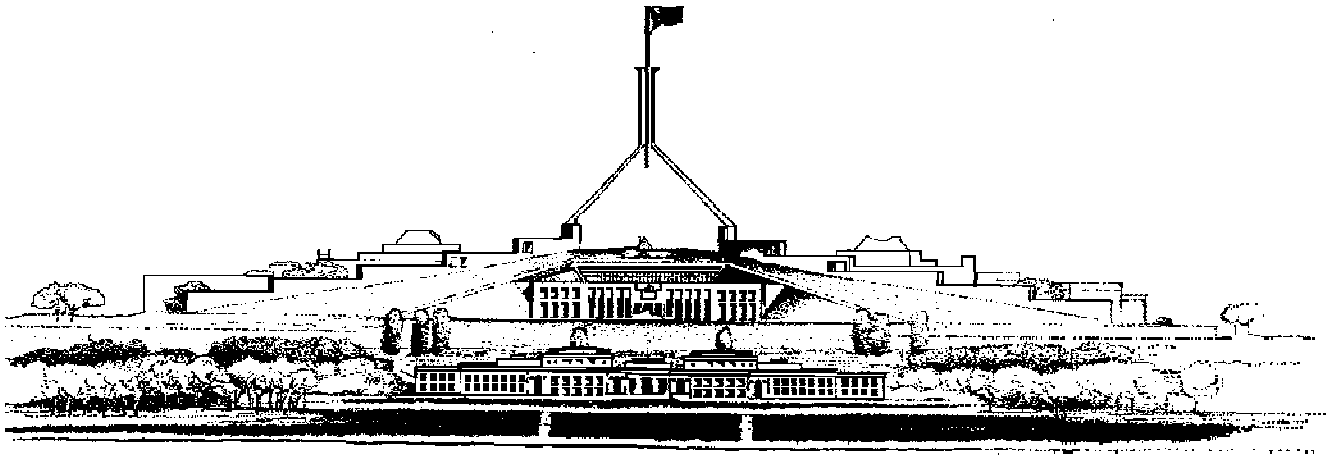
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

WEDNESDAY, 26 MARCH 1997

THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—THIRD PERIOD

BY AUTHORITY OF THE SENATE
CANBERRA

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Wednesday, 26 March 1997

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

THERAPEUTIC GOODS AMENDMENT BILL 1997

First Reading

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

That the following bill be introduced: A Bill for an Act to amend the Therapeutic Goods Act 1989 to make provision relating to the listing of therapeutic goods and the supply of therapeutic goods not conforming to standards and to give effect to Australia's obligations regarding therapeutic goods under an Agreement on Mutual Recognition with the European Community.

Motion (by **Senator 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 CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.33 a.m.)—I table a revised 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—

I take pleasure in introducing the Therapeutic Goods Amendment bill 1997.

The amendments provided for in this bill are necessary to allow for the implementation of an Agreement on Mutual Recognition in Relation to Conformity Assessment Certificates and Markings between Australia and the European Community. The other important change put forward in this bill is an amendment to allow for the recovery of individual batches of registered or listed therapeutic goods included in the Australian Register of Therapeutic Goods which do not conform to standards.

The Agreement on Mutual Recognition will allow the Secretary to accept conformity assessment certificates, issued by conformity assessment bodies in the European Union, certifying that registrable medical devices manufactured in the European Community to which the certificates apply meet with all Australian regulatory requirements relating to good quality, safety and efficacy, and that listable devices specified in the certificates meet with all requirements as to good quality and safety. Acceptance of these certificates will preclude the need for further evaluation or assessment of the devices before they may be included in the Australian Register of Therapeutic Goods and approved for general marketing.

In relation to medicines, the bill also provides for acceptance of the results of inspections of overseas manufacturers required to meet Australia's Good Manufacturing Practice requirements, which have been carried out by conformity assessment bodies in the European Union.

The other important change to the Therapeutic Goods Act 1989 will allow the Secretary to require a sponsor to withdraw from the market batches of the sponsor's goods where only a batch or certain batches fail to meet applicable statutory standards.

The provision of such a power expands the range of options available to the regulatory authority in such circumstances. At present goods failing to meet applicable standards can be cancelled from the Australian Register of Therapeutic Goods and, only then, can they be recalled under the act, or the sponsor can be prosecuted for supplying non conforming therapeutic goods. Following this amendment a sponsor who has had no similar transgression in the preceding six months can be required by the Secretary to inform the public and to recall only the batch or batches of therapeutic goods which do not comply. The Secretary must publish notice of such actions in the Gazette. A penalty of 60 penalty units will apply for wilful refusal to comply with such a requirement made by the Secretary.

Finally a minor correction is made to one section of the act by substituting the word "acceptable" with the words "not unacceptable" to conform with terminology used elsewhere in the act.

Ordered that further consideration of the second reading of this bill be adjourned until the first day of sitting in the winter sittings 1997, in accordance with standing order 111.

DAYS AND HOURS OF MEETING

Motion (by **Senator Campbell**), as amended, agreed to:

That on Wednesday, 26 March 1997:

(a) the hours of meeting shall be:

9.30 am to 7 pm, 8 pm to adjournment;

(b) the routine of business shall be:

(i) Government business only

(ii) At 2 pm, questions

(iii) Petitions

(iv) Notices of motion

(v) Postponement and rearrangement of business

(vi) Formal motions—discovery of formal business

(vii) Government business; and

(viii) The question for the adjournment of the Senate shall be proposed at midnight.

COMMONWEALTH SERVICES DELIVERY AGENCY BILL 1996

COMMONWEALTH SERVICES DELIVERY AGENCY (CONSEQUENTIAL AMENDMENTS) BILL 1997

In Committee

Consideration resumed from 25 March.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.35 a.m.)—Last night, when speaking to amendment No. 1 which stands in my name, I said that a point that had been made in the minority report on the Commonwealth Services Delivery Agency Bill that, while we see some merit in separation of purchaser and provider functions, we believe that the provider authority should be precluded from taking on regulatory accrediting or outcome monitoring roles. We argue strongly that these are more properly the responsibility of Commonwealth policy departments or independent authorities.

I understand that the government may have some difficulty with the precise wording of the amendment. But, in our view, we have a situation where it is perfectly reasonable for the agency to monitor and report on how it is performing in relation to the service arrangements that it has entered into.

I would not want to preclude that from occurring, if that is still a concern of the government. No doubt we will hear the comments of the minister on that point. I would be happy to consider any other words the minister may care to suggest, if she still believes that those concerns need to be allayed. I commend amendment No. 1 to the committee.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (9.37 a.m.)—It might help expedite the matter if I were to put the government's position and explain why we are so concerned about this amendment which, in our belief, would make the agency unworkable. A preclusion such as would prevent the agency from undertaking regulatory functions would prevent it also from doing a large part of what it is intended to do. It would operate to deny the agency the power to enter into a service arrangement with the Department of Social Security to carry out some or all of that department's functions under the Social Security Act, because a large part of what the department does now is regulatory by nature.

By definition, the department, exercising powers under the act, controls access to benefits by the application of the rules. By definition, the act restricts access to those benefits. Those functions would come within the ordinary definition of 'regulatory'. It is very hard to imagine how the agency would carry out the department's functions under the Social Security Act without exercising a regulatory function. That is the first part of this amendment.

Let me turn now to the monitoring function, with which I think perhaps there is also a misunderstanding by those who would seek to amend it in this way. The power to regulate remains with the parliament through the legislative process, policy responsibilities remain with ministers and their policy departments and the agency will deliver services purchased by policy departments and within the framework of the relevant legislation.

In his speech on the second reading debate, Senator Faulkner mentioned the aged care area as an example; he said that in that area he had a concern about the potential role of the Service Delivery Agency. That issue was covered in the committee hearings. The Department of Health and Family Services made it very clear. It clarified the agency's role in relation to the accreditation of nursing homes. It said that there is no plan for that at all, and:

Accreditation mechanisms, which the minister is currently reviewing as part of the structural review package, would be part of aged care legislation. Indeed, an exposure draft is now available, which details what we expect will be covered in the aged care act. We will be contracting or purchasing from the Commonwealth Service Delivery Agency the income testing of residents of nursing homes for means testing purposes. The agency will be undertaking a specified function for us that will be given authority in the aged care statute.

So there is no plan for accreditation. But, if accreditation were to be desired in the future from the agency—and I say 'if'—it would have to be as part of a policy of the Department of Health and Family Services, it would have to come by way of legislation to this parliament and it would have to then come by way of contract between the Department of Health and Family Services and the agency.

The parliament will have a complete opportunity to control that process down the track. It is not the plan. It is not being provided for now. It is not intended. But I would say to those, particularly in the opposition, who have been so concerned about the thought of public sector jobs disappearing: if these roles are not given to the agency—and that means future opportunities for accreditation perhaps; it certainly means the monitoring arrangements—what is the parliament expecting of the government? Is it expecting that therefore the agency will have to go to the private sector for accreditation purposes, or to the private sector for monitoring purposes? Currently we are not proposing accreditation at all. That is one thing that is off the agenda for now, and it would have to come by way of approval of the parliament.

However, the monitoring exercise is an essential element for making sure that the agency itself knows how it is delivering its services. It is customer focused. It has to know at any given time how well or badly it is doing. To force the agency to go out to the private sector to implement a monitoring process would seem unnecessarily restrictive. It may be sometimes desirable, and certainly external independent monitoring is useful from time to time. But, surely to goodness, the public sector employees in the agency should be able to monitor also the performance of the agency.

I draw the committee's attention to the fact that currently, with these programs being administered by the Department of Social Security, quality assurance is an essential element of making sure that we do provide the service to the best our ability. Quality assurance obviously has to continue under the agency. It is an important element of monitoring, surely. I think it would be a terrible shame for this amendment, which would preclude the agency from independently monitoring the services it delivers, to go through.

Really, it is a nonsense. I believe that it flies in the face of all accepted accountability practices in public administration. I ask Senator Faulkner whether the opposition is seriously suggesting that the agency should not be able to seek an independent view on its delivery of a particular service—for example, by engaging a consultant to review its systems design or its business process design.

The agency has to have a capacity to fully monitor and track its performance through both internal and external sources of advice and assistance, so as to ensure accountability to the minister and the parliament, and so we may all be confident that it is fulfilling the charter of service to the public that has been established. None of this takes away from the independent advice which will also be available to ministers and the parliament through audits by the Australian National Audit Office and by evaluations, undertaken by the purchaser departments, of their contract of services.

I urge the Senate not to go down this path which in fact would neuter the Commonwealth Services Delivery Agency in the exercise of its role, which is one that is currently properly exercised by the Department of Social Security under legislative authority. That would be the case with the agency taking on the role. It is under legislative authority. It needs to be scrutinised internally and it will also be scrutinised externally. Any limitation along the lines of these amendments would go to neuter the effectiveness of agency altogether.

Finally, I go back to the question of limiting the regulatory role. Just about everything

the department currently does in the exercise of its powers under the Social Security Act has a regulatory connotation. To remove that power from the new agency would be the ultimate neutering.

Senator WOODLEY (Queensland) (9.45 a.m.)—Sometimes in this place we say we will listen to the debate and make up our minds and we really do not mean that. That is exactly what I am doing at the moment, because I am caught between two opinions. What the ALP is trying to do through these amendments is very commendable and that is to ensure there is some distance between the monitoring of the department and the department itself. That is always desirable.

I have a briefing from the Minister for Social Security (Senator Newman) and I have listened to her. It seems to me that there are two things happening, both of which are desirable and they are not coming together. I will ask Senator Faulkner to give a bit more explanation, but for example I refer to his illustration that you would not want the same people in the department and on the Social Security Appeals Tribunal. That is a helpful analogy, but the Social Security Appeals Tribunal is actually an appeals process and you certainly would want to keep the appeals process separate.

The minister is saying that the problem with the ALP amendment is that it actually interferes with the normal operation and running of the department. I do not think the ALP wants to do that either. You can see my problem in trying to decide where it is. I wonder whether independently monitoring that service is also a problem. Surely what we do want is independent monitoring of the service. If I could get a bit of clarification on those issues that would help me.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.47 a.m.)—I appreciate the points that Senator Woodley makes. This largely swings on the Minister for Social Security's (Senator Newman) interpretation of the word 'regulate'. I would be interested if the minister could assist the committee by giving us a definition of 'regulation' or what the legal definition of 'regulation' is that she is using. I suspect that if the minister does that it will assist both of us.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (9.48 a.m.)—Senator Faulkner may have been consulting his advisers at the time, but I did go through the dictionary definition of 'regulatory' and drew on that when I was advising the committee before about the department's functions under the act. I said that a large part of what the department does is regulatory by nature. By definition the department controls the access to benefits by the application of rules. By definition the Social Security Act restricts access to those benefits and these functions would come within the ordinary definition of 'regulatory'.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.49 a.m.)—I have to say that we all have an understanding of what 'regulation' might be, but I do not think that a dictionary definition of 'regulation' answers the question that Senator Woodley asks. Let me put it in very clear form. I asked two questions: what is the legal definition of 'regulation'—and I think that will assist Senator Woodley—and how does the agency independently monitor itself? As I understand what Senator Woodley puts to the committee, that is the nub of issue before us. We would probably all agree that this is where we are at in relation to what hopefully will be a very contained debate on this amendment.

I pose those two questions to the Minister for Social Security (Senator Newman): give me a legal definition of 'regulate' or 'regulation'; and explain to the committee how the agency can independently monitor itself. If we have the government's view put on these issues, we can perhaps determine the issue and move to the next amendment.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (9.50 a.m)—I am finding Senator Faulkner's clarification not a great deal of help. I certainly want to make sure that both Senator Faulkner and Senator Woodley understand the importance of the contractual arrangements in

this whole exercise. It is the role of the purchaser departments, the Auditor-General, the Department of Finance and the parliament to independently monitor the agency. We cannot walk away from the fact that those serviced agreements are what determines what is to be achieved by the agency. We have independent monitoring now and, as I said at the beginning of the debate on this amendment, provision is made for it. I cannot give you today a legal definition of 'regulatory', but Senator Faulkner has been minister for veterans' affairs and at the very least he would understand the regulatory role that the Department of Veterans' Affairs played in implementing—

Senator Faulkner—It is that experience that has led me to move these amendments.

Senator NEWMAN—You interject, but I think that you are somehow hung up on something which is hard to quantify. I do not really understand your concerns and, therefore, it is very hard to address them. I have taken you through some of the examples of what the department now does which are regulatory by nature. The department in the future will be a policy department which contracts for services to be provided by the agency. The agency, in order to do that work under the contract, needs those regulatory powers. It needs to be able to implement the regulations. It would be impossible to administer if this amendment were to go through.

Senator O'BRIEN (Tasmania) (9.53 a.m.)—Minister, I thought your immediate past contribution struck upon the nub of the problem. The amendment is saying that the agency should not be a self-regulatory body. That is what the amendment is prohibiting. If you are saying that that is the appropriate course, then I do not fully understand the nature of your objection to the amendment. What the amendment is preventing is the agency independently monitoring itself. That is not to say that the agency would not audit its own delivery of services. I think self-audit is different from a monitoring or a regulatory role.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (9.54 a.m.)—I do not think you were in the chamber when I explained these matters earlier, Senator O'Brien. Were you?

Senator O'Brien—Yes.

Senator NEWMAN—The agency needs to independently monitor how it is going. It is service oriented. It is not just a question of auditing whether the money is being paid out correctly, although it is also important to monitor that both internally and externally. But the quality of the service must be independently monitored and internally monitored. Once again, the failure to grasp the idea of the contract is the base of the problem with this amendment.

The contract has to set up the performance outcomes that are required. Both parties to that contract need to know that those outcomes are being achieved or where they are falling short. The purchaser—which is the department—has to know that, and so does the provider, which is in trouble if it does not achieve the outcomes that the contract demands. They need to have internal quality assurance. They also need to be assured that their own internal evaluations are spot on.

Currently the department is exercising the dual role that will in the future be provided by the purchaser and the provider. Once this split takes place, the provider has to assure itself internally and by independent evaluation that it is doing the things that it is contracted to do. Otherwise it is in strife under its contract. Does that not help?

Senator BROWN (Tasmania) (9.56 a.m.)—It might help if the minister could suggest an alternative way in which the overview and monitoring of this authority could be established and made clear for the committee. Because there is a real concern that it will be a law unto itself; that it will do as it wants to, invent the rules and then carry them out as it wants to. The second issue I would like the minister to comment on, because it is important for the future, is to what degree this sets the path for potential future privatisation of the services being provided under this new super body.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the

Prime Minister for the Status of Women) (9.56 a.m.)—Senator, I think you were also not in the chamber when I spoke.

Senator Brown—Yes, I was.

Senator NEWMAN—Were you listening?

Senator Brown—I listened throughout.

Senator NEWMAN—I am not meaning to be offensive, but I am concerned in that we seem to be covering the same ground twice. The parliament will be the determinant of what the department does. The departments will have contracts with the agency. Unless the parliament agreed to things happening, they would not be able to happen because the departments and the minister who is responsible—in this case, me—for both the agency and the department have to be accountable to the parliament.

The independent monitoring that now goes on and that will continue to go on is that of the ANAO and the Department of Finance. The department, as the purchaser of the services, will be evaluated to make sure that its contract is being implemented. The parliament has all those strands of independent evaluation. The agency cannot be a law unto itself because it is set up by legislation. The department is there under its legislation. One has a contract with the other. The outcomes are to be evaluated internally but there are also existing external evaluation processes. There cannot be the concerns that you have raised. Did I miss something else that you asked?

Senator Brown—Privatisation.

Senator NEWMAN—That is why I asked whether you were here. I adverted to that issue earlier when I talked about accreditation and the claim made by Senator Faulkner that the agency was required to accredit nursing homes. It is not planned. I quoted from the evidence given to the legislative committee by a deputy secretary to the Department of Health and Family Services. If that were to happen in the future, it would have to come to the parliament to be achieved, because it would be a change in the role of what is currently done by the Department of Health and Family Services. It would then be a contract between that department with the agency, but it would not happen unless the parliament approved it.

Senator BROWN (Tasmania) (9.59 p.m.)—The question I am asking is: what degree of motivation is there in this legislation for future privatisation? Is that being discussed, or is it being entertained, or is that absolutely off the board and something that the government would not contemplate?

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.00 a.m.)—I have publicly answered this in the past, but that may not have been in the Senate. The decision was taken very deliberately to make this agency a statutory authority, because we believe these are services which need to always be provided by the public sector. We believe that the evaluation and monitoring processes can also be provided by the public sector. Equally, they could be, as they are now, contracted out to consultants.

If this amendment goes through, we will be prohibited from having independent monitoring. In fact, we will have real trouble in monitoring it altogether. I would suggest that we need to give the opportunity to the public sector—which is what the government is doing—to do that evaluation process. Senator Woodley, you do remember that is what I said earlier.

Senator Woodley—Yes.

Senator NEWMAN—Thank you. I said it better then. I am really just canvassing the previous ground. I assure you that we have no intention to privatise it, and that is why we took a deliberate decision to go to the statutory authority. There are jobs that can be done by the private sector in some of these areas, but we are wanting to, by our agency legislation, give those jobs to the public sector. That is why I found it strange that Senator Faulkner would be denying us the opportunity to have those jobs done by the agency.

Senator WOODLEY (Queensland) (10.02 a.m.)—I think I need to indicate just where the Democrats stand. I still think we are talking about two different things, and that is influencing me in the way I vote on this. The

minister is defining regulatory and independent monitoring within powers that I believe the department certainly has. I do not think the amendments are trying to take those powers away. It is not trying to interfere with the normal running of the department, but the department itself is defining the ALP amendment as though it does that. There is no intention to do that.

What the ALP amendment is trying to say is that there should not in the future be an attempt to take on other powers which ought remain outside of the department's ability. So the ALP amendment is really talking about additional or extraordinary powers being taken on board by the department. It is not seeking to interfere with the normal operation of the department, which is the department's worry.

Senator Faulkner—That is right, Senator. I have tried to make that very clear.

Senator WOODLEY—All right. So I am inclined to support the ALP amendment because I hear what the minister is saying. If the ALP amendment were doing what the minister is saying it will do, I would be worried. But I do not think it is seeking to do that, and I do not think it is doing that.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.03 a.m.)—I do not want to prolong this debate further. I think we have canvassed those issues. I think it would be very regretful if support were given for this opposition amendment. The advice I have from my department is that this amendment would make the Commonwealth Services Delivery Agency's role unworkable.

Question put:

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

The committee divided. [10.08 a.m.]

(The Chairman—Senator M.A. Colston)

Ayes	33
Noes	33
Majority	0

AYES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, R. L.
Cook, P. F. S.	Cooney, B.
Denman, K. J.	Evans, C. V.*
Faulkner, J. P.	Foreman, D. J.
Forshaw, M. G.	Gibbs, B.
Hogg, J.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	Neal, B. J.
O'Brien, K. W. K.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

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

PAIRS

Collins, J. M. A.	McGauran, J. J. J.
Crowley, R. A.	Short, J. R.

*** denotes teller**

(Senator Robert Ray did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Conroy did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

Senator HARRADINE (Tasmania) (10.11 a.m.)—Mr Chairman, I wish to indicate that the reason that I was not present for the vote was that the doors were closed prematurely. On the monitor, as I came past the opposition lobby, there were still 17 seconds to go and the doors were locked 17 seconds or 16 seconds prior to the time that they should have been locked. That, I think, will be

confirmed by the officers who are sitting in the government's lobby. I would have cast my vote for the amendment, but I do not think that would have made any difference anyhow.

Senator Bob Collins—Actually it would have.

Senator Carr—It makes a big difference.

Senator HARRADINE—I would have voted for the amendment.

The CHAIRMAN—Senator Harradine, I have two comments. I was going by the hourglass—it was the four minute glass—and the clock obviously was different from the hour glass. The second comment I have is do you wish to have the vote put again?

Senator HARRADINE—I would only do so if it was confirmed that what I am saying is correct. I am not asking you to take at face value what I am saying. I would just ask those who may be in the Senate secretariat to consider that and report back. Let us go on to the other amendments.

The CHAIRMAN—I am not quite sure that we need confirmation because, if you said that, that is what has happened. We accept that that is what has happened.

Senator HARRADINE—Naturally, one would like to have one's vote recorded as one would have voted.

The CHAIRMAN—Would you like to seek leave to have the vote put again?

Senator HARRADINE—I seek leave to have the vote put again.

The CHAIRMAN—Is leave granted?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.13 a.m.)—by leave—Can I make this suggestion, Mr Chairman, which is something that Senator Harradine and perhaps the government might also embrace. We have, effectively, three further amendments to this bill. It is quite possible that that means three further divisions in the chamber. We are very comfortable, obviously, with the suggestion of recommittal and I suggest that that be dealt with as perhaps a one-minute division following a further division in the committee stage of the bill to save time. I think that would be helpful.

Senator HARRADINE (Tasmania) (10.14 a.m.)—Consistent with what happened the other day, I am happy for that to be done at the end of the committee stage. But I fell flat on my face because I was the one who missed it—I had not thought that there would be another amendment, so I do apologise to the committee.

The CHAIRMAN—I suggest that if we have another division, we immediately recommit the first one and have a one-minute division. Is that satisfactory to the chamber?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.15 a.m.)—I move:

(2) Clause 14, page 8 (after line 5), after subclause (1), insert:

(1A) Particulars of any notifications given by the Minister under this section in a financial year must be included in the annual report for the Agency for that year.

I will try to be brief. This amendment would require any ministerial notifications of the 'general policies of the Commonwealth government that are to apply in relation to the agency, the board or the employees' to be published in the agency's annual report. To try and save time, let me also perhaps try and pre-empt the argument of the government here. I expect that the government will argue that this item gives you a power to notify the board of the general policies of the Commonwealth in relation to the agency, the board or its employees.

They are policies which are, by definition,—such as it is—general policies, policies that are well known by the public. I expect that the government will be citing precedents. I understand that the government now has some case law—which you can provide us with and enlighten us on—which would restrict the use of this notification power. I would be very pleased to listen to what you have to say in relation to that.

But, of course, you will not agree that any notifications that you give the board should be published in the annual report of the agency. I do not understand the problem in relation to this. If your general policies are well-known policies on the public record,

what on earth could be the problem with publishing notifications of these in the agency's annual report.

Let me try and take a topical example, seeing we are using analogy and examples as debating mechanisms in this particular committee stage. Everyone knows that you could have implemented an entirely voluntary so-called work for the dole program without any amendment to the social security legislation. What your legislation does, as I read it, is give you the power to compel people to participate in that scheme and it allows the government to provide a payment to those people to cover their work related expenses. But it is not essential in implementing a work for the dole scheme.

Of course the work for the dole policy, you would argue, is a well-known policy of your government. We do not say it is a good policy. We do not believe it is. We would not have done it. But, under the terms of this legislation, there would be nothing to prevent you from implementing a non-compulsory, non-supplement version of this scheme by simply notifying the agency of your policy. You would not be subject to any scrutiny. You would not even have to publish your notification in the annual report, as the legislation now stands.

What if, in the next budget, for example, you announce that it is your general policy that all authorities within your jurisdiction produce running cost savings of 50 per cent next year? Could you notify the agency? Would the board have any recourse but to ensure the savings were generated? What constraints actually exist on your use of the notification power?

Minister, at the end of the day, why won't you agree to publish any notifications in the annual report? That is the nub of the issue. That is the point of this amendment. I will be interested to hear your response.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.19 a.m.)—The Leader of the Opposition in the Senate has adverted to precedents which I could quote. Let me quickly quote them, because they are all examples where similar provisions are in legislation of the previous government. They are: the Australian Postal Corporation Act 1989, section 48; the Broadcasting Services Act 1992, section 161; the Employment Services Act 1994, section 72, which is an identical provision; and the Telecommunications Act 1991, section 49. All of those acts were passed when the current opposition was in government.

We are doing nothing untoward in this legislation. The general policies of this government will be well known and will not require the kind of publication and, with it, the public and parliamentary scrutiny that notification in the annual report of the agency would bring. It is only general policies we are talking about being notified under this provision. There is different provision in the bill for specific directions.

I would also draw it to your attention that there is a precedent. Only last year, on 18 August, in Aboriginal Legal Service Ltd v. Herron, the Full Federal Court ruled that the capacity to give general directions under subsection 12(1) of the Aboriginal and Torres Strait Islander Act 1989 did not allow the Minister for Aboriginal and Torres Strait Islander Affairs to give certain directions to ATSIC. One of the relevant directions was that ATSIC was not to make a grant or loan of money to a body unless certain conditions were met. One of the reasons for finding the directions invalid—this is the nub of the matter—was that they required a particular outcome and therefore could not be described as a general direction.

In terms of the specifics that Senator Faulkner just referred to, the question of running costs changes, for example, that is a matter which first of all has to be made clear to the parliament by way of appropriations. It would be negotiated and taken account of in the contract between the purchaser and the provider. It would be subject to the estimates committee scrutiny, as currently such matters are, when the department appears before the estimates committee. So there is no reason for having a concern about the running costs issue.

When it comes to the work for the dole scheme, as Senator Faulkner said, there would

be no requirement to change the legislation if it was purely voluntary. That is the situation now with the department. If the department was to implement a voluntary work for the dole scheme, there would be no need for it to come before the parliament. It is because there is a wish to have some pilots, where there is compulsory work for the dole, that there is a need to come back to the parliament. The same would apply if the department was to produce a requirement that the agency provide a compulsory work for the dole scheme. Once again, it could not happen without a change to the legislation.

The policy department is the department that is responsible for the legislation. It is the legislation that drives the contractual arrangements between the department and the agency. The scrutiny is very clear. In this amendment we are only talking about general policies being notified under the provision for the annual report of the agency. We believe that it is totally unnecessary, because the sorts of policies that are being described are ones which are well known and on the public record.

Senator WOODLEY (Queensland) (10.23 a.m.)—Again, I am trying to the listen to the debate. I am inclined to support this amendment. I must say that one thing that does worry me is the departmental assertion that it would be a bad thing if the policies in question are well known and do not require publication and, with it, public and parliamentary scrutiny. I would have thought that it is very desirable. This amendment is important because it gives us a device or a lever to look at these particular policies. I think that that kind of scrutiny is very helpful and very important.

There is another issue in the illustration about voluntary work for the dole. There was legislative change—we passed some legislation just before Christmas. The illustration does not hold up because we did just that: we passed legislation before Christmas to make it possible for people on the dole to work in approved voluntary organisations; thereby they do not have to fulfil the activity test by going out and seeking work. So I am not sure what the illustration does prove. The more fundamental principle is that scrutiny is certainly something the Democrats are very keen on.

Senator HARRADINE (Tasmania) (10.25 a.m.)—I have been listening to the explanations that have been given on this matter and on the previous matter. I am not convinced by the explanations that have been given by the minister to vote against this amendment. On the face of it the amendment would seem to be objectionable, but on balance I maintain my original view of supporting this amendment.

Amendment agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.26 a.m.)—I move:

(3) Clause 30, page 15 (after line 12), after subclause (1), insert:

(1A) The Board must not make a determination under section (1) before it has obtained advice from the Remuneration Tribunal in relation to the terms and conditions, including remuneration and allowances, on which the Chief Executive Officer is to hold office.

(1B) Particulars of any advice obtained from the Remuneration Tribunal under this section in a financial year must be included in the annual report for the Agency for that year.

This amendment requires the board to seek advice from the Remuneration Tribunal about the terms and conditions under which the CEO of the agency holds office and to publish this particular advice in the agency's annual report. I will try to be very brief in speaking to this amendment. I really cannot see any argument that can be mounted in opposition to this particular proposal. I think the government said, 'Well, we may well do this anyway.' If that is the case, why not say so in legislation?

I want to make it clear that this amendment and my remarks should not be taken as being in any way critical of Ms Vardon. I actually do wish Ms Vardon well in her new job. I have got a lot of sympathy for anyone who has to work with you, Minister, particularly in such a senior job. I wish her well.

This amendment is about ensuring that the terms and conditions of publicly funded positions are transparent and that you, as the minister responsible, are accountable to the taxpayer. There has been a lot of debate and public speculation recently. As late as today I read in the newspaper about the terms and conditions of another government appointee, Mr Max Moore-Wilton. In my view, the case is no different for the Secretary to the Department of the Prime Minister and Cabinet. I urge the Senate to support this amendment which would properly involve the Remuneration Tribunal in setting the terms and conditions for the chief executive officer of the agency. It would make its advice available on the public record. I commend this amendment to the Senate.

Senator BROWN (Tasmania) (10.28 a.m.)—I am a little disappointed that the amendment does not have a greater reach. I think it would be an excellent thing if we in some way or other were able to have chief executive officers in the private sector right across the board in this country explain the incomes that they are getting. It is quite untoward that executive officers in the private sector bring home packages of much more than $1 million per annum in a country where a lot of people live in unwarranted, unnecessary and totally unacceptable poverty.

But that remark aside, I think this is a piece of accountability which has to be supported. The Greens very strongly support the concept that there be scrutiny of the pay packages of the higher paid public servants which come out of the public purse. It is a matter that should be applied to parliamentarians as well, of course. We will be supporting this amendment.

Senator WOODLEY (Queensland) (10.30 a.m.)—I want to indicate, without delaying the Senate, that the Democrats will support this amendment.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.30 a.m.)—For the record, the secretary to the department did advise the community affairs committee that it is intended that the position of CEO of the agency will be designated as 'principal executive officer' for the purpose of paragraph 34RA of the Remuneration Tribunal Act 1973 and a request for the relevant regulations to be made will be sent to the Department of Industrial Relations shortly. Such regulations will have the effect of giving the tribunal the power to provide advice in relation to the terms and conditions including remuneration allowances on which the office of the CEO is to be held.

Details of relevant advice and of any acceptance or rejection in whole or part would appear in the Remuneration Tribunal's annual report. If the agency board of management did not wholly accept the tribunal's advice, the tribunal's practice is to then formally draw this to the attention of the relevant minister. It should also be noted that subclause 13(1) of the agency bill gives the minister an express power to give directions to the board about the terms and conditions of the CEO's employment. This means that the power to set terms and conditions is by no means unfettered, as has been suggested.

Senator HARRADINE (Tasmania) (10.31 a.m.)—I, too, will be supporting this amendment, although I do not know how voluminous the annual report of the agency will be, having regard to what has to go into it now through the acceptance by the chamber of the second amendment and now the third amendment. I would be just as happy to see the particulars of any advice tabled in the parliament. I am getting a bit worried, frankly, about how big the annual report is going to be. I support the amendment.

Amendment agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.32 a.m.)—I move:

(4) Clause 35, page 17 (lines 12 to 14), omit subclause (3).

This particular amendment is an important one relating to omitting the provision allowing the CEO to employ staff outside the provisions of the Public Service Act. On this occasion I would like to very briefly read an extract from the minority report on this issue to put this issue in context. The minority report said:

The Bill provides the Agency with the capacity to employ staff outside the provisions of the current Public Service Act, on terms and conditions determined by the Chief Executive Officer. As the CPSU noted in evidence, 'we could have people within the Agency under different categories of employment performing the same levels of work for different pay and condition outcomes'.

While we recognise the precedents for employing staff outside the provisions of the Act under legislation establishing other Commonwealth authorities, we are concerned that such precedents have yet to be tested in the context of new industrial relations arrangements.

We are not persuaded by the Department's argument that the present Public Service Act hampers their capacity to employ temporary staff to deal with peak workloads. We note also that this and other significant issues will be dealt with in the context of the government's foreshadowed changes to public service terms and conditions. In the meantime, and given the Department's stated intention to negotiate a single enterprise agreement with Agency staff which could deal with arrangements for peak workload staffing, we see the provision as unnecessary.

There are at least two tools available to the agency to deal with emerging or temporary staffing problems. Revising the enterprise agreement negotiated with the staff of the agency and in the longer term the government's announced reforms to the Public Service Act. What I say is: use these. There is no need to employ staff outside the Public Service Act, no need at all. The agency can do the things it needs to do within the confines of the Public Service Act.

I think we ought not lose sight of the fact that even in a very limited debate like this the point needs to be made that the agency is delivering a public service. Labor cannot allow you to erode the pay and conditions of public servants by what I consider to be a backdoor mechanism. It is for those reasons that I urge the Senate to support this amendment.

Senator WOODLEY (Queensland) (10.36 a.m.)—The Democrats will be supporting this amendment. I do not want to waste the time of the Senate, but I am quite concerned about the idea that any government enterprise such as this should need to look for a staff and then employ them under conditions which are different from the conditions applying to other employees in the same office. It seems to me that is a recipe for disaster. I believe we ought to support the amendment.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.36 a.m.)—The government does not accept the amendment. The government has consistently maintained that it is intended that the staff of the agency will predominantly be employed under the Public Service Act and the power in subclause 35(3) will only be used to allow flexibility in the employment of additional staff.

It may appear that this flexibility is possible under current arrangements by the employment of people under contract. The inclusion of subclause 35(3) was intended to make this capacity both express and transparent on the face of the legislation. The current arrangements are, in any case, unsatisfactory in that temporary employees engaged under the Public Service Act attain statutory rights to permanency after a period of temporary employment and that is not conducive to flexibility of deployment.

Finally, the clause is unexceptional when compared with similar provisions in other Commonwealth legislation setting up statutory bodies. I draw the committee's attention to the fact that the Department of Social Security, in its evidence to the legislative committee, pointed out that similar provisions are found in the Australian Securities Commission Act 1989, section 120; the Industry Commission Act 1989, section 43; the Hearing Services Act 1991, sections 49 and 50; the National Occupational Health and Safety Commission Act 1985, section 54; and the Commonwealth Electoral Act 1918, section 35.

Several of the relevant acts were passed when the current opposition was in government. We are doing nothing untoward, nothing unusual and nothing threatening but we are consistent in continuing the approach that was taken through all those legislative changes. I urge the Senate to reject this amendment.

Amendment agreed to.

The CHAIRMAN—We have not had a division, but we will have to have a four-minute one.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.39 a.m.)—I had given an indication to senators that I would put on the public record during the course of this debate the commitment to privacy, which I think is of concern to us all. Would it be appropriate if I did that now before we moved to the next amendment?

Senator Faulkner—I assumed that we might raise this in relation to the consequential amendments bill, but it is a matter for you.

Senator NEWMAN—If you choose; I do not mind.

Senator Faulkner—I assume your comments are relevant to the next bill.

Senator NEWMAN—They are across the board.

Senator Faulkner—I am relaxed.

Senator NEWMAN—If I do it now, it must be taken to be in relation to the main bill and also to the consequential amendments bill. The secretary to the Department of Social Security told the Senate Community Affairs Committee that the department had been involved in consultations with the Privacy Commissioner in relation to any privacy issues arising from both the agency bill and the consequential amendments bill. The end result of those consultations is that the Privacy Commissioner has written to the secretary to the department indicating that she has no objection to the bills proceeding in their current form.

As part of the consultation process, however, I have agreed to make a public commitment on the privacy issue, and I am happy to give such a commitment. The government has consistently stressed that the existing privacy regime, including the Privacy Act, will apply to the Services Delivery Agency and there will be no diminution in the protection that the Privacy Act and the confidentiality provisions of the Social Security Act, for example, affords to customers of the agency. While the agency will be subject to the Privacy Act, I want to ensure that the bringing together of the functions of several departments fully complies with the principles underlying the Privacy Act.

I intend that the agency and the departments involved will consult with the Privacy Commissioner in the development of guidelines. I will subsequently direct the board of the agency to follow these guidelines. The consultations with the Privacy Commissioner will include consideration of: firstly, client registration and record-keeping systems, including the use of any identification numbers and any common core client information; secondly, flows of personal information between the agency and other departments, responsibility for that information and access privileges; and, thirdly, processes for consideration of the privacy implications of the addition of any new functions which may be given to the agency in future.

As I have already indicated, I am happy to make this commitment, which demonstrates the government's clear intention that the establishment of the agency will involve no diminution of the current privacy regime.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.42 a.m.)—I thank the minister for those assurances. The issue of privacy has been raised by the Privacy Commissioner. I also acknowledge that this has been a particular concern of Senator Woodley. I appreciate the points he has made in relation to this also.

I thank the minister for her confirmation about the views of the Privacy Commissioner. Minister, given that you indicated that a letter had gone from the Privacy Commissioner to the secretary to the Department of Social Security—I also appreciate that you may not have that with you—could you undertake to table that, which would be useful and appropriate in these circumstances. I appreciate that you may not have it with you at the moment.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (10.43 a.m.)—I am happy to table the letter, and I do so now.

Senator WOODLEY (Queensland) (10.43 a.m.)—I simply indicate that what the Leader of the Opposition has said does represent our position, as I indicated in my speech on the second reading. We thank the minister for that offer to table the letter.

Senator HARRADINE (Tasmania) (10.43 a.m.)—I had foreshadowed my desire to seek leave to have the first amendment recommitted. I am now not seeking leave to have that recommitted, despite the fact that, under the circumstances, the doors were locked 17 seconds before they should have been. That ought to be in some way overcome for the next time, but I do not propose to seek leave now.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.44 a.m.)—by leave—I have made some investigation and I do understand that there is a clock on the desk. If you go off that, apparently it is synchronised with the clock on the TV. I know that if we are running late, most of us watch the TVs as we are running in. I am not sure whether there is a clock on the desk, but apparently they are the things that are synchronised. Since all senators work off the little clocks on the television, I think it would be helpful to all senators when we are racing from ends of the building to get here if we knew that the clock on the TV was the timer.

The CHAIRMAN—I understand that it is unsatisfactory for senators, so what I intend to do in the future is to take the clock or the four-minute glass, whichever is the later.

Senator Faulkner—On a point of order, Mr Chairman: I do not want to delay the committee, but I thought the Senate had already determined by leave to have a division on this matter. That was my understanding. I think I made the suggestion that was accepted by the committee that this be done at a later stage so that we did not have an unnecessary four-minute division, which otherwise would have been held immediately.

I am not quite clear as to why Senator Harradine has made the contribution he has. It may not be reasonable, but I urge Senator Harradine to be a little more forthcoming and explain why that is the situation, given it is my understanding that the committee has already made a decision in relation to having a division on this matter.

Senator Newman—He can withdraw his request.

Senator Faulkner—He can; he can do anything he likes, but I am making a separate point, Minister. I think this is reasonable. I am not addressing this in an outlandish way. My understanding is that the committee had already made a decision in relation to the recommittal of the vote. That is the point I am putting to you, Mr Chairman. It might be easier if Senator Harradine addressed the issue. But I think what I am saying is an accurate reflection of the status of the amendment and the status of the committee's decision in relation to the recommittal.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.46 a.m.)—by leave—My understanding is not dissimilar to Senator Faulkner's except at the margin. I think we had agreed that, if there were to be a recommittal, it would be a sensible use of time to have it back to back with some other division. As it turned out, there were no further divisions so that sensible suggestion did not come into play.

My understanding, however, differed from Senator Faulkner's in that I was pretty clear that Senator Harradine was foreshadowing that he would seek leave for there to be a recommittal. I imagine he would have had to have done that at the time after the division. I suspect it is a subtle difference of recollections. Ultimately, it is up to Senator Harradine whether he wanted to seek leave, but I thought he was foreshadowing that he might seek leave. He has decided that he will not be.

The CHAIRMAN—It was my understanding that leave was granted; that the Senate had decided for a recommittal. I checked with the clerk and the clerk is of the same opinion. But Senator Harradine can seek leave to withdraw his request if he so wishes.

Senator BROWN (Tasmania) (10.48 a.m.)—You are quite right, Mr Chairman. The committee has arranged for a recommittal and I think we should take that course of action.

I would certainly like to see the vote determined that way. I am a very gracious person, but I have draw the attention of the committee and Senator Harradine to some remarks he and Senator Alston made in this place a few days ago—in fact, last Thursday—when through misadventure I had to seek a recommittal of a vote then.

I accept Senator Harradine was out of the chamber and, for reasons beyond his control, was not able to cast his vote earlier. I am so sorry he did not so readily accept the situation when the roles were reversed. It is remarkable how these things can come back to catch us. Here we have Senator Harradine in the invidious situation I found myself in last Thursday. I am very happy—although he was not very happy last Thursday—to accept that this makes a difference to the vote.

What we have got here is the extraordinary situation that, with the effluxion of just a few minutes, it appears that Senator Harradine is changing his vote. That is going to make a material difference to the outcome. I think we should have that clarified through having the vote again on the amendment that the Labor Party has brought forward.

It would appear that, had the vote been taken at the time, as was the previous practice, Labor's amendment would get up with the vote of Senator Harradine. With the new practice of having the recommittal put at the end of the committee stage, Senator Harradine has changed his mind and Labor's amendment is not going to get up. I presume that he has changed his mind through some new information that has come to his notice.

Senator Faulkner—Don't make presumptions on his part. How can you do that?

Senator BROWN—I have to make presumptions in the absence—

Senator Faulkner—No, you don't.

Senator BROWN—I am free to, Senator Faulkner.

Senator Faulkner—You are free to. Let us deal in presumptions.

Senator BROWN—No, let me deal in presumptions if I want to, Senator Faulkner. That is my clear right in the absence of any other information.

Senator Campbell—There is absolute freedom of speech here under the standing orders.

Senator BROWN—Thank you. We have absolute freedom of speech here. Of course, we do. I would like to see the vote recommitted as the committee determined earlier on. I do not think it is up to us not to have that recommittal because a senator might have changed his mind in the intervening time.

Senator HARRADINE (Tasmania) (10.51 a.m.)—I have indicated my intention not to continue with my request to seek a recommittal. I seek leave to withdraw my request.

Leave granted.

Request withdrawn.

Bill, as amended, agreed to.

COMMONWEALTH SERVICES DELIVERY AGENCY (CONSEQUENTIAL AMENDMENTS) BILL 1997

Bill agreed to.

Commonwealth Services Delivery Agency Bill 1996 reported with amendments and Commonwealth Services Delivery Agency (Consequential Amendments) Bill 1997 reported without amendments; report adopted.

Third Reading

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

AVIATION LEGISLATION AMENDMENT BILL (No. 1) 1997

Second Reading

Debate resumed from 19 March, on motion by **Senator Tambling**:

That this bill be now read a second time.

(Quorum formed)

Senator BOB COLLINS (Northern Territory) (10.55 a.m.)—The bill amends the Air Navigation Act 1920, the Airports Act 1996 and corrects a typographical error in the Airports (Transitional) Act 1996. Fundamentally, the purpose of the legislation is to provide a new set of arrangements under which charter flights may operate and enable

regulations to be made to establish a register of unencumbered aircraft operated by Airservices Australia. The reason I highlight these two examples is that the opposition thinks these are sensible provisions. We will be supporting the legislation.

On what is going to be a long day, in order to save the time of the Senate by not unnecessarily going over the magnificent record that we had on aviation policy and the appalling record that the government has on aviation policy, I will let all that go through to the keeper, on today's occasion, anyway, and indicate that we will be moving a number of amendments to the legislation, as I understand it, and I know that amendments will also be moved by the Greens and the Democrats.

For the advice of the Senate, we will not be supporting on this occasion the Greens' or Democrats' amendments. There are a number of amendments relating to airport noise that I think the Greens will be moving, parts of which were supported by us during the committee stages in a previous debate but which will not be supported on this occasion. The simple reason is that, as a result of the sales process now being well advanced, we do not think it is reasonable or proper at this stage to start changing the rules. The question of noise is a major one in terms of potential purchases and we do not think it is reasonable or proper, at this point in time, having had that matter determined at an earlier time, to attempt to change it again. The bottom line is that we will be supporting this legislation. I understand that the government has agreed to support our amendments but we will not be supporting the amendments to be moved by the Greens and the Democrats.

Senator MURRAY (Western Australia) (10.58 a.m.)—Parliamentary Secretary, through you, Mr Acting Deputy President, you will be aware by the limited number of amendments we are putting up that we welcome your bill. We regard it as a good bill which advances the cause appropriately. I signal that we will be supporting the Greens' amendments and I will listen to what Senator Collins has to say as regards his amendments before notifying our approach there.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.58 a.m.)—I thank honourable senators for their contribution to this debate and their cooperation. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator Murray—Is there a running sheet?

The CHAIRMAN—Not that I am aware of.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.59 a.m.)—I suggest that it will probably be helpful if the ALP move their amendments and then we could deal with any other amendments, including your own, Senator Murray. If there were a running sheet, as Senator Bob Collins said, you could probably write it on the back of a box of cigarette papers.

Senator BOB COLLINS (Northern Territory) (11.00 a.m.)—by leave—I move:

(1) Schedule 1, item 2, page 8 (after line 11), after subparagraph (iii), insert:

(iiia) if foreign interests hold substantial ownership and effective control of the charterer or the charter operator—employment and investment in, and general development of, the Australian Aviation industry; and

(2) Schedule 1, item 2, (after line 25), after subsection (3), insert:

(3A) In deciding whether to make a determination under subsection (3), the Secretary is to have regard to the following matters (except to the extent, if any, to which the matters concerned relate to the safety of air navigation):

(a) the public interest, including but not limited to:

(i) the need of people to travel on, or to send cargo and mail by, aircraft; and

(ii) the promotion of trade and tourism to and from Australia; and

(iii) if the application relates to a program of flights to or from Australia—whether there is to be a wide range of places in Australia that will be served under the program; and

(iv) if foreign interests hold substantial ownership and effective control of a charterer or a charter operator—employment and investment in, and general development of, the Australian Aviation industry; and

(v) aviation security; and (vi) Australia's international relations;

(b) the availability of capacity (within the meaning of the *International Air Services Commission Act 1992)* on scheduled international air services, and any relevant determination made by the International Air Services Commission in respect of the allocation of capacity on those services;

(c) any relevant advice on matters referred to in paragraph (a) that is provided to the Minister by that Commission under paragraph 6(2)(c) of that Act; and

(d) any other matter that the Secretary thinks relevant.

These are, I must say, amendments that I think I could confidently look forward to the Greens and the Democrats supporting.

I refer the attention of the committee to the first amendment. It simply makes the point that, if charters of this type are in fact approved, the minister has to have regard to the impact on Australian aviation of such an approval. It is not a minor matter; it is an amendment of some substance. I think it is an amendment that would be welcomed by the Australian aviation industry. In real terms, the reason the amendment is here is that I think ministers of both sides of the house would in the normal course of these approvals take that into account, but it explicitly puts in the legislation that it is not simply the commercial bottom line that has to be taken into account; some regard has to be given to the interests of the Australian aviation industry as well, and that is then explicitly set out in the obligations that the minister has. The other amendment is self-explanatory.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.02 a.m.)—The coalition will be supporting the amendments moved by Senator Bob Collins.

Senator MURRAY (Western Australia) (11.03 a.m.)—I regret that the ALP did not pre-circulate this to us. Senator Collins, I think your researcher would have been wise to have circulated this to us. Am I correct in concluding that we are debating amendments Nos 1 and 2 and not 3?

Senator Bob Collins—Correct.

Senator MURRAY—I think from what we have heard, Senator Collins, short and sweet though it was, we will support you.

Senator MARGETTS (Western Australia) (11.03 a.m.)—Thank you, Chairwoman—

Senator Bob Collins—I have heard Senator Colston accused of a lot of things recently, but not of a sex change.

Senator MARGETTS—Thank you, Chairwoman. The amendments that we have in front of us—

Senator Bob Collins—On a point of order, Mr Chair: I understand the political point the senator is trying to make, but, with respect, I think she is making it very clumsily, because I think she is in fact destroying her own case. The political point is that she objects to the word 'chairman', but I always thought that the principal concern of people like me with that problem—and I share Senator Margetts's position on this—is that the appellation that is provided to people is accurate. It is obviously clear to everyone that it is grossly inaccurate. I think you are entitled, as other senators are entitled, to the correct title that you enjoy here in this chamber, which is chairman. I would ask Senator Margetts to observe that propriety.

The CHAIRMAN—You do have a point, Senator Collins—

Senator Bob Collins—I was going to sit down, except she obviously intends to do it throughout the whole committee stage.

Senator MARGETTS—Can I take it that you have not ruled on this?

The CHAIRMAN—I am not ruling on it, no. I am just saying that Senator Collins has a point.

Senator Margetts—On the point of order: if there are people who take offence, I would be happy to hear those people who do take offence, but perhaps those people ought to let me know why they are taking offence. That would be very useful.

Senator Bob Collins—I just think you need your eyes tested; that's all.

The CHAIRMAN—The public might ask me some questions. Anyway, keep going, Senator Margetts.

Senator MARGETTS—People do not tend to need their eyes tested when there is a female in the chair and they are called 'chairman'.

In relation to the Aviation Legislation Amendment Bill (No. 1) 1997, I had actually intended to speak briefly on the second reading. The reason I had intended to speak was that there are some changes in the Aviation Legislation Amendment Bill which are welcome and which I am pleased to see we are moving towards.

There are, however, some amendments which the Greens WA will be putting and they have not yet been circulated. This bill was going to be brought on yesterday and we asked that it be at least put off a little while so that we had a chance to deal with it better. I will be putting our amendments as soon as they are circulated, but everybody knows the work load that has been on us in the last while. Of course, in a situation where there are just one or two senators, you find that it becomes almost impossible to deal with these important bills reasonably in such a short time.

The opposition's amendments Nos 1 and 2 I believe hold some merit, but I am wondering whether Senator Collins could give us some more explanation of the reason why he is moving them.

Senator BOB COLLINS (Northern Territory) (11.07 a.m.)—Quite simply and briefly, the amendments require the secretary to give consideration to employment, investment and development in the Australian aviation industry when granting to a foreign operator permission for charters. As I said, that is quite simply the effect of the amendment.

As I said before, I think it is something that in practice ministers of all political persuasions would have done, but I think an important strengthening of the legislation would be that there is actually a legislative requirement to do so. In other words, it is not simply the commercial bottom line, as I said before, but there is a positive obligation to take the interests of the Australian aviation industry into account when these things are being done.

The subsequent amendments require the secretary, when granting an exemption to a class of charter flights from gaining permission, to give the same consideration to the same matters that must be considered when granting an individual charter. They are, I think, positive amendments that would be warmly welcomed by the Australian aviation industry. I urge the Senate to support them.

Senator MARGETTS (Western Australia) (11.08 a.m.)—That would back up the Greens' propensity to support the amendments. It also perhaps leads us to the inevitable conclusion that the amendments by themselves will not be any substitution for industry policy, whether it is aviation industry policy or transport policy in general. In the end this government has to come clean with what its industry policy is, whether or not it actually has a policy in relation to promoting employment, good industry and ecologically sustainable industry development in Australia.

I indicate that the Greens (WA) will support amendments 1 and 2, and hope that eventually something will filter through and we will actually get a comprehensive industry policy for both the aviation industry and the transport industry.

Amendments agreed to.

Senator MURRAY (Western Australia) (11.10 a.m.)—Senator Margetts has made two very good points today. The first is that the nature of the program, as we are being concertinaed to the last day, does put exceptional pressure on Independents and small parties. We would appreciate the courtesy of the major parties circulating amendments to us as soon as they are produced and giving us as much latitude as possible within a very truncated program to deal with these issues and amendments in time.

The second point that Senator Margetts correctly makes is that of how the chair should be addressed. Frankly, I found the directive of the Prime Minister (Mr Howard)

in this regard offensive. I do not believe he has the right to impose his individual wishes on this Senate chamber. I believe that you, Mr Chairman, as an officer of this chamber, should forward this matter to the presiding officer and return with a direction as to how chairs and committee chairs should be addressed. Frankly, when I sit in a committee hearing and I hear a Liberal senator chair who happens to be a woman addressed as 'Mr Chairman' I think we are advancing to a stage of extraordinary lunacy.

Senator Bob Collins—It is ridiculous, but you would also agree that both Senator Colston and I would look absolutely appalling in a frock.

Senator MURRAY—I would actually enjoy seeing you in a frock, Senator Collins.

The CHAIRMAN—Senator Murray, I shall refer the matter to Madam President.

Senator MURRAY—Thank you. I appreciate that, Mr Chairman. I want to return to our two amendments, and I will address them as quickly as I can. The amendments to the bill put forward by us support the bill's proposal to insert important new offences into the legislation that deal with the deliberate causing of harm to the environment and an airport site—that is, if the acts are carried out intentionally or recklessly. The new offences are an integral part of the Commonwealth regime to protect the environment on leased Commonwealth airports and employ a tiered approach with escalating penalties for more serious damage to the environment.

Provision is made for persons charged with more serious offences to be found guilty of a lesser charge where there is insufficient evidence to convict them of the more serious charge. That is the reason that the Australian Democrats, the Greens and the opposition like this bill: because it introduces some attractive components into regulation. But there are weaknesses. They include the apparent non-promulgation of important regulations under the Airports Act 1996 upon which these new amendments depend.

The main issue from an environmental point of view that keeps coming up is the need for airports to have a legally binding environmental management plan and penalties for environmental harm which address both pollution and site disturbance, such as in my own state the destruction of remnant bushland and wetland as proposed at Perth airport. Many airports are considering expansions of runways or shopping commercial facilities that will impact on remnant bushland—and, incidentally, will also impact on the interests of local traders and small business.

Second, and related, the other important amendment I think we need to propose is the formal designation under this legislation of the Minister for the Environment as the action minister in determining matters which need to be reviewed under the Environment Protection (Impact of Proposals) Act. As things stand, it is the minister for transport and this is not satisfactory. I am disappointed that Senator Collins is going to vote against this. Hopefully if he listens to this he will change his mind on at least one of these amendments.

Under the Airports Act 1996 each airport is to have a final environment strategy. This is a draft environment strategy which has been approved by the minister under section 115. The environment strategy will run for five years under section 117. An airport lessee has 12 months to prepare the environment strategy.

The environmental standards for airports are set out in the regulations, and the act just says that regulations will come through. Section 136 of the Airports Act 1996 says that both state and Commonwealth laws can apply, unless inconsistent then the Commonwealth law prevails, and that the regulations can declare that a particular state law will not apply. This is much the same as the exemption given to telecommunications carriers to exempt them from the operation of state environmental laws in relation to cable roll-out and towers.

The three tiered environment protection offences at item 61 in the bill are reasonably good, subject to knowing just what the regulations will require to be inserted in the airport environment strategy. I note the inclusion at item 66 of standards proposed or approved by the Standards Association of Australia. The

explanatory memorandum says precious little about what this means.

The fairly profound matter that we wished to examine was whether legislation should place decision-making in relation to environmental matters at airports with the minister responsible for the environment rather than with the minister for transport. Under current Commonwealth law, environmental impact statements are invoked only if the matter is considered significant and if the minister responsible for the particular portfolio refers the issue to the Minister for the Environment.

Our amendment No. 2 seeks to place responsibility for improving environment strategies with the Minister for the Environment and not with the minister for transport. We think that is entirely appropriate. But, with regard to amendment 1—and this is the amendment I expect you to support, Senator Collins—the Airports Act 1996 also has a part 5, 'Land use, planning and building controls,' which requires ministerial approvals. I think it would be eroding the role of the minister for transport if this authority were also moved to the Minister for the Environment.

Our amendment inserts in section 80 'Consultations' a requirement for the airport lessee to also consult with the Commonwealth minister responsible for administering the environment. Consultation is also required of state and territory governments and local government; so why not the Commonwealth Minister for the Environment as well? That is all amendment 1 does; it requires consultation. I would like Senator Collins to indicate whether he will still be opposing both our amendments.

Senator BOB COLLINS (Northern Territory) (11.16 a.m.)—The reason we will not be supporting the amendments is not that the opposition does not share the concern that the Australian Democrats and the Greens have with the proper environmental control at airports; we do. The major reason we will not be supporting these amendments is that, from my own experience as the former minister for aviation, the airports we are dealing with are Commonwealth places. Because they are Commonwealth places, they are automatically under the control, in respect of environmental issues, of the federal Minister for the Environment. So the amendments are quite simply unnecessary.

Senator MARGETTS (Western Australia) (11.17 a.m.)—There would be no necessity to make these kinds of changes to the Aviation Legislation Amendment Bill (No. 1) if what Senator Bob Collins said was working properly. We received a great many assurances during the debate on the airports privatisation bill that the greatest care would be taken, but in fact the Federal Airports Corporation challenged heritage listing and, despite what the Minister for the Environment (Senator Hill) said at the time, that listing was lost. We are still hoping, in the case of Perth airport, that the very important wooded wetlands can be relisted. So, in relation to the difficulties that are occurring with the fact that airports—not by accident—have ended up sometimes having some of the most important areas of remnant bushlands left in otherwise fairly developed areas, it is extremely important that they are handled well.

Whilst it might be Commonwealth land, it might be no surprise to Senator Collins to know that that does not automatically mean there is going to be action if there are moves to affect the environment on Commonwealth land. That is the reality. That is what has happened already in relation to Perth airport. It is good to see that there are changes in the legislation, but I think there are many people who feel that these amendments would go some way towards creating a better situation where there is an automatic consultation. I do not think that is the case at the moment and I do not think the action minister at the moment is necessarily the environment minister.

Senator Bob Collins—If he is derelict in his duty now, he will be derelict in his duty with this.

Senator MARGETTS—It would be nice to think that ministers are never derelict in their duty. But in terms of environmental issues I would have to say that over time, even in the last few months—and surely even Senator Collins would acknowledge this—there has been a number of changes in important areas throughout Australia where we

would have to say that the environment minister may not have been derelict in his duty but may have been overruled by other considerations. We would like to see that not to be the case and that there would be some part of the process in which he is required to be consulted. I do not think that is always the case. If there is a requirement to be consulted, there must at least be some written rationale for whatever decisions are made. I wonder why the opposition is not going to support these amendments.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.20 a.m.)—Mr Chairman, I actually think that you and Senator Bob Collins would look good in kilts!

Senator Bob Collins—I think we should adopt the ancient Roman practice of allowing senators to wear togas.

Senator CAMPBELL—That will look good. We will have a toga day. I will put that on the schedule of government business. For the next sittings we will have a toga day—not just a government business day, but a toga day.

The government will not be supporting these amendments. Senator Collins has already explained the reason why the opposition is not supporting them, and the government's view is very similar to that. Ultimately the minister for aviation must have responsibility for the Aviation Legislation Amendment Bill (No. 1). These amendments divide the responsibility. I am informed that under the EPIP Act there is already requirements to consult. But the reality of the situation is that, if you want the minister for aviation to be responsible to the parliament and to the people for his decisions under his legislation, you do not divide the responsibility in this way.

Senator Margetts raised a side issue entirely unrelated to this bill. She raised issues relating to Perth airport and to the AHC's listing and then agreement to consent orders to delist in an action before, I think, the Federal Court. These amendments would make absolutely no difference to that arrangement. The AHC and the FAC were having a dispute. I was asked to deal with that dispute when I was the Parliamentary Secretary to the Minister for the Environment.

The Minister for the Environment (Senator Hill) had a practical view that it is a bit silly to have two Commonwealth agencies—the Federal Airports Corporation and the Australian Heritage Commission—spending hundreds of thousands of dollars fighting each other in court when most Australians would think that the FAC, if it has hundreds of thousands of dollars, should spend it on looking after airports and that the Australian Heritage Commission, if it has hundreds of thousands of dollars, should spend it on looking after heritage as opposed to looking after lawyers. The FAC and the Australian Heritage Commission, I think as a result of consultations, discussions and negotiations that I facilitated, will be making sure that there is a sensible regime under this act, as amended by the bill today, to ensure the protection of heritage at Perth airport and other airports around Australia.

Amendments (by **Senator Murray**)—by leave—proposed:

(1) Schedule 1, page 25 (after line 18), after item 36, insert:

36A After subparagraph 80(1)(b)(i)

Insert:

(ia) the Minister responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, or related legislation;

(2) Schedule 1, page 29 (after line 23), after item 57, insert:

57A After section 114

Insert:

114A Interpretation

In this Part, ***Minister*** means the Minister responsible for the administration of the *Environment Protection (Impact of Proposals) Act 1974*, or related legislation.

Senator BOB COLLINS (Northern Territory) (11.23 a.m.)—Just briefly, I confirm the accuracy of Senator Campbell's comments about Perth airport. That is as I understand it as well. The statutory provisions also that Senator Campbell referred to are, as I know, there, and that consultation occurs anyway. The simple facts are that, if the Minister for the Environment (Senator Hill) is in any way

being derelict in his responsibilities, that dereliction of duty will in no way be changed by these amendments. I make the obvious point that, if you did want a set of ministers who would not be derelict in their duties, you would have to re-elect a Labor government.

Amendments negatived.

Senator MARGETTS (Western Australia) (11.23 a.m.)—The amendments I have mentioned which deal with section 1 have now been circulated, and I do apologise for the late circulation. I move:

(1) Schedule l, page 15 (after line 26), after item 11, insert:

11A Section 5

Omit the definition of ***significant ANEF levels***, substitute: ***significant ANEF levels*** means a noise above 20 ANEF levels.

This amendment seeks to establish the significant ANEF level as 20 ANEF. We have spoken about this in the past and I will not repeat the argument, except to remind senators that the 20 ANEF level is that which is judged to cause significant hearing damage and problem for up to a third of residents over a period of time; and that 20 ANEF is the level at which Standards Australia suggest that residential housing should not be allowed.

On economic grounds the decision was taken to retain significant ANEF levels at 30 ANEF, which is 50 per cent higher. I think this is unreasonable. Therefore, I would seek to give the Senate another opportunity to put the health and wellbeing of people above short-term budget costs.

Amendment negatived.

Senator MARGETTS (Western Australia) (11.25 a.m.)—by leave—I move:

(3) Schedule l, page 30 (after line 2), after item 58, insert:

58A Subsection 130(2)

Omit "not an offence. However", substitute "an offence. In addition".

(4) Schedule 1, page 30 (after line 9), after item 60, insert:

60A At the end of section 130

Add:

(5) If a person contravenes the requirements of subsection (1) or (1A) the person is guilty of an offence punishable on conviction by a fine not exceeding 250 penalty units.

At the outset, I congratulate the government on this bill. I believe that in this case it has made legitimate attempts to address some real problems, as befits a social regulator acting in the interests of the land and people of Australia. In particular, I am pleased that it has introduced a number of measures that address deficiencies—deficiencies in the regime of environmental protection which was established—that we argued in the original bill. These deficiencies existed even after the passage of a number of amendments in the Senate strengthening the environmental protection regime. This was particularly so with the inclusion of a broader range of issues in the development of master plans and requirements to propose actions to prevent environmental or heritage damage within those plans which must be complied with and where non-compliance is an offence.

As Senator Campbell would know, I am usually the one to hand out brickbats, but it is a small bouquet we are throwing on this occasion. However, among the primary deficiencies of the original legislation was the lack of penalties and strong requirements for compliance in the environmental strategy. Particularly offensive was section 132, which states that a failure to take 'all reasonable steps to ensure the strategy was complied with' cannot be considered an offence.

Mr Chairman, note that the requirement of failure to make even such a reasonable attempt was not allowed to be treated as an offence. The bill addresses some of this with the introduction of various environmentally related offences, complete with penalties, as 131B, 131C and 131D. What I am not certain about is how this is consistent with the retention of an essentially unmodified section 132. It seems strange to state that failure to even make a reasonable attempt at compliance with the strategy is not an offence, and then to state that various things which must be contraventions of the strategy are offences.

One of my amendments seeks to address this, stating that failure to at least make reasonable attempts to comply with the environment strategy which the lessee itself

designed is an offence with a penalty. It also eliminates any lack of clarity that may arise between 132, which states unequivocally that non-compliance is not an offence, and modified 131, which states that many activities that must constitute failure to comply are offences. In order to clarify this, I commend amendments 3 and 4 to the Senate.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.28 a.m.)—Just quickly; the coalition, as indicated, will not be supporting these amendments. There are two reasons for this. Firstly, we believe basically that for someone to say that if you have not abided by your plan it becomes an offence is an inappropriate way of ensuring that people stick by their plans. We believe that under section 15 there are already powers of injunction for failure to perform against an environment strategy.

Secondly, we believe that this is a more appropriate way to deal with non-performance. Finally, in relation to amendment number No. 4 moved by Senator Margetts, the government's policy on the advice of the Attorney-General's Department, which I think is good advice, is that matters relating to penalty units should be consistent across Commonwealth legislation. This would create inconsistency, which we would regard as unnecessary and undesirable.

Senator MARGETTS (Western Australia) (11.30 a.m.)—As a point of clarification, in this sense who would be enjoined? Would it be the company, the lessee or the government in some sense that would be enjoined by such a part of the legislation?

Senator Campbell—It would be the lessee.

Senator MARGETTS—Obviously this depends on what kind of resources there are in the community to take such action. It requires some sort of community action. Usually the communities that are concerned about such issues as environment are not necessarily rich. It does very much rely on what amount of resources there are within communities to fight such issues, and communities are fighting many such issues. It seems that it might be better if it was very clear in the legislation what the obligations and expectations were on the lessees, rather than expecting the community once again to pick up the tab for getting the companies to do what one would think the legislation should require them to do.

It is all very well saying that you have a plan and have to submit the plan, but the plan does not mean anything unless communities fight with their very minimal funds without much in the way of legal aid or environmental defender's aid. Perhaps what you are doing is putting the costs of compliance on to the community.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.31 a.m.)—To the extent that it is the Minister for Transport and Regional Development who has to seek the injunction, the community bears the cost through taxation. That is how the legislation is put together.

Amendments negatived.

Senator MARGETTS (Western Australia) (11.32 a.m.) I move:

(5) Schedule 1, item 61, page 31 (line 25), omit "200", substitute "250".

I also wish to address the penalties themselves in this amendment. I accept that we are unlikely to get support for a maximum penalty for serious environmental harm which is greater than $500,000. I do not like it. By its nature the damage involved in this kind of breach is exceedingly severe, and by definition it must be high impact and irreversible or causing substantial harm to public health, not only the health of one or two people.

We are talking about major disaster here. The term 'irreversible environmental damage of high impact' is probably a reasonably contentious term legally and likely to be somewhat difficult to prove. It is possible that a company operating in an airport in such a way that it causes irreversible environmental damage of high impact may decide that half a million dollars is a justified expense, particularly where that expense may be reduced through arguing that impact is only significant, or that there is some potential to reverse the damage, within some time frame.

Nevertheless, we are happy to see that explicit recognition as an offence with penalties. However, given that a case of damage

may result in convincing the court that what may be high impact is unequivocally significant impact, I can see plea bargaining reducing very serious environmental damage to a charge of material environmental harm. The maximum penalty then becomes $200,000, which is actually less than the current maximum penalty of $250,000 for violation of environmental regulations under section 132. This seems somewhat counterproductive.

I would therefore seek to increase the maximum penalty for material environmental harm to 250 penalty units. It should be noted that this is a maximum and there is discretion for a lower penalty to be applied. I would therefore seek support for my amendment No. 5.

Amendment negatived.

Senator MARGETTS (Western Australia) (11.34 a.m.)—I move:

(6) Schedule 1, item 61, page 32 (line 15), omit "50", substitute "100".

In line with the fact that environmental damage needs to be taken seriously and with a need for penalties to act as a preventative force, we also seek to increase the penalty for environmental nuisance, which is the charge that will be applied when significant impact cannot be conclusively proved. We seek to raise the maximum penalty from 50 units or $50,000 to 100 units or $100,000 and again note that the penalty applied can be lower if the offence is deemed minor.

We also note that airport operations are large and basically they can be a licence to print millions or tens of millions of dollars in terms of development plans. Fifty thousand dollars may not seem a significant fine in that kind of context. I commend amendment No. 6 to the Senate.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (11.35 a.m.)—I do not want to delay the debate, but in relation to the former amendment and this amendment, senators and other people with an interest in this matter should understand that the penalties are not a one-off speeding fine. They do apply on a daily basis for as long as the breach applies. In relation to the previous amendment, you are looking at $200,000 a day, which I think even for airport operators would be a fairly significant slug. If you are in breach for a few days, you are up to a million before you know it. In relation to amendment 6, it is actually $50,000 a day. I do not think even the Kerry Packers of this world can look at losing $50,000 a day without feeling a bit of pain.

Amendment negatived.

Senator MARGETTS (Western Australia) (11.36 a.m.)—by leave—We oppose Schedule 1, item 62 and item 63 in the following terms:

(7) Schedule 1, item 62, page 32 (line 32) to page 33 (line l), TO BE OPPOSED.

(8) Schedule l, item 63, page 33 (lines 2 to 6), TO BE OPPOSED.

We will be seeking to oppose the changes to section 132. That section establishes that it is an offence to violate Commonwealth environmental regulations. It is not the same as noncompliance with environmental strategy nor it is the same as creating environmental damage. Regulations are effectively laws which override state and territory environmental laws, and regulation and penalties for violation of regulations are appropriate.

The government seeks to tie penalties for violations of regulation to actual environmental damage, setting the maximum penalty as equivalent to the maximum penalty for such damage. This is equivalent to saying that running a red light should only attract a fine if an accident results. I always remember reading an old law from the United Kingdom about ferry operators overloading; one of the penalties was transportation to Australia—heaven forbid!—and it said 'if anybody drowned'. Perhaps this is one of those 'if anybody drowns' penalties.

This equivalent saying that running a red light should only attract a fine if an accident results and that the seriousness of the accident should determine the fine is nonsense. Violation of environmental regulations which would replace and override state and territory environmental laws is a serious thing even if no damage occurs. I note that the penalty prescribed—250 units—is, once again, a maximum penalty. Penalties may be prescribed under regulations themselves, and this should be respected. It is improper to tie such

penalties to the impact of the violation. Therefore, we oppose clauses 62 and 63 of the bill.

The CHAIRMAN—The question before the chair is that items 62 and 63 stand as printed.

Clauses 62 and 63 agreed to.

Senator MARGETTS (Western Australia) (11.38 a.m.)—We oppose schedule 1, item 69 in the following terms:

(9) Schedule 1, item 69, page 34 (lines 13 and 14).

This goes back to states and territory rights. Section 136(2) states that Commonwealth regulations extinguish state and territory laws and regulations in relation to airports. This clause seeks to do the same thing for the new Commonwealth offences relating to environmental impact as contained in 131B, 131C and 131D.

This may be dangerous since state and territory laws relating to impacts are often much more specific. Terms are often better defined and penalties may be much higher depending on the level of damage. I realise that Commonwealth legislation overrides laws in which there is a conflict, but I opposed 136(2) when it was proposed. I suggested an alternative which would have the Commonwealth law establish a minimum respecting any more exacting amendments by state and territories. This amendment is in line with my earlier opposition, although I think there is even more cause in relation to general laws and environmental and health impacts.

The CHAIRMAN—The question before the chair is that item 69 stand as printed.

Clause 69 agreed to.

The CHAIRMAN—Senator Margetts, I presume that you do not intend to proceed with amendment No. 2.

Senator MARGETTS (Western Australia) (11.40 a.m.)—As the first ANEF amendment was defeated, I realise what the answer will be to the second one.

Bill, as amended, agreed to.

Bill reported with amendments; reported adopted.

Third Reading

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

ORDER OF BUSINESS

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

That intervening business be postponed till after consideration of the following government business orders of the day:

No. 5 Export Market Development Grants Bill 1997 and a related bill

No. 4 Consideration in committee of the whole of messages Nos 216, 217 and 218 from the House of Representatives (Private Health Insurance Incentives Bill 1997 and 2 related bills.

EXPORT MARKET DEVELOPMENT GRANTS BILL 1997

EXPORT MARKET DEVELOPMENT GRANTS (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 1997

Second Reading

Debate resumed from 20 March, on motion by **Senator Hill**:

That this bill be now read a second time.

(Quorum formed)

Senator COOK (Western Australia) (11.45 a.m.)—The Senate has before it the Export Market Development Grants Bill 1997 and the Export Market Development Grants (Repeal and Consequential Provisions) Bill 1997. The government has delivered its second reading speech on this legislation. On behalf of the opposition, it is for me to present our views on this legislation.

Export market development grants are an institution in Australia that serve our national interest. It serves our national interest in a powerful way. It does so by providing uncapped grants to would-be Australian exporters, encouraging them to venture into the marketplace beyond our shores and win export contracts for their companies, which will build the export base for this nation and turn around what is, by any measure, a quite severe current account deficit.

The truth about Australia is that in dollar values we sell less to the world than we buy

from the world. We are a nation whose profile is, in the main, that of exporting bulk commodities—be it agricultural goods or mineral commodities—and we are an importing nation whose profile is, in the main, that of importing sophisticated manufactured goods. As a country we cannot go on selling cheap, unimproved bulk commodities at the lowest value in the marketplace and buying back sophisticated manufactured goods that command the highest price in the marketplace.

When Labor was in office, our major thrust was to turn around the profile of our exports by encouraging the manufacturing sector and the services sector to export their goods and services. To do so, a range of incentives was provided. That range of incentives includes export market development grants. Those grants serve the needs mostly of small to medium sized companies.

This government purports to be a government for small businesses. This bill cuts out essential support that small businesses need to trade in the international marketplace. It cuts them out or cuts them down. As a consequence, this bill is regressive legislation. It is legislation against our national interest. It is legislation against our need to export more at the improved level of the chain rather than at the unimproved level of the chain.

Australia's current account deficit is roughly in the order of $20 billion. That is a big figure, but it is meaningless unless you contrast it with what percentage of GDP that represents. Our current account deficit is about four per cent of GDP. It is high by world standards, and the only way we will turn it around is to export more.

The budget this government brought down last year—the first conservative budget in Australia for 13 years—is a budget which forecasts, in fact, for 1996-97 and 1997-98 a contraction in the amount of contribution that net exports will make to GDP. It is a contraction of 0.25 per cent. That is to be contrasted with the increase that the net contribution exports made to Australia's GDP under Labor. In our last year, 1995-96, we had a plus one per cent contribution—a positive outcome for this country. In one year, the government has turned that into a negative contribution to this country.

Encouraging exports means nurturing an export culture for Australia. The instrument to do that is the Australian Trade Commission—Austrade. Austrade has had its budget cut. ITES—a scheme for bigger exporters, a rollover scheme and a scheme that played a significant role in lifting Australia's international exports—has been abolished. Now we have the EMDG Bill, which is to further remove supports for the export industry.

As with industry policy—where this new government has decided that the harshest, most severe version of rational economics is to apply—this government has reduced these incentives. In industry policy across the board, the government has reduced incentives on a range of areas which expose our companies to predatory international competition with no protection or very little protection. I believe that is a vote of no confidence in Australia's capability to succeed in developing, particularly in the manufacturing and service industries. Certainly that is what the industries say.

In the case of EMDG, we have had a Senate committee of inquiry into this bill. A number of well-known national bodies that represent exporters gave evidence. These are bodies whose main role in life is to represent the interests of the companies covered by them. These are bodies which, by their very nature, are conservative when it comes to criticising governments. Their preferred position is to work with governments.

All of them were critical of this bill. The Australian Institute of Export, representing most exporters in Australia—certainly all of the small companies that are exporters—was a severe critic of this bill. The Australian Information Industries Association, which represents the field of information technology and telecommunications—the biggest and fastest growing industry in the world: the one that commands the most excitement and drama, the one in which Australia has a leading role, particularly as a software creator—is concerned that this bill will limit the opportunities of its members to realise in the

international market by removing essential supports from them.

As I have said on previous occasions, currently we are in deficit on information industry exports. We import $6 billion worth of information industry technology a year. By the year 2000, we will be importing, on current estimates, $20 billion worth of computers and of convergence and telecommunications materials—$20 million, which is about the size of our current account deficit now. What is urgent for this nation is to encourage our exporters in this area so that they can sell to the world more than we buy from the world.

They are like Geoffrey Rush. They are Oscar winners in their field, but we are removing from them the ability to star in films and get world and global recognition by cutting out these props. That is a black mark against the government. It is not me saying that; they are saying that. An independent refereeing of the statistics of this scheme reveals that—loud and clear and more eloquently than anyone else.

Let me continue the rollcall. The Australian Publishers Association, which represent book publishers in Australia, are a relatively small industry group—but a very active and certainly an extremely enterprising one. They have used imagination and innovation and have won for Australia a bigger share of the world book market by being enterprising, taking our product abroad, being assiduous about attending trade fairs and promoting the small publishers in Australia—the small businesses that this government claims to represent. They say that this bill is against their interest and against the interest of Australia maintaining a key position world on book publishing. The furniture association says similar things.

At previous hearings, we have heard the reason why Australia is a world leader in the manufacture and export of fast, aluminium catamaran ferries—a market worth half a billion dollars worth of exports a year. It is because, in the initial start-up phase of that industry, they took advantage of the export market development grants. They took advantage of circumstances which this government now wishes to change and change in a regressive way.

I reject the economic rationalist thinking that is behind this bill—that thinking which argues that, if you cut out these industry supports, the cold winds of the marketplace will determine that the strong will win and the weak will fail. The trouble with that theory is that we are talking about small business in Australia; that is, small business that does not have the market strength of bigger business that will compete with overseas businesses.

When the cold winds of economic rationalist theory blow through the Australian small business market in export, they abolish that market. They overrun it; they overwhelm it. It means that, certainly, the fit will survive, but they will not be Australian companies. Our current account deficit will blow out to a greater level, which will have a consequential effect not only on unemployment in this nation but also on interest rates and inflation.

I think this is a very important bill. The opposition is strongly opposed to cutting back the export market development grants scheme in the manner proposed. Certainly, we are strongly opposed to capping the scheme. The important and distinctive feature of this scheme is that those who want to export, those who have the initiative and entrepreneurial drive to seek markets offshore from Australia for goods or services manufactured here can access the support this scheme offers and access it according to the amount of effort they put in. It is not picking winners. It is backing winners. Those that want to have a go are supported.

This government is proposing to cap the amount of support and to limit and narrow the amount of areas in which those companies can qualify. What is offensive to me about that is all of the things that I have said. But when you look at whether this scheme works or not, the evidence is unequivocal: this scheme works. There are a number of things that you do to promote exports, that you do not being certain about what the practical impact is, and you spend public money in order to help achieve a practical outcome. After you have done that for a while, you audit whether or not it has succeeded. If it

has, you encourage it. If it has not, you modify it and, if it is a failure, you abolish it.

In the case of the export market development grants scheme, it has been independently refereed by Professor Bewley of the University of New South Wales. He is a distinguished econometrician in Australia. He has calculated that, for every dollar spent on this scheme—every dollar of taxpayers' money—the return to the nation is between $9 and $20. If Australian taxpayers could be sure that if they put $1 down and get a return of between $9 to $20 on that dollar, I am sure that they would say, 'This is a good investment.' Certainly, if I were an investor and I could put down $1 and get between $9 and $20 back, I would regard that as a good investment. This is—I underline this—independent refereeing of this scheme. That is what the independent academic who reviewed this scheme said.

What does Austrade say? Austrade is the government's agency here. It is the agency through which this scheme is operated. In its comments in the last budget, it said that the scheme returns up to one to 33; that is, for $1 up to $33 returned. In the face of all that, there is one stark question: why would you cut back a scheme that returns that value to the nation? It returns that value to the nation, at a time when we have a current account deficit of $20 billion, representing four per cent of gross domestic product, and when the Prime Minister himself has said that the most urgent economic problem for this nation is to reel back that current account deficit. It makes no sense. It is for that key reason that we are opposed to this bill.

As I said in my earlier remarks, this bill imposes a cap on a scheme which is currently uncapped. This bill proposes that no more than $150 million be spent in support of this scheme, that is to say, we make a $9 to $20 return, or one to 33 per cent return. But, by God, we're not going to put too much money down in order to achieve that outcome.

The cap, however, reduces what has been in recent budgets the estimate of how much money would be spent on the scheme. In recent budgets, I recall, the estimated outlays under the scheme would be between about $220 million and $250 million. So we are cutting about $90 million out of it or, as my colleague in the other place, the Hon. Stephen Smith, has said, over four years $142 million—according to the budget figures—will be cut out of the scheme. That is $142 million to which there is an advantage of one to nine or one to 20 or, in Austrade's figures, one to 33.

But that is not all. An administrative charge is to be cut from that outlay of $150 million. That administrative charge is five per cent. There goes $7.5 million; the $150 million becomes $142.5 million. Of course, this a grants scheme and recipients of grants have to declare them as income in their tax and pay tax on them. The corporate tax rate is 36 per cent. When you apply the 36 per cent tax rate to the scheme, there goes another $51.3 million. So the actual outlay to the Commonwealth is $91.2 million. But I bet you that the Commonwealth will run around this nation and say, 'We are putting $150 million into encouraging exports.' They will not say that that is about $90 million less than last year. They will not say that they are clawing back over $50 million and that the real figure is only $91.2 million.

The other element of this legislation is to narrow the eligibility for this scheme, and that affects small business. Let me recite the areas of narrowing of eligibility. Trusts are to be excluded although I understand now, from amendments foreshadowed by the government, that the government will relent on that and trusts will be included. Air fares are essential to export. You need to get into the market and, unless you sail, the only way of getting there is to fly but air fares are to be limited and be ineligible after two years. We are moving an amendment in that regard, and I trust and hope that the government can support that amendment.

One of the biggest problems for Australian companies is protecting their patent rights. We are an inventive country. We have got good scientists. Too often we see their ideas taken overseas and turned into products or services by others and sold back to us. This scheme limits the ability of Australian companies that have taken our scientific base and turned it into products here to protect and

defend their patents and their intellectual property in the world. We are moving amendments on that. Overseas buyers' visits to Australia, foreign language training, international business education courses, export packaging and labelling design, tenders and quotations, free technical information and subscriptions to industry associations are all to be limited under this bill.

To put the final touch to it, this bill contains what I describe as delegated legislation. This bill reposes in Austrade, an organisation that I have a high regard for but it is a public sector organisation nonetheless, the right to make business and entrepreneurial decisions about whether businesses are capable or should be given money for a grant. Clearly, government has to discriminate about what is the difference between success and failure but I say this as a cautionary note: none of the guidelines under which Austrade will make those decisions has yet been published. The government could have brought those guidelines forward now—we could have seen them and, if we could know what the guidelines were, that would be a good signal to industry. But they have not been published and we do not know what they contain.

We only have assurances about them, and I hope that those assurances—given in the committee hearing—can be supported by the parliamentary secretary at the table and at least then we will know, under the Acts Interpretation Act, that that is the government's view. But delegated legislation is a thorny issue for the Senate, rightly so and for good reason. What the government wants to do should be clear, should be transparent and the appeal rights should be well set out. That is not the case here and I oppose those areas of delegated legislation.

I conclude by saying that I want to acknowledge that the parliamentary secretary, David Brownhill, has been prepared to talk to the opposition and negotiate with us about our concerns in a constructive manner. I acknowledge that. All too often in politics there is nothing but criticism. I want to damage his career, I hope not, by praising his constructiveness here and also that of his minister, Tim Fischer. I also say that this is an important bill and we will oppose all those features I have referred to. *(Time expired)*

Senator MURRAY (Western Australia) (12.05 p.m.)—Thank you, Senator Cook, for a very good summation. I first want to deal with the Senate Foreign Affairs, Defence and Trade Legislation Committee which, in such a short period of time, pulled out all the stops to produce a very helpful set of hearings and a report. In the rush and pressure that we are experiencing in this overconcertinaed period, in which we are looking at so many important bills, the secretariats that serve our committees deserve proper commendation. The secretariat of the legislation committee were so rushed that they actually could not even advertise the hearings. Yet nearly 50 submissions came in in a very short period of time. This is a bill on which there has been an outpouring of rage by persons affected and by organisations that are concerned with and understand the export milieu.

This scheme is now 23 years old. It began under that giant of the political landscape, Gough Whitlam. It was continued under the Liberal governments that followed his government and by the Labor governments that followed those governments. In each case, amendments were made to, and reviews were made of, the legislation so it is now, in our opinion and in the opinion of informed observers, one of the most effective and most worthy of all business and export assistance schemes.

It is not, and has not been, a scheme which is subject to expenditure blow-out or to any substantial abuse. It is a scheme which has had a total of 69,234 grants made between 1974 and 1991. Most grants average around $61,000. The total grants for 1995-96 are recorded at $202 million. But those grants are taxable in the hands of the recipient, so the real value of the scheme has been limited to around $120 million in net cost.

It is not an expensive scheme for the benefits it delivers to Australia; the real killer is the actual exports generated under the scheme. In 1995-96, the exports generated were $5.07 billion. I will lead on to that later. How any Treasurer who has to pay attention to our balance of trade deficit as well as our

budget deficit can attack such a productive scheme throws great light on his lack of judgment and his lack of discretion. The ratio of exports to grants has actually been improving. In other words, it is an extremely efficient scheme. From 1992 to 1993 the ratio rose to 21 to one. As Senator Cook has outlined, it is now recorded as in the low thirties to one. It is an extremely efficient scheme with a very high multiplier content.

I am of the opinion that you have to have a mix of policies in the pursuit of Australia's export goals. I am beginning to have the opinion that we need a better mix in the cabinet. Eight lawyers, four farmers, a doctor, a diplomat and a businessman sat there and agreed to this cut. It shows me that they really do need to look at their prioritisation. I commend both the Minister for Trade (Mr Tim Fischer) and the Parliamentary Secretary to the Minister for Trade (Mr Brownhill), because I am aware that both of them fought to keep this scheme alive. It is my information that it was the intention of the Treasurer (Mr Costello) to destroy it completely. They should be publicly commended for at least allowing it to survive in a truncated manner. The second thing I would like to commend Senator Brownhill for is his willingness to consult and to negotiate on this matter. That makes it far more easy to resolve legislation which so materially affects the country.

The Australian Democrats have the view that the scheme should not be capped. Accordingly, I will be moving a motion at the end of my address that the scheme not be capped. We believe that its growth has not been open ended and fearsome to the budget; it has been regulated, controlled and quite well managed. It is fashionable and probably realistic to criticise those authorities that have to manage these schemes because they do not get everything right. But, by and large, Austrade has a reputation for having managed the scheme well. It should be commended for doing that.

This legislation has two motivations. Before damning it completely, I should indicate that the Australian Democrats believe there are many improvements in the bill. Those amendments are based on the efficiency audits of the scheme by the Australia National Audit Office—another accountability mechanism which very frequently does a good job in assisting in the efficient management of the country. In this respect the bill reflects a number of positive aspects in terms of administrative, managerial and operating effectiveness. But the bill—this is where our criticisms will be focused in this debate—alters the character of the EMDG scheme, the export market development grants scheme, in two fundamental respects.

Firstly, it alters it from an open-ended to a capped scheme. That will result in far more discretion, far more of a winner picking mentality within Austrade. Secondly, it reduces the budget from $204 million—I think it was expected to reach $212 million this year on an open access basis—to $150 million. That is a reduction of nearly $70 million. But the real reduction, as I said, will be far less because this is a scheme where the grants are taxable in the hands of the individual. In other words, the government is claiming a saving of nearly $70 million, but the real saving will be about $40 million.

Our main concerns with this bill reflect those of the majority committee. It should be pointed out that many coalition members are very disturbed by some of the trends emerging in this bill. We have focused on trusts: we commend the government for its changes to trusts as a result of submissions from the community affected by this bill, from the committee itself, from the opposition and from us. We want to accord our gratitude to you for your responsiveness. I will be putting up amendments during the committee stage; I will deal with trusts at greater length at that time.

The second area which I understand is attended to as a result of the trusts amendment is the element of retrospectivity. Persons who, quite rightly, made decisions about how they would spend money this year discovered only in December, nearly five months after the budget, that what they were proposing to do would now be rendered retrospectively inapplicable under the bill.

The third area that the government, the Democrats and the opposition have come to

agreement on is that of air fares. We concur with the view, and from long and practical experience it is the right view, that air fares are the single most important mechanism for promoting exports because they promote face-to-face interaction. If you want to persuade people you talk to them face to face. That is why in this parliament we do not sit in front of our television sets all the time. We actually come down here and talk to each other. In the most important debate that seems to have been around in terms of people's consciences, the euthanasia debate, they were all here listening and reacting. The face-to-face mechanism is very important.

The next concern we have, and we wish we did not have this concern because it is a huge and costly drain on exporters and it is quite a large component of the eligibility mechanism, is the costs of patents, trademarks and other intellectual property. It is a fact of life that if you have a brand of good or service of any kind, if you want to compete internationally you have to make sure you are protected, otherwise you will arrive with your little bag of tricks and they will get stolen from you. It is as simple as that. The patents, trademarks and other intellectual property protections are designed to prevent your competitors from stealing your brand of goods or services.

The last area really refers to the nature of Austrade's discretion. Austrade is a statutory authority and its discretion would be less of a concern under an open access scheme. But as soon as you cap a scheme it results in a situation where they themselves have to distinguish, subjectively sometimes, between applicants. That means that the criteria for selection needs to be particularly well developed as a consequence and there does need to be a proper reviewable system. I should indicate to government that there is a problem with the capping of the scheme which results in a different way in which Austrade will have to function in terms of distinguishing between applicants and their eligible claims.

I do not propose to go through much more in my opening remarks. I am aware we are under time constraints. I would commend to the Senate my minority report which I think expresses the Australian Democrats views succinctly and well. There is a comity of views between the opposition and ourselves on these matters. We will be supporting the opposition amendments. We will be supporting the government amendments. I move:

At the end of the motion, add:

"but the Senate is of the view that, if the scheme is to be capped, funding for the scheme should be not less than last year's levels."

I do not want to move to a division. What I would like to do is get an indication from the government, the opposition, Senator Colston and Senator Margetts whether they will support that motion. Senator Brownhill, could you advise me whether Senator Harradine would support it? If you advise me no I will then just do it on the voices.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.18 p.m.)—I thank all those who have spoken in the debate on the Export Market Development Grants Bill. I would also like to thank the Foreign Affairs, Defence and Trade Legislation Committee for the prompt manner in which they dealt with the draft bill. We found the report to be a constructive contribution and that is the way things should happen. The draft bill was sent to the committee so that a debate could take place outside this chamber and the legislation could be dealt with much more quickly when it came before the chamber.

We took particular note of some of the comments from the business representatives and also from others during the debate. I think the Minister for Trade (Mr Tim Fischer) indicated in the other place that he was prepared to consider the issue of trusts and access to the EMDG scheme in the light of that legislation committee's report. The report was tabled on the 20th. I thank Senator Troeth for the job she did as chairperson.

The government has carefully considered both the report and what was put to us. On the strength of the arguments we have decided that the trusts should be included in the scheme and the government amendment which has been circulated to that effect is with you all. The amendment also seeks to

ensure that trusts are subject to rules so that, in short, they have the same degree of accountability as all other export market development grant claimants. We have had an agreement with the Democrats and others as far as that is concerned.

This bill delivers on the government's commitment to maintain the export market development grant scheme and to provide full rate eligibility for the first time to the tourism industry. It simplifies and better targets the scheme; it supports the SMEs; and it retains a well-funded program, despite the budget black hole of the previous government. The EMDG scheme has been assisting Australian exporters for over 22 years, as Senator Cook said. We believe it has assisted many people.

Two significant measures have been introduced to direct more funds to small and medium enterprises. The minimum expenditure threshold has been lowered to $20,000 per grant to benefit more small and medium size enterprises. In addition, applicants with income in the grant year in excess of $50 million will no longer be eligible to receive a grant for that year, thus freeing up available funds for those exporters most in need of assistance.

The government has also recognised the significant contribution made to our exports by the tourism industry and increasing the grant rate for all tourism providers to the full 50 per cent and allowing free samples of services provided and access to approved joint ventures, I believe, will be a great help. The government has, because of the fiscal legacy we inherited, decided to place a cap on annual funding and this is consistent with the government's wider goal of fiscal restraint. Most importantly, the mechanism for affecting the cap will provide for full payment of smaller grants at the time of determination. As to the point that Senator Murray made, no, we will not be supporting his amendment.

To minimise the potential reduction to individual grants, the government has introduced a number of policy changes which will simplify the scheme, address fraud and better target those SMEs in the early years of exporting. The fundamental principles of the scheme have not been altered. The scheme will continue to provide assistance to small and medium Australian exporters and potential exporters through the partial reimbursement of selected promotional cost. Under this bill the scheme retains its open access nature.

The bill demonstrates the commitment of the government to assist Australian SMEs to enter and develop export markets. I note Senator Cook's concern about smaller companies. We have retained a well funded EMDG scheme which encourages smaller firms into exports. We have also made substantial progress towards reducing the budget deficit and providing a better macro-economic environment for all Australian exporters. All small firms are eligible for grants. Indeed, the bigger impact of the reduced budget for the EMDG is on the larger companies.

On the issue of Austrade's discretionary powers, Senator Murray raised concerns about protecting commercial-in-confidence information. I have checked the provisions within the current Austrade Act 1985. That act provides substantial penalties for any breaches by Austrade staff. They are of the same order that Senator Murray seeks. Therefore, I believe that further amendments on that subject would not be needed.

To all the people who participated in the debate, I thank you very much again for your kind words. The Senate is a place where I believe we have to look at legislation and do the best thing we can for the community. I take your points on notice. I believe that this scheme will be a better targeted scheme within the constraints that we have under the fiscal responsibility that we have to the taxpayers of Australia. I believe it will make sure that the export industries are assisted well in the next few years.

I thank Senator Murray and the other senators for being able to talk about this bill outside the chamber and taking in account what was said at the inquiry. I commend the bill to honourable senators.

Senator MURRAY (Western Australia) (12.25 p.m.)—by leave—I have a question regarding the amendment I have put. Can you indicate for me, Parliamentary Secretary, whether Senator Harradine has advised you

that he will oppose my second reading amendment.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.25 p.m.)—by leave—The bill, as presented by us, as far as the cap is concerned, would be supported by Senator Harradine. Therefore, he would not be supporting your amendment.

Senator MURRAY (Western Australia) (12.26 p.m.)—by leave—I therefore indicate to you that I will take my amendment on the voices.

Senator COOK (Western Australia) (12.26 p.m.)—by leave—Senator Murray asked in the concluding phases of his speech what the opposition's position would be on his motion. The opposition will support the Democrats' motion, and we will take it on the voices.

Question resolved in the negative.

Original question resolved in the affirmative.

Bills read a second time.

In Committee

EXPORT MARKET DEVELOPMENT GRANTS BILL 1997

The bill.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.28 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. This memorandum was circulated in the chamber on 21 March 1997. I seek leave to move the government amendments to this bill.

Leave granted.

Senator BROWNHILL—I move:

(1) Clause 7, page 5 (lines 2 and 3), omit "*or approved trading house*", substitute "*, approved trading house or trustee*".

(2) Clause 7, page 5 (line 5), omit "or approved trading house", substitute ", an approved trading house or a person acting in the capacity of trustee of a trust estate".

(3) Clause 7, page 6 (after line 25), at the end of the clause, add:

Trustees

(4) A person acting as trustee of a trust estate is eligible for a grant in respect of a grant year if the following conditions are satisfied:

(a) the person was, in Austrade's opinion, genuinely carrying on in Australia, during the grant year, a business (***trust business***) for the purposes of the trust estate;

(b) subject to section 8, the person is not a grantee in respect of 8 or more previous years;

(c) the income of the person from the trust business during the grant year is not more than $50,000,000;

(d) the export earnings of the person during the grant year are not more than $25,000,000;

Note: Section 10 provides that only earnings from the trust business are to be taken into account.

(e) neither the person, nor (in the case of a company) any of its directors, is under insolvency administration when the person applies for the grant;

(f) none of the beneficiaries of the trust estate, nor (in the case of a beneficiary other than an individual) any associate of the beneficiary, is under insolvency administration when the person applies for the grant;

(g) there are no disqualifying convictions outstanding against either the person or any beneficiary of the trust estate under section 17 when the person applies for the grant;

(h) if Division 5 applies to the person—the person (in the capacity of trustee for the trust estate) has been registered under section 19 and has passed the grants entry test.

Note: For *person*, *grant year*, *Austrade*, *grantee*, *income*, *export earnings*, *associate under insolvency administration* and *grants entry test* see section 107.

(4) Clause 8, page 6 (line 27), omit "or (2)(a)", substitute ", (2)(a) or (4)(b)".

(5) Clause 8, page 6 (line 29), omit "(within the meaning of the repealed Act)".

(6) Clause 8, page 7 (after line 11), after paragraph (c), insert:

; (d) in the case of a person that has applied for a grant in the capacity of trustee of a trust estate—any grant paid to the person otherwise than in that capacity;

(e) in the case of a person that has applied for a grant in the person's own right—any grant paid to the person in the person's capacity as trustee of a trust estate.

(7) Clause 8, page 7 (after line 21), after the definition of ***claim period***, insert:

grant includes a grant under the repealed Act.

(8) Clause 10, page 8 (line 6), omit "and (5)", substitute ", (5) and (6)".

(9) Clause 10, page 10 (lines 27 to 29), omit subclause (5), substitute:

(5) In working out the export earnings of a person that has applied for a grant in the capacity of trustee of a trust estate, disregard any earnings of the person that are not derived from the business carried on for the purposes of the trust estate.

(6) In working out the export earnings of a person that:

(a) has applied for a grant in the person's own right; but

(b) is also a trustee, or a beneficiary, of a trust estate;

disregard any earnings of the person from the business carried on for the purposes of the trust estate.

(10) Clause 18, page 17 (line 4), omit "This", substitute "Subject to subsections (2) and (3), this".

(11) Clause 18, page 17 (after line 11), at the end of the clause, add:

(2) If the person intends to apply for a grant in the capacity of trustee of a trust estate, then, for the purposes of subsection (1), disregard:

(a) any grant previously paid or payable to the person; and

(b) any application for a grant made by the person; otherwise than in that capacity.

(3) If the person intends to apply for a grant in the person's own right, then, for the purposes of subsection (1), disregard:

(a) any grant previously paid or payable to the person; and

(b) any application for a grant made by the person; in the capacity of trustee of a trust estate.

(12) Clause 40, page 33 (cell at table item 14, 2nd column), omit the cell, substitute "Expenses of applicant carrying on business in different capacities".

(13) Clause 54, page 37 (lines 24 to 26), omit the clause, substitute:

54 Expenses of applicant carrying on business in different capacities

(1) If an applicant has applied for a grant in the capacity of trustee of a trust estate, any expenses of the applicant incurred otherwise than in that capacity are excluded.

(2) If an applicant that has applied for a grant in the applicant's own right is also a trustee of a trust estate, any expenses of the applicant incurred in the capacity of trustee of the trust estate are excluded.

(14) Clause 86, page 55 (line 15), omit "against the person", substitute:

against:

(a) if paragraph (b) does not apply—the person; or

(b) if the person is entitled to the grant or advance in the capacity of trustee of a trust estate—the person or any beneficiary of the trust estate.

Note about clause 86, page 55 (line 11): The heading to clause 86 is altered by omitting "**the person**" and substituting "**grantee etc.**".

(15) Clause 86, page 55 (line 19), add at the end ", or the person or any beneficiary of the trust estate, as the case may be".

(16) Clause 87, page 55 (lines 24 to 26), omit "advance, the person or, (where applicable) an associate of the person, is under insolvency administration", substitute:

advance:

(a) if paragraph (b) does not apply—the person or (where applicable) an associate of the person; or

(b) if the person is entitled to the grant or advance in the capacity of trustee of a trust estate:

(i) the person or (where applicable) an associate of the person; or

(ii) any beneficiary of the trust estate or (where applicable) an associate of the beneficiary;

is under insolvency administration.

Note about clause 87, page 55 (line 21): The heading to clause 87 is altered by omitting "**Person or associate**" and substituting "**Grantee etc.**".

(17) Clause 87, page 55 (line 28) to page 56 (line 2), omit "when neither the person, nor any associate of the person, was under insolvency administration", substitute:

when:

(a) if paragraph (1)(a) applies to the person—neither the person, nor any associate of the person; or

(b) if paragraph (1)(b) applies to the person—neither the person nor any other person referred to in that paragraph;

was under insolvency administration.

(18) Clause 101, page 66 (line 6), after "(a)", insert "or (4)(a)".

Senator COOK (Western Australia) (12.28 p.m.)—I understand that these are the amendments that the government foreshadowed earlier. They relate to trusts. I think they largely meet the points that the opposition is concerned about here.

I am aware that my colleague Senator Murray has an amendment on this matter. I understand that Senator Murray's amendment is also acceptable to the government. I would indicate now, to save jumping up and down all the time, my support for Senator Murray's amendment too.

Senator MURRAY (Western Australia) (12.29 p.m.)—I rise to advise the government that we will be supporting amendments 1 to 18. We commend the government for reacting so well to the concerns of the community and of the committee that produced the report.

The CHAIRMAN—Senator Murray, do you have an amendment to government amendment No. 3? If so, could you move it.

Senator MURRAY (Western Australia) (12.30 p.m.)—I move:

Omit paragraph (4)(a), substitute:

(a) the person provides to Austrade, on request, the following information:

(i) a declaration of beneficial and ultimate control of the trust estate, including by trustees; and

(ii) a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries which are not individuals, their countries of incorporation or registration, as the case may be; and

(iii) details of any relationships with other entities;

(iv) the percentage distribution of income within the trust; and

(v) any changes during the grant year in relation to information provided under subparagraphs (i), (ii), (iii) or (iv).

Note: For protection of information provided to Austrade under this paragraph see section 105A.

Trusts are an extensively used legal mechanism for conducting family and business affairs in Australia. There are, as we know, varying kinds of trusts and they all have characteristics which make them less transparent and often more complex than corporations. It is for this reason that informed commentators are cautious and careful in dealing with some kinds of trusts. However, the fact that trusts may have a reputation that they can be used by a minority in a manner which is not conducive to good social conduct does not mean that the majority of families and businesses using them are operating outside the law.

I should indicate those characteristics of trusts which distinguish trusts from corporate entities and should be noted for the purposes of this amendment. Those characteristics of trusts are as follows. Firstly, the beneficial and ultimate control of the trust is shielded from public disclosure. In contrast to a corporate entity where the shareholders are available in the annual ASC declaration, there is no such mechanism for trusts.

Secondly, the distribution of income in a trust is generally discretionary and can vary between the beneficiaries year by year. That again is in contrast to a corporate entity whose ASC declaration will indicate the percentage shareholding and, therefore, the percentage entitlement of the shareholders. Thirdly, the beneficiaries of trusts are shielded from the public eye. Once again that is in contrast to a corporate entity where the shareholders are identified in terms of their shareholdings and return, whereas the beneficiaries of trusts are concealed.

Lastly, trusts may be used to maximise tax effectiveness and planning in ways which are not available to incorporated bodies. The government has indicated that it is going to put trusts under greater scrutiny in this regard, if I understand their signals correctly. Speak-

ing for the Australian Democrats, we would welcome that.

The Austrade officials at the hearing made sound and valid points, although they might have expressed themselves a little more clearly I think, about some of the problems they do experience with trusts—that is, being able to determine exactly what lies behind trusts and who is dealing with them. I was at pains in the question and answer section with one witness to establish whether that witness would have a problem with outlining the exact nature of his trust.

His answer was no, he was quite happy to show who was in control, who the beneficiaries were and what the percentage distribution of income was because the trust to him was a legal device which maximised his relationship both with his export trade and with his business affairs. My view is that that sort of attitude is likely to pertain to most trustees and participants in trusts.

The purpose of this amendment is to allow Austrade to require where it wishes—it is not obligatory; it is a discretion—for a trust to disclose relevant information about control and beneficiaries if it wishes to proceed with the grants. The second point Austrade made, which was a good one, was that at times it has great difficulty understanding the relationships of trusts to corporate entities and in what manner funds are controlled and moved about. Once again, my Australia Democrat amendment does not allow for Austrade, at its discretion—it is not obligatory—to request that information if it needs it in order to make a more informed and more objective decision as to who should get grants and on what basis of eligibility. Accordingly, I commend my amendment to the Senate.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.34 p.m.)—I thank Senator Murray for his contribution. The government supports that addition to our amendment No. 3.

Amendment (**Senator Murray's**) agreed to.

Amendments (**Senator Brownhill's**), as amended, agreed to.

Senator COOK (Western Australia) (12.35 p.m.)—by leave—I move:

(1) Clause 28, page 24 (line 8), after "promotional" insert "or other".

(2) Clause 29, page 24 (lines 15 and 16) omit paragraph (a), substitute:

(a) the expenses are claimable expenses:

(i) under section 33, in respect of an eligible promotional activity, or

(ii) under section 38B, in respect of other claimable expenses.

(3) Clause 33, page 26 (line 20), omit "Subdivision 4", substitute, "Division 2B".

(4) Clause 33, page 27, omit item 2 of the table of **Claimable expenses in respect of eligible promotional activities**, substitute:

Column 1	Column 2	Column 3
2	any visit (marketing visit) made by the applicant or its agent to any place in or outside Australia, or by an overseas buyer to any place in Australia, to the extent to which the visit is made for an approved promotional purpose	all expenses: (a) incurred by the applicant in payments to persons that, in Austrade's opinion, are not closely related to the applicant; and (b) that are allowable expenses under section 34.

(5) Clause 33, page 27, after item 3 of the table of **Claimable expenses in respect of eligible promotional activities**, insert:

Column 1	Column 2	Column 3
3A	the provision, primarily for an approved promotional purpose, of free technical information to a person that is not a resident of Australia	all reasonable expenses incurred by the applicant that are attributable to the actual cost of providing the information

These amendments relate to eligible expenses and return effectively the provisions of the existing bill. We had, as has been said in the various speeches delivered on this subject today, a quite worthwhile and useful Senate Economics Legislation Committee hearing on this bill. During that hearing an innovative procedure was adopted in which the chairman, Senator Troeth, invited witnesses to the hearing to put their views directly to the Austrade witnesses, who then forthrightly replied to the concerns the industry witnesses had raised. What the industry witnesses were concerned about were matters of interpretation.

I indicated during that hearing, and I now wish to implement that indication, that I would ask the government during this phase of debate on this bill whether it adopted the interpretations that Austrade had given the industry in the committee hearing as its understanding of what this bill meant and would do so for the provisions of the Acts Interpretation Act. I, therefore, wish to ask: is the parliamentary secretary at the table, Senator Brownhill, in a position to now confirm on behalf of the government the advice that Austrade gave the industry organisations at the hearing that relates to how this bill will be interpreted?

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.37 p.m.)—On the advice that I have, it is not clear that the Acts Interpretation Act allows the parliamentary secretary to endorse departmental evidence as material to which regard can be had in interpreting the act. It is not a common practice and will require far more careful consideration and advice than we have been able to obtain in this short time to give you a more definitive answer.

Senator COOK (Western Australia) (12.38 p.m.)—In view of that answer and in view of the time constraints that we are under, I indicate that I do not think that is an acceptable answer. The purpose of the procedure entered into at the committee was for the industry associations to be able to clear up directly with Austrade in the presence of the committee their concerns about how this act would be administered by the trade commission—Austrade. If the government is not prepared to back Austrade's interpretation—and that is the only possible interpretation of the answer just given—I am not sure what industry should think about the advice given by Austrade. I think their concerns—and they have raised a number of them in the evidence—are therefore justified and the pity is that we are under time constraints today.

The consequential pity of that is that we cannot explore this question in great depth other than to say no-one should therefore necessarily place their faith in what Austrade has indicated to the committee would be the interpretation. In saying that, I intend, of course, no reflection on Austrade. I am sure those officers conducted themselves as they believed was right and proper. What I do intend is to make a reflection on the government in not backing up that interpretation. I mark this spot in the *Hansard* for the reason that industry associations should be aware of that when they approach their understanding of how these provisions would be interpreted.

I conclude by saying that this could be cleared up in a trice. It could be done in the blink of an eye if the government would bring forward the guidelines that obviously have to be published and would accompany the final legislation as a guide to Austrade in its interpretation. The fact that we do not have those before us, and did not have them before the committee, means that the issue is still at large. The industry organisations are still, I

believe, within their rights and justifiably raising these matters, and the administration of the terms of this bill must be cloudy until the government moves to change it.

On Monday, the Prime Minister brought down a statement about cutting red tape in small business. One of the big problems for small business in interpreting what their rights are vis-a-vis government agencies is vagueness and uncertainty. They do not have discretionary time to hire advisers and to advise them—they do not have the discretionary finance to do that—and they do not have the discretionary time to spend on trying to work it all out for themselves. I think it is a terrible state of affairs that this vagueness now continues, and it works against the very purpose that the government proclaims this bill to serve, namely to simplify the administrative system of the export market development grants. With those words, I, of course, persist in my amendments. I will take the vote on the voices.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.41 p.m.)—In answering some of the comments that Senator Cook has made, it is normal practice to develop guidelines and regulations after a bill is passed. The government will develop these instruments in consultation with industry and the government would be happy to make drafts available to senators as part of that process. The parliament will have an opportunity to consider those instruments when they are tabled. The guidelines on significant net benefit will be developed if it is considered that they are required. I hope that lays some of your concerns to rest.

Senator COOK (Western Australia) (12.42 p.m.)—As I said, we are under time constraints. Therefore, I am not obliged to prolong this, other than to indicate notice to the government that I will be moving to disallow those instruments when they are tabled, if they do not meet the concerns of the industry association and if they do not reflect reasonably the advice Austrade gave the industry associations at the hearing. I just take this opportunity to put that on notice and mark the spot as far as we are concerned on this.

Senator MURRAY (Western Australia) (12.42 p.m.)—With regard to opposition amendments 1 to 5, we did not review this in detail and we are concerned that it may affect the judgment as to where moneys are put in the capped scheme. Our priorities are undoubtedly airfares and intellectual property. However, with regard to these promotional activities, Senator Cook, I will take the risk, without having had a look at it a little more deeply, of supporting you on this one.

Amendments negatived.

Senator COOK (Western Australia) (12.44 p.m.)—I have amendments circulated in my name under amendment No. 6 on the running sheet, relating to clause 34. I have substituted a further amendment in place of that.

The CHAIRMAN—The amendment I have in relation to amendment 2 says:

Subject to subsection (6), the following expenses in respect of any air travel reasonably undertaken by the applicant or its agent are allowable:

It removes 'or an overseas buyer'.

Senator COOK—This is in my subsequent amendment?

The CHAIRMAN—Yes.

Senator COOK—I wonder if I might take that subsequent amendment in place of amendments Nos 6 and 7.

Senator MURRAY—Just to clarify—are you taking out 'or an overseas buyer'?

Senator COOK—Let me just do it in place of No. 6 then. It is the most recent circulated amendment that you have before you.

The CHAIRMAN—I think you have it, Senator Murray, do you?

Senator Murray—That you are omitting 'or an overseas buyer'.

The CHAIRMAN—Yes.

Senator Murray—Yes.

Senator COOK—Yes, that is correct. I see the parliamentary secretary nodding. That is my understanding of what he and I agreed to in relation to this.

Senator Brownhill—Would you like me to tell you what I understand before you—

Senator COOK—Let me formally move the amendment and then you can tell me what you understand from it. I move:

(6) Clause 34, page 28 (lines 9 to 15), omit subclause (2), substitute:

(2) Subject to subsection (6), the following expenses in respect of any air travel reasonably undertaken by the applicant or its agent are allowable:

(a) if the applicant has paid first class air fares in respect of the travel—65% of those fares; or

(b) in any other case—the total amount of the air fares.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.46 p.m.)—Yes, the government does agree to opposition amendment No. 6, with the words 'or an overseas buyer' to be deleted from the original running sheet. So it would read:

> Subject to subsection (6), the following expenses in respect of any air travel reasonably undertaken by the applicant or its agent are allowable:
>
> (a) if the applicant has paid first class air fares in respect of the travel—65% of those fares; or
>
> (b) in any other case—the total amount of the air fares.

I accept the subsequent amendment moved by Senator Cook.

Senator MURRAY (Western Australia) (12.47 p.m.)—The Australian Democrats will support that amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (12.47 p.m.)—In light of our support of the opposition's amendment, we will not be moving ours.

Senator COOK (Western Australia) (12.48 p.m.)—I wonder if I might seek leave to move as a block all the remaining amendments standing in my name.

Senator Murray—Relevant to Senator Cook's request, I would rather he dealt with opposition amendment No. 8 separately. The others can be moved together.

The CHAIRMAN—We will take amendment No. 8 first.

Senator COOK—I move:

(8) Page 32 (after line 14), after Subdivision 3, insert:

Division 2A—Other claimable expenses

Subdivision 1—General

38A Object of Division

This Division provides for expenses to be claimable in respect of certain activities other than those provided for in Division 2.

Subdivision 2—Other claimable expenses

38B Claimable expenses in respect of other activities

The expenses specified in sections 38C to 38H, subject to sections 38J and 38K, are claimable expenses in relation to an applicant in accordance with the relevant provisions of those sections and to the extent that they are not excluded expenses under Division 2B.

38C Expenses for foreign registration of eligible intellectual property rights

Expenses (whether as payment of fees or otherwise) are claimable expenses if, in Austrade's opinion, they are directly attributable to obtaining, or seeking to obtain, under the law of a country outside Australia:

(i) the grant or registration; or

(ii) the extension of the term of registration; or

(iii) the extension of the period of registration;

of eligible intellectual property rights in respect of eligible goods.

38D Expenses for foreign language training

(1) Expenses are claimable expenses if, in Austrade's opinion, they are directly attributable to foreign language training:

(a) for the applicant or a director, partner or employee of the applicant; and

(b) that, in Austrade's opinion, will assist the applicant to carry on business in connection with the production or provision of eligible goods or services;

but only to the extent that those expenses are, in Austrade's opinion, expenses attributable to the actual cost of labour and material involved in the training.

(2) Expenses incurred in the remuneration (whether by way of salary or otherwise) to the person undertaking the training are not claimable expenses under this section.

38E Expenses for certain educational courses

(1) Expenses are claimable expenses if, in Austrade's opinion, they are directly attributable to an educational course on international business development:

(a) for the applicant or a director, partner or employee of the applicant; and

(b) that, in Austrade's opinion, will assist the claimant to carry on business in connection with the production or provision of eligible goods or services;

but only to the extent that those expenses are, in Austrade's opinion, expenses attributable to the actual cost of labour and material involved in the course.

(2) Expenses incurred in the remuneration (whether by way of salary or otherwise) to the person undertaking the course are not claimable expenses under this section.

38F Expenses for packaging and labelling eligible goods

Expenses are claimable expenses if, in Austrade's opinion, they are directly attributable to:

(a) selecting or designing packaging and labelling; or

(b) selecting or designing materials for packaging and labelling;

for use exclusively in connection with the export of eligible goods, but only to the extent that those expenses are, in Austrade's opinion, expenses attributable to the actual cost of labour and materials involved in:

(c) selecting or designing packaging and labelling; or

(d) selecting or designing materials for packaging and labelling.

38G Expenses for preparation of tenders and quotations

(1) Expenses are claimable expenses if, in Austrade's opinion, they are directly attributable to preparing or submitting a tender or quotation to a person resident outside Australia for the supply by the applicant of eligible goods or services, but only to the extent that those expenses are, in Austrade's opinion, expenses attributable to the actual cost of labour and materials involved in preparing or submitting the tender or quotation.

(2) For the purposes of this section, preparing or submitting a tender or quotation includes making investigations and preparing information, designs, estimates of other material for the purposes of submitting the tender or quotation.

38H Expenses incurred in subscriptions to industry associations etc.

Expenses are claimable expenses if, in Austrade's opinion, they are incurred by an applicant in the payment of an amount to an association as the whole or part of a subscription, contribution or levy and

(a) the association is not an approved body or a company resident outside Australia; and

(b) Austrade is satisfied that the amount has been or will be applied in such a way that will assist the applicant in the production or provision of eligible goods or services.

38J What are reasonable expenses?

(1) Austrade is to determine for the purposes of section 38B whether any expenses incurred by the applicant are reasonable.

(2) If it appears to Austrade that any expenses claimed by an applicant under this Division may not be reasonable, Austrade must:

(a) notify the applicant, in writing, that it is of that opinion and of its reasons for being of that opinion; and

(b) ask the applicant to establish, within the period specified by Austrade, that the amount of the expenses was reasonably payable for the activity for which the expenses were incurred.

(3) If Austrade determines that any expenses of the applicant are not reasonable:

(a) Austrade must determine the amount that it considers to be reasonable for those expenses; and

(b) expenses in that amount are taken to be the reasonable expenses of the applicant for the purposes of this Division.

(4) In making a determination under subsection (1), Austrade must take into consideration any information given by the applicant in answer to Austrade's request under paragraph (2)(b).

38K Certain expenses not claimable

Expenses are not claimable expenses if, in Austrade's opinion, they involve payments to persons that are closely related to the applicant.

This is the reinsertion of eligible expenses. The headings referred to are 'Claimable expenses in respect of other activities', 'Expenses for foreign registration of eligible

intellectual property rights', 'Expenses for foreign language training', 'Expenses for certain educational courses', 'Expenses for packaging and labelling eligible goods', 'Expenses for preparation of tenders and quotations', 'Expenses incurred in subscriptions to industry associations etc', 'What are reasonable expenses?' and 'Certain expenses not claimable'.

In my contribution to the second reading debate I spoke about how these provisions in the government bill narrow eligibility. The headings that I have just read out are the areas being made narrower, where eligibility is reduced. The purpose of these amendments is to turn back those provisions in the bill, letting the legislation essentially stand in its current state.

Having said that, it is perhaps important for me to register strongly that the provision relating to expenses for registration of eligible intellectual property rights is important because Australia is a small country and, as an exporting nation, is open to piracy of its intellectual property and open to breach of its patents. Where that occurs in foreign countries, our exporters have to go to the legal jurisdictions of those foreign countries to enforce our rights.

There is no tougher jurisdiction to go to than the United States. If we are exporting sophisticated goods to the US and our patents are breached in the United States, our companies have to then undertake a proceeding in a US court before a US jury with a US judge disposed to the US national interest. Without criticising the American legal system, I must say that in arguing that in a US court it is very difficult indeed to win a positive decision. So we start from behind the eight ball anyway. The changes that the government would make to the Austrade bill would make it even more difficult. If we cannot protect our intellectual property, if we cannot have our patents respected, the effort that companies have made in developing that property or those patents is rendered as zero.

I think one of the biggest issues in international trade is about the protection of intellectual property. It is an issue that the United States has made a feature of, particularly in its relations with China, where open abuse and piracy does occur, and in relation to other countries. I think it behoves us, Australia, who are essentially a small player in the world marketplace, to be rigorous in protecting our standards here. That is the reason behind that amendment.

Senator MURRAY (Western Australia) (12.52 p.m.)—I asked for this to be dealt with separately because it places us right in the middle of the problem that results from capping, and that is that capping inevitably requires choice between eligibility and the allocation of funds. As Senator Cook would have been aware from my speech on the second reading motion, I have a particularly keen interest in clause 38C within his amendment. However, it is tied up with the entire amendment, and a later amendment to be put by me addresses that particular question. Our problem is that, once the bill is passed and a cap imposed, we recognise that the best use of money available then needs to be made. Our focus, as I spelt out earlier, is undoubtedly on air fares and intellectual property. If this was an uncapped scheme, Senator Cook, I would support you wholeheartedly, but I regret that, because it is a capped scheme, I have decided to oppose it.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.54 p.m.)—The government cannot support the amendment as moved.

Amendment negatived.

Senator MURRAY (Western Australia) (12.54 p.m.)—I move:

(2) Page 32 (after line 14), after subdivision 3, insert:

Subdivision 3A—Other claimable expenses

38A Object of Subdivision

This Subdivision provides for expenses to be claimable in respect of certain activities other than those provided for in Subdivisions 2 and 3.

38B Claimable expenses in respect of other activities

The expenses specified in sections 38C and 38D, subject to sections 38E and 38F, are claimable expenses in relation to an applicant in accordance with the relevant provisions of those

sections and to the extent that they are not excluded expenses under Subdivision 4.

38C Expenses for foreign registration of eligible intellectual property rights

Expenses (whether as payment of fees or otherwise) are claimable expenses if, in Austrade's opinion, they are directly attributable to obtaining, or seeking to obtain, under the law of a country outside Australia:

(i) the grant or registration; or

(ii) the extension of the term of registration; or

(iii) the extension of the period of registration;

of eligible intellectual property rights in respect of eligible goods.

38D Expenses for insurance to protect eligible intellectual property rights

Expenses incurred by way of premiums paid for insurance against costs likely to be incurred in respect of the protection of eligible intellectual property rights obtained under the laws of countries outside Australia.

38E What are reasonable expenses?

(1) Austrade is to determine for the purposes of section 38B whether any expenses incurred by the applicant are reasonable.

(2) If it appears to Austrade that any expenses claimed by an applicant under this Division may not be reasonable, Austrade must:

(a) notify the applicant, in writing, that it is of that opinion and of its reasons for being of that opinion; and

(b) ask the applicant to establish, within the period specified by Austrade, that the amount of the expenses was reasonably payable for the activity for which the expenses were incurred.

(3) If Austrade determines that any expenses of the applicant are not reasonable:

(a) Austrade must determine the amount that it considers to be reasonable for those expenses; and

(b) expenses in that amount are taken to be the reasonable expenses of the applicant for the purposes of this Division.

(4) In making a determination under subsection (1), Austrade must take into consideration any information given by the applicant in answer to Austrade's request under paragraph (2)(b).

38F Certain expenses not claimable

Expenses are not claimable expenses if, in Austrade's opinion, they involve payments to persons that are closely related to the applicant.

I think the reasons for those changes are self-evident. I have previously spoken of the critical nature of intellectual property to the promotion and the protection of export dollars. I would hope that the government would see its way to responding positively to this. It does pick up a number of the elements addressed by Senator Cook in his previous amendment, although it does not go quite as far. I therefore commend that amendment to the Senate.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.55 p.m.)—The government will not be supporting the amendment.

Senator COOK (Western Australia) (12.55 p.m.)—The opposition will be supporting the amendment.

Senator MURRAY (Western Australia) (12.56 p.m.)—I am now placed in a difficult situation because I am not sure where the voices would go. Once again, I would ask the parliamentary secretary whether he has had any indication from Senator Harradine, who is the only missing voice, on that matter.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.56 p.m.)—On previous conversations with Senator Harradine, he would be voting against the amendment.

Senator MURRAY (Western Australia) (12.56 p.m.)—I therefore accept the dictate of the voices.

Amendment negatived.

Senator Cook—Mr Chairman, am I in a position now to move as a block my remaining amendments?

The CHAIRMAN—I have had a look at them, and it would be preferable if we went according to the running sheet and just took Nos 9 to 11 now.

Motion (by **Senator Cook**)—by leave—proposed:

(9) Heading to Subdivision 4, page 32 (line 15), omit the heading, substitute:

Division 2B—Excluded expenses

(10) Clause 39, page 32 (lines 16 to 18) omit the clause, substitute:

39 Object of Division

This Division sets out the expenses that are excluded expenses for the purposes of subsection 33(2) and section 38B.

(11) Clause 40, page 32 (line 19), omit "**Subdivision**", substitute "**Division**".

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (12.57 p.m.)—The government will not be supporting the amendments as moved by the opposition.

Senator MURRAY (Western Australia) (12.57 p.m.)—I am sorry to delay proceedings, but I regret I am not completely on top of what result these have. Perhaps Senator Cook could outline it briefly.

Senator COOK (Western Australia) (12.57 p.m.)—My understanding of these amendments, and the reason why I did not speak to them, is that largely they are consequential upon my earlier amendment which failed in this chamber. It is therefore a moot point as to whether they should be moved at all, but I thought I had better stick to my obligation and move them.

Senator Murray—Does it refer to the opposition amendment No. 8?

Senator COOK—Numbers 9 to 11.

The CHAIRMAN—Senator Murray, I think your question might have been, do the current amendments before us, Nos 9 to 11, refer to No. 8?

Senator Murray—Quite right.

The CHAIRMAN—I think you are right, Senator Murray.

Senator COOK—I think I am right in saying that, yes, they do refer to that amendment, but they are largely consequential upon that amendment having been carried.

Senator Murray—Therefore the Australian Democrats will not support them.

Amendments negatived.

Senator COOK (Western Australia) (12.59 p.m.)—by leave—I move:

(12) Clause 61, page 40 (lines 8 to 11), omit subclause (1), substitute:

(1) Division 2 deals with the calculation process. It explains how to work out the maximum amount that each applicant entitled to a grant in respect of a grant year should receive.

(13) Clause 61, page 40 (lines 12 to 27), omit subclauses (2), (3) and (4), substitute:

(2) Division 3 contains provisions setting out the amount of grant to which an applicant is entitled.

(14) Heading to Division 2, omit "**provisional**".

(15) Clause 62, page 41 (line 5), omit "provisional".

(16) Clause 63, page 41 (line 12), omit "***provisional***".

(17) Clause 63, page 41 (line 19), omit "***provisional***".

(18) Clause 63, page 41 (line 27), omit "***provisional***".

(19) Clause 63, page 42 (line 1), omit "provisional".

(20) Clause 63, page 42 (line 9), omit "provisional".

(22) Clause 65, page 43 (line 13), omit "***provisional***".

(23) Clause 65, page 43 (lines 18 and 19), omit "(under section 63 or 64) the provisional grant", substitute, "(under section 63) the grant".

(24) Clause 65, page 43 (lines 24 and 25), omit "(under section 63 or 64) the provisional grant", substitute "(under section 63) the grant".

(25) Clause 67, page 44 (lines 6 to 26), omit the clause, substitute:

67 Amount of grant

If an applicant is entitled to a grant in respect of a grant year, the amount of the grant is equal to the applicant's grant amount calculated in accordance with Division 2.

(29) Clause 95, page 62 (line 6), omit "provisional".

(30) Clause 96, page 62 (lines 26 to 28), omit paragraph (d), substitute:

(d) work out the amount that, apart from this section, would be the applicant's grant amount for the grant year.

(31) Clause 107, page 75 (after line 16), after the definition of "grant", insert:

grant amount has the meaning given by Division 2 of Part 6.

(32) Clause 107, page 76 (lines 14 to 16), omit the definition of ***initial payment ceiling amount***.

(33) Clause 107, page 76 (lines 27 to 29), omit the definition of ***payout factor***.

(34) Clause 107, page 77 (lines 5 and 6), omit the definition of ***provisional grant amount***.

By way of explanation, these amendments are, I understand, consequential upon earlier amendments.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (1.00 p.m.)—The government will not be accepting those amendments.

Senator MURRAY (Western Australia) (1.00 p.m.)—My reading of this is that it affects more than just previous opposition amendment 8, which we opposed. Therefore, because they affect more than that, we will support them.

Amendments negatived.

Senator MURRAY (Western Australia) (1.01 p.m.)—My reading of where we are is that proposed Democrat amendments 3 to 21 and 24 to 27 are identical to those defeated opposition amendments and therefore will not be proceeded with.

Senator MURRAY (Western Australia) (1.01 p.m.)—Before I proceed with putting amendment 22, I should advise that its purpose is to ensure that the amount of grant is a reviewable decision. Many companies fear that Austrade may exercise undue and subjective discretion in determining allocations. As I pointed out in my speech at the second reading stage, that is made worse by the effects of capping. However, the government has informed us that this amendment is not necessary as the bill does provide for such decisions to be reviewable. If that is the case and the parliamentary secretary can confirm it on the public record, I will not proceed with my amendment.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (1.02 p.m.)—In relation to Democrat amendment 22, referred to by Senator Murray, I would like to confirm that the amount of the grant is already covered by the provisions of clause 97 regarding reviewability of decisions.

Senator MURRAY (Western Australia) (1.02 p.m.)—Consequently, I will not seek to move my amendment.

I wish to make a point about the secrecy provisions for trust information. An earlier amendment that was passed unanimously on the floor meant that Austrade could ask trusts to give them information. But, of course, that information will remain the private matter of a disclosure to Austrade and not to the public as a whole, and it is appropriate for that disclosure to occur. It is not appropriate for trusts, as has been formerly the case, to receive public money and taxpayers' grants when control of those trusts and the beneficiaries have been concealed. We have now made that a far more transparent and open process. I am very pleased that the government has accepted that principle.

With regard to the proposed Democrat amendment 23, I have been informed by the parliamentary secretary that the act does currently ensure that any information requested of trusts will be treated with due regard to commercial confidentiality and that the process for doing so is already well established. If the parliamentary secretary is willing to put that on the record and explain how the existing secrecy provisions and protection of private information operates, I will be happy to not proceed with the amendment.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (1.05 p.m.)—The advice I have, Senator Murray, is in relation to the amendment you refer to regarding secrecy. This is already covered in section 94 of the Australian Trade Commission Act 1985. That section provides that Austrade may not reveal commercial-in-confidence information and provides significant penalties for breaches of it. Therefore, basically, I do not think the amendment is necessary as it is in the act already.

Senator MURRAY (Western Australia) (1.05 p.m.)—Consequently, I will not proceed with my amendment.

Bill, as amended, agreed to.

EXPORT MARKET DEVELOPMENT GRANTS (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 1997

The bill.

Senator COOK (Western Australia) (1.06 p.m.)—I move:

(1) Schedule 1, item 2, page 8 (after line 20), at the end of subitem (1), add:

; and (f) a person by whom expenditure under section 11B, 11E, 11F, 11G, 11H or 11J was incurred between 1 July 1996 and 20 August 1996.

This amendment deals with retrospectivity and would correct the bill in that context. I will take the vote on the voices.

Senator BROWNHILL (New South Wales—Parliamentary Secretary to the Minister for Trade and Parliamentary Secretary to the Minister for Primary Industries and Energy) (1.07 p.m.)—The government will not be supporting the amendment moved by Senator Cook.

Senator MURRAY (Western Australia) (1.07 p.m.)—The Australian Democrats will be supporting the amendment.

Amendment negatived.

Bill agreed to.

Export Market Development Grants Bill 1997 reported with amendments; Export Market Development Grants (Repeal and Consequential Provisions) Bill 1997 reported without amendments; report adopted.

Third Reading

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

ORDER OF BUSINESS

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

That intervening business be postponed until after consideration of the following government business orders of the day.

No. 8—Hindmarsh Island Bridge Bill 1996

No. 7—Natural Heritage Trust of Australia Bill 1996.

Senator CARR (Victoria) (1.09 p.m.)—On that matter, could I just indicate that, while we do not oppose the proposition, we do think it is appropriate that these matters be discussed with us before they are moved, not that we be notified that they are going to be done. Given the extraordinary levels of cooperation we have extended to this government, I think that is a common courtesy.

Senator Herron—I apologise. I was under the impression that it had been discussed.

Senator Bob Collins—I was told this morning we weren't doing this today.

Senator CARR—This is a reorganisation of the program by executive fiat. It would be appropriate, I think, for us to be advised and for these matters, in turn, to be discussed.

Question resolved in the affirmative.

HINDMARSH ISLAND BRIDGE BILL 1996

In Committee

Consideration resumed from 25 March.

Senator BOB COLLINS (Northern Territory) (1.11 p.m.)—We have this legislation back before us. We will be moving, once again, hopefully with a different result from that of last time, the completely unexceptionable amendment to ensure that this act does not conflict with the Racial Discrimination Act.

The reason I said 'completely unexceptionable amendment' is that this government found it completely unexceptionable and unobjectionable when they accepted it in relation to the rights of social security recipients, with not the slightest difficulty. Senator Tambling, representing the government here in the Senate, said so. Senator Tambling in fact said that because the government asserted that that legislation did not conflict with the Racial Discrimination Act, as the government asserts this legislation does not, then the government had not the slightest difficulty in accepting the amendment, which was moved in precisely the same terms as the one that is currently before the committee.

As the *Hansard* record clearly shows, despite repeated questioning from me, the leader of the Democrats, Senator Kernot, and,

I believe, Senator Margetts of the Greens, the minister on not one single occasion provided the slightest explanation for the distinction between the concerns the government has in accepting this amendment in this respect and the lack of concern the government had with the social security legislation.

The only explanation the minister offered was that the government did not want to accept this amendment because it would provide the possibility of enhancing the prospect of some legal challenge. In fact, the minister produced with a flourish, like a magician producing a rabbit from a hat, advice from the Department of the Attorney-General saying that, and then thought I had said something extraordinary when I agreed with the advice from the Department of the Attorney-General.

As I pointed out to the minister, I have not the slightest doubt—in fact, I challenge him to put the question again—that, if the same question had been put to the Department of the Attorney-General, in respect of accepting this amendment for the social security legislation, then the answer from the Department of the Attorney-General would have been in precisely the same terms. It was an unexceptional answer from the Department of the Attorney-General.

If you put additional provisions into pieces of legislation that make it clear that the legislation does not conflict with another act, of course you will, by simple definition, increase the opportunity for people to put a legal challenge against it. It gives them another ground for doing so. So none of that was particularly exceptional or noteworthy.

What the minister utterly failed to do, having given that explanation, was to explain why that problem in respect of the social security legislation apparently was of no concern to the government when it would have had precisely the same effect. I might add that it was not a non-controversial issue—double negatives are dreadful things; I will rephrase that to say 'another controversial issue'—as those provisions in the social security legislation were.

So what the government and the minister failed to do—I will give the minister the opportunity to correct that now—was to provide any kind of rational distinction as to why people affected by the Social Security Act, social security recipients, are entitled to the protection of this amendment—and the government, without question, without an argument, happily accepted it, as the *Hansard* record shows—but Aborigines apparently are not. The government has a concern that they do not want to open up any additional legal grounds for Aborigines, but they are perfectly happy to provide that opportunity to beneficiaries from social security provisions. I invite the minister to attempt to make the distinction between the two pieces of legislation, which he failed to do last time.

There is another important question. The reason I make this point is that, despite the minister's best efforts, and the government's generally, at misrepresentation in reporting after that debate, the opposition was not, in fact, opposing the government's legislation or the building of the bridge at all, as we had made clear again and again some time ago. It was pointed out that that was not the position of others. We were not opposing the passage of this legislation last time nor the building of the bridge. We simply wanted to make it clear that the government's assertion that there was no conflict between this legislation and the RDA was a fact by the government, as they say in the classics, putting its money where its mouth is.

Had the government accepted the RDA amendment the last time this legislation came into the Senate in the same happy way they accepted exactly the same amendment to the Social Security Act, then the bill would have been passed in the Senate at that time. We will be pressing that amendment again today.

One of the things that needs to be pointed out in this debate is that the people who are directly affected by this legislation, which for them is the effective repeal of this federal act in so far as their interests in Hindmarsh Island are concerned, is that they are the victims. The government can blame who it likes for the problems that this application has caused. It can blame the former government, and indeed it has. It can blame deficiencies in the act, which to this point in time I do not think

it has. Perhaps the minister has not bothered to read the Evatt report on this legislation; after eight months, the government has certainly failed to respond to it, which I think is a very relevant matter to raise during this debate, and it will not be the last thing I say about it during the committee stage.

The government can blame all sorts of other things. But the one thing that the government cannot blame for all of the delays is the Ngarrindjeri women. All they were doing was exercising the rights they, like any Australians, had under the law. They were not responsible in any way, shape or form for any difficulties that may then have occurred under the legislation. But it is their rights that are being affected.

The opposition, with the greatest respect to the minister, does not think that asking the government to accept a modest amendment to taking the government and the minister at their word—that there is going to be no transgression to the RDA—is a very large or unreasonable ask at all on behalf of the small group of Aboriginal women in South Australia who are having this federal act repealed—in effect, their application to their interests. That is in fact what is happening. It has been the sorry history of this country—unfortunately, it is a history that is being repeated today and has been repeated since March last year—that the victims are always the ones who get the blame.

Minister, I do not think that you can fairly say that the women whose rights are being removed by the passage of this legislation are in any way, shape or form to blame for any problems that may well have occurred. That matter is laid out very fairly and very cogently in this report, which has been sitting on your desk now for eight months, not responded to. I will be asking you again today, as I did in Senate estimates, when we are all likely to see a formal government response to the Evatt review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. The problems that are attached to this act, none of which are brought back to the Ngarrindjeri women, are clearly laid out in this report.

I will briefly refer you, Minister, to the genesis of this legislation. I was very familiar with the genesis of this legislation. It was a former minister for Aboriginal affairs, Clive Holding, who introduced it. The federal government made it absolutely clear at the time that it was not even intending this legislation to be legislation at first resort; it was intending it to be of last resort.

Something else that I will quote from this report shortly relates to the fact that, when you consider the tiny number of occasions—tiny number of occasions—when declarations have been made under this act in all the years that it has been in existence, I do not think that you can make out a fair case that this legislation has been abused or overused by anybody. In fact, the cold hard facts are that there is only one declaration in existence today in the whole of Australia, that is in Alice Springs—one. Why was the act brought in in the first place? Minister Holding, when he introduced it, said:

> Where a State or Territory has no law capable of providing effective protection, or no action is being taken to give effect to that law, the Commonwealth will act in appropriate cases. It is open to the States to ensure that effective heritage protection is offered by their legislation.

Then the report of the Hon. Justice Elizabeth Evatt says:

> Twelve years later this hope has not been realised. The result is that the Commonwealth Act is often called on as a substitute for State protection—

It also is worth advising the Senate of what an organisation closely connected with the operation of this act said about that. It said:

> The effectiveness of the Act in providing protection for areas of significance to Aboriginal and Torres Strait Islander people is limited by incompatible and inadequate legislation operating in a number of States. This has created a situation where the Commonwealth Act is invoked to provide primary site protection rather than, as the scheme of the Act suggests, a last resort of back-up to legislation in the States and Territories.

That statement was made to this review by the Aboriginal Sites Protection Authority of the Northern Territory.

So, sadly, the stated intention—I think a laudatory one—of the Commonwealth by introducing this act 12 years ago to fill an

appallingly obvious deficiency in the protection of these important sites—sites not just important to the cultural heritage of Aboriginal people but, at the end of the day, to all Australians—and to try to encourage the states to introduce appropriate legislation of their own, has regrettably, at the time of writing this report and now as we speak, failed.

I simply want to point out again, as we have in the past, the appalling deficiency of state legislatures in failing to provide appropriate protection. In some cases, that has probably simply been by a process of neglect. In other cases, I think that, because of the controversy that sometimes surrounds these issues, states are perfectly happy to leave the Commonwealth to grasp the nettle when they do not want the controversy landing on their own doorsteps. But, of course, on a number of occasions the failure has been because of the absolute open and stated hostility to the rights of Aboriginal people in any case to have any protection for their heritage at all.

Senator MARGETTS (Western Australia) (1.26 p.m.)—Today we are dealing with the Hindmarsh Island Bridge Bill deal. I personally believe that we should not be here debating this. The Senate has decided on this bill. The only reason we are here is that there has been a change of opinion, perhaps a change of policy, from the opposition, which has said, 'Oops, the South Australian election is coming up; this is a populist issue, so let us jump on this bandwagon.' So here we are.

Yesterday I intended to speak to the motion to allow this bill to be brought on. Considering the weight of legislation that the government is asking us to deal with in these last days—

Senator Bob Collins—Perhaps you might help by voting for the RDA amendments instead of opposing them like last time.

Senator MARGETTS—Senator Collins interjected that I might help by voting for the RDA amendments. It was quite clear last time that the Racial Discrimination Act amendments were the means by which the opposition were giving themselves an excuse to support the bill. Senator Collins and a number of people from the opposition benches quite lucidly condemned the bill. But they gave themselves an excuse to support it if an RDA amendment was tacked on. Now they have changed their position and said, 'Look, we like the bill so much, we will support it any way.'

The Leader of the Opposition (Mr Beazley) has indicated that, being as it is so close to the South Australian election, they will jump on this populist bandwagon. And here we are again.

Senator Bob Collins—He said nothing of the sort.

Senator MARGETTS—No, he did not. I am paraphrasing, that is true. I am putting my own spin on the fact that the South Australian election is just around the corner. Last time, the opposition made some wonderful comments about how rotten the bill was. Guess what? The bill is just as rotten as it was then. What they are saying now is that, whatever happens in the RDA amendments, they are going to support the rotten bill—'What else can you say? I have to now leave it to you to decide what the rationale was for the change in the decision.' The bill is still as rotten as it was.

I appreciate the comments that Senator Collins made about the Evatt report. Most people will be getting letters from people who are concerned that perhaps the issue that has been left out is the fact that the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 fails to provide protection for people with information of a sensitive nature that cannot be given in the normal form.

It was fairly disgraceful to hear the Minister for Aboriginal and Torres Strait Islander Affairs (Senator Herron) mention that, if this information was real, it would be written down by an anthropologist. That forgets the fact that the concerns and the issues of Aboriginal law, if they are as they have been stated, could not have been written down. Therefore, going back and saying, 'It is not written down, therefore it does not exist' is contradictory. You would either say, 'These issues of Aboriginal law are not and never are relevant' or say, 'Yes, cultural issues are important, and we as a parliament need to

move some way towards recognition of cultural values and cultural law.'

If we do not have any recognition of that, one wonders what the purpose is of having an Aboriginal and Torres Strait Islander Heritage Protection Act 1984, if not to protect those visual elements of culture which we know are all to our benefit. In the Middle East and in Europe, people spend a lot of time, effort, money, resources and person hours protecting archaeological sites of 100 years, 200 years, 1,000 years. In Australia, often we are dealing with issues of physical cultural heritage that might be 25,000 years old, but sometimes we build roads through them or take rock carvings out of their place and put them in a pile and say that we have protected them. We do not value Aboriginal and Torres Strait Islander heritage as we should in Australia. Other people in the world do value their cultural heritage. We do not put the value on it that we should.

However, this act of 1984 is some recognition that we ought to be moving in the direction of doing something about protecting Aboriginal and Torres Strait Islander heritage. But it has been shown by Justice Elizabeth Evatt to be deficient. It is my understanding that both sides of government have indicated that they agree something ought to be done about it. Obviously, therefore, I indicate that at the third reading stage I will be moving an amendment to that effect to look at this issue. Of course, even though the Minister for Aboriginal and Torres Strait Islander Affairs has given it to the states to look at, that will give the states the opportunity, as well as other interested parties, to give their evidence and their opinions. Hopefully, by that stage the Commonwealth will have an opinion written down and will be able to provide us with it.

In relation to the Racial Discrimination Act, I stated quite clearly and categorically the last time this bill was dealt with in the Senate that I fully support the Racial Discrimination Act. What I did not support was its being used as an excuse to support a revolting bill. As I said, the bill is just as revolting—it has not changed. What is the case now is that the opposition has indicated that, whatever happens in relation to racial discrimination, it is no longer as concerned—that is paraphrasing as well—that the bill might go through without a Racial Discrimination Act amendment on it. They will support the bill anyway. Therefore, I am forced to say that, because of my support for the Racial Discrimination Act and not because of my support for the bill, I will support the amendment. But, of course, my opposition to this still revolting bill stands.

Senator KERNOT (Queensland—Leader of the Australian Democrats) (1.33 p.m.)—I concur with the comments Senator Margetts made about Australia's failure to value Aboriginal cultural heritage. We will be supporting her third reading amendment to refer this really important report to a committee for response. That is one way of getting a response and at least it gets the issue back on the public agenda for debate.

On the matter of the Hindmarsh Island Bridge Bill itself, the Democrats' position is clearly on the record. It has not changed. We do not think that this is just a bill about building a bridge. It is a bill which legislates for discrimination. Nothing about its recommittal here has changed that fundamental fact. Yes, I agree, procedurally this issue has been an absolute nightmare. That means we should look at the procedures. We do not seek a little piece of specific legislation to deal with a particular problem. That is the way a lot of state governments want to go: got a problem; special piece of legislation; get rid of it.

What the long history of this bill tells us is that the processes do not work. Some of the solution is in this report yet we have not even considered it before we get to this bill. As we know the political expediency of the numbers here, this bill is going to go through now. It is because I think that will not be the end of the matter that I want to take just a couple of minutes to look at some of the legal points in relation to the issue of discrimination. I think that there will be an appeal and I want to take this last opportunity to put a couple of things on the record.

Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, and the first optional protocol

to the International Covenant on Civil and Political Rights, both of which Australia has ratified, provide a right of individual petition to an international committee for breach of either convention. Miss Jennifer Clarke, a lecturer in law at the ANU, in her submission to the Senate inquiry into this bill, canvassed the articles in these conventions which provide a right of complaint for the Ngarrindjeri women.

In the convention on the elimination of racial discrimination those articles are article 1, which clearly prohibits racial discrimination and defines discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in relation to any human rights or fundamental freedom, including freedom of religion; and article 5, which guarantees racial equality before the law. In the light of those particular articles, I think one can argue that this bill is clearly seen as discriminating against the Ngarrindjeri women and other groups of people seeking to use similar laws, because it removes their right at law to have their claim dealt with under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

The International Covenant on Civil and Political Rights has much broader forms of human rights obligations, but the relevant articles are similar to those that I have just articulated. Article 18 protects freedom of religion and article 27 protects minority cultural rights, both of which apply to the present case. It is my understanding that, for an action under these conventions to be successful, the Ngarrindjeri women will need to prove an additional two elements: firstly, that the applicants are a victim—Senator Collins has already used that description several times in the debate—and, secondly, that they have exhausted all domestic remedies.

What we have to do is to fall back on the Human Rights Committee's 1992 decision, in Toonan v. Australia, which dealt with the definition of victims, giving it a wide meaning. As neither of the applicants in that case had actually been subject to the criminal law which they claimed violated their human rights under the ICCPR, the Tasmanian government had urged the Commonwealth to state that they were therefore not victims of the law. But Toonan argued that the laws had created the conditions for discrimination in employment, constant stigmatisation, vilification, threats of physical violence and a violation of basis democratic rights. The committee accepted this expanded notion of victim and stated that the threat of enforcement and the pervasive impact of the continued existence of these provisions on administrative practices and public opinion had affected and continued to affect Toonan detrimentally. So there is an expanded notion of victim.

Given that the Ngarrindjeri women's arguments relate to abuse of their cultural history and an ongoing sense of humiliation and degradation because of the proposed bridge, there is a case that they could be deemed victims for the purpose of the two conventions. The second test, the second point, of whether or not all domestic remedies have been exhausted, also applies. Where can the Ngarrindjeri women go now? The short answer is that here they have nowhere to go. In their own country and as a result of the exemption created by this bill, the Ngarrindjeri women are about to be dispossessed again.

If this is appealed, if this is taken to an international adjudicator, and if the action is successful, Australia will for the second time this decade distinguish itself in the international arena as a nation which actively discriminates against its citizens. I do not believe that this Senate or the parliament as a whole should be a party to legislation which actively sets up such discrimination. Whatever your views might be on development, on that whole development debate—in this case, it is a specific bridge—I do not believe, as a member of this Senate, that any senators should support legislation which seeks so blatantly to remove current legal rights from a particular group of people. That is why the Democrats do not support this bill. It is not about whether you want a bridge or not.

I indicate our support for the ALP amendment. Our position has not altered. The arguments Senator Bob Collins advanced are just

as relevant as they were last time around. I think they have been strengthened by the addition of the Evatt report comments. As I said, we will be also supporting Senator Margetts's third reading amendment. We think it is really important to consider the implications of the Evatt report. The government has not. Therefore, an inquiry by a parliamentary committee is both appropriate and timely.

Senator COONEY (Victoria) (1.41 p.m.)—I would like to join in this debate because I think it is a vital one for the sort of society we live in. I accept and agree with what has been said by all the speakers before me. I just want to say something about the Racial Discrimination Act because it is one of three acts that set, within the Australian scene, something like a bill of rights—a bill of rights that this parliament has set up. The three are: the Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act. That whole regime that we set up to make sure that there is no discrimination is important not only for the Aboriginals but for all of us.

I remember former Senator Button, the Leader of the Government in the Senate as he then was—in one of his quirky moods, which often occurred—talking about discrimination and saying that there ought not be ageism. Everybody said, 'Of course there should not be ageism.' It seemed a funny thing at the time. But there can be ageism. We have understood that and, as a result, there is now in the Workplace Relations Act a provision that says people should not be discriminated against in their work because of their age.

There is something about all of us and about everybody in Australia that others can pick out and use to discriminate against us. It is not just racism; it is not just sexual matters; it is not just a disability. It can be anything. It can be age. Senator Bob Collins, facetiously perhaps, said that there might be prejudice against largeism. Well, there could be. It is just another illustration of how people can pick out something and use it against us.

If we do not stick by the provisions of the Racial Discrimination Act in this matter, it is not just the Aboriginals, the indigenous people, who will be put at risk; everybody has the possibility of being discriminated against because of some particular feature of their body or their beliefs or some other aspect. That is what is so important.

I take up the point that Senator Kernot made that, if there is some expectation about some legal proceedings, then there is a concern about that. But, as I understand it, there are no legal proceedings in operation at the moment. As things now stand, there is no reason why this bridge should not go ahead. But the fundamental principle that must be maintained is that there should be absolutely no suggestion of discrimination because of a particular aspect—as I said, of a person's race, body, sex, or indeed any other feature.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (1.44 p.m.)—I would like to respond to some of the points raised. Senator Bob Collins raised the social security bill and tried to draw an analogy between that and the government's response. I do not think that is valid because there can be no comparison. The Hindmarsh Island legislation and the building of a bridge has been a highly litigated issue, as you know, over three years at least with the expenditure of over $4 million. To draw an analogy or suggest an apparent inconsistency with the social security legislation I think is invalid. I would also point out that the opposition opposed precisely this amendment to the Native Title Bill in 1993 for the same reasons as the government now opposes it. Our legal advice is that there is no inconsistency with the Racial Discrimination Act.

Senator Margetts spoke about the Heritage Protection Act, and I share her concerns and those of Senator Collins that the Heritage Protection Act has been found not to function. The previous government set up the Evatt inquiry into it. We have received that report. I have read it, Senator Collins. I issued a press release late last year announcing proposals for reforming the Aboriginal and Torres Strait Islander Heritage Protection Act. Under those proposals, as it was previously the Commonwealth act will be retained as an act of last resort to apply where state and territory

legislation does not meet national minimum standards or where national interest considerations exist.

The processes for granting protection to Aboriginal sacred sites under the Commonwealth act will also be substantially improved. A discussion paper on the national minimum standards is being sent for comment to the states and territories, indigenous, mining, pastoral and other relevant interests today. The Evatt report on the Heritage Protection Act is also being sent out for comment.

I think Senator Margetts does appreciate that reforming the Heritage Protection Act is a complex undertaking. Proper consultations will be required with a wide range of interested parties, including the states and territories and indigenous people, pastoralists and miners. This will take time. However, it is intended that the legislation will be passed by the end of the year. We do not believe that there is any advantage by slowing this process up. We will have it through by the end of the year and we seek your indulgence that that process will achieve the desired objective that all of us wish to achieve. I will speak further on that, if necessary, when you move your amendment.

Senator Kernot said—and I agree with her—that procedurally it has been an absolute nightmare. Observers on all sides would agree with that. I could not agree with her more in that regard. That is the very reason that we have come to this stage of introducing this legislation—to end the nightmare. That will only be achieved by the passage of this legislation. It may well be that there is an appeal to an international body or that there may be further legal recourse. So be it; that is the way of the world.

Senator Cooney, with his usual erudite and intellectual analysis, approached the issue from another point of view. But I would point out to Senator Cooney that he made one factual error. The Chapmans did seek an order for yet another reporter, then withdrew it because of this legislation. So it is possible that there would be further action if this bill did not go through, Senator Cooney. It is a hypothetical, I suppose, at this stage, but it—

Senator Cooney—I think what I said was that there is no litigation at the moment.

Senator HERRON—Yes, that is correct. What you said was correct, but who knows what could occur. The intimation is that that legal action would occur if this bill does not go through.

Senator BOB COLLINS (Northern Territory) (1.49 p.m.)—It is obvious at this point that we will not conclude the debate on this bill prior to question time. But can I say to the minister for his information and for the committee's information that so far as the opposition is concerned we do not expect the debate to be much prolonged after we resume.

Senator Kernot and Senator Margetts both referred to the cultural and religious beliefs of the Ngarrindjeri women, indeed Aboriginal people generally, and religious beliefs are at the root of a lot of the complaints that I have received about the support that has been given to these Aboriginal women in South Australia.

It is a matter of public record also, I regret to say, that the Aboriginal beliefs generally of these people and others, have been subjected to an enormous amount of derision and contempt. That has been in the public press. It has been in interviews that I have heard. I have been subjected to it personally. Aboriginal religious belief basically is an animus belief: that animals and various mythical beings created the universe.

The reason that I wanted to comment on this is that I received an abusive telephone call this morning, on the eve of the debate. It is not the first one I have had—and I have had some interesting letters, too, let me tell you—taking me to task as a professed Christian, which I am, and as a practising Catholic, which I am.

Senator Cooney—And a good one.

Senator BOB COLLINS—No, I am not. I am not a good Catholic, Senator Cooney. In fact, I have no doubt at all that I am going to go to hell when I die. That is the reason I have been doing some intensive heat training in Darwin for the last 30 years—to get me ready for the experience.

I was taken to task this morning by a gentleman who was indeed a practising

Christian from South Australia and who said to me that he just could not understand how as a practising Catholic I could possibly be giving the slightest support to people who believed that the earth was created by snakes and various other things. A number of people have been pouring nothing but contempt on such beliefs; one at least I know is a member of the Lyons Forum and goes off to church every Sunday.

I respect those views utterly, but I am not a fundamentalist Christian and I want to make that clear. I am not. This particular person that spoke to me this morning is and believes every little word of the *Bible*. I do not. I believe in good and evil. I think that is demonstrated on the earth on a daily basis. But I do not think that fundamentalist Christians are in a good position to criticise people who believe, rightly or wrongly, that it was the rainbow serpent—not God, whose son was Jesus Christ—that created the earth.

I have never really believed that Jonah swam around inside a big fish for several days and emerged unscathed. I have never particularly believed that Noah managed to fit two of every single living organism on earth, non-aquatic, into an ark and float around the place. If you want to move to the New Testament, I am happy to, because I know this particular person is listening to this debate, as he told me this morning he would be. I just quote from the gospel of John, from my favourite translation of the *Bible*, which is the *Mew Jerusalem Bible*:

> On the third day there was a wedding at Cana in Galilee. The mother of Jesus was there, and Jesus and his disciples had also been invited.

Christians in here will understand the significance of this. This was the first miracle that the Son of God—

Senator Schacht—What—a picnic?

Senator BOB COLLINS—This was the first miracle, according to—

Senator Schacht—A barbecue?

Senator BOB COLLINS—No, it was a wedding, Senator Schacht. You go to Sunday school before you come in here and criticise me. You be quiet. On the third day there was a wedding at Cana in Galilee. The mother of Jesus was there.

Senator Schacht—A big reception?

Senator BOB COLLINS—A big reception. I have got to tell you: at this wedding, there must have been a huge reception. Jesus and his disciples had been invited. It continues:

> And they ran out of wine, since the wine provided for the feast had all been used, and the mother of Jesus said to him, 'They have no wine.' Jesus said, 'Woman, what do you want from me? My hour has not come yet.'

So he was a bit terse with his old Mum. The *Bible* then goes on:

> His mother said to the servants, '*Do whatever he tells you*.' There were six stone water jars just standing there, meant for the ablutions that are customary among the Jews: each could hold twenty or thirty gallons. Jesus said to the servants, 'Fill the jars with water,' and they filled them to the brim. Then he said to them, 'Draw some out now and take it to the president of the feast.' They did this; the president tasted the water, and it had turned into wine. Having no idea where it came from—though the servants who had drawn the water knew—the president of the feast called the bridegroom and said, 'Everyone serves good wine first and the worse wine when the guests are well wined; but you have kept the best wine till now.'

I have to tell you, Mr Chairman, that as a practising Christian I have never seriously believed that the son of the creator of this entire universe and everything in it chose as the first sign of his divine power on earth a sign that turned 360 gallons of bathwater into Grange Hermitage. I have never, ever, believed it.

I know that senators that are involved in this debate will understand the reason that I am making these points. I have received a large number of telephone calls from people who have openly derided the beliefs of these women—said it is a load of garbage and a put-up job. All I can say is that, when you consider that I know to my certain knowledge that these same people are members of organisations like the Lyons Forum and are in fact fundamentalist Christians, I personally believe, with the greatest respect to them, that they are on very thin ice indeed.

Mr Chairman, could I seek your guidance at this point as to whether this would be an

appropriate time to adjourn the debate, or do you want to continue to 2 o'clock.?

The CHAIRMAN—An appropriate time would be 2 o'clock.

Senator BOB COLLINS—I will continue.

Senator Ferguson—You have a few more chapters left!

Senator BOB COLLINS—I can start at Genesis chapter 1, if you insist. I also draw to the attention of the minister a number of other problems that Justice Elizabeth Evatt highlighted. I said earlier that people should read the Evatt report. I do want to demonstrate this to the people who I know are listening and who have said that these acts of parliament are blocking development. That is always the cry—that this act is stopping development all over Australia. I suggest that those people that are genuinely interested in the debate—and I accept that their interest is genuine, even though I might disagree with their position on it—should read the Evatt report. It is a comprehensive, authoritative document all in one volume that actually lays out precisely what the effect of this act has been. I want to quote from page 2 of the report. Under the heading 'How effective has the act been?', the subheading is 'Few areas have been protected by declarations'. The terms of reference, of course, require Justice Evatt to report on this. The terms of reference ask for the report to cover:

> . . . the effectiveness of the provisions of the Act in providing protection for areas and objects of significance to Aboriginal and Torres Strait Islander people.

Justice Evatt goes on to say:

> One indicator of effectiveness is the number of places that have been protected by the Act, directly or indirectly.

Remember: this act has been in operation for 12 years. Only four declarations have been made under section 10 in relation to areas. No section 10 declarations have been made in respect of areas in New South Wales or Queensland, despite the large number of applications from those states. Few short-term declarations have been made under section 9, which applies to serious and immediate threats. Furthermore, two of the four declarations under section 10 were overturned by the Federal Court, and one was later revoked. Only one place in Australia is protected by a section 10 declaration—Junction waterhole, Alice Springs. Two other decisions declining applications have been challenged—one successfully. Some submissions argue that these outcomes show that the act has not been effective.

I will conclude at this point to liaise with my staff and tell them to prepare the office for the expected deluge of complaints from fundamentalist Christians all around Australia which no doubt will pour in this afternoon.

Progress reported.

QUESTIONS WITHOUT NOTICE

Austudy

Senator DENMAN—My question is directed to the Minister for Employment, Education, Training and Youth Affairs. Isn't it true that about 10,750 of the 25,000 applicants for Austudy whose applications had been assessed for this academic year have had their applications reassessed as a consequence of your backflip on the Austudy actual means test on 20 February? Can you, Minister, confirm that the department has now discovered that it has misunderstood the actual means test procedure yet again? Can you confirm that the department has failed to take into account the requirement that, where taxable income exceeds actual means, the taxable income is to be used as the basis for the assessment? How many of the 10,750 reassessed applications will need to be reassessed because of this error?

Senator VANSTONE—I thank Senator Denman for the question. In the vicinity of 10,000 people were reassessed—you say as a consequence of a backflip. I cannot resist the opportunity and the obligation of clarifying for you what actually happened with relation to the Austudy difficulties in February.

In July last year I received a brief advising that we should discard the imputation arrangements endorsed by the previous government—that is, where someone's actual means were assessed not on the basis of what they said they had spent but, on the previous government's formula, on the basis of what it

was decided they must have had available to them as actual means to spend. It was put to me that such a system was seen by the Austudy clients as arbitrary and unfair.

So I agreed that that system should be disposed of and that we should shift to a system of self-declaration of expenditure combined with some reasonable compliance measures. One measure flagged in the brief was to run the self-declared expenditures by Austudy applicants against ABS minimums—that is taking, as I understand it, the minimum expenditure on any particular item and, if the cost is cheaper in the city, using the city cost and, if the cost is cheaper in the country, using the country cost, using metropolitan, regional and rural costs.

Somewhere between that brief and the actual implementation, that compliance measure—that is, 'Run their expenditures past a minimum. If they're spending a lot less than the minimum, we better check up on them'—was incorporated as the assessment measure. Senator Denman, if you had the opportunity to be at the estimates committee, you would appreciate that there is not yet an explanation as to how or why that happened in the department.

Senator Carr—That's incredible! All this time and you still don't have an answer. How much time do you need to get it right?

Senator VANSTONE—Madam President, I am answering a question from Senator Denman. Senator Carr has had his opportunity. It was very important at the time to focus on fixing the problem and fixing it as quickly as possible rather than looking to find those who might bear the burden of blame. This is typical, with respect, Senator Denman, of many in your party who have a kick and kill mentality—always looking for someone to blame rather than actually going to the source of the problem. As a consequence of that, I decided to spend just about all of my working time on fixing that problem, and we fixed it in record time.

Senator Carr—All your working time! You are going to have to put a lot more into it.

Senator VANSTONE—The people who had been affected by that imputation received their cheques—

Senator Carr—How appalling! All your time spent on this and you still can't get it right.

The PRESIDENT—Senator Carr, it is Senator Denman's question that Senator Vanstone is answering.

Senator VANSTONE—Thank you, Madam President. We wanted the people to have the cheques in their bank accounts as quickly as possible, which is what happened. As a consequence of that, we also reviewed very carefully everything the department had done. There were a few other things that did not comply and, to the best of our ability, we fixed them. As to the question of blame that Senator Carr seems so passionately interested in, the secretary has appointed someone to investigate what went wrong here to ensure that it does not happen again. As to the specific matter that you raised, I am aware of the concern with respect to that. That concern has not yet been finalised and I will come back to you with an answer on it when it is.

Senator DENMAN—Madam President, I ask a supplementary question. What is the status of those applicants whose increased Austudy entitlement as a result of the first reassessment is now under question as a result of the second reassessment? Will they be required to return the money which you boasted about sending them in your media release on 26 February this year? Will they receive yet another letter of apology?

Senator VANSTONE—Unlike the previous government, when this government makes a mistake it is prepared to accept responsibility and apologise. As Gary Gray told you, that is part of the trouble with your party: you are never prepared and you still are not prepared to say, 'Look, we got it wrong.'

I am looking at these matters very carefully. There are two things to take into account in fixing any errors. One might be to give clients the benefit of an error, which presumably you would not be complaining about. I hope that is your position. But let us bear this in mind: no-one should get Austudy who is not entitled

to it. So if someone is now receiving Austudy funds and it is later discovered, for example, from a compliance check that they did in fact understate their expenditure—that is, that they have put up their hand to get money they are not entitled to—yes, we will cut them off.

Small Business

Senator TIERNEY—I direct my question to the Leader of the Government in the Senate. Today the Australian Bureau of Statistics published its business expectation survey where businesses comment on their expected performance for the short and medium term from the June quarter through to the March quarter next year. What do these figures indicate; and what do these figures tell us about how small business in Australia is faring?

Senator HILL—These figures are very important to the government, because this is a government that is interested in the well-being of small business—business in general, but small business in particular, because we know how hard small business had to do it under the previous Labor government. The figures are quite pleasing. Bear in mind, Madam President, that this survey covers some 3,000 firms of various sizes. So it is a reasonable indicator of what business in Australia is feeling at the moment.

What is pleasing is that the survey is demonstrating that businesses are now more confident about their performance and their future. That is not surprising, because of the economic reforms that have been put into place; in particular, our willingness to cut expenditure to keep pressure off interest rates and the industrial relations changes we have made—all changes that help Australian businesses. Also, of course, they will now have more reason to be confident because of the small business reform package that was announced by the government this week.

The survey shows us that businesses believe that their profit expectations are improving. Firms expect profits to be 7.8 per cent higher in the June quarter than in the March quarter but, more importantly, to then rise 12.2 per cent higher in the next March quarter. So that is an expectation of reasonable profits now, but growing profits. Similarly, in relation to new capital investment, firms expect capital expenditure to rise by 3.4 per cent in the June quarter, and to continue to rise.

Unemployment or employment prospects are not as good as we would like them to be. But I am pleased to note that they are expecting growth to the March quarter of next year. And at least that is positive, because one of the reasons we want business to do well is to create employment opportunities for more Australians, particularly those who missed out under Labor.

These results, Madam President, are consistent with other economic intelligence that we have had of recent times. I remind you of the national account figures, which showed continuing growth; retail sales figures, which showed as being 2.7 per cent higher in January than in December; and the business investment outlook figures, which showed that real business investment grew by 20 per cent last year. The latest survey shows that expectations remain robust and, in fact, the budget forecast for business investment has been revised upwards from 14 to 17 per cent.

Looking specifically at small business, there is no doubt that it continues to do it—according to these figures—tougher than large business, but again the expectations are quite reasonable. Small business expects profits to rise by 4.2 per cent in the June quarter, compared with this current March quarter. But it then expects profits to rise by 9.4 per cent in the March quarter next year—again very positive. It expects its capital spending to grow 1.3 per cent in the June quarter, but 2.9 per cent in the March quarter—again continuing to invest, continuing to grow. It also expects to be employing more during the next 12 months, so that is pleasing. Finally, it is expecting its exports to grow in the next 12 months—and that is very important for the trade accounts.

So business is telling us that it is reasonably confident about the future and, when we look a little further into the future, it is even more confident. What that does is demonstrate that the policy reforms instituted by the new Howard government have been correct and have given business an opportunity to grow

and employ as it was not able to under Labor—and that is good news for all Australians.

Unemployment

Senator FOREMAN—I direct my question to the Minister for Employment, Education, Training and Youth Affairs. Minister, are you aware that the closure of John Martin's in Adelaide may cost around 500 jobs? Are you also aware that Telstra has already shed 7,000 of the 22,000 jobs it plans to shed by 1999? Have you seen reports that universities are expecting to lose 2,000 academic jobs; that 4,000 jobs will go because of the privatisation of DAS; and that New South Wales manufacturers are expecting to shed 2,300 jobs over the next 12 months? Do you continue to stand by your statement that you will not deserve to be re-elected if you fail to turn this tide of job losses around?

Senator VANSTONE—Thank you, Senator Foreman, for the question. The answer to the first part is: yes. The answer to the second part is: not in detail. The answer to the third part is: I would be surprised if 2,000 academics lost their jobs.

Just give me the opportunity, Senator Foreman, to point out that a number of people who were prophesying doom and gloom for the higher education sector are now nowhere to be found. Why is that, Senator Foreman? It is because in some of the highest level HECS charges, having shifted to a differentiated HECS last year, we find that universities—at least some, anyway—are overenrolled in some of the most expensive courses. So universities will not be losing any jobs as a consequence of what we have chosen to do. But whether they choose to restructure for other reasons is another matter. So I think that one is a debatable point.

In relation to 4,000 people vis-a-vis DAS: no, I am not aware of that; and I have not seen what the New South Wales manufacturing sector says it is going to do. I will guarantee you this, Senator Foreman: at the next election the people of Australia will judge us on what we have done to generate real jobs. They will have very clearly in their minds that, after 13 years of Labor, with the highest unemployment since the depression, the highest unemployment since World War II and months and months and months of youth unemployment at tragically high levels—much higher than they are now—when your government failed to do anything to address the structural inefficiencies in the economy to get rid of this ingrained stain of unemployment that your people put on the economy, the Australian people will be looking to this side of the chamber to say, 'What have you done about it?'

Already there is a very impressive list of what we have done about it. For starters, when your people were in government you had years of growth and were still running deficits. Why? Because you were absolutely gutless politicians, completely incapable of facing up to the difficult decisions of putting a budget back into black. We came in and found Beazley's billions and billions of dollars worth of black hole and on this side of the chamber we have had the confidence and courage to fix that problem. Because to walk away from that problem and leave a budget in deficit when you have economic growth, is to walk away from the people who most need assistance—the people who are looking for a job or the low skilled who are most likely to lose their jobs. That is something Senator Foreman might like to reflect on before someone gives him such a question that he is prepared to ask again.

You can add onto fiscal restraint—which your people were never able to show—the changes to the industrial relations system. If you look at countries that have better employment records than us, you will see that inevitably the IR system comes into play. Look at what we have done with unfair dismissals and what we did only this week in relation to small business. We have only been in government one year. It took you 13 years to leave the mess how it was and in one year we have made significant changes to improve that situation.

Yes. I think the electorate will judge us on what we have done and they will judge us as being a government of courage. They will see that you are still not prepared to say sorry for the shocking mess you made of it.

Senator FOREMAN—Madam President, I ask a supplementary question. How does the minister expect us to believe she is serious about unemployment when she remains hell-bent on policies that encourage the shedding of jobs and continues to shy away from committing herself to any jobs target?

Senator VANSTONE—Perfectly simply. Senator Foreman, you seem to have the view—and this is the view that your government had—that, if you keep putting people on the government payroll, somehow you will solve unemployment. What you need to understand is that more real jobs are generated by getting a more efficient, vibrant and active economy and we are doing that. If we did not shed some jobs now, there would be a hell of a lot more to shed later.

You people hid your heads in the sand and did not want to look at it. It was too hard a decision to make. You were never prepared to bite the bullet. Senator Foreman has to face up to the fact that we are serious about unemployment. We are serious about fixing the problem and that means we are prepared to make the tough, long-term, hard decisions that you were never ever prepared to make.

Higher Education

Senator KNOWLES—My question is to the Minister for Employment, Education, Training and Youth Affairs. Last year when the government's higher education budget measures were passed in the Senate some commentators predicted dire consequences for the sector. Will the minister please provide the Senate with an update of the implementation of those particular budget measures?

Senator VANSTONE—I thank Senator Knowles for her question. It is very kind of her to ask me such a question. Last year, as you know, Madam President, the government took the opportunity to minimise what direct cuts to the higher education sector needed to be made to fill Beazley's black hole and actually took the savings by and large by seeking a higher contribution from students, fairly balancing the public and private benefit of a higher education, and we have certainly delivered on that promise.

We took the opportunity to ensure that undergraduate places—your first chance in the higher education sector—would continue to grow. This year we are prepared to fund about 6,000 more undergraduate places than last year. There will be 10,000 more in 1998 and about 13,000 more in 1999. That represents an increase of 3.7 in undergraduate places between 1996 and 1999. It is important to underscore that because there were many on the other side who said that the changes we wanted to make would lock people out of university and it would be the end of higher education. Quite the opposite is the case. There are more undergraduate places than there were in 1996 and more people are seeking to get in.

Of course, the budget included other changes. It introduced some equity into the HECS system by not charging doctors and teachers the same per annum contribution for the degree that they earn and allowing universities to charge full up-front fees to additional students in 1998. Nonetheless, it is important to note that some of the fundamentals of the higher education contribution scheme have in fact been retained. That is, no student is forced to pay an up-front fee to attend university in Australia. If someone has a lower income, they can pay back their HECS when they start earning. No-one has to pay up front.

However, as I have said, we have asked students to make a higher contribution for what they get. It does not appear at this stage that the increased contribution we are asking students to make has deterred them from enrolling in university. In fact, applications have held up well, despite a trend over recent years for some decline in response to the improving job prospects after the worst recession in Australia since the Great Depression.

We will not have firm data probably until September this year, but we do believe that—as I was indicating to Senator Foreman—law, which is in the highest HECS band, has been very heavily subscribed. One vice-chancellor, who was amongst the most critical publicly and privately—one of the vice-chancellors whose public and private message is always the same—and who was one of the greatest

critics of our HECS increases, sheepishly admitted last week that his university is over enrolled. Those who were prophesying doom and gloom are now prepared to admit that some of their universities are over enrolled and in the highest HECS bands. Furthermore, he has had his first delegation from students saying to him, 'Listen, sport. I am paying $5,500 a year for this', and the students are now demanding quality delivery of their courses, because it is costing them $5,500 and the student population around Australia will certainly be pushing for greater quality.

If I had more time I would tell Senator Knowles something about science and engineering enrolments, because there were a lot of people prophesying doom and gloom in that area as well. Yet again we may well see that those who prophesy doom and gloom are here just to nit pick and complain and behave as though they are in student politics, not taking it seriously and telling Australians the full truth of the story. *(Time expired)*

Senator KNOWLES—Madam President, I ask a supplementary question. In fact Senator Vanstone has just touched on what I was going to ask her about science and engineering and I am very glad that she had some more information on that. Also she might like to dispel some of the concerns that were specifically raised by Labor and the Democrats about up-front and full paying fees.

Senator VANSTONE—Thank you very much, Senator Knowles. I did want to refer to science enrolments. It is true that there have been falling applications in science and engineering but, nonetheless, we expect that enrolments will be maintained across the board. A good news story that you hardly ever hear is that Australia has the highest number of science graduates in the age 22 category in the whole of the OECD.

Senator Hill—Is that right?

Senator VANSTONE—Yes, the highest number ofscience graduates. So science is not falling apart.

What is important is that graduates are now seeing that their university might charge the additional students, the full up-front fee students, up to $110,000 a degree. What does that tell you? It tells you that, if you are a HECS student and you can get it for $20,000, you are doing very well. They are the facts of the matter. If you paid $110,000 for one particular degree that we have done the calculations on and you chose to pay your HECS up-front, you would pay only $20,000. If you wanted to defer your HECS, you would pay $28,000. So the value to Australian students is now very clear. *(Time expired)*

Senator Colston

Senator FAULKNER—Madam President, my question is directed to you. Madam President, is it a fact that the Department of the Senate's interim fraud control plan requires the Usher of the Black Rod or the Clerk of the Senate to examine instances of suspected fraud? Is it a fact that they are also required to determine whether the alleged fraud, one, is without foundation; two, should be the subject of advice from the AFP or the DPP on whether an offence has been committed; three, is a matter for departmental action; or, four, is a serious matter for prompt referral to the AFP for investigation? Madam President, I ask: has either the Usher of the Black Rod or the Clerk of the Senate made any such determinations in relation to the allegations against Senator Colston? If so, what is the nature of those determinations, and will you table them?

The PRESIDENT—In answer to the question, the Senate officers and I are aware of the guidelines which were promulgated in March 1994 in relation to suspected fraud, and we have been acting within them. Within the guidelines there is also a clause which says that in a matter which is deemed politically sensitive the issue should be referred to the Attorney-General or the Minister for Justice, which in the present instance is the same person. It seemed to me that the issues we have been dealing with could be classified as politically sensitive, and I have referred the matter to the Attorney-General. I table the letter I have received from the Clerk of the Senate and the letter I wrote to the Attorney-General.

Senator FAULKNER—Madam President, I thank you for that, and I ask a supplementary question. Will you undertake to provide

to party leaders and to Independent senators—and I say that in order to avoid the burden of copying, which tabling would, in fact, entail—copies of all Senator Colston's travel claims relating to the periods of travel identified in the reports that you tabled in the Senate on Monday? I believe this is the only way to remove doubts about the accuracy of Senator Colston's own estimate of the number of inaccurate claims.

The PRESIDENT—Senator, this is a matter which comes up later this afternoon under a notice of motion listed to be dealt with today. It is in the name of Senator Carr, motion No. 530. I believe it is a matter that ought to await the resolution of that motion, and it is a matter that can be discussed after that.

Student Assistance

Senator STOTT DESPOJA—My question is addressed to the Minister for Employment, Education, Training and Youth Affairs. Minister, in light of today's national day of action in protest against your government's higher education policies and proposed common youth allowance, I ask: when will the government release the details of its youth allowance? Will you guarantee that the proposed allowance will be above the poverty line, so that young people are no longer told—as they are being told each day by student assistance centres—to go to the Salvation Army for food parcels? Minister, why is it that young people are deemed financially independent of their parents at age 18 for the purposes of the family tax initiative yet, when it comes to student assistance and the youth allowance, young people are considered dependent on their parents till ages 25 or 20 respectively?

Senator VANSTONE—I thank Senator Stott Despoja for her question. Senator, the government will release details of those proposals it wishes to proceed with when it is satisfied those proposals are in the proper order they ought to be in—and not before. It seems a bit of a shame for people to be protesting about something that has not yet been resolved. I do not know whether it shows a lack of aptitude on the part of those people protesting or a misuse of them by those who would seek to use protesters for their own political ends. Nonetheless, it does seem to be a very sad waste of their time.

Senator, perhaps you can give me an undertaking in return. Perhaps you will give me an undertaking that, if the government proceeds with the youth allowance and students are substantially better off, you will welcome the youth allowance. Perhaps you can give me that. You did not work very hard to achieve anything for what you regard as your constituency—namely, the students—during the budget. There was not one attempt from you to improve their position. You, as spokesperson for them, are happy to just complain and say, 'No, no, no.' You are too busy pushing your own ideological barrow than trying to do something for the students of Australia. So I just caution you to be very careful, Senator. Before you get—

Senator Kernot interjecting—

Senator VANSTONE—Senator Kernot is wailing and getting upset. Just hold on a minute there. I will come to you.

The PRESIDENT—Senator Vanstone, you should be directing your remarks through the chair.

Senator VANSTONE—Through you, Madam President. Senator Stott Despoja does need to have some very careful and caring cautioning to not get stuck into a policy that she has not seen, lest she backs herself into a corner and has to say no to something that she might really want to say yes to.

Senator Stott Despoja—Madam President, I rise on a point of order. It is a point of relevance—standing order 194. Minister, I asked for you to outline when the policy would be available and to outline the policy, not attack us or our policies. Tell us about the youth allowance. We are not attacking it. We would like you to outline the discrepancies in your own policy, please.

The PRESIDENT—Do have in mind the question that you are answering, Senator.

Senator VANSTONE—It is a sad fact that every now and then in this place someone gives you a gratuitous serve because you ask a question. The Democrats are very good at this. They fairly understand it is a part of day

to day politics and sooner or later, Senator Stott Despoja will get used to it and regard it as just the froth and bubble of politics and be quite happy.

Senator Stott Despoja reminds me of what I already knew, and that is she asked a very silly question. She asked me to detail a policy that has not yet been settled. If cabinet has not resolved something, I am hardly going to publicly discuss it in here, or even privately, with Senator Stott Despoja, as interested as she is in the youth allowance—and I am pleased that she is.

We had a lot of consultations on this matter around Australia. We are very well aware of the range of views. As interested as she is, she has to accept that the Democrats are never going to be in government, she is never going to be in cabinet and she is always going to have to wait until the decision has been made. And then she will be told—like everybody else.

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. Can the minister outline, in response to my original question, why the government has deemed young people dependent on their parents to the age of 25 for the purposes of student assistance and their common youth allowance—that is something that has been decided, Minister—whereas in the case of the family tax initiative they are deemed independent at the age of 18? Can the minister please, once and for all, give a commitment that the common youth allowance will be a living allowance for young people and that it will be above poverty line levels?

Senator VANSTONE—Senator, your question vis-a-vis 25 was, I think, answered very, very clearly when we had the debate on this matter. You may think that Melanie Howard is entitled to Austudy. You may think that that is appropriate. But guess what? On this side of the chamber, we do not happen to think it is appropriate.

Senator Stott Despoja knows full well that, up until 1992, the age of independence for Austudy, that is, the point at which you get it simply because you happen to be that age and for no other reason—you could be living at home with wealthy parents—was 22. It was then changed, and all we have done is change it back. The best example I can give you of why is that Melanie Howard should not be able to get Austudy. It is as simple as that.

Furthermore, if I had more time, I would give you some explanation of the reasons why independence in one category is not necessarily the same as independence in another. It is quite a complex policy argument that I hoped to get you across. *(Time expired)*

Mining: North Stradbroke Island

Senator CHILDS—My question is directed to the Minister for Resources and Energy. Minister, is it true you failed to meet your ministerial responsibilities to consult the Australian Heritage Commission over your decision to review Consolidated Rutile Ltd's mining activities on North Stradbroke Island? Isn't it a fact that areas affected by the CRL mine are listed on the interim National Estate and that the Heritage Commission have set export conditions for CRL's operations? Shouldn't you then have followed the proper process and sought AHC advice under section 30 of the Australian Heritage Commission Act?

Senator PARER—I know the incident to which Senator Childs refers. My department was informed about the incident by the Queensland department of mines at a very early stage. Let me say that, under the previous government, management of the environment aspects was given to the Queensland government to oversee. Officers from my department and the Commonwealth environment department travelled to Brisbane for discussions with the state authorities and the company.

The Queensland minister's response was to issue a notice to the company to show cause as to why CRL's mining lease should not be cancelled or a fine imposed. The Queensland minister also announced that CRL's security deposit had been increased and his department had instructed CRL to commission independent hydrological studies of the Gordon and Ibis Alpha mines.

Following CRL's response to the notice to show cause, the Queensland minister decided not to cancel CRL's mining lease or impose

a financial penalty. This was based on Consolidated Rutile's actions to mitigate the impacts arising from the incident, the company's undertaking to address water management and its commitment to revise its environmental management overview strategy. I recently undertook a review of CRL's export controls and concluded that the relevant environmental concerns are being adequately addressed by state environmental processes. I therefore decided to take no further action against CRL.

Senator CHILDS—Madam President, I ask a supplementary question. Minister, why did you conduct such a narrow review and make conclusions based on the very limited advice that the relevant environmental concerns were being adequately addressed by state environmental processes and monitoring procedures? Will you release the review so that the community is fully informed and can have confidence in CRL's environmental performance?

Senator PARER—I think it is worth informing Senator Childs that I actually went across and had a look at the project on North Stradbroke Island, just to see for myself what was happening over there. It was before the change of ownership, which happened, I think, a couple of months ago with CRL. There was no doubt that some things had occurred in the past, and some of these problems that occurred in the past go back 15 or 20 years. It should be remembered that this is a mine that has been going for pretty close to 40 years. It is the last remaining sand mine in Queensland.

One of the things that really impressed me about it, notwithstanding the fact that there had to be some corrections made to some of the things that happened in the past, was the rehabilitation on South Stradbroke Island. For those people in this place who are interested in the environment, can I say that it would be well worth your while just to see the high level of rehabilitation on South Stradbroke Island by CRL.

Small Business

Senator MARGETTS—My question is addressed to the Minister representing the Prime Minister. I refer the minister to the recent statement issued by the Prime Minister entitled *More Time for Business*, and in particular to the comments in relation to unfair dismissal changes. I also remind the minister of the comments made by the then Chief Justice of the Industrial Relations Court, Justice Wilcox, in which he refuted claims that unfair dismissal laws were making small business reluctant to hire people. I ask: given that the government has acknowledged that small business is the major employer in this country, what impact does the minister consider that the proposed changes will have on employees' security if new employees are able to be dismissed with relative impunity? Does he not agree that this insecurity will actively act as a disincentive to consumer spending and thus have a negative impact on the viability of small businesses?

Senator HILL—Obviously we do not agree with that. I presume that Senator Margetts is referring to the decision of the government to exempt small businesses with 15 or fewer employees from the unfair dismissal laws in respect of new employees who have been continuously employed for less than a year. We have found—certainly from representations over a long period for small business—that one of the disincentives to take on more labour is the rigid labour relation laws we have in this country, particularly in relation to unfair dismissal. Although they have been improved, they are still a disincentive to small business. We have taken the attitude that there needs to be a range of changes to give encouragement to small business to increase their—

The PRESIDENT—Order! The level of noise in the chamber is too high.

Senator HILL—I thought it was an important issue, Madam President. With the levels of unemployment that we inherited from Labor, it is important we take that range of options.

As you know, Madam President, we have managed to support small business by bringing interest rates down with the previous industrial relations changes that have been made and by a whole range of other initiatives that are contained within the document *More Time for Business*. But certainly we

believe if we free-up unfair dismissal laws in relation to small business it will give them greater encouragement. We think that is worth a chance.

Senator MARGETTS—Madam President, I ask a supplementary question. I thank the minister for his response, but I wonder whether the minister acknowledges the connection within the workplace between unfair dismissal laws and unfair treatment that may lead to threats of unfair dismissal. I wonder whether the Prime Minister was saying in his statement that it is okay to act unfairly—and, up until now, illegally—as long as you are a small business. Perhaps that might lead in the future to these laws being changed in larger and larger businesses until we get to the point where there is no certainty for employees at all.

Senator HILL—I hear what Senator Margetts says, but the alternative is that you do nothing, basically. We are prepared to take a few chances to give more Australians the opportunity to work. We believe that this will work; we believe it on the basis of the representations that we have received from many small business people Australia wide. We do not necessarily always think in the negative, Senator Margetts. If you continually assess every initiative negatively, you end up doing nothing. We believe this is worth a go.

As you would have noted from the report document itself, we are going to have the situation monitored by the Department of Industrial Relations to see how it is working. We will respond accordingly. Our assessment is that it is something that will encourage small business to employ more Australians, and therefore it got the tick.

DISTINGUISHED VISITORS

The PRESIDENT—Before proceeding with questions, I invite senators to recognise the presence in the chamber of a parliamentary delegation from the Ukraine led by Mr Igor Ostash. Your presence is most welcome. I hope you have an enjoyable visit to this country and that senators welcome you here.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Shipbuilding Industry

Senator MURPHY—My question is directed to Senator Parer, the minister representing the Minister for Industry, Science and Tourism. My question relates to Australian business—that you claim to care so much about. Minister, I refer to your government's decision to end the shipbuilding bounty on 31 December this year. Isn't it true that you have argued that this action aligns the Australian shipbuilding industry with key overseas competitors and that the Prime Minister reiterated this argument in question time yesterday? Isn't it also true that the Prime Minister went on to say:

> . . . if some further extension were needed to keep pace with the OECD practice then we would do so?

Minister, is it not a fact that the OECD agreement provides for the continuation of subsidies for up to three years for our major competitors, whereas there is no such agreement for Australian shipbuilders? Why, then, does the Prime Minister not act immediately to restore the level playing field for our shipbuilding industry and save the thousands of jobs that he has put under threat by his decision?

Senator PARER—Madam President, what an extraordinary question! I might tell you, Senator, that if you had been here a week or two ago you would have heard someone else ask this question on the shipbuilding bounty.

Let me make these points to you. First of all, let me answer one of your questions with yes, in relation to the OECD agreement, three years is quite correct. Let me point this out to you, Senator: do you know when the shipbuilding bounty ended under your policy? Do you know when it finished? In June this year. That was under the Labor government. Minister Moore extended that bounty until December this year. This a matter that actually is on the *Notice Paper* for debate, but I do not mind answering it. Can you keep—

Senator Cook interjecting—

The PRESIDENT—Order! Senator Parer, would you address your remarks to the chair?

Senator PARER—There is Senator Cook asking Senator Faulkner if he is allowed to take note of my answer. I would like to ask Senator Faulkner: is it all right if Senator Cook does take note?

Honourable senators interjecting—

The PRESIDENT—Order! The level of noise is still too high, Senator Parer, if you would wait.

Senator PARER—Minister Moore did announce in the December last year that it would be extended to 31 December 1997. He also announced that the government would closely monitor progress towards implementation of the OECD agreement and, in light of that progress, review the need of any extension of the bounty beyond 1997 during the second half. Minister Moore advised that he also indicated his willingness to consider bringing the forward review announced on 16 December to the middle of this year.

Minister Moore informed the Australian Shipbuilders Association of this position; in other words, to bring forward the review. He announced his position during his meeting with Mr Rothwell on 6 March. While Mr Rothwell raised a number of options for the future, Minister Moore made no commitment that the government would change its current policy, as reflected in the existing bill before the parliament. I would just like to reiterate that under the previous government this bounty would have expired in June this year.

Senator MURPHY—Madam President, I ask a supplementary question. I am sure you are aware that the Australian shipbuilding industry is in the process of trying to compete with overseas shipbuilders for contracts right now. It is a fact that you have taken a decision to cease the bounty as of 31 December. How can you expect the Australian shipbuilding industry to actually compete for contracts to build ships when they know full well that the bounty does end as of 31 December and they have no capacity? Thousands of jobs are threatened. Why won't you now take a decision not only to bring the review forward but to put them back on a level playing field?

Senator PARER—Senator Murphy, I am not sure whether you were listening when I answered your question. Under the previous Labor government this bounty would have expired on 30 June this year. What Minister Moore did was extend the bounty to December this year. Minister Moore has made the point, under the instructions I have, that while he talked about reviewing it towards the end of this year he is prepared to bring forward that date of review.

Small Business

Senator FERRIS—My question is directed to the Minister representing the Minister for Small Business and Consumer Affairs. Much has been said in recent years about the need to improve the access of innovative small and medium sized companies to equity capital, especially after Labor's failure to address these needs. Could the minister please outline to the Senate how business will benefit from the small business innovation fund announced by the Prime Minister this week?

Senator PARER—I thank Senator Ferris for that question. It is true that Labor has only ever paid lip service to small business. When the Labor government took over in 1983 small business was the engine room of growth. When Labor came into government—and bear in mind that Labor is the political arm of the trade union movement—the only advantage it saw in small business was for union growth. So what did we see? We saw small business being badgered and hounded by union organisers to try to get them to increase their numbers.

Then we had Labor's unfair dismissal laws. Business found that they could not even dismiss someone caught stealing, whether from the till or from stock. In many cases thieves were rewarded and small business reacted in the only way it could, by curtailing growth and not employing people. Labor's performance on small business can only be described as absolutely deplorable. Labor cannot help itself when it comes to small business.

A search of the Internet today provides confirmation of Labor's assessment of small business. Labor produced a list of 12 key achievements of the Hawke and Keating government. They included: the prices and

incomes accord, Mabo, the national agenda for women and the republic. You know what? There is not one mention of small business. Senator Schacht, you should be ashamed. That is why the Howard government's *More Time for Business* package received such overwhelming support from all areas. While this package restores balance to small business and eases the repressive union bias on small business employers, it addresses the need for government to help return confidence and growth to small business and thus real jobs.

One of the key elements of the Howard government's determination to be a team player with small business is the proposal to establish the small business innovation fund. In this era of technological growth it addresses something Labor never had the vision to address—the need to assist small technology based businesses.

It is interesting that a press release has been put out by the Australian Venture Capital Association. It is worth senators listening to this. They welcome the announcement by the federal government to establish the small business innovation fund. They state:

'Attracting investment into early stage and start-up companies has been a problem in this country for far too long'—

13 years too long—

as Bill Ferris, Chairman of the Australian Venture Capital Association said. Australia has an indifferent record when it comes to commercialising its research and development. This new scheme should provide the incentive for investors and private capital fund managers to support this end of the market. The scheme has great merit and it is not tax driven and every dollar invested is rewarded by business development successes only.

Senator FERRIS—Madam President, I ask a supplementary question. Can I ask the minister to further explain the amount of funding available for the start-up fund and the access that private sector managers will have to that fund.

Senator PARER—This fund provides seed capital to the small business sector that has struggled to survive against resistance to investment capital from normal sources. Under the small business innovation fund this government will establish six early stage capital funds to invest more than $100 million in the small high technological firms over five years. The Commonwealth will provide $130 million from the R&D Start program and private sector fund managers will be responsible for finding matching private contributions on the basis of $1 of private capital for every $2 contributed by the government. This is something not plucked out of the air. It follows extensive consultation with industry and the financial sectors in developing the scheme. It is clear that the industry wants action in this area and initial reactions to the proposal have been very highly favourable.

Women

Senator REYNOLDS—I address my question to the Minister representing the Prime Minister for the Status of Women. Minister, can you confirm that your government is opposed to each of the following: gender policy reform, a comprehensive women's budget process and a 50-50 gender balance for the proposed people's convention? If this is not the case, can you identify which of these equal opportunity policies your government does support?

Senator NEWMAN—I am glad that Senator Reynolds persists in this misconception of what the new government is all about. There has been no backsliding on equality of opportunity for Australian women under this government. In fact, on every test you could make, this government is hell-bent on seeing that women get a fair go in this country, like all other citizens. That is why we took so seriously the importance of finding a new head for the Office of Status of Women. We had wide-ranging advertisements and an executive search organisation short-listed suitable candidates. I am sure that right across party lines it would be agreed that the appointment of Ms Pru Goward to head up the Office of Status of Women is a very positive step and one that has been widely acclaimed, except, I am sad to say, by Dr Carmen Lawrence, for reasons best known to herself.

Senator Jacinta Collins—What about the Sex Discrimination Commissioner?

Senator NEWMAN—I hear an interjection, which is also worth addressing now that I

have this opportunity. The Sex Discrimination Commissioner resigned in a blaze of glory, I suppose, having a serve at the government. That has been picked up by the media. What have not been picked up are the allegations that somehow the government is doing something unconstitutional by the position not being filled as yet. The provisions are quite clear and the advice from the Attorney-General's Department is such that the role of the Sex Discrimination Commissioner continues while a replacement is being found. That search is being carried out by my colleague Mr Williams right now. There is no movement away from that.

The proposals that we took to the Australian people at the last election included an extraordinarily important measure, which was the retirement savings accounts, which recognise the important need for women to have better economic security in old age. Yesterday in this place, Senator Reynolds, your party did its utmost to stop Australian women having access to a measure which will recognise for the first time their broken work patterns and their role as carers of the disabled, the aged and children.

Senator Mackay interjecting—

Senator NEWMAN—You do not like to hear this true story, do you, Senator Mackay? But this government is hell-bent on putting practical policies into place which will mean good things for Australian women across the board. Economic security is extraordinarily important, domestic violence is important and involving women in decision making is important. Already in our first 12 months we have improved the percentage of women on Commonwealth government boards and committees by one per cent, which is only a short step, but it is a better position than we inherited. I hate to remind you, Senator, that we also brought those women into parliament that you were unable to do with your quotas.

In 12 months this government has been getting on with the job of doing a fair thing by Australian women. The response of this government to the commitments made in Beijing is just about finalised. It is so thick, it will hold the door open for you, Senator, when you are ready to receive it. It is just about at the printers and will be going to New York shortly. It was somewhat delayed by the need to add all the new programs and developments from this government. The first year of a new government in a new direction, giving fair treatment to women right across Australia, not just the top end of town that Mr Keating and Anne Summers focused on and that you—*(Time expired)*

Senator REYNOLDS—I ask a supplementary question, Madam President. Minister, can you explain why the government only yesterday voted against a motion which would have tied the government to support each of these initiatives? I repeat them: gender policy reform, a comprehensive women's budget process and a 50-50 gender balance for the proposed people's convention. Could you answer the questions specifically, as you have given us a generalised response. Could you give us a categoric assurance that you will support each of those initiatives and that you made a mistake in voting against them yesterday.

Senator NEWMAN—This side of politics believes that merit works, as a result of which my colleagues are appointing capable, experienced and qualified women to boards and committees in greater numbers than your ministers did. Would you suggest that as Minister for Social Security I should cut the gender balance in my department down from approximately 60-40 in favour of women to 50-50? Don't be ridiculous!

Australian Pituitary Hormone Program

Senator LEES—My question is to the Minister representing the Minister for Health and Family Services. I refer you to the legal proceedings currently underway in which former participants of the Australian pituitary hormone program are taking legal action against both the Commonwealth Department of Health and the Commonwealth Serum Laboratories. I ask: are you aware of claims from their lawyers that they have not had access to documents and records of the inquiry carried out by Professor Margaret Allars into the Australian pituitary hormone program, documents which were originally lodged by her at her request with the Australian Archives and were subsequently removed

from the Archives by the Commonwealth Department of Health? Secondly, when were these documents retrieved from the Archives and on whose authority? Thirdly, have all the documents now been found or are some still missing or perhaps destroyed? Finally, these people have now faced extensive delays, their legal costs have built up and they have been denied legal aid. Therefore, as it was the health department which caused the delay, will you now guarantee them legal aid so that they can continue with the proceedings?

Senator NEWMAN—I appreciate Senator Lees' interest in this matter. It is a very important issue. Therefore, in order to get a detailed answer on a very important question, I value the fact that she gave me some advance warning of this. I am advised that the plaintiffs' solicitors have sought access to documents which are protected by the secrecy provision in the National Health Act, release of which may prejudice the privacy of individuals and in particular hormone recipients who gave evidence to the Allars inquiry.

Documents have been released in accordance with an agreement between the Australian Government Solicitor and the plaintiffs' solicitors with respect to release of such documents. With respect to a recent request for additional documents, a decision has been made to release these documents to the plaintiffs' solicitors under this agreement.

Turning to your second question of when were these documents retrieved and on whose authority, in early 1996 a large number of the documents were retrieved from archives by the Australian Government Solicitor on authority of the health department. Allars inquiry staff upon completion of the inquiry nominated the then Department of Human Services and Health as the controlling agent for the purposes of the Archives Act. The documents were then forwarded to the Australian Government Solicitor for the purpose of providing documents to the plaintiffs' lawyers.

Your third question was: has the department destroyed or lost any of these documents since they were retrieved? I am advised 'not so far as the minister is aware'. Your fourth question was: who is or was responsible for determining which of these documents are covered by section 135A of the National Health Act? Decisions to release the documents to the plaintiffs' solicitors were taken by the Commonwealth government chief medical officer on the advice of the Australian Government Solicitor. The Minister for Health and Family Services will continue to monitor these arrangements.

I am advised that arrangements are in place for all documents sought by the plaintiffs' solicitors to be provided by the Australian Government Solicitor to the plaintiffs' solicitors. At the completion of the CJD litigation, all documents will be returned to archives.

Senator, you did ask me an additional question relating to legal aid. I have no brief on that, but I will endeavour to get it for you as soon as I can.

Senator LEES—Madam President, I ask a supplementary question. I thank the minister for the detailed answer. Minister, I am sure you are aware of the considerable anguish that not only these particular individuals have suffered but also their families. As you have said, it has been the health department that has caused much of these delays and that it is really the controlling agent. Therefore, I ask: will you now go back to the Minister for Health and Family Services and make a recommendation that the legal aid should be paid and seek his support to make sure that the plaintiffs can continue with their action?

Senator NEWMAN—I will refer the request to the minister and see if I can obtain an answer for Senator Lees.

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

Shipbuilding Industry

Senator COOK (Western Australia) (3.04 p.m.)—I seek leave to take note of an answer given by Senator Parer to a question asked by Senator Murphy relating to the shipbuilding industry.

Senator HILL (South Australia—Minister for the Environment)—by leave—The orders of the day, as I understand it, did not allow for taking note of answers given during

question time because there was an understanding that we might try to do a bit more government business for a change. Nevertheless, cooperation is a two-way street, I understand that. Senator Cook feels that he has been personally provoked.

Senator Bob Collins—He was.

Senator HILL—There was a bit of teasing going on. In all the circumstances, I think it would be reasonable if Senator Cook had five minutes to take note as if it were a take note and we ended it at that stage. What I could not understand was, when I asked Senator Cook if he were prepared to limit it to five minutes, he refused to answer.

That is all I am asking, if we are going to try to be reasonable on both sides—you were provoked—five minutes time to respond and then we can get on with other things?

Senator Cook—My speech will take five minutes. That is what I am entitled to under the standing orders.

Senator HILL—No, you are not.

The PRESIDENT—There is no taking note of answers listed on the *Notice Paper* for today. Senator Cook has sought leave to make a five-minute statement taking note of an answer and that has been granted. For five minutes, is that understood, Senator Cook?

Senator COOK (Western Australia) (3.05 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Resources and Energy (Senator Parer), to a question without notice asked by Senator Murphy today, relating to the shipbuilding industry.

The fast ferry industry in Australia is the only area of sophisticated, complex manufactured goods that this country leads the world in. It is an industry that did not exist eight years ago. It is an industry that grew up under a Labor government. It is an industry that now leads the world. It grew up under a Labor government with assistance from a Labor government by a bounty introduced by a Labor government.

The bounty act that the Labor government introduced was due to expire on 30 June this year. It is not true, as the minister, has said that under Labor the bounty would have expired. What is true is that the act, with the bounty in it, would have expired. Our commitment to the industry was to continue the bounty. That was our commitment and negotiations between the industry and my colleague, the honourable Chris Schacht, the minister for construction at the time who was in charge of this sector when I was minister for industry, were in an advanced stage of completion. Had we not been defeated in the election, we would have continued the bounty. That was the situation that the industry knew. That was our commitment, and we were in an advanced state of delivering on that commitment.

Now let us look at the government. The government introduced a bill into this chamber to make sure that the bounty did conclude on 30 June, and it would not have been extended. That bill is on the *Notice Paper* now. That bill has been amended, of course, because of subsequent events. Let us cast our minds back to what those events were. Last December, when this chamber was debating the rapacious slashing and cuts by the government to the research and development bill, this government had negotiations with the Independent senators in this place. As a consequence of those talks on that bill—this is my suspicion and I compliment him if my suspicion is right because one of those Independents, Senator Harradine, is a Tasmanian and this industry is based in Tasmania and Western Australia—the government issued a press statement saying that the bounty would be extended for six months to 31 December this year.

The government was pushed into it. It did not want to do it. It resisted. It wanted a major money bill passed. It ended in negotiations with pressure from an Independent from Tasmania, and that is my assertion. It caved in and extended the bounty for six months. So let us not have any of this allegation that the government has done something voluntarily to help this industry. It has not. It has been made to do it by this chamber.

On 16 December, the Treasurer (Mr Costello) and the Minister for Industry, Science and Tourism (Mr Moore) put out a press release crowing about this, and they

named Senator Harradine and Senator Colston as having helped them to make up their minds about it. In that press release, they said that this aligns the bounty with the OECD agreement and for ship builders who are the major competitors for our industry. That is, those who are the major competitors for the Australian manufacturers. The department says in the *Hansard* transcript of the estimates committee last time that they are the Europeans. It is in the *Hansard*. But what has happened here? Yesterday, the Prime Minister answered a question in the House in which he responded that he thought that the promise made by Ministers Costello and Moore in fact did align the bounty with the Europeans. It does not.

What is now clear—and it was clear to us and clear to the industry that has lobbied the government on this matter since it made its announcement—is that the bounty does not align it. The Prime Minister thought it did. The Minister for Industry, Science and Tourism and the Treasurer made sure it did not, and it did not for this reason. The Europeans give their manufacturers a nine to 25 per cent bounty—ours is a five per cent one—and they are pinching orders out of shipyards in Australia and putting Australians out of work, and the manufacturers get theirs to the end of the year.

If an order is placed this year, they get three years to build their ships. In Australia, you have to complete your ship to get the bounty by the end of the year. It is not aligned. Yesterday, the Prime Minister said he thought it was. He thought that, if it was not, he would make sure that it was aligned. It is not what his ministers did, and you cannot accept this stuff from Senator Parer today that it is what his ministers did. It is now for the Prime Minister to prevent retrenchments in Kwinana, to prevent people from going out of work in Tasmania, to deliver on his promise, and align those bounties with the OECD agreement. *(Time expired)*

Question resolved in the affirmative.

REMOVAL OF SENATOR FROM PARLIAMENTARY RETIRING ALLOWANCES TRUST

The PRESIDENT—Two of the notices of motion given yesterday relate to discharging Senator Colston from the Parliamentary Retiring Allowances Trust. Today I received a letter from the Minister for Finance (Mr Fahey) advising me that Senator Colston resigned from the trust by letter addressed to the minister, dated 7 March 1997. The minister's letter was apparently sent to me on 14 March but was not received by me, which was unfortunate, and therefore it was not acted upon. It is, however, for the Senate to determine who its representative on the trust should be. I suggest it is open to the Senate to make an appointment to the trust in place of Senator Colston, and I table the letter from the Minister for Finance.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.12 p.m.)—by leave—Madam President, I wrote to you on 25 February this year seeking advice in relation to a number of positions that were held by the Deputy President, Senator Colston. I raised the issue of the appropriateness of Senator Colston continuing as a member of the Parliamentary Retiring Allowances Trust. I also, you may recall, informed the Senate that I had done that after an article appeared in the *Sydney Morning Herald* on 26 February.

I also indicate that I did seek advice from officers of the Department of the Senate, in relation to this particular matter, about possible methods of removing Senator Colston from the Parliamentary Retiring Allowances Trust, and I did receive written advice in relation to my request. The advice said that in the absence of a resignation from Senator Colston, it would be open to any senator to give notice of a motion that Senator Colston be removed from the trust in accordance with subsection 6(1) of the Parliamentary Contributory Superannuation Act. You may recall that on 4 March 1997 I gave notice that I would move:

> That, in accordance with subsection 6(1) of the Parliamentary Contributory Superannuation Act 1948, Senator Colston be removed from the Parliamentary Retiring Allowances Trust;

You may also recall, Madam President, that the motion was defeated by the Senate because, of course, the government determined to support Senator Colston's continuation on the trust.

The situation we have now is quite an extraordinary one indeed. To be absolutely frank, the Labor Party is glad that Senator Colston has gone because we do not believe that it is appropriate that Senator Colston hold such a position of trust. Given his extraordinary bookkeeping efforts in relation to his own travel allowance claims, we certainly would not want to see Senator Colston in any way responsible for the affairs of other members of parliament.

I do find it interesting, to say the least, that Senator Colston gave his resignation to Mr Fahey, the Minister for Finance. I suspect that that is yet another example of Senator Colston's lack of attention to detail. It is obviously a matter for the Senate, and a resignation that needs to be appropriately dealt with by the Senate. It is up to Mr Fahey to explain how it took so long for him to communicate to you, Madam President, that he had received a letter from Senator Colston.

I do point out that this is even more remarkable, given there had been a lot of discussion about this particular issue in the press. Even a minister for finance as out of touch as Mr Fahey, I think, ought to have been aware that the Senate was debating this issue and voting upon this issue. I do appreciate the fact that, Madam President, when at last Mr Fahey brought this matter to your attention, you did act quickly and, in my view, appropriately, in making the statement that you have just made. A number of questions remain as to the amount of time it took to communicate this resignation, which was notified to Mr Fahey one day after the government determined that it was appropriate to see Senator Colston remain on the Parliamentary Retiring Allowances Trust.

In simple terms, we are glad that Senator Colston has gone. We do not believe that it was appropriate that he continue in that position and I hope that Senator Colston has the same foresight in relation to a number of other positions he holds in this parliament.

The PRESIDENT—To add one point to this issue, the matter was drawn to my attention this morning by Senator Watson when he rang and asked why I had not acted upon Mr Fahey's letter. A member of my staff then rang Mr Fahey's office to ask for a copy of it to be faxed to my office.

PETITIONS

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

Aerial Cabling

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

The Petition of the undersigned shows:

the strong opposition of residents of the City of Tea Tree Gully in South Australia to the proposed roll-out of overhead cables within our City, based on the impact upon residential amenity, our local streetscapes, the environment and potential damage to mature trees.

Whilst we have no objection to the benefits telecommunication services bring, we ask that they are delivered in an environmentally responsible fashion.

In addition to our concern about visual pollution we are strongly opposed to the unnecessary duplication of infrastructure and the extent of immunity granted to telecommunications carriers from state and local government regulations (Telecommunications Act of 1991).

Your Petitioners request that the Senate should:

intervene in this matter with a view to preventing the degradation of residential amenity caused by aerial cabling and obtain a positive outcome for the residents of the City of Tea Tree Gully and the wider community.

by **Senator Schacht** (from 1,093 citizens).

Repatriation Benefits

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 fact that members of the Royal Australian Navy who served in Malaya between 1955 and 1960 are the only Australians to be deliberately excluded from eligibility for repatriation benefits in the Veterans' Entitlements Act 1986 (the Act) for honourable 'active service'. Australian Archives records show that the only reason for the exclusion was to save money. Members of the Australian Army and Air Force serving in Malaya were not excluded, and the costs associated with the land forces was one of the main reasons for the exclusion of the Navy. An injustice was done which later events have compounded.

There are two forms of benefits for ex-servicemen, Disability Pensions for war caused disabilities (denied the sailors referred to but introduced in

1972 for 'Defence Service' within Australia) and Service Pensions. Allied veterans of 55 nations involved in conflicts with Australian forces until the end of the Vietnam War can have qualifying eligibility for Service Pensions under the Act. Service by 5 countries in Vietnam was recognised after RAN service in Malaya was excluded. The Department of Veterans' Affairs confirms that 686 ex-members of the South Vietnamese Armed Forces are in receipt of Australian Service Pensions; 571 on married rate and 115 on single rate. In effect, 1,257 Service Pensions, denied to ex-members of the RAN, are being paid for serving alongside Australians in Vietnam.

It is claimed that:

(a) Naval personnel were engaged on operational duties that applied to all other Australian service personnel serving overseas on 'active service'. They bombarded enemy positions in Malaya and secretly intercepted enemy communications;

(b) Naval personnel were subject to similar dangers as all other Australian service personnel serving in Malaya and there were RAN casualties, none of which appear on the Roll of Honour at the Australian War Memorial;

(c) the Royal Australian Navy was 'allotted' for operational service from 1st July 1955 and this is documented in Navy Office Minute No. 011448 of 11 November 1955, signed by the Secretary to the Department of the Navy. The RAN was then apparently 'unallotted' secretly to enable the excluding legislation to be introduced;

(d) the Department of Veterans' Affairs has said it can find no written reason(s) for the RAN exclusion in the Act. In two independent Federal Court cases (Davis WA G130 of 1989 and Doessel Qld G62 of 1990) the courts found the two ex-members of the RAN had been 'allotted'. Davis had served in Malaya in 1956 and 57. As a result of these cases ex-members of the RAN who served in Malaya and who had, at that time, claims before the Department of Veterans' Affairs for benefits, had their claims accepted. Eight weeks after the Doessel decision the Act was amended to require allotment to have been by written instrument. In parliament, it was claimed the amendment was necessary to restore the intended purpose of the exclusion, reasons for which can not, allegedly, be found.

(e) Naval personnel were not, as claimed, bound by the 'Special Overseas Service' requirements, introduced in the Repatriation (Special Overseas Service) Act 1962. This Act became law some two years after the war in Malaya ended;

(f) as Australian citizens serving with the Royal Australian Navy they complied with three of the four requirements for 'active service'. The fourth, for 'military occupation of a foreign country' did not apply to Malaya.

Your petitioners therefore request the Senate to remove the discriminatory exclusion in the Act thereby restoring justice and recognition of honourable 'active service' with the Royal Australian Navy in direct support of British and Malayan forces during the Malayan Emergency between 1955 and 1960.

by **Senator Faulkner** (from 27 citizens), and **Senator Schacht** (from 15 citizens).

Repatriation Benefits

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

The Petition of the undersigned shows that only one group have been excluded from eligibility for repatriation benefits in the Veterans Entitlements Act 1986 (the Act) where such group has performed honourable overseas 'active service'. That group being members of the Royal Australian Navy who served in Malaya between 1955 and 1960 which were excluded under 'Operational Service' at Section 6. (1)(e)(ii) of the Act.

The various claims made in Statements to the House and the Senate and the contents of correspondence from various Ministers to maintain the exclusion are answered as follows, the answers are from documents obtained under FIO and from public record:

(i) 'They were never allotted for operational service', (contained in a letter from the Hon. Con Sciacca Minister for Defence Science and Personnel 1995). A letter from the Secretary Department of the Navy to Treasury dated 11 November 1955 stated 'the date that the Navy were allotted for operational service was 1 July 1955'.

(ii) 'Members of the RAN were only doing the duty for which they had enlisted', (October 1956 The Hon. Dr Cameron representing the Minister for Repatriation in the Senate). This applies to all Service personnel everywhere.

(iii) 'They were in no danger', (November 1956 The Hon. Dr Cameron representing the Minister for Repatriation in the Senate). They shared the same danger as all other Australian Service personnel serving in Malaya at the time.

(iv) 'They were not on Special Overseas Service', (in a letter from the office of The Hon. Bronwyn Bishop Minister for Defence Industry Science and Personnel to Mrs Williams of Adelaide dated October 1996). Requirement for Special Overseas Service was introduced in 1962 without retrospective conditions, therefore has no relevance to events of 1960.

(v) 'They were not on Active Service', (in a letter from the office of The Hon. Bronwyn Bishop

Minister for Defence Industry Science and Personnel dated October 1996). It is now, as it was then, that Service Personnel had to comply with one of three requirements for Active Service, this group complied with two, or twice as many as is needed. The one that they did not comply with was, 'is in military occupation of a foreign country'.

Your petitioners therefore request that the Senate should remove the discriminatory exclusion in the Act, thereby giving the Australian sailors involved comparative recognition with the Army and RAAF personnel that served at the same time, and all other Australians who have served their Country on active service overseas.

by **Senator Woodley** (from 52 citizens).

Petitions received.

NOTICES OF MOTION

Malaysia: Logging and Woodchipping

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

That the Senate—

(a) expresses concern about:

(i) the well-being of four Penan citizens who are under arrest in Marudi, Sarawak, on charges relating to protests against logging of forests,

(ii) the continued loss of the indigenous people's forests in Malaysia and the consequent loss of income, sustenance, well-being and cultural amenity, and

(iii) reports of the use of the military against the Penan people; and

(b) calls on the Malaysian Government and the State Government of Sarawak to negotiate with the Penan people to ensure the survival of their remnant forests, and to ensure the civil rights of those currently under arrest in Sarawak.

Academy Awards 1997

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

That the Senate—

(a) congratulates:

(i) Australian actor Geoffrey Rush for winning the 1997 Academy Award for Best Actor for his role in the movie *Shine*,

(ii) all those involved in the production of the movie *Shine*, and

(iii) Australian cinematographer John Seale for winning the 1997 Academy Award for Best Achievement in Cinematography for his work on the movie *The English Patient*;

(b) acknowledges the Government's support for film and the arts in Australia;

(c) notes that these awards highlight the enormous talent and diversity within the Australian Film Industry (AFI); and

(d) commends the AFI, as a whole, for its continued and growing success in Australia and overseas.

Regulations and Ordinances Committee

Senator CALVERT (Tasmania)—At the request of Senator O'Chee, I give notice that, on the next day of sitting, he will move:

1.— That the Airports (Environment Protection) Regulations, as contained in Statutory Rules 1997 No. 13 and made under the *Airports Act 1996*, be disallowed.

2.— That the Airports Regulations, as contained in Statutory Rules 1997 No. 8 and made under the *Airports Act 1996*, be disallowed.

3.— That the High Court Rules (Amendment), as contained in Statutory Rules 1997 No. 11 and made under the *Judiciary Act 1903*, be disallowed.

4.— That the Mutual Assistance in Criminal Matters Regulations (Amendment), as contained in Statutory Rules 1997 No. 3 and made under the *Mutual Assistance in Criminal Matters Act 1987*, be disallowed.

I seek leave to incorporate in *Hansard* a short summary of the matters raised by the committee.

Leave granted.

The summary read as follows—

Airports (Environment Protection) Regulations Statutory Rules 1997 No 13

The Regulations provide for environmental management of airports.

A number of discretions are reviewable only by the Secretary and not by the AAT. In addition there appear to be either direct or implied discretions which are not subject to any review, including commercially valuable discretions.

An airport-lessee company may enter an occupier's premises. This power appears to be very wide and is not limited by the usual safeguards.

A system of infringement notices effectively confers power on a non-government body to impose fines. Also, the infringement notices do not include the usual advice that, if the fine is paid, then this not only discharges the liability and prevents any prosecution for the matter, but also that the person concerned is not to be regarded as having been convicted of an offence.

Notices under the Regulations may be given to the general public by pre-paid post. However, there is no equivalent concession for members of the public replying to notices.

There are also possible reference errors.

The committee has written to the minister.

Airports Regulations Statutory Rules 1997 No 8

The Regulations implement a regulatory regime for Commonwealth-owned and privately-leased airports.

The Regulations include a number of subjective and vague expressions.

Creditors of airport lessee companies may in certain circumstances be precluded from recovering debts due to them.

The Secretary may review commercially valuable discretions with no indication whether such decisions are subject to AAT review.

There may be drafting oversights.

The committee has written to the minister.

High Court Rules (Amendment) Statutory Rules 1997 No 11

The Rules include a number of Notes, which appear to advise of matters for which there may be no legal authority.

The Rules provide for witnesses called because of their professional, scientific or other special skill or knowledge to be paid $610.20 per day, while other witnesses are to be paid only $64.40 per day. This is a considerable difference and the provisions could operate harshly or unfairly.

For more than a decade Commonwealth legislative drafting practice has included the expressions 'he or she', 'him or her' and 'his or her'. The present Rules, however, include only the expressions 'he', 'him' and 'his'.

The committee has written to the Chief Justice for advice.

Mutual Assistance in Criminal Matters Regulations (Amendment) Statutory Rules 1997 No 3

The Regulations provide for the service of criminal process in Australia on behalf of foreign governments.

A Magistrate may require a person who is only to produce documents to attend in person. This appears to be a restrictive provision, given the distance that people may be required to travel and the rapid forms of communication available today.

New electronic forms for search warrants may not include the usual safeguards relating to usual and reasonable force and reasonable grounds.

The committee has written to the minister for advice.

Gathering in Solidarity with Indigenous People and the Earth Conference

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

That the Senate—

(a) notes that the conference, Gathering in Solidarity with Indigenous People and the Earth, held in Victoria recently:

(i) was attended by more than 200 indigenous people and environmental and social justice campaigners,

(ii) included representatives from Aboriginal communities from every State around Australia, as well as representatives from several Native American nations, Papua New Guinea, Sarawak, Japan, Aotearoa, Bougainville, the Philippines and East Timor, and

(iii) passed unanimously a number of motions in support of indigenous peoples' struggles, including:

(A) the Ngarrindjeri people opposing construction of a bridge to Hindmarsh Island in South Australia,

(B) Aboriginal people facing forced removal from the Sydney suburb of Redfern, and

(C) the B'laan people of the Philippines attempting to gain justice and calling for the withdrawal of Western Mining Corporation from Lumad territory; and

(b) congratulates Friends of the Earth for its initiative in organising the conference and encourages it to continue its work in support of indigenous rights.

Dental Care

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

That the Senate—

(a) notes:

(i) a report that more that 100 000 Victorians are on waiting lists for dental care and that these lists are growing by approximately 4 000 adults per month,

(ii) that the previous average 6-month wait for non-urgent treatment has blown out to 2 years, and

(iii) that this blow-out is the result of the Howard Government's axing of the successful Commonwealth Dental Health program for low income adults; and

(b) condemns the Howard Government for abandoning its core responsibility to provide basic health care to Australian citizens, particularly those on low incomes.

Public Housing

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

That the Senate—

(a) notes that:

(i) on 22 March 1997, five public housing properties in the inner city suburb of Richmond, Victoria, were put up for auction by the Victorian State Government,

(ii) there was such opposition to the sale of these properties by councillors, tenants unions, and members of the local community that the sale had to be conducted in private over the telephone,

(iii) the Victorian State Government claims that a significant number of public houses in the inner urban region are underutilised when, in fact, statistics show that many tenants live in over-crowded conditions, and

(iv) there are currently 7 842 people on the waiting list for housing in the inner urban region of Melbourne;

(b) recognises that this is strong evidence that State governments will not maintain, let alone increase, public housing to meet these needs;

(c) calls on the Victorian State Government to reinvest funds made from the sale of public housing assets in the inner city region into the development of more public housing in this area; and

(d) calls on the Commonwealth Government to reconsider its proposal to cease funding of housing construction and maintenance, in favour of rent assistance, in the light of this evidence.

COMMITTEES

Selection of Bills Committee

Report

Senator CALVERT (Tasmania)—I present the sixth report of 1997 of the Selection of Bills Committee and seek leave to have the report incorporated in *Hansard*.

Leave granted.

The report read as follows—

REPORT NO. 6 OF 1997

1. The Committee met on 25 March 1997.

2. The Committee resolved:

(a) That the provisions of the following bills be ***referred*** to committees:

Bill title	Stage at which referred	Legislation Committee	Reporting date
Constitutional Convention (Election) Bill 1997 (see Appendix 1 for a statement of reasons for referral)	immediately upon introduction in the House of Representatives	Legal and Constitutional	14 May 1997
Social Security Legislation Amendment (Work for the Dole) Bill 1997 (see Appendix 2 for a statement of reasons for referral)	immediately	Community Affairs	23 June 1997

(b) That the following bills ***not*** be referred to committees:

Broadcasting Services Legislation Amendment Bill 1997

Commonwealth Services Delivery Agency (Consequential Amendments) Bill 1997

Education Legislation Amendment Bill 1997

Radio Licence Fees Amendment Bill 1997

Social Security and Veterans' Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Bill 1997

Television Licence Fees Amendment Bill 1997.

The Committee recommends accordingly.

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

(deferred from meeting of 25 March 1997)

Wine Export Charge Bill 1997

Wine Export Charge (Consequential Amendments) Bill 1997.

(Paul Calvert)

Chair

26 March 1997

Senator CALVERT—I move:

That the report be adopted.

Senator NEWMAN (Tasmania—Minister for Social Security and Minister Assisting the Prime Minister for the Status of Women) (3.24 p.m.)—I move the following amendment to the motion:

"but, in respect of the Social Security Legislation Amendment (Work for the Dole) Bill 1997, the bill be referred to the Employment, Education and Training Legislation Committee for report on 14 May 1997".

A reporting date of 23 June would leave very little time for debate in the budget sittings because it is the Monday of the final week of the budget sittings, which, as senators would realise, will be a very difficult time for us all. A date prior to the budget would be far more suitable and it would still give the committee over six weeks to deliberate these very limited legislative changes.

This is an important government initiative. There is a great deal of community support for it, including from young people particularly from regional Australia who understand the need for it. All around Australia it has been very clear, as the opposition has recognised by its willingness to support the measures, that Australians want this put in place.

In the past we have dealt with much more complex legislation much more quickly than this. I draw senators' attention to the fact that the Social Security Legislation Amendment (Budget and Other Measures) Bill was referred to a committee on 10 October last year and it reported on 4 November, which is 25 days, and the Social Security Legislation Amendment (Further Budget and Other Measures) Bill was referred to a committee on 31 October and it reported on 18 November, which was 18 days.

Those senators who have been here for a long time would remember that in the past the process was that bills were referred to committees on a Wednesday, committee hearings were held on a Friday and they reported on the next sitting day. In this case, the first Friday is Good Friday, and that is obviously not appropriate or possible. Nevertheless, the next sitting day, 14 May, is the date I have proposed in my amendment. I do believe that allows adequate time for this legislation to be examined very thoroughly.

As I said, plenty of legislation in the past was dealt with in a very much faster manner than in recent times. A reference to a legislative committee does not need to take so long. I remind the Senate again that the people of Australia want this legislation. They want the measure put in place as expeditiously as possible. They want to see the policy implemented. They will be frustrated at a Senate which looks as though it is playing games when in fact it is prepared to pass the legislation but wants to stall it. Senators who do that will have to hold themselves accountable to the young people of Australia, who in overwhelming numbers say they want the opportunity to contribute to their country to help

maintain their confidence and their self-esteem in the difficult task of looking for work in the current environment.

No good can be served at all by a late reporting date, but there is much to gain for regional Australia and for the unemployed people who live in regional Australia by an earlier reporting date so the measure can go through the chamber as soon as possible. I urge senators not to play games with the lives of young Australians. Having a shorter reporting date will not truncate the debate. Between now and 14 May the committee has plenty of opportunity to report, but the proposal of 23 June is ridiculous. It does not need to take so long. I urge senators to consider that in deciding on my amendment.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.29 p.m.)—Well, here we have the government up to its usual tricks late in the session—

Senator Calvert interjecting—

Senator FAULKNER—The government whip interjects. The government whip chairs the Selection of Bills Committee. Is the government whip willing to stand up in the chamber and indicate that this was not a unanimous decision of the Selection of Bills Committee? Of course he is not, because he was rolled over too, because he is weak and incompetent also. A whip worth holding their hand out for their money would not get rolled over like this, Senator Calvert.

What we have here is a situation where the Minister for Social Security (Senator Newman) proposes an amendment to a unanimous report of the Selection of Bills Committee—chaired by one of her own, rolling over one of her own—to refer a social security bill, a bill that she is responsible for, to the Employment, Education and Training Legislation Committee. That is the situation. It is an admission from the minister's own mouth that she is not capable of handling the legislation committee stage of this particular bill. The minister is again exposed in terms of her absolute incompetence in her ministerial responsibilities.

This is on the same day that an amendment to the Commonwealth Services Delivery Agency Bill would have been carried if we had had an immediate recommittal of a vote, by leave, after Senator Harradine came into this chamber. There is no doubt about that; every senator in this chamber knows it. But, of course, the opposition was very reasonable and, I have to say, Senator Brown and Senator Woodley, who were also involved in that debate, were very reasonable, allowing Senator Harradine, by leave, to withdraw his request for a recommittal, even though an amendment would have been carried in this chamber this morning.

This is the same minister who sat there, saw that, and now comes into the chamber and suggests that a unanimous report of the Selection of Bills Committee should be rolled over so that her own bill goes to a different legislation committee with a different reporting date. This bill, her own bill, is about one of the most significant issues in Australian public life today. There is no argument about that, not even from the government.

In this circumstance the Selection of Bills Committee has proposed a reporting date of 23 June to allow an adequate time for the issue of the so-called work for the dole bill to be debated. But, no, that will be brought forward to 14 May and dealt with by a different committee—without any consultation, I might say, with that different committee. I understand, Minister, that in fact the secretary of that committee will be overseas at the time when the committee would be holding its hearings.

This is not a serious proposition. This is not adequate time to deal with this issue. It is not proper process. There was never an intention to deal with Selection of Bills Committee reports this way—without referring these matters to other parties in the chamber for proper debate. This amendment should be opposed. *(Time expired)*

Senator CALVERT (Tasmania) (3.34 p.m.)—I want to say a couple of words about this. I am not going to make excuses but I am just going to explain how the Selection of Bills Committee works. It has always worked in a very cooperative fashion with all parties. Sometimes matters come before us where we have not had all the i's dotted and the t's

crossed, and we have always worked in a very cooperative manner. But if Senator Faulkner wants to change the rules and wants to get down to tintacks, I can tell you that your deputy whip—not Senator Conroy—arrived here last night with this particular reference and put it on the table, and we were led to believe that it had been around to the appropriate ministers. It had not been. That is why this amendment was put today.

If you want to play that game, fine. Do you know how the Selection of Bills Committee works? If you want to refer a bill, you send it off to the appropriate minister to see if it is okay, and it gets ticked off. We work in a very agreeable fashion. If you want to change that, fine; go ahead.

Senator Faulkner—You are the one that's changing it.

Senator CALVERT—Because we were led to believe that it had been to the appropriate minister. It had not been to anybody. It was lobbed on the table last night at the last minute. There was no consultation with the PLO, and that is the way it normally works.

Senator ROBERT RAY (Victoria) (3.36 p.m.)—We have had an amazing admission from the Chairman of the Selection of Bills Committee that he was not doing his job, that he had not checked out things, that he had walked in here and moved a motion that he later supports an amendment to. Why didn't you reconvene the committee, Senator? Why didn't you put the minister's amendment to the committee and seek agreement? If you cannot chair these committees properly, if you are not doing your job and following through to make sure all the details are covered, give it away.

The second thing is that I was amazed to hear Senator Newman demand this timing and that this particular committee do it because the Australian people were demanding it. They were dead silent on this issue, other than one or two comments before the election—and the one or two comments before the election went to deny that they would ever embrace such a scheme. So do not come in here and say that the Australian people are demanding it.

I would have had more respect for Senator Newman if she had just come in and argued on the timing of this and related it properly back to the legislative program. People could have agreed on a date of somewhere between 14 May and 23 June. But of course the whole reason for this has nothing to do with dates. This is shifting it from one reference committee to another, because the responsible minister has to take something through a reference committee. And guess what happens if Senator Newman's amendment gets up today? This matter shuffles out of the social security area and into Senator Vanstone's area—someone who is more capable of shepherding it through; someone who actually understands, occasionally, concepts, arguments, et cetera; someone who does not sit there like a piece of blancmange waiting for the department secretary to rationalise and put forward every possible argument.

I simply suggest to Senator Calvert and everyone else that this place does work by commonsense. Pull this off the floor now, go back and reconvene your meeting and see whether you can come up with a decent compromise as to which committee and which date. Why slog it out here in a meaningless way? If it is such a good committee that works on such a good basis, surely Senator Calvert can convene a meeting in the next hour. People can sit around the table and they might come up with a compromise that is workable.

But at the moment all we have got is an ambush: a minister coming in and ambushing the chairman of the committee from her own side and saying, 'What he signed up for is no good.' All he can give is the Nuremberg defence or some other defence: 'I didn't really understand what was happening. I did not actually check the details. I've been conned.' I do not know which of those explanations is acceptable, but I can say this: wasting the Senate's time on this, when it is a 10-yard walk to a committee room to sort this issue out, seems stupid.

Senator MARGETTS (Western Australia) (3.39 p.m.)—If we have got to the stage where it is required of the Senate, whichever party you are in, to ask permission of the

minister to take action in committee, we have reached a very—

Opposition senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator MacGibbon)—Order! Senator Margetts has the call and no-one else.

Senator Newman—You misunderstand.

The ACTING DEPUTY PRESIDENT—Senator Newman!

Senator MARGETTS—If we have got to the point where there is a requirement, written or otherwise, for all members of this Senate to ask permission of the minister before they take action or choose timings in a committee, we have reached a very sad point. If we have done that, we have forgotten a very tiny but very important point: the separation of powers. Ministers and the executive do not have the power to direct committees on how they make their decisions. That is important, and it is very important to fight for that. That includes the timing of reports. That is very important in relation to such things as a committee's operation and the timing of reports.

Question put:

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

The Senate divided. [3.45 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	34
Noes	35
Majority	1

AYES

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

NOES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Collins, J. M. A.	Collins, R. L.
Conroy, S.	Cook, P. F. S.
Crowley, R. A.	Denman, K. J.
Evans, C. V. *	Faulkner, J. P.
Foreman, D. J.	Forshaw, M. G.
Gibbs, B.	Harradine, B.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
Neal, B. J.	O'Brien, K. W. K.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

PAIRS

McGauran, J. J. J.	Hogg, J.

*** denotes teller**

(Senator Cooney did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Childs did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

Original question resolved in the affirmative.

ORDER OF BUSINESS

Parliamentary Sitting Program

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

That general business notice of motion No. 525 standing in the name of Senator Margetts for today, relating to the parliamentary sitting program, be postponed till the next day of sitting.

Occupational Health in Workplace

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

That general business notice of motion No. 1 standing in the name of Senator Lundy for today, relating to the reference of matters to the Economics References Committee, be postponed till Thursday, 5 June 1997.

Genetically Engineered Food

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

That the Senate—

(a) notes that:

(i) the Government has continued to allow the importation of genetically-engineered soya beans before it has finalised a standard for genetically-engineered food,

(ii) there is still no Government body with the legal authority to enforce regulations for genetically-manipulated organisms or assess the impact of genetically-manipulated organisms on the environment and their safety as food, and

(iii) most consumers want genetically-engineered foods to be labelled; and

(b) calls on the Government to:

(i) ban all imports of genetically-engineered foods into Australia, including Monsanto's soya beans now being imported into Australia, until the Government has finalised its standard for genetically-engineered food,

(ii) give the Genetic Manipulation Advisory Committee, or a new body, the legal authority to regulate and control the use of genetically-manipulated organisms in Australia,

(iii) require Monsanto to separate its genetically-engineered soya beans from its unaltered soya beans to make sure that foods containing genetically-engineered material can be labelled,

(iv) test genetically-engineered foods for their safety as food,

(v) ensure that Monsanto's soya beans, which contain a gene resistant to Monsanto's herbicide, Roundup, and which can be sprayed with 200 times the usual amount of the herbicide, do not contain Roundup residues which would be harmful to the health of people,

(vi) give guarantees that genetically-engineered soya beans and other crops containing genes resistant to pests or herbicides will not pass their resistance on to weeds or insects, and

(vii) inform Australians why it would be worthwhile importing Ciba-Geigy's corn, which contains a gene resistant to a commonly used antibiotic.

PRIME MINISTER'S VISIT TO CHINA

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

That the Senate—

(a) notes that the Prime Minister (Mr Howard) will meet China's Premier Li Peng and President Jiang Zemin on his forthcoming overseas trip;

(b) requests the Prime Minister to raise with the Premier and President the matter of repression of human rights and environmental and cultural degradation in Tibet;

(c) notes that the Minister representing the Prime Minister (Senator Hill) has already undertaken to ascertain whether the Prime Minister will raise these matters during his visit; and

(d) requests Senator Hill to inform the Senate before it rises for Easter whether the Prime Minister will accede to this request.

COMMITTEES

Uranium Mining and Milling Committee

Extension of Time

Senator CHAPMAN (South Australia) (3.52 p.m.)—I ask that general business notice of motion No. 523, standing in my name, be taken as formal.

Senator MARGETTS (Western Australia) (3.52 p.m.)—by leave— I have concerns about this. I am unable to give formality, unless I am given some indication that I will be able to seek, and be granted, leave to amend the motion and to speak briefly at the time the motion is put.

Senator CHAPMAN (South Australia) (3.52 p.m.)—by leave—I want to indicate that I am willing to give Senator Margetts leave to move her amendment, but I will be opposing the amendment.

The ACTING DEPUTY PRESIDENT (Senator MacGibbon)—Is there any objection to Senator Chapman moving this as a formal motion? There is no objection.

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

That the time for the presentation of the report of the Select Committee on Uranium Mining and Milling be extended to 15 May 1997.

Senator MARGETTS (Western Australia) (3.53 p.m.)—by leave—I move:

Omit "15 May 1997", substitute "29 May 1997".

The reason for asking for an extension of time is that the report is due today and it is not

here. It is not unreasonable to suggest that the committee should have time to meet, once the report is available, and to discuss the report before it is printed. Also, if there is any need for minority or majority dissent or any kind of comment on the full report, there needs to be time for that to be completed.I do not think that is unreasonable.

What I am talking about is the ability of the committee to have reasonable time to meet and consider the report. I am not sure if there is any suggestion of a videoconferenced meeting ahead of time. I do not think we have any suggestions of that. I am just suggesting that it would be reasonable for the committee to have a chance to meet before the report is actually tabled.

Senator LEES (South Australia—Deputy Leader of the Australian Democrats) (3.54 p.m.)—by leave—The reason I will be supporting the amendment is that the committee discussed delaying the report and I was left with that understanding when I left the committee meeting. Obviously, today is the date on which it is due and we have not as yet seen even the final draft of the remaining chapters.

When I left the meeting, it was being discussed as to which weeks were the post-budget estimates weeks and therefore which weeks we could ask the printing department to be ready to print the document. I understood that it was agreed that in the first week we came back we would meet, look at what would hopefully be the final report, arrange for it to be printed over the period of the estimates, and present it to the Senate after that. I was amazed to receive the minutes of that meeting and find they were quite different from my understanding of what actually took place at the meeting. I am most disappointed that this has happened and therefore I will be very strongly supporting Senator Margetts with her amendment.

Senator CHAPMAN (South Australia) (3.55 p.m.)—by leave—As indicated, I oppose this amendment and support the original motion as moved. The reasons for that are that the committee did discuss the timing of a possible extension for the reporting date of the committee. There was in fact no specific—

Senator Ferguson—A second extension.

Senator CHAPMAN—As Senator Ferguson has indicated, this is the second extension that this committee has sought. There was no ultimate conclusion reached as far as those discussions were concerned, and the minutes that Senator Lees refers to are in fact an accurate reflection of the discussion that took place.

What occurred was that I indicated I would go back to the government and discuss the timing of their decisions on this very important issue. As Senator Margetts and Senator Lees would know, these are issues about which the government is to make decisions. The fact is that, if this committee wants its deliberations, its inquiries and its conclusions to have any influence on government decisions, obviously the report must be tabled prior to those decisions being made. Therefore, in those discussions with the relevant people in the government, it became clear that 15 May was an appropriate reporting date, and that is what I have moved.

Senator REYNOLDS (Queensland) (3.57 p.m.)—by leave—I have some concerns about the processes that have been involved in this matter but I do, to a certain extent, empathise with both sides in the debate. You will say this is a typical sitting-on-the-fence attitude. That is not my position. I am trying to find a way for this committee to get on with the job of reporting and presenting a balanced, fair account about this very important issue that many Australians have strong views on.

I do think, Senator Chapman, that it is unrealistic to imagine that we can report by the 15th, given that to date I have only three chapters and I imagine it will be at least a six-chapter report.

I further would like to put on the public record that it is not the job of chairs of committees to respond to what suits the government. This is a Senate report and, while I have lived in the real world, Senator Chapman, and understand that you will automatically consult with your government, it is important to place on the record that it is

not the job of the chair of any Senate committee to necessarily consult the government. This is for the Senate to determine and, while I am still considering my position on the actual amendment of the time, I do think the 15th is unrealistic.

Senator CHRIS EVANS (Western Australia) (3.58 p.m.)—I seek leave to make a brief statement to indicate how the opposition will be voting on this issue.

Leave granted.

The ACTING DEPUTY PRESIDENT (Senator MacGibbon)—I would remind the Senate that this is not a debate. The speakers have sought leave before each of them has spoken but it is not a debate. I would ask of the Senate that people only speak if they have a point of information.

Senator CHRIS EVANS—I wish to indicate that, on the basis of earlier advice and discussions with committee members, the Labor opposition will be supporting the government's original motion, taking on board the comments made by Senator Reynolds. This is on the basis that it is open to the committee—if it finds itself unable to report by the 15th—to seek an extension of time on the 14th or 15th. So, obviously, this matter can go back to the committee. There seems to be some disagreement on the committee which I do not have any detailed knowledge of. The opposition will be supporting the original motion and opposing the amendment on that basis.

Amendment (**Senator Margetts's**) negatived.

Original question resolved in the affirmative.

SENATE: PHOTOGRAPHS

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

That the Senate—

(a) notes the different regulations governing what images television and still photographers can access in the Senate; and

(b) removes restrictions on press photographers on when and what may be photographed in the Senate.

The ACTING DEPUTY PRESIDENT (Senator MacGibbon)—The question is that the motion be agreed to. Those of that opinion say aye, against say no. I think the ayes have it. Is a division required? Ring the bells.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT—I will put the question again. The question is that the motion moved by Senator Brown be agreed to.

Senator Brown—I rise on a point of order. You called quite rightly as I heard it for the—

Opposition senators interjecting—

Senator Brown—Of course I will defend my position here. The point of order is this: you have called that the ayes have it. There have been objections from those who say that the noes have it. So, unless there is some reason that is not obvious to me, your original call should stand.

The ACTING DEPUTY PRESIDENT—Senator Brown, resume your seat. It was apparent to me that there was some confusion in the Senate at my call, and it is at my discretion that the question is put again. I put the question that the motion moved by Senator Brown be agreed to. Those of that opinion say aye, against say no.

Question resolved in the negative.

SENATOR COLSTON

Senator ROBERT RAY (Victoria) (4.00 p.m.)—I ask that general business notice of motion No. 529, proposing the reconvening of the Finance and Public Administration Legislation Committee to consider further evidence in relation to Senator Colston's use of parliamentary entitlements, be taken as formal and that I be given leave to make a very short statement.

Leave granted.

Senator ROBERT RAY—I move:

That the Finance and Public Administration Legislation Committee be reconvened for the consideration of additional estimates, on 3 April 1997, to hear further evidence from the Department of the Senate and the Department of Administrative Services for the purpose of examining irregularities in the use of Senator Colston's parliamentary entitlements.

I think people in this chamber would know the reasons I have asked for this motion to go

through. However, subsequent to giving notice of it, I have now come to an understanding that President Reid will not be available on 3 April. I think she is on overseas duty, possibly for some weeks and, therefore, will not be available.

Senator Alston—Will you be here?

Senator ROBERT RAY—Yes, I will be, Senator. Naturally, I thought the Deputy President would rush into the chair and cover for his President. I thought he would enthusiastically come in while I ask questions about travel allowance and all the other obsessions in my life, but apparently he is not available on 3 April or 4 April. In fact, he is not available on any day to replace the President in these circumstances.

So, whilst I have moved the motion, I am indicating to you, Mr Acting Deputy President, we will not call a division on it. It will just be on the voices and I suggest that you, on this occasion, declare it for the noes. Because, even if my motion is carried, it is going to be a lonely vigil waiting at the table at estimates committees with no head of department or representative there to answer my thousands of questions. If you think that is good news on the other side, somewhere in early May, unfortunately, we will return to this issue.

Question resolved in the negative.

EAST GIPPSLAND FORESTS

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

That there be laid on the table, by the Minister for the Environment (Senator Hill), not later than immediately after motions to take note of answers to questions without notice on the next day of sitting:

(a) all notes of, or reports arising from, a meeting on or around 28 November 1996 between officials from the environment portfolio that discussed the presence of world heritage values in East Gippsland;

(b) ongoing notes, records, e-mail messages and diary entries from officials in the Department of Environment, Sport and Territories (DEST) on matters relating to world heritage and the Regional Forest Agreement (RFA) in East Gippsland;

(c) all ministerial briefs, drafts of briefs and DEST officials' comments arising from drafts on the East Gippsland RFA and World Heritage;

(d) all briefs to the Minister for the Environment from the Department of Prime Minister and Cabinet on the Commonwealth's negotiating position for the East Gippsland RFA; and

(e) all advice or information from DEST consultants on World Heritage in East Gippsland, and any records, notes, diary entries or e-mail messages from DEST officials relating to that advice or information.

COMMITTEES

Environment, Recreation, Communications and the Arts Committee

Reference

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

That the following matters be referred to the Environment, Recreation, Communications and the Arts References Committee for inquiry and report by the last sitting day in February 1998:

(a) the powers of the Commonwealth in environmental protection and ecologically-sustainable development in Australia, including an examination of case studies;

(b) the practicality, adequacy and application of existing Commonwealth mechanisms, including legislation, to promote the national interest in the protection of natural and cultural heritage and to achieve compliance with the principles of ecologically-sustainable development, with particular reference to:

(i) implementing Australia's obligations under international treaties and conventions, in particular, the Ramsar Convention and the World Heritage Convention,

(ii) the National Reserve System and the consistency of management regimes for reserves created under the National Reserve System program,

(iii) environmental impact assessment in or near areas of high conservation value in which the Commonwealth has an interest, and the consistency of guidelines for assessment processes between all levels of government,

(iv) export controls,

(v) the use of the corporations power,

(vi) the Endangered Species Protection Act,

(vii) the Inter-Governmental Agreement on the Environment, and

(viii) the National Strategy for Ecologically Sustainable Development; and

(c) the most appropriate balance of powers and responsibilities between Commonwealth, State and local levels of government and mechanisms for implementation of treaties, conventions and national strategies to ensure consistency between all levels of government in environmental protection.

Senator HARRADINE (Tasmania) (4.07 p.m.)—I seek leave to make a very, very brief comment on these matters.

Senator Robert Ray—I can remember when you objected to anyone having leave on these things.

Leave granted.

Senator HARRADINE—I do not recall ever denying leave. I must say that one of the problems about this whole procedure in the last few weeks—perhaps the last month or six weeks—is this business of having these matters put on the *Notice Paper* and then called formal. Everybody votes one way or the other. You have all made up your mind one way or the other. I have not heard the reasons for or against these particular matters. I voted in favour of Senator Lees's motion just a moment ago because I am usually in favour of returns to order in general terms—unless of course they are tainted with some political overtones. But I am not prepared to vote in favour of this particular matter. I will be voting against it.

Question resolved in the affirmative.

TRAVELLING ALLOWANCE: SENATORS

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

That there be laid on the table by the President of the Senate, no later than 7 pm on 26 March 1997, the two memoranda, dated 27 February 1997 and 4 March 1997, respectively, from the Clerk of the Senate to Mr Graham Semmens, General Manager, Corporate Policy and Government Relations, Department of Administrative Services.

Question put:

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

The Senate divided. [4.13 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	33
Noes	34
Majority	1

AYES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Faulkner, J. P.	Foreman, D. J. *
Forshaw, M. G.	Gibbs, B.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
Neal, B. J.	O'Brien, K. W. K.
Ray, R. F.	Reynolds, M.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H. *	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Harradine, B.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Hogg, J.	McGauran, J. J. J.
Evans, C. V.	Tambling, G. E. J.

*** denotes teller**

(Senator Schacht did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Sherry did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

TRAVELLING ALLOWANCE: SENATORS

Motion (by **Senator Robert Ray**) proposed:

That the Senate—

(a) notes that:

(i) the repayment by Senator Colston for fraudulently-claimed travelling allowance was $6 880,

(ii) these overpayments relate to claims dating from 30 June 1993 to 7 October 1996, and

(iii) the overpayment for the year 1993 constitutes $3 645, the overpayment for the year 1994 constitutes $1 965, the overpayment for the year 1995 constitutes $840 and the overpayment for the year 1996 constitutes $435;

(b) asserts that, if the current repayment stands, the above represent interest-free loans to Senator Colston of between 6 months and three and a half years; and

(c) calls for the outstanding interest on these monies, calculated at the relevant long-term bond rate, be repaid immediately by Senator Colston to the Receiver of Public Monies.

Question put:

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

The Senate divided. [4.22 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	31
Noes	33
Majority	2

AYES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Faulkner, J. P.
Foreman, D. J.*	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
McKiernan, J. P.	Murray, A.
O'Brien, K. W. K.	Ray, R. F.
Reynolds, M.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.*	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Harradine, B.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Macdonald, S.	MacGibbon, D. J.
Minchin, N. H.	Newman, J. M.
O'Chee, W. G.	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Schacht, C. C.	Tambling, G. E. J.
Evans, C. V.	McGauran, J. J. J.
Neal, B. J.	Macdonald, I.

*** denotes teller**

(Senator Murphy did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Denman did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

TRAVELLING ALLOWANCE: SENATORS

Senator CARR (Victoria) (4.25 p.m.)—I ask that motion No. 530 be taken as formal and that I be given leave to make a five-minute statement.

Leave granted.

Senator CARR—I move:

That there be laid on the table, no later than 7 pm on 26 March 1997, the Department of the Senate's travelling allowance claim forms of Senator Colston for claims made with respect to:

11 December 1993, 11 and 12 February 1994, 25 and 26 March 1994, 13, 14 and 15 May 1994, 5 August 1994, 19 August 1994, 3 September 1994, 23 September 1994, 11 and 12 November 1994, 13 December 1994, 4 February 1995, 24 and 25 March 1995, 12 May 1995, 2 and 3 December 1995, 30 September 1996, 7 October 1996, 30 June 1993, 31 July 1993, 1, 2 and 3 August 1993, 6, 7, 8 and 9 August 1993, 12 August 1993, 27 August 1993, 6 November 1993, 17 July 1993, 25 July 1993, 15 April 1994, 27 May 1994, 30 September 1995, 1 October 1995, 24 April 1996 and 8 June 1996.

This motion calls upon the Senate to provide copies of the TA forms that were the basis for Senator Colston's claims for payment of travel allowance. These forms indicate, I believe, that he personally has signed for those particular claims.

In Senator Colston's response to the two Senate reports that were tabled in this parliament two days ago, he made a number of points in defence of his claim that these matters were all questions of administrative error. They were bookkeeping errors, I believe he suggested. He said to the Senate by way of the tabled statements that he took information from his staff and on a regular basis filled in his TA forms. The response states:

> I would regularly ask my office manager at the time for the dates of my travelling to place on my claims and I would transcribe those dates onto the claim form. In doing so I assumed that the dates which were given to me by my office manager were correct.

He says:

> In the course of my investigation, I discovered that in numerous cases these dates were not correct.

He makes the proposition that he personally filled in these claims and, secondly, that on a regular basis he received information which he later found was incorrect. What we would like to see is in fact whether or not it was he who personally filled in those forms and, secondly, the dates on which those claims were actually made. I believe it would be a reasonable basis for this Senate to examine those claims based on the proximity of the actual travel that was claimed to the point at which he submitted those claims. If he filled in those claims at the end of a particular week in which that travel was undertaken it would be a reasonable proposition to put that he would have some recollection of what actual travel did occur.

I say that in the context of the other statements that have been made by Senator Colston in his defence. He says that he was a senator here who actually kept boarding passes to aircraft. He was a man who had records of such detail that he could ascertain which aircraft he travelled on by the boarding passes that he himself had collected. He also said in these documents that he would have to check the various other records that were made available to him—on the basis of DAS monthly reports and of course his own detailed knowledge of those particular events.

We know, and I think all senators here would appreciate, Senator Colston's particular expertise when it came to the issue of claims being made for travel allowance. It was understood, as he himself says in his defence and on the public record has stated, that he checked claims made with Senate staff.

Not only do we have his own expertise to measure what now appears to be his administrative errors but we also have the expertise available through the Senate staff, which he himself says he checked. This is a man who was meticulous in his record-keeping, he says, to the extent that he kept boarding passes of air travel. I also suggest to the Senate that this is a senator whose travel records have disappeared from the transport office. It is an extraordinary proposition. On 27 February it was reported by the AAP that his travel records disappeared from the transport office.

Senator Alston—Is that his fault?

Senator CARR—Senator Alston, you ask: is that his fault? It is on the public record that he was the only one who actually had access to them on that occasion. You asked the question, Senator Alston; you are entitled to the answer. Is it his fault? I put it to you, Senator, that he is the only one with access to those travel records. It is an extraordinary proposition that suddenly these records disappear when he is under such scrutiny.

We are making a fairly simple proposition. We are seeking that actual documents be provided by way of photocopies. I understand that in terms of proper legal proceedings, originals may well need to be kept. I also suggest that in relation to documents tabled here today, the Clerk's letter indicates that in terms of the Senate's requirement—*(Time expired)*

Question put:

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

The Senate divided. [4.35 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	33
Noes	34
Majority	1

AYES

Allison, L.	Bolkus, N.
Bourne, V.	Brown, B.
Carr, K.	Childs, B. K.
Collins, R. L.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Evans, C. V.	Faulkner, J. P.
Foreman, D. J.*	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

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

PAIRS

Bishop, M.	Macdonald, I.
Sherry, N.	McGauran, J. J. J.

*** denotes teller**

(Senator Jacinta Collins did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Neal did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the negative.

TRAVELLING ALLOWANCE: SENATORS

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.38 p.m.)—I move:

That the Senate calls on the Minister representing the Minister for Administrative Services (Senator Kemp) to make available to the Leader of the Government in the Senate (Senator Hill), the Leader of the Opposition in the Senate (Senator Faulkner) and the Leader of the Australian Democrats (Senator Kernot), no later than 8 pm on 26 March 1997, the two Department of Administrative Services briefs concerning Senator Colston's use of parliamentary entitlements, and that a condition of the release of these briefs to the aforementioned senators be the understanding that they not publicly disclose the contents of those briefs.

I seek leave to make a short statement.

Leave granted.

Senator FAULKNER—This motion goes to an answer which was provided by the Minister representing the Minister for Administrative Services (Senator Kemp) to a question without notice that was asked by Senator Robert Ray on 20 March. In that answer, Senator Kemp indicated on behalf of the Minister for Administrative Services, Mr Jull, that Mr Jull had not received two completed reports from the Department of Administrative Services on Senator Colston's use of his parliamentary entitlements. But he did say that what he had received were two departmental briefs—and I use the words of Senator Kemp—'which provide information concerning Senator Colston's use of entitlements without drawing any conclusions in relation to this information'.

Mr Jull communicated through Senator Kemp to the Senate that one of those briefs was given to Senator Colston on 10 March and a response was received on 24 March. The other was forwarded to Senator Colston on 10 March with a deadline—I think, quite an extraordinary deadline—for a response by Senator Colston of 18 April. I think, and the opposition believes, that that is extending an extraordinary courtesy to Senator Colston.

Senator Alston interjecting—

Senator Carr—Get that in the *Hansard*.

Senator FAULKNER—What was it?

Senator Carr—'He is a gentleman,' he said.

Senator FAULKNER—Senator Alston is entitled to his view. Senator Alston says that Senator Colston is a gentleman. Senator Alston also at some point will have to front up. So will Senator Hill and so will Mr Howard have to front up.

Senator Robert Ray—They are not hiding out the back just here.

Senator FAULKNER—Senator Colston is hiding out in the government lobby while these debates go on and while these divisions are held. He is hiding outside the doors, listening to the debate—

Senator Alston—You have got a couple of minutes.

Senator FAULKNER—No, I have not got a couple of minutes. He is listening to the debate, but is never willing to come inside the chamber and defend himself or answer the allegations.

Senator Bob Collins—Not once.

Senator FAULKNER—Not once has Senator Colston been willing to front up. What I was saying—and I stand by it—was that this is an extraordinary courtesy extended by Mr Jull to Senator Colston, a courtesy that goes way beyond the interests of natural justice to allow him six weeks to respond to a report. We object to this final report being delayed in this way.

We also say that the Senate has a vital interest in this matter. The matters that are subject to these two departmental briefs not only are of interest to all senators but also I think there is enormous public interest in them. Accordingly, we are seeking access to them. That is not unusual for the Senate. It is not unusual at all. But what is unusual is the extent to which this government has gone to cover up this and a number of other issues. We have seen cover-up after cover-up after cover-up. These divisions again today represent nothing less than a government that is not willing to allow the facts to become public. It is ashamed.

Senator Carr—What have they got to hide?

Senator FAULKNER—They have got an enormous amount to hide on this issue. It is not unreasonable for the opposition or the Senate to be making these demands of the government. We will continue to make them until we have access to the truth.

Madam President, I do acknowledge in your case that, for example, today your willingness to table the letter you sent to Mr Williams is a different approach to ministers in the government. I acknowledge it. I think it is proper. I thank you for it. It was interesting to see that in your letter to Mr Williams you have sought access from Mr Williams to the Chief General Counsel of the Commonwealth for advice on whether the matter should be referred to the Australian Federal Police. I appreciate the fact that you have tabled that letter.

I also appreciate the fact that you have tabled the clerk's advice to you. I draw the attention of honourable senators and others in the building who are interested to the advice that has been presented to you by the Clerk of the Senate on Senator Colston's travelling allowance. I acknowledge that that has been tabled as a result of a question I asked, but it is an appropriate course of action for you to undertake and it would be appropriate for other ministers in the government to exercise their responsibilities in a similar way. There has to be transparency in these sorts of issues.

In saying that there needs to be transparency, what this motion also does is acknowledge and accept that there is a need for confidentiality, given that these matters may be subject to an investigation and report of the Australian Federal Police. I have said publicly and in this chamber—and I will say it again today and stand by it—that we believe nothing less than a full investigation and report from the Australian Federal Police on this matter is acceptable. That is what is required. This motion is acknowledging the possible confidentiality requirements. What it says is that these briefs should be made available only to Senator Hill, Senator Kernot and me, and that the release of the briefs should be on the understanding that their contents—if they are such sensitive matters—should not be publicly disclosed.

Madam President, that is a very reasonable demand. Of course, Senator Alston shakes his head. But Senator Alston is the person—

Senator Carr—Has he seen them?

Senator FAULKNER—I do not know whether Senator Alston has seen them but I do know that it is Senator Alston who has a case to answer. It is Senator Alston that involved himself in a sleazy political deal with Senator Colston to deliver the deputy presidency in this chamber. At the end of the day, Senator Alston and Senator Hill—at least I believe Senator Hill is ashamed of what he did, Senator Alston, but both of you acted as agents for Mr Howard in this—it is the Liberal government and senior ministers in it who have a case to answer.

I also make the point that this is the same crew that rode into government on a white charger, talking about parliamentary standards, ministerial accountability, open government and raising the standards of this parliament—the same mob. And you, Senator Alston and Senator Hill, are two ministers responsible for one of the sleaziest, lowest, most contemptible buy-offs in Australian political history.

I say again that the demand that is made in this motion is reasonable. It takes account of privacy and confidentiality if needs be and, given the extent and the nature of the allegations that surround Senator Colston, it is one that I believe the Senate should endorse. We are sick and tired, in relation to this issue, of the sorts of cover-ups we have seen from the government. They were even attempted earlier today in relation to Senator Colston's membership. When others in the government knew apparently that he had resigned, they even kept attempting day after day to try to protect Senator Colston's position there.

You really need to get your act together on these sorts of issues. This is a cover-up that is not acceptable. We will continue to delve to get to the bottom of it, to ensure that these issues are on the table. I urge decent senators to think about these issues and the sorts of claims and speeches that were made time and again by members of the Liberal and National parties, when they were in opposition, about the need for this sort of information to be placed on the public record in the Senate. I urge senators to think about the level of political hypocrisy involved here and to support this motion.

Senator BROWN (Tasmania) (4.49 p.m.)—by leave—I note that the motion does not accommodate Senator Margetts and me in the proposed briefing. I will be supporting the motion notwithstanding. But I do want to make it clear that any consequent action that should come out of those briefings will not have my support without the necessary information being made available.

Question put:

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

The Senate divided. [4.55 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	33
Noes	34
Majority	1

AYES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Cooney, B.
Evans, C. V.	Faulkner, J. P.
Foreman, D. J. *	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
Neal, B. J.	O'Brien, K. W. K.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H. *	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Harradine, B.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.

Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Reid, M. E.
Short, J. R.	Tambling, G. E. J.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Crowley, R. A.	Patterson, K. C. L.
Denman, K. J.	McGauran, J. J. J.

*** denotes teller**

Question so resolved in the negative.

(Senator Cook did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Conroy did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

TRAVELLING ALLOWANCE: SENATORS

Senator CARR (Victoria) (4.57 p.m.)—I seek formality for general business notice of motion No. 533.

The PRESIDENT—Is there any objection to motion No. 533 being taken as a formal motion? There being no objection, leave is granted.

Senator CARR—I move:

That the Senate requests:

(a) the President of the Senate to authorise a further Senate inquiry into Senator Colston's travelling allowances, for the period 1 January 1990 to 1 July 1993;

(b) that the reconciliation of travelling allowance payments with Department of Administrative Services (DAS) air fare and car hire records, already tabled for the period June to December 1993, be completed and tabled for the period 1 January 1990 to 3 March 1997; and

(c) that the President, in conjunction with DAS, examine all Canberra travelling allowance claims by Senator Colston with a view to determining that Senator Colston was, in fact, in Canberra at the times specified in those claims.

The PRESIDENT—The question is that motion 533 moved by Senator Carr be agreed to. Those of that opinion say aye, to the contrary no. I think the noes have it.

Senator CARR—I wish to move, pursuant to contingent notice of motion in the name of the Leader of the Opposition in the Senate, Senator Faulkner, that so much of the standing orders be suspended that would prevent me from moving a motion relating to the conduct of the business of the Senate; namely, relating to the notion of precedence in relation to the general business notice of motion which the Senate just voted on.

The PRESIDENT—The motion has been put to the chamber and called in the negative. You can call for a division if you want to determine the outcome.

Senator CARR—In the preceding discussions on this matter we were advised that the government was not going to grant formality for this matter. However, the government consequently agreed to formality. It was also understood that we would be moving a motion to suspend standing orders arising from the government's action. The government has changed its position during the proceedings and, as a consequence, I am seeking to move a motion.

The PRESIDENT—Senator, I think the moment has passed in the sense that the motion was allowed as a formal motion and has been dealt with.

Senator CARR—I seek leave, Madam President, to move a motion in similar terms to motion No. 533 for debate of half an hour.

The PRESIDENT—Is leave granted? There being no objection, Senator Carr, you may proceed. But can I be clear as to what we are discussing? Are we abandoning the consent to formality and the decision on the motion and starting as if motion No. 533 were before the chamber ab initio with formality refused? All right. Senator Carr.

Senator CARR—The motion states:

That the Senate requests:

(a) the President of the Senate to authorise a further Senate inquiry into Senator Colston's travelling allowances, for the period 1 January 1990 to 1 July 1993;

(b) that the reconciliation of travelling allowance payments with Department of Administrative Services (DAS) air fare and car hire records, already tabled for the period June to December 1993, be completed and tabled for the period 1 January 1990 to 3 March 1997; and

(c) that the President, in conjunction with DAS, examine all Canberra travelling allowance claims by Senator Colston with a view to determining that Senator Colston was, in fact, in Canberra at the times specified in those claims.

The motion calls for a further inquiry into Senator Colston's actions in regard to certain claims made, and certain behaviour in the use of parliamentary entitlements. The issue is one of some urgency as far as this parliament is concerned, because I think it would now be conceded in all quarters that the concerns raised about the misuse of these travel entitlements present us with a stench that hangs right over this parliament. It was produced as a result of the demonstrable, repeated and habitual abuse of parliamentary entitlements and it is a stench which now hangs right over the frontbench of this government.

It is quite an extraordinary proposition to suggest that these issues can be simply passed away by the notion that there has been an administrative error. There are 43 occasions that have now been clearly demonstrated for which a travel allowance has been paid which should not have been paid. It has been acknowledged as such by the senator concerned. These are issues which are being presented in the press of this country—not by the opposition, but in editorial comment across this country—in a way which goes very much to the heart of the level of trust and honesty that can be expected by the Australian people of this government itself.

It is a view very aptly presented in the editorial in today's *Australian Financial Review* which says:

. . . the Coalition's Colston ploy now hangs as a bad smell over the Prime Minister and his team.

This is a smell that unfortunately reflects upon the entire parliament, because all this goes to the issue of probity and public accountability. It goes to questions of very basic issues of fraud which ought to be removed and ought to be resolved quickly and in a manner which ensures that this parliament's integrity is protected. It goes to the very basic issues of the way in which this government does business. It goes to the basic question of the manner in which majorities have actually been put together to ensure a legislative program.

The Clerk of the Senate has advised us by letter of the very basic issue of the fraud control plan of this chamber. This plan, which we have been made only too well aware of by way of the letter from the Clerk dated 25 March:

. . . imposes upon the Clerk of the Senate the responsibility to "promptly examine instances of suspected fraud to determine whether a basis exists for further action", and "on the basis of the information supplied, determine whether the alleged fraud:

. is without foundation;

. should be the subject of advice from the AFP/DPP on whether an offence has been committed;

. is a matter for departmental action, ie, disciplinary, civil or administrative proceedings to recover any monies lost to the Commonwealth;

. is a serious matter for prompt referral to the Australian Federal Police for investigation."

The plan covers all matters concerned with the responsibility of this department. This motion is squarely aimed at that responsibility. It is incumbent upon this government to come clean on these issues because what is becoming increasingly obvious is that this government is facing a very sobering experience—as Senator Colston said—of having been caught. But it is not Senator Colston that is suffering from this sobering experience. It is the government that is suffering the hangover that results from this shoddy action. We have seen in recent times this parliament voting to suppress reports, to hide and delay investigations and to put things off to the Attorney-General (Mr Williams)—I have been quite concerned about this—in an attempt to bury this issue.

We have seen the manner in which there has now arisen the extent to which not only Senator Colston but also Senator Hill, Senator Alston and Mr Howard are in the gun. There is also the extent to which Senator Hill, Senator Alston and Mr Howard are owned by Senator Colston, just as he is owned by them. From the complicated web that is now emerging, it is apparent that this government is increasingly becoming enmeshed in this scandal. It is incumbent upon you, members

of the government, to come clean and to fulfil your obligation to the Australian people and this parliament and make sure that this scandal is exposed and that these matters are clearly put right. You have got an obligation, Senator Hill, to come clean on these matters. You cannot run away from them any longer. As the *Courier-Mail* points out today, this week—*(Time expired)*

Senator HILL (South Australia—Minister for the Environment) (5.06 p.m.)—Madam Deputy President, this is a fairly familiar track that we are passing along today. We seem to have heard this debate once or twice before in the last week or so. I must say that I presumed that if it was to be brought on a third time there would be something new put before the chamber.

But there does not seem to be anything new at all. It is a rehash of what is now very familiar, plus an attempt by the Labor Party to cast the net even wider. One could be forgiven for believing that Senator Colston, during these years of alleged misbehaviour, was under the authority of somebody or some party other than the Australian Labor Party. This is the most extraordinary aspect of this matter: that the Labor Party, in its efforts to persecute a former colleague because he left its midst, intends to explore his behaviour in the years in which he was one of its own and at a time over which it had jurisdiction for the responsibilities that he is now alleged to have breached.

Yet during all these years—and today Senator Carr seeks to extend it back to 1990—Labor were in government. Labor had the ministry of Administrative Services and a Labor president sat in the chair. For all these years of Labor control there was not a sound, there was not a whisper, of alleged misconduct. But as soon as Senator Colston leaves their midst and as soon as Labor acknowledge that they are on a path of punishment, it becomes the principal issue on the Labor Party table.

It is not surprising that the Australian people seem to be, through the opinion polls, demonstrating a disappointment with the Australian Labor Party, which have not learnt the lessons of the last election—that, as a future alternative government, it is time they concentrated on the big picture and on the tasks of rebuilding their credibility, of building policies for forthcoming elections and of presenting themselves as an alternative government. But we hear nothing of that. The principal interest of the Australian Labor Party, as demonstrated in the Senate over the last few weeks, has simply been payback—payback against Senator Colston and payback by alleging misconduct. If they had any interest at all in these matters, they would have taken action years ago.

So what is the difference now? There are two differences. Firstly, he left the Labor Party and he has to be punished for that. Secondly, they are now in opposition and it does not matter. It is good sport, apparently; you can amuse yourself with the politics of payback without believing it has any consequence.

Senator Bob Collins—It matters.

Senator HILL—I actually think it matters, too, Senator Collins. I think it probably mattered from 1990. If you believed that there had been wrongdoing from 1990, why did you do nothing in 1990, 1991, 1992, 1993, 1994—

Senator Bob Collins—Are you addressing that to me personally?

Senator HILL—No; you and your colleagues. You were a minister during that time. In all the Labor speeches we have had in this place on this issue, no-one has sought to explain why the Labor Party powerbrokers did nothing. What is the distinction? The only distinction now is that you are out of office and he has left your party.

I make no apology for having stood by the presumptions of innocence. I think that is excellent. I make no apologies for standing for the principles of natural justice. I make no apology for saying that each and all in this place are deserving of a fair go. It seems to me that this matter has been handled properly. I gather Senator Faulkner congratulated President Reid yesterday for referring the matter to the A-G. Documents have been tabled and matters have been referred to the A-G. Proper process is taking place and it should continue. *(Time expired)*

Senator ROBERT RAY (Victoria) (5.11 p.m.)—Let us put the lie to the Hill line right now. What is under discussion is travel allowance. The first time the full travel allowance figures were tabled was on 11 September 1996. DAS did not have a purview into them at all; neither, I believe, did the presiding officers of the past.

Senator Hill—Why weren't you asking questions in the estimates years ago?

Senator ROBERT RAY—Because I had no idea Senator Colston was making fraudulent claims, and I am telling the truth. If you go to the estimates committee transcript, Senator Hill, you will see that I asked one question about one day of travel allowance; so I did not know. From that one question, apparently, we had the knock-on effect of all those discoveries that I had no idea about. The Senate department went off and investigated one claim that I made by way of a vague allegation. What they came back with were two reports and a confession from Senator Colston to a third lot of activity.

Let us see how they got that particular information. They crosschecked the Canberra claims going back 3½ years and they came up with 23 different nights that were not accounted for. They checked a very narrow range of interstate claims—only six months—and they found 12 nights, I think. When DAS caught Senator Colston misusing his Commonwealth car in Brisbane and told him the dates, he himself crosschecked those with his travel allowance claims down here and fessed up to another eight. What we have not had checked are the three years prior to July 1993 or all of the interstate claims—other than six months—from 1990 to 1997. Why should Senator Hill want to cover up that investigation?

Senator Hill—I'm not.

Senator ROBERT RAY—Yes, you are covering it up by opposing this. All you have to do is vote for this and another fair investigation will proceed into all these untapped areas. You are categorically covering up when you defeat this motion. What are you trying to hide with regard to these areas that have never been looked at? You cannot say, either from your explanation or from mine, that there has not been a pattern of behaviour that would not lead you to suggest that there may have been other errors. You say that it is sloppy bookkeeping. You say that it is a staff member—Mrs Christine Smith. Have you ever met her, Senator?

Senator Hill—Never; but I accepted the explanation.

Senator ROBERT RAY—You do not know what the explanation is. It could be, as far as Senator Collins alleges, systematic fraud. But you do not want to know. You want to see nothing, hear nothing, look at nothing. You do not want the Senate department to check those areas they have not previously checked, because you are afraid of what they will find. You are afraid that the 43 nights may escalate into 60, 70, 80 or 90 nights incorrectly claimed. That is what you are afraid of.

This motion simply asks the Senate department to check these other areas back to 1990. Clearly, if they find a pattern of fraud there, then they are going to have to go back beyond that. But do not come in here and say that we all knew; we did not. Full figures were not published until 11 September 1996. So they could not be checked. I am sure that they were not made available on a daily, weekly, monthly or yearly basis to the then President of the Senate.

The absolute stinginess of this! When you add up the amounts of money for the nights that Senator Colston has misclaimed, you will find that he is even $5 short on those figures; he cannot even repay the full amount. He has to jib the Collector of Public Moneys by another $5. Of course, as we pointed out earlier today, the Senate will not demand that he pay interest on what were effectively interest-free loans for 3½ years and less. If you do not pay the amount, the old tax department will soon put an interest rate on you. So will Social Security. But not this particular chamber.

This motion should go through. It should not have to be passed as a bipartisan resolution, because it simply asks the Senate department to go and check more extensively than it has in the past.

Given the fact that that department has found 43 errors in Senator Colston's favour and has yet to discover one error against him, one would presume that it should look at these other fields. If it does not turn anything up, there is no harm done to the Senate or Senator Colston. If it does, it would be interesting to know whether the staff member who has taken the fall was responsible for claims prior to 1993 going wrong, because it is my understanding that she was not working as office manager for three of those years—and that would be very revealing indeed.

Senator ALSTON (Victoria—Minister for Communications and the Arts) (5.16 p.m.)—I think what is truly extraordinary is that the opposition has had several weeks to take the view that this inquiry should have extended back further than it has.

Senator Robert Ray—We got the report yesterday. You delayed the report.

Senator ALSTON—You did not know what was in it; is that what you are saying?

Senator Robert Ray—Of course.

Senator ALSTON—So why did you not ask for them to go back then?

Senator Robert Ray—Because we didn't know how far back they were going.

Senator ALSTON—Why go back further now? Because you have a deliberate strategy of wanting to string it out.

Senator Robert Ray—In for a quick clean kill.

Senator ALSTON—I heard you say that Senator Collins said there could be fraud. You, of course, do not have any such qualms. You just say 'systematic fraud'. So you do not know Mrs Smith. Presumably, what follows from that is that you are prepared to say that I know her, and therefore she is guilty—an absolutely extraordinary proposition.

It is no surprise that a former Minister for Administrative Services has just left the chamber. Senator Ray is a person who has been very much aware of the history of this matter. If he takes the view that Senator Colston has behaved badly in the past, he has had every opportunity to do something about it. But, of course, no. What we have is the most monumental set of double standards that one could ever imagine. You are not interested in knowing about or examining travel allowance, charter claims or anything else—not a word of it. I give Senator Ray marks for coming clean, as he did, in saying that this is purely about revenge.

Senator Bob Collins—Rubbish.

Senator ALSTON—He said it on the *7.30 Report*.

Senator Bob Collins—I am talking about me, Senator Alston.

Senator ALSTON—I am sorry; I am speaking of Senator Ray.

Senator Bob Collins—Thank you.

Senator ALSTON—You might have higher motivations, but Senator Ray makes no pretence.

Senator Bob Collins—No.

Senator ALSTON—Yours are the same as his, are they? Or are yours higher or are they equal? Whatever it is, the fact is that Senator Ray has made it perfectly clear what motivates him. He is not driven by any concerns about integrity or wanting to get to the bottom of some irregularities. All he is interested in is revenge—and the public understand that. They know precisely what you are on about.

To say because there is series of claims over a period of years that that demonstrates a pattern is a complete failure in logic. If you say that it results from a bookkeeping system put in place by Mrs Smith some years ago, you can just as easily argue that it is due to one mistake; that it is due to a mistake in administrative procedures, which then flows on to a series of irregularities.

There is no basis, on the face of it, to argue that it is systematic fraud. It is simply that you want it to be systematic fraud. You want to skip over all the niceties. You do not want to worry about natural justice. You simply want to make these allegations. 'I didn't know he was making fraudulent claims,' says Senator Ray. There is no pretence of saying that somehow these are matters that need to be further investigated. You know that you have evidence contradicting any evidence of

fraud, and you do not have anything to contradict that. Yet you make these blithe assertions.

Senator Bob Collins—Let the chips fall where they may.

Senator ALSTON—That is fine. If you have higher motivations than Senator Ray, that is commendable. But Senator Ray makes no such pretence. He has told the Australian public what he is on about. He is not on about integrity. He is not on about cleaning up the system. He is not interested in making sure whether Senator Colston has behaved badly on this occasion—because, presumably, he has the same view about Senator Colston that he has had for very many years.

What Senator Ray is on about is making sure that anyone else who might be tempted to leave the Labor Party understands the penalties attached. You cannot even dissociate yourself from the Labor Party in this place. If you vote against it, the federal executive gives you a three-month suspension. He wants to make it absolutely crystal clear that no-one else should ever contemplate leaving the Labor Party, because they will be hounded; they will be not only hounded but also vilified, traduced. They will have everything said against them that can possibly be said under parliamentary privilege. That is the motivation. The public understands that. So let us get on with it. We know where we are going—and we are not going anywhere.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.21 p.m.)—We have just had the grand defence from those who have said that Senator Colston is guilty of nothing more or less than sloppy bookkeeping—the grand defence from those who have said that this is very embarrassing. I find it extraordinary that such a limp, feeble and weak proposition could be put forward by Senator Alston and Senator Hill.

But what this motion is about is filling the gaps. We can quite rightly ask, on behalf of the Australian taxpayer, what Senator Colston was doing in relation to his taxpayer funded trips and travelling allowance prior to 1993. Perhaps the government presumes that, because Senator Colston has not forwarded further moneys in repayment to the Department of Administrative Services, no other 'mistakes' or 'infringements'—as they are described—whether they be accidental or otherwise, occurred. Perhaps Senator Alston and Senator Hill, the deal makers, believe that.

But I want to say that the opposition is not satisfied. This is a man we are talking about who has had enough time on his hands to identify the cheapest sandwich available in Parliament House, and we are expected to believe that this same individual has not had enough time over the last four years to check his own bookkeeping. Come on. Who do you think you are kidding? I will tell you who you are not kidding: you are not kidding us and you are not kidding the Australian people.

What we are saying here is that we call on the Senate President to authorise an investigation into Senator Colston's travelling allowances from 1 January 1990 to July 1993 to make sure the question of Senator Colston's records is properly covered. We have requested that all travel allowance payments—DAS airfare and car hire records—be completed back to 1 January 1990. Only records between June 1993 and December 1993 have been reconciled and are currently available.

This goes to the heart of the narrow scope of the second Senate report. It looked at six months worth of claims other than Canberra and it recouped from Senator Colston $3,065. Why is the government not willing to ask or direct the Department of the Senate to look at all the other trips between 1990 and 1997 and reconcile them? The principle that the government works on, Senator Hill and Senator Alston, is this: out of sight, out of mind.

It is logical, in our view, that an examination must be made by the Department of the Senate and the Department of Administrative Services of all travel allowance records to determine whether Senator Colston was in Canberra at the time of those claims. We argue, and I think we can argue very forcefully on this, that nothing less will be acceptable to the Australian public. If their money had been used wrongly, whether by misfortune, administrative error in Senator Colston's office or otherwise, it should be paid back,

and we say paid back with interest. We believe that this has been, as I have said before in this place, deliberate and systematic abuse of Senator Colston's travelling allowance entitlements. We believe that if further infringements are found along with the ones we already know about then they certainly should be placed in the hands of the Australian Federal Police. That is the only acceptable course of action. *(Time expired)*

Senator FERGUSON (South Australia) (5.26 p.m.)—I was not sure whether the time had expired. That is why I did not rise as quickly as I should have. Besides, if I hadn't, I would have had to listen to another tirade from Senator Collins. I would like to make some contribution—

Senator Bob Collins—I wanted to answer Senator Alston's challenge to take the AFP back to 1983.

Senator FERGUSON—I am quite sure you wanted to do that, Senator Collins—

The ACTING DEPUTY PRESIDENT—Order! Perhaps, Senator Ferguson, you might like to direct your remarks through the chair. Senator Collins might like to have some order.

Senator FERGUSON—Thank you, Madam Acting Deputy President, but Senator Collins provokes me and there is a temptation to directly respond to him. We have now reached the situation where day after day we have heard the same old story in the Senate from Senator Ray, Senator Carr and Senator Faulkner, and on each of those days they insist to us that they are trying to introduce some new material to the Senate for it to discuss, and as yet we have not seen that new material. We have got to the situation today where they have asked yet again that the government agree to provide some other material, when in fact the material they asked for in the first place they have received. They then insist, every time they receive some material, that they want some more. It is nothing more and nothing less than systematic revenge on Senator Colston—

Senator Bob Collins—Oh no, it's not.

Senator FERGUSON—Senator Ray, in media outlets—on television and on radio and through the newspapers—has gone on record as saying it is a matter of revenge. Senator Ray has said that.

Senator Carr—Thirty-eight claims.

Senator FERGUSON—Let me tell you I am only repeating what Senator Ray himself has said, that it is a matter of revenge and that he will not rest until he has got Senator Colston. So every method he can possibly see he will use to try to make sure that he gets his revenge on Senator Colston. This is the way the Labor Party works in relation to somebody who was one of their people for a long period of time and then chooses to leave the party and sit as an Independent. This is their way of revenge. So they have used—

Senator Conroy—Leave the party! He walked in. You offered him a job.

The ACTING DEPUTY PRESIDENT (Senator West)—Order! Senator Conroy.

Senator FERGUSON—Thank you, Madam Acting Deputy President. I am used to Senator Conroy interjecting like this, so it is not causing a lot of problems. All I said is that this is just a matter of revenge; this is not for any other reason than revenge. So we get to the situation where day after day we come in here and we get detailed notices of motion which go on and on forever asking for information to be supplied. That information has been supplied—

Senator Carr—Are you trying to cover it up?

Senator FERGUSON—Senator Carr, I am not trying to cover anything up. All I am saying to you is that the motives behind your requests were highlighted by Senator Ray when he said the motive is revenge. He said that they will hound Senator Colston and they will hound him until they get rid of him. He said just before he left the chamber today—

Senator Bob Collins—It's not my motive.

Senator FERGUSON—Through you, Madam Acting Deputy President, I never at any stage suggested that that was Senator Collins's motive. I know that Senator Collins is a man of very high motives. Not once did

I say that Senator Collins's motive was one of revenge. I am saying that Senator Ray has said on the record that his is one of revenge and that he will make sure that anybody who rats on the Labor Party gets their just reward—or what he thinks is their just reward.

Senator Ray can come in here day after day and say exactly the same thing. Until he achieves his final result of hounding Senator Colston out of this chamber, he will not be satisfied. I do not question your motives, Senator Collins, because you have shown in the past that revenge is not one of your motives. I never once suggested that your position was one of revenge. I would not say that, but Senator Ray has said that, as has Senator Carr in the speeches that he has made here today. He has made it quite obvious that he is determined to take this revenge on one of his former colleagues. He has made it quite clear from what he has said in the chamber that that is his motive. Anything that has been said here today only proves that. *(Time expired)*

Question put:

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

The Senate divided. [5.35 p.m.]

(The Acting Deputy President—Senator S.M. West)

Ayes	31
Noes	32
Majority	1

AYES

Allison, L.	Bishop, M.
Bourne, V.	Brown, B.
Carr, K.	Childs, B. K.
Collins, R. L.	Conroy, S. *
Cook, P. F. S.	Cooney, B.
Denman, K. J.	Evans, C. V.
Faulkner, J. P.	Forshaw, M. G.
Hogg, J.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	Neal, B. J.
O'Brien, K. W. K.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Harradine, B.	Heffernan, W. *
Herron, J.	Hill, R. M.
Knowles, S. C.	Macdonald, S.
MacGibbon, D. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Reid, M. E.
Short, J. R.	Tambling, G. E. J.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Collins, J. M. A.	Kemp, R.
Foreman, D. J.	Macdonald, I.
Gibbs, B.	Patterson, K. C. L.
Sherry, N.	McGauran, J. J. J.

*** denotes teller**

Question so resolved in the negative.

(Senator Crowley did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bolkus did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

PERSONAL EXPLANATIONS

Senator CARR (Victoria) (5.37 p.m.)—I wish to make a brief personal explanation as I claim to have been misrepresented.

The ACTING DEPUTY PRESIDENT (Senator West)—The honourable senator may proceed.

Senator CARR—Under standing order 191, I claim to have been misrepresented. My speeches on the last matter have been misrepresented. Senator Alan Ferguson suggested in his speech that my attitudes on Senator Colston were entirely motivated by revenge. I would like to make it clear to the Senate—

Senator Bob Collins—Is it No. 191?

Senator CARR—No. 191 is the relevant standing order, Senator Collins. I would like to place on the record that that statement is entirely incorrect. As far as I am concerned—and I am sure many members of the opposition would concur with this—we know that it

is up to only us, the Labor Party, to pursue this issue to its final conclusion. We know that the stench will not go away until there is a full and proper investigation into these matters. The integrity, the probity and responsibility in government will not be restored—

Senator Hill—Madam Acting Deputy President, I rise on a point of order. This has now become a re-run of his speech. He has made the point that he has other motives. He should leave it at that and sit down.

The ACTING DEPUTY PRESIDENT—It is appropriate, Senator Carr, for you to state where you have been misrepresented and correct it. You cannot debate the issue again. You are getting very close to debating the issue again.

Senator Alston—Madam Acting Deputy President, I rise on a point of order. If Senator Carr claims that he has been misrepresented in so far as his motivation has been misrepresented, he ought to tell us what his motivation is if he wants to properly correct the record.

The ACTING DEPUTY PRESIDENT—There is no point of order, Senator Alston.

Senator CARR—My speech went to the issue of probity and responsibility in government.

Senator Margetts—Madam Acting Deputy President, I rise on a point of order. I want to check on the timing. Do you not wait until the end of an item of business before a person can stand up—

The ACTING DEPUTY PRESIDENT—This debate is about the motion No. 533. It relates to that particular motion.

Senator Margetts—I was checking on the order, because there are motions that are still to be made formal.

The ACTING DEPUTY PRESIDENT—We will deal with Senator Carr's issue first.

Senator CARR—I will be very brief. The issue that I have raised is the question of whether or not this government has, in fact, abandoned any pretext to what is right or wrong. Fundamentally, this is an issue about accountability and the use of public funds in this parliament.

Senator BOB COLLINS (Northern Territory) (5.41 p.m.)—Madam Acting Deputy President, I wish to make a personal explanation.

The ACTING DEPUTY PRESIDENT (Senator West)—Senator Collins, do you claim to have been misrepresented?

Senator BOB COLLINS—Yes, I claim to have been misrepresented—indeed, by the same minister, which he acknowledged across the chamber. I was also accused of being motivated by nothing—

Senator Ferguson—Not by me.

Senator BOB COLLINS—No, by Senator Alston, I just said—

Senator Carr—'Minister'.

Senator BOB COLLINS—'Minister,' I said. That accusation is absolutely incorrect, and I want to correct the record. I am not motivated in any sense by revenge in respect of anything I have said about Senator Colston. I wish to make it clear, because I was accused of the contrary. I personally did not know about these claims. I found out about them only when they were published. Indeed, I think there is an unassailable case for the publication of these records for both houses of parliament—not just the Senate, both the Senate and the House of Representatives—and the sooner the better.

The reason that I was motivated was not by revenge, as Senator Alston suggested, I was motivated by simply this: I had the privilege of chairing the Standing Committee on Regulations and Ordinances, between 1987 and 1990, for over two years. I am intimately familiar with the workload of the chair of that committee. I would hope that the staff of the committee, and that was principally Peter O'Keeffe, would be prepared to attest to the fact—if they were questioned by the Federal Police, and I think they should be, in terms of the workload required of the chair—that I was as competent a chair of that committee as any other.

The committee has not changed its practices in 10 years. The committee still meets at 8.30 on Thursday mornings for half an hour in each sitting fortnight. The workload has not increased, and that is what—

The ACTING DEPUTY PRESIDENT—Senator—

Senator BOB COLLINS—I am concluding now, Madam Acting Deputy President. That is what motivates me, because I know that the 10 or 11 nights Senator Colston claimed in the first year, the 22 in the second year—when he got a taste for it—and the 32 in the third year are fraudulent claims.

The ACTING DEPUTY PRESIDENT—Senator Collins, you are required—

Senator BOB COLLINS—If nothing else happens, perhaps the average of the claims of the four previous chairs could be added together and averaged out. Senator Colston could at least repay the excess.

The ACTING DEPUTY PRESIDENT—Senator Collins, you are required to state where you have been misrepresented. You have strayed very wide past that mark.

Senator BOB COLLINS—I have finished.

COMMITTEES

Appropriations and Staffing Committee

Reference

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

That—

(1) The Standing Committee on Appropriations and Staffing, in its examination of the report *Managing the Parliament: The way ahead*, conduct a public inquiry into the report, including:

(a) appropriate advertising of the inquiry;

(b) calling for submissions;

(c) the holding of public hearings; and

(d) the presentation of a comprehensive report by 26 June 1997.

(2) The committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the inquiry, with the approval of the President of the Senate.

Question put:

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

The Senate divided. [5.48 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	34
Noes	32
Majority	2

AYES

Allison, L.	Bishop, M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Colston, M. A.
Conroy, S. *	Cook, P. F. S.
Cooney, B.	Denman, K. J.
Evans, C. V.	Foreman, D. J.
Forshaw, M. G.	Harradine, B.
Hogg, J.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	Neal, B. J.
O'Brien, K. W. K.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

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

PAIRS

Crowley, R. A.	Macdonald, I.
Ray, R. F.	Kemp, R.
Reynolds, M.	McGauran, J. J. J.

*** denotes teller**

Question so resolved in the affirmative.

(Senator Faulkner did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Gibbs did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

DOCUMENTS

Auditor-General's Reports

Report No. 29 of 1996-97

The ACTING DEPUTY PRESIDENT (Senator West)—In accordance with the provisions of the Audit Act 1901, on behalf of the President I present the following report of the Auditor-General:

Report No. 29 of 1996-97—Preliminary Study—Management of Corporate Sponsorship.

COMMITTEES

Economics Legislation Committee

Report

Senator FERGUSON (South Australia)—I present the report of the Economics Legislation Committee inquiry entitled *Inquiry into public equity in Telstra Corporation Ltd*, together with the submissions and transcript of evidence.

Ordered that the report be printed.

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

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Publications Committee

Report

Senator HEFFERNAN (New South Wales)—At the request of Senator Sandy Macdonald, I present the eighth report of the Standing Committee on Publications.

Ordered that the report be adopted.

Scrutiny of Bills Committee

Report

Senator CONROY (Victoria)—At the request of Senator Cooney, I present the fifth report of 1997 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table *Scrutiny of Bills Alert Digest No. 5 of 1997* dated 26 March 1997.

Ordered that the report be printed.

Legal and Constitutional References Committee

Report

Senator McKIERNAN (Western Australia)—I present the first report of the Legal and Constitutional References Committee entitled, *Inquiry into the Australian legal aid system*, together with submissions received by the committee and transcript of evidence.

Ordered that the report be printed.

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

Leave granted.

Senator McKIERNAN—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in *Hansard* and continue my remarks later.

Leave granted.

The statement read as follows—

Inquiry into the Australian Legal Aid System

I have pleasure in presenting this first report of the Senate Legal and Constitutional References Committee Inquiry into the Australian Legal Aid System.

The inquiry into the Legal Aid System in Australia was referred to the Legal and Constitutional References Committee on 17 September 1996.

The terms of reference for the inquiry are extensive and cover many issues of great importance to the provision of legal aid in Australia.

The committee has received 157 written submissions, many of which are very comprehensive, and has held eight public hearings around Australia.

At these hearings the committee has received evidence from 134 witnesses from a diverse and impressive range of backgrounds.

As the committee reviewed the evidence and submissions, it became evident that there is a great deal of concern and confusion about the uncertain future of legal aid arrangements in Australia.

As a result, our inquiry into legal aid has found that all stakeholders are currently preoccupied with the consequences of change in the legal aid system.

The committee set out to examine the terms of reference systematically but found itself caught up in a storm of anxiety, the eye of which is the Commonwealth Government's decision:

- to reduce the global budget for legal aid,
- to terminate legal aid agreements with the states and territories, and
- to renegotiate funding according to different and more limited parameters.

Prior to coming to Government, the Coalition had promised to support legal aid at pre-election levels. The committee has heard many witnesses describe their disappointment with the Government's back-down since its election in March 1996.

The committee has received excellently researched and compelling evidence from many distinguished witnesses including State and Territory Attorneys-General, the Law Council of Australia and the State and Territory Law Societies and Bar Associations, members of the Judiciary and academics.

The committee has heard that Australia has built a national legal aid system which is recognised internationally as an excellent model.

This model, referred to as a "mixed model", brings together the energy and goodwill of the private profession, the legal aid commissions, and the community sector working together cooperatively.

Although there are separate legal aid commissions in each of the eight (8) states and territories, plus about one hundred and fifty (150) community legal centres, these agencies, and the profession, work together to contribute to a truly cooperative national system.

The model provides a mix of services ranging from representation in court where this is necessary, but it also includes providing minor legal assistance, advice and legal education so that many people are able to help themselves solve their legal problems before these get out of hand.

Australia's legal aid system, with this level of cooperation, and the extent of services provided, is the envy of many countries. The parties who contribute to the current Australian legal aid system are justifiably proud of it. They are anxious to preserve it and to build on it.

The committee heard, however, that the current legal aid system has one major and fundamental downfall. That is, that it is "mean", because it does not have sufficient resources to extend it to many people who need it or would benefit from it. Indeed, many witnesses told the committee that the system is far from being a "Rolls Royce" system.

The committee also heard evidence from experienced practitioners and from community organisations representing the perspectives of a range of constituents with special needs. Some witnesses told of the degree of vulnerability of their clients in an already over-stretched, and some say, underfunded legal aid system.

Witnesses want to further improve the system, not watch it fall apart. Witnesses are worried about who else will miss out on access to services and assistance in the future, when, already scarce, resources are radically cut back.

The strength of feeling about this is such that the committee decided to prepare this first report concentrating on the current situation. The committee considered that it was important to do this in advance of the 1997-98 Budget due for delivery in May.

The committee considered that, by presenting the evidence provided to it date in a report to the Parliament, the Government may be better equipped to understand the degree and nature of concern about Commonwealth legal aid expenditure reductions and policy refocusing.

Many witnesses believe that the Government has acted in too much haste in relation to legal aid in its effort to implement a deficit reduction strategy. Small initial savings could lead to far greater economic and social costs.

Mr Peter Short, President of the Law Council of Australia said the following to the committee, and I think this sums up the views of many:

> "The Law Council and, I think, society as a whole generally accept that a government should balance its budget and has to reach priorities. In a nutshell we are saying that, by cutting legal aid, the government has reached a wrong priority. We say that in any civilised society equality before the law is one of the hallmarks of successful government. Equality before the law means that people who are attacked or under threat by a legal system must feel comfortable that society is providing them with an equal opportunity to answer and relieve themselves of that burden. It is a positive obligation of a civilised society to provide that minimum level of legal assistance."

The committee has been very impressed with the extent of commitment nationally, to the preservation, and further development, of a viable legal aid system in Australia.

There is significant support for such a system, for example, from governments, the legal profession, academia, the churches and the social services sector.

There is a great deal of expertise in legal aid and the broader justice system being willingly offered to Government.

The committee has recommended that the Government consider establishing a high level representative task force to advise Governments on the legal aid system and its place in Australia's justice system.

The evidence to the committee suggests that such a representative expert group would receive support from the Law Council of Australia and national legal aid organisations.

The committee is concerned about the uncertain future of Australia's current cooperative legal aid system. The committee intends to continue to gather evidence addressing each of the terms of reference and to take the opportunity to test and further develop this evidence at future public hearings.

The committee's continued inquiry will contribute to public debate and awareness.

The committee agrees with those witnesses who have told it that legal aid issues ought to be considered alongside broader issues in the justice system.

For this reason it will undertake the current legal aid inquiry as part of its wider responsibility to inquire into the continuing ability of all Australians to have access to litigation and legal services.

The committee's intention in tabling this initial report is to ensure that the input of the many persons and organisations who provided the committee with evidence is available to the Parliament and can be taken into consideration by the Government prior to its delivery of the 1997/98 budget on 13 May 1997.

I commend this report to you.

Debate adjourned.

Rural and Regional Affairs and Transport References Committee

Report

Senator WOODLEY (Queensland)—I present the report of the Rural and Regional Affairs and Transport References Committee entitled, *Purchase of the Precision Aerial Delivery System (PADS) by Airservices Australia*, together with submissions received by the committee, correspondence and transcript of evidence.

Ordered that the report be printed.

Senator WOODLEY—I seek leave to move a motion relating to the report.

Leave granted.

Senator WOODLEY—I move:

That the Senate take note of the report.

Senator BOB COLLINS (Northern Territory) (5.55 p.m.)—This is a damning report, and it is important to point out to the Senate that it is a unanimous report. There is no dissent from this report. It is an agreed report by all members—government and opposition—of this very sorry story that is outlined in the report. I commend the report to anyone with an interest in aviation safety in Australia. It condemns the Minister for Transport (Mr Sharp) but it damns the minister's hand-picked chairman, Mr Forsyth.

The report tells a very sorry story indeed, and it is an unfortunate chapter in what has been a long history involving the use of this rescue equipment. During the time available to me, I do not think that I can do much more than to point anyone with an interest in aviation safety to the relevant sections of the report.

I make it clear—as the report itself does—that the involvement of the minister and his adviser in this went to the extent of involving themselves in discussions with Mr Gruzman on the equipment. Subsequently, on request from the new chairman, Mr Forsyth, they were involved in directing, in writing, a fly-off, as it was called—or a testing program—to test this equipment against the rescue equipment that Airservices Australia was already using.

Airservices Australia and the Royal Australian Air Force recently performed in an exemplary fashion in completing one of the greatest sea rescues of all time. That rescue was performed without using the PADS equipment, and there is a good reason for that. Having spent well over $1 million—and by the time this sorry story is finished it will probably be closer to $2 million—on the PADS equipment in what the report says was a very precipitate fashion, the equipment is currently unusable. It is lying idle in a warehouse in Melbourne and has had its certification formally withdrawn by CASA.

I refer all honourable senators and, indeed, everyone else, to page xii where the report says this:

The precipitous action of the new Chairman of the Airservices Australia Board in instigating an evaluation of search and rescue systems, and his haste in accepting the results of that evaluation, ignored a long history of considered deliberation on the PADS system in that very organisation, and a clear and very recent decision to reject any move

to replace or augment the existing system with PADS equipment.

The minister—as the report points out—also ignored a detailed brief that had been given to him in April, which laid out the full sorry history of this saga and the firm decision that Airservices Australia had made not to purchase PADS equipment because it posed a danger to the lives of the crews that were using it—that is, the rescue crews. The reason I point that out is that the minister, in interview after interview—right up until the last interview he gave on *PM*—kept saying, 'PADS is more accurate.' As the report points out, the committee has no dispute with that. The accuracy of the equipment is not in dispute.

The problem is that there are serious problems at the other end of this equipment that directly potentially endanger the lives of the rescue crews themselves. For the board and the chairman to take the action they did is—I quote the relevant paragraph on the same page:

> The Committee concludes that because the Chairman requested from the Board, and received, authorisation to proceed unchecked, he must accept full responsibility for a decision that resulted in the expenditure of over $1 million on equipment that is currently unusable. The Chairman, in making his decision, placed too much emphasis on accuracy of the delivery system and insufficient emphasis on the safety of the crew involved in the delivery.
>
> For these reasons, the Committee concludes that the actions of both the Board and the Chairman were imprudent to the point of negligence.

That is a hard finding, and a unanimous finding, of the committee. But it was an inescapable finding, unfortunately—I say that word 'unfortunately' advisedly; I mean it—because the evidence given to the committee was overwhelming.

The new chairman was appointed by the minister. I have to say all oppositions are in the position for quite a while—particularly when the current opposition was in government for 13 years—of being able to blame the previous government for all its sins and omissions. But, as the report makes clear, this situation is absolutely laid at the feet of this new minister. This is his chairman we are talking about; the person he appointed with a great deal of fanfare. Why do I mention that? Obviously because the minister has been running a campaign—a foolish and reckless one, in my view—against the chairman of CASA, the air safety authority, claiming that the chairman is incompetent, the board is incompetent, and, because of the minister's concern about air safety, he wants to replace the chair.

No evidence has actually been produced to justify those attacks on Mr Justice Fisher. In fact, to take one example of just how reckless the minister's accusations have been, to justify dismissal of the board of CASA he accused them of dereliction of duty because they had not prosecuted the people responsible for the DC3 incident. In fact, as was demonstrated within 24 hours, it has never been the responsibility of CASA or its predecessor, the CAA, to prosecute anyone; it is the responsibility of the Director of Public Prosecutions. CASA acted with perfect propriety in forwarding everything they needed to forward to the Director of Public Prosecutions, who has taken a decision not to prosecute in the public interest. But this a relevant matter because this minister has set the standard for himself on this. This minister has said that, if there is proven incompetence on the part of a chairman of any board involving safety, they should go.

This unanimous report, this all party report, finds that the chairman of Airservices Australia was imprudent to the point of negligence in this matter—this is the chair appointed by the minister. It also criticises—I think justifiably, to some extent—the board. But of course there are mitigating circumstances, of which all committee members are aware, that need to be stated. It was the chairman's first meeting as chairman when this proposition was put. The board, I suppose, felt, 'Well, this is the new broom.' In fact, the new chair told us that he had laid down his philosophy to the new board as to how he was going to conduct matters. He summed it up for us in what I thought were extraordinary words: that his experience as a chairman—of Dymocks books, as it happens—and his experience in business had led him to the view that 'if a

thing was worth doing, it was worth doing as quickly as possible'.

That, I have no doubt, is the appropriate philosophy for Dymocks books. Unfortunately, it is not the appropriate philosophy for the chairman of a government statutory authority whose primary statutory responsibility is the safety of the Air Navigation Act. This is particularly so when the chairman had at his disposal numerous reports, one of them from the Royal Australian Air Force, that laid out in detail that this equipment posed a risk to the lives of the crews that were using it. He gave extraordinary evidence to the committee that, although he had seen the *60 Minutes* report on PADS, which provoked him into going to his first board meeting and asking for carte blanche to buy it, he had deliberately not read any of the previous reports so that he was unbiased. He had absolutely no standard against which to check the accuracy of the *60 Minutes* report.

It is extraordinary stuff. In the 10 minutes I have got left I do not have time to go over it, but I say again: anyone with an interest in air safety has got an obligation to read this report because it has damned this chairman. I take no pleasure in saying that.

Senator Parer—Ha, ha!

Senator BOB COLLINS—In response to your laugh, Senator Parer, have a look at the public record. In 20 years in parliament, the number of individuals I have criticised who are not members of parliament could literally be counted on the fingers of one hand. It is not something that I delight in doing. Read the report, Senator Parer, if you do not think this is justified.

This new chairman went to the board meeting and, as we say in this report, said, 'Give me power of attorney to do this myself without any further recourse to the board.' And they did! Therefore, the new chairman, having wanted to take full responsibility, now has to take full responsibility for the mess this has turned into and the fact that over $1 million has been spent on equipment which currently cannot be used, equipment which during its testing further placed the lives of aircrews in danger, as we all know. It is now up to the minister to determine whether he is going to apply these standards to his appointment on the basis of this all party report. *(Time expired)*

Senator CRANE (Western Australia) (6.05 p.m.)—I would like to make some brief comments on the report by the Senate Rural and Regional Affairs and Transport References Committee into the purchase of the precision aerial delivery system, PADS, by Airservices Australia. I do not disagree with most of what Senator Bob Collins has said about what is in this report. In particular, I want to emphasise the exoneration of the Minister for Transport and Regional Development (Mr Sharp) for in his involvement in this particular process. That is dealt with in two chapters of the report and also in the findings.

There is no question that the findings of this committee, as Senator Bob Collins said, are very harsh on the board and the chairman. That is a matter that the minister will have to deal with. In the couple of minutes I have—I know business must move on—I would like to briefly highlight that there was nothing forthcoming from Senator Bob Collins. Hopefully something might be forthcoming from the shadow minister for transport, the member for Melbourne (Mr Tanner), in the other place in terms of the campaign that they carried out with regard to Minister Sharp while this hearing was going on. I quote a particular question that was asked of Senator Alston by Senator Bob Collins:

> . . . his understanding was that the minister had approved both the re-evaluation of the equipment and its subsequent purchase? Are you also aware that the committee was given a letter by the senior adviser to the minister, Mr Wallis, which clearly indicates the extent that both he and his minister were involved in the matter? In the face of this evidence, it is clear, minister, that Minister Sharp has caused you to mislead the Senate.

That is a very serious claim from Senator Collins. It was done on half information. I believe that Senator Collins and the shadow minister, Mr Tanner, from the other place owe Minister Sharp an apology for the way they picked up a half truth and ran with a particular aspect of this case. As we got all the evidence and all the information on the table for this report, it became quite clear that this

claim, this charge, this press campaign, was being run on a false premise.

Furthermore, at that time—and this will be shown in *Hansard*—Senator Collins himself questioned the accuracy of the evidence being put forward before the committee by Mr Forsyth. He questioned it himself, yet that did not stop him running this particular campaign. I call on both those gentlemen to do the honourable thing and recognise the fact that they were using half information, running a campaign on a false premise.

I will leave my comments at that. I re-emphasise, firstly, that the minister and his adviser were exonerated. They only got involved when they were asked to get involved to confirm a couple of aspects of it, which I would determine normal ministerial behaviour. Secondly, it was most disappointing to me as a member of that committee to find out the processes that were gone through. Hopefully, lessons can be learned for other government instrumentalities so we do not see an occurrence such as this again.

Senator CONROY (Victoria) (6.09 p.m.)—I would like to respond firstly to Senator Crane's comments and then go to the substance of the report. I do not think Senator Crane can stand there straight faced and say that the only involvement the Minister for Transport and Regional Development (Mr Sharp) had was being dragged in by Mr Gruzman. If you have a look at the facts, Senator Crane, it is clear that when Mr Forsyth wrote to the minister about wanting the fly-off, the minister authorised the fly-off, ignoring his own departmental advice, ignoring previous advice from Airservices about the dangers.

An extensive briefing was given to the committee, so it is impossible to say, 'Oh, we do not think PADS is a particularly good system.' An extensive briefing based on extensive testing by the RAAF, the department and everybody else who had been involved in it was: 'This system is a dud because it is not safe. Yes, it hits the target but in hitting the target it is potentially causing a life threatening situation to the crew in the aircraft delivering it.'

Senator Crane—That's all in the report.

Senator CONROY—It was all in the report before the minister but he ignored it. It was there before we did our report. It did not need this report to reiterate that PADS is not safe to the crews delivering it. It was there in black and white from the RAAF and a host of other sources before our report.

We will then go through the farce of what happened in the training and the evaluation. We had a situation of some rescues in January, which all senators would be aware of. The minister came out in response to Mr Gruzman and said, 'There's nothing wrong with PADS. It is just a training problem. The crews have not been trained properly.' Still the minister is refusing to accept all the evidence put before him and before the evaluation panel and the cancelling of the training that took place in November because it was again shown to be unsafe. The minister has consistently ignored all the evidence that has been before him. So he has not simply supported the purchase and the fly-off and been dragged into it; he has chosen to ignore all the expert advice.

In coming back to the substance of the report, Senator Collins made a number of references. The chairman of Airservices, Mr Forsyth, walked into his first meeting, after watching *60 Minutes*, and decided with no briefings, no requests for information, no what do other people think: 'I want to organise this. I want to clear this up.' Information was available from Airservices if he had chosen to ask.

He had been briefed but he told the committee the briefing was not satisfactory. But when asked by the committee: 'What was it that you found unsatisfactory in the briefing from Airservices?' he could not remember. He then went on to praise the staff of Airservices six months later, saying that they were a very professional organisation. At the time he said that their briefing was unsatisfactory but could not remember why. So he wrote to the minister for permission. As I said, the minister ignored all the evidence and advice from his own departmental briefings and said, 'Go ahead. Order the fly-off.'

So then we move to the fly-off, and the evidence before the committee on the conduct

of the evaluation panel is damning. Read the report. You have an RAAF report, scientific testing conducted 12 months before, that states, 'This is unsafe for the following reasons . . . These must be addressed before there is further evaluation, further testing, of PADS.' This information was presented to the evaluation panel, according to evidence given to the committee, before the evaluation tests.

When appearing before the committee, the evaluation panel was asked: what evidence did the manufacturer provide to you of the changes that he had made to models D to E that satisfy and fix the issues raised in the RAAF report? The evidence went from extraordinary to bizarre. We were told that no, there had been no independent testing by someone else on the manufacturing design. Mr Gruzman had thrown the PADS units on the back of a truck and driven it down a bumpy road to simulate stormy conditions in a plane at 100 feet, among air turbulence.

Senator Hogg—Ha, ha!

Senator CONROY—You can laugh, Senator Hogg, but that is actually the evidence that the evaluation panel took. The manufacturer said, 'I put it on the back of a truck and drove it over a bumpy road to simulate air turbulence,' and they accepted that.

Should you just accept the word of a manufacturer of a product that a safety problem had been fixed? When asked, 'Would you accept as satisfactory evidence before a committee from a manufacturer?', the chair simply said, 'I fixed it.' The committee asked the chair, Mr Forsyth, 'Would you agree that it is acceptable to take the word of the manufacturer in this circumstance?' Mr Forsyth's answer was, 'I'm not qualified to say.' Senators are laughing at that. But Mr Forsyth's response was, 'I'm not qualified to say.' He used the back of a truck to simulate stormy conditions in a life-threatening situation.

We then received evidence from the pilot who was actually trying to conduct the evaluation.

Senator Hogg—Was he in the truck?

Senator CONROY—No, the pilot was not in the truck, Senator Hogg. He was even more damning before the evaluation committee about what a joke it was. We have here a product designed to save lives. They conducted an evaluation in sunny, still conditions. Most operations to save lives at sea are conducted in stormy weather.

You would have thought that the panel conducting a test on air safety equipment would seek to find rough, stormy conditions to simulate as closely as possible the conditions that you would find in a rescue. Did the panel do that? No. It looked for a day but it could not find any stormy weather. So it said, 'Well, that's it; it's passed the test.' This is what happened when Mr Forsyth was asked—it is here in the report—why the panel was forced to do the tests so quickly. He was asked why they had to be finished in such a short time frame. Mr Forsyth said, 'Well, if they had asked, they could have had more time.' When we asked the chief executive of Airservices why, he said, 'It was necessary to do it so quickly.' But the panel itself told the committee that it felt constrained and it could have done a better job if it had had more time.

This is a disgrace. The panel is culpable and the chair is culpable. The minister ignored all the advice. But Mr Forsyth, as he said, is not qualified to make a decision. He is not qualified for this job, and he should consider his position.

Question resolved in the affirmative.

Membership

The ACTING DEPUTY PRESIDENT (Senator Knowles)—The President has received a letter from the Leader of the Government in the Senate seeking to vary the membership of a committee.

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

That Senator Tierney replace Senator Eggleston on the Community Affairs Legislation Committee for the committee's inquiry into the Social Security Legislation Amendment (Work for the Dole) Bill 1997.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

The following bill was returned from the House of Representatives without amendment:

Trade Practices Amendment (Industry Access Codes) Bill 1997

EDUCATION LEGISLATION AMENDMENT BILL 1997

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (MALE TOTAL AVERAGE WEEKLY EARNINGS BENCHMARK) BILL 1997

First Reading

Bills received from the House of Representatives.

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

That these bills may proceed without formalities, may be taken together and be now read a first time.

Bills read a first time.

Second Reading

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.22 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

EDUCATION LEGISLATION AMENDMENT BILL 1997

The purpose of this bill is to give effect to the transfer of responsibility for the University of Canberra from the Commonwealth to the Australian Capital Territory (ACT) and to amend the Maritime College Act 1978.

The transfer of the University of Canberra from Commonwealth to ACT jurisdiction was first proposed by the University of Canberra.

The university considers that its future is bound up with the growth and development of the act itself, since the university is a key provider of professional education and advice in education and research.

The transfer will bring the university closer to ACT activities such as infrastructure and land development, health education and the ACT school system.

The Commonwealth and the ACT governments agree that there will be considerable benefits to the university and the Canberra community in the university being more closely identified with the city.

The university's comprehensive undergraduate teaching programs and expanding presence in graduate education, research and international education services are of great importance to the continued economic and cultural life of the city. There are strong mutual benefits to be obtained from facilitating collaboration between the university and territory government agencies, businesses and community organisations.

In order to facilitate the transfer this bill:

amends the University of Canberra Act 1989 (the act) where appropriate and necessary prior to the conversion so that the act will reflect the change of jurisdiction;

amends the Australian Capital Territory (Self-Government) Act 1988 to make the act an ACT Enactment;

provides consequential amendments to the Remuneration Tribunal Act 1973; and

provides certain transitional arrangements in relation to preservation of the rights and accrued entitlements of university officers and staff.

The commonwealth government is transferring the act with its existing framework intact. Any changes to it are appropriately made by the ACT Legislative assembly after the transfer is made. However, any employee rights of coverage under commonwealth occupational, health and safety, industrial or administrative law for incidents occurring prior to the

transfer day will continue. Coverage for incidents occurring after the transfer day will be determined according to the law of the territory.

This bill also amends the Maritime College Act 1978 to provide the Council of the Australian Maritime College with the power to make statutes for or in relation to the regulation or control of traffic or parking.

Currently, parking spaces at the Australian Maritime College are being used by others to the detriment of the college staff and students. The act is amended to allow the college to enforce car parking regulations.

I commend the bill to the senate.

SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (MALE TOTAL AVERAGE WEEKLY EARNINGS BENCHMARK) BILL 1997

During the 1996 Election, the government gave a commitment to maintain the single adult rate of pension at a quarter of the all males total average weekly earnings figure. This bill gives legislative effect to that commitment.

This bill provides that the maximum basic rate of the single adult social security pension (after

indexation) will not fall below a rate equal to 25 per cent of the annualised original, all males, total average weekly earnings figure. There will, of course, be a flow-on increase to maintain the adult partnered rate of pension at 83% of the single adult rate of pension. The bill also provides for the same amendment to be made to service pensions and income support supplements paid under the Veterans' Entitlements Act 1986.

Pensions are indexed twice a year, in March and September according to movements in the CPI, ensuring that the real purchasing power of the pension is maintained. However, CPI indexation, by itself, may not enable pensions to keep pace with changes in the living standards of the rest of the community. By legislating to maintain the single rate of pension at 25 per cent of male total average weekly earnings, the government is demonstrating its commitment to ensure that pensioners share in increases in community living standards.

Madam President, I commend this bill to the Senate.

Ordered that further consideration of the second reading of these bills be adjourned until the first day of sitting in the winter sittings 1997, in accordance with standing order 111.

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

That the bills be listed on the *Notice Paper* as separate orders of the day.

AGED CARE INCOME TESTING BILL 1997

First Reading

Bill received from the House of Representatives.

Motion (by **Senator 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 CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.23 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 Aged Care Income Testing Bill 1997 is being tabled today in advance of the Aged Care Bill 1997 to establish an administrative procedure to support the implementation of the income testing arrangements that were part of the aged care reforms announced in the 1996 Budget.

The Aged Care Income Testing Bill will allow the Departments of Social Security and Veterans' Affairs to commence income testing residents in nursing homes and hostels so that they can be advised by my Department in advance of 1 July 1997 about the level of charges they will face when the Aged Care Bill is passed.

This bill only enables an income assessment to be undertaken and advice to be provided to residents of the outcome of that assessment. It does not enable charges to be increased, nor does it allow any reduction in the level of Commonwealth subsidies paid under the National Health Act 1953 and the Aged or Disabled Persons Care Act 1954.

The substantive income testing provisions which would enable increased charges and corresponding reductions in subsidies will be provided for in the Aged Care Bill 1997. It is anticipated that the Aged Care Bill will also be tabled during this sitting with a commencement date of 1 July 1997.

The provisions in this income testing bill would therefore cease to operate once the new aged care legislation is in force.

The bill provides for an exchange of information between the Department of Health and Family Services and the Departments of Social Security and Veterans' Affairs. The Department of Health and Family Services will provide resident information to the other two Departments who will match it to their records to retrieve information for those residents, to enable the determination of ordinary income for those residents. Information will be provided to the Department of Health and Family Services under the relevant parts of the acts administered by those Departments.

There are provisions in the bill to ensure that any personal information exchanged for the purpose of income testing is not used for any other purpose. These provisions have been developed in consultation with the Privacy Commission.

The income test to be applied by the Departments of Social Security and Veterans' Affairs is the existing test carried out in determining entitlements to pensions and benefits. The determination of income for people already in receipt of Social Security or Veterans' Affairs pensions or benefits will therefore be based on their existing available income information and they will not have to provide additional details. People will, however, be able to request a review of the determination if their circumstances have changed.

Special protections for war widows and widowers have been built into the bill so that they will not

pay any more than other people with an equivalent income.

9 per cent of current nursing home and hostel residents are non-pensioners. The Department of Social Security will undertake assessments for this group in order to ensure that they can be advised of their potential income tested charge as much in advance of 1 July as possible. The Department of Social Security will require 3 months prior to 1 July to undertake the necessary assessments.

The income testing provisions in the Aged Care Income Testing Bill have therefore been introduced for passage in advance of the provisions in the Aged Care Bill to provide this necessary lead time.

When income testing is in operation after 1 July only those who can afford to pay a little more and make a fair contribution will be asked to do so. Older people will not be asked to pay what they cannot afford for the residential aged care services they need.

People who are not satisfied with decisions made about their income will have a right of appeal, first to the relevant Department and then to the Administrative Appeals Tribunal or the Social Security Appeals Tribunal.

The reforms announced in the 1996 Budget will see far-reaching changes to residential aged care services in Australia. The establishment of the administrative procedures provided for in this bill is essential to the Government's overall strategy of providing residents with detailed information on the reforms and with certainty about the impact on their individual situation.

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

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives intimating that it had agreed to the amendments made by the Senate to the following bills:

Law and Justice Legislation Amendment Bill 1996

Telecommunications Bill 1996

Trade Practices Amendment (Telecommunications) Bill 1996

Australian Communications Authority Bill 1996

Telecommunications (Transitional Provisions and Consequential Amendments) Bill 1996

Radiocommunications Amendment Bill 1996

Acquainting the Senate that the House has made the requested amendments to the following bills:

Telecommunications (Carrier Licence Charges) Bill 1996

Telecommunications (Numbering Charges) Bill 1996

Telecommunications (Numbering Fees) Amendment Bill 1996

TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) BILL 1996

TELECOMMUNICATIONS (NUMBERING CHARGES) BILL 1996

TELECOMMUNICATIONS (NUMBERING FEES) AMENDMENT BILL 1996

Third Reading

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

COMMITTEES

Public Accounts Committee

Joint Meeting with Queensland Public Accounts Commmittee

The ACTING DEPUTY PRESIDENT (Senator Knowles)—The President has received a message from the House of Representatives seeking the concurrence of the Senate in a resolution of the House to authorise the Joint Committee of Public Accounts to meet jointly with the Public Accounts Committee of the Legislative Assembly of Queensland.

I also table a letter from the Speaker of the Queensland Parliament transmitting the text of a resolution relating to the same matter. This letter satisfies the requirements specified in paragraph 8 of the message. Copies of the message and letter have been circulated in the chamber.

Ordered that the message be considered forthwith.

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

(1) That the Senate concurs with the resolution transmitted to the Senate by message no. 240 of the House of Representatives to authorise the Joint Committee of Public Accounts to meet jointly with the Public Accounts Committee of the Legislative Assembly of Queensland.

(2) That the terms of the resolution agreed to by the Senate and the House of Representatives be

transmitted to the Legislative Assembly of Queensland.

(3) That the concurrence of the Senate to the resolution be transmitted to the House of Representatives.

WORKPLACE RELATIONS REGULATIONS

Senator JACINTA COLLINS (Victoria) (6.26 p.m.)—At the request of Senator Sherry, I seek leave to move business of the Senate notices of motion Nos 2, 3 and 4 together.

Leave granted.

Senator JACINTA COLLINS—I move:

That new regulation 30BD contained in regulation 7 of the Workplace Relations Regulations (Amendment), as contained in Statutory Rules 1996 No. 307 and made under the *Workplace Relations Act 1996*, be disallowed.

That regulation 5 of the Workplace Relations Regulations (Amendment), as contained in Statutory Rules 1996 No. 307 and made under the *Workplace Relations Act 1996*, be disallowed.

That new regulation 30C contained in regulation 8 of the Workplace Relations Regulations (Amendment), as contained in Statutory Rules 1996 No. 307 and made under the *Workplace Relations Act 1996*, be disallowed.

We move to disallow three regulations contained in statutory rules 1996 No. 307 which have been made under the Workplace Relations Act 1996. Each of the regulations concerns termination of employment. I must express my disappointment that at this stage of business we are dealing with these disallowance motions.

It came to my attention only briefly before dealing with this matter that an arrangement had been reached between the government and the Democrats which deals with at least some of the issues pertinent to this, but of which the opposition had no knowledge. It may well have been the case—and we are yet to analyse more completely the terms of this arrangement—that it dealt with some of the issues that I will be covering now. I will deal with some of those in more detail as I reach them.

The regulations we seek to disallow are: regulation 5, new regulation 30BD contained in regulation 7, and new regulation 30C contained in regulation 8. Perhaps it is time also to highlight the other element of concern the opposition has in this matter and that is that, in relation to the government's industrial relations package, the only area where it signalled such changes to regulations was in respect of the filing fee—not some of the other areas which I am about to cover.

New regulation 5 would exclude three classes of employees from making an application for relief under the unfair and unlawful termination provisions of the Workplace Relations Act. Those three classes of employees are: employees engaged under a contract of employment for a specified period of time; probationary employees where the maximum period of probation is three months or less, or is more than three months and is reasonable in the circumstances; and casual employees engaged on a regular basis for more than six months. Casual employees will now have their entitlements changed and this will now be extended to 12 months under the proposals.

In relation to employees engaged for a specified period of time, I note that under the existing regulations, where the contract of employment was made after 16 November 1994, these employees are excluded only if the specified period is less than six months. For contracts made before 16 November 1994, the duration of the specified period is, as in the proposed regulations, irrelevant. The reason for the difference was that the relevant regulations were amended on 16 November 1994 to introduce the necessity for a specified period of less than six months. So in effect this new regulation seeks to reverse the 1994 amendment.

I need to cover the two important reasons why this amendment was put in in 1994. First, employers were being encouraged to employ employees on fixed term contracts of lengthy duration in order to avoid liability under unfair and unlawful termination provisions. This is dealt with in part in the government-Democrat deal but unfortunately the dealing with it will not cover the significant concerns that we would raise. In fact, the provision in this deal, on my very limited first reading of it, seems, on our interpretation, to make a microscopic change, if anything

hardening the provision, moving it from fixed term contracts where the main purpose is to avoid obligations to being a substantial purpose.

The second reason for the original amendment was that the original regulation was inconsistent with Australia's obligations under article 3 of the ILO recommendation concerning termination of employment, which states:

> Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention.

We have not heard—and I do not know whether the Democrats have heard—an argument from the government that this trifling change will actually rectify the problem that we find whereby, if these regulations go through, we will be inconsistent with the ILO. It was thought that the only way to properly prevent recourse to contracts that sought to avoid the obligations was to provide that only contracts with a specified period of six months or less would be exempted. As I said, no arguments have been put to the opposition which change that. The Democrats obviously accepted these arguments back in 1994, so I will be interested to hear from the speakers following why it appears that they have accepted something different as satisfactory now.

There is, of course, an additional argument which does not seem to have been dealt with at all in this deal—and that is that the new regulation will effectively have retrospective operation. Employees who, after 16 November 1994, entered into a contract for a specified period of more than six months will now find themselves without access to unfair and unlawful termination provisions of the Workplace Relations Act. I do not know whether that was considered between the government and the Democrats.

Let us move on to some other areas. In relation to probationary employees—and none of that is in this deal—I note that the present regulations only exclude employees where the probationary period is reasonable. The effect of the new regulation is to deem that three months or less can be reasonable in every case. This deeming provision is completely inconsistent with the approach that has been taken by the Industrial Relations Court of looking at what is fair and reasonable in the particular circumstances of a job. For example, in a 1994 case, Chief Justice Wilcox observed:

> Perhaps the most important consideration, in determining what is a fair and reasonable period, will be the nature of the job. In the case of a person employed to carry out repetitive duties under close supervision, a reasonable period may not extend beyond a week or two. In the case of a person employed in a marketing or managerial position, working with little or no direct supervision and whose quality of performance cannot be immediately apparent, it may be reasonable for an employer to specify a probationary period measured in months.

In recent times, Mr Howard has said that to him 12 months is a reasonable period. It seems Mr Howard thinks he knows more on industrial relations law than the equivalent of a Federal Court justice.

There is a very strong and very good argument as to why a discretion should remain with the commission to determine whether the probationary period is reasonable in all of the circumstances. It surprises me that the Democrats, the great upholders of the Industrial Relations Commission and its powers, have not dealt with this issue.

Regulation 5 would also permit casual employees to make an application under unfair dismissal provisions only where they have been employed on a regular and systematic basis for a period of at least 12 months. This contrasts with the present regulations, which permit casuals to make an application where they have been employed on this basis for a period of six months. This change strikes against the general understanding of what is regarded as a short period of employment. It will also encourage—much against the rhetoric of the government about part-time employment—further casualisation of the work force as employers are encouraged to employ casuals for up to 12 months at a time in order to avoid their obligations with respect to fair and reasonable employment. This is certainly not about establishing a fair system. It seems to be establishing a loose system so

that some employers can seek and find out rorts.

With respect to new regulation 30BD contained in regulation 7, we are dealing with a $50 filing fee. The committee which dealt with the Workplace Relations Act heard submissions on this issue. Under the existing regulation, no filing fee is payable. The government justifies the introduction of a filing fee on the basis that it will discourage unmeritorious and vexatious claims. But because a monetary sum is involved, the only claims likely to be discouraged are those of people with very little means, irrespective of the merits of their claim. It is unlikely that people with the means to pay $50 will be discouraged from vexatious claims. I note that the Democrat-government deal deals with this issue by providing that a filing fee be refundable if it is withdrawn, but that does very little in terms of the concerns that we would have and that indeed were raised before the committee in relation to this issue.

In relation to the new regulation 30C contained in regulation 8, this regulation would remove the prohibition on termination of an employee who is temporarily absent because of illness or injury in either of two circumstances: the employee's absence extends for more than three months, unless the employee is on paid sick leave for the duration of the absence; or the total absences of the employee within a 12-month period extend for more than three months, unless the employee is on paid sick leave for the duration of the absence.

I ask the government—and I hope that a response will be forthcoming before we need to vote on this disallowance—a couple of questions. It is unclear in the wording in the regulation what is meant by duration. If a worker is on paid sick leave for a period of 2½ months of a total more than three-month period, are they covered or, because the last two weeks of that period are unpaid, could these provisions come into force?

Secondly, I ask the government in relation to these provisions: what happens to employees who have cashed out paid sick leave? Is one of the consequences of them cashing it out that they will lose their eligibility to protection under unfair dismissal laws because they have cashed it out? Will workers be apprised of these circumstances when they are balancing up the no disadvantage in a total sense in agreements that they might reach?

The present regulations do not qualify the current prohibition in the way proposed. In other words, if an employee is temporarily absent because of an illness or injury, irrespective of its duration, the employee cannot be terminated. The unfairness of this new qualification on such an important prohibition is manifest. The qualification is arbitrary. As soon as the employee has been absent for more than three months, either consecutively or cumulatively, the employee is liable to be lawfully terminated even though the illness or injury is perfectly legitimate.

Let me give the Senate some examples of what is perfectly legitimate. One analogy I personally feel is a quite good one is: if we can do this to people who are ill, why not do it to women who are pregnant? It is not the employer's responsibility if someone falls pregnant, just as it is not the employer's responsibility if someone becomes ill. So why bother giving women special consideration when their absence is beyond three months?

Perhaps an analogy that will affect more people in this place would be the one Senator Murray outlined—I apologise to him for borrowing this—relating to people who have questionable tickers, or hearts. If someone has a heart attack, because they are likely to be absent for around three months do they potentially face being lawfully terminated?

Senator Campbell—What about bouts of masochism?

Senator JACINTA COLLINS—I would like to hear the government's justification on this one. In this brave new world falling pregnant may well be masochism because you might find that further down the track a new regulation will be introduced and your employment may be terminated not just because of illness.

I would like to conclude my comments at this stage by referring to my very brief analysis of the government-Democrat deal. Firstly, I want to again reinforce my disappointment.

The opposition has cooperated in relation to this disallowance on several occasions to facilitate government business. To some people's surprise, they thought we were actually considering the terms of this deal, which we have never seen. So the opposition has agreed to delay this disallowance on the basis that we want to facilitate the cause of government business, and we find ourselves at the last moment being presented with this deal, the terms of which we have had no time to give proper consideration to. But let me give my limited consideration of it.

On my reading of it, it includes two reviews, one note, one restatement of the current law or what is presently the case and, as I said, one microscopic change from the 'main purpose' to the 'substantial purpose'. There is nothing in this deal, and it has not even dealt with half of the issues that I have raised in just the brief 10 or so minutes I have had to speak because we have agreed to contain ourselves to limited time. I look forward to the response from the government and the Democrats.

Senator MURRAY (Western Australia) (6.41 p.m.)—Firstly, my sincere apologies to Labor. This letter was struck between the Minister for Industrial Relations (Mr Reith) and me late on Sunday evening with the understanding that the workplace regulations disallowance would be running on Monday. I had understood his office had distributed it, and I presumed it was in Senator Sherry's hands. That is my understanding, but you have my apologies that I did not pursue it.

Labor is seeking to disallow three regulations issued under the Workplace Relations Act dealing with termination of employment regulations. The first deals with those classes of employees who are excluded from protection of the unfair dismissal regime; the second deals with the application fee for lodging an unfair dismissal application; and the third deals with the circumstances under which absence from duty due to sickness ceases to become an unlawful dismissal.

The Australian Democrats advised Labor that they shared their concern about the potential scope of these provisions. These provisions, we felt, if applied in a regressive and nasty way, could reduce the promise of the unfair dismissal regime to provide a fair go all round. I think one of the aspects we have to be constantly aware of is that, with the Workplace Relations Act and all the workplace regulations, there are unfortunately employers and employees out there who are less than ideal in their practices.

I placed our concerns before the Minister for Industrial Relations, Peter Reith, and, in several meetings since those regulations were first brought to our attention by the ACTU, Minister Reith and I discussed the various problems. We finally met on Sunday night, and he agreed then to amend these regulations in several substantial respects. I understand the minister will read that correspondence into *Hansard* shortly through the parliamentary secretary.

The Democrats' key concern with those regulations was that employers might, with regard to the specified term or the fixed term contracts as they are known, try to avoid the unfair dismissal provisions. With the introduction of Australian workplace agreements, we think that specific term or fixed term contracts will continue to grow in popularity. Where a specified term contract is a genuine specific term or fixed term contract and a person is terminated at the end of that contract in accordance with the contract, we think it is reasonable they should not then be able to challenge that as an unfair dismissal. They would have signed up for a term, they would have done that term and the contract would have ended.

There is the issue of double jeopardy which existed with the present act; that is, if somebody was dismissed within the period of a fixed term contract, they would be able to go to the courts and be paid out for the entire unexpired portion of that contract if that contract was terminated unjustly. Under the laws, it could be interpreted that they could also get rectification from the Industrial Relations Commission. That was plainly a problem which needed to be resolved.

Where employers try to take what we think of as permanent or normal engagements and place over them a facade of a specified term contract, they should not be able to avoid the

provisions. In other words, if the intention of constructing the contract is to avoid the unfair dismissal regime, they should not be permitted to get away with that. If they terminate the employment before the contract expires or after it expires, it will no longer be a specified term contract.

If they have had a succession of specified term contracts, one after another, then the nature of the employment really ceases to be a specified or fixed term contract and becomes a rolling contract. The amended regulation will make it clear that both these cases of contracts will not be excluded from the unfair dismissal regime. They will not be excluded in that circumstance.

The exclusion in 30B(2) will also be expanded to ensure that employers cannot use contracts to avoid these provisions where a substantial purpose of the engagement is to avoid the provisions. Senator Jacinta Collins, we were advised that 'substantial' actually provides a greater protection than 'main', and that was the advice we followed. That protection will be broader, we believe, than the protection under Labor's old regulation. Disallowance of regulation 30B, as an aside, would also have the perverse result of allowing very high income earners earning over $64,000 a year access to the provisions. I do not think that is appropriate.

Labor has raised the issue of casuals and probationary employees. These regulations are about balance and judgment. At this stage, we think the balance is probably about right in the amended regulation and we are going to leave it at that. But the minister has agreed, at our request, to review these regulations after 12 months and we will need to look at the empirical evidence then. It is our consistent opinion that we have to see how the new laws settle down before we arrive at a conclusion as to how they will operate. Casual employees will also have the protection of the wider 30B(2), where the contract of employment using casual engagement is subject to action if it has a substantial purpose of being there to avoid the unfair dismissal provisions.

With regards to the application fee, right from the start we accepted the principle of an application fee. Therefore all along the question has been about the quantum. Frankly, we were concerned with a $50 quantum. But the registrar reports that at least 50 per cent of applications for waiver of the application fee have been granted. In other words, half of the people going to the Industrial Relations Commission are not having to pay the application fee. We thought the application fee could have emerged as a major impediment to people applying for unfair dismissal. We are advised that, to date, this fear does not seem to have eventuated.

But it does remain early days. These laws are still coming into practice. The minister has agreed to amend the regulation to give an 18-month sunset clause and to conduct a full review of the impact of the fee after 12 months. The regulation will also be amended to allow a refund of the fee where matters are discontinued. We think that is reasonable.

In relation to regulation 30C, Labor are concerned that this provision might exclude employees from accessing unfair dismissal where they have been absent from work on prolonged unpaid sick leave. The regulation will be amended with a note to make it clear that this provision applies to only the unlawful dismissal provisions and that the commission will still be able to decide whether a dismissal is unfair in the case of extended sick leave entirely without prejudice to these provisions. We thought that was the best outcome we could arrive at.

In short, we think that the regulations as amended will not be more than slight amendments to the old regulations put in place by Minister Brereton, as he then was. In some respects they will provide more protection for employees; in other respects we agree with you: there will be less. In all cases they will provide the certainty which business says was missing from the old regulations.

I wish to now draw a line in the sand on this unfair dismissal matter. This is as far as the Democrats intend to go for an extended period. We think these provisions should be now allowed to bed down so that employers, employees, unions and employer organisations can get used to them and use them and to then see on the basis of empirical evidence whether we need further reform, or more

tightening up or better protection on the basis of evidence and experience. I must express to you, Parliamentary Secretary, our concern and some alarm that the government is seeking to make more changes in this area with its latest small business announcement.

The Democrats intend to oppose further excluding employees merely because their employer happens to be a small business. You cannot take people and exclude them from one class of rights unless you can clearly show that it is for the common good of society as a whole, and you cannot do so on the basis of belief when you have no empirical evidence to support it.

We think the proposals following from the small business announcement will fail the test of providing a fair go all round. It will be unfair to the most vulnerable and the most industrially unrepresented section of our work force—the employees of small business. The Democrats will support and indeed already support measures to encourage the Industrial Relations Commission to deal expeditiously with small business unfair dismissal claims. But a wholesale exclusion, as proposed the other day, goes far too far.

We have been disappointed that so far Labor have been ambivalent in their reaction. But I am quite sure that, knowing them, they will soon come out with a very precise statement in this regard. I hope that when I or they move a disallowance on that proposed regulation in a few months, if it is done by regulation, we will both be able to defend workers' rights to have their unfair dismissals reviewed as they have been to date.

Senator MARGETTS (Western Australia) (6.51 p.m.)—Surprise, surprise: it was written into the legislation that the Minister for Industrial Relations (Mr Reith) is able to make regulations based on the size of business. So guess what he is doing? He is making regulations to take away people's rights to be treated fairly. Basically, it looks like he is going to do it in the future. I am pleased to hear Senator Murray indicating that the Australian Democrats want to see this bedded in and not go any further for the moment. But that does not indicate that they are ruling it out in the longer term, supporting allowing small businesses to treat their employees unfairly.

I often wonder what would happen if it were a matter of criminal law. Would it matter whether you were a small business or a large business as to whether you would be obliged to abide by criminal law? No. If people are entering into contracts, should not the contracts on both sides be required to be upheld? One would think, yes.

However, what we get—and we already know this as a result of the general workplace relations legislation—is that the upholding of only one side, the employer's side, is seen as being important and not necessarily any rights on the employee's side of the contract. Those contracts that people have insisted on others writing, it seems, are only useful for one side; that is, to take away from employees or insist on obligations for them to be under. But there does not seem to be a balance achieved with the rights of the employee.

Therefore, I indicate that we recognised right from the beginning that what we saw in the bill was the thin end of the wedge—indications that people would lose the rights for which they had fought over so many years, so many decades. These rights include reasonable sick leave, and so on. Employees do not necessarily get paid for that leave, but they have fought for the right to be able to be recognised in relation to bona fide sick leave. We have seen indications that those rights are being rolled away very quickly.

I indicate that the Greens WA will be supporting these disallowance motions. Also, we will be watching carefully in relation to any future motions that come up to implement the government's small business statement—a statement that Labor and the Democrats, according to their indications, welcomed. I guess we will need a few more qualifications to make sure that workers are protected and will not have further rights rolled back and the erosion of their basic rights which have been so hard fought for, by so many people, over so many years and, indeed, so many decades.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.54 p.m.)—I think Senator Murray has

covered a number of the substantive points raised by the speakers. But I would just make two points, because I think it would be in everybody's interest to have this matter dealt with before the dinner break.

Senator Murray did state that I was going to read into the *Hansard* the letter which sets out details. I would be happy to incorporate it, because its reading might take sometime, if Senator Murray nods his agreement.

Senator Murray—Yes.

Senator CAMPBELL—I therefore seek leave it to incorporate this letter. I have given copies to Senator Collins. I do not think I have given Senator Margetts the courtesy of a copy; she might have to trust me on this one.

Senator Margetts—Okay.

Leave granted.

The letter read as follows—

MINISTER FOR INDUSTRIAL RELATIONS

MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE

LEADER OF THE HOUSE OF REPRESENTATIVES

23 March 1997
Senator Andrew Murray
Parliament House
CANBERRA ACT 2600

Dear Senator Murray

Further to three notices of disallowance of regulations on termination of employment to be resolved tomorrow in the Senate, I confirm that we have reached an agreement on the handling of these matters.

1. The Government will amend the regulations so as to provide that the filing fee is refundable if the applicant withdraws the proceedings at least 48 hours before the day on which the proceedings have first been listed for hearing before the Australian Industrial Relations Commission.
2. I appreciate your concerns to ensure that the system which allows for the waiver of a filing fee operates as intended. Following the first 12 months operation of the regulations the Government will conduct a review and invite your contribution. Subject to the outcome of that review, we would be prepared to favourably consider any necessary changes. This will be reinforced by a sunset clause of 18 months on the operation of the $50 filing fee.
3. The Government will insert a note in the regulations to express that where, because of the regulation, an absence is not a 'temporary absence because of illness or injury' within the meaning of section 170CK of the Workplace Relations Act 1996 and thus dismissal because of that absence is not prohibited by that section, this is without prejudice to the rights of an employee dismissed because of that absence to bring an action for unfair dismissal, under the Workplace Relations Act or under any State unfair dismissal law.
4. In regards to the safeguard provision in respect of fixed term contracts, the regulation will be amended so that the exclusion does not apply if evasion of the termination provisions was 'a substantial' purpose for entering into a fixed term contract.
5. The regulations will be amended to include a note which draws attention to decisions of the Industrial Relations Court of Australia on contracts which are or are not for a 'specified period'. This note would have the effect of giving greater clarity to the effect of the provision.
6. Following 12 months operation of the fixed term provisions, the Government has agreed to conduct a review to ensure that these provisions are operating satisfactorily and, in particular, give an appropriate level of protection to employees.

I confirm that this agreement will be disclosed in the Senate debate, as confirmation of the Government's commitments.

Yours sincerely
PETER REITH
Accepted/agreed.
SENATOR MURRAY

Senator CAMPBELL—I thank honourable senators. I do apologise to Senator Margetts for not providing her with a copy. It was not a secret deal or anything of that sort, but I am informed that the Minister for Industrial Relations (Mr Reith) did inform the House of this in a speech on small business matters earlier this week—Monday, I am informed.

How it occurred is that, with these regulations, Senator Murray and the Democrats showed a cooperative and constructive spirit. They have brought forward a number of concerns, which the government has agreed to. We believe that they are constructive. They include a sunset clause in relation to the operation of the $50 fee. They include an undertaking that, if someone is to withdraw

their application 48 hours prior—I think it is—to the proceedings, their fee will be refunded. We already have included provisions to ensure that, in cases of hardship, the $50 fee can be waived. I think Senator Murray covered the other matters.

I do not think I need to respond to any further matters. With the matter of temporary absence and illness that was covered by Senator Murray and also raised by Senator Jacinta Collins, we think that the operation of the unfair dismissal provisions that would apply on top of these provisions does provide a fair balance, particularly with the inclusion of the amendments that we have foreshadowed in the letter that has just been incorporated. I think, with those things and what has been covered in the incorporation, I will say no more.

Senator JACINTA COLLINS (Victoria) (6.57 p.m.)—Just very quickly in response, because I would like to see this dealt with before the dinner break also, I close by pointing out to the Labor Party that, even despite the comments made here today, these are not, in Senator Murray's words, 'slight amendments'. I have just very quickly been going through what I do not believe has been dealt with in this session: the implication for casual employees of the extension of the period from six to 12 months; the setting in concrete of a three-month probationary period, despite industrial law on the issue; and the retrospective operation with respect to fixed term contracts has not been dealt with, as I recall.

I have not had an answer on what advice has been received about the implications and terms of our obligations to the ILO; the issue of paid sick leave being cashed out and how that will affect people's entitlements in terms of this three-month period after which people's unfair dismissal entitlements can be withdrawn; and the issue of the duration of paid leave as part of that three-month period. Those issues also have not been dealt with.

Once again, we have had experience of this, as I think was implied by Senator Margetts, with Democrat-government deals, which do not deal with all of the issues. We have a deal here which has only dealt with some of the issues and will leave many workers out, hanging in the rain.

Question resolved in the negative.

Sitting suspended from 6.59 p.m. to 8.00 p.m.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives intimating that it had agreed to the amendments made by the Senate to the following bills:

Commonwealth Services Delivery Agency Bill 1996

Aviation Legislation Amendment Bill (No. 1) 1997

The following bill was returned from the House of Representatives without amendment:

Commonwealth Services Delivery Agency (Consequential Amendments) Bill 1997

HINDMARSH ISLAND BRIDGE BILL 1996

In Committee

Consideration resumed.

Senator COONEY (Victoria) (8.01 p.m.)—There is just one matter that was raised by the minister which I would like to comment on. He spoke about the cost of the legal proceedings that had occurred over the Hindmarsh Island Bridge. I know that he did not intend it in this context, but I would hate the impression to be created that there was a cost on fairness and a cost on justice. Some people talk about affordable safety. Some people talk about affordable justice, and I think that is a wrong concept. It is one of the core functions of government—talking about government in terms of the three arms of government, and in that sense it is one of the core functions of government—to see justice done and to see it done to everybody no matter what their race, creed, colour, size or age. I think it sends out the wrong message when it is put that 'we have got to pass this act because to go through the judicial processes would be too much'.

Beliefs, as Senator Collins says, are matters of great importance. He spoke about his belief, and it just occurred to me that he

spoke about Jesus turning water into wine at Cana. He said that, although he did not believe that occurred, nevertheless it was a symbol of his general beliefs in this area. I must confess that I have a greater belief in the miracle of Cana than he has. I remember hearing a master of ceremonies in modern days testing some wine prior to a wedding feast. When he sipped an offered brand of wine, he screwed up his face and said, 'If the Lord came down from Heaven, he would change this back into water.'

Senator Bob Collins—All 360 gallons of it!

Senator COONEY—I think it is the 360 gallons, rather than the transformation, that has you in doubt, Senator Collins, but perhaps they drank well in those days. But that is the point I would like to make.

Senator Bob Collins—Sounds like a wedding in the Northern Territory to me.

Senator COONEY—May I say, Senator Collins, that I do not think that anyone has represented the territory as well as you have this week—or over the years for that matter.

Senator Patterson—What about Grant Tambling?

Senator COONEY—And Grant Tambling, of course. In any event, the point I want to make, and then I will sit down, is the fact that the legal process has been truncated. I know that it has caused a great deal of distress to the Chapmans, but the process of law is important. I am sure that it is not being brought in on this basis, but if this bill was brought in on the basis that this is the only way in which we can cut costs and that this is really a cost cutting exercise, I think that would certainly send out a wrong message about how we should conduct the affairs of this society. The way the affairs of this society should be conducted is through the proper legal processes. Sure they go wrong, just as the parliament goes wrong and just as government goes wrong from time to time, but that underlying principle is important. I think it is a matter that was well described and touched on by Senator Margetts.

Senator SCHACHT (South Australia) (8.05 p.m.)—As a senator from South Australia, I am obviously not unaware of the long running controversy of the so-called Hindmarsh Island bridge affair. I have never been a great participant in the debate because since it started I have always held other positions in the parliament and so on. But I have certainly supported the previous government's position and have debated it accordingly.

I have to say that I have noticed over a period of time the ability of people to change their position. I find it ironical that way back in 1992-93, when the Chapmans as promoters and developers first proposed the bridge, the bridge was to be built by them at their cost if the government would approve the development of the marina, et cetera, on Hindmarsh Island. When that was changed, they did not have access to the money. In the end, in negotiations with the then Labor state government, the case was that the state government could pick up the cost of the bridge in some significant way.

At that stage, the then Leader of the Opposition in South Australia, Dean Brown, and the federal member for Barker, Mr McLachlan, publicly and strongly opposed the bridge being built and campaigned accordingly. I find it ironical that they did at that stage oppose it. Furthermore, certainly Mr McLachlan came in a later stage of the whole affair to be an absolute advocate of building the bridge.

It seems to me that, as soon as a group of Aboriginal people indicated their opposition to the bridge, Mr McLachlan changed his mind and became a supporter of the bridge being built. For about a year, in 1991-92, he was strongly opposed to the bridge being built. I do not think any of us should get too pure about the range of positions that have been held on this issue, because there has been a fair bit of shifting around in regard to the bridge.

Many of us do not support a particular religious view about society. I openly declare that I am an agnostic. I have considerable scepticism about organised religion of all forms. I have always been extremely sceptical of any government attempting to make law in any area involving religion which is based on a mystical or an unproven belief in some-

thing—the supernatural, the afterlife and so on—which is demonstrably a matter of faith and commitment, and not demonstrably proven by scientific fact.

Every time a government moves into that area, it is running a risk of getting terribly entangled and then breaking down the separation between the state and the church. Over the last couple of thousand years or more, every time the church and the states got wrapped up with each other there had usually been some dreadful atrocity committed against those who were declared the non-believers. The Christian church has been just as bad in all its forms as have other faiths—the Islamic faith, Buddhists and all the variations and forms thereof.

I have always taken a very sceptical view that, when someone proposes to me that there is a particular religious significance for a particular person and that it should be in a law, that ought to be treated very cautiously. Therefore, when the Ngarrindjeri women indicated that this issue had a particular significance for them, I treated that no differently than someone fronting up to the Roman Catholic Church, the Church of England or an Islamic organisation and saying, 'We ought to make laws in an area based on our view or our religious beliefs.'

You end up making some very difficult decisions, and in the end you probably disadvantage many more people. That is not to say that I do not fully support the Ngarrindjeri women. They are entitled to have that view, even if it is in dispute with others. All religions are in dispute with each other. No-one has yet proven that there is a religious view that everyone agrees on. There is always a dispute.

What I find very difficult to take is the holding of a royal commission into the religious beliefs or the spiritual beliefs of a group of women—or any group in the community—to then find that their views were fabricated or that religious belief was fabricated when they chose not to give evidence. I am not surprised that a royal commission found that that was a belief in which the royal commissioner could not believe. The Ngarrindjeri women who had that belief chose not to give evidence. Can you imagine holding a royal commission into whether immaculate conception took place?

Senator Herron interjecting—

Senator SCHACHT—Imagine holding a royal commission into any religious belief. Senator Collins read out a section of the *Bible* earlier. That is just one version of a bible. You could hold a royal commission into the *Bible* and find dispute about whether that had any standing at all.

I have to say that I think the *Bible* is a wonderful piece of poetry. That is the best I can say about it. The idea that something may have been written 2,000 years ago or 1,800 years ago is extraordinary, yet no-one has suggested that we should hold a royal commission into the religious beliefs of Christians or Buddhists. But, when it is a group of Aboriginal women who we think hold a stupid view, we proceed to hold a royal commission to prove that they have fabricated that view. I do not care whether they have fabricated it or not. To me, that is not the germane issue. After being rounded upon on many occasions about the Hindmarsh Bridge issue, as a senator from South Australia, I want to put it on record that, whilst I support Senator Collins's amendment—

Senator Bob Collins—Of course.

Senator SCHACHT—I think that goes without saying. I think it is an appropriate amendment.

Senator Faulkner—It hasn't gone without saying!

Senator SCHACHT—Well, it has been said by many others. My view on all of these areas is that, if you can show that there are scientific reasons or environmental reasons, then of course they have to be taken into account. I believe that to hold a royal commission to try to prove that a group of Aboriginal women did not genuinely hold that religious view is extraordinary.

In my view, there has been an enormous amount of political hypocrisy by people running around saying, 'Just because they are Aboriginal women their religious views weigh less than our other religious views or religions that some of us think are more substantial.' I

do not hold any of those religious views more equally than any other. In regard to the decision taken on this bridge, the minister has given assurances that the legislation is not contrary to the Racial Discrimination Act. Those assurances are very necessary and relevant. If that is the case, they can go ahead and build the bridge.

I have to say that I think the majority of South Australians would say, 'Thank goodness a decision has been taken and the bridge has proceeded.' I find that overall in this issue there has been an amount of hypocrisy from people, including members on the other side. When they thought they could attack a former state Labor government for being involved in building the bridge, they opposed it. When the Aboriginal people opposed the bridge, they then seemed to change their minds and they attacked them religiously.

Senator BOB COLLINS (Northern Territory) (8.15 p.m.)—by leave—I move:

(1) Page 1 (after line 8), after clause 2, insert:

2A Racial Discrimination Act to prevail

(1) For the avoidance of doubt, it is expressly declared to be the intention of the Parliament that the terms of the Racial Discrimination Act shall prevail over the provisions of this Act.

(2) Nothing in this Act shall be taken to authorise any conduct, whether legislative, executive or judicial, that is inconsistent with the operation of the Racial Discrimination Act.

(2) Clause 3, page 2 (after line 7), after the definition of **pit area**, insert:

Racial Discrimination Act means the *Racial Discrimination Act 1975*.

I will not speak for much longer on this, Minister. There are just a few points I want to make. Before the dinner suspension, the minister mentioned the distinction that he drew between the Social Security Act, which had the amendment that is before the Senate now moved in the same terms. It makes interesting reading. When you have a look at the *Hansard* pinks, it just indicates the difficulty that the government has actually making this distinction. This is what the minister said:

I would like to respond to some of the points raised. Senator Bob Collins raised the social security bill and tried to draw an analogy between that and the government's response. I do not think that is valid because there can be no comparison. The Hindmarsh Island legislation and the building of a bridge has been a highly litigated issue, as you know, over three years at least with the expenditure of over $4 million. To draw an analogy or suggest an apparent inconsistency with the social security legislation I think is invalid.

That is it. I point out to the committee that—and I am not going to protract this issue: we have been over the ground enough times—all of that litigation and money had absolutely nothing to do with any argument about inconsistencies in the Racial Discrimination Act.

So what the relevancy of that distinction is in respect of this particular question, I do not know. It had to do with all of the reports and all of the disputes and the fact that ministers did not read the secret information and so on and so forth. I will not stray on that.

There is one other matter that I do want to correct. The minister went on to say that the 'opposition opposed precisely this amendment'—which of course is wrong—'to the Native Title Bill in 1993'. I was here during that debate. I recall what the minister was referring to. What a pity he only told half the story, because the other half is actually in the act as section 7. That is not correct either.

My memory of what happened—and the Greens and the Democrats and Senator Kernot may have a more precise recollection—was that effectively there was an assurance that this did not affect the operations of the RDA. One bit was moved by the Democrats and another bit was moved by the Greens. During the negotiations over getting those two bits together, a compromised form of words was, in fact, suggested by former Senator Gareth Evans, who had the carriage of the legislation. That was agreed to, and it appears as section 7 of the act.

Senator Kernot interjecting—

Senator BOB COLLINS—I am glad to have that confirmed by Senator Kernot. Section 7 states:

Racial Discrimination Act

Operation of RDA not affected

7(1) Nothing in this Act affects the operation of the Racial Discrimination Act 1975.

That was a distillation drafted by former Senator Evans—and I was in here when it happened—of a number of amendments of similar kind moved by both the Democrats and the Greens. This was a distillation of all of that.

So the information that we rejected the amendment is absolutely untrue. There it is in the act. It is part of the law. Minister, if you concede that that argument is flawed in terms of you advancing it as an argument against accepting this, I think in true justice you would have to now tap the mat and agree to support the amendment, or maybe you could redraft it so that it reads in exactly the same way as the one we accepted to the RDA.

I simply conclude by saying that, in respect of a number of other statements that were made about the cost of reports and the length of time for reporting, the minister would be well aware—but other members of this committee would not be aware—that the matter was canvassed at some length during the Senate estimates processes and questions that I asked ATSIC officers. We started off with answers that said that the cost could be between nought and a million. I commend the ATSIC officers. They knew exactly where I was heading. I commend their professionalism in trying to do the right thing as best they could for the minister.

I pursued the issue. The ATSIC officers—and, of course, it is ATSIC that is going to have to pay the bill for this, should there have to be a report at any time—said on the record, and it is in the *Hansard*, their commonsense estimate—and, Minister, I concede that these are rubbery figures—of where they thought it might or most likely would end up. The period of time for the report was two months and the estimated cost was $100,000, which I think is probably close to the mark.

Senator Herron—$200,000.

Senator BOB COLLINS—Was it $200,000? I thought it was $100,000, but I will not press you on that. It was $200,000. It is a long way from the million, of course, which got a real workout here in the chamber. Again, I do not raise that, Minister, as any substantive issue. The substantive issues are that, once again, some red herrings have been thrown in our path tonight. The fact that a lot of money was spent on this act had nothing to do with the RDA—nothing whatever. Again, it just shows you how difficult it is for the government to try to really make a case for why they accepted this amendment without question in respect of social security but will not with this.

I have to say again that the assertion that we rejected this amendment in 1993 is so flatly wrong that it actually became section 7 of the act itself. I urge honourable senators to support it. Let me say, Minister, that if there is an inconsistency with the RDA, there will be a challenge to this act, whether this amendment is carried or not, if someone asserts that it does conflict with the RDA. If it goes through unamended or if it goes through amended, there will still be a challenge to the act.

I have to say that the only defence that the minister can offer, and he has not yet run it, as to why the amendment therefore causes him any complications is if he is concerned that his advice might be wrong and that a court would determine that, because it is a later act of the federal parliament, without this particular amendment it does not in fact technically in a legal sense transgress the Racial Discrimination Act for the simple reason that it overrides it, which is something, of course, that the government has said consistently is not its intention. So I guess what we are saying is, 'Prove it.'

Minister, without going in gory detail through the Evatt review, I would also point out that there is also information right up front in the Evatt review—not, I might add, argued by anyone in this chamber. It is on page 15 of the Evatt review. It is listed, of course, under Aboriginal concerns about the operation of the act, from their perspective, not going far enough. The heading is 'No obligation to make a declaration'. It reads:

> 2.33. Aboriginal people are critical of the Act because the power to protect areas and objects is discretionary.

That is a fact.

> The Minister is not obliged to act, even if an area is of significance to Aboriginal people—

A point made again and again, as senators know, in debate in here.

He/she can revoke a declaration without any express requirement to consult the parties. The Act does not specify criteria which, when established, confer a right to a declaration. The political nature of the discretion is discussed in Chapter 10.

That is simply a matter of fact. There is no obligation to make a declaration and the minister is not obliged to act even if the area is of significance to Aboriginal people. That absolute discretion under the act, as was confirmed in the recent Boobera Lagoon decision by a court, has always been there. This whole thing has been a furphy from day one and a political beat-up of the highest order.

After this bill passes the Senate—with this amendment, should it pass—there is nothing whatever, so far as this federal parliament is concerned, to prevent the construction of that bridge commencing immediately. So what I suggest to the minister and to all honourable senators, to conclude this debate in the quickest time possible, is for the Senate to support the amendment and to pass the amended bill and to build the bridge.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (8.25 p.m.)—The government will be opposing the amendments. Senator Collins has just gone through some sort of circuitous logic which I certainly do not follow. What he said is in the *Hansard*, and I suppose that is why he put it there, so that he can look back on it. I hope he does. I bring this to the attention of honourable senators, Senator Harradine in particular: he said that, even if this amendment goes through, it can be challenged in the courts in relation to the Racial Discrimination Act. My advice is that it makes it more likely that that will occur if this amendment is accepted, and the government will be opposing the amendment.

Question put:

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

The Senate divided. [8.30 p.m.]

(The Chairman—Senator M.A.Colston)

Ayes	33
Noes	31
Majority	2

AYES

Allison, L.	Bourne, V.
Brown, B.	Carr, K.
Collins, J. M. A.	Collins, R. L.
Colston, M. A.	Conroy, S. *
Cooney, B.	Crowley, R. A.
Denman, K. J.	Evans, C. V.
Faulkner, J. P.	Forshaw, M. G.
Harradine, B.	Hogg, J.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
Neal, B. J.	O'Brien, K. W. K.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	Minchin, N. H.
O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Childs, B. K.	Newman, J. M.
Cook, P. F. S.	Tambling, G. E. J.
Foreman, D. J.	Heffernan, W.
Gibbs, B.	McGauran, J. J. J.

*** denotes teller**

(Senator Bishop did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bolkus did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Question so resolved in the affirmative.

Bill, as amended, agreed to.

Bill reported with amendments.

Adoption of Report

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

That the report of the committee be adopted.

Senator MARGETTS (Western Australia) (8.34 p.m.)—I was waiting for the magic words, because I have circulated an amendment to the motion that the report of the committee be adopted. I move:

At the end of the motion, add:

"and that the Senate resolves that the following matter be referred to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund for inquiry and report on or before the last day of sitting in 1997:

The urgent need for amendments to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, consistent with the report of the Review of that Act by Justice Elizabeth Evatt, in order to avoid or minimise the repetition of any further incidents, such as the Hindmarsh Island Bridge situation, in which the spiritual and cultural beliefs of Aboriginal and Torres Strait Islander people are not able to properly considered under existing legislative arrangements."

Senator Harradine interjecting—

Senator MARGETTS—Senator Harradine indicated that perhaps I will not get Senator Schacht on this issue. As far as I know, under the Evidence Act there already is exemption in relation to people such as priests, who have heard incriminating evidence. People will not be imprisoned for not giving evidence if they are priests and they have heard a confession. It is not as if this has never happened before. It does not presuppose the way the law will deal with these issues. It simply is looking for ways of dealing with issues of cultural sensitivity so that they can be heard under the law. I do not think that that is unreasonable.

Senator Collins gave a terrific speech in support of the findings of the Evatt report. I thank Senator Kernot for indicating support for my amendment which, really, as has been indicated, was well overdue three months ago—or whenever the time was that we last dealt with this bill. The government indicated that they had passed on the Evatt report to the various interested bodies, including state governments, for their comments. The state governments have had this for three months. I believe it has been something like eight months since the report was issued.

This amendment says to 'report on or before the last day of sitting in 1997'. I do not think it is unreasonable to ask for a response. I do not think it is unreasonable to get together the views of the community to enable the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Fund to conduct an inquiry and report. I think this is the appropriate committee. I think it is definitely the appropriate time. I commend this amendment to the Senate.

Senator BROWN (Tasmania) (8.37 p.m.)—I wholeheartedly support the amendment that Senator Margetts has moved. Just before I came here I was talking with Wadjularbinna from the Aboriginal people on the other side of the nation to those at Hindmarsh Island. Senator Margetts is trying to find a means of redressing some of the concern that Wadjularbinna expressed to me as an Aboriginal person—that is, the need for we non-Aboriginal people in this country to understand that we have an obligation to accept a difference in cultures: to accept that the original culture of this country, while subjected to centuries of depredation, exists, is vibrant and is no less important and enriching to this country than the culture we brought so recently to these shores. It must be not only heard but also fostered if we as a nation are to go into the next century shedding some of the angst and division and repression of this and the last century.

Surely we can at least begin with this small measure to find a means of recognising the need for our laws to be able to encompass the different cultural values of the Aboriginal people of this nation. It is very easy to shrug that off and say it does not matter, but I can tell you if the boot were on the other foot we would feel mightily aggrieved. It is ultimately a spiritual matter. If we ignore it we continue to repress people's spirit, and at the same time say, 'We do not understand, therefore we do not care, therefore we will ignore you, therefore we are responsible for the consequences.' I think the consequences are far more grave than many people of non-Aboriginal culture have assessed.

It is our responsibility as law-makers in this place to face that responsibility, to address our obligation and to incorporate, at least on an equal basis, their cultural, spiritual and legal beliefs when there are dealings with the Aboriginal people of this nation. So it is very important indeed that this motion by Senator Margetts, which seeks to find a way to do just that, be supported. It is a very important motion. It is a very critical means of trying to find an answer to a problem we created—one for which we have not yet found a solution. We ignore it not only at our peril but also at a great cost to our own esteem further down the line as more and more of us recognise that we are wrong to do so.

I wholeheartedly support this motion. I hope it will get the Senate's support. I hope that the Senate will, through this mechanism, try to find a better way of dealing with the phenomenally important and enriching Aboriginal culture of this nation.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (8.42 p.m.)—The government will be opposing the amendment because we believe that sending the matter to a committee, as proposed by Senator Margetts, would only serve to delay reforming the act. All sides agree it is necessary and urgent—there is no question about that. We have gone through a process, as you know. I mentioned previously that I issued a press release late last year announcing proposals for reforming the Aboriginal and Torres Strait Islander Heritage Protection Act. Under the proposals the Commonwealth act will be retained as an act of last resort to apply where state and territory legislation does not meet national minimum standards or where national interest considerations exist.

The processes for granting protection to Aboriginal sacred sites under the Commonwealth act will also be substantially improved. A discussion paper on national minimum standards was sent for comment to the states and territories and indigenous, mining, pastoral and other relevant interests today. So that is already being achieved, Senator Margetts. The Evatt report on the Aboriginal and Torres Strait Islander Heritage Protection Act has also been sent out for general comment. I do not know what more we can do.

Senator Kernot interjecting—

Senator HERRON—Reforming the Aboriginal and Torres Strait Islander Heritage Protection Act, Senator Kernot, is a complex undertaking. Proper consultations will be required with a wide range of interested parties, including the states and territories and indigenous people themselves.

As everybody should know if they do not know already, consulting the indigenous people in particular requires a considerable amount of time in their interest because of their dispersal. Similarly, consultation is occurring with pastoralists and miners, and that will take time. However, it is intended, of course, that legislation will be passed by the end of this year. It will be, and so I do not believe that anything would be achieved by the passage of this amendment. I will be opposing it.

Senator BOB COLLINS (Northern Territory) (8.44 p.m.)—You have got to be very careful: the minister almost had me there for half a second until I re-read the amendment. The minister has said that he does not want to support this amendment because it may well have the effect—this is what he said—of delaying the government actually doing something about this report it has now had for eight months. Of course, the amendment has no such—

Senator Woodley—He tried to do that without needing any amendments.

Senator BOB COLLINS—Thank you, Senator Woodley. I am responding to that interjection so that it will get in the *Hansard*. The amendment, of course, says 'on or before the last day of sitting in 1997'.

I would imagine that if Senator Margetts, Senator Brown, Senator Kernot, I and all others who have a close interest in these issues hear from the minister that he in fact intends to act on this much earlier I have not the slightest doubt that we would all cooperate fully with him in ensuring that this reference to the committee was completed in good time to assist him in his intention to respond.

I have to say, Minister, I have some degree of puzzlement as to your opposition to this reference considering the fact that in my view, appropriately and responsively, this major report is an excellent report. I said earlier in the debate today that if anybody has concerns about the operation of this act—and I have had this criticism made to me directly, and it falls to stony ground if you read this, that this act has been abused by Aboriginal people—the cold hard facts are that only 99 applications in total over 12 years have even been made under the act. As I said before, this review points out that, as we speak, only one single protection order currently exists in the whole of Australia at Alice Springs.

It is a major piece of work, and I would have thought that before the Senate actually passes any amendments being referred to a Senate committee in some way or other is as certain as the sun rising tomorrow morning is certain. I am not quite sure what you achieve by opposing this, with respect. There will be a reference to a Senate committee of this inevitably at some stage before the Senate passes whatever legislation you might bring forward. Frankly, it might as well go to the committee now as later. Sooner or later it is going to go to a committee; it might as well be tonight.

I say on the record—and I am sure I would be joined by Senator Kernot and Senator Margetts who has moved the motion—that we will all cooperate to the fullest extent with you, Minister, in expediting that process.

Senator Kernot—I'm on that committee.

Senator BOB COLLINS—Fine. I have connections on that committee in that case. I am sure Senator Kernot would give such an assurance that the committee would cooperate fully with you, Minister, to expedite the work of the committee if you supported this amendment. It is just a question of waiting a month and getting it referred some other way.

I want to conclude by saying on the record—and I want to be very careful to say this—that there are a great many recommendations in this report. I have concerns about some of them and for that reason I just want to refer to these words in the amendment, which will certainly not prevent me from voting for it, where it says 'the urgent need for amendments . . . consistent with the report of the Review'. I would certainly not want that read as concurrence with every recommendation of the report.

I think that the Hon. Elizabeth Evatt has done an excellent job of examining the impact of this act and has made a number of, I think, very positive suggestions for both Aboriginal and non-Aboriginal people as to how the matters can be resolved. But at this stage we would not want to be locked into any position of necessarily supporting each and every amendment. With that caveat placed on it, Senator Margetts—and I am sure you understand it—we will be supporting this reference.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (8.50 p.m.)—Winding up—

The ACTING DEPUTY PRESIDENT (Senator Patterson)—You cannot wind up.

Question put:

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

The Senate divided. [8.53 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	32
Noes	31
Majority	1

AYES

Allison, L.	Bourne, V.
Brown, B.	Carr, K.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Conroy, S. *
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Evans, C. V.	Faulkner, J. P.
Forshaw, M. G.	Harradine, B.
Kernot, C.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
Neal, B. J.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferris, J
Gibson, B. F.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
Minchin, N. H.	Newman, J. M.
O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Foreman, D. J.	McGauran, J. J. J.
Gibbs, B.	Ferguson, A. B.
Hogg, J.	Heffernan, W.
O'Brien, K. W. K.	Tambling, G. E. J.

*** denotes teller**

Question so resolved in the affirmative.

(Senator Bolkus did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bishop did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Original motion, as amended, agreed to.

Report adopted.

Third Reading

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (8.56 p.m.)—I move:

That this bill be now read a third time.

I was denied the opportunity to speak previously on the third reading by what I suppose would best be called a misadventure, and I want to put that on the record. I was opposing the previous amendment because it seemed more logical for the reports coming through on the heritage protection act to go off to the committee for further debate and discussion instead of as it stands now, with this amendment being carried, that it would go off before the reports came through on the Evatt report. But, in its wisdom, the Senate has passed that motion—and I accept that the amendment be accepted—but it will achieve far less, and I was denied the opportunity to say that before the division occurred.

The ACTING DEPUTY PRESIDENT (Senator Patterson)—Senator Herron, I apologise. It was a misunderstanding. I thought you had spoken and I was advised that you had spoken. We made an error and I apologise that you did not have the opportunity to speak on that amendment.

Question put:

That the bill be now read a third time.

The Senate divided. [9.02 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	53
Noes	9
Majority	44

AYES

Abetz, E.	Boswell, R. L. D.
Brownhill, D. G. C.	Campbell, I. G.
Carr, K.	Chapman, H. G. P.
Childs, B. K.	Collins, J. M. A.
Collins, R. L.	Colston, M. A.
Conroy, S.	Coonan, H.
Cooney, B.	Crane, W.
Crowley, R. A.	Denman, K. J.
Eggleston, A.	Ellison, C.
Ferris, J	Foreman, D. J.
Forshaw, M. G.	Gibbs, B.
Gibson, B. F.	Harradine, B.
Herron, J.	Hogg, J.
Kemp, R.	Knowles, S. C.
Lundy, K.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
Mackay, S.	McKiernan, J. P.
Minchin, N. H.	Murphy, S. M.
Neal, B. J.	Newman, J. M.
O'Brien, K. W. K.	O'Chee, W. G. *
Parer, W. R.	Patterson, K. C. L.
Ray, R. F.	Reid, M. E.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Short, J. R.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.
West, S. M.	

NOES

Allison, L.	Bourne, V. *
Brown, B.	Kernot, C.
Lees, M. H.	Margetts, D.
Murray, A.	Stott Despoja, N.
Woodley, J.	

*** denotes teller**

Question so resolved in the affirmative.

Bill read a third time.

ORDER OF BUSINESS

Government Business

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

That the order of consideration of Government Business for the remainder of today be as follows:

Government Business orders of the day—

No. 4— Consideration in committee of the whole of messages Nos 216, 217 and 218 from the House of Representatives (Private Health Insurance Incentives Bill 1996 and two related bills)

No. 6— Superannuation Contributions Surcharge (Assessment and Collection) Bill 1997 and six related bills.

PRIVATE HEALTH INSURANCE INCENTIVES BILL 1996

MEDICARE LEVY AMENDMENT BILL (No. 2) 1996

TAXATION LAWS AMENDMENT (PRIVATE HEALTH INSURANCE INCENTIVES) BILL 1996

Consideration of House of Representatives Message

Debate resumed from 6 March.

House of Representatives messages—

Schedule of amendments made to which the House of Representatives has disagreed:

PRIVATE HEALTH INSURANCE INCENTIVES BILL 1996

MEDICARE LEVY AMENDMENT BILL (No. 2) 1996

(1) Clause 3-3, page 6 (lines 19 to 28), omit subclause (4), substitute:

(4) The ***maximum amount*** is:

(a) if at all times during the financial year the person covered by the policy is not a dependent child and is not the partner of another person—$35,000 adjusted, as appropriate, by the index number; or

(b) if at any time during the financial year the person covered by the policy is not a dependent child and is the partner of another person—$70,000 adjusted, as appropriate, by the index number; or

(c) if at any time during the financial year the person covered by the policy is a dependent child—$70,000 adjusted, as appropriate, by the index number.

Note: For ***dependent child***, ***parent*** and ***partner***, see the Dictionary.

For ***index number***, see section 3-6.

(5) For the purposes of subsection (4), adjustment of the maximum amount is determined by multiplying the sum specified by the index number (rounding down to the nearest whole dollar).

Note: For ***index number***, see section 3-6.

(2) Clause 3-4, page 7 (lines 21 to 31), omit subclause (4), substitute:

(4) The ***maximum amount*** is:

(a) if the persons covered by the policy do not include 2 or more dependent children at any time during the financial year concerned—$70,000 adjusted, as appropriate, by the index number; or

(b) if, at any time during the financial year, 2 or more dependent children are covered by the policy—the amount worked out as follows:

Note: For ***dependent child***, ***parent*** and ***partner***, see the Dictionary.

For ***index number***, see section 3-6.

(5) For the purposes of subsection (4), adjustment of the maximum amount is determined by multiplying the sum specified by the index number (rounding down to the nearest whole dollar).

Note: For ***index number***, see section 3-6.

(3) Page 8 (after line 12), at the end of Division 3, add:

3-6 Meaning of *index number*

In section 3-3 or 3-4:

(1) ***Index number***, in relation to a maximum amount, means the number, calculated to 3 decimal places, worked out under the following formula:

(2) For the purposes of subsection (1), ***average weekly earnings*** for a year of income is the number of dollars in the sum of:

(a) the average weekly earnings for all employees for the reference period in the December quarter immediately before the year of income, as published by the Australian Statistician; and

(b) the average weekly earnings for all employees for the reference period in each of the 3 quarters immediately before that December quarter, as published by the Australian Statistician.

(3) Subject to subsection (4), if at any time, whether before or after the commencement of this Part, the Australian Statistician has

published or publishes an average total weekly earnings number in respect of a year in substitution for an average total weekly earnings number previously published by the Australian Statistician in respect of that year, the publication of the later number shall be disregarded for the purposes of sections 3-3 and 3-4.

(4) If at any time, whether before or after the commencement of this Part, the Australian Statistician has changed or changes the reference base for the average total weekly earnings, then, for the purposes of the application of sections 3-3 and 3-4 after the change took place or takes place, regard shall be had only to numbers published in terms of the new reference base.

TAXATION LAWS AMENDMENT (PRIVATE HEALTH INSURANCE INCENTIVES) BILL 1996

(1) Schedule 3, page 14 (lines 2 to 12), omit the Schedule.

Reasons of the House of Representatives for disagreeing to the amendments of the Senate

The House does not accept the Senate's amendment for the following reasons:

The increase in the threshold is an integral part of the Government's package to boost Australia's declining level of participation in private health insurance, a package that includes incentives for lower income earners who have private health insurance and an incentive on higher income earners to take out private health insurance; and

The $1000 threshold has not been increased since it was introduced in 1985-86.

The CHAIRMAN—The committee is considering messages Nos 216 to 218 from the House of Representatives, in relation to the Private Health Insurance Bills. With the agreement of the committee I propose to call on the message relating to the Private Health Insurance Incentives Bill 1997, followed by the message relating to the Medicare Levy Amendment Bill (No. 2) 1996 and then the message relating to the Taxation Laws Amendment (Private Health Insurance Incentives) Bill 1997.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.07 p.m.)—I think it would shorten proceedings if we have one debate on these three messages. I therefore propose, with the leave of the Senate, to move a motion in respect of each message at this stage, to make my comments and after the debate has concluded to have the question put separately in respect of each motion. I can foreshadow that I will move in respect of each message that the committee does not press its requests to which the House of Representatives has disagreed.

Leave granted.

Senator ELLISON—At the outset, I might assist the committee by stating the government's position. These bills were the subject of amendment by the opposition which resulted in the indexation of the threshold for the private health insurance incentives and for the Medicare levy surcharge. This package of bills was also altered by the opposition's successful rejection of the government's proposed increase of the medical expenses rebate from $1,000 to $1,500.

As a result of further consideration, the government has decided to amend the Taxation Laws Amendment (Private Health Insurance Incentives) Bill 1997 and the Medicare Levy Amendment Bill (No. 2) 1996. If I might firstly deal with the taxation laws amendment bill. These amendments deal with schedule 3 and propose that the medical expenses rebate be increased from $1,000 to $1,250. This will entail an increase of 25 per cent rather than the 50 per cent which the government previously proposed. I think it was Senator Harradine who raised that earlier and the government has considered this.

It is important to note that this rebate has not been altered since its introduction in 1985. It is the government's view that a 25 per cent increase over a period of 12 years is hardly what one would call harsh. This amendment has the benefit of easing the impact on those people who claim the rebate but still increasing the incentive for people to move into private health insurance. It also makes a contribution to the budget deficit similar to the original review estimates contained in the 1996-97 budget. This measure will involve an increase to revenue in the region of $20 million in a full year.

In relation to the second amendment, the government has decided to amend the Medicare Levy Amendment Bill (No. 2) 1996.

This amendment increases the income threshold for the Medicare surcharge for families by $1,500 for each dependent child after the first child. Hence a family with three dependent children will have an income threshold of $103,000 per annum before the Medicare surcharge is payable. This recognises that families with children have additional expenses associated with those children.

The government's private health insurance incentives package otherwise remains the same. We reject the amendments made by the opposition in relation to the indexation of the respective thresholds in these bills. The opposition amendments will not help stem the flow of people moving away from private health insurance and will result in a loss to the government between now and the year 2000 of over $200 million. Any benefit indexation might bring is far outweighed by this factor.

As a result of this indexation brought upon us by the opposition, there will be a void of some $60 million in a full year. Where do we get money to fill that void? Do we take it from worthwhile programs which none of us would like to see affected by such a move? The opposition knows that there is a cost to everything and it has to ask itself whether indexation is worth that sort of decision in order to make a political point.

In any event, there are good precedents for a fixed threshold. I would refer to the income tax free threshold which exists now. Both this government and the former government have seen fit to preserve this fixed threshold as well as others. There is similarly no need to extend or index the thresholds contained in these bills. I believe the general arguments in matters generally touching on this package were well canvassed when these bills were last before the Senate. I do not intend to delay the Senate further.

I might add, however, that, during the debate on this matter on 4 March 1997, I made a statement that I need to correct. That followed a question from Senator Neal. When discussing in committee the mechanism for changing the qualifying income threshold for the private health insurance incentives, I indicated that this threshold could only be changed through a disallowable instrument. I, of course, meant to refer to the actual amount of the incentive rather than the qualifying threshold. It is the amount of the incentive that is the subject of a disallowable instrument.

I have already advised Senator Neal that I referred to the wrong provision. I believe nothing flows from this. I commend these bills and the government amendments to the Senate.

Senator Neal—I am not quite sure exactly how the parliamentary secretary intends to approach the messages. Are you formally moving your amendments?

Senator ELLISON—There are two aspects to this. Firstly, with respect to each message I will move that the committee does not press its requests for amendments to which the House of Representatives has disagreed. That deals with the three amendments that the opposition passed. So we do not press our requests for those. In turn, I will move the amendments I have indicated, which I believe have been circulated in the chamber.

The CHAIRMAN—It seems to me that, if you wish to debate these matters, we do not have to worry about the first motion yet. You can have a global debate on all three.

Senator NEAL (New South Wales) (9.14 p.m.)—I just want to make some initial inquiries of the parliamentary secretary. In his address in the Senate just a few moments ago, he indicated that the indexation would cost $60 million each year. I was wondering if he could break that down and indicate exactly how that is calculated and whether that includes both the first and second amendments which the opposition moved in the Senate and, if so, how that is broken up.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.15 p.m.)—I have here a breakdown of the costs in relation to the indexation in respect of thresholds. With respect to the private health incentive threshold, I am advised that the cost would be: 1998-99, $11 million; 1999-2000, $24 million; and 2000-01, $38 million. That

adds up to a total of $73 million. With respect to the Medicare surcharge threshold indexation, I am advised that the cost is: 1998-99, nil; 1999-2000, $10 million; 2000-01, $25 million. That would be a total of $35 million. I am advised that, in the year 1999-2000, the $10 million would relate to when the assessments would first become effective.

Senator Neal—Could I ask the parliamentary secretary to table that document; it is a bit hard to understand exactly what figures you are indicating.

Senator ELLISON—Certainly, that can be done. I will arrange to have that photocopied in an appropriate form and it can be tabled.

Senator NEAL (New South Wales) (9.16 p.m.)—Thank you. I do wish to indicate that the two amendments that have been circulated in relation to this matter by the government will not be opposed by the opposition. I must confess that they have been circulated quite late, so I have not had the opportunity to appraise in detail the technicalities of the amendments, but I assume that they do what the parliamentary secretary has indicated—in relation to the Taxation Laws Amendment Bill, that it decreases the amount of expenditure that must be incurred before a tax rebate is provided; and in relation to the Medicare Levy Amendment Bill, that it provides an additional allowance before the levy comes into play for those who have children. Could the parliamentary secretary confirm that the additional amount allowed to be earned before the levy comes into play is $1,500 per child?

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.18 p.m.)—It is $1,500 per child after the first child. The example I gave was that, if you had three children, your threshold would be $103,000 and that is calculated on the basis that it does not relate to the first child. The second child would be $101,500. The third child would be another $1,500 and so on.

Senator Neal—Is there an upper limit on the number of children that you receive the $1,500 for?

Senator ELLISON—There is no upper limit to the number of children nor to the threshold.

Senator NEAL (New South Wales) (9.18 p.m.)—I would like to indicate at this stage that the opposition will not be pressing their first amendment which was moved in the Senate—that is, amendment to the Private Health Insurance Incentives Bill. There is a concern in the opposition that, even though it would be fairer and more equitable for there to be indexation of the income level for payment of the levy, any further attempt to amend this bill may mean that the legislation is delayed and those who need the relief and are looking forward to it may well not receive it as soon as they might otherwise. So we will not be pressing that particular item.

In relation to the second amendment that was moved—to the Medicare Levy Amendment Bill, and the indexation of the threshold for those high income earners—the opposition does intend to continue to press that amendment. In fact, some events that have occurred since this matter first came before the Senate would lead us to the view that it is really very much the position that we feared.

I was looking back in the *Hansard* at some of the statements made by the parliamentary secretary. I was somewhat concerned that he may have misled the Senate—I would hope inadvertently, but potentially intentionally. He was asked by me—and pressed quite heavily on this point—whether the government had any plans to reduce the income level where the Medicare levy for high income earners would come into play. The parliamentary secretary responded on at least two occasions—and I am paraphrasing—that there were no plans to drop the threshold level. You may recall that, subsequently, a document came into the hands of the opposition that showed that our fears were extremely well-founded. That document was in a submission from the department of health to the ERC which suggested that savings could be achieved by reducing the level of the threshold and bringing the levy into play at a lower income level.

I do not make those suggestions lightly. The document that we were provided with

indicated that copies were given both to Mrs Moylan and to Senator Ellison as the parliamentary secretary to Dr Wooldridge. I would like the parliamentary secretary to respond to that issue and to indicate, firstly, if the government is again prepared to make an undertaking that the threshold will not be dropped for the levy and, secondly, to explain why the statement was made previously that there were no plans when obviously Senator Ellison had in his possession this document that I refer to.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.22 p.m.)—The document to which Senator Neal refers dealt with a number of matters. I can concern myself with only the matters which deal with the areas for which I have responsibility. They do not include the matter raised by Senator Neal.

Nonetheless, that document was merely an option which was put by the department. I believe that the Minister for Health and Family Services (Dr Wooldridge) has explained in the other place the character of that document extensively. It is not a plan. It is not a decision that the government has taken. It has no standing as a government document as such. Therefore, when the government says it has no plans, it has no plans. That document does not form part of a plan. The common use of the word 'plan' in the English language is for a decision that someone is about to embark on. It is a design that someone has decided to implement. That document does not constitute such a thing, and Minister Wooldridge made that very clear in the other place.

To the extent that I concern myself with only that part of the document which deals with my area of responsibility and did not include the matter that Senator Neil raised, I did not turn my mind to that aspect of the threshold that she mentioned. But, in any event, this document was not a plan nor formed any part of the government's plan. It was an option that departments put to governments from time to time, just as they did when the opposition was in government. Options were put to the government by the department then but they did not form part of plans.

Finally, I have repeatedly said to those opposite that I cannot give undertakings as to what will be in the budget in this year or any other year. You referred to the statements of Senator Gareth Evans, as he then was, in this very chamber. He gave similar statements to the then opposition when they requested similar undertakings from him.

Senator LEES (South Australia—Deputy Leader of the Australian Democrats) (9.25 p.m.)—I will speak to all three bills in just one hit, as it were, unless issues come up, as they tend to in this place, that I cannot resist responding to. I will begin with the Private Health Insurance Incentives Bill 1996. We will not continue to press for this amendment—indeed, we will also not continue to press for a similar amendment to the Medicare Levy Amendment Bill (No. 2)—partly because of the amount of money involved. I think we have made the point very clear to the government that it is now on their head to ensure that the indexation is catered for if they really do believe that this is the way to get people into private health insurance and thereby solve some of the problems being faced by our health system.

I again make the point that when we look at taking money out of government coffers—in this case, for health—it is always tagged to the relevant portfolio area. We are being told that this is a health measure, it will cost $200-odd million and therefore it has to come out of the health budget. But when we have the opportunity to raise some moneys, such as from an increase in the Medicare levy, which we will also be debating in a moment, we are told, 'No, sorry. We can't actually put the money we raise into health.' We are very quick to take money out but, as was the case when we discussed these bills before—indeed, it was made very clear by the Minister for Health and Family Services (Dr Wooldridge)—there is no guarantee that any of the extra money we raise will end up in the health budget.

The Australian Democrats believe that they need to make this point yet again, so I flag

now very clearly that, when we debate the indexation and when we have the third reading on the Medicare Levy Amendment Bill (No.2), I will call for a division to make the point that all the additional money we are raising should go—must go—into our public health system. I am not speaking about just hospitals, I am talking about our public health system—be it dental health services, community health services, mental health services.

As I said before, all the additional money raised from the increase in the levy should go into public health. The government should have given us a much clearer explanation as to why the Democrat amendments that would have raised between $360 million and $380 million a year will not be supported when we could have had a substantial improvement in our public health system.

I note that we have some additional amendments before us—in particular, to the Medicare Levy Amendment Bill (No. 2)—in relation to what is now the family surcharge threshold. We are quite happy to work with you on that one. I note also that you are now putting before us a change to the Taxation Laws Amendment Bill to reduce the medical expenses rebate threshold from, if I am reading this properly, $1,430 to $1,250. At least we see there is some recognition that a $500 increase—although it does not look to me like a $500 increase; I am not quite sure where that figure came from, as I thought we were talking about $1,500—was too high. At least we now have a more reasonable figure.

As this will now be supported here, all I can say is that surely it is about time this government gave some encouragement to those people who are prepared to self-insure. If we do want to see people move into the private sector, we should not keep trying to push them into the private health insurance funds when they have already voted with their feet and shown they really do not wish to get into the prescribed or approved funds. Many people are self-insuring. So, whilst we are still disappointed that there is an increase in the rebate threshold, at least it is a lot better than the $500 originally proposed.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.29 p.m.)—The $430 that Senator Lees refers to relates to the first year, and of course by the time that is effected it is based on a proportionate part of the year. Thereafter it would have been $500, but I think that that is quite irrelevant now because we are dealing with $250 for each year. I say to Senator Lees that the government's firm view is that the funds raised from the Medicare levy have never been hypothecated towards health funding and that the government is not about to change that long precedent.

Senator NEAL (New South Wales) (9.29 p.m.)—Your explanation of your amendment to the Taxation Laws Amendment (Private Health Insurance Incentives) Bill has raised more questions than it answered. Could you explain exactly what is your view of the effect of that amendment? It certainly is not clear to me.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.30 p.m.)—The current medical expenses rebate is $1,000. We previously proposed that it be increased from $1,000 to $1,500, an increase of 50 per cent. We are now proposing that it be increased by 25 per cent to $1,250. It is as simple as that: a $250 increase.

Senator Neal—Does the amendment in any way affect any further years after that or will it continue to be $1,250?

Senator ELLISON—That $250 increase per year will stand until such time as it is altered in the future, if ever.

Senator Neal—Does that mean a $250 increase each year so that it will be $1,250, $1,500, $1,750—

Senator ELLISON—No. It will apply not to each respective year in an accumulative sense. The amendment is proposed as of now and will remain as such until changed and will require an amendment to the act. So it will be $1,250 until such time as it is changed by an act of parliament.

Senator NEAL (New South Wales) (9.32 p.m.)—I wish to indicate that, before we vote

further on this matter, the opposition will be pressing what was originally its third amendment in this package—that is the Taxation Laws Amendment (Private Health Insurance Incentives) Bill—which relates to taking the expenditure back down to $1,000. I ask for our original second amendment and the third amendment to be put to the chamber separately from the total message.

Senator HARRADINE (Tasmania) (9.32 p.m.)—I want to make two very brief observations. I know time is on the wing and there is not really time to have a full-scale debate on this matter. I feel that the action of the opposition in respect of this has set the scene for some improvements to be made. I acknowledge the work that was done by Senator Neal on that particular matter. The figures that have been given by the government as to the lost revenue does of course bear heavily on my mind. I have come to the view that I will not vote to continue to press for the amendments.

I note what the government is proposing here. At least they are starting to recognise that a family of whatever income with children has more necessary expenditure than those without. I commend the government for at least acknowledging that. The amount of $1,500 is, I suppose, a start. I acknowledge that the government has at least attempted to acknowledge that principle.

I am rather concerned as well that the $2,100 per child that is operative in respect of the cut-in figure for the Medicare levy to be paid—I am not talking about the one per cent increase—has not been changed for about eight years. It is quite clear that the latest figure used by this government in respect of children is $3,000. That $3,000 is operative in respect of the family tax initiative. I would have thought that the government ought to be having a look at that in the context of the budget. That is possible, but presumably the government does not feel it is appropriate for that matter to be determined at this particular stage.

The figure of $1,250 is probably based on inflation and, under those circumstances, I am prepared to accept that. So, in short, I will agree with the propositions being put forward by the parliamentary secretary not to insist upon the amendments that the Senate made. I will be voting for the amendments put forward by the parliamentary secretary. The amendments to the Medicare Levy Amendment Bill (No. 2) 1996 and the Taxation Laws Amendment (Private Health Insurance Incentives) Bill 1997 are an improvement.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.37 p.m.)—Briefly, can I say through you, Mr Chairman, to Senator Harradine, that the Treasurer has advised me that, in the context of the forthcoming budget, he undertakes to consider your comments in relation to the $2,100 increase in the threshold for children that you have mentioned.

The CHAIRMAN—Is it the wish of the committee to now proceed with the individual bills? Perhaps we could start with the Private Health Insurance Incentives Bill 1996.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.37 p.m.)—Yes. Mr Chairman, we have had an indication that some matters are in contention and others are not. As I understand it, the two requests dealing with the Private Health Insurance Incentives Bill 1996 and the Medicare Levy Amendment Bill (No. 2) 1996 will not be pressed. Is that right?

Senator NEAL (New South Wales) (9.38 p.m.)—No. The Private Health Insurance Incentives Bill amendment will not be pressed, but the Medicare Levy Amendment Bill (No. 2) will be pressed.

PRIVATE HEALTH INSURANCE INCENTIVES BILL 1996

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.39 p.m.)—With respect to message No. 216, relating to the Private Health Insurance Incentives Bill 1996, I move:

That the committee does not press its requests for amendments not made by the House of Repre-

sentatives to the Private Health Insurance Incentives Bill 1997.

Question resolved in the affirmative.

MEDICARE LEVY AMENDMENT BILL (No. 2) 1996

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.39 p.m.)—With respect to message No. 217, relating to the Medicare Levy Amendment Bill (No. 2) 1996, I move:

That the committee: does not press its requests for amendments not made by the House of Representatives to the Medicare Levy Amendment Bill (No. 2) 1996.

Question put:

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

The committee divided. [9.44 p.m.]

(The Chairman—Senator M.A. Colston)

Ayes	39
Noes	24
Majority	15

AYES

Abetz, E.	Allison, L.
Alston, R. K. R.	Boswell, R. L. D.
Bourne, V.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J	Gibson, B. F.
Harradine, B.	Herron, J.
Hill, R. M.	Kemp, R.
Kernot, C.	Knowles, S. C.
Lees, M. H.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
Murray, A.	Newman, J. M.
O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Stott Despoja, N.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.
Woodley, J.	

NOES

Brown, B.	Childs, B. K.
Collins, J. M. A.	Conroy, S. *
Cook, P. F. S.	Cooney, B.
Denman, K. J.	Evans, C. V.
Faulkner, J. P.	Foreman, D. J.
Forshaw, M. G.	Gibbs, B.
Hogg, J.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Neal, B. J.	O'Brien, K. W. K.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	West, S. M.

PAIRS

Heffernan, W.	Carr, K.
McGauran, J. J. J.	Collins, R. L.
Minchin, N. H.	Sherry, N.
Tambling, G. E. J.	Crowley, R. A.

*** denotes teller**

Question so resolved in the affirmative.

(Senator Bolkus did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bishop did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

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

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

Schedule 2, page 5 (after line 31), after item 3, insert:

3A After section 3

Insert:

3A Meaning of *family surcharge threshold*

In sections 8C, 8D, 8F and 8G:

family surcharge threshold for a year of income is:

(a) $100,000; or

(b) if a person has 2 or more dependants who are children—the amount worked out as follows:

$100,000 + ($1,500 x (Number of dependants who are children—1))

Example: If a person has 3 dependants who are children, the family surcharge threshold under paragraph (b) is:

$100,000 + ($1,500 x (3-1)) = $103,000

Schedule 2, item 4, page 7 (line 16), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 8 (line 23), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 9 (line 4), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 9 (line 8), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 10 (line 16), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 11 (line 20), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 12 (line 3), omit "$100,000", substitute "the family surcharge threshold".

Schedule 2, item 4, page 12 (line 7), omit "$100,000", substitute "the family surcharge threshold".

TAXATION LAWS AMENDMENT (PRIVATE HEALTH INSURANCE INCENTIVES) BILL 1997

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.50 p.m.)—I now propose to move, one, that the committee does not insist upon its amendment disagreed to by the House of House of Representatives and, two, the further amendments to the bill, as circulated.

Senator NEAL (New South Wales) (9.50 p.m.)—Could I request that those items be taken separately? Otherwise we would be required to vote opposite ways at the same time, and that would be rather difficult.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.51 p.m.)—I understand Senator Neal's dilemma. Therefore, in relation to message No. 218, I move:

That the committee does not insist upon its amendment disagreed to by the House of Representatives

Senator NEAL (New South Wales) (9.51 p.m.)—Before we proceed to vote on this issue, I would like to clarify exactly what the consequences of the two amendments, as circulated, might be. I will put a proposition to which I hope the parliamentary secretary will indicate his agreement or otherwise. It appears to me that at the present time the level of expenditure required before you can achieve a rebate in the bill is $1,500. I do not mean presently at law, but presently with this bill. If no amendment were moved, it would remain at $1,500. I wonder whether the parliamentary secretary could advise me on that.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.52 p.m.)—The situation is that, as it has been returned from the House of Representatives, the level is $1,500. That would then be reduced to $1,250 by the subsequent motion which I would move to amend this bill.

Senator NEAL (New South Wales) (9.52 p.m.)—But you have not yet moved that amendment at this stage. That is the case. You are doing that second?

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.53 p.m.)—I think we have to do it that way because sequentially that is how things have occurred, and you have asked that we take it separately. That is why we face the dilemma you mentioned, because we have taken it separately. I was trying to do it all in one action. By taking it separately, we accept the $1,500 and then, by the second action, we reduce it to $1,250. I was hoping to do it all in one action so that you would not have to put the position where we would be facing the $1,500 rebate. I do not know how else we can do it, Senator Neal.

Senator NEAL (New South Wales) (9.53 p.m.)—Parliamentary Secretary, I did not wish to mislead you. I was not suggesting that it should be done in any other way. In fact, it suits me to do it as you are doing it now. I just wanted to be exactly sure of how it affected the bill before we voted. Could the parliamentary secretary also advise the Senate of the difference in cost to the government between the $1,500 level and the $1,250 level, which the government is proposing.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.54 p.m.)—I am advised it is in the region of $22 million. That is the difference between $1,250 and $1,500.

Senator Neal—Is that amount each year or over a certain time?

Senator ELLISON—That is in a full year.

Senator NEAL (New South Wales) (9.54 p.m.)—Will that cost continue to be of the same amount each year or will it only be a once off and there will be no further cost? Will it continue to be $22 million each year or a different sum each year thereafter? Will there be a variation?

Senator Ellison—No, there will not be. I am advised there will be approximately $22 million for each year.

The CHAIRMAN—Is it satisfactory to move the two together, Senator Neal?

Senator NEAL (New South Wales) (9.55 p.m.)—No, I am sorry, Mr Chairman. It is quite important for the purposes of what the opposition is doing that they be voted on separately.

Senator HARRADINE (Tasmania) (9.55 p.m.)—In respect of the question that Senator Neal raised, what she was asking was, I believe: what would the effect be if the motion that is moved by the parliamentary secretary is, first, adopted or, second, negatived? The Taxation Laws Amendment (Private Health Insurance Incentives) Bill contained discrete sections which were excised. Normally, for example, if the motion that you move is negatived, then what would happen is that amendments that are made are, in fact, no longer in the bill. But when the question is put that the clause stand as printed, the effect of a negative vote on this particular occasion would mean, yes, the $1,500 could be retained in the bill. That is as I see it.

Senator ELLISON (Western Australia—Parliamentary Secretary to the Minister for Health and Family Services and Parliamentary Secretary to the Attorney-General) (9.57 p.m.)—I think what we will do to allay any fears is to do it in the reverse order to which I indicated; that is, that we deal with the amendments, as circulated. We will deal with that first. After that, we will deal with the motion in relation to message No. 218 which I moved earlier which does not insist upon the amendment disagreed to by the House of Representatives. That will enable us to pass the $1,250 to begin with and then just dispense with the $1,500 thereafter, because I do think this order is wrong. Therefore, I move:

(1) Clause 2, page 2 (lines 4 and 5), omit subclause (5).

(2) Schedule 3, item 1, page 14 (line 5), omit "$1,430", substitute "$1,250".

(3) Schedule 3, item 2, page 14 (lines 6 and 7), omit the item.

(4) Schedule 3, item 3, page 14 (lines 8 to 12), omit the item, substitute:

3 Application

The amendment made by this Schedule applies to assessments in respect of the 1996-97 year of income and for all later years of income.

Amendments agreed to.

The CHAIRMAN—I will restate the earlier question. The question is that the committee does not insist upon its amendment disagreed to by the House of Representatives.

Question put:

That the committee does not insist upon its amendment disagreed to by the House of Representatives.

The committee divided. [10.02 p.m.]

(The Chairman—Senator M.A. Colston)

Ayes	40
Noes	23
Majority	17

AYES

Abetz, E.	Allison, L.
Alston, R. K. R.	Boswell, R. L. D.

AYES

Bourne, V.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Colston, M. A.
Coonan, H.	Crane, W.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J
Gibson, B. F.	Harradine, B.
Herron, J.	Hill, R. M.
Kemp, R.	Kernot, C.
Knowles, S. C.	Lees, M. H.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	Murray, A.
Newman, J. M.	O'Chee, W. G. *
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Stott Despoja, N.	Tierney, J.

AYES

Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	Woodley, J.

NOES

Brown, B.	Childs, B. K.
Collins, J. M. A.	Collins, R. L.
Conroy, S. *	Cook, P. F. S.
Cooney, B.	Crowley, R. A.
Foreman, D. J.	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Neal, B. J.
O'Brien, K. W. K.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
West, S. M.	

PAIRS

Heffernan, W.	Denman, K. J.
McGauran, J. J. J.	Sherry, N.
Minchin, N. H.	Evans, C. V.
Tambling, G. E. J.	Carr, K.

*** denotes teller**

Question so resolved in the affirmative.

(Senator Bolkus did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Bishop did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

The ACTING DEPUTY PRESIDENT (Senator Murphy)—The committee has considered messages 216, 217 and 218 from the House of Representatives in relation to the Private Health Insurance Incentives Bill 1996 and two associated bills and has resolved:

(1) not to press requests for amendments to the Private Health Insurance Incentives Bill 1997 to which the House of House of Representatives has disagreed, and

(2) not to press its requests for amendments to the Medicare Levy Amendment Bill (No. 2) 1996 to which the House of Representatives has disagreed, and to request the House of Representatives to make further amendments to the bill, and

(3) not to insist upon its amendments to the Taxation Laws Amendment (Private Health Insurance Incentives) Bill 1997 disagreed to by the House of Representatives, and to make further amendments to the bill.

Adoption of Report

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

That the report of the committee be adopted.

Senator NEAL (New South Wales) (10.07 p.m.)—I want to indicate at this stage that the opposition will not be opposing this package. It is firmly our view that this will not have the effect of preventing the drain of membership from the private health insurance schemes, that it will not remedy the problems that are presently in place in the public hospital system and that this ineffective package will cost the sum of some $1.7 billion. But, bearing in mind that the government have the responsibility to resolve these difficulties—it is in their hands—we will give them the opportunity by allowing them to put this package through. But, as it were, if it fails, be it on their heads.

Question resolved in the affirmative.

Report adopted.

PRIVATE HEALTH INSURANCE INCENTIVES BILL 1997

Third Reading

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

DAYS AND HOURS OF MEETING

Senator HILL (South Australia—Minister for the Environment) (10.09 p.m.)—by leave—I move:

That:

(1) The Senate shall sit on Tuesday, 6 May, Wednesday, 7 May and Monday, 12 May 1997.

(2) The hours of meeting shall be:

Tuesday, 6 May:

12.30 pm to 7 pm, 8 pm to 11.40 pm.

Wednesday, 7 May:

9.30 am to 1 pm, 2 pm to 7 pm, 8 pm to 11.40 pm.

Monday, 12 May:

12.30 pm to 7 pm, 8 pm to 11.40 pm.

(3) The routine of business for Tuesday and Wednesday, 6 and 7 May, shall be:

(a) government business only till 2 pm and after 8 pm, and

(b) as set down in standing order 57 from 2 pm to 7 pm.

(4) The routine of business for Monday, 12 May shall be government business only.

(5) The question for the adjournment shall be proposed at 11 pm.

(6) That the order of the Senate of 12 December 1996, relating to estimates hearings, be varied to provide that:

(a) supplementary hearings in respect of the 1996-97 additional estimates for the Community Affairs, Employment, Education and Training, Economics, and Finance and Public Administration Legislation Committees be held on Thursday, 8 May;

(b) supplementary hearings in respect of the 1996-97 additional estimates for the Environment, Recreation, Communications and the Arts, Foreign Affairs, Defence and Trade, Legal and Constitutional, and Rural and Regional Affairs and Transport Legislation Committees be held on Friday, 9 May;

(c) if required, additional hearings in respect of the additional estimates may be held by any legislation committee during the sittings of the Senate on Monday, 12 May.

I hope everyone has now got the motion. The purpose is to provide for three extra sitting days for the Senate just before the start of the winter sittings. It would be Tuesday, 6 May, Wednesday, 7 May and Monday, 12 May. Basically, the first two days of those would be what we might describe as normal Senate schedules, with some variation at the end of the day. Monday would be for government business, and Tuesday the 6th and Wednesday the 7th would then be followed by the two planned estimates days.

These extra sitting days and the times and details have been the subject of some discussion around the chamber. They are at the request of the government to facilitate dealing with what we might describe as leftovers from the government's program, which is quite extensive. They are not designed to allow new bills to be debated, but to deal with some of those very important bills that are not going to be dealt with, because of the pressure of time, in this first session.

There is no doubt that we have had before the Senate in this session some very major packages. They have taken considerable time and it has meant that the government was not able to make the progress it would desire before the next budget, which, of course, with the new schedule, is brought on earlier this year. With that in mind, we have sought the cooperation and support of other parties and Independents in this place. I put this motion to the Senate urging that it be adopted.

It would be our intention to give notice to honourable senators, well before these days, of the bills that we would hope to have debated on those days, so that proper preparation can be made for them and orderly practice can be adopted. I also indicate that I recognise that this means that there will be an additional cost for both services to senators and services of the Senate. As it is the government requesting this additional time to meet our programming requirements, we accept that we would have to bear those additional costs.

I do appreciate the spirit within which our request has been discussed tonight. I know that there is not enthusiasm for extra sitting days and I can understand that. But I would ask honourable senators to appreciate that we have put it at the end of this break to facilitate senators' programs—

Senator Faulkner—And staff travel?

Senator HILL—Yes, okay. The two days—Tuesday the 6th and Wednesday the 7th—do fit quite neatly with the estimates sittings that had been earlier agreed upon. Of course the following Monday, the 12th, is the start of what will be a sitting week. I therefore hope that it will not unduly inconvenience senators. Just taking Senator Faulkner's interjection, when I said 'costs for services of senators', I recognise within that the cost of staff, including staff travel.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.13 p.m.)—I did indicate to a meeting of leaders and whips held a short time ago that one of the ironclad laws of business and process in this place is that if you tend to put on extra days or weeks of sittings at the beginning of a session, it is much less likely to be effective than if you in fact add sitting times at the end of a session.

I think the last couple of days probably demonstrate that, on all of us, there are certain pressures towards the end of a session and governments are more likely to be able to progress a legislation program then than at the beginning of a session. It is for those reasons that I do not personally believe that Tuesday, 6 May and Wednesday, 7 May are the best options in terms of those days that are available to the government to ensure that the government's urgent legislation program is dealt with.

I really do think there is a requirement on the government. It is an inexperienced government. It is a government that is obviously struggling to manage the intricacies of legislative programming in this chamber. I think all senators would agree that it has been a particularly poor performance from the government in regard to its management role over the last couple of days.

We have seen so many changes in the order of business before the Senate that we really have to concentrate very hard to try to work out what is in the government's mind—that is, if anything is in the government's mind at all—as it approaches the task of managing a hefty legislation program. I am sorry to report that Senator Hill and his colleagues do not appear to be up to the task. But the opposition, for its part, with its far greater expertise and experience in these matters, has been able to provide as much assistance as one can in these circumstances. I am pleased to say that we—Senator Carr, Senator Evans and others with responsibilities; opposition office holders in this regard—have held out the hand of friendship to try to assist Senator Hill and Senator Campbell in these dark hours.

If the Senate is to sit on Tuesday, 6 and Wednesday, 7 May, I think it is appropriate that the ordinary routine of business be dealt with on those days, so that there will be question time and the capacity for the usual matters that senators at times take advantage of, as well as there being a considerable amount of time for dedicated government business.

Senator Schacht interjecting—

Senator FAULKNER—Yes, that is true. Of course, Monday, 12 May itself will be a dedicated government business day. This is a proposal that is obviously only reluctantly embraced by the opposition.

I really think the task at hand here is for the government to get its act into gear in relation to the management of this chamber. It has been a poor performance. Yes, you have an excuse in terms of your inexperience and lack of understanding of the procedures and processes in this place. But I am sure if you listen more closely to the advice that has been offered, Senator Hill, perhaps next time even you can do a little better than you have been able to manage on this occasion.

What I have indicated on behalf of the opposition is that we will not be taking a dog-in-the-manger approach to this. We are not going to divide on this and waste the Senate's time because clearly there is a majority around this particular proposal. That, I might say, is indicative of the level of cooperation this government has received from the opposition in relation to its legislation program—something that is acknowledged at times by the Leader of the Government in the Senate (Senator Hill). I place that on record: you do acknowledge it at times. But the point needs to be made that this is a level of cooperation that was never extended to the previous Labor administration during the period that Senator Hill was Leader of the Opposition in the Senate. Any criticism of the opposition, of course, is groundless.

I am glad, Senator Hill, that at last you realise the approach you took in opposition, now that you have the experience in government to understand the difficulties of managing a legislative program. I hope, Senator Hill, that after the next election when you find yourself back in this chair you will remember it.

Question resolved in the affirmative.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Knowles)—The President has received a letter from the Leader of the Opposition in the Senate nominating senators to be members of certain committees.

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

That Senators be appointed to committees as follows:

Foreign Affairs, Defence and Trade References Committee—

Participating member: Senator Cook for the committee's inquiry into Radio Australia and Australia Television.

Substitute member: Senator Lundy to replace Senator Cook for the committee's inquiry into Radio Australia and Australia Television.

Legal and Constitutional Legislation Committee—

Participating members: Senators Childs, Gibbs, Lundy and Mackay.

TAX LAW IMPROVEMENT BILL 1996

First Reading

Bill received from the House of Representatives.

Motion (by **Senator 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 CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.21 p.m.)—I table a revised 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—

The Tax Law Improvement Bill 1996 is the second instalment of legislation which will progressively replace Australia's main tax law, the Income Tax Assessment Act 1936.

The 1936 act is on the verge of collapsing under the weight of 60 years of constant and largely piecemeal amendment. The rewrite of the income tax laws to make them shorter, clearer and less burdensome is critical to the Australian taxation system. It will reduce compliance and administrative costs and make it easier for business and individual taxpayers to fulfil their obligations.

The Tax Law Improvement Project has been performing the task of restructuring and rewriting the income tax law. This overhaul is vital and establishes a robust legislative framework which can readily absorb any future changes. By making the law much clearer to follow it will also enable an informed debate about future changes to our tax laws.

The Tax Law Improvement Project team is to be congratulated for the excellent progress it has achieved towards completing this very major undertaking. It has been greatly assisted by the practical insights and commercial expertise of the consultative committee which advises on the project's work. The committee's comments and suggestions have been a valuable asset and the government is most grateful for their dedication.

The Tax Law Improvement Project has pioneered new techniques to make the legislation more user-friendly and understandable. These techniques are now being used in other Commonwealth legislation. There has also been strong interest from overseas in the project, with New Zealand and Britain both undertaking similar rewrite exercises.

The first instalment of the new law, the Income Tax Assessment Act 1997, has now passed both Houses and is awaiting Royal Assent.

Areas rewritten

This bill will build on this very sound foundation and includes rewrites of the following important rules with general application: assessable and exempt income, deductions, trading stock, depreciation and gifts.

Some other rules with more specialised application have also been rewritten and included in the bill. These cover entertainment expenses, primary production deductions, the recoupment of deductible expenses and the sale of leased cars.

The bill continues to use the general features established by the Income Tax Assessment Act 1997. These include a new more logical structure, a new flexible numbering system, and the extensive use of material to help the reader, such as examples, diagrams, notes and signposts to other parts of the law.

Minor policy changes

The rewritten rules include 29 minor policy changes which will make the law simpler, clearer and less burdensome for taxpayers. They will do this by:

replacing impractical rules with ones which facilitate taxpayer compliance;

simplifying rules which are unnecessarily complex;

deleting unnecessary rules;

removing anomalies; and

clarifying ambiguities.

About half of these proposed changes enact existing administrative arrangements which are largely to the benefit of taxpayers.

Joint Committee of Public Accounts

The Joint Committee of Public Accounts reviewed the Income Tax Assessment Act 1997 and concluded that it was a significant improvement over the current law, being widely regarded as far easier to read and understand.

The joint committee has also reviewed this bill and again considers that the rewritten law improves on its predecessor. The bill adopts all the recommendations of the committee, except for the time being, the recommendations about assets converted to or from trading stock.

A specific recommendation is the removal of references to hire purchasers of plant as being entitled to deduct depreciation. Hirers under hire purchase agreements will continue to attract depreciation deductions under long established administrative arrangements. The other amendments are of a minor technical nature; they do not require any change in policy and are mainly to make drafting improvements and correct omissions to ensure that the new law accurately reflects the existing law.

In the course of consultation there was an attempt to formulate rules for the conversion of trading stock to or from capital or private assets. There has, however, been ongoing debate about the drafting of those rules and the government has decided not to proceed, at this time, with the measures but to further pursue broad agreement with professional bodies.

Revenue impact

This bill will have a broadly neutral impact on revenue. All but two of its measures will have no measurable effect on revenue.

The proposal to allow a deduction for rates and land tax on premises used to produce mutual receipts will have a small annual cost to the revenue.

A change to bring the valuation methods for live stock closer in line with those for other kinds of trading stock will have a revenue cost of up to $10 million in most years and over $25 million in the occasional year where there is a large fall in stock prices.

Date of effect

The government intends that the bill will apply from the beginning of the 1997-98 income year.

I present the explanatory memorandum which includes summaries of all the rewritten areas of the law and detailed explanations of the minor changes to the law.

I commend the bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned until the first day of sitting in the winter sittings 1997, in accordance with standing order 111.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from House of Representatives intimating that it had agreed to the amendments made by the Senate to the following bill:

Export Market Development Grants Bill 1997

SUPERANNUATION CONTRIBUTIONS SURCHARGE (ASSESSMENT AND COLLECTION) BILL 1997

SUPERANNUATION CONTRIBUTIONS SURCHARGE IMPOSITION BILL 1997

TERMINATION PAYMENTS SURCHARGE (ASSESSMENT AND COLLECTION) BILL 1997

TERMINATION PAYMENTS SURCHARGE IMPOSITION BILL 1997

SUPERANNUATION CONTRIBUTIONS SURCHARGE (CONSEQUENTIAL AMENDMENTS) BILL 1997

SUPERANNUATION CONTRIBUTIONS SURCHARGE (APPLICATION TO THE COMMONWEALTH) BILL 1997

SUPERANNUATION CONTRIBUTIONS SURCHARGE (APPLICATION TO THE COMMONWEALTH—REDUCTION OF BENEFITS) BILL 1997

Second Reading

Debate resumed from 25 March, on motion by **Senator Campbell**:

That these bills be now read a second time.

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.22 p.m.)—Before Senator Sherry gets to his feet, could I table replacement revised explanatory memoranda relating to the Superannuation Contributions Surcharge (Application to the Commonwealth) Bill 1997 and the Superannuation Contributions Surcharge (Application to the Commonwealth—Reduction of Benefits) Bill 1997. These

explanatory memoranda were circulated in the chamber on 26 March 1997.

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate) (10.22 p.m.)—There are seven bills before the Senate in relation to the superannuation surcharge. It represents the major tax measure of the 1996-97 budget. The so-called surcharge is estimated to raise around $1.5 billion over the next three years. It is the government's major revenue raising measure from last August's budget and here we are at 10.30 at night, the Wednesday evening of the last sitting day before Easter, and we wonder what the priorities of the government are. Its major revenue raising measure, seven complex bills, is expected to be considered in one and a half hours.

I indicate that we have cooperated to the extent that we have withdrawn our second reading speakers on this legislation this evening. I move:

At the end of the motion, add:

"but for the reasons set out in paragraph (2), consideration of the bills in committee of the whole be postponed and be made an order of the day for the day after the day on which the Government tables further amendments to the bills to ensure that the bills will meet the objective of imposing an additional 15% tax on the superannuation contributions of higher income earners without the adverse consequences identified below.

(2) The reasons referred to in paragraph (1) are as follows:

While supporting in principle the Government's proposal to phase in a 15% tax on all superannuation contributions made by or on behalf of high income earners who earn in excess of $70,000 per year, the Senate is concerned that:

(a) the bills, as currently drafted, will apply the tax to at least one million low to middle income earners, particularly in the first year of operation; and

(b) these low to middle income earners will also be subject to advance instalment provisions, resulting in the imposition of a 22.5% tax on at least one million low to middle income earners in the first year; and

(c) the requirement for superannuation funds to collect tax file numbers from all members in order to determine a person's contributions to the fund and their precise income, raises significant concerns about the adequacy of privacy protection for this information; and

(d) families will be unfairly hit by the 15% tax because it includes unpaid leave, eligible termination payments and redundancy packages in the definition of assessable income, and the imposition of the advance instalment system will substantially disadvantage low to middle income earners and their families; and

(e) the cumbersome and administratively complex method of requiring superannuation funds to collect the tax will lead to significantly higher administrative costs that all fund members will have to pay.

(f) the deletion of clause 34 of the Superannuation Surcharge Contributions (Assessment and Collection) Bill 1997 in haste still leaves unresolved the constitutional issues arising where a separate entity is required to pay a tax on behalf of an individual; and

(g) amendments are required to section 58 of the *Superannuation Industry Supervision Act 1993* to ensure that the tax applies to members of defined benefit schemes and to remove concerns about the ability of trustees to reduce member benefits in order to pay the tax, with a consequential concern that the small and large business employers will pay the tax; and

(h) while Federal Judges have been exempted from the tax for constitutional reasons, the Government has not managed to negotiate a satisfactory outcome with the States in relation to the payment of the tax; and

(i) an anomaly has been created, whereby the tax applies to private citizens and Commonwealth employees, but not to Federal Judges or state employees; and

(j) the definition of "adjusted taxable income" to include eligible termination payments, unused leave, sick leave and other once-off payments will have the effect of unfairly catching low to middle income earners who receive a once-off payment during the year, which artificially inflates their income above the threshold; and

(k) the number and nature of amendments moved and new bills introduced by the Government since the introduction of the package on February 13 indicates serious confusion on the part of the Government; and

(l) key issues may be overlooked in the haste with which this legislation is being rushed through the Parliament; and

(m) given the majority report of the Senate Select Committee on Superannuation and the unanimity among witnesses on serious concerns raised in the majority report, the bills should not proceed further before the Government has responded formally to the report;

and the Senate therefore calls on the Government to draft further amendments to the bills to address these concerns.

The purpose of this amendment to the second reading motion is in fact to defer further debate on the surcharge bills in the Senate following the end of the second reading debate this evening. I would like to make it very clear that the effect of voting for this amendment obviously will be to defer consideration of the package of legislation. If that is not carried, the Labor Party will not be voting against the second reading but rather, as I said earlier, will be voting to defer consideration of the bills. If that is not carried, we will be moving into committee to consider a range of amendments that we propose to put to the package of legislation before us this evening.

The Labor Party moves this amendment due to the following reasons. These are reasons which the Labor Party believes are not just critical but fundamental to the whole nature and process of any review of this legislation. The government's stated intention, in imposing the phased-in 15 per cent surcharge on all superannuation contributions on high income earners who earn between $70,000 and $85,000, was to introduce greater equity into superannuation. The Labor Party supports greater equity in superannuation.

As a consequence of this position, the Labor Party does support in principle the government's imposition of the phased-in 15 per cent surcharge on superannuation contributions made by or on behalf of high income earners. However, the Labor Party does not support the imposition of the full 15 per cent surcharge on middle to low income earners who earn less than $70,000. The inclusion of eligible termination payments, unused payment of leave, redundancy payments and other payments will have the effect of requiring low to middle income earners to pay this 15 per cent surcharge.

This is neither fair nor equitable. Neither is it fair nor equitable when the individual will also be required to pay an advance instalment on the following year's surcharge liability. This means that low to middle income earners will be hit by the initial surcharge liability and then half of that liability again. In the Labor Party's view, it is atrocious that a government would consider imposing a full penalty tax of 15 per cent on the superannuation contributions of those individuals who fail to provide their tax file numbers to the superannuation fund.

In evidence presented to the Senate Select Committee on Superannuation, AMP amongst others highlighted the difficulty in obtaining tax file numbers from members. AMP had recently conducted a campaign to collect tax file numbers from members and received a mere 11 per cent response rate. The problem that the government does not seem to have understood is that in many cases the superannuation fund has either lost contact with or the ability to contact members. In this situation there is no way of contacting members to request tax file numbers.

A further problem is the fact that many individuals do not read the information they receive from the superannuation fund. As a consequence of being either an itinerant, casual or part-time worker or failing to read or comprehend what is sent to them, these individuals will be slugged with a penalty tax. It is also concerning to the Labor opposition that this 15 per cent tax will have a dramatic effect on the family. This is utterly hypocritical from a government that stood solemnly before the Australian electorate last year on 2 March and said they were about families.

How will this new 15 per cent surcharge affect the family? The entire concept of superannuation is to introduce intergenerational equity. This means that if I save for my retirement through superannuation perhaps I will lesson the burden I will pass to my children and grandchildren. There is no doubt in anyone's mind that the current age pension of $8,300 is hardly enough for an individual

to live on. They do require other financial assistance. Often this assistance is provided by other family members or provision of state services.

Let me tell the Senate what a massive peace of mind it is for Australians to think that they are doing something positive for their old age by saving. The surcharge will reduce the ability of individuals to save adequate amounts for their retirement income. As a consequence they will be required to ask for help and assistance from their family members. In an era when families are already doing it tough, trying to save for children's education, housing and other necessary essentials, having to provide additional retirement income for older family members is an added burden.

The surcharge also impacts on the decisions of married women. Women, as we all know, are more likely to take time off during their working lives to have and raise children. During this time out of the work force they are unable to accumulate a significant, if any, level of superannuation savings. When women do return to the work force they normally attempt to put additional contributions into superannuation in order to build their retirement nest egg.

This surcharge bill does not provide for any averaging of annual taxable income and therefore unfairly discriminates against women. I will return to this point a little later, but I would just like to note that if women do not have the ability to benefit from accumulated compound interest as a result of reduced benefits arising from the payment of the surcharge it will impact very heavily on the ability of a family to function.

The opposition is also extremely concerned about the potential breaching of privacy laws. Superannuation funds are not government agencies. The government clearly stated on Monday when it announced its response to the Small Business Deregulation Task Force package that privacy laws will not extend to the private sector.

The collection mechanism proposed by the government currently requires all superannuation funds to collect tax file numbers from their members. The superannuation fund is then to match tax file numbers with superannuation contributions and provide all this information to the tax office. In compiling all this information, the superannuation funds will be able to ascertain the level of taxable income of individuals. If individuals choose to make this information unavailable or fail to provide tax file numbers they will be slugged the full 15 per cent tax. This means that individuals have no rights to protect their privacy in relation to income levels and, of equal importance, the funds have no duty to protect the privacy of individuals.

Labor is also concerned about the number of constitutional questions that have been raised in relation to this legislation. First the government had to announce that Federal Court judges would be exempt from the surcharge due to the section 72 constitutional protection in relation to their remuneration. Then the states came out arguing that the Commonwealth could not tax the states on two different grounds.

Firstly, the state schemes are unfunded and therefore paid out of consolidated revenue. The money does not become the property of the member until payment of benefit. This means that prior to payment of benefit it is the property of the states. Under section 114 of the constitution, the Commonwealth is not able to tax the property of the states.

The second point that the states made related to the taxation power in section 51(2) which prohibits the Commonwealth from discriminating in taxation between states. Due to the different superannuation scheme designs used by states it will undoubtedly be the case that some states will have to pay higher surcharge liabilities than other states. This, the states have argued, would be unconstitutional.

Then there is the problem of state judges and magistrates. Appearing before the Select Committee on Superannuation, state judges and magistrates argued quite convincingly that they are required to perform some federal duties in relation to the AAT, the Social Security Tribunal, et cetera. They should also be afforded the protection of section 72 of the constitution. Judges and magistrates also argued that should this legislation pass they would consider a High Court challenge.

What did the Treasurer and Senator Kemp say in relation to these problems? 'Don't worry; it's fine. We are in negotiation with the states over this issue. They will come to the party.' It is unfortunate for the government that today in the *Sydney Morning Herald* on page 1 it quite clearly states that the states are not about to come to the party. We will have the ludicrous position where all Commonwealth employees and private sector employees will have to pay the surcharge. However, if you are employed by a state government—and there are at least 25,000 employees of state governments—you will not have to pay the surcharge.

The situation got worse. On 11 March the Business Council of Australia represented by Dennis Rose QC indicated they believed that the whole bill was unconstitutional because of clause 34. He indicated that it would be beyond the constitutional power of the Commonwealth to levy a tax on an individual and require a third entity to pay it on their behalf. As the entire bill revolved around this issue, Mr Rose suggested the entire bill be withdrawn for redrafting.

When the Labor opposition raised this issue with the government we saw utter confusion on the government side. First the Treasurer said that there was no constitutional issue. Then he said that the government would look into it. Then he said that the government would seek further legal advice. Then the PM said that it was a plot by the superannuation funds. I have never been aware that the Business Council of Australia was a superannuation fund.

Then finally last Thursday the government introduced some amazing amendments to delete clause 34. You said that there was no problem and it was all okay. In a press statement released today, the government indicated that further amendments will be required to allow trustees to reduce a member's benefit to pay the surcharge liability. It is funny, Senator Kemp; I think I raised this issue in question time yesterday.

This is the fourth set of amendments introduced into this package of legislation. This is policy being made up on the run. This is simply not acceptable for a bill of this level of significance. The government has introduced two new bills and three sets of amendments to the bills and, presumably, the fourth set is on the way to try to fix the gaping holes in the legislation. Of course, the problem that has continually plagued the government on this issue is that once they attempt to fix one problem, another emerges.

The final point I would like to make is in regards to the amendment that I am moving in relation to eligible termination payments, unpaid leave, sick leave and other once-off payments that will be caught under the definition of adjustable taxable income. The effect of this definition will be to unfairly tax hundreds of thousands of Australians who would not normally earn sufficient levels of income to be caught by the tax. I have some further comments that I will not make on this matter at this time.

I would like to point out that this legislation is possibly unique in Australian political history. It combines a blatant repudiation of a cast-iron pre-election commitment not to introduce new taxes and it steadfastly refuses to honestly acknowledge the breach. It does not call the tax a tax; it calls it a surcharge. Frankly, the government has created greater political problems for itself by not frankly acknowledging it is a tax.

There is a massive increase in compliance costs and procedures from the government, supposedly committed to lessening the burden of red tape on business; a reduction in the benefits of all members of superannuation funds from the surcharge; a complete alienation of the superannuation industry and related professional advisers, such as accountants, financial advisers and actuaries; no cooperation from the states and territories; the prospect that the revenue estimated to be collected will not be collected from those at whom the tax is aimed; and the complete lack of commitment that the government is showing to its national savings objective.

What type of messages do these bills send to those individuals who are doing the right thing in saving for their retirement? More particularly, what type of message does this package of legislation send to those individuals for doing the right thing and taking their

retirement as a pension? Instead of encouraging these people to save and take their superannuation as a pension, the government is going to tax them at a much greater level.

One of the biggest farces of the government so far has been the untruthfulness of the taxation debate. The government has made a number of outrageous, deliberately untrue commitments before the last election concerning taxation. They then solemnly promised on many occasions not to introduce new taxes nor to increase the existing rate of taxes. The people of Australia believed that they could rely on that commitment. They are sorely disappointed.

We have had the Treasurer, Mr Costello, Senator Short—your predecessor, Senator Kemp—the Prime Minister (Mr Howard) and various officials from revenue agencies bend over backwards to say that the surcharge is not a tax. They have obfuscated through the other place, the Senate, the estimates committees and numerous media interviews. All the semantic gymnastics diminish the Treasurer's and the government's standing with the public and the media. Unequivocally, the answer is yes, a surcharge is a tax. It is classified in the budget papers as a tax by the Bureau of Statistics. I could not put it better than Dennis Rose QC, who remarked before the Senate Select Committee on Superannuation, 'It is plainly a tax.' Of course, nobody, not even the Treasurer, can maintain the pretence of such a preposterous claim forever.

Over time Mr Costello, the Treasurer, has even slipped up. We first saw this on the John Laws program on 26 February 1997 when he said:

> The tax that is collected on employer contributions will be 30 per cent rather than 15 per cent.

Note 'the tax'. This was a clear, if inadvertent, admission that he had been fibbing since the budget. On 12 March 1997 on Radio National the Treasurer said:

> So this is nothing new that we are introducing in the sense of the contributions tax. It's been operating for quite some time. What we're doing is we're changing the rate in relation to high income earners.

This is another blatant admission that this is a tax. Again, on the *AM* program, we heard the attempted adroit language of the Treasurer. He finally dropped the pretence when he said:

> No, it's a surcharge which reduces the tax concession currently available to high income earners.

The interviewer persisted and asked the Treasurer:

> How can you look people in the eye and say that this is not a tax?

Of course, he did not answer the question directly; he knew he would be caught out. But he did not admit the truth, and he still has not done so consciously. As a result, the public now knows that the surcharge is, in fact, a tax.

The *Australian* newspaper got it pretty right on 13 March with the headline, 'Costello concedes super slug is a tax.' Perhaps the Assistant Treasurer or his parliamentary secretary could advise the Senate that if it is not a tax, why is it collected by the Australian Taxation Office and why is it necessary to provide a tax file number to avoid being caught in the net?

In conclusion, as I have mentioned, we are very concerned that we are dealing with this matter at this time. It is a very important budget measure. It should have been dealt with much earlier in the government's program.

Senator ALLISON (Victoria) (10.43 p.m.)—This package of seven bills seeks to set up the government's announcement in the 1996 budget to impose a new 15 per cent additional contributions tax on employer contributions on behalf of high income earners. It would be an understatement to say that this legislative package is complex and that it creates great difficulties for superannuation funds.

The complexity stems from a fundamental flaw—that is, the refusal of the government to collect this new tax on high income earners as a tax on high income earners. Instead, the government has gone to incredible and ridiculous lengths to ensure that the tax is collected by someone else. In this case it is by the superannuation funds.

The result will be a $100 million impost on superannuation funds, reducing the earnings

capacity of those superannuation funds and reducing the investment returns paid to the 95 per cent of people who will not pay the surcharge. This is so that the Treasurer (Mr Costello) does not have to admit to his own high income earning mates that they will be paying more tax.

But it gets worse. The 95 per cent of people who earn less than $85,000 could still end up paying the tax surcharge if they refuse, if they forget or if they are simply unable to provide a tax file number to their superannuation provider. The Senate Select Committee on Superannuation was told by the super fund administrators that they expect, at best, about 40 per cent of members will get around to providing their tax file numbers and, on their past experience, the funds cannot even find an address to contact about 20 per cent of their members. So up to 60 per cent of workers could end up paying an extra 15 per cent tax on their superannuation for simply not getting around to providing a tax file number.

But the legislation gets worse still. Accountants have advised us that high income earners are likely to desert superannuation in large numbers, rearranging their salary packages into fringe benefits, shares, negatively geared property and other more tax effective devices. The extent of these transfers may not be as dire as predicted, but I would expect to see many high income earners in the private sector with access to salary packaging taking a very long, hard look at their superannuation. With the phasing in between $70,000 and $85,000, they face marginal tax rates of between 85 per cent and 103 per cent on their superannuation contributions. So I would certainly expect to see some movement.

The only people without access to salary packaging paid above the $70,000 cut-off could end up being senior public servants and politicians. So we could end up with a situation where most high income earners exit the system, but most low income earners get swept up by the surcharge and the fund earnings of all are reduced by the massive cost of collecting tax file numbers and administering the surcharge. While that is the worst case scenario, I think it would be most remiss of the parliament to pass legislation capable of producing such a result.

In short, the legislative structure set up by this package of seven bills has very serious problems. I think that is a pity because the intent of the bills is something that the Democrats very strongly support. We strongly believe that superannuation contributions by high income earners are excessive and that they need to be reduced. The current superannuation concessions total about $6.4 billion a year and, according to our research, the six per cent of people earning over $50,000 receive 33 per cent of those concessions while the 22 per cent of people earning less than $21,000 receive just three per cent of the concessions.

They run hard against women, who receive just 26 per cent of superannuation concessions even though they make up 55 per cent of those aged 60 or more. This is clearly a ludicrous result. It flows because the contributions tax on superannuation is a flat 15 per cent. For someone earning over $50,000 this means a 33c in the dollar tax concession. But for someone earning under $21,000, it is a concession of just 6c in the dollar.

An EPAC report in 1994 by Howard Pender found that employer superannuation contributions provided the most tax effective investment possible for high income earners. Others such as Fred Argy from CEDA, Professor John Head from the Monash University, ACOSS, and former Treasury Deputy Secretary and National Commission of Audit member John Fraser have also called for reform of these concessions. That Labor refused to do so for so long showed how close the Keating government had become to the rich and powerful.

We do support reform of superannuation tax concessions. Indeed, the only gripe we have with this legislation's intent is that it does not go far enough. Why should people earning between $50,000 and $70,000 receive a tax concession worth five times as much as lower income earners? We believe it would be far fairer to provide a flat rebate to all employees at all classes of income—indeed, this was the coalition's election policy, Fightback, in 1993.

So we support the intent. What we do not like is the way the government wants to collect it. If the government acknowledges that this surcharge is a tax, it would be halfway there. Then it would not be trenchantly opposed to collecting the tax surcharge off the people it is trying to target—the high income earners—rather than through an elaborate subterfuge through superannuation funds.

The Senate superannuation committee received a wide range of submissions from an extraordinary variety of sources urging the use of the income tax system as the collecting mechanism. They included the Business Council of Australia, the ACTU—very rarely seen on the same side of the fence, I might say—the Association of Superannuation Funds of Australia, the Australian Society of Certified Practising Accountants, the MTIA and more muted support from the Australian Council of Social Service.

But for their efforts, the government has simply pilloried them. I wish to record my disapproval of the attack on the superannuation industry, particularly ASFA and Susan Ryan, from the government, arguing that the industry is wanting to defeat the tax. ASFA in our view has been entirely responsible in this debate, accepting that the contribution will be paid but arguing only about the best means of collecting it. I wish to publicly acknowledge the very excellent work of ASFA in exposing the flaws in this legislation whilst always accepting its intent.

Other submissions to the Senate inquiry found major flaws with the legislation as well. The government still has not properly responded to the arguments of Dennis Rose QC that this bill is probably unconstitutional, nor has it responded to the arguments about the privacy considerations of requiring, under the weight of a massive tax penalty, all taxpayers to provide tax file information and, with that, information about their taxable income to private sector organisations. I have to say that this is a massive invasion of privacy from a coalition government which, as I recall, so vigorously opposed the Australia Card as the great defender of individual rights and privacy.

These issues are automatically fixed with an alternative collection mechanism. ASFA had developed and circulated to senators a set of amendments to show how an alternative collection mechanism could be set up. The Democrats support the general design of the collection mechanism as proposed by ASFA, but we have decided not to move amendments in the committee stage to establish the collection mechanism, simply because of the complexity involved in doing that.

I think the best outcome for this package would be for the government to withdraw it and to design a new tax collection mechanism which utilises the PAYE system and which does not involve a massive cost for superannuation funds. That is what they ought to do but, as we know, this is not what they are going to do. The Treasurer has indicated to us again and again—most recently today, and publicly, of course, many times—that he will not change the collection mechanism. So despite all the evidence presented to the Senate committee inquiry and despite the unanimous view put by so many industry bodies calling for change, the government thinks that it knows better.

Senator Kemp, I have to tell you that this is a piece of legislation that you can have. You can wear it. We will vote for your legislation without amendment, not because it is good legislation, not because it is fair legislation, but on the clear understanding that you wear the consequences of what we regard as an appalling piece of legislation.

It is my hope that every superannuation fund in Australia will tell their members next year how much their earnings on three accounts were reduced by the massive administration costs of Treasurer Costello's clumsy and inefficient tax. I hope that the 50 per cent of people likely to be slapped with the tax for forgetting to quote a tax file number to a non-government body are made aware that Treasurer Costello did it to them. And I hope that some super funds get so angry that they take it to the High Court and that the court tells the Treasurer that this surcharge has no constitutional basis. And it will be entirely, completely and utterly the government's fault.

It is a great pity in all of this that the administrative and fiscal minefield that this tax will create will almost certainly kill stone dead any popular support for further necessary reform of superannuation tax concessions, but the government must wear that, too. And when the evidence is in, if Treasurer Costello or his successor as Treasurer decides that the tax needs to be reviewed, we would be happy for you to come and talk with us. We will resist the opportunity to say, 'We told you so,' and will help you to revise the tax and put in place a mechanism that you should have taken the opportunity to introduce in the first place.

Senator MARGETTS (Western Australia) (10.55 p.m.)—I will say at the outset of our contribution to this package of superannuation surcharge bills that, fundamentally, the Greens (WA) support the concept of progressive taxation. In respect of this package of bills, it means we accept the principle of some kind of superannuation surcharge, given that for many years high income earners have used the special tax treatment of superannuation to reduce tax obligations by voluntarily depositing surplus capital in superannuation funds. These are often not the same kind of superannuation funds the average worker has access to, but may instead allow high income earners various options to control investment in their own interest, and to withdraw from the fund with minimum cost when they decide it is convenient.

This is an entirely different form of use, and it creates very different opportunities from those available to ordinary workers, who often find they have no choice as to fund, and that their money is placed in funds which penalise someone taking money out before they reach retirement age. In addition, it is not a means of reducing tax; it is a reduction in disposable income for those whose income is primarily spent on necessities. It is a reduction in the income of those who can least afford such a reduction, including those who are only working part time or casually in low income jobs.

In general, there is nothing equitable about superannuation. It may be of some benefit to workers. It might be, and has been, argued that ordinary working Australians are so improvident that they must be forced to save for their retirement because they will not do so on their own. However, ordinary Australians have managed their incomes for years and many are fairly canny about living on modest incomes and can see other potential ways of using money which may bring greater returns long term, and real returns, not only for themselves but for their dependants in the short term. Purchasing a house, or somewhere to live in your later years, is often such an option.

With high income earners, we talk about those earning over $70,000 in taxable income after all deductions and other ways of minimising tax. We are talking about less than seven per cent of Australian taxpayers—not seven per cent of citizens. Such high income earners have no problem purchasing a house, using negative gearing to purchase investment properties, opening family trusts, and utilising the optimum mix of salary, superannuation and fringe benefits. These are the people who have the money to utilise options like income splitting as a potential rort. For the majority of Australians, the use of trusts for dependants often represents sacrifice with the intention of providing for loved ones. But for the rich, they can use options to create structures where income is shifted to another without that other having any real control, and where those assets are not permanently assigned, but can be shifted back.

This measure of the government would place an additional level of tax on such high income earners. To this extent, we support it, as we have supported the establishment of some additional rates of progressive taxation for higher income earners.

However, while we support the general principles of progressive taxation, and while we support the general principle of ending the use of incentives for superannuation savings to provide tax shelters for the wealthy, we have serious questions about the mechanisms of this bill. In the first place, this is fundamentally a tax. Call it by whatever name you wish; it is a tax. In fact, it seems that by calling a tax by any other name, the govern-

ment may simply be opening itself up to other various problems. I understand that the federal government has the legal ability to impose taxes. Does it have the legal ability to impose income-based surcharges on the general public? And what about the word 'surcharge?' A surcharge is an additional charge. Additional to what? What is the government charging the rich for?

A levy is something comprehensible. It is tax, often for a given period, collected for a dedicated purpose—for example, the Medicare levy, should I say theoretically, or the proposed employment levy. But this money is being collected for undefined purposes, presumably going into general revenue. In what sense, other than name, is it different from a tax? And, if it is an income based tax, why is it not dealt with in the Income Tax Assessment Act?

It is odious to see a government promise not to raise taxes and then go ahead and raise taxes and try to pretend it is not doing so on the pretext of calling them by some other name, and then insist they are not taxes. I have no problem with government imposing taxes if necessary. I never have. I have little problem with governments coming forward and saying that they cannot keep their election promises, especially the more extravagant ones, as long as they come clean and say so, and say why, openly, and then accept the consequences.

I do not think the blind attempt in politics to pillory governments for their inability to keep improvident promises, or promises to do something stupid or socially or environmentally destructive is a good thing. I would rather government did something sensible and good for the community than keep promises that are stupid or destructive, though this does not mean I accept making reckless promises for political gain as a good thing. But, if the government, as it has, promises not to raise taxes, and finds that this is not a workable promise, not a promise that can be kept without causing the people of Australia inordinate pain—and, if I am cynical enough to suggest, electorate pain—then it should come forward honestly and say so. The government should apologise and outline the reasons for breaking its promises. Above all, what it should not do is pretend it is keeping its promises, while finding weasel words and fox phrases to try to make black white.

The problem with lying and attempting to persist in a lie is that you must slowly attempt to falsify all reality in order to make the lie fit as truth. I ask: if this is not a tax, under what constitutional powers does the government impose this so-called surcharge? I understand there have already been constitutional challenges and the only basis government has for imposing this is under the powers of taxation. If that is so, this is a tax.

I have a problem with this sort of stuff because not only is it ethically unclean but it results in hideous legislation, as something that should be treated in a perfectly clear and straightforward way is covered up to allow the weasel words some reality. We have seen this last year with the infamous family tax package, where the Income Tax Rates Act was besmirched so that was a simple $200 contribution could be called a $1,500 change of tax thresholds. Here we see a whole new section of legislation, a new power of the Commonwealth and a 50-page alternative to the Income Tax Assessment Act created. How dare the government, and just to cover up a lie.

It is clear to anyone that this thing is a tax. It should have been treated as a tax. It should have been introduced as an amendment to the tax act, a modification of the tax treatment of superannuation. If the government had gone that way, it could have been done perhaps in a couple of pages with none of this legal ambiguity about Commonwealth power. Not only could it have done so, it could probably have availed itself of measures such as the availability of those with periodic incomes—farmers, artists, athletes—to average the incomes. This would have eliminated some of the injustices that are likely to perpetuate, which have been highlighted.

While it is clear that a disproportionate benefit is obtained by wealthy people from concessional tax treatment of superannuation contributions, it should also be clear, on a moment's reflection, that there will be some taxpayers who may on occasion get a high

income, but not regularly. A farmer may have a good year, maybe two, where they are taxed at the highest rate. It may be followed by several years of drought. Under the income tax law, they have the ability to average their income and may not have to pay at the highest rate. Here, in your pocket duplicate of income tax law, there is no such capacity. What a shame, and all because you have not got the stomach to call a tax a tax.

I will not go on at much greater length. Obviously, the thing to do is to take this misbegotten bill away, and re-write it as a tax bill. The outcome would be clearer and less contentious. And, of course, contention is the other price you have paid for your inability to call a tax a tax. You have a Senate that unanimously supports your underlying intent of taxing high income earners at a slightly higher rate, at least in regard to their superannuation contributions. But, by refusing to use the proper name for things and refusing to take the simple, clean and honest option, you have managed to build almost unanimous opposition to this bill. You are your own worst enemies.

The Greens will be supporting the ALP second reading amendment to take this bill away and re-submit it after substantial re-drafting. We suggest strongly that you do not, in hubris, oppose this measure. It is actually a government policy the Senate is willing to see passed, as long as it is in a workable form. We are willing to help you. We would like to see this work, and know that it is not likely to work if pass it as it is.

I strongly suggest that you take this course. I think you will have the goodwill of the Senate in re-drafting it so that we can pass it speedily. I put to you that it is not an efficient or good use of power to pass bills or put things in place that will have to come back session after session to be dealt with again and that require us to drop all other things to put it through speedily because of your own bad treatment in the first place. It is not so hard to get it right. It is not so hard to give families a child rebate, for instance, or to impose a tax. But it becomes very difficult when you have to insist that this is not actually what you are doing.

I hope the government has the sense not to oppose the ALP second reading amendment. It would allow us to go to some legislation we might usefully address instead of getting bogged in an interminable committee stage debate. It might even allow us to end this session at an hour not entirely unreasonable.

I give notice that, if the second reading amendment is not carried, we will support most of the amendments by the various opposition parties that we have seen. I do not like trying to fix this particular mess without getting rid of what is here now, but we will do so if we have no other options.

I also give notice that it is entirely possible that we will not be able to support the bill if some modifications are not made. So I ask the government to actually listen to the debate and consider the issues raised on their merits instead of blindly opposing everything that the Senate is quite helpfully trying to suggest at this stage.

Senator HARRADINE (Tasmania) (11.08 p.m.)—I hesitate to take this unusual step of seeking leave to have, because of the lateness of the hour, my speech on the second reading debate incorporated in *Hansard*. I hesitate because there might be some perverse person here who would deny me leave.

Leave granted.

The speech read as follows—

SUPERANNUATION SURCHARGE BILLS

Second Reading Speech

When income tax was first introduced by Pitt the Younger in 1798 a deduction was allowed in respect for premiums paid for life insurance.

Pitt recognised that in taxing the income of a labourer it would be wrong to tax that income as a gross income without allowing for the costs of maintaining or protecting it. If an income tax was to allow a tax deduction to a ship owner for insuring his ships, the source of his income, why should it not equally allow those who live by their labour to insure their incomes?

There is absolutely nothing wrong or unfair about a tax system which allows workers to spread their incomes forward from their earnings years to their non earnings years and to make provision for their dependants. Quite the contrary, anything else is barbaric and utterly biased against the family taxpayer.

If income averaging is equitable for farmers, for artists and sports people there is no reason why some form of life time income averaging through superannuation should not be available to every person gaining an income from personal exertion.

It is interesting to observe that the concept behind the superannuation tax surcharge has been previously considered and rejected.

Professor William Vickrey now Professor Emeritus of Colombia University and a former President of the American Economic Association examined in 1947 the idea of taxing employer superannuation contributions in the hands of the employee—the same concept as the surcharge. In his book Agenda for Progressive Taxation he wrote at page 82 "In principle, the correct method of taxation for all such pension and insurance plans would be to include in the income of the employee the value of the entire contribution to the pension fund both by himself and by the employer on his behalf, and in addition the interest earned by this fund as it accumulates. The pension itself would then be treated as an annuity. But this solution is even more impractical than in the case of life insurance and annuity contracts of life insurance companies. Often the employer does not know how his gross contribution to the fund is equitably divided among his employees. In any event it would still be open to him to postpone his employees' income and hence their tax, by making no explicit contribution to the fund until it was actually needed to make the benefit payments. What is really required is not the contributions he actually makes but those that he should theoretically make to cover the actuarial value of his liability. But many pension plans are such that this actuarial value cannot readily be determined: benefits may hinge on non-actuarial contingencies such as continued service, or may be awarded ex postfacto 'in consideration of long and faithful service,' etc.

"As with insurance, the only hope for a completely proper treatment is through the application of cumulative averaging"

Thus as early as 1947 the superannuation surcharge concept was examined and rejected by an acknowledged expert.

Superannuation taxation is not a matter of concern for those few persons lucky enough to have an income from inherited property. It is, however, of great importance for those who have to provide for themselves and their families from their own labour.

This issue was also addressed over a hundred years ago by John Stuart Mill in his Principles of Political Economy (Book V chapter ii sec 4) when he dealt with the question whether the same percentage rate should be levied on perpetual and on terminable incomes. He observed that "in spite of the nominal equality of income, A, an annuitant of £1,000 a year, cannot so well afford to pay £100 out of it, as B who derives the same annual sum from heritable property; A having usually a demand on his income which B has not, namely, to provide by saving for children or others; to which, in the case of salaries or professional gains, must generally be added a provision for his own later years; while B may expend his whole income without injury to his old age, and still have it all to bestow on others after his death. If A, in order to meet these exigencies, must lay by £300 of his income to take £100 from him as income tax is to take £100 from £700, since it must be retrenched on that part only of his means which he can afford to spend on his own consumption. . .

"The principle, therefore, of equality of taxation, interpreted in its only just sense, equality of sacrifice, requires that a person who has no means of providing for old age, or for those in whom he is interested, except by saving from income, should have the tax remitted on all that part of his income which is really and bona fide applied to that purpose. . .

"perhaps a deduction of one-fourth in favour of life-incomes would be as little objectionable as any which could be made, it being thus assumed that one-fourth of a life-income is, on the average of all ages and states of health, a suitable proportion to be laid by as a provision for successors and for old age."

The principle of life time income averaging has found favour with economists since John Stuart Mill wrote in 1871. Professor William Vickrey makes the point in his 1947 treatise Agenda for Progressive Taxation, (p 166) that "there would still be a very serious doubt of the equity of taxing each year's income as a separate entity. With progressive rates, an individual whose income fluctuates from year to year will, under this method, pay a heavier tax than an individual having the same average income more evenly distributed from year to year." Vickrey goes on at p 186 to point out that it is logical in fact to average a taxpayer's income over his lifetime.

It is quite remarkable, is it not, that an English Conservative government in the middle of the Napoleonic Wars—at a time when the Combination Acts were used to suppress trade unions—was willing to be more liberal in its tax treatment of labour income than is the Australian Federal Government of today. It is also interesting that the bureaucrats who designed this legislation are willing to run barefoot into minefields where even the most speculative academic is afraid to tread.

Senators may wish to ponder these paradoxes at leisure but before departing from this subject I might point out that, not only does the superannuation surcharge produce wholly inequitable outcome

in the case of pensions or annuities, it is also quite unworkable in the case of unfunded State government pensions schemes.

State governments do not have to pay this tax. Even if the Melbourne Corporation Case did not exist and there were no Constitutional immunity for the Crown in right of a State in its dealings with its servants, the State governments can take another tack.

There is nothing to stop State governments reverting to the practice followed in l9th Century Britain of simply placing aged servants on half pay and never formally fully retiring them from their offices. A State, for example, could create an internal Treasury trust fund and use it to meet the half pay of its inactive aged civil servants, much as the British Government used to put former Generals and Admirals on half pay.

This being a State's House I think we should let the States know that they need not subject themselves to this legislation whether or not it is passed. And if States and their civil servants can not be subjected to this surcharge in respect of de facto pensions or annuities, where is the equity in imposing it on the rest of the workforce?

There are many other points that will be raised on these Bills. There is not time to go into all of them now but it is my firm view that it should be accepted that the application of the provisions of the legislation to taxable pensions or annuities is quite inappropriate, unjustified and unfair.

An exemption is required where otherwise surchargable contributions are used to finance pensions or annuities. No one can possibly argue that someone receiving a taxable pension or annuity in retirement is somehow getting an unfair treatment from the tax system. On the contrary to impose this surcharge on pensions or annuities is to implement a form of double taxation which in many cases is retrospective in its effect.

This much has been acknowledged by provisions in the Bills which propose that Public Service pensions be unilaterally cut. It does not do much for confidence in the public credit of the Commonwealth of Australia for a Government to be legislating unilaterally to cut its obligations under terms and conditions of employment.

The Government is rightly concerned about Australia's international credit rating. How does it think readers in the Wall Street Journal or the Financial Times will react when it is drawn to their attention that the Commonwealth Government of Australia is quite willing to propose legislation unilaterally reneging on quasi-contractual obligations or wiping out accrued rights.

Superannuation and national savings are suffering a crisis of confidence because of the perceived threat of legislative risk. Short-term revenue expediency should not be allowed to prejudice public confidence in saving for retirement. The Senate, without wishing to be obstructive, cannot possibly be expected to endorse unprincipled revenue measures.

At the very least it should adopt the amendment which I intend to move in the Committee of the Whole. That amendment would ensure that if benefits financed by otherwise surchargable contributions are payable as non-commutable pensions or annuities, the surcharge is not payable.

Senator HARRADINE—I thank the Senate. I recommend to honourable senators that in due course they should turn to my speech.

Senator KEMP (Victoria—Assistant Treasurer) (11.09 p.m.)—Senator, I look forward to reading the speech you have incorporated. I will not comment on it now because I have not had a chance to read it, so do not regard that as a discourtesy.

In response to comments made by honourable senators in relation to these important bills which are before the parliament, as indicated by a number of speakers these form an important part of, first of all, restoring equity in the area of superannuation. I welcome the fact that most senators indicated that it was important to ensure greater fairness in the superannuation system. Senators accepted, as indeed did the Senate committee, the concept of the 15 per cent surcharge.

In much of the debate which has occurred in recent months that important principle may have been obscured as particular groups sought to advance their cases. In listening to the debate this evening I was mindful of a recent article about the surcharge written in the *Sydney Morning Herald* by Ross Gittins where he cautioned that nine out of 10 people who say, 'It is not what you did; it is the way you did it,' are lying. There is an attempt in the wider debate—I am not suggesting in this chamber—to undermine the surcharge by advancing problems and issues which are entirely spurious. Let me just illustrate this with one point.

There is no doubt, as Senator Allison said, the concessions to superannuation greatly benefit high income earners, and yet the spurious argument has been run—including, I regret to say, in this chamber tonight—in

attacking this measure, which is above all about fairness, that low and middle income earners will be affected. This issue has been canvassed many times in this chamber in recent months and, as I and others have said, not one low or middle income earner need pay the surcharge. All they have to do is provide their tax file number to the superannuation fund.

The government has given careful consideration to considering alternative options to collect the surcharge. We believe that the option we have chosen is the best option. It is an efficient option, and it avoids imposing additional costs on small business. We reject the ASFA proposal, which would directly involve some 900,000 employers rather than requiring, as these bills before the chamber do, a reporting obligation on behalf of some 137,000 superannuation funds. The alternative mechanism which has been proposed would involve substantial costs on small business.

Some commentators advanced an argument about whether superannuation would still be a good investment. I agree with Senator Allison that much of the comment in this area had been greatly overstated. According to BT funds management analysis, the clear message is:

> Do not forsake superannuation as a core part of your investment folio. Even with a surcharge bringing contributions taxed to 30 per cent, you will need substantial returns from other investments to get better after tax benefits.

I think a lot of the comments have been overstated and designed to protect a very important tax concession available to high income earners. I regret that the Labor Party has, in its attack on this measure, quite spuriously run the argument which is incorporated in Senator Sherry's second reading amendment, which we will certainly be opposing.

The use of TFNs was raised. People might not have realised that the fact of the matter is that the ability of funds to use TFNs was a Labor policy. In fact, the Labor Party introduced a bill to assist superannuation funds to collect tax file numbers. Senators will be aware that, under the Taxation Laws Amendment Bill (No. 2), which was recently passed by the Senate, funds will be able to collect tax file numbers for all superannuation accounts. That started on, I think, 16 February. There were arguments that the funds were finding it difficult. It is worth recording that this procedure has been in place for some four weeks.

Senator Sherry—That doesn't mean they'll get them.

Senator KEMP—Senator Sherry, the funds will have up to 12 months to collect tax file numbers. This is another spurious attack launched on the approach that we have taken. You would not have thought, from what Senator Sherry said in some of the issues he raised in relation to tax file numbers, that he and his colleagues were driving forces just a little over 12 months ago in allowing funds to collect tax file numbers. I put that on the record in case people who listened to Senator Sherry may have felt that they perhaps missed an important point.

We will be opposing the second reading amendment, which is a very poorly worded amendment. It says that the government is to bring forward further amendments. I would have thought that the opposition were unhappy with the bill. They of course have the right to bring amendments. At last, at a very late stage in the debate, we have the committee stage amendments that the Labor Party are proposing to move. I put on the record the fact that Senator Sherry spoke to me some weeks ago and tried to ensure that we were able to provide the amendments to the Labor Party, which we do always in an expeditious fashion.

The second reading amendment which is drafted is plainly wrong in so many cases and seriously misleading in other cases. It is illogical in that it urges the government to fix up problems which the government does not accept are problems. The Senate is of course entitled to address its mind to particular issues, but I certainly would not accept that the government should go away and fix up problems which we do not accept are problems at all.

For example, if you take 2(a) and 2(b) in the amendment, the reality is that they are grossly misleading—absolutely and totally

misleading and totally wrong. Senator Sherry's amendment says that at least one million low and middle income earners may be liable to the surcharge. The short answer is, and I said it earlier in my remarks, that not one person needs to pay the surcharge; all they have to do is supply their tax file number.

It is part of the deliberate scare campaign that Senator Sherry relentlessly runs in a desperate attempt to grab a headline, which he finds difficult to get, and to undermine a very fair measure. Senator Sherry, if you succeeded in your ultimate aim to overturn these bills, which is implicit in the amendment you have moved, the low and middle income earners would not be cheering, but the big end of town would be cheering.

We will not accept the amendment you have moved—the quite spurious claims about low and middle income earners and the quite spurious comments about the constitutionality of the bill, and that has been addressed many times in this chamber. We have effectively addressed those issues. You have asked me questions about those issues, if not on a daily basis, on a very regular basis. We do not accept those claims which you have put forward. In relation to privacy, which is another part of your amendment, we have confidence in trustees upholding the privacy of members—

Senator Sherry—Oh, confidence!

Senator KEMP—I thought you were supportive of the trustee structure. I am interested to hear that you now appear to have some particular qualifications. In relation to the states, we have made it very clear that we are negotiating with the states to make appropriate arrangements to cover public servants. You would not believe, in reading this amendment, that bona fide redundancy payments are excluded. I would have thought that was a very important point, but it is completely brushed over and ignored in the amendment you have moved.

This bill and the concepts have been debated very widely in this chamber. They have been the subject of a Senate committee report. They have been very extensively debated in the lower house. Senator Sherry has decided not to alter at least the principle of the collection approach that we have adopted. We welcome that. We are currently analysing the amendments he has put forward and we are trying to work out what he is seeking to achieve there. I look forward to some further advice.

But I do record that these amendments came on the scene exceedingly late, and that is a pity. For an office which often approaches my office, and we extend all courtesies we are able to extend, I think it is a pity that these amendments have appeared on the scene so late, which of course makes it difficult to ensure that all issues are properly canvassed. So I urge the Senate to reject the second reading amendment that Senator Sherry has proposed. It is an illogical amendment, it is wrong, it is misleading and it seeks to undermine a fair measure and an important budget measure.

Question put:

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

The Senate divided. [11.26 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	24
Noes	38
Majority	14

AYES

Bishop, M.	Bolkus, N.
Brown, B.	Carr, K.
Collins, J. M. A.	Collins, R. L.
Conroy, S.	Cook, P. F. S.
Cooney, B.	Denman, K. J.
Evans, C. V. *	Forshaw, M. G.
Hogg, J.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Neal, B. J.	O'Brien, K. W. K.
Reynolds, M.	Schacht, C. C.
Sherry, N.	West, S. M.

NOES

Abetz, E.	Allison, L.
Boswell, R. L. D.	Bourne, V.
Brownhill, D. G. C.	Calvert, P. H. *
Campbell, I. G.	Chapman, H. G. P.
Coonan, H.	Crane, W.
Eggleston, A.	Ellison, C.

NOES

Ferguson, A. B.	Ferris, J
Gibson, B. F.	Herron, J.
Hill, R. M.	Kemp, R.
Kernot, C.	Knowles, S. C.
Lees, M. H.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
Minchin, N. H.	Murray, A.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Stott Despoja, N.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	Woodley, J.

PAIRS

Crowley, R. A.	Heffernan, W.
Faulkner, J. P.	Alston, R. K. R.
Gibbs, B.	McGauran, J. J. J.
Ray, R. F.	Tambling, G. E. J.

*** denotes teller**

Question so resolved in the negative.

(Senator Childs did not vote, to compensate for the vacancy caused by the death of Senator Panizza.)

(Senator Foreman did not vote, to compensate for the vacancy caused by the resignation of Senator Woods.)

Amendment negatived.

Original question resolved in the affirmative.

Bills read a second time.

In Committee

SUPERANNUATION CONTRIBUTIONS SURCHARGE (ASSESSMENT AND COLLECTION) BILL 1997

The bill.

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate) (11.30 p.m.)—by leave—I move:

(1) Clause 6, page 3 (lines 12 to 17), omit the third dot point.

(2) Clause 6, page 4 (lines 3 to 5), omit ", and to pay any advance instalment of surcharge on the member's contributions for the next financial year,".

(3) Clause 6, page 4 (line 15), omit "or advance contribution".

(4) Clause 6, page 4 (lines 21 and 22), omit "or advance payment".

(5) Heading to Part 2, page 5 (lines 2 and 3), omit "**and advance instalments**" .

(8) Heading to Part 3, page 13 (lines 2 and 3), omit "**and advance instalments**".

(9) Clause 15, page 17 (lines 1 and 2), omit "**and determination of advance instalment**".

(10) Clause 15, page 17 (lines 14 to 21), omit subclause (2) and heading.

(11) Clause 15, page 17 (lines 26 to 29), omit subclause (4) and heading.

(12) Clause 15, page 18 (lines 10 to 16), omit subclause (6) and heading.

(13) Clause 15, page 18 (lines 21 to 25), omit subclause (8) and heading.

(14) Clause 15, page 19 (line 1), omit *"or determination"*.

(15) Clause 15, page 19 (lines 3 to 4), omit "or determination".

(16) Clause 15, page 19 (lines 13 to 17), omit subclause (11) and heading.

(19) Heading to Part 4, page 30 (lines 2 to 3), omit "**advance instalment**,".

(20) Clause 25, page 30 (line 5), omit **"or advance instalment"**.

(21) Clause 25, page 30 (line 7), omit "or advance instalment".

(22) Clause 25, page 30 (line 23), omit "or advance instalment".

(23) Clause 26, page 31 (line 13), omit paragraph 26(b).

(24) Clause 27, page 31 (line 16), omit "**advance instalment**,".

(25) Clause 27, page 31 (line 18), omit "advance instalment,".

(26) Clause 35, page 38 (line 12), omit "**or advance instalment**".

(27) Clause 35, page 38 (line 14), omit "or advance instalment".

(28) Clause 35, page 38 (lines 25 to 27), omit paragraph (c).

(29) Clause 37, page 39 (line 7), omit "or determination".

(30) Clause 37, page 39 (line 10), omit "or determination".

(31) Clause 37, page 39 (lines 14 to 15), omit "or determination".

(32) Clause 37, page 39 (line 18), omit "or determination".

(33) Clause 37, page 39 (line 25), omit *"or determinations"*.

(34) Clause 37, page 39 (line 28), omit "or determination".

(35) Clause 37, page 40 (line 2), omit "or determination".

(36) Clause 37, page 40 (line 7), omit "advance instalment,".

(39) Clause 43, page 44 (line 14), omit the definition of *advance instalment.*

(40) Clause 43, page 45 (line 30), omit the definition of *determination.*

Firstly, I should explain the reason why we do not have a running sheet. Even though our amendments were in some hours ago for compilation into a running sheet, the Australian Democrats have withdrawn all their amendments. This meant that the entire running sheet had to be rewritten. I do not criticise the Democrats for that; that is their prerogative. But I was not aware of that having happened until about 35 minutes ago, which meant that the running sheet could not be prepared in time.

I turn to the issues that we are considering. I know there are a substantial number of amendments, but many of those which we are considering tonight deal with the same issues. On this occasion we are dealing with a substantial number of amendments: 1 to 5, 8 to 16, 19 to 36 and 39 and 40. All of those amendments are in respect of advance instalments, of which I have spoken during the second reading debate.

The vote effectively to defer this legislation, requesting that the government rewrite the legislation taking into account the criticisms that were listed, was defeated. We made it clear what would occur if it were defeated and if the government were not prepared to reconsider the various types of issues, including the advance instalment issue. That was not our first option; we would have preferred the government to have listened and to have rewritten the legislation. But that has not happened. That having failed, Labor will now attempt—hopefully with the assistance of other parties and the Independents in the Senate—to rewrite some of the more iniquitous provisions in this package of legislation.

I want to make one point at this particular stage of the debate about the collection mechanism. We started to rewrite the collection mechanism about two to three weeks ago. We got a further set of amendments from the government—and I have to say that the continual government amendments subsequently made that rewriting more difficult. An attempt to redraft the collection mechanism would have meant redrafting the seven bills in very substantial ways—in fact, a total rewrite—and could have meant some 400, 500 or 600 amendments. It would have been a massive number of amendments.

Our preferred option was that the government would withdraw the bills, rewrite them and reconsider the collection mechanism. That has not happened. That is lost, and we accept that. That is on the government's head. We would have preferred the government to have rewritten the collection mechanism. We were unable to rewrite the collection mechanism, given the massive number of amendments that were required, because we do not possess the same resources as government in terms of drafters. I requested from Senator Kemp access to drafting staff. That was not forthcoming. I do not imply a criticism of Senator Kemp in that because his refusal to meet that request was based on the sheer volume of work. We understand that, but that is part of the problem in dealing with these bills. We think the rushing and the volume of work are unreasonable.

For those reasons, we have not attempted to rewrite the collection mechanism. As I have said, it would have been a massive job. It is the government's role to do that. We urge the government to do that. It is not our job to rewrite the collection mechanism.

Senator Ferguson—Who said it was? You've just got no alternative.

Senator SHERRY—We had a number of alternatives. You are unwise enough not to listen to them. That issue has now passed. We and the industry have highlighted the consequences that flow from the collection mechanism included in these bills. It is regrettable that those consequences are going to flow.

There are a number of other fundamental issues that we want to deal with in respect of our amendments. I am referring to advance instalments. I know that it is a circuitous route, but I need to put these matters on the record. We are going to do the best we can to minimise the problems that we highlight in

the committee stage. We are not going to be obstructive in the sense that we are going to speak unduly, but we do intend to comment in respect to our major series of amendments. We believe we have a right to do that. It is unfortunate that we are here tonight at 25 to 12 and will shortly conclude. I would have liked to have had four or five hours on this.

Senator Kemp—We can have four or five hours on it.

Senator SHERRY—The government chose to prioritise other business. We find that somewhat strange, given that this was the government's No. 1 revenue raiser. Half a billion dollars is at risk. If we had been able to start at 8 o'clock, maybe we would have got through the amendments substantially and been in a position to conclude them tonight. I do think that is unfortunate for the simple reason—and I say this quite frankly—that industry want to know what the final position will be. They want to know that. We are not going to abrogate our right and responsibility to deal with significant amendments—and these are significant amendments—in a reasoned way.

As far as Labor is concerned, the advance instalment provisions of this legislation represent one of the most atrocious elements of the government's legislation. If an individual has to halve the 15 per cent tax, the advance instalment provisions require the individual to pay the following year's tax liability in advance. It assumes that an individual will have an ongoing taxation liability.

I would like to make a few other comments about this issue. What the government is trying to do is bring forward its revenue through this advance instalment. Of course, the effect of pushing back the dates that the surcharge debt from 1996-97 is payable by, in conjunction with the advance instalment, led to one outcome: a huge amount of revenue being collected in the year 1999-2000. I would hate to suggest that the government is fiddling the numbers, but that is exactly what the government is attempting to do. The government is seeking to raise the maximum amount of revenue in 1999-2000 that it possibly can.

Of course, nothing particularly exciting is happening in the year 1999-2000. I do not know whether any of the senators can think of anything that is due in 1999-2000 and why the government would want all the additional revenue because of the effects of the advance instalment. It may just be that—I think—there is an election scheduled, but maybe I am not sufficiently cynical to believe that the government wants to boost its revenue in that year because there is an election scheduled.

Senator Ferguson—You used to be in one; you ought to know.

Senator SHERRY—I will not respond to the provocation; we could sit until four or five in the morning as a consequence of that. I will stick to the issues.

The CHAIRMAN—Could I remind honourable senators that interjections are disorderly, but that is compounded when the senator is not in his or her own seat.

Senator SHERRY—Thank you, Mr Chairman. I am trying to avoid the provocation. It does not hurt the government that a large part of the revenue that would have been raised in 1996-97 will not now be collected until 1997-98, thereby inflating the bottom budget line in that year as well.

The opposition also notes that the government does not propose to insert a line item in the budget statements indicating the amount of money that the commissioner has to refund due to the incorrect collection of moneys. The opposition would note strongly that, should our amendments on advance instalments fail, the government should be required to put this liability to refund Australians' superannuation moneys with interest as a separate line item in the budget, particularly if the government is true to its promise of budget honesty.

I will move on to the equity issues that the advance instalment provision raises. How can this be a fair tax on superannuation when individuals who should not be required to pay the tax in the first place are required to pay an advance instalment? Senator Kemp has been very cautious with his words. He says not one person need pay the 15 per cent tax if they all provide their tax file numbers, but

we know that not everyone will provide their tax file numbers.

If you ask a superannuation fund how many are likely not to provide their tax file numbers, they will tell you it will be at least a million in the first year, which means that they will not only be hit by the 15 per cent tax, they will also be hit by the additional advance instalment of 7½ per cent. Given that these are likely to be low income, part-time, casual or itinerant workers who fail to provide their tax file numbers to the superannuation fund—either because they are unaware of the requirement to do so or because of the inability of the fund to contact them—they will pay the total tax in the first year of 22.5 per cent. These are people who should not be paying this so-called surcharge.

Senator Kemp will not assure the Senate that not one person who earns less than $70,000 will have to pay the tax. He will assure the Senate that not one of them need to, but he will not assure the Senate that not one person will have to. He knows the evidence; he knows what the reality is out in the industry.

Senator Kemp—Oh!

Senator Carr—He's got you there.

Senator SHERRY—Senator Kemp—through you, Mr Chairman—continues the same sort of theme, 'This is not a tax; it is a surcharge.' I put to the Senate that this is a fundamentally dishonest approach. Senator Kemp continues to say that people earning less than $70,000 need not have to pay the tax, but all the evidence before the committee—never refuted by anyone—says that hundreds of thousands, a million or maybe more, people who earn less than $70,000 will have to pay the tax because, for various reasons, they do not provide their tax file number. That is a 15 per cent tax and another 7.5 per cent advance instalment. That is a total of 22.5 per cent tax on top of the existing 30 per cent tax. You can imagine what is going to happen when the people who have not provided tax file numbers open up their fund statement.

Senator Kemp—Come on, Nick!

Senator SHERRY—It is a very necessary point, Senator Kemp. It is very necessary to get this on the record. They will open up their fund statement, and they will look down there and see 30 per cent tax, 15 per cent surcharge—so-called—tax, 7½ per cent advance instalment tax and probably the admin charges for the collection of the new tax. There will be four amounts deducted from a million people who earn less than $70,000. It is not me who says this; it is the experts in the industry who say it. The government knows it is true.

Senator Kemp—Come on, Nick!

Senator SHERRY—Senator Kemp, you can say, 'Come on,' but I am not saying it; it is the industry that is saying it. These are the people who have to collect the tax file numbers, but all this money is collected. Let us say it is 10,000 people, Senator Kemp; let us say it is 100,000; let us say it is a million. Whatever the final figure will be, it will be significant. The tax office collects all the money and then it has to refund it all. So we could have a million people, with all the tax collected, who then have to get a refund—if they, of course, remember to go to the tax office. Then we have the issue of the advance instalment. This issue serves to highlight the inequity of the advance instalment.

Senator Carr—I don't think he's got it.

Senator SHERRY—I think you are right, Senator Carr. I do not think Senator Kemp has got the message. Everyone has been telling him this and everyone has been telling Mr Costello. It is important to get this issue on the record in this debate because when the complaints come to the electoral offices of the government we will know who to blame.

Senator Kemp—Ha!

Senator SHERRY—You can laugh, but I tell you that a few of you will be ducking once people get their statements. It is a great tragedy that this should occur. These are the sorts of issues we raise.

Senator Carr—It's callous.

Senator SHERRY—It is callous, Senator Carr. Finally, how can the voluntary principle of collection of—*(Time expired)*

The CHAIRMAN—Before I call another speaker, could I just indicate that certain of those amendments which we called amendments will have to be moved separately. They are amendments Nos 6, 7 and 18. The question will have to be that a certain clause stand as printed. So we would be looking firstly at amendments Nos 1 to 5, 8 to 16, 19 to 36 and 39 to 40. Then we will go back to amendments Nos 6, 7 and 18, after we have considered the amendments.

Senator KEMP (Victoria—Assistant Treasurer) (11.46 p.m.)—I think Senator Sherry, in his rhetoric which has so marred sensible discussion on this issue, has actually misunderstood the nature of the advance payment. I think this is important as senators vote on this issue. The advance payment is basically a collection of the surcharge on contributions that have already been received. Contributions are received from 1 July to 15 June and the instalment is due on 15 June. The bulk of those contributions would have been received by the fund. It is worth while just repeating that, because it is a very important point which no-one who is listening to Senator Sherry would have any inkling of at all.

I repeat: the advance instalment is basically a collection of the surcharge on contributions that have already been received. So it certainly meets the equity test. Senator, your amendments would cost revenue $160 million in 1997-98. That is what the Labor Party amendment would do. It is poorly thought out, not properly understood, does not understand the nature of the advance contribution and does not understand that it relates to the bulk of contributions already received. We will be opposing the amendment.

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

That the committee report progress and seek leave to sit again.

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate) (11.48 p.m.)—Could Senator Hill give a reason why he wants to negate the committee so early, prior to midnight?

Senator Hill—Because I would like to test the Senate on sitting past midnight, to get on with the job.

Senator SHERRY—You could have been more honest and indicated that, rather than trying to sneak it through.

Senator Campbell—It's normal practice, Nick.

Senator SHERRY—Yes, it is normal practice. But is normal practice to do it just a shade closer to midnight. Why didn't the government consult the opposition about this? Why didn't you inform us that you intended to move this?

The CHAIRMAN—I just indicate to honourable senators that there is no debate on that motion.

Question resolved in the affirmative.

Progress reported.

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

That the committee have leave to sit again at a later hour of the day.

Senator Sherry—Can I ask what the later hour of the day will be?

Senator Hill—You could sit after midnight.

Senator Sherry—How long?

Senator Hill—I have a subsequent motion which will be that we sit until this bill is completed.

Senator Sherry—This bill?

Senator Brown—On a point of order: we cannot hear what the leader is saying.

The TEMPORARY CHAIRMAN (Senator Murphy)—I understand that, Senator Brown. It is a process of people trying to work out where we are all at at this point in time. Senator Hill, do you want to clarify anything?

Senator HILL (South Australia—Minister for the Environment) (11.51 p.m.)—The next motion that I will seek to move—after we have permission to sit again—will be to negate the adjournment until the superannuation package is completed and the messages are returned on the Hindmarsh Island bill and the Private Health Insurance Incentives Bill and dealt with by the Senate.

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate) (11.51 p.m.)—I am rising to oppose the motion. Can I just ask: what is the position if

we get to midnight and I have not finished speaking?

The TEMPORARY CHAIRMAN (Senator Murphy)—For the clarification of those senators who did not hear the clerk, the adjournment will have to be put.

Senator SHERRY—Okay. I rise to oppose the resolution. We are dealing with a major package of legislation in respect of a new tax—call it a surcharge, if you wish. There are seven bills. It is extraordinarily complex legislation. We have a series of amendments. We do not want to keep the Senate unnecessarily on the amendments, but is it reasonable to push on with this package of amendments that in my estimation—I have advised the government of this—will take probably four to five hours? I think that is a reasonable amount of time to spend.

Senator Campbell—That's not what you told me at 10 to 8. You said it was only a short amount of time.

Senator SHERRY—We did not start at 8 o'clock. You put your legislation up. Why wasn't the government's—

Senator Hill—You've been misleading us all day.

Senator SHERRY—Senator Hill, you might take this back to the Treasurer and the Prime Minister: why wasn't the government's major revenue raising measure listed on the program as a matter of priority earlier than the Friday night before Easter? Sorry, the Wednesday night before Easter—I keep thinking it is Friday.

Senator Hill—It feels like Friday.

Senator SHERRY—It feels like Friday after the last few days, I would have to say. Why wasn't it listed? It is a matter of priority.

Senator Campbell—You said you would discuss it at 12 o'clock.

Senator SHERRY—Calm down, Senator Campbell. Dear oh dear! You are touchy tonight.

The TEMPORARY CHAIRMAN—Senator Sherry, can you direct your remarks to the chair?

Senator SHERRY—Initially we thought we had an understanding—I understand circumstances do change; I do understand that—that these bills would be dealt with on Monday or Tuesday of this week. That was not possible because of the euthanasia legislation. We could have sat other nights, but—I think rightly, from a personal point of view—the euthanasia issue was dealt with by the Senate. I think that was quite right and proper. But we have so much very significant legislation to consider. Labor does not seek to keep the Senate unnecessarily.

We know that ultimately we have to have this legislation passed in whatever final form. But this legislation is very substantial, very important; it is important we do try to amend some of the provisions that we consider iniquitous and that we do it in a considered way.

Senator Campbell interjecting—

Senator SHERRY—Senator, you make the point, 'Let's get on with it,' but these seven bills that were tabled, I think, on 13 February—

Senator Campbell interjecting—

Senator SHERRY—I am saying to you by way of debate, Senator Campbell, that if we thought there was half an hour or an hour to go on these amendments—if we had started a couple of hours earlier there would only be half an hour to an hour—we would be very happy to extend for another half an hour or an hour. But I have to say to the Senate that, in my humble judgment, there are probably another three to four hours on these amendments to consider them properly.

Senator Campbell—You guys said you would discuss it at 12 o'clock.

The TEMPORARY CHAIRMAN—Order! Senator Campbell, if you want to speak then maybe you can speak on the adjournment.

Senator SHERRY—Thank you. I am tempted to speak on the adjournment if I cannot proceed with my amendments, but I think I will have to talk about super again. Seriously, I am trying to impress on you—

Honourable senators interjecting—

Senator SHERRY—We got this legislation on 13 February—five of the seven bills we are now considering. You have put in two

new bills since then and there are major amendments. You said this legislation was constitutional. New provisions—

Senator Hill—Mr Deputy President, I have a point of order. The point of order is, I confess, a little spurious, but I want to ask Senator Sherry whether we can test the mood of the Senate on whether we go on beyond midnight. If the opposition wants to simply talk this out and therefore thwart the government's program in this way, then so be the consequences. But surely a fair go would be to allow the Senate to express its point of view.

The TEMPORARY CHAIRMAN—There is no point of order.

Senator SHERRY—Thank you, Mr Chairman. I was attempting to point out how the government got itself into this shambles. On 13 February five bills were tabled. Where was the legislation? This was announced in August last year. On 13 February we finally got what would arguably be the most important package of legislation on superannuation this country has seen for a long time. Where were the bills? What happened when we got the bills on 13 February? Two or three weeks later—

Senator Campbell—You're speaking it out—that's what you're doing. You won't let the Senate vote.

Senator SHERRY—The rowdiness from the government is just encouraging me to go on, because I want to finish and I am being interrupted. What were we told three or four weeks later? The government told us that there were particular problems with the package of five bills we are now considering, so two new bills had to be introduced. Then we were told by the government they had forgotten to include the tax mechanisms to collect the money from Commonwealth employees; more amendments to these bills. Then we heard that there was a constitutional problem with the bills. Mr Costello said, 'No worries, it's constitutional. There's no problem. We took into account Mr Rose's concerns in respect to the constitutional query.' Then what happened? On the quiet last Thursday, the government introduced amendments trying to rectify—

Senator Hill—Mr Temporary Chairman, on a point of order: I want to test the opposition once again by asking if we might have leave for this procedural debate to continue beyond 12 o'clock in order that these matters can be resolved in a way that the Senate as a whole can express its view on whether the government's legislative program should be dealt with.

The TEMPORARY CHAIRMAN—Is leave granted for that course of action?

Leave not granted.

Senator SHERRY—I was about to track through and conclude the history of this sorry saga of these superannuation bills.

Senator Campbell—I raise a point of order, Mr Acting Deputy President. I wish to know who refused leave. Was it the Leader of the Opposition, was it the shadow Leader of the Opposition or was it the Manager of Opposition Business?

Senator Margetts—It was us actually.

The ACTING DEPUTY PRESIDENT—Leave was refused by Senator Margetts. Senator Sherry.

Senator SHERRY—Thank you. We were assured—

Thursday, 27 March 1997

ADJOURNMENT

The ACTING DEPUTY PRESIDENT—Order! It being just past 12 o'clock, I propose the question:

That the Senate do now adjourn.

Euthanasia

Senator BROWN (Tasmania) (Midnight)—The letters columns in today's newspaper started to reflect the feeling of the Australian people about the failure of this parliament to uphold the voluntary euthanasia laws. I do not wish to hold the chamber for long at this point but I have circulated—

Senator Ellison—Why not; you've done it all week. You're a disgrace.

Senator BROWN—The honourable senator opposite interjects at this stage to delay the Senate chamber, but let me tell him this: I have in mind that, as a reflection of what

people are saying about the decision on euthanasia, I want to incorporate into *Hansard* the page of letters in today's *Sydney Morning Herald* published under the heading 'Senate's night of shame'. I seek leave, having circulated this page, to have it so incorporated.

Leave granted.

The page read as follows—

LETTERS

Senate's night of shame

So our politicians have a conscience—a pity they have no compassion.

Zac Marov,

Belleview Hill

March 25

Congratulations to the 38 intelligent senators who voted to preserve our greatest gift, the essence of our being—life!

Jo-Ann Brown,

Eastwood

March 25

Mr Kevin Andrews and his supporters have fully confirmed the old adage that "Those who seek power are the least suited to wielding it".

Andrew Brown

Gladesville

March 25

How agonising is the irony of "I'm-for-the-battlers" John Howard's concern over the incidence and causes of suicide in this country at the same time as his and other non-representing politicians' rejection of some battlers' self-determined release from their mental and physical trauma. Yet again, actions give the lie to the political rhetoric of compassion.

Now that an honest, open approach to the problem of ending life has been scuttled, will this legislation do anything to reduce the illegal practices that were to be replaced by the NT law?

Will the PM now back up his convictions and determine the true number of such suicides—including the assisted ones—and legislate to reduce these? Or are we back to the days when we pretend it doesn't happen? Just another example of the Tasmanian anti-gay-style legislation?

Gerard Henderson's point about Mr Andrews's pre-election silence on this matter is quite telling (*Herald*, March 25). What will be even more so will be his party's actions to deal with hidden suicides. How hypocritical can one be?

Trevor Kruger

Blue Bay

March 25

First the House of Representatives, now the Senate.

What a laugh!

When approximately 75 per cent of people questioned are in favour of voluntary euthanasia, just whom do some of these politicians imagine they represent?

John Gamble

Baulkham Hills

March 25

We do not want politicians' conscience vote. Heavens above! What do some of them have on their conscience at the best of times? Put this very important bill to a national referendum.

Sue Resnik

Cremorne

March 25

I never liked Keating but "unrepresentative swill" sounds about right for the 38 senators whose "conscience vote" was knowingly against the will of the majority of people of this country.

Kevin Andrews is now a household name which is no doubt what he wants, but we the people haven't got what we want.

Jill Slatter
Coal Point
March 25

I have heard that early this morning, in the Senate, the lights went out.

Vincent Scoppa

Gladesville

March 25

Weep, Australia. The night of March 24 was the dark night of Australia's soul: its democracy.

Poll and poll again have shown that an overwhelming majority of Australians supports physician-assisted suicide for the terminally-ill who desire it. Our elected "representatives" have denied us what we overwhelmingly demanded.

I believe that Australia will survive this dark night and that the people will not allow our democracy to be dealt such a blow. I remind our "representatives" that the will of the people does prevail in a democracy—and it will. The "representatives" who voted against us may not.

Gail Scott

St Ives

March 25

Congratulations to Mr Andrews and all those who voted for your bill! You have reaffirmed my suspicions that Australia is no longer a free country.

We don't have the right to freedom of speech, as proved by the attacks on Ms Hanson following her maiden speech in Parliament—now you have the audacity to tell us we can't take our own life when we have no hope of recovery and extreme pain. So the alternative is to end it all with a knife, a gun or a rope?

Obviously Mr Andrews has had no experience with the forms of cancer for which there is no pain relief, and I certainly wouldn't wish it on him. However, I suggest he visits some of the oncology units to see what happens in the real world.

Polls show that 70 per cent of Australians approve of euthanasia and yet less than 50 per cent of parliamentarians appear to approve. This would indicate that the Lower House can now join the Senate in being, in the words of Mr Keating, "an unrepresentative swill".

Wendy McSweyn

Wollar

March 25

Obviously honourable senators would love to see the abolition of dignity. They seem happy to deny terminally ill people any dignity in death and seem absolutely content to see that Mal Colston is able to have none in life.

Joshua Brown

Bonnells Bay

March 25

It is to be hoped that the psalm singing *vigilantia* outside Parliament last night (*Herald*, March 25) return when Mr Howard slashes the palliative care budget even further. How ironical that purveyors of a religion supposedly of tolerance feel vindicated in inflicting their beliefs on those of other persuasions who are terminally ill. Didn't the Thirty Years' War which killed so many in Europe establish that tolerance was the best path to follow?

J. Byrne

Eastwood

March 25

Shame, Senate, shame. Advance Australia forward, ever forward, to the dark ages.

George D'Aran

Nelson Bay

March 25

What a sad day for democracy when the fate of a basic human right such as this can be decided by 70 or so politicians acting on the whims of one puppet and his church.

Why do we have the referendum framework in place if it will not be used on the important issues?

What is next, Andrews? Ban condoms because your leader says contraception is evil?

Democracy is dead.

Richard Kinder

Cherrybrook

March 25

The Senate squabbles on a curiously termed "conscience" vote to deny citizens the right to end their suffering and die painlessly and with dignity at a time of their own choosing. Yet they have no conscience about sending troops to die in foreign countries or peddling nicotine and lung cancer to children. The Senate will happily condemn you to death, but only if you don't want to die. Undying hypocrites everyone of them.

William S Lloyd

Denistone

March 25

Now that our politicians have no doubt righteously indulged themselves with a "conscience vote" will they now revert to voting the party line which does not require them to use their consciences?

Or, heaven forbid, might their consciences now tell them that their votes should represent the views of their electorates, rather than impose narrow sectarian rules on the majority?

Pamela Thistleton,

Toowoon Bay.

March 25

Increasingly over the years, this country has for some reason put up with the hysterical dribblings of the self-perpetuating, politically correct do-gooding fringe groups, but never has there been anything to equal this latest act of Big Brother tactics, namely, the Andrews anti-euthanasia bill.

Australia has just thrown away an opportunity to show the world that we have a compassionate and caring society which allows our terminally ill people the right to choose how and when they will die. To deny this right to anyone in pain and without hope is the ultimate act of obscenity.

The point that these meddling minders have apparently missed is that palliative care does not work for many patients and even when pain can be alleviated there is another equally important aspect to their suffering to consider—dignity.

I ask this: have any of you who so vehemently oppose voluntary euthanasia ever watched someone you love die in mental and physical agony, inch by inch? Well, I have, and it is a predicament that even the most blase of us never forget. Certainly, if it happened to the family dog, it would not be tolerated.

In this country nowadays we are becoming enveloped by crime and violence—if all those who are expending so much energy interfering in the lives of the terminally ill were to divert even a small part of that energy towards ridding our society of these evils, Australia would be a much better place.

A.J. Beckett,

Bay Village.

March 25

May I wish Mr Kevin Andrews a long and excruciatingly painful life.

Ted Matulevicius,

Goonellabah,

March 25

The unrepresentative swill of the Senate have affirmed that though God may decide when we die and rest in peace, they may dictate how long we live in agony.

But some good will come of this—it continues the exposure of their unworthy membership. Our glimpses of their cosy corruption and smug arrogance coupled with this latest failure to represent the wish of the majority will make us look very carefully at that long strip of paper next time we are in the ballot booth.

No more ticking off the numbers according to the party ticket. We have learned the importance of appointing true representatives and we have learned that we cannot trust the two major parties' recommended candidates.

The Ides of March have never been a good time for senators, and trust me—the knives are out.

Gary Stowe,

Faulconbridge,

March 25

Makes me feel all warm and fuzzy.

I don't have to worry about what's best for me.

A very few altruistic-minded wise persons in Canberra tell me what's best.

I feel good.

I don't need God.

I have them.

Tony Strachan

Katoomba

March 25

I don't understand why these evangelists of their own belief systems have the right to take away another individual's right to end his or her own suffering.

This is the worst kind of politicking, far worse than acting out at Question Time, making errors with expenses or jetting around on fact-finding missions. I don't care what "God" a politician chooses to follow, but when his belief affects others I consider he has overstepped his already poor standing in the community.

My heart goes out to those who are suffering and those wanting to help them within the law.

Chris Baker

Mosman

March 25

The current session of Parliament will be remembered for its preoccupation with the moral high

ground. But why stop with passing the private member's bill to nullify the NT euthanasia law and forgiving the Deputy President of the Senate for over claiming travel allowances? Both Houses must now increase hospital funding because euthanasia is no longer an option and amend tax legislation to remove penalty and interest provisions for inadvertent errors. Only fair, surely?

L.A. Rae

Burrawang

March 25

How appropriate! The lead story on the front page (*Herald*, March 25) is about senators throwing out the Northern Territory's right-to-die bill. Alongside this is a story about the Federal Government's accepting a senator's excuse that "sloppy bookkeeping" was responsible for his claiming $6,880 in travelling allowance for 43 days on which he did not travel.

An "unrepresentative swill"? Maybe. Or perhaps it's a case of a senator being judged by his peers.

A.J. Hill

Stanmore

March 25

Oh, how sincere and "holier than thou" do the speakers in the Australian Senate sound in their defence of liberty, human rights, and "Australian values" in their rejection of the Northern Territory euthanasia legislation.

Please tell me, where were these earnest defenders of humanity when funds were cut to health, education and social services? While the "right to die" legislation is worthy in its own right, its dissenters' hollow cries still scream hypocrisy.

Jurgen Wille

Coogee

March 19

This morning's vote supporting the Andrews bill in the Senate was a travesty of the democratic process.

These self-righteous senators exercising their "conscience" vote in favour of the bill clearly have no conscience relating to the vast majority of the population and of their constituents who support the availability of euthanasia.

David A. Haines

Avalon

March 25

You will receive many letters on this topic.

Let me add mine to the pile which will express revulsion at the sanctimonious hypocrites in Canberra imposing their wills on the responsible relations between the medical profession and dying patients.

Have they done everything else so well, protecting us from the perils of the drug trade, protecting children from the predations of pedophiles, protecting us on our roads, that they can now move on and interfere in an area where no-one except a small group of God-botherers sees a problem?

And to think that this was brought on us by the party which professes to hold States' rights so dear.

Richard Ure

Epping

March 25

To all the senators who voted in favour of the Andrews euthanasia bill: you disgust me.

You have shown that in Australia, as in the United States, the "moral majority" is on the rise.

You seek to impose your religious and moral beliefs upon the wider community. You missed the point. You can't stop me gassing myself, or driving my car off a cliff. It's my life and I will control it, thanks very much.

All you have done is to remove a humane and merciful option. In doing so, you have run roughshod over public opinion and the rights of the individual.

Thanks to your vote, euthanasia will continue to be practised in secrecy every day in every major hospital in Australia.

When society matures further, a euthanasia law will be passed. As with most issues, I doubt that Australia will be in the vanguard of change.

Alex Kemeny

Wahroonga

March 25

Now that debate on the Andrews bill to overturn the NT's euthanasia legislation has ended with a vote in the Senate, it is necessary to reflect on why the Territory's laws were flawed.

Former Territory Chief Minister Marshall Perron's heart was in the right place, but use of the word euthanasia was always going to alienate most Australians and their elected politicians. We are basically a very conservative population opposed to giving people a right to choose to end their lives.

In NSW in the late 1980s, an amendment to the NSW Crimes Act was drafted to give terminally ill people "death with dignity". Its aim was to prevent any over-zealous law officer from prosecuting doctors and other hospital staff involved in the withdrawal of life-supporting treatment from the terminally ill. Regrettably, this amendment never saw the light of day.

People faced with death want to end their lives with dignity and at ease in the knowledge that they have a choice which affords them, their families and doctors some legal protection.

The Andrews bill may have passed, but this debate is not over.

Wayne K. Geddes

Hornsby Heights

March 25

Senator BROWN—The letters speak for themselves. They are a consistent barrage of vitriol, disappointment and disgust with the fact that the rights of individuals in this country have been overridden by a majority of people in this parliament not reflecting what the people themselves think. I finally add that on the eve of Easter, it is quite remarkable that so many people got up and said, 'I am a Christian. I vote for this bill. I vote to override the rights of the people of the Northern Territory and, in particular, those of individuals. The effect of what I am doing, in parenthesis, is: They shall suffer as they die because of my intervention against their self-determination and their wish for access to voluntary euthanasia.'

Senator Patterson—I find that offensive; you are appalling.

Senator BROWN—You may find that offensive, but I find what you did offensive in the extreme. The difference between you, Senator Patterson, and me—through you, Madam President—is that I have not voted to override the right of individuals. If you want to get up to defend your position, you do so, but I stand here on the point I take and I stand defiant of your point of view.

Government senators interjecting—

Senator Campbell—I wish to raise a point of order, Madam President. In relation to standing order 193, I suggest that Senator Brown has transgressed that rule that says quite clearly that a senator shall not reflect on any vote of the Senate, except for the purpose of moving that the vote be rescinded. I do not understand that Senator Brown is seeking to do that at this stage.

The PRESIDENT—Senator Brown, you must abide by that standing order in the remarks that you make. You should address your remarks to the chair.

Senator BROWN—Madam President, I will continue to abide by that, as I have. The fact is that, despite what honourable senators opposite are saying now, I am reflecting what the people of Australia are saying in the letters columns and in their calls to the media about the vote that was made in the Senate. I have said enough. I want the people to speak for themselves and I am pleased that through this opportunity tonight a quotient of that opinion about the passage of the Andrews bill through this chamber will go on the *Hansard* record—people speaking for themselves.

Government Business

Senator HILL (South Australia—Minister for the Environment) (12.05 a.m.)—I want to say a few words about the action of the opposition tonight in obstructing the program of the government. It is not so much the program of the government but really the wishes of the people as was expressed so overwhelmingly at the recent election. The people elected this government on a reform program, which they wished to have implemented. It is complex but it is important and what has happened tonight, unfortunately, is that key parts of that program have been unnecessarily blocked. They have been blocked simply because the opposition wished to be obstructionist—obstruct the government's program in order to make it more difficult to pass and therefore to disregard the wishes of the Australian people.

For that, this negative carping opposition should be condemned. There is no reason at all why the Senate could not have continued sitting tonight to deal with bills that have been the subject of community debate, Senate committee debate and widespread debate now for a long period of time. They are reforms that are vital in this country and they deserve to be put to the vote. But this opposition

would not only not allow the reforms to be put to the vote, it would not even allow the Senate to sit to have the opportunity to debate them. It would not even allow the Senate to express its view as to whether it should continue sitting tonight to debate bills that are so important in the government's program—a program of reforms that were clearly put to the Australian people at the election and were overwhelmingly endorsed by the Australian people and have now been brought to the parliament for debate and hopefully passage but the opposition is not—

Senator O'Brien interjecting—

The PRESIDENT—Order! Senator O'Brien, you are in consistent breach of the standing orders.

Senator HILL—A will of the Australian people that this opposition is not prepared to respect. It is not surprising that the polls are showing the Australian Labor Party now in a worse position than when they were thrashed at the election 12 months ago. Why? Because they have become so negative, so obstructionist, so irrelevant to the future policy and legislative process of this country. That is disappointing. It is disappointing to the elected government that wishes to have the opportunity to implement its program. It takes time.

Honourable senators interjecting—

The PRESIDENT—Order! There are too many interjections.

Senator HILL—It requires the Senate to be willing to sit to debate these issues. There is no reason at all why the Senate—

Senator Chris Evans—You had all last week and all this week.

Senator Campbell—You broke every agreement. Your word's not worth a pinch of—

The PRESIDENT—Order! Senator Campbell and Senator Evans, stop shouting across the chamber!

Senator HILL—We have been misled more times than I can remember this week on dealing with the legislative program. We were told time and time again that bills would be debated in a short space of time and they have not been. The telecommunications package took 23 hours even though they were originally Labor's bills. The package goes through months of Senate committee debate. It comes in here and it still takes 23 hours. On that basis, a government is not going to get the opportunity to put its program to the vote. That is all we ask, that we have the opportunity to put the program to the vote.

If you have an opposition as negative as this one and when the numbers are as tight as they are here—and we may have an overwhelming majority in the House of Representatives, but we are a minority in here—I know how easy it is for an opposition to block the government's wishes. You have made a determination to make it as impossible as you can for this government to have the opportunity to get its bills put to the vote. All we ask is to put the bills to the vote. We saw it with telecommunications. We have gone through package after package. Take the RSA bills. We understood after consultation around the chamber that it would take 1½ hours.

Senator Chris Evans—You got your vote and you lost it.

Senator Hill—No, I am not quarrelling about the vote. What I am quarrelling about is that you kept it going for seven hours to avoid having to face up to other legislation before the chamber. You are seeking deliberately to make it impossible for the people's wishes to be implemented and for that you should be condemned.

That is why the voters are telling you, if you only listened, if you read the polls, that you are going in the wrong direction. You have no respect at all for the wishes of the Australian people or you would start responding more positively to the newly elected government's program. But you don't care about that. You have gained what you believe is a right to govern and you have refused to accept the verdict of the people. Every day we see it.

Gary Gray, your secretary, comes out and talks about you as a party that is drifting that has lost its way. So many other Labor commentators have come out in recent times and have said it is clear that this Labor Party has lost its direction, has no idea where it is

heading, and that is reflected of course in the opinion polls.

This action tonight is a disgrace, that the Senate is not being permitted to complete debate of a vitally important package of legislation, that is, the superannuation bills. This Senate is being refused the opportunity to hear messages from the House of Representatives returning the health bills, so the health bills cannot be completed tonight. It is refusing to take the message on the Hindmarsh Bridge bill.

Senator Campbell—They don't want to take that.

Senator HILL—Of course they don't. The Hindmarsh Bridge bill is typical. The Leader of the Opposition, Mr Beazley, goes public and said, 'We have changed our position. We are going to support the bill.' But when the bill comes in here this double dealing opposition seeks to carry amendments, successfully as it turns out, that it knows is unacceptable to the government; in other words, defeats the bill through a different means. Would Mr Beazley come clean with the Australian people? No. He has misled them on that as well.

For about two days he got a little bit of credit from the public that he had finally seen reason, recognised that millions of dollars have been wasted on that debacle and that the Australian people had the right to have that legislation passed. But by either deliberately misleading the people or not having the capacity to influence the behaviour of his colleagues in this place, when the bills get in here Labor determines it will not be brought into law.

Every sign we see is of a negative Labor Party that has shown no sign at all of learning the lessons of the thrashing that they received last year—a Labor Party that is just intent upon obstructionism, intent upon blocking the program that the people voted in. They have no interest at all in even offering the respect of a right to vote.

Senator West—Wind him up.

Senator HILL—Senator, you laugh at all this because this is within the style of the new Labor Party, isn't it? The once great Labor Party that had the privilege of governing—that was different. But the privilege of being in opposition, no—that is just the role of blocking the people's wishes.

We have seen it tonight in a way that we rarely see it in this place. Tonight will be remembered by the Australian people as just another nail in the coffin of what was once a great political party—a great political party that has lost all credibility with the Australian people, that is not prepared to respect the wishes of the Australian people, that is not prepared to give the new government a go, that is going to use its numbers in this place when it can join with others to not even allow the opportunity for votes to be put. That is a matter of great regret. But you will suffer as a result of it.

You will suffer because, as we saw again with the work for the dole bill today, Labor is not even prepared to have that bill come on in the next parliamentary session. If ever there was another demonstration that this Labor Party is solely intent on blocking the program of the newly elected government, there is another demonstration of it.

We see it constantly—10 or 20 hours of unnecessary debate, getting the Senate up when it is unnecessary, putting off committee reports not just until the beginning of the next sittings of the parliament but until the end of the next sittings. All of these signs are consistent with a Labor Party that has no interest in playing the responsible role of opposition. It is a Labor Party that is only interested in blocking the legitimate wishes of the Australian people. That is a matter of great regret.

Government Business

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.15 a.m.)—We have just had one of the greatest exercises in hypocrisy that we have ever seen in this chamber. What sanctimonious hypocrisy from Senator Hill, the man who time and again, year after year, deliberately, callously and cold-bloodedly disrupted the Labor government's program in this place. Time and again he broke his word, as he did on three occasions during the life of the last parliament in terms of commitments that were

given by the Liberal Party. The Liberal Party was never a great political party. Commitments were broken time and again.

What Senator Hill does is come into this chamber and rail because the Senate worked to a plan proposed by the Manager of Government Business.

Senator Jacinta Collins—By who?

Senator FAULKNER—The Manager of Government Business. He put forward a proposition that the Senate adjourn at 8 o'clock tonight. He then put forward a new proposal that the Senate adjourn at 12 o'clock tonight. When the question was put for the adjournment at 12 o'clock tonight, what did they do? They whinged, complained and beat their breasts.

Senator Campbell—You are a liar!

The PRESIDENT—Senator Campbell, withdraw those remarks.

Senator Campbell—This man is a liar, Madam President. I didn't put forward the proposal; they put forward the proposal for 12 midnight, and the man is a liar.

The PRESIDENT—Senator Campbell, resume your seat. Withdraw those remarks immediately!

Senator Campbell—I withdraw.

Senator FAULKNER—I don't give a damn what these people say about me. I want to say that this is the same political party—Mr Howard's confreres in this chamber, Mr Howard's liege men in this chamber—and the same Mr Howard who said that the Australian parliament should work harder. It is the same Mr Howard who said that the Australian parliament should sit longer. It is the same Mr Howard who comes forward with a parliamentary sitting program of 20 weeks. That is one week less than the Labor Party had during the last year of the Labor government. What we say to these clowns, these deceitful clowns on the other side of the chamber—

The PRESIDENT—Senator Faulkner, withdraw that.

Senator FAULKNER—I withdraw that. These hypocrites should plan ahead.

The PRESIDENT—Order! Senator Faulkner, withdraw that remark please.

Senator FAULKNER—I withdraw, Madam President.

The PRESIDENT—Order! In the chamber there should be no interjections. Senator Faulkner has the call and is entitled to speak. There are many senators in breach of the standing orders at present.

Senator FAULKNER—The Liberal government in this chamber is incapable of planning ahead. The truth of the matter is that, so far in the life of the 38th parliament, the Australian Labor Party has offered up 121 hours and 36 minutes extra time for your government. That is unparalleled and unprecedented. What that means, just so you know, is that, on average, you deal with government business about three hours a day. That effectively means the equivalent of 40 extra days of sitting of this parliament. That is the sort of generosity that was never seen from these people when they were in opposition. They accuse us of being carping critics but, in reality, in the most deceitful way, they broke their word on so many occasions about the way this place should operate.

Senator Abetz—I rise on a point of order, Madam President. The Leader of the Opposition, who won the Oscar for the most hysterical outburst at the Labor Party conference one year, is once again referring to honourable senators on this side as being deceitful, and that ought be withdrawn.

The PRESIDENT—I do not believe that the word was used in that fashion on that occasion. There is no point of order.

Senator FAULKNER—This is the equivalent of, effectively, for government business time, six extra sitting weeks. That is what this opposition has given this new government in this chamber. But, of course, even with that amount of extra time—a courtesy never extended by you when you were in opposition—you have still managed to comprehensively mismanage the Senate's legislation program and to whinge and complain.

Senator Carr—Ten sitting weeks.

Senator FAULKNER—They have had 10 sitting weeks to whinge and complain that the opposition has not cooperated. I think that stands exposed as, without doubt, one of the

falsest claims we have ever seen made in this chamber.

Senator Herron—Most false.

Senator FAULKNER—It is one of the most false claims ever made in this chamber. That from the same crew who not only have mismanaged the chamber but have talked to us tonight about standards of parliamentary integrity and about how this parliament and this chamber should work!

They are the same people who gave you Senator Mal Colston Deputy President of the Senate; the same people who did this sleazy, contemptible, despicable deal; and the same people who completely subverted the will of the Australian people, who completely subverted the will of those Labor voters in Queensland who voted for a Labor senator and who bought Colston lock, stock and barrel. That is what you have done. How dare you come in and talk about parliamentary standards. How dare you!

The PRESIDENT—Senator Faulkner, you should refer to a senator by his correct title.

Senator FAULKNER—Who bought Senator Colston lock, stock and barrel and have the hide—now they are quiet—to come into this chamber and talk about parliamentary standards and accountability. That is what the Howard government stands for. That is what Alston and Hill stand for.

Senator Campbell—On a point of order, Madam President: I suggest that Senator Faulkner is again in breach of standing order 193(3) in relation to offensive words, imputations, improper motives and personal reflections. I would ask him to withdraw all of those matters where he has transgressed that standing order in defiance of your numerous rulings on this matter.

The PRESIDENT—Senator Faulkner, you must have regard to that standing order in the way you address senators and speak about other senators. I would ask you to do so.

Senator FAULKNER—Thank you, Madam President, I will. What has occurred is the shifting of the government's budget from August to May, irrespective of whether that is a good move, irrespective of its merits or not—

Senator Ferguson—You started it!

Senator FAULKNER—That is right. We all know that has shortened the capacity of the Senate during the life of this parliament to deal with your legislation program. We have moved from a sitting pattern of two weeks on and two weeks off to two weeks on and one week off. That is your proposal—a new pattern. It does not allow the same level of scrutiny of a government's legislation program.

I am not arguing about the importance of the Andrews bill in terms of the Australian people—it was important—but decisions were made in this parliament and by the government to give that bill priority and we at the end of the day supported that as a party. We believed that that was appropriate, but it has consequences. It was a very long debate. It took a lot of the Senate's time and everyone here knows it.

You have a situation where you have unparalleled incompetence in terms of the management of a legislation program. You might get up and say, 'Senator Campbell is very inexperienced. He is new to the job.' Okay, he is and we accept that anyone in that situation is likely to make mistakes. We are surprised at the number of mistakes that Senator Campbell has made, but it is understandable that he is not across his brief.

It is unprecedented to have a situation where the government's orders of the day change literally on an hourly basis; that the red that comes out in the morning is meaningless. It may as well be printed on toilet paper for all its use. This is the performance of the Manager of Government Business.

We have a situation where this opposition and this Senate have given a newly elected government more time and more opportunity to deal with the legislation program than has, in the life of the 13 years of Labor in government, ever been extended by the Liberals in opposition. One rule for them, one rule for us. No, we play ball—we have just allowed an extra three sitting days before the next budget to deal with your program.

The record stands that the Labor Party delivers. The Labor Party honours its word and you stand condemned as liars and frauds.

The PRESIDENT—Senator, would you withdraw that remark.

Senator FAULKNER—Which?

The PRESIDENT—The last phrase.

Senator FAULKNER—I withdraw 'liars'.

Government Business

Senator CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.28 a.m.)—I do need to respond to a number of matters that have been raised. We have seen over the past week in particular a game that became quite clear to me towards the end of last year when the Labor Party played it. When I summed up the end of the sittings before Christmas—as you will recall, Madam President, because you sat in the chair—I was quite magnanimous and thanked the opposition and other senators for the cooperation we received.

Senator Faulkner said that he was sitting to our program. I must say that you can only have a program in this place that is agreed to by all senators. Yes, the adjournment time originally was set at eight o'clock. Senator Faulkner said that we proposed 12 o'clock and I called him a liar and I have withdrawn that remark. It was unparliamentary and I should not have said it.

However, I get angry when someone walks in here saying such things, knowing full well what the truth is—that is, we went to the opposition this morning and said, 'We are not going to be able to finish these programs'—having taken 15 of those important bills off the program—'We will bring it down to five or six keys bills, including superannuation and a number of matters that have been dealt with today.'

We said that we will need to put the question for the adjournment when a minister moves it so that we have flexibility. The opposition came back and said, 'No, we can't have an open-ended adjournment because that does not give anyone certainty. We will make it 12 o'clock.' I am giving away private conversations here, but I believe I can do that because the Leader of the Opposition (Senator Faulkner) has misled the Senate in relation to those discussions and those negotiations.

All senators need to understand and anyone who is silly enough to be sitting up listening to this needs to understand what the Manager of Opposition Business has done. I do look forward to Senator Carr speaking if he gets the call, because what I am about to tell you is what happened. He can deny it. He came to me and said, 'We need to have a definite time for the adjournment tonight and that should be 12 midnight. But what we will do is talk to you about it as we get closer to that time. Of course, we are not wedded to 12 o'clock, we are not restricting it to 12, we are just saying you need to have a cut-off for the debate and we will talk to you about it as it gets closer.'

As it got closer to 12, we had discussions about these matters. As Senator Kemp would know, being a previous manager of government business, you talk about these things. We went to them at 8 o'clock and said, 'We are trying to get on with things and we have just got to flick Hindmarsh through.' We were told by the opposition senators that should only take 10 minutes after dinner. We were very keen to bring superannuation on straight after dinner. Senator Herron had been told—what was it—

Senator Herron—Five or 10 minutes.

Senator CAMPBELL—No worries. So what happens? Three opposition speakers come in. Hindmarsh takes another hour. Then all those other matters are brought in and it takes up time. So as we get closer to midnight we go to Senator Carr and say, 'Look, we are not going to have time to finish super unless—

Senator West—Oh dear, not fair! Senator Campbell has spat the dummy.

Senator CAMPBELL—I am sorry, Senator West, but maybe you can take the New South Wales Labor right at their word. When they say 'mate' to you, maybe you can take them at their word. But I have to tell you that the socialist left from Victoria and possibly the New South Wales left are a different matter. When Senator Carr says, 'Come and talk to

us about midnight and we will be cooperative about getting rid of the adjournment,' he really means, 'Hang on; sorry, no, I do not think we said that.'

Senator Carr, I look forward to your explanation, because when it came to 12 o'clock not only could we not even bring the superannuation bills to a vote but we could not allow honourable senators who have been elected by the people of Australia to decide whether we negate the adjournment. Senator Carr and Senator Sherry would not even allow senators to make a decision. They said, 'We will talk about negating the adjournment at midnight so that we can get the legislation finished,' but when it came to it they would not allow us to debate it or have a vote. That is what we are dealing with here. As a great Western Australian and former Premier said, 'Never shake hands with a cobra,' because obviously you get your hand bitten off.

Could I just say that the current Leader of the Opposition (Senator Faulkner) said that he had given the coalition an extra 121 hours. I will table this document: it shows that one of the reasons that we have problems in this place is that every time the opposition give us an hour of extra of extra time they take it back. When it comes to managing government business and trying to be cooperative, they are the great Indian givers.

Do you want to know how many hours you took on four bills? In the relatively short time since last October, do you know how long it has taken these guys to deal with four pieces of legislation? Endless speeches on second reading debates, endless committee stages. For example, take the RSA bill that you handled this week, Senator Kemp: we were told, 'An hour and a half should knock that off, no worries.' There was no objection from Senator Carr, no objection from Senator Faulkner, about the length of time it would take to deal with retirement savings accounts. Senator Sherry said, 'Yes, an hour or two; no worries.' Two hours go by, four hours go by, six hours go by, eight hours go by—and we get it. How many hours for four bills, four pieces of legislation? One hundred and eleven hours. You give us 121 and take back 111. These guys are generous. Indian givers.

In relation to extra sitting hours, earlier today Senator Faulkner said, 'Look, these guys do not know what they are doing. If you want to get business done, you have to get extra time at the end of the sittings.' So we went to them last week and said, 'Do you think we could get a couple of extra days at the end of the sittings if we don't get our business done? Could we come back for a couple of days after Easter?' 'Oh no, you cannot come back for a couple of days after Easter—we are all going overseas. We have got a two for one offer with Qantas. We are not going to be here. So you are not going to get any days like that.' So we go to them and say, 'We cannot get extra sitting hours tonight, we cannot sit through until 2 or 3 in the morning like we used to do every year when we were in opposition. We cannot do that, that is out of the ballpark.' So we say, 'Could we please have an extra week before the budget sittings?' They say, 'You cannot have a whole week. You can come back for a day or two if you are lucky.' We have got three days. You see, we were silly because we should have asked for time at the end of these sittings to get our bills done. We were told we were stupid; we were told we were moronic. We were told that we just did not know what to do.

I say to the Senate that we actually have that figured out. I may be new, I may be inexperienced; I will give you that. But I am learning pretty fast. I tell you what, a number of people from Senator Faulkner's own side have come to me and said, 'Ian, you are doing a very good job managing government business—better than Senator Faulkner ever did—

Senator Carr—Name them!

Senator CAMPBELL—You want me to name them? I will tell you quietly outside, Senator Carr, over a beer. And you will not be surprised to hear who they are.

The other thing we heard today was, 'Why didn't you bring super on earlier?' Senator Sherry did not have his amendments ready until after the second reading stage yet he said, 'Bring on super.' You saw the *Notice Paper* this morning, Madam President. We had the disallowance motions on industrial

relations. We were told that would take 10 minutes. It could have been dealt with in May but we had to deal with it today. That took half an hour. Then we had eight motions in relation to the Deputy President of the Senate, the person they voted in as Deputy President in 1990. We spent two hours this afternoon dealing with their little vendetta against Senator Colston. They said, 'Let us bring on super after lunch.' What did we do after lunch? We spent hours on their old mate Senator Colston, the Deputy President. We were happy to deal with superannuation straight after lunch, but what did they want to do? Not talk about legislation that will help make Australia's economy fairer for the battlers. We spoke right through until dinner time about matters that the opposition put onto the program. After dinner we were told, 'We will knock off Hindmarsh and we will knock off health. It will only be a quick one, flick it through, off to the Reps and you will be onto super within half an hour.' At 10 o'clock we get onto super.

So do not come in here and tell us that we do not know how to manage the program. You guys cannot be taken seriously. We cannot shake hands with you guys because we all know what happens when you look us in the eye and say, 'Don't worry, trust me, Ian; trust me, Senator Campbell. We will come and talk to you about midnight, about being reasonable and sitting for a couple of extra hours to get super done, to get health done and to get the message on Hindmarsh dealt with.'

They did not want to do Hindmarsh. They are split down the middle on Hindmarsh. The shadow minister in the other place is saying, 'We can't have this,' Senator Collins over here is saying, 'We need it, we are going to flick it through.' They are divided down the middle. They do not want to deal with Hindmarsh. The filibustering on the other side I can understand—they do not want to deal with it.

Mr Beazley is totally embarrassed because he promised the Australian people that we would deal with Hindmarsh, and with no amendments. You cannot deal with these guys; you cannot look them in the eye. They cannot tell you truth. They say, 'We are so cooperative; we will give you 121 hours'; then they spend 111 hours—the second longest debate in Australian history—on industrial relations. They have the third longest debate in Australian history on Telstra. There is a blow-out of 100 per cent in relation to telecommunications and we spent nearly eight hours on RSA. These guys are not serious. Gary Gray has got it right; Bob Carr has got it right. They are a joke; they are disgrace; and they are un-Australian. *(Time expired)*.

Government Business

Senator CARR (Victoria) (12.38 a.m.)—In the short time that is remaining, I think I should state a few basic facts. It is in fact 125 hours and six minutes that this opposition, along with other members of the Senate, agreed to, in terms of extra time for this government to consider their legislative program. If you average it out at three hours per day, it equals 40 extra days of sitting or, if you work on the assumption that the average parliament sits some 80 days, that is, in effect, an extra six months in a parliamentary cycle, an extra 10 weeks of parliamentary time provided to this government for consideration of their program—a program, I emphasise, that is fundamentally different from the program they actually put to the people in the last election.

They went into the election on the basis that they were seeking to secure a mandate for minimal changes. What we saw after that election was a program that actually promised maximum changes—such as in industrial relations, where they said that people were not going to be worse off, or in superannuation, where they said there were going to be no extra taxes. What do we see? We see a program that introduces massive increases in taxation. We see a whole series of areas, such as the ABC, education, industrial relations and telecommunications, where there are fundamental changes in the structure of Australian society.

There have been 125 hours extra time for you to pursue your agenda. The problem has not been Senate obstruction; it has been mismanagement. What I indicated to you,

Senator Campbell, was very simply that, if there was a reasonable hope that we would get the super bill at 12 o'clock, we would extend the time. There are four hours extra to go and you know there was no hope of getting it. *(Time expired)* .

Senate adjourned at 12.40 a.m. (Thursday), until Tuesday, 6 May 1997 at 12.30 p.m.

DOCUMENTS

Return to Order

A return to order relating to the Franchising Code Council Ltd was tabled pursuant to the order of the Senate agreed to on 18 March 1997.

Tabling

The following documents were tabled by the Clerk:

Acts Interpretation Act—Statement pursuant to subsection 34C(7) relating to the delay in presentation of a report—Casino Surveillance Authority and Casino Controller Reports for 1995-96.

Christmas Island Act—List of applied Western Australian Acts for the period 7 September 1996 to 14 March 1997.

Civil Aviation Act—Civil Aviation Regulations—

Civil Aviation Orders—Directive—Part—

105, dated 18, 26[2], 27[2] and 28 February 1997; and 3, 4, 6, 7[3], 10, 12[4], 14[4], 18[5] and 19 March 1997.

106, dated 7 March 1997.

107, dated 19 and 27 February 1997; and 4 and 7[8] March 1997.

Statutory Rules 1997 No. 67.

Cocos (Keeling) Islands Act—List of applied Western Australian Acts for the period 7 September 1996 to 14 March 1997.

Customs Act—Regulations—Statutory Rules 1997 No. 70.

Financial Transaction Reports Act—Regulations—Statutory Rules 1997 No. 63.

Health Insurance Act—Regulations—Statutory Rules 1997 Nos 61 and 62.

Income Tax Assessment Act—Regulations—Statutory Rules 1997 No. 68.

Migration Act—Regulations—Statutory Rules 1997 No. 64.

Primary Industries Levies and Charges Collection Act and Horticultural Levy Act—Regulations—Statutory Rules 1997 No. 66.

Social Security Act—

Pension Loans Scheme (Social Security)—Rate of Compound Interest Determination No. 1 of 1997.

Social Security (Access to Special Benefits by Newly Arrived Residents) Guidelines 1997.

Social Security (Newly Arrived Resident's Waiting Periods) Determination 1997.

Superannuation Industry (Supervision) Act—Regulations—Statutory Rules 1997 No. 69.

Taxation Rulings TR 97/5 and TR 97/6.

Veterans' Entitlements Act—Pension Loans Scheme (Veterans' Entitlements)—Rate of Compound Interest Determination No. 1 of 1997.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Australian Conservation Foundation: Funding

(Question No. 387)

Senator Abetz asked the Minister for the Environment, upon notice, on 31 January 1997:

(1) What funding, and if any what amount of funding, was provided to the Australian Conservation Foundation (ACF) in the 1994-95 and 1995-96 financial years by any department or agency falling within the Minister's portfolio.

(2) What is the estimated funding any department or agency falling within the Minister's portfolio will provide to the Australian Conservation Foundation in the 1996-97 financial year.

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

(1):

1994-95	Purpose	Amount $
Australian Heritage Commission	Women and the Environment Conference	5 000
Australian Nature Conservation Agency	Purchase ACF Publications	63
	Travel Allowance and Sitting Fees—representative to attend Endangered Species Advisory Committee	384
	Women and the Environment Conference	2 000
Environment Protection Agency	Consultancy undertaken by Michael Krokenberger on behalf of the ACF—to prepare a submission on the National Pollutant Inventory that represented the views of national and state conservation organisations	5 000
	Grant—coordinator to produce materials for the National Women in the Environment Conference	12 500
	Grant to facilitate participation in the East Coast Armaments Complex Inquiry	58 529
	Purchase of ACF Publications	57
	ACF/ACTU Green Jobs Unit—"Cut Waste and Energy: Create Green Jobs demonstration Project"	50 000
Environment Strategies Directorate	Travel ACF to attend three Peak Conservation Meetings	1 200
	Grants to Voluntary Conservation Organisations	187 463
TOTAL		322 196

1995-96	Purpose	Amount $
Australian Heritage Commission	Nil	Nil
Australian Nature Conservation Agency	Travel Allowance and Sitting Fees—representative to attend Endangered Species Advisory Committee	984
	Speaker Fees	1 000
	Purchase of ACF Publications	456
Environment Strategies Directorate	Grants to Voluntary Conservation Organisations	187 463
	Travel ACF to attend three Peak Conservation Meetings	1 200
Environment Protection Agency	Reimbursement of ACF taxi fares (Ms Helen Rosenbaum and Mr Mark Kortsman) to attend best practices Environment Management Meeting	174
	Grant to facilitate participation in the East Coast Armaments Complex Inquiry	39 296
TOTAL		230 573

(2):

1996-97	Purpose	Amount $
Australian and World Heritage Group	Nil	Nil
Biodiversity Group	Purchase Books	138
Environment Priorities and Coordination Group	Grants to Voluntary Conservation Organisations	110 000
	Travel ACF to attend two National Environment Consultative Forum Meetings	850 (est)
Environment Protection Group	Airfare M Clarke of the ACF to attend briefings and consultations on lead issues	444
TOTAL		111 432

Coongie Lakes

(Question No. 425)

Senator Lees asked the Minister for the Environment, upon notice, on 12 February 1997:

(1) What steps will the Government take to see that the Commonwealth's obligations to protect the Ramsar and World Heritage values of Coongie Lakes are fulfilled.

(2) What Commonwealth assessment process will the Government undertake to investigate and, if necessary, prevent the impact of the proposed Santos Ltd exploration and extraction operations on the recognised international values of the area.

(3) What is the schedule of the planning process for the Ramsar Management Plan.

(4) What steps will the Government take to see that proposed operations in the area by Santos Ltd do not pre-empt the recommendations of the Ramsar Management Plan.

(5) What steps is the Government taking to implement the majority recommendation of the Lake Eyre Basin World Heritage Reference Group to initiate a World Heritage management plan for the areas identified by the Commonwealth Scientific and Industrial Research Organisation as of World Heritage natural value, including Coongie Lakes.

(6) When will the Government respond to the final report of the reference group on the assessment of natural values in the Lake Eyre Basin.

(7) When will the reference group be reconvened.

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

(1) A principal obligation of the Australian Government under the Ramsar Convention is to ensure that the ecological character for which Ramsar listed wetlands were recognised, are protected. The Commonwealth Government will be maintaining a role in any consideration of the future management of Coongie Lakes to ensure these obligations are met. In particular the National Wetlands Program is providing funds to the South Australian Department of Environment and Natural Resources to prepare a management plan for the Coongie Lakes Ramsar site and it is a requirement of the Commonwealth that this be prepared in accordance with the Ramsar Convention's wise use guidelines.

The Coongie Lakes are not World Heritage listed although there has been some identification of world heritage values. The commonwealth believes that respecting the Ramsar values is sufficient in these circumstances.

(2) The Commonwealth has provided some comments in relation to the Draft Declaration of Environmental Factors and Draft Code of Environmental Practice—Seismic Operations, provided by Santos under cover of the Departmental Secretary's letter of 14 February 1997 and asked a series of further questions. The Commonwealth will continue such involvement in the process as is necessary and ensure it meets its obligations under the Ramsar Convention.

The letter further noted that the environmental impacts of any subsequent stage, involving exploratory drilling and possible development of petroleum deposits, will require close attention by the Commonwealth at that time.

(3) The final report is due to be submitted in September 1997.

(4) Funds which have been allocated to South Australia from the National Wetlands Program for the Coongie Lakes Management Plan have been provided, in accordance with normal practice, on the condition that the management plan when completed must be consistent with the Ramsar Convention's obligations, particularly with the Guidelines on Management Planning for Ramsar sites, the Guidelines for Implementation of the Wise Use Concept of the Convention and the recommendation on zonation within wetland reserves, as developed by the Ramsar Convention. The Program also specifies that the draft management plan must be prepared in consultation with all interest groups and released for public review.

(5) Further Commonwealth action on the majority recommendations of the Lake Eyre Basin Reference Group is awaiting the conclusions of a study on the indigenous cultural World Heritage values of the Lake Eyre Basin in South Australia.

(6) See answer to question 5.

(7) It is expected that the reference group will be reconvened following receipt of the report on the indigenous cultural World Heritage values of the Lake Eyre Basin in South Australia.

Community Development Employment Program: Amalgamations

(Question No. 486)

Senator Cook asked the Minister for Aboriginal and Torres Strait Islander Affairs, upon notice, on 14 March 1997:

(1) Has ATSIC taken a policy decision to require the amalgamation of any Community Development Employment Program (CDEP) involving less than 50 persons currently operating within Aboriginal communities; if so, why was this decision taken.

(2) Is the Minister aware that there is widespread opposition to this proposed compulsory amalgamation from Aboriginal communities, especially in the Kimberley region.

(3) Does the Minister accept the view of Kimberley Aboriginal resource agencies which see this forced amalgamation of CDEP projects as leading to a dramatic shift of administrative paper work from ATSIC itself onto already overextended Aboriginal resource agencies; if not, why not.

(4) Is the Minister prepared to allocate to ATSIC the necessary resources for it to continue administering the CDEP, the 'work for the dole' scheme to Aboriginal communities, rather than force the transfer of this administrative burden from ATSIC to the Aboriginal resource agencies.

Senator Herron—The Aboriginal and Torres Strait Islander Commission has provided the following information in response to the honourable senator's question:

(1) There has been no policy decision that requires amalgamation of CDEPs of less than 50 participants.

(2) There is no compulsory amalgamation of small CDEPs proposed. However, Regional Coun-

cils are required to ensure the optimum use of funds available and may consider providing resources to an organisation to administer projects in the area. In the Derby region, the Regional Council investigated the proposal, but no resolution was passed.

(3) No, any rationalisation of small CDEPs would be based on cost efficiency which would imply a decrease in administrative functions within a region. Whilst the administrative functions would increase for the Aboriginal resource agency, resources would be provided to ensure an efficient and effective service would be provided.

(4) There are no forced transfer of administrative functions, therefore it is not necessary to consider re-allocating resources.