing a framework*. The authors, Messrs Hinchley, Fisher and Graham, have provided a particularly informative paper on the background issues, features of an emissions trading scheme, and the like, dealing ostensibly with issues under the Kyoto protocol but not limited to that. It is certainly a matter which this government could look at more fully. ABARE has also produced another paper called *International trading in greenhouse gas emissions: some fundamental principles*. So the Australian bureau has been helpful in expanding understanding in this area, assisting the Australian community at large in understanding the Kyoto protocol, understanding the UN convention on climate change and understanding some of the concepts that surround the issues that are so im-

portant—which are, in one line, greenhouse gas emission.

As one of those who was on the committee that produced the discussion paper, I thank the secretariat for their work and their assistance in developing this discussion paper. It is timely. In my view, it is helpful to provide a paper to the wider community which will generate further discussion on these issues, assisting parties to focus on some of the issues at hand. The paper will also assist the committee in working through the more difficult issues, such as the economic, environmental and social implications of what you may describe as a domestic regulatory system. Such a system may have things such as a carbon tax—I think the 'carbon tax' word was raised in response to a question from the Democrats in question time today—and perhaps an incentive based process or, as I have gone through earlier, a cap and trade in relation to emissions trading. On that note, I thank the committee and the secretariat for their good work and commend report No. 38, the Kyoto protocol discussion paper, to the Senate.

Question resolved in the affirmative.

#### **BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives returning the following bill without amendment:

Lake Eyre Basin Intergovernmental Agreement Bill 2001

#### **EXCISE TARIFF AMENDMENT BILL (No. 1) 2001**

#### **CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2001**

#### **Second Reading**

Debate resumed from 29 March, on motion by **Senator Heffernan**:

That these bills be now read a second time.

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (4.52 p.m.)—I thought the Deputy Clerk said 'the excise tariff bills'—in fact, I am sure she said that because she is nodding in the affirmative—but by any definition the proper title of these bills should be 'the backflip bills'. These are the bills in which the government was forced to move to put



ernment was forced to move to put down the price of excise on petrol. The Labor Party had introduced a private member's bill to do that. After the political pressure brought on the government by the defeat of the coalition government in Western Australia and the Beattie landslide in Queensland, the government backflipped and introduced its own bill.

These measures in this bill enact the changes the Prime Minister announced—changes that he did not willingly do; changes that were regarded by the electorate as too little, too late; and changes that were regarded as typical of an arrogant, out of touch, insensitive and not-listening government. Since we played a key role in forcing the government into not taxing Australian motorists more in the face of higher petrol prices, we of course always had our hand up to vote for this measure. Indeed, as I said, we had our own private member's bill which the government voted down in the House and the coalition government senators filibustered in this chamber. So, yes, we are signed up to that. That is backflip one in the backflip bill.

Backflip two was best highlighted by the *Daily Telegraph*. I am not able to hold this front page up but let me say that this is a massive, blaring headline: 'Beer Tax Trick—the Prime Minister ties petrol cut to the rise for drinkers.' What did the government do? It put a measure reducing tax on petrol with a measure increasing tax on beer and said, 'We won't separate these: you have to vote for the package.' The *Daily Telegraph* described this as 'Beer Tax Trick'. Within a few days of them saying that, the government backflipped because the Democrats and the Labor Party had indicated in this chamber that we would divide that legislation and cause a separate vote on each measure. I want to say something about the Democrats' role in this in a moment, but that was what the government was confronted with. The next day, the *Canberra Times* headline was 'Beer link backfires—coalition leak forces excise turnaround' and the *Daily Telegraph* said 'PM's trick fails—fuel tax cuts safe—beer prices to fall'. That was the second backflip: they tried a trick, it failed and they have changed.

I will now move on to the third backflip. The Prime Minister told the electors of this nation, back in August of 1998, that the GST would mean the price on ordinary beer would rise by 1.9 per cent. He said that on the John Laws program, he said it on the Alan Jones program and he told his party room that.

**Senator Boswell**—Were you there?

**Senator COOK**—I was not there but, since you raise the interjection, I have here an excerpt from a transcript from radio station 6PR in Perth of Mr Eoin Cameron, who at the time was the Liberal member for Stirling. He is now a radio commentator. This excerpt is from 8 March. I was not in the party room but Mr Cameron was, and what did he say the party room said? He said:

I was a member of the government that went to the 1998 elections with that policy and I can tell you I was led to believe by the powers that be that beer would only go up by 1.9 per cent.

This is a Liberal member at the time disclosing the nefarious affairs of the government. He goes on:

There was no differentiation between stubbies or cans or middies. We were simply told beer would go up by 1.9 per cent. And that was a common question asked of us.

He has blown the lid on the internal affairs of the government party room. That is what you said, that is the promise you drilled your backbenchers into repeating, that is what you told the Australian electorate and that is what did not happen—beer prices went through the roof. The reason why we have persisted—back from the time of the introduction of the GST right through these bills—in facing down the government on this legislation is that this is clearly a broken promise and the government has to be held to account. We intend to hold it to account.

I noticed in this morning's *Canberra Times* that there is a headline that the Democrats have forced the change on beer. Let me say this: the Labor Party has been rock solid in opposing the introduction of the GST and rock solid on this issue. The position of the Democrats only counts if we stick. On the GST, the Democrats knew we were going to oppose it and they ran off and did a deal. Why didn't they fix the beer price then? The

Democrats knew, after the biggest petition ever lodged in the Australian parliament—a petition from 850,000 beer drinkers opposing the government—that the public pressure was on. They could read the change in the political climate, too, so they found the courage to stand with us in opposing the government on this legislation.

Now, as one of the co-conspirators—one of the original architects of the current GST law—they are claiming the credit for facing down the government on this change. That is like a robber coming into your house and pinching your silverware and then going outside and collaborating with the driver of the getaway car to claim the reward when they are caught. That is what the Democrats are doing and that is what the government is now saying. The only party that has honour and credibility on this issue is the Labor Party. We are the only party that has been consistent all through this issue in opposition to the GST and in opposition to this issue about petrol prices.

We now come to a quite significant position as far as this chamber and the efficacy of proceedings in this chamber is concerned. We were due to debate these bills last Thursday morning. I fronted up ready to go and was told, at a minute's notice, that the government had withdrawn the legislation from the chamber, that we were not proceeding. That is what I was told, and we did not proceed. Secret offstage talks between the Democrats and the government have now, after seven days, produced the situation where this morning a set of amendments was placed on my desk which will amend the bill and change the direction of it, as far as petrol is concerned, 180 degrees. They were going to increase it; now they are going to reduce it. This is a government amendment of 15 pages, with 113 amendments—I counted them. God knows how many amendments there have been to the GST legislation—we lost it when it got into the thousands. Here are 113 more. And, as I said, it diametrically changes the position of the government. I welcome it, because it comes to our position.

But the question for this chamber is that there is no accompanying explanation from the government. There is no recognition that

the parliament ought to have explained to it what the calculations mean. There is no additional second reading speech and no explanatory memorandum—the normal documentation a parliament is given. There is no other explanation. We know that the government and the Democrats have the numbers. And we know that the Senate is a house of review, but we are not given the information to conduct a review. Are we going to be put in a position—without having an opportunity to check the calculations or the 113 different amendments—of being told, 'We've got the numbers, bad luck, we are going to run this through'? If we are, I think that borders on contempt of this chamber. It certainly is a facile and contemptuous effort to treat the serious job of reviewing legislation in a derisory way. And remember this: what is the claim to fame of the Australian Democrats? They support openness in government. They support transparency in government. They want accountability of political parties. They want to uphold the review function of this chamber. They want to keep the bastards honest. Now, they may have, but let us see the information on the table. Let us have the explanation from the government. Let us lay the facts out and check the calculations.

We know from advice we have received that no fewer than four different econometric models were used to calculate these changes: one from the Treasury; one from the brewers; and two from the government's preferred economic modeller, Chris Murphy of Econtech, one of which I understand was paid for by the AHA and I am not sure who paid for the other one. Why can't we have those results tabled? Why can't we see why there is an obvious discrepancy in what the government says is the cost of this legislation? For example, the Treasurer says that the cost of this government backflip is \$185 million; but the government says that, although beer drinkers have been paying this excise since July last year, it is only going to put into a charitable trust the proceeds it has thus far reaped from the higher excise paid by beer drinkers, and that is \$120 million. If it is \$120 million, then the annual rate is \$160 million, not \$185 million. Why is there a discrepancy between what the Treasurer says

it costs—\$185 million—and what simple arithmetic calculates, based on the government assertion that it is \$120 million for nine months? Where is the missing \$25 million? Why can't we see the information? What is so secret about it that it cannot undergo parliamentary scrutiny?

In the absence of any explanation, the only document I have to go on is the press release the Prime Minister issued yesterday. Talk about legislation by press release! This press release is headed 'Excise on draught beer'. It could equally have been headed 'Continuing great GST hoax'. In this press release, three paragraphs from the bottom, he sets out what the new excise rates will be for low strength beer, mid-strength beer and full strength beer. He provides no explanation in any accompanying documentation as to how those calculations are arrived at. At the very least, this chamber is entitled to know—not by press release but by tabled documentation—why are they the calculations, how have they been arrived at, what are the different views of the various models and what conclusions have been reached to settle on these figures? Somewhat hypocritically and, indeed, with a maximum sense of being patronising, after the brewers, the drinkers, the Labor Party and others have conducted the campaign for nine months to reduce the price of beer, the Prime Minister says in his press release yesterday:

I call upon the brewers to immediately pass on these excise reductions through lower prices for draught beer.

They have been leading the charge to reduce the cost, and we have a gratuitous comment: please pass on the reduced costs immediately. I do not think there was any need for that, but there it is.

The other thing that needs to be explained to this chamber is: because the government has been collecting this excise off beer drinkers for nine months and because it now accepts the inevitability that it will not have the legislative power to do so, what becomes of the money that it has so far collected? In the lobbying that we have all been experiencing over the past months, we know that the brewers, in canvassing opinions of beer drinkers, obviously say, 'Well, we can't give

it back because who do you know paid it?' I make this important point: this money does not belong to the government; this money was improperly collected and belongs to those who paid it—that is, ordinary beer drinkers. They cannot get it back, so it is money they have forgone, and it is calculated at \$120 million. But what happens to it?

The beer drinkers, by way of a survey, said: 'We don't think it can be given back. A charitable trust should be set up. These are our priorities and the money should be given to charity. Let's pocket the reduced excise from the point of legislation onwards.' That is not what the government and the Democrats have done, according to the amendments, according to what is on the record and according to what the Prime Minister says in his press release. Bear in mind this point: the money belongs to the beer drinkers, not to the government, and the beer drinkers have expressed a view about how that \$120 million should be disbursed. But what do we have? We have an agreement for the government and the Democrats to set up a charitable trust. They will appoint the trustees and there is no-one on the list, as far as I can tell, that represents the people who own the money, the beer drinkers. There are a lot of other interests—very laudable interests. But at least those who have paid the money should have been considered. The money is theirs and they are entitled to a view.

The disbursement of that money does not go to the organisations that those who own the money, the beer drinkers, indicated. It goes elsewhere. I am not knocking the organisations to which it goes. Many of them are laudable organisations, and it will make an important difference. But aren't this parliament and the Senate, if we are to legislate this way, entitled to an explanation? Aren't those who have contributed the money entitled to have explained to them through this procedure why, in these secret talks, the government and the Democrats did not agree with what they wanted to do with the money and why they want to do it differently? There might be a perfectly good explanation.

The procedural problem I have in debating this legislation is that, technically, the government will not follow the bill before us.

The bill before us, which I am now supposed to be speaking to, under the procedures of this chamber, is a bill that increases excise. We know that, as soon as the second reading is over, the government will diametrically change the direction of the bill with a 15-page amendment containing 113 changes. So I am not speaking to what is real; I am speaking to what may have been true last week but is not true today. There is no explanation. This chamber is being asked to legislate blind. That is not transparent, that is not fair, that is not accountable and that is not what the Democrats allege they stand for.

It is not always the case that I agree with the economic pundits who express opinions from a conservative point of view about the economy. One of them, in today's paper, made a comment—after the government and the Democrats made big fellows of themselves about how much money would flow to charitable trusts and to worthy causes—with which I emphatically agree. This economic pundit asked: if those causes are genuinely worthy and deserving—and they appear to be—why do we require a windfall gain that was accumulated by happenstance, by government insensitivity, and that was collected from drinkers to serve those worthy causes? If they are worthy, we should be paying for them all the way through. That is a fair comment.

When we reach the committee stage of this legislation, I will be pursuing a number of questions to get the facts out on the table and to make this process transparent. The Democrats and the government did this deal to get the GST up in the first place. That is what caused the problem. They have now done another deal and there is no explanation. It may be to solve the problem, but we are entitled to an explanation. (*Time expired*)

**Senator MURRAY (Western Australia)** (5.12 p.m.)—I will start with a procedural issue. There is before the chamber a second reading amendment, No. 2175, proposed to be moved by Senator Lees. That will not be moved. Turning now to the [Excise Tariff Amendment Bill \(No. 1\) 2001](#) and the [Customs Tariff Amendment Bill \(No. 2\) 2001](#), some things need to be corrected, because there was a vast amount of misrepresentation

in Senator Cook's speech in the second reading debate.

Senator Cook is assuming that we support the fact that there is no explanatory memorandum to accompany the government's amendments. It is not the Democrats' responsibility to produce explanatory memorandums; it is the government's responsibility. We agreed a position with the government. The government turns it into legislation and produces the explanatory memorandum. Of course we support the view that the parliament is entitled to receive proper explanation and, if the government has had neither the time nor the opportunity to produce an explanatory memorandum, it needs to have a very clear exposition of the amendments put before the Senate for it to consider. Let us make it quite clear that, in arriving at a view with the government, the Democrats do not take the view that normal Senate processes should be set aside. That is a fundamental misrepresentation.

The second misrepresentation is that we do not acknowledge the role of the Labor Party in meeting the two promises arising from the new tax system. Senator Cook is at pains to throw the GST into every sentence that he can, but we are dealing with excise issues, which were part of the new tax system and which the Labor Party did not oppose in any form during the inquiry and the debates that followed the implementation of the new tax system. But the Labor Party have consistently argued that the petrol price should be reduced by 1.5c, which it now has been, and that the on-premise price of beer should be reduced, which it now has been.

I can picture the Labor Party's and the Democrats' position as their having had an agreement with the government. Quite frankly, I would be standing here congratulating them for it—because the outcome is surely exactly what they have been advocating—instead of which you get a very fierce and petulant display of anger about an outcome which they want. Frankly, for both petrol users and beer drinkers, the Labor outcome has been achieved. Senator Cook pursued in his speech a truism. The fact is that the government of the day, of whichever colour it happens to be, cannot get legislation

through this chamber unless either the opposition supports it or another party with sufficient numbers supports it. So, with regard to this legislation, if we and Labor said it would not pass without certain changes, the government has to take that into account if it wants to achieve a better outcome.

The next thing is that we get this assertion about secret talks behind closed doors and all that kind of hypocritical finger pointing which some members of the opposition indulge in. Frankly, that denies the very manner in which complicated outcomes are worked out in the parliament. Very frequently, there are meetings between ministers and members of the various political parties to get outcomes. That is so for the Labor Party, that is so for the Democrats, it is very seldom so for the Greens and it has been so for the Independents. So what is the stuff from them about negotiating behind closed doors and secret talks?

I will give you two examples in recent Labor history. Labor agreed with the government to maintain youth rates in this country, which makes us the second-worst OECD country in the world with regard to requiring adults to be paid at rates for juveniles. We obviously opposed that. That was done behind closed doors; that was done in secret talks. What are the Labor Party talking about by pointing the finger? I will give you an even more recent example. An adjunct to the new tax package was the very significant business tax package. What did the Labor Party do? They secretly negotiated an agreement with the government behind closed doors and then announced the outcome.

Do not condemn us for behaviour which is common to the Senate and which has been carrying on in this place in that manner for, I suspect, the entire hundred-odd years of Federation and the parliament. That kind of language, that kind of distortion and that kind of misrepresentation undoes something about which the Labor Party should be proud: in holding with the Democrats on these two issues, an outcome has been achieved which petrol buyers and beer drinkers will benefit from.

The other point I want to make is about the question of numbers. It is for the government to define for the Senate the precise financial consequences of these measures. But you are making an easy calculation of the cost of the foundation by dividing it by nine months and extrapolating it for the full year. Senator Cook forgets that indexation has in fact occurred during the year. There will be a quite complicated way to arrive at a different figure for what is a full-year effect for the forthcoming year with two indexation periods within it—and of course two have passed already.

A further misrepresentation I want to deal with in my remarks is this thing about 'the beer drinkers expressed a view'. Excuse me, I suspect that everyone in here has drunk beer or is a beer drinker. I distinctly remember having at least one in the last week. I was not asked my opinion as a beer drinker. Who represents the beer drinkers? Is it the big business end of town—the brewers—or is it the Australian Hotels Association, which represents small and medium business? Who asked all these people on this large petition? The AHA and the brewers can both claim to have close connections with many things that the beer drinkers want, but the idea of 'the beer drinkers'—I suspect all 11 million or 12 million adults in this country are beer drinkers—all having expressed a view, which is the authoritative view and which is the view supported by Senator Cook, is just nonsense.

In deciding where the money should go—the money that has been collected from an excise rate which was greater than that which is now to apply—you have to use common-sense. To be fair to him, Senator Cook did seem to indicate that the proposed uses that the money would go to, through the foundation, were not those that he would oppose. But perhaps he does oppose them—and, if he does, I will be quite astonished.

Let me turn to the substance of what is before us with these bills. The first issue relates to petrol taxation and the fulfilment of a promise. That has now been met. Quite plainly, it does not make a massive difference to the real cost of fuel in this country, because that is primarily determined by the OPEC prices and the prices we experience as

a result. However, that reduction in price is welcomed by consumers and it is welcomed now by all parties in the Senate. The Labor Party and the Democrats deserve credit for holding true to that issue, and the government should be recognised for finally having accepted it.

I will move on to the alcohol issue. The outcome, frankly, is not necessarily good policy. Alcohol policy has always been to apply a volumetric excise tax per litre of alcohol, regardless of pack. What is happening here is an order to make the government keep a promise to get the correct outcome in pubs, hotels and so on. The only way you can do that is to address it by pack, and the only pack which is almost exclusive to hotels and pubs is the keg. Those kegs will therefore be at a lower price. So a distortion of a traditional policy approach will deliver an alcohol regime which is different according to the container size. However, there are some good policy outcomes which this reduction does address. It is a fact that the new tax system has resulted in increased prices in the hotel, pub and restaurant scene. We know that from the GST and new tax system inquiry. It is a fact that it has had a dampening effect on jobs in certain sectors, but not in all sectors. It is a fact that there has been a call for some relief in this sector by some small and medium businesses. So, in a stimulatory sense, it is probably good timing from a policy perspective.

The actual announcement and the rates have been put out by the government, and we can deal with those in the committee stage. The key thing, of course, is to try to turn it into something which beer drinkers can grasp as opposed to the very strange language you always find excise and tariffs written in. The language I can grasp is the Australian Hotels Association's assessment that the excise rates will reduce the price of a glass of regular beer sold over the bar by an average of 11c and the price of a mid-strength or low alcohol beer by 13c to 15c. All of us who attend to policy matters in this chamber know how difficult it is to arrive at an exact consequence. I think there are well over 7,000 of these establishments. They

vary in terms of their margins and price, but that seems to be the consequence.

The second issue arising from all this is the proposed Foundation for Alcohol Education and Rehabilitation, on which the Democrats have agreed with the government. The point is made that if there is a need for this it should have been established before, but of course you have to have been able to afford it before. The only way you can afford these things is through tax reform and, as we know, that is what has been achieved. This is a windfall, but frankly this amount of money will stretch only so far. The Labor Party seem absolutely convinced—and almost triumphant about it—that they will be the next government. If they are the next government, let them make a commitment to continue the funding of this. I for one will support them for as long as I am able to.

It is intended that the objectives of the foundation will be to prevent alcohol and other licit—not illicit—substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth. The foundation is to support evidence based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programs. It is to promote community education, encouraging the responsible consumption of alcohol and highlighting the dangers of licit substance abuse. It is to provide funding grants to organisations with appropriate community linkages to deliver the above-mentioned services and to promote public awareness of the work of the foundation. There is a \$115 million grant for this, but there is also a \$5 million grant which will go to support the historic hotels project. It is not for hotels who have pokies; it is for hotels in rural and regional Australia with up to a sum of \$100,000 who, on a careful application, can get support for this as a Centenary project. I think those are immensely desirable and admirable objectives. Senator Cook may have his own pet charities that he would like to give the money to, but I would be very surprised if he did not regard those as worthy objectives and therefore say that they should be supported. The other thing I should ad-

dress in my second reading remarks is motion 2183. I move:

At the end of the motion, add:

“and that the Senate calls on the Government to initiate an independent inquiry into alcohol taxation, to commence no later than 1 July 2002 for completion no later than 1 July 2003, taking into account the following matters:

- (a) the health and social issues arising from the consumption of alcohol;
- (b) taxation principles of simplicity, efficiency and equity; and
- (c) desirable industry outcomes”.

I am aware that there has been a Productivity Commission inquiry into some of these aspects. I am aware that the Senate itself has looked at some of these aspects. But the fact is that the new tax system has introduced such wholesale change in this area that the consequences need to be assessed. There are a number of anomalies in alcohol taxation. For instance, the combination of the excise rates for beer and the state subsidies for beer result in a zigzag graph as you move up from low- to medium- to full-strength beer. There are certain points of that graph where it is actually cheaper for the brewers to brew a higher strength or slightly higher strength beer than a lower strength beer. I would have thought that you would attempt to have a look at a means of arriving at a straight graph.

I am also of the view that probably the states should get out of alcohol taxation altogether given the changes of the High Court and issues of how the final pricing should be addressed. There are other problems with alcohol. There are anomalies in how some components of spirits are taxed and, for example, how cider is taxed. People have views about RTDs, ready to drinks. There is the fact that customs duty on spirits and wine is at five per cent but there is none on imported beer—why? Should that carry on? There is no low-alcohol wine category—why? Should there be one? There is the question: at what stage does price discourage abuse of drinking? There was the Northern Territory experiment which some of you may remember which dealt with these issues. And, of

course, there is WET itself. We all know that the wine industry is concerned about the effects of WET. It is a value added tax and they wish to address that issue.

I think that the way to resolve that is for the government of the day—not now but probably by 2004—arising from an inquiry to come to a view on health and social issues, improving the taxation framework for alcohol and making sure that desirable industry outcomes are promoted. I put that inquiry to the Senate accordingly. I would be happy to make further remarks and points during the committee stage. (*Time expired*)

**Senator SHERRY (Tasmania)** (5.32 p.m.)—The bills we are considering propose amendments to the Customs Tariff Act and the Excise Tariff Act, and they implement change in broad areas. Firstly, there are new tax arrangements for alcoholic beverages from 1 July 2000, and I will particularly focus on beer. Secondly, there is a reduction in excise for petroleum products from 1 July 2000 and, linked with that, the recent announcement—roll-back—of a reduction in excise for petroleum products from 1 March 2001. My colleagues and I in the Labor Party have commented on many occasions about the issues relating to petrol prices in this country so it is not my intention to go into that issue today but to focus on the issues relating to beer prices.

What has characterised the Liberal-National Party government's approach to the issue of beer prices? Basically it can be summed up as one of subterfuge and deception in a number of key areas over the last 18 months. We go back to the lead-up to the release of the Liberal-National parties' GST package, commonly known as the ANTS package. In the lead-up to the release of that document prior to the election in October 1998, there were a number of articles in the media highlighting how drinkers would benefit from a GST. These were based on what I believe were a deliberate set of leaks from the Liberal-National parties, and almost certainly from the Treasurer's office, to soften up the public for a GST. Let me refer to one of these. The *Herald Sun* on its front page of 28 July 1998, under a screaming headline 'Drinks All Around', extolled the



virtues of the GST to drinkers. It said that pub drinkers would pay about the same with the goods and services tax while full strength beer sold in bottle shops would cost up to three per cent less. That was typical of the sort of media coverage at the time. I do not blame the media. They were being fed a particular line by the Liberal-National parties about what would happen with the introduction of a GST in this country. It was a false position that was being presented to soften up the Australian public for that GST. That was the first subterfuge and deception.

Let us go to the release of the ANTS package, the GST package, in the lead-up to the October 1998 election. The ANTS package—and I have a copy of it here—is some 208 pages thick and it outlined the Liberal-National parties' program for the introduction of a GST—euphemistically referred to as *Tax reform: not a new tax, a new tax system*. Basically it was all about a GST. The details of the impact of a GST on alcohol are outlined on pages 87 and 88. One of the initial propaganda lines of the government—and that is what it was, propaganda—was that a GST would replace an allegedly ramshackle and inefficient range of taxes, that everything would be simpler as a consequence of the GST. This is the second subterfuge or deception. The GST was to replace wholesale sales taxes and a range of other taxes. But with respect to alcohol, if you adopt this approach, the replacement of excise and wholesale sales tax by a 10 per cent GST would result in a massive loss of revenue to government and a massive reduction in the price of alcohol.

Pages 87 and 88 outline what was proposed with respect to alcohol. With the abolition of the wholesale sales tax, the rate of excise on beer was to be increased and a GST added, supposedly with a revenue neutral outcome. With the abolition of the wholesale sales tax and the application of the GST, it was decided to bring in a new tax to replace the wholesale sales tax on wine. This was referred to as the wine equalisation tax. In addition to the GST, a new tax was to come in. Again it was argued that this would be revenue neutral. The ANTS document says:

However, the change in excise will be limited so that the retail price of a carton—

I repeat: a carton—

of full-strength beer need only increase by the estimated general price increase associated with indirect tax reform.

The general price increase was 1.9 per cent. I thought the reference to a carton was a bit strange when I initially read the ANTS package. Why wasn't there a reference to beer prices or, for that matter, alcohol prices per glass? The most commonly used reference to the price of alcohol relates to the cost per glass, but it did not appear in the ANTS document. Having some background in the alcohol industry prior to entering the Senate—

**Senator Hutchins**—As a user!

**Senator SHERRY**—Not just as a user but as a continuing user, I might say. The GST obviously applies to services. If you add a GST to the service component of a glass of alcohol, my estimate at that time was that the price of beer would rise by around eight per cent to nine per cent. That was to be the next deception of the government.

I can just imagine the Treasurer, Mr Costello, and the Prime Minister, Mr Howard, sitting in their offices poring over this document prior to its release. I can just imagine their trying to work out ways to make sure that the only message sent to the Australian public prior to the election was that the price of alcohol would go up by 1.9 per cent and not by eight per cent to nine per cent. Of course, they had to be consistent with the propaganda they had given to the media in the months leading up to the preparation of the ANTS document. They had to hide the impact of the GST on the price of alcohol in this country. That is the reason why there is reference only to packaged beer in the document. The government adopted the very simple practice—which was not a particularly effective one, as it turned out—of referring only to packaged product and ignoring the price impact on a glass of beer.

During the election campaign, the issue was pressed to the Prime Minister on a number of occasions. It was on the John Laws

program on 23 September 1998 that the Prime Minister said:

There will be no more than a 1.9 per cent rise in ordinary beer.

I have frequented pubs and clubs quite often, particularly in the last couple of years. What would the average Australian drinker think when they heard the Prime Minister, Mr Howard, say there would be 'no more than a 1.9 per cent rise in ordinary beer'? They would think that that was meant to apply to a glass of beer. I would be very surprised if there were too many beer drinkers sitting at the bars of the clubs and hotels who had their 208-page ANTS document handy to read the fine print. I do not think too many of the pensioners that I have met in the last year or so had a copy of this document so that they could turn to the fine print about the pension clawback. The Prime Minister did not do it just once; he did it again on the Alan Jones show on 14 August.

**Senator Patterson**—You're telling fibs over there.

**Senator SHERRY**—You should be concerned with fibs after the performance of the Prime Minister on this issue of beer. On 14 August 1998, the Prime Minister said on the Alan Jones show:

Across the board there is virtually no change in relation to alcohol. A tiny CPI equivalent rise in relation to ordinary beer.

Yet again he stated this clearly on the record. He is the one who loves these talkback shows. He dashes out to spread and sell his message. I put it to the Senate that when the Australian public were told by the Prime Minister that ordinary beer would not go up in price by more than 1.9 per cent, the public took him at his word. They believed it was a reference not just to packaged beer but to beer in a glass.

It gets worse. So far I have touched on three chapters of the subterfuge that has occurred. Mr Eion Cameron is a former Liberal member for Stirling, who was defeated in the last election. Mr Cameron—a member of the Liberal government in the run-up to the 1998 election—went on Perth radio 6PR and shed further light on this subterfuge. He said:

I was a member of the government that went to the 1998 election with that policy and I can tell you I was led to believe, by the powers that be, that beer would only go up by 1.9 per cent. There was no differentiation between stubbies, cans or middies. We were simply told a beer would go up by 1.9 per cent and it was a common question asked of me and asked of the government because many Australians love a cold beer, as we know. And it wouldn't be proper for me to reveal what goes on in the government party room back then when I was an MP, but I can tell you what was not said.

Here we have clear evidence from a former member of the Liberal-National Party of subterfuge, of an attempt to mislead the Australian public, about the true impact of the GST on the price of beer in the run-up to the election. There was no mention of packaged beer by the Prime Minister anywhere during the election campaign; there was just an attempt to fudge the issue and convince the Australian public that the price of a middy or a schooner would go up by only 1.9 per cent. There is no need to go into all the detail; we have debated the introduction of the GST and its passage through the Senate, with the agreement of the Australian Democrats, many times before.

We had had some trouble finding out what the projected increase in the price of a glass of beer would be. Finally, at the estimates hearings last May, Treasury fessed up. One of the Treasury officials, Mr Blair Comley—I do not know whether he is still with Treasury—responded to a question I posed about the increase in the price of a glass of alcohol, particularly beer. He admitted that the price rise would be around seven per cent under the GST—that is, more than three times the original estimate of 1.9 per cent. That was finally revealed by Treasury officials at estimates after the agreement to pass the GST legislation.

We have seen the impact of the higher price of beer over the last few months around Australia. For those who are not aware, beer is sold mainly by the glass, over the bar, from a keg at a club or hotel and is the most profitable line of business for the operator. It has been a real struggle over the last 10 years for the club and pub industry, for a whole range of reasons that I will not go into today.

But this price increase has had a significant impact on the business of hotels and clubs around the country and it has led directly to job losses, particularly in rural and regional Australia.

We then had what is commonly known as the beer industry objecting to the increase in the price of beer as a result of the GST. They made very clear publicly, as is their democratic right, what they felt about the statements by the government in the run-up to the election and beyond and how they believed they had been misled. They believed quite correctly they had been misled. Rather than the government doing anything about it, rather than the Prime Minister, Mr Howard, or the Treasurer, Mr Costello, admitting that they had got it wrong, they decided to abuse the industry. Two days after the beer industry started running a campaign against the government, Dr Wooldridge said:

We do have to look at alcohol advertising, particularly at sporting events, because that might give the wrong message to young people.

I suggest to the Senate that it was not just coincidence that he made these criticisms of the beer industry two days after they had launched a public campaign against the government. It got worse: the Treasurer decided to indulge in some amazing personal abuse of some individuals involved in the beer industry. He got stuck into Mr Gosper, who is a director of one of the Japanese owned companies. Goodness knows what Mr Gosper had to do with the promise the government made about not increasing the price of beer by 1.9 per cent. The Treasurer then launched into an attack on foreign-owned companies—the beer industry is foreign owned. That may be true, but what about all the other foreign-owned companies in Australia? If the Treasurer starts launching attacks on foreign-owned companies, the current value of the dollar will look very healthy in comparison to what will result from such criticism of foreign-owned companies. So the government, rather than fess up to the error it made—I believe it was quite deliberate subterfuge—and correct the problem, decided to abuse both individuals in the industry and the companies themselves.

That leads us to today. I think the last subterfuge was the government's vain attempt to link the increase in excise on beer with the reduction of the excise on petrol in the hope that, given the Labor Party's stated position of opposing the increase in the excise on beer beyond a price rise of 1.9 per cent, we would cop the blame from the media if we blocked such a measure and sent it back to the House of Representatives. Of course, it did not quite work out the way the government anticipated. This trick was exposed by the media for what it was. The government itself was rightly criticised for combining the two measures. Finally, we had the Prime Minister's capitulation on beer prices during question time last week and his commitment to take notice of what the Senate said.

It has been a long hard campaign to hold this government accountable to its promise on the price of beer. The Labor Party have fought long and hard and were quite correct: Mr Howard said the price of ordinary beer would not go up by 1.9 per cent—and that is what we are achieving in this debate, or it is very close to the outcome that will be achieved. That is a good thing. I do not know whether the government has learned a lesson from this long and sorry saga that, if you try to mislead people about the impact of the GST, it eventually catches up with you. (*Time expired*)

**Senator HUTCHINS (New South Wales)** (5.52 p.m.)—It certainly is my pleasure to follow my colleague Senator Sherry, who has gained a very deep and knowledgeable understanding of the finances of this country in the number of roles he has played in this parliament. As a commentary on politicians, the actions that the Prime Minister has taken in relation to these bills, the [Excise Tariff Amendment Bill \(No. 1\) 2001](#) and the [Customs Tariff Amendment Bill \(No. 2\) 2001](#), are quite breathtaking in their hypocrisy.

At a time when we should recognise that the credibility of politicians continues at an all-time low, the Prime Minister, in a tricky, sneaky, underhanded fashion, has tried to connect the increase in the price of a glass of beer with the decrease in the price of filling up your car. The Prime Minister, who used to

try to market himself as an honest and honourable politician, is not only going to be further diminished by this sleazy sort of action, but I do not think that he will be able to run those credentials up before the Australian public again. As Senator Sherry said, it is our intention in the opposition to make the government accountable for their promises—for two reasons. I have outlined the first reason, and that is that politicians are required, and should be required, to be credible. The second reason is that the Prime Minister made these direct promises and tried to influence people's votes by making these commitments. It is certainly our intention to make sure that the government keep those commitments.

As Senator Sherry said, the Prime Minister went on the John Laws program in September 1998, prior to the last federal election, and said that the price of an ordinary beer would not rise by more than 1.9 per cent. You may not be aware of this, Madam Acting Deputy President Knowles, but the John Laws program is broadcast in Sydney between 9 a.m. and 12 noon—it is a live show. There would have been no opportunity for anyone, unless they had been to an early morning opener at the quay, to have been under any sort of influence in making a statement like that. The Prime Minister would have been stone cold sober when he said that.

**Senator Patterson**—Madam Acting Deputy President, I rise on a point of order. I think there was an imputation on the Prime Minister in that, and I ask Senator Hutchins to withdraw it.

**Senator HUTCHINS**—I withdraw. I did not mean to imply anything about the Prime Minister. It was meant to be tongue in cheek. Anyway, that program is broadcast between 9 a.m. and 12 noon on 2UE in Sydney, and the Prime Minister did make that commitment to the Australian people and went to an election on it. There is no ambiguity in it. A lot of people I know from my previous occupation in the TWU—a lot of truck drivers—listen to the John Laws program, and probably a number of them voted for the Prime Minister because of commitments that were given on programs like John Laws, where he

said that a glass of beer would not rise any more than 1.9 per cent.

We found that, as a result of the introduction of the GST in July, the price of beer rose by eight per cent. Men and women who go to the local pubs where I live—the Blue Cattle Dog, the Lapstone Hotel, the Nepean Hilton—were outraged when these increases occurred. They are now paying an extra 20c or 30c for a glass of beer, and the Prime Minister said that that was not going to occur. A number of people found that they could no longer afford to have a drink in the same pattern as they did before. I am not talking about people who had drinking problems or anything like that; I am talking about working men and women—people who would have one, two or three schooners after work. These are the sorts of people, not problem drinkers, who could no longer afford to keep up their patterns of drinking, because the Prime Minister had told them that their glass of beer would not go up in price and it did. In fact, I think the head of the Australian Brewers Association estimated that their sales dropped by four per cent in that period. So it is not something that did not have an effect; it did have a significant effect, especially in country pubs in New South Wales, and I will deal with that shortly.

As I said, one of the central issues is the credibility of politicians. On two key planks, the Prime Minister made unexceptional, unambiguous commitments. The first was that the price of a glass of beer would not rise by more than 1.9 per cent, and the second was that the price of petrol would be reduced as a result of the introduction of the GST. You would recall, Madam Acting Deputy President, that the coalition parties were successful in convincing the Australian people at the ballot box—not by a majority of votes but by a majority of seats—that they would carry out their promise to reduce the price of filling up their cars. The Prime Minister said at the 1998 election that the price of petrol need not rise as a result of the GST. But when the government introduced the GST on 1 July, they cut petrol excise by only 6.7c a litre and then added 10c GST, which added around 8.2c a litre to the price of petrol. When the

GST was introduced, this tax on a tax amounted to an extra 1½c a litre. You could imagine that in country Australia, where the price of fuel is already higher than it is in the cities, that was devastating to local communities. If the February indexation had gone ahead as planned, due to the sneakiness of the legislation, the price of petrol would have risen another 2c a litre.

The government has already collected millions of dollars extra in petrol excise from the Australian people, and this recent change does not reverse the damage already done by the government's broken promises. As I said, motorists in regional and rural areas are still punished as a result of the high petrol prices. Businesses, small and large, particularly in the road transport sector are still being punished by the actions of this government—in particular, lorry owner-drivers, single operators, who do not have the opportunity or the economies of scale to ensure that they are able to at least cover some of these costs, and farmers, who we are now seeing leaving the coalition in droves and going to Labor or One Nation.

As I said earlier, the Prime Minister promised that there would be a rise of only 1.9 per cent in the price of a glass of beer, and the actual price of a glass of beer rose by about eight per cent. The government abolished the 37 per cent wholesale sales tax, but it increased the excise rate from 18c to 33c a glass and then added a 10 per cent GST to it. So the total tax on an ordinary glass of beer increased from 33c a glass to 54c a glass. That is an increase of 19c in the price of a glass of beer. Mr Acting Deputy President Murphy, I can tell you honestly that I have not had a glass of beer since 14 March 1999—not to say that I do not drink anything else, but I cannot drink a glass of beer anymore. So I have no particular angle in this to press for myself. I know a lot of beer drinkers—people who are not problem drinkers but social drinkers—and they have been well and truly whacked by this government and the duplicity of the Prime Minister.

We have been advised that there has been a deal—yet another deal—done with the Australian Democrats with respect to what is to be done with this rip-off of \$185 million

from the drinking public of Australia. From what I read in the press reports this morning, the money will be allocated to charities—I suppose charities that are involved with problem drinking—at the whim of the current Leader of the Australian Democrats. I do not know whether this deal would only have been made with Meg Lees as Leader of the Australian Democrats or whether it would have been made regardless of who might have been the Leader of the Australian Democrats. I am very worried that the money will not be evenly divvied up between the groups that may need it. Undoubtedly, money should be given to charities or institutions that assist people with drinking related problems. But one group has not been given the attention it deserves—and that group is country pubs. Country pubs have been suffering from the negative effects of these increases in the price of beer. As I have said, beer sales have slumped, particularly in the rural towns across Australia.

The country public has been under threat for quite some time now. There has been a decline in services and investments in rural towns. The rural exodus, which has already caused rural communities to lose many of their young people to the cities, is continuing. These factors have led to rural towns being less vibrant, making it harder and harder for small country pubs to drum up enough business to make ends meet. We have already witnessed the disappearance of many icons in the country towns across Australia—the railway station has closed; the police station has been closed; the petrol station has closed; the bank no longer exists; not even the bakery is still there. As you would know, Mr Acting Deputy President, often the focal point of any sort of community activity in these country towns is the local country pub. They have been penalised severely by this government and by the duplicitous actions of the Prime Minister in misleading the Australian people about the increases that were attached to the ordinary glass of beer. A spokesman from the Australian Hotels Association, Mr Simon Bermingham, said in January this year that the country pub was 'feeling the pinch'. He also said:

Rural pubs are probably harder-hit because they tend to be more reliant on just beer sales.

So these communities are being singled out. Gordon Cairns, the head of Lion Nathan, said that the excise increases were:

...ripping the heart out of the community. People will stop visiting the pub, they will drink beer at home, and what will happen is eventually the pubs will end up closing.

So when we go through those country towns, deserted as they have been, we will be left with the image of tumbleweeds being pushed down the main street by the wind. That is what has been happening rapidly under this government, as it has sat by and let these icons of Australiana disappear. The Commonwealth Bank, the Bank of New South Wales, the petrol stations and the railway stations have all disappeared under your government.

**Senator Ian Campbell**—You sold the Commonwealth Bank.

**Senator HUTCHINS**—They all disappeared under your government or have been rationalised. What are you going to do about the country pubs? Very little.

**Senator Ian Campbell**—Tell us about the Commonwealth Bank.

**Senator HUTCHINS**—There is very little in this package to look after the rural communities. The men and women who look to you—

**Senator Ian Campbell**—You sold the Commonwealth Bank, you hypocrite!

**The ACTING DEPUTY PRESIDENT (Senator Murphy)**—Order! Senator Ian Campbell, I think you ought to withdraw the remarks you made. You know the standing orders as well as I do—probably better. I think it is appropriate that you withdraw.

**Senator Ian Campbell**—I know it is against standing orders to call a hypocrite a hypocrite. It is a hypocrite who condemns the government—

**The ACTING DEPUTY PRESIDENT**—Senator Ian Campbell, I am asking you to withdraw.

**Senator Ian Campbell**—I will withdraw. I am withdrawing—and I am withdrawing without any qualification whatsoever.

**The ACTING DEPUTY PRESIDENT**—Just withdraw and then resume your seat.

**Senator Ian Campbell**—Do you want me to withdraw?

**The ACTING DEPUTY PRESIDENT**—Withdraw unequivocally and resume your seat.

**Senator Ian Campbell**—I withdraw.

**Senator HUTCHINS**—Thank you very much, Mr Acting Deputy President. I thank Senator Ian Campbell for withdrawing that inaccurate comment.

**Senator Ian Campbell**—You sold the Commonwealth Bank.

**The ACTING DEPUTY PRESIDENT**—Order, Senator Ian Campbell!

**Senator HUTCHINS**—As I said, all these icons have disappeared and they are rapidly disappearing under your government.

**Senator Ian Campbell**—Tell us about the Commonwealth Bank.

**Senator HUTCHINS**—What have you done about it? You have done nothing about it. You sat on your hands. That is why they are coming back to us.

**Senator Ian Campbell**—What have you done about the Commonwealth Bank?

**The ACTING DEPUTY PRESIDENT**—Order! Senator Ian Campbell, you know that it is quite in breach of the standing orders to continue interjecting, particularly when you have already been asked to withdraw one comment. I suggest that it would be much better for the debate if we did not have interjections that are clearly in breach of the standing orders.

**Senator HUTCHINS**—As I say, these icons have almost disappeared.

*Senator Ian Campbell interjecting—*

**The ACTING DEPUTY PRESIDENT**—Order! Senator Campbell, I think the remark you just made was a reflection on the chair. If it was directed at me, I ask you to withdraw it.

**Senator Ian Campbell**—I withdraw.

**Senator HUTCHINS**—These icons rapidly continue to decline in country Australia.

That is why country people are not comfortable supporting the Liberal and National parties. That is why they are turning to radical alternatives like One Nation—or to an alternative that offers them proper solutions, good solutions: the Australian Labor Party. I have worked around country New South Wales over the past 18 years. In my term here as a senator I have been up the North Coast of New South Wales to the seats of Lyne and Cowper and Page and Richmond. I have noticed how the men and women in those areas feel abandoned by the coalition. I have noticed the sense of despair and despondency that is amongst them. They know exactly what the government has done. This is symptomatic of the way the government is approaching the problems of country Australia. I do not know the details of the Meg Lees-coalition deal or where they are going to put the \$185 million. They should never, ever have collected it in the first place. They should have kept their word.

I know Senator Ian Campbell was not here when I commenced my contribution. I said that the problem with this is twofold: firstly, the Prime Minister should have kept his word and, secondly, the credibility of all politicians is at stake as a result of his misleading the Australian people at an election—an election you won on a majority of seats only; you did not win it on numbers. You will find out about that at the next election, Senator Campbell, because we will be there. As I said, country Australia knows exactly what you have done for them: nothing. When we get there we will see what we can do. But, as I said, I do not know the details of the Meg Lees-coalition deal.

**Senator Ian Campbell**—No, you don't know much detail at all; you're a poor excuse.

**Senator HUTCHINS**—But what I do know is that I do not believe that the deal has gone far enough in making sure that some sort of contribution is made to assist country pubs to make sure they are viable.

*Senator Ian Campbell interjecting—*

**The ACTING DEPUTY PRESIDENT (Senator Murphy)**—Order! Senator Campbell, I think you would know that, by any

mark, you are walking on very thin ice in your breaches of the standing orders. I have on three occasions now had to call you to order. You have had to withdraw on two occasions. I suggest you take stock of what your position is at the moment and consider it very seriously before you continue with any further interjections, because there are provisions under the standing orders for the Senate to take action, as has been taken previously in respect of other senators who have continued to breach the standing orders.

**Senator Ian Campbell**—Mr Acting Deputy President, I raise a point of order. My point of order is that the honourable senator opposite has breached standing orders on at least 14 or 15 occasions by not directing his remarks through the chair and directing them directly across the table at the government. I would ask you to call him to order as well.

**The ACTING DEPUTY PRESIDENT**—Senator Campbell, when there is a breach of the standing orders by another senator, and if I happen to miss it, it is your right to draw it to my attention. You have done it on no occasion other than this one. I will listen carefully, as I have been—and it is easier for me to listen without interjections from you.

**Senator HUTCHINS**—I do not know what I have done to ruffle up some of the wowsers in the coalition about this issue of beer prices but obviously I have. I am not sure whether it is wowserism in them or not; I am not sure where they are coming from on this. They look like they were dragged screaming into this deal with the Democrats—I am not sure. I end with this quote from G.K. Chesterton. I think it is apt for members of the coalition. I think you can spot a number of us over here who are of the Christian faith. Chesterton said:

Tea drinking is pagan, coffee drinking is the Puritan's opium, whilst beer drinking is truly Christian.

I love to see myself as a Christian and my party as a Christian party—I am not sure about Schachtie, but!

**Senator SCHACHT (South Australia)** (6.12 p.m.)—I appreciate the remarks of my good colleague Senator Hutchins. I am not a



Christian, it is true, but I am a member of the humanist group of the Labor Party. I am not a Christian, Senator Hutchins, but I absolutely agree that the government ain't very Christian at the moment in how they are handling the arrangements over tax in Australia.

I rise to speak in this debate with some astonishment at the backflip this government has again performed. Since the introduction of the GST in July last year, the opposition has consistently said the government has misled the people of Australia by saying that beer excise will go up by only 1.9 per cent. It soon became clear that it had gone up by 10 per cent. When this was raised, the Prime Minister's astonishing answer was, 'Oh, I wasn't talking about draft beer or beer served at a hotel; I was talking about packaged beer, because that is what most people purchase from hotels and drink these days.' When we checked, there was no definition before 1 July last year by the Prime Minister separating draft beer, glasses of beer or packaged beer. It was quite clear that the Prime Minister and the government were quietly aiming to get a major windfall from excise on beer into the pot to help pay the cost of introducing the GST.

For a large part of last year and early into this year, the Prime Minister valiantly stuck to his position when everyone who heard him realised there was a major credibility gap in his explanation of his position—just as there was a credibility gap when he explained the tax on petrol. It turned out that the GST was on top of the excise on petrol. As many people have said, 'The GST is a tax on tax and we're paying more than we should.' Even allowing for the increase in the world parity price for oil, everybody realised that there was another little fiddle which was going to cost the taxpayers of Australia—the motorists in particular—a large amount of money.

As we all know, it got so hot by the early part of this year that changes were going to have to be made. I suspect it was not until the electorate took out its anger on the Liberal and National parties in the state elections in Western Australia and Queensland and of course in the Ryan by-election that a decision

was taken. Many comments were made by state Liberal Party members and state National Party members in Western Australia and Queensland, and also by federal members of parliament from those two states, that one of the reasons there had been such an appalling result for the coalition in those state elections was the impact of excise and the GST on petrol and beer. Kim Beazley predicted you would see policy panic occurring during February and March, and the government would start to unravel its position and make the changes as this panic set in. That is what happened. On this particular measure this bill was going to allow the excise to stand—which would have been effectively a 10 per cent increase on the price of a glass of beer around Australia. The bill was suddenly pulled about a week or so ago.

**Senator Ian Campbell**—No, it wasn't.

**Senator SCHACHT**—Well, it stopped being debated. There was silence. Why? Because the Prime Minister, the Treasurer and the Liberal government realised that they were out of touch and had to do something. Secondly, the Democrats started to panic. They signed up to this package over 12 months ago. They made the deal with the government. There was that wonderful photograph of Senator Lees, the Democrats leader, shaking hands with the Prime Minister, Mr Howard, at the press conference where they announced that they had reached agreement to introduce the GST, a photograph that in its own way will record the day of infamy for the Democrats for the rest of their existence, however long that may be.

The Democrats, when they realised that they were being blamed equally with the Prime Minister for introducing the GST, started panicking. The first panic led to this extraordinary process they have about how they elect their leader. There is now a leadership challenge. The vote ended last Friday. We have to wait a week for the Democrats to count a ballot of 3,000 people, and I am told that will be announced at 10.30 on Friday night. You can see what happened: Senator Lees, the leader of the Democrats, under great pressure, clearly went to the Prime Minister and said, 'We can't sustain the pain any more. You have to do something on this

excise on beer. Just as you have walked away and capitulated on excise on petrol, you have to do it on beer.'

So the bill was delayed. It was not debated. It was put to the bottom and off the Senate red. It has been suddenly brought back today. A deal has been reached. But what is astonishing is the deal has been leaked but it is not in the bill. All we have are pages of amendments to restore what the Prime Minister really had promised over 12 months ago, and what we said he should keep his promise about, which is a 1.9 per cent increase in excise on beer. But there is no mention here—from what I can see, and I am being informed by advisers—of what they are going to do with the \$180 million they have already collected. The deal, apparently, is that this will be put into some sort of trust fund and then that trust fund will be used to fund programs to look at alcohol abuse in the community. Doesn't that sound like a wonderful Democrat solution? This would be what they would always do: look at some abuse; put the money in; and dole it out around the place.

**Senator Ian Campbell**—Would you give it to the brewers?

**Senator SCHACHT**—No. I would try and find a way to give it back to the ordinary people of Australia who have actually had it taken out of their pockets. That is what you should do. But, no; the Democrat way is: 'We have got the money out of you improperly, by a stolen promise, but we are not going to give it back to you direct. We are going to put it into a trust fund.' There is no detail in the amendment as to what the trust fund is and who is to run it. Is it to be some fairies at the bottom of the garden of the Democrats? Is it to be some hardheads from the National Party—Ronnie Boswell and the boys with a bagful of money doling it out—

**The ACTING DEPUTY PRESIDENT (Senator Murphy)**—Order! You should refer to—

**Senator SCHACHT**—Senator Boswell and the boys from the National Party with a carpetbag doling out money around the rural areas of Australia to try and buy political favour? We do not know. All we are told is:

'Buy this on trust.' Well, we do not buy any deal between the Liberal Party—this Prime Minister, this coalition government—and the Democrats. They are the ones who got Australia into the mess of the GST, the mess of declining growth, the mess of small business collapsing and small business being outraged about the massive amount of increased paperwork. They have made the mess, so we are not really too keen on taking on trust that there will be some 'nice' way of distributing a part of the \$180 million—I understand it is \$120 million. In the second reading debate summing up by the minister we would like to know: how will the \$120 million be managed? Can you just give us a bit of a hint about how it is going to be spent?

**Senator Ludwig**—A peep.

**Senator SCHACHT**—Yes, a peep. Just a little chip of light through the door. How do we tell people to apply for it? Which groups are eligible for it? Who knows? This is government policy at its worst—on the run, trying to do a deal to catch up and then do the detail afterwards. This is the sign of a government in terminal decay, when you think of an idea of a deal and you wait until later on to try and fix the detail to fill in the shonky deal. That is what the Democrats and the government have got themselves into. I do not know how many Democrats have spoken on this bill so far since the deal has been announced. Have there been any Democrats?

**Senator Ludwig**—Murray.

**Senator SCHACHT**—Senator Murray has spoken. I would like to hear Senator Lees speak. I would like to hear the contender, Senator Natasha Stott Despoja. I would like to hear them all speak about where they stand on this deal. What is going to happen? We know that at 10.30 p.m. on Friday night there might be a leadership change. Is this bill being put in, rushed through and voted on not only because it is the end of the parliamentary session before the budget session but also before there is a possible leadership change in the Democrats? Senator Stott Despoja has made it clear that she wants to run as far away from the GST deal with the government as she can go. If she becomes leader, we will not be able to see her with the

Parkes radio telescope standing next to the GST deal. She will be out beyond the Milky Way, saying, 'No, no. It wasn't me; it wasn't me.'

I have to say that although she is a good senator from South Australia she cannot walk away as leader. It was a deal that they sat with and made and—although she abstained on a couple of votes in a couple of areas—the strength and the guts of the GST deal were put in place because they down in the Democrats corner all voted for it with the government. None of them can wriggle out of it. Even though the 3,000 electors of the Democrats on Friday night at 10.30 p.m. might well say, 'We have changed the leadership—don't blame us anymore,' I have to say that we in the Labor Party will remind the electorate. They can change the leaders; they can go from age to youth; or they can go from brunette to blonde—they can go any way they like—but the issue is the policy. We are not interested in the personalities of the Democrats. We are only interested in the policy they have put up and inflicted on the Australian people. We in the Labor Party have always copped our medicine: when we have made mistakes on policy we have copped it in the ballot box. It is a really astonishing decision we have here with the Democrats now: trying to change the leader and then expecting everyone in the Australian electorate to have amnesia about the fact that they actually voted it in.

I certainly hope that before this debate ends Senator Lees speaks and that the contender—or the pretender—also speaks and they explain what their position will be next Monday on this matter. We look forward to the overall changes that will occur in Australia at the election at the end of this year. I suspect the electorate will be as severe on the Democrats—irrespective of who their leader is—as they will be on this government.

My colleague Senator Hutchins raised in his remarks—quite rightly—some issues about the small country pub and the impact that these changes have made. A lot of people may say that we should not do anything to encourage alcohol consumption in Australia: it is bad for health and is bad for issues of safety on the road, et cetera. We all

know that. But most of us who have had some experience in country areas of Australia know that the country pub in a small town or in a country area is very much the centre of community activity. How many times has the saloon lounge of a country hotel held the meeting of the local netball, footy or golf club or of the local RSL, if they did not have their own rooms? That is the role of a country pub. Any number of community organisations in a small country area use the country pub as a community centre—not to get drunk in or for alcohol abuse: it is a natural centre.

These changes that this government first put forward—this outrageous rip-off of a 10 per cent increase on beer excise—were devastating to the cash flow of small businesses like country pubs and hotels. The AHA, in their submissions and in their public comments, made it clear that they understood what was happening to their members. But not this government. This out of touch Prime Minister, this out of touch Treasurer and these out of touch Democrats did not understand until the political heat went on.

What we want to see is stability in issues such as excise. I was Customs minister for a period of three years and I certainly know what all the various groups who have to pay excise—whether it is on the petroleum side or on wine, beer or spirits—were consistently arguing for. First of all, they said they did not like paying the level of excise that they had to—that is a given. But the second thing they always argued for was stability, so that they knew year in, year out, what the excise would be and could make their business plans accordingly. One would have thought that the Liberal Party—who claim that they are great economic managers but above all else claim they represent the small business constituency—would understand that more than any other party in this place. But no, not with this GST introduction and not with these changes to excise. Excise was let loose to raise revenue to cover other budget holes—to pay for the compensation needed in some areas for the introduction of the GST and to cover the decline that was going on in the budget bottom line. The surplus was going down rapidly because the

GST had put the economy into negative growth: something we all warned you about and something that reasonable economists warned you about. When you make these changes so significant —

**Senator Ian Campbell**—You cannot have it both ways.

**Senator SCHACHT**—I cannot have it both ways? I am only having it one way. You people introduced the GST and for the first time in 10½ years we end up with a quarter of negative growth. All the evidence is that consumers have lost confidence and money has been taken out of the economy. Above all else, you have created cash flow problems for small business, including for the small businesses who are the local country and suburban pubs of Australia.

This has been done by a government that has lost touch with what was its natural constituency—small business. You have moved away from accepting that small business want certainty and stability in the tax regime that they have to live under. You made more changes to the excise in a year than previous governments had made in a decade. It had been set: it had been CPI indexed and people knew what it was going to be to within half a per cent. You go crash, bang, wallop and what they thought they were getting on beer at 1.9 per cent, you delivered to them at 10 per cent. You were out by a factor of five.

Gee, I can imagine if we had been in government and had hit small business with an excise increase and been out by a factor of five. The Liberal and National parties would have burnt the benches in protest; they would have claimed this was outrageous and they would have led every attack. But when they do it to their own constituency they expect us all to shut up and say nothing, to see it as a wonderful tax reform. We all know that this GST package, with all its manifestations, has done more damage to small business than has been done in living memory—probably not since the Great Depression of the thirties has as much damage been done to the confidence of small business as you have done. Every day now we see surveys from every small business organisation saying overwhelmingly, ‘It is the GST and the administration of it that is putting us out of busi-

ness, destroying our cash flow and destroying our profitability.’ And it is destroying the confidence of Australian consumers, who have stopped spending because they are worried when they get the bill for the GST on all the things such as electricity, water, gas and other services and realise they have to save more. That has flattened the economy.

This deal, which has not been announced in the parliament but outside this place, has been done, firstly, to try and give Senator Lees some further standing and, secondly, because I suspect they believe she is going to get done so they want to get the deal in before the new leader takes over and might want to redo it. Finally, we find out that again it is bad policy, that we do not know the detail on how \$120 million is going to be allocated to the Australian community from a so-called charitable trust. This is a government in terminal decline and decay. (*Time expired*)

**Senator LUDWIG (Queensland)** (6.32 p.m.)—This is not a matter I had scheduled to speak on but, after sitting here and listening to the debate, I have been moved to make a contribution. It certainly will not be a long contribution.

**Senator Ian Campbell**—Your whip had actually told us that was the final speakers list, so you have breached it.

**Senator LUDWIG**—If there is some difficulty with me speaking I can ensure that I limit it to a time that will allow Senator Ian Campbell to speak. But it was the interjections by Senator Ian Campbell that provoked me to comment on the [Excise Tariff Amendment Bill \(No. 1\) 2001](#) and the [Customs Tariff Amendment Bill \(No. 2\) 2001](#). The matters I go to are finite but they do highlight the government’s inability to bring down effective policy to deal with the economy as it should. I say that in the sense that it appears the ‘Excise on draught beer’ press release by the Prime Minister has set about a process where it is unclear how the Alcohol Education and Rehabilitation Foundation will deal with what can only be described as the equivalent to the difference between the excise collection on draught beer since 1 July 2000 and the amount that would have been collected using the new rates. So there is a

significant amount of money that will be dealt with through the Alcohol Education and Rehabilitation Foundation.

Newspapers comment on it as a deal that has been thrashed out—I am reading from the *Herald Sun* of Wednesday, April 4—between the coalition government and the Democrats. It gives me great concern to find that this matter is dealt with not through legislation, not through a policy initiative of this government, but through a deal that has apparently been thrashed out by the government and the Democrats, and that that deal is not clear. It is not brought into this parliament so that it can have the scrutiny it might otherwise require. It is brought in a way where the general outline and financial impact do not deal with some of the questions I might otherwise have in relation to the bill: how the fund will work, who will get access to the fund and how the brewers will pass on the excise reduction through lower prices for draught beer. The press release seems to call on the brewers to immediately pass it on, but it does not provide a framework or what I would describe as a logical process to allow this matter to be brought forward in a meaningful way.

As I said at the outset, this was not a matter I was going to speak on for very long. Hearing the interjections of Senator Ian Campbell in relation to Senator Schacht's fine contribution provoked me to read the Prime Minister's media release and to take issue with some of the questions that are not stated within it, some of the matters that remain unheard and unanswered. The speeches in the second reading debate by Senator Cook, Senator Schacht and Senator Hutchins have amplified the debate and raised questions with the government. Hopefully, Senator Ian Campbell, with the time available, will be able to provide some cogent answers to these questions. Also, I would have expected the Democrats to have participated more fully than they have in the second reading debate to provide logical answers to the issues.

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (6.36 p.m.)—I

thank all honourable senators for their contributions to the debate. I will sum up as succinctly as I can because I believe it is important that we move to the committee stage this evening. In fact, it would be sensible management to see this matter concluded this evening.

I will respond to two points that have been made. Firstly, there was a criticism of there not being some explanation or some reference in the bill to the expenditure of the roughly \$120 million that has been collected so far in relation to the excise. That is an announcement that has been made by the Prime Minister and, of course, it would be extraordinary for the detail of that to be put in the bill. It is money that has already been collected. Labor senators seem to be incredibly confused about what Labor would propose to do with that money.

Labor, as you would know better than most, Mr Acting Deputy President Murphy, have a number of different positions on a number of subjects. It is a new strategy of Labor's. If you have six or seven different positions on any issue, you are going to keep a lot of people happy. But, ultimately, the people of Australia will expect you to have a position on at least one subject and to keep it for more than a few hours. It would be absurd to have to include such a thing in this bill. No Labor bill would ever have done that, and the government will not be including that in this legislation. We have given a commitment to use the money in what most people who are aware of the debate over the taxation of alcohol would regard as a prudent, sensible and responsible way, and that is to set up an independent foundation. I quote the Prime Minister's announcement from yesterday:

... the amount ... will be appropriated and allocated to an independent foundation to be called the Alcohol Education and Rehabilitation Foundation.

And, to answer a point raised by the senator from the Transport Workers Union, Senator Hutchins, I will add this comment by the Prime Minister:

A small amount will be allocated to an initiative for the restoration and preservation of historic hotels in rural and regional Australia.

It is a significant increase in funding for research into the health effects and rehabilitation of people who suffer from the effects of alcohol. Most people who have bothered to be associated with that area of public policy for even a short period would regard that as a sensible expenditure. Labor's policy was to allow the brewers to keep the money. The Senator Schacht policy was to give the money back to the drinkers, and I think even the brewers would regard that as a fairly impractical suggestion.

I did get agitated—and you picked up on that, Mr Acting Deputy President—and I apologise for that agitation, which was reflected in a number of disorderly interjections aimed at what I regarded as the rank hypocrisy from the Australian Labor Party on this issue. When the Australian Labor Party were in power, they wreaked havoc on the Australian economy, creating massive deficits year after year, driving interest rates up to 17 per cent on home loans and from 20 per cent to 32 per cent on business loans, and sending one million breadwinners into unemployment—that is, removing the breadwinner from one million households. I am talking about kids who would wake up in the morning and see that dad or mum did not have a job to go to. Labor created that social and economic havoc in Australia through their inane, destructive economic policies of spending, spending and spending. They were ruinous economic policies, and they ruined the lives of many Australians. Many of them have not recovered yet. There are people out there who were forced to sell their homes and who lost all their equity because of the ruinous policies of Mr Keating and Mr Beazley. Mr Beazley now asks us to ask the people of Australia to re-elect him and to put in what I refer to as the 'Keating retread' ministers. Mr Beazley asks us to put back in the same team who wrecked the joint for so many years.

I will refer specifically to the issue of alcohol and beer taxation. This evening, a series of Labor Party senators have come in here and said that we have put the excise on beer up too much. According to their own policy, they want to take between \$185 million and \$200 million out of the revenue and

give it to the brewers. This is the party who say that we do not spend enough money on education, health, housing, roads and anything else they care to think of on a particular day, yet they would prefer to spend something like \$185 million to \$200 million on excise reduction.

The hypocrisy that worries me the most and that should be revealed to the Australian people is that it was the Australian Labor Party who increased the excise on beer by more than 28 per cent between 1988 and February 1996. Specific policy decisions made by the Labor government—and many of these retread opposition shadow ministers were members of that government—saw the excise on beer go from \$11.70 per litre in August 1988 to \$15.60 per litre when they were ignominiously turfed out of power in February 1996.

Not content to increase excise by over 28 per cent, Labor also imposed a 20 per cent wholesale sales tax—another hidden tax. They did not tell people they were going to do it; they did not explain it to the people of Australia. It was quite the contrary: in 1993, Prime Minister Keating and Mr Beazley went around the country, campaigning against increased indirect taxes and, within days of being elected, increased the hidden sales tax on beer by five per cent. Not content with increasing it by five per cent within days of an election—this is the deceit and the rank and gross hypocrisy of the Australian Labor Party—they increased it again, in August 1995, by another five per cent. So we had a 10 per cent increase in the hidden wholesale sales tax from February 1993 to February 1996.

When it comes to issues of economic management and the specific issue of the taxation of alcohol, the Australian Labor Party are, without any doubt, the perpetrators of the most gross hypocrisy in this area in the history of Australia. Drinkers remember that. They remember that, budget night after budget night, fags went up and beer went up. That happened in every budget, prior to the indexation of excise coming in in the early eighties. Apart from the slogans of 'bringing home the bacon' and those other inane and disgraceful comments by that failed Treas-

urer, Mr Keating, the one thing Australians remember most about Labor in power was budget night: beer went up; fags went up. And they have the audacity and the hypocrisy to come into this place today and give us a lecture about beer tax increases. The Australian people will not forget what the opposition did with the beer tax when they were in power. They will never forget it, and I will not let them forget it. It is time to get on with the debate, to deliver on the government's promises and to deliver on a whole range of excise measures. I commend the bill to the Senate.

Amendment agreed to.

Original question resolved in the affirmative.

Bills read a second time.

Ordered that further consideration of these bills in committee of the whole be made an order of the day for a later hour.

### **BUSINESS**

#### **General Business**

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

That consideration of government documents not be proceeded with today and that government business continue till 7.20 p.m.

#### **EXCISE TARIFF AMENDMENT BILL (No. 1) 2001**

#### **CUSTOMS TARIFF AMENDMENT BILL (No. 2) 2001**

#### **In Committee**

Consideration resumed.

**The CHAIRMAN** (6.47 p.m.)—Before we commence the committee stage of these bills, there is a statement that I wish to make. This is to clarify for the Senate our method of proceeding with the two bills. Under section 55 of the Constitution, bills for imposing duties of customs and bills for imposing duties of excise may deal with different goods, and increases in duties on some goods and decreases in duties on other goods may be contained in the same bill. Where a bill contains both increases and decreases in duties, the Senate regards it as a bill imposing taxation within the meaning of section 53 of the Constitution. The Senate may therefore not make amendments directly to such a bill, and

all Senate amendments, including proposals for the division of such a bill, must be proceeded by way of requests. I note that statements of compliance in the order of the Senate of 26 June 2000 have been circulated in respect of both bills. The first bill we will deal with is the **Excise Tariff Amendment Bill (No. 1) 2001**.

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (6.48 p.m.)—I table a supplementary explanatory memorandum relating to the government requests for amendments to be moved to these bills. The memorandum was circulated in the chamber today.

#### **EXCISE TARIFF AMENDMENT BILL (No. 1) 2001**

The bill.

**Senator MURPHY** (*Tasmania*) (6.48 p.m.)—I was looking at the supplementary explanatory memorandum which has just been circulated. One thing that was raised in the course of the debate on the second reading was this question: what is actually going to happen to this \$120 million? I think Senator Campbell pointed out that the government would not include that in the bill itself, but they ought to have some explanation of exactly what they really plan to do with this money and how it will be distributed. At least the people who paid the money—that is, the beer drinkers of the country, from time to time including me, although I do not tend to drink too much beer these days—have a right to know.

**Senator Murray**—What is too much?

**Senator MURPHY**—I think it becomes obvious to some people what is too much sometimes. People have a right to know what the government is really going to do with the money. I know that Senator Murray, on behalf of the Democrats, moved a second reading amendment that went to the question of setting up an inquiry, but unfortunately even that amendment does not really require the government to initiate an independent inquiry. I am not sure what the Democrats deem to be independent—whether that is an external government person or persons to do



the inquiry—and at the end of the inquiry what is intended to happen.

The fact is that the beer drinkers who paid \$120 million in excise deserve an explanation from the government. There is no question about that. Again, from my own point of view, throughout this whole debate about excise the government has held strong. It might sound repetitive to Senator Campbell and the government, but the fact remains that the government started from a position where it introduced the GST on top of the excise for petrol, beer and a whole range of other things. At the end of the day, that was in clear breach of the promises the government made.

Senator Cook read out a statement by former Liberal member Mr Ian Cameron who said that it was made abundantly clear to him that the price rise in beer would be 1.9 per cent. That was fundamentally the issue in terms of the general public. The government cannot be reminded enough about that. At least from a Labor Party point of view—as was also indicated to the government during the second reading debate—we maintained the position that sooner or later this government would come to a realisation. It took three significant political defeats to cause the government, as Senator Schacht said, to go into panic mode and proceed to do things on the run.

That is reflected by the economic commentators of this country, who are clearly saying that the government's actions have not been good for the economy or business. In the past, when this government was in opposition, it was only too ready to criticise the same sorts of actions if they occurred at any point. No actions occurred in our former administration of the nature of this government's actions in respect of the backflips that it has done on a whole range of excise matters. The supplementary explanatory memorandum in no way gives any explanation as to exactly where the \$120 million will go. If it is intended to address a whole range of issues, how much will really end up there? How much will be raked off by the government in administration costs? I find it interesting sometimes to see how the government administers grant moneys and just how much

it can consume in administration charges. I find it very intriguing. The government finally admitted it incorrectly took \$120 million from the beer drinking and tax paying public of this country.

It is no wonder the government is in such a dire electoral state. It is because of your actions, the things that you have been doing to the people of this country, which you made promises about prior to the last election and even the election before that. You have given a whole range of commitments to people only to unravel them after the event—way too late, in my view. You have done that in all of the things you have said, including what the Prime Minister said on petrol and beer. You set about a course of action where you tried a little trick to link petrol and beer together so that, if there were any attempt on the part of the opposition to deliver your promise, you might be able to come out of this blaming the opposition and saying the opposition was responsible for not delivering the petrol excise cuts. What a ridiculous situation! Of course it failed, and you got the right sort of press for that failure.

I think one of the first senators who got up in this chamber a long time ago and raised the issue of the increase in excise on beer was Senator Sherry. From memory, it was raised in the 1998 budget. Of course, the Assistant Treasurer got up in the chamber and said, 'No, we only ever said that applied to packaged beer; we didn't say it applied to beer bought over the counter.' But that is not what the punters thought. I know that Senator Murray has always tried to ensure that the Democrats' approach has been genuine, but I have to say that the Democrats found themselves caught out when they signed on to the GST in respect of this matter. Likewise, I think they got caught out with petrol. That is why they have had to go back to the government—because their electoral fortunes have been clearly reflecting the troubled parts of the GST deal. The government now finds itself running scared on this matter, let alone on a whole host of other issues which are yet to be responded to by the government. There are other matters that relate to the promises that this government has made and indeed the way it has treated taxpayers.

The general outline in the supplementary explanatory memorandum says:

**Duty rates for certain beer**

The amendments to these Bills will incorporate further alterations to the Excise Tariff Act and Customs Tariff Act to:

reduce excise and customs duty rates for beer packaged in an individual container exceeding 48 litres;

align the reduced rates with the present Excise and Customs Tariff structures by providing 3 different duty rates based on alcohol content—that is, for low strength, mid strength and full strength beer; and

provide for beer of these differing alcoholic strengths that is packaged in an individual container of 48 litres or less by applying the rates of duty introduced on 1 July 2000 that have since been subject to indexation increases in August 2000 and February 2001.

What has happened with regard to the reduction of 'excise and customs duty rates for beer packaged in an individual container exceeding 48 litres'? The explanatory memorandum then says:

**Financial impact:** The reduction in rates of duty for draught beer is estimated to cost \$35 million in 2000-2001. The amount of \$120 million, equivalent to the difference between collections on draught beer since 1 July 2000 and the amount that would have been collected using the new rates (with the exception of the following), will be appropriated and allocated to an independent foundation to be called the 'Alcohol Education and Rehabilitation Foundation'. A small portion of this amount will be allocated to an initiative for the restoration and preservation of historic hotels in rural and regional Australia. Costs for the out-years are estimated at \$175 million in 2001-2002, \$180 million in 2002-2003, \$180 million in 2003-2004 and \$185 million in 2004-2005.

What the parliamentary secretary might explain in respect of this supplementary explanatory memorandum is: have the government any idea as to which historic rural and regional hotels in Australia they are going to preserve? How is that going to be allocated in terms of a state by state basis? Does it mean that the government will decide which hotels, and in which states, will get the money?

This foundation is to be set up. How is it going to be structured? It says it is an inde-

pendent foundation, but who is going to be this independent foundation, given that there are a range of bodies in terms of drug and alcohol abuse already in existence? That is an issue the government has not addressed itself to yet. I hope that the parliamentary secretary will respond to that because I think it is important. How are these things going to interact with existing arrangements and existing government funded bodies? How are they going to interact with those organisations? And what is going to be the real role of the Alcohol Education and Rehabilitation Foundation? There are government funded organisations both in the private sector and in the public sector that have a role. What are the arrangements for that? What is the process for the interaction to occur?

I think those are very important points that the government must also explain because, as I said, at the end of the day, the government has got \$120 million of taxpayers' money that it should never have got in the first place. At least the government ought to be decent enough to explain to the taxpayers exactly what it is going to do with it. I will be very interested to hear what the parliamentary secretary has to say about that.

**Senator MURRAY (Western Australia)** (7.02 p.m.)—Just before I begin, Senator Murphy, the reason for my earlier interjection was that I discovered years ago to my immense surprise that professional researchers into alcohol use regard someone who has six beers a week as a heavy drinker. If you had answered my interjection as to how much you take a week with seven, I would have been able to pin you.

**Senator Murphy**—They obviously did not survey any shearers.

**Senator MURRAY**—Yes. Anyway, that is an interesting bit of trivia. Senator Murphy has addressed many of his remarks to the foundation. In the development of this proposition, the Australian Democrats had to talk to those they could. We certainly could not talk to all the beer drinkers of Australia, so we had considerable discussions with the leaders of the beer industry and their representatives. We had considerable discussions with leaders of the Australian Hotels Association and their representatives; we had dis-

cussions with representatives of other sectors of the alcohol industry. We had to decide what should be done with this money which is now in excess of the actual beer rates by some \$120 million. Obviously, it did not belong to the government and it did not belong to the brewers. It could not be given back to the individual beer drinker. So the only thing that could be done was to use it for purposes that could be regarded as legitimate and needy.

It was the brewers themselves who came up with the idea of a separate foundation. We thought that was a very good idea. I think their original intention was to call it the Beer Drinkers Foundation. That was not really descriptive of the purposes to which the money could be put. Either the \$120 million could be dished out to somebody's favourite charity on somebody's criteria or we could try and determine in the outline where that money should go. As a result of consultation, we agreed that the objectives of the foundation would be to prevent alcohol and other licit substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth. The foundation would support evidence based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programs. It should promote community education, encouraging responsible consumption of alcohol and highlighting the dangers of licit substance abuse. It should provide funding grants to organisations with appropriate community linkages to deliver the abovementioned services on behalf of the foundation. It should promote public awareness of the work of the foundation. Explicitly, in response to Senator Murphy's questions, it was not to replace existing funding for existing activities in other areas; it was to provide a means for the distribution of moneys to the appropriate bodies and organisations that deal in these areas.

There are very considerable sums of money being spent by this government on illicit use of substances. That campaign is replicated to some degree by the states' activities, but the area of licit substance abuse deserves more attention and more funding.

Our view, after consultation with the bodies I outlined earlier, was that this \$120 million could be very well directed over a four-year program into that area.

The second component—a minor but significant one—is to respond to an Australian Hotels Association initiative for \$5 million towards historic hotels development. The idea is that rural and regional hotels that do not have other forms of subsidy, such as pokies, within their organisation but do at least provide food, beverages or accommodation should get, as part of a centenary year exercise, some dollar for dollar grants of up to a total of \$100,000. These grants will contribute towards the preservation of historic hotels in regional and country areas that do not have gaming machines. That is a marvellous initiative. It is good for tourism, it is good for preservation and it is a terrific idea on heritage grounds. Five million dollars is not a vast amount of money, but it will be \$5 million well spent. I will leave my remarks there to allow the minister time to conclude.

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts*) (7.09 p.m.)—Senator Murray went into a whole range of detail about the foundation, but it is an incidental issue to the bill before the Senate. How that money will be spent is, of course, an important issue. I think the point Senator Murphy made is true about the existence of a whole range of private—often voluntary—as well as government programs that seek to rehabilitate and provide education about alcohol, particularly about the abuse of alcohol. This initiative will support the very important work of those existing bodies. I know that the government, the Prime Minister, Senator Lees, Senator Murray and the Democrats generally will want to ensure that the foundation does nothing but support those efforts and encourage greater education about the risk of alcohol in society.

It is fair to say that there has been a huge focus on illegal and illicit drugs and drug education, and this government has made it a very important part of its social policy to increase the resources available, particularly to parents but also to other community

groups, but this should not be to the detriment of dealing with alcohol. The effects of alcohol on virtually all age groups creates a massive devastation and destruction in the community across a whole range of areas. An enormous percentage of the carnage that takes place on our roads is because of the abuse of alcohol.

The Australian Labor Party may well wish to use the establishment of this for some point scoring on process or procedure, but attacking the concept of spending \$120 million in this area is probably going on a short path to nowhere. I recommend that we move ahead with the substantial debate on the bill. The government have made it clear that we would like to see this measure dealt with to provide certainty for the industry prior to the adjournment of the Senate this week. After tomorrow, the Senate will not be sitting in this building until 22 May—a most important date in the history of the world. That is some time away, and the government will be seeking the cooperation of all senators in ensuring that the Senate sits the hours required to pass this measure. It would have

been very desirable for the bill to have been dealt with this evening, which would have allowed any requests that may flow to be transmitted to the House of Representatives and back here again for a third reading. The progress has not been as fast as I would have liked this afternoon, but certainly I will not stand in the way by talking any longer. I seek leave to move my requests together.

Leave granted.

**Senator IAN CAMPBELL—I move:**

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

- (1) Clause 2, page 2 (after line 12), at the end of the clause, add:
  - (7) The amendment of the *Excise Tariff Act 1921* made by item 18 of Schedule 1 to this Act is taken to have commenced on 4 April 2001.
- (2) Page 13 (after line 10), at the end of Schedule 1, add:

***Part 6—Amendments having effect on and from 4 April 2001***

**18 Item 1 of the Schedule**

Repeal the item, substitute:

1	BEER; OTHER EXCISABLE BEVERAGES OF AN ALCOHOLIC STRENGTH BY VOLUME NOT EXCEEDING 10%	
(A)	As prescribed by By-law	Free
(BB)	Beer produced for non-commercial purposes using commercial facilities or equipment	7% of the rate applying to goods classified to sub-item (C)
(C)	Other Beer	
	(1) packaged in an individual container not exceeding 48 litres	
	(a) not exceeding 3% by volume of alcohol	\$44.08 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	(b) exceeding 3% but not exceeding 3.5% by volume of alcohol	\$37.42 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	(c) exceeding 3.5 % by volume of alcohol	\$32.22 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	(2) packaged in an individual container exceeding 48 litres	

1	BEER; OTHER EXCISABLE BEVERAGES OF AN ALCOHOLIC STRENGTH BY VOLUME NOT EXCEEDING 10%	
	(a) not exceeding 3% by volume of alcohol	\$15.96 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	(b) exceeding 3% but not exceeding 3.5% by volume of alcohol	\$17.33 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	(c) exceeding 3.5 % by volume of alcohol	\$22.68 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
(D)	Other Excisable Beverages of an alcoholic strength by volume not exceeding 10%	\$32.22 per litre of alcohol

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (7.13 p.m.)—I note the closing comments of the parliamentary secretary before he moved the government amendments to this legislation. Those remarks pointed to the government's preference to have this bill passed today, or certainly before the parliament rises. I note the affirmative nod of the parliamentary secretary, agreeing that that was the point.

From an opposition perspective, it is of course eminently desirable that this legislation pass the parliament as soon as possible. We will not be—not that we ever do—seeking to delay it by any artificial means. However, as I said in my contribution on the second reading debate, we were all ready and dressed up to go to the dance on Thursday morning, at start of play last week, to debate that legislation.

In the intervening period there have been discussions offstage that have not involved us. An outcome has been agreed on a majority of votes in the Senate but, as yet—at least not to my ears—there has not been any explanation made to this chamber, which I note is a chamber of review, as to the details of that deal. I think that, without artificially delaying anything, it is appropriate and proper—indeed, in a democracy, desirable—that some of the elements of this be put down clearly on the table. I did not expect to be debating this bill at this hour, but I under-

stand that an arrangement was made by the managers of business. Because we are debating it, I think the chamber had a chance to vote on the second reading and, while I was not in the chamber, my understanding is that the Senate adopted the amendment moved by Senator Murray to the second reading which is, inter alia, an amendment that would set up an inquiry into alcohol taxation. The Labor Party did not vote for that amendment. For it to have been carried, as I understand it has, it means that the government did vote for it.

**Senator Ian Campbell**—Sorry; what amendment was that, Peter?

**Senator COOK**—This is the amendment to the second reading that there be an inquiry into alcohol, moved by the Australian Democrats.

**Senator Ian Campbell**—It was carried on the voices, but we might seek a recommittal if that is the Labor Party's wish.

**Senator COOK**—We never at any point indicated that we were going to vote for it. If your vote was assumed—

**Senator Ian Campbell**—We heard a voice.

**Senator COOK**—So did the Maid of Orleans.

**Senator Murray**—Madam Chair, I raise a point of order. That vote was actually called. I have no objection to it being resubmitted. I would accept the recommittal of the vote on

the voices if the committee wishes to do that now. But I think it would be to good order—

**The CHAIRMAN**—We can't do that now because we are in committee.

Progress reported.

**Second Reading Amendment:  
Recommittal**

**Senator IAN CAMPBELL** (*Western Australia—Manager of Government Business in the Senate*) (7.17 p.m.)—I seek leave to have the vote on Senator Murray's second reading amendment recommitted.

Leave granted.

**The ACTING DEPUTY PRESIDENT (Senator Knowles)**—The question is that Senator Murray's amendment be agreed to.

Question resolved in the negative.

**ADJOURNMENT**

Motion (by **Senator Ian Campbell**) proposed:

That the Senate do now adjourn.

**Mental Health: National Depression Initiative**

**Senator PAYNE** (*New South Wales*) (7.19 p.m.)—I rise to make some comments this evening which follow on from remarks I have made previously on what I regard as a key health issue in Australia. I attended a breakfast this morning in the parliament with 20-plus of our colleagues. I thought it was a pretty impressive roll-up for a fairly early start to the day. It was not about rural and regional issues and it was not a discussion about the fate of the Australian dollar or what the Chinese may or may not be doing to the American's Orion. It was for a web site called [beyondblue.org.au](http://beyondblue.org.au), the site of the National Depression Initiative, which was launched this morning by the CEO, Professor Ian Hickie, and the federal Minister for Health and Aged Care, the Hon. Dr Michael Wooldridge, in the presence of in excess of 20 members of the parliament. It was a pretty sombre way to start the day, but it is a timely reminder of where our country is in this regard and of what the impact of depression and anxiety is on communities, families and individuals. I want to talk more about the site later but, first, I want to identify some of the

key statistics, both domestic and international, on depression.

The National Survey of Mental Health and Wellbeing shows that about 800,000 Australians suffer from depression each year, that up to one in four females and up to one in six males will suffer from depression at some in their life and that depression is the fourth leading medical cause of disability in the Australian community. Internationally, Harvard University and the World Bank predict that depression will be the second major cause of disability worldwide by 2020. In fact, in 1990 unipolar major depression was the leading cause of years lived with a disability. While psychiatric conditions are responsible for just over one per cent of deaths worldwide, they in fact account for almost 11 per cent of disease burden worldwide. Of the 10 leading causes of disability internationally in 1990—that is, measured in years lived with a disability—five were psychiatric conditions: unipolar depression; alcohol use; bipolar effective disorder, known as manic depression; schizophrenia; and obsessive-compulsive disorder.

Depression is women's leading cause of disease burden in both developing and developed regions. Suicide is the fourth in developing regions. These are extraordinary statistics that I think need to be borne in mind when discussing what faces Australia in this regard. They also have an economic cost. The institutional and non-institutional costs of mental disorders in Australia were estimated at over \$2½ billion in 1993-94 alone. In material sourced from the Surgeon General's report on mental health in 1999 in the United States, where you are talking about a far greater population, it is stated the US spent more than \$99 billion in 1996 for the direct treatment of mental disorders. More than two-thirds of that amount, about seven per cent of the total health spending, was for mental health services.

Similarly, in the UK—sourced from the UK Department of Health Expenditure Plans 2000-01—12 per cent of the more than £23 million spent on hospital and community health services was directed to mental health. These are very significant costs facing the international community. Total spending on



mental health services in Australia in 1997-98 was \$2.24 billion, combining private hospitals, the Commonwealth government and state and territory governments. Of that amount, \$718 million is Commonwealth spending. These are enormous investments in the health of a nation but they are investments which, for many people, it is difficult to see paying off right now.

Beyondblue is making a very important contribution in this process. I want to acknowledge the work of the CEO, Professor Ian Hickie, and the chairman, the Hon. Jeff Kennett. They take a public health approach to depression and anxiety. When asked to describe that approach, they said, 'A public health approach, such as that proposed by beyondblue, focuses less on getting treatments to individuals and more on reducing exposure to risk factors in the community and reducing the adverse social effects for those who suffer the illness.' That can only be a positive and beneficial approach.

I want to talk briefly about the site and some of its key points. It discusses its operations, its three main spheres of strategic activity—which will be community awareness and literacy, comprehensive programs and research, and training and work force support. It has a very useful page of frequently asked questions which I think it is relevant to look at this evening because they are the sorts of questions that people ask. They are:

What are the common symptoms of depression?

What causes depression?

What are the effective treatments for depression?

What are the drug treatments for depression?

What are the psychological treatments for depression?

Where can I go to get professional help?

What is beyondblue planning?

How can I get more information about beyondblue?

In the information about key programs, the schools program is addressed quite comprehensively. It is a national school based initiative for prevention, early intervention and pathways to treatment of depression in young people. I was very pleased to hear, in the briefing this morning, comments about addressing bullying in schools, which obvi-

ously has an enormous impact on young people's lives: their psyche, their feelings of wellbeing and their self-esteem. The strategy will take two approaches. The first is an individual focused approach, which will aim to provide young people with the knowledge and skills to deal with common challenges and stresses. Things that you and I might accept as part of daily life can often be so much more challenging for young people. They are going to address topics such as trust, negotiating life's ups and downs, expectations of self and others, and dealing with anxiety. The second approach is an environment focused approach, which will look at building a school social climate profile, establishing school based adolescent health teams and supporting those teams in the implementation of best practice interventions. These are very practical, evidence based approaches which were described at the breakfast this morning as being some of the most effective ways to address many of the problems people suffering depression face on a daily basis.

The site goes on to provide more information on depression. It has a page titled 'understanding your illness', and I will quote from the beginning of that page of the site. It states:

Depression is not just a low mood, but a serious medical illness. It causes *both* physical and psychological symptoms.

It goes on to talk about specific psychological treatments, drug treatments and a guide to treatment, which says:

The course of depression varies from person to person. While some people only ever have one period of severe depression, at least half of those who come to treatment will have an illness that recurs.

These are points that, one suspects, many people wondering about their own state or the state of a friend will find very useful.

The resource library on the site is really impressive. It has some very good video and audio streaming of people, like Garry McDonald, talking about their personal experiences; consumers describing their experiences, dealing with their doctor in that whole process; a doctor explaining depression to a patient; and so on. There is an in-



roduction to beyondblue which features the Hon. Jeff Kennett.

The site lists related organisations—some very important ones which I have had contact with in my area of activity in Western Sydney: Lifeline, for example, which is very prominent in Parramatta and the Macarthur area; and Reachout!, which has been supported by many people in this parliament and is a very important information and referral service aimed particularly at young people.

What we need, and what I think the break-fast indicated, is a push along for some community awareness on this issue. We need real commitment on the part of national leadership to take this up personally—not just to direct money to it, because much of the challenge is about addressing community awareness and destigmatisation of depression, anxiety and mental illness.

This is about illness; it is not just a social problem. It is about treatments and prevention, it is about targeting and education—as much as cancer or HIV. This is a silent death threat and it hangs over not only this parliament and our communities but also our friends and our families. Too many people I know have lived with and been lost to depression, both friends and family. Too many people are facing that struggle every day, without the right support. As national leaders, we can assist in raising community awareness. We can assist in destigmatising depression, anxiety and mental health issues to a point where people can access the right sort of support and feel confident that they will not be maligned and attacked for doing that. (*Time expired*)

#### **Goods and Services Tax: Housing**

**Senator HUTCHINS (New South Wales)** (7.29 p.m.)—I rise tonight to speak on a matter that has had great bearing on the Australian economy in the last few months. I would like to speak about the Australian housing industry and demonstrate to the Senate how the goods and services tax has decimated this very important sector of our economy.

One of the key indicators often used to assess how well an economy is performing is the Australian Bureau of Statistics data on

building approvals. This information reflects the level of activity taking place in the housing and building sectors, which is of course a key indicator of what sort of activity is taking place in the rest of the economy. After several years of strong growth in the building and housing sectors, last year we saw a dramatic drop in the number of building approvals going ahead. The most recent statistics reveal that in February this year building approvals had dropped to a five-year low of just 8,935. That is 43½ per cent down from the number of approvals in February last year—a huge drop by anyone's standards. This huge slump in building activity has been reflected in the nation's level of growth. Last December Australia experienced a quarter of negative growth.

What has brought about this tremendous drop in activity? What is it that has caused the activity in this crucial sector of the economy to drop off in such a dramatic fashion? As many others have stated in this chamber, this reduction in activity can be attributed to one major factor: the introduction of the goods and services tax by the Howard government in July last year. It is no coincidence that, in the six months preceding the introduction of the GST, building approvals started to fall dramatically. In January 2000 the number of approvals was 16,693. By July, when the GST was brought in, it had fallen to 9,094. In the nine months since that tax was brought in, the number of approvals has dropped even further.

Much has been bandied about in this chamber, in the media and in public about how the GST is the major cause of our current economic troubles. But I would like to outline to the Senate two examples from the area which I come in from in Sydney's west. I would like to relay to the Senate two stories of personal tragedy resulting from the way in which the GST has impacted upon participants in the home building sector. The first example I raise is of a mud brick house builder who featured in the local Penrith newspaper, the *Penrith Press*, last year after the GST had been brought in. This mud brick house builder lives in Springwood in the lower Blue Mountains, in the seat of Lindsay. I am told that building mud brick houses

is not like putting together your average fibro or brick home. It can often take six months or more to build a single house out of mud brick. This means that when he builds a mud brick house it usually takes around six months to complete. Often he experiences long periods of bad weather, and it can take even longer.

The mud brick house builder in question started building a home before the GST had passed through the Senate. At that time it was not at all apparent that the GST would be passed. As a result, few builders inserted GST clauses into their contracts at that time—this builder did not. Due to bad periods of weather, the property took a lot longer to build than he had expected. By the time he had finished, the GST had come in. He had been forced to start paying subcontractors the GST and to pay the GST on building materials. By the time he had finished building the property, he was sent a GST bill by the Australian Taxation Office. Because he had not inserted a GST clause in the building contract way back when the GST had not passed through the Senate, he could not collect GST costs from his client. So this mud brick house builder—this hard-working small business man—living in the lower Blue Mountains of Sydney has been pushed to the brink of bankruptcy all because he got caught in the middle of the government's GST transitional arrangements.

Mr Greg Jargiello of Glenmore Park—once again in the seat of Lindsay—was another person who got caught by the GST. He had his costs blow out as a result of the extra costs of building a house because of the GST. He recently wrote to a colleague of mine, the state member for Mulgoa, Diane Beamer. In his letter, Mr Jargiello complains that, as a result of the GST, the cost of building his house blew out by more than \$14,000. He first committed to buying a land and home package in January 2000. Building on his new home did not commence until June 2000 and was finished in January this year. Because of the unexpected costs of the GST, Mr Jargiello had to take out a personal loan of \$20,000 to cover the extra costs. This loan has already cost him around \$700 in interest payments.

Is it any wonder that so many people were turned off building a new home? Is it any wonder that, in January 2000, 16,693 people wanted to build a home but in February this year only 8,935 wanted to? Is it any wonder that so many small business people in the building sector have been hurt? Is it any wonder that their activity has dropped off so much in the last nine months? The two examples I raised clearly demonstrate how the GST has wrecked the building sector, both from the point of view of new home buyers as well as builders. And the government is now paying the price as it stares down the barrel of low growth and tries to manage the economic difficulties it has got itself into. I have given only two personal insights into how the GST has affected and impacted negatively on people's lives in just one sector and in one small part of Australia. I wonder how many other lives the GST has ruined or will ruin.

#### **Violence Against Women International Criminal Court**

**Senator BOURNE (New South Wales)**  
(7.35 p.m.)—Amnesty International recently published a report about torture and the ill-treatment of women, called *Broken bodies and shattered minds*. This sadly accurate title sums up the effects on the victims of torture and ill-treatment. All too often the degradation and inhuman activities that women are often subjected to are generally not talked about or are considered to be cultural somehow or are in some way a woman's lot and she just has to put up with it. I know ever senator would agree with me that there is absolutely no excuse for beating, abuse, rape, intimidation or any of the full gamut of actions that we know collectively as ill-treatment. Amnesty's report says:

The torture of women is rooted in a global culture which denies women equal rights with men, and which legitimises the violent appropriation of women's bodies for individual gratification or political ends.

Often violence against women is seen as domestic violence and thus personal and unavoidable. Studies have been done which show this type of violence is a global phenomenon. Amnesty cites World Bank statistics that show that at least 20 per cent of

women around the world have been physically or sexually assaulted. Given that many of the causes of this violence are also the reasons why people do not report these crimes, I think we can safely assume that this figure is much higher.

This issue is not a private matter; it is an issue of basic civil and political rights and it involves state responsibility. Even when the crime is committed in the home by a husband, father or other relative, the state bears responsibility for ensuring that the woman is not treated as the criminal. The state has the responsibility to ensure that the woman has a safe place to go, that the perpetrator is brought to justice and that there is no culture of acceptance in society and particularly in the judicial system. In some countries women will be cast as the criminal after rape and will be imprisoned, flogged or become an outcast. I urge senators to read the report in its entirety because some of the victims' stories are really quite heart wrenching.

There is the issue of forced marriages and honour killings. Forced marriage contravenes the Universal Declaration of Human Rights, which says that marriage must only be entered into with the 'free and full consent of the intending spouses'. Sadly, in far too many instances this is not the case. Even where women have been born in another country with different customs and grow up there they may be taken by their parents to their country of heritage and forced into marriage. Women are assaulted in the name of honour in regions all over the world. The range of so-called offences leading to this assault can be quite broad, from talking to a male neighbour to having sex outside marriage. The family will attack the woman in order to 'save face' and restore their honour. This is an insidious practice.

The trafficking in women is also a worldwide scourge. I am astounded to note that trafficking in human beings is the third largest source of profit for international organised crime after drugs and arms, with an annual turnover of billions of dollars. I am sure that most of us thought we had done away with slavery, but apparently not. The USA released a report last year which stated that between 45,000 and 50,000 women and

children were trafficked into the USA every year.

Women may be recruited on false pretences, and may be coerced, transported, bought and sold for a variety of exploitative purposes. These include forced labour, sexual exploitation and forced marriage. These women may suffer rape and other physical violence, unlawful confinement, confiscation of identity papers and enslavement. If state officials discover these women they are usually treated as criminals or as illegal immigrants rather than as victims. If they return to their communities they may be ostracised yet again.

Finally, I would like to talk about the abuses committed against women in armed conflicts, the majority of which involve sexual violence. Amnesty cites evidence that shows that sexual violence in armed conflict is often a gruesome, ritualised prologue to murder. Violence against women is a weapon of war. It is used to spread terror, to destabilise society, to reward soldiers and to extract information. It is also a form of ethnic cleansing and genocide. Women who have been tortured in conflict are usually unable to gain access to legal or medical remedies. In most cases the perpetrators are not brought to justice.

A current example in our region is Aceh, where rape and other forms of sexual violence against women are going completely unpunished. Acehnese women have also been ill treated or tortured when soldiers have come looking for their husbands. The story of Sumiatit Binti Hamzah is just one example. She is a young orphaned woman crippled by polio. A soldier who followed her home raped her. She did not report the rape but discovered she was pregnant as result of the rape. She tried to kill herself several times but, thankfully, neighbours were able to save her. What is outstanding about this case is that no-one has been brought to trial for her rape even though a military tribunal has ruled that the perpetrator should pay the victim 50,000 rupiah per month as maintenance for the child. Indonesia has legislation for the establishment of human rights tribunals but it is unclear when these tribunals will be operational.

Cases such as this remind us of the importance of the International Criminal Court. The International Criminal Court will be vital in providing a forum of justice for people like Sumiatit Binti Hamzah where domestic legislation fails her. Australia was at the forefront of the setting up the International Criminal Court. We must now be at the forefront of ratification. It is essential that this government put up the enabling legislation so that we can ratify this essential international convention quickly and set an example for other countries to follow.

#### **Centenary of Federation: *Lucinda***

**Senator BRANDIS (Queensland)** (7.40 p.m.)—In this centenary year of federation, the great events which led to the creation of the Commonwealth are being celebrated in numberless ways across the land. This evening I would like to say a few words about one of the more notable of those commemorations, by the Supreme Court of Queensland. In doing so, may I acknowledge the presence in the President's Gallery of the Chief Justice of Queensland, the Hon. Paul de Jersey.

Last Friday evening, some 300 people gathered at the Supreme Court in Brisbane for the official opening by Emeritus Professor Geoffrey Boulton of a major historical exhibition dedicated to the drafting of the Commonwealth Constitution and in particular to the central role in those events of the then Premier of Queensland, Sir Samuel Griffith. Sir Samuel was, of course, later to become the first Chief Justice of Australia. The centrepiece of the exhibition is a faithful and painstaking reconstruction of the gentlemen's smoking room of the Queensland Government Steam Yacht *Lucinda*. I have always thought it a shame that so few Australians have an appreciation of the romance of the federal story, and there can be few episodes among those great events so romantic as the role of the *Lucinda*.

The 46 delegates to the first Federal Convention, representing each of the six colonies as well as New Zealand, gathered in Sydney on 2 March 1891. Sir Henry Parkes, who was elected as President of the Convention, described it as 'beyond all dispute the most august assembly which Australia has ever

seen'. The delegates had before them two proposed drafts of a federal constitution, one by the Tasmanian Andrew Inglis Clark and the other by the South Australian Charles Cameron Kingston.

After the convention had deliberated for some days, a drafting committee was chosen from among their number and Sir Samuel Griffith was appointed as its chairman. Its task was to finalise a draft Commonwealth constitution over the Easter weekend of 1891, to be placed before the final session of the convention for its approval. The members of the committee decided to escape from Sydney to finish their work and so on Good Friday morning, 27 March, they boarded the *Lucinda*, the Queensland government's official yacht, which had borne the Queensland delegation in grand style from Brisbane, and betook themselves from Port Jackson to the clearer air of the Hawkesbury River. They moored in a picturesque backwater called Refuge Bay and there, in the gentlemen's smoking room of the *Lucinda*, the Australian Constitution was crafted.

At the last moment, Inglis Clark succumbed to influenza and he was replaced by the young Sydney barrister Edmund Barton, a historical accident of enormous good fortune for Barton since it accelerated his standing in the federal movement. The others who accompanied Griffith and Kingston on the voyage were Sir John Downer, Sir Henry Wrixon, Andrew Thynne and Bernhard Rिंगrose Wise. Professor Boulton, in his fine new biography of Barton, describes the scene in these words:

Throughout Friday evening, Saturday and Sunday morning the drafting party laboured intensively in the gentlemen's smoking-room in the upper fore-cabin; thirteen hours non-stop on the Saturday. It was naughty, but understandable, for the frustrated Inglis Clark to describe the cruise as a picnic, though no doubt Griffith and Barton allowed themselves an occasional whisky to solace the labours of composition; Kingston, who was not a drinking man, found no scope for his besetting weakness in the all-male environment of the *Lucinda*.

The *Lucinda*, which had been built for the Queensland government in 1884 by the Glasgow shipwrights William Denny and Sons, was a vessel of unsurpassed elegance.

According to one authority, it was 'recognised throughout Australia as the stateliest and most beautiful ship on the Australian coast'.

Now, current and future generations of Australians have the opportunity to savour the atmosphere in which the Constitution was crafted, by visiting the *Lucinda* reconstruction at the Supreme Court of Queensland. The reconstruction has been carried out with fine craftsmanship and meticulous care by the Brisbane firm of E. Chapman and Son. It contains many original items and artefacts including, I believe, the whisky decanters from which the founding fathers took refreshment as they went about their work. The *Lucinda* exhibit forms part of an extensive historical precinct dedicated to the history of federation which has been assembled, under the guidance of the Chief Justice, by the Supreme Court Librarian, Mr Aladin Rahemutula.

What of the *Lucinda* herself? She gradually fell into disrepair and was sold by the Queensland government in 1923 for just £400, to be broken up. In 1937, the hull was beached on Bishop Island, at the mouth of the Brisbane River, to form part of a breakwater. There the remains of her hull still sit in the mud and sand. A project to raise the wreck of the *Lucinda* was proposed in 1986 but abandoned. Dr Michael White QC, the Director of the Centre for Maritime Law at the University of Queensland Law School, has made a close study of the history of the *Lucinda*. Dr White said last weekend:

This most beautiful vessel is an important part of Australia's history. The only pity is that its remains still remain in the mud under the extension of the Port of Brisbane. It is a national shame that in this the Centenary of Federation the remains of this important part of Australian history has not been the subject of a program to find and recover so much of them as may be reasonable. That neither of the relevant governments, Commonwealth or Queensland, or the relevant agencies or authorities have undertaken this program is a matter much to be regretted.

Last month, my colleague Senator Mason lent his voice to the call to raise the wreck of the *Lucinda*, and I take this opportunity to add mine.

The events that shape the history of a nation are the product of place and time. When we think of our nation's history, we think of Anzac Cove and the Kokoda Track. We think of the Eureka Stockade and the Tenterfield School of Arts. We should think, as well, of the *Lucinda*. It is high time that the relics of the place where the founding fathers gathered together on that Easter weekend 110 years ago, to craft the words that made our nation, should be retrieved, preserved and made a proper object of remembrance for future generations.

**Senate adjourned at 7.48 p.m.**

## **DOCUMENTS**

### **Tabling**

The following government document was tabled:

Australian Communications Authority—  
Report—Principles for determining the  
amount of datacasting charge, March 2001.

**QUESTIONS ON NOTICE**

The following answers to questions were circulated:

**Foreign Affairs Portfolio: Value of Market Research****(Question No. 3389)**

**Senator Robert Ray** asked the Minister representing the Minister for Foreign Affairs, 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 Hill**—The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

- (1) Market Development Division (Trade Development Branch) commissioned a study for \$20 000 in the financial year 1999/2000.
- (2) The purpose of the study was to contribute to identifying and prioritising key impediments to trade and investment faced by Australian companies working with Indian Ocean Rim.
- (3) (a) - 12; (b) - 6.
- (4) The Australia South Asia Research Centre (Australian National University)
- (5) (a) - \$20 000; (b) - \$20 000.

**Treasury Portfolio: Executive Agencies****(Question No. 3401)**

**Senator O'Brien** asked the Minister representing the Treasurer, upon notice, on 31 January 2001:

- (1) How many executive agencies are there in the Minister's portfolio.
- (2) In each case: (a) when was the executive agency established; (b) why was the agency established; and (c) what was the cost of establishing the agency.
- (3) In each case, can a breakdown of all costs incurred in establishing the executive agency be provided, including accommodation, human resources (including payroll management) and information technology resources.
- (4) In each case, have any corresponding savings been identified by the department from the establishment of the executive agency.
- (5) In each case, what is the public benefit flowing from the establishment of the executive agency.

**Senator Kemp**—The Treasurer has provided the following answer to the honourable senator's question:

- (1) None.
- (2) to (5) NA.

**Goods and Services Tax: Tasmanian Insurance Premiums****(Question No. 3435)**

**Senator Brown** asked the Minister representing the Treasurer, upon notice, on 23 February 2001:

- (1) Is it true that in Tasmania insurance premiums are attracting both the goods and services tax (GST) and stamp duty.
- (2) Are any other transactions subject to such double taxing.

- (3) Did the Government not make a commitment, after announcing the GST, that such state taxes as stamp duties would be abolished.

**Senator Kemp**—The Treasurer has provided the following answer to the honourable senator's question:

- (1) and (2) Consistent with the treatment of other services, insurance premiums are subject to the goods and services tax (GST).

The application of state taxes, such as stamp duty, is a matter for State governments. However, I understand that the Tasmanian Labor Government does impose stamp duty on insurance premiums.

- (3) While the Government's tax reform package included the abolition of a number of State taxes, stamp duty on insurance premiums was not slated for abolition.



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SENATE

Wednesday, 4 April 2001

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