## BILLS RETURNED FROM THE SENATE

The following bills were returned from the Senate without amendment or request:

Workplace Relations Amendment (Registration and Accountability of Organisations) Bill 2002

Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Bill 2002

Treasury Legislation Amendment Bill (No. 1) 2002

Taxation Laws Amendment Bill (No. 3) 2002

## AUSTRALIAN ANIMAL HEALTH COUNCIL (LIVE-STOCK INDUSTRIES) FUNDING AMENDMENT BILL 2002

### Report from Main Committee

Bill returned from Main Committee without amendment, appropriation message having been reported; certified copy of the bill presented.

Ordered that this bill be considered forthwith.

Bill agreed to.

### Third Reading

**Miss JACKIE KELLY** (Lindsay—Parliamentary Secretary to the Prime Minister) (4.07 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

## FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (BUDGET INITIATIVES AND OTHER MEASURES) BILL 2002

### Report from Main Committee

Bill returned from Main Committee without amendment, appropriation message having been reported; certified copy of the bill presented.

Ordered that this bill be considered forthwith.

Bill agreed to.

### Third Reading

**Miss JACKIE KELLY** (Lindsay—Parliamentary Secretary to the Prime Minister) (4.08 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

## INSURANCE AND AVIATION LIABILITY LEGISLATION AMENDMENT BILL 2002

### Report from Main Committee

Bill returned from Main Committee without amendment; certified copy of the bill presented.

Ordered that this bill be considered forthwith.

Bill agreed to.

### Third Reading

**Miss JACKIE KELLY** (Lindsay—Parliamentary Secretary to the Prime Minister) (4.08 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

## PARLIAMENTARY ZONE

### Approval of Proposal

**Miss JACKIE KELLY** (Lindsay—Parliamentary Secretary to the Prime Minister) (4.09 p.m.)—On behalf of the Minister for Regional Services, Territories and Local Government, I move:

That, in accordance with section 5 of the Parliament Act 1974, the House approves the following proposal for work in the Parliamentary Zone which was presented to the House on 14 October 2002, namely: Construction of a roof extension to the gardener's compound at Parliament House.

Question agreed to.

## FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

### Second Reading

Debate resumed.

**Ms GILLARD** (Lalor) (4.10 p.m.)—As the House was discussing prior to the move to question time, the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 deals with activity testing for special benefit. Special benefit is a unique benefit in the Australian

social security system. As we all know, our social security system is a highly targeted one, and that targeting has been achieved by vigorous legislative regulation of the terms and conditions under which people receive assistance. Labor supports a targeted approach where benefits, through means testing, are directed to those most in need and where the eligibility criteria for benefits are publicly known and clear.

In a social security system of this style, special benefit has always been a bit of an anomaly. Its historic role has been to meet the needs of those who are in the too-hard basket, for want of a better term—people who need assistance but who are not eligible for other benefits. Special benefit has performed this role since its introduction in 1944, and since that time special benefit has been relatively flexibly administered through guidelines prescribed by the secretary of the relevant government department. This bill therefore marks somewhat of a departure from the historic approach taken to special benefit, by formalising in legislation activity testing for special benefit recipients. Such activity testing has applied to date through administrative guidelines. In formalising it through legislation, the government is indicating a more rigorous and less flexible approach to such activity testing.

As has been noted by other speakers and is made clear by the second reading amendment moved by the member for Lilley, the vast majority of special benefit recipients are temporary protection visa holders. I will therefore, in this speech, make some comments about the temporary protection visa itself and the conditions under which temporary protection visa holders live. Prior to doing so, I want to make two important principles clear. I support and Labor supports a targeted, clear and transparent social security system. We therefore have no opposition, as a matter of principle, to the criteria for eligibility for social security payments being formalised. In addition, I support and Labor supports what can be termed active rather than passive welfare. Our social security system should not be founded on the basis that people are simply handed enough money to live on. Governments should clearly accept the obligation to do more to give people a real hand-up through making available to them work and training opportunities as well as money to live on. In return, welfare recipients should be obliged to make the most of the opportunities provided to them.

Against that background, this bill offends the principle that both the government and the welfare recipient have obligations to each other. I seek to explain that remark by firstly going to the nature of temporary protection visas. Prior to 1999, an asylum seeker who entered Australia unauthorised and who was found to be a refugee under the refugee convention was entitled to a permanent protection visa. This visa enabled that person to stay in Australia permanently, to seek citizenship, to travel to and from Australia, and, perhaps most importantly of all, to seek family reunion. In 1999, the Migration Act was changed so that such a person would only receive a temporary protection visa, a TPV as it is known in the trade. This visa only entitles the holder to stay in Australia for 30 months. At the expiration of the 30-month period, the visa holder is supposed to be reassessed to see if his or her refugee claim still remains. If the person is still assessed as a refugee then he or she will be entitled to a permanent protection visa.

Holders of TPVs do not have the right to travel, to attend English classes, to undertake other studies or to access the more intensive services of the Job Network. Most importantly, a TPV holder cannot seek family reunion. In 2001, the relevant legislation was changed again so that a person who had remained in a country in which he or she could have sought protection for more than seven days while travelling to Australia—that is, they are in such a country for more than seven days—would only ever be entitled to a TPV. The first TPV would be for a 30-month period, an honorary assessment, and if the person was still assessed as a refugee, then he or she would get another TPV. It should be noted that lawfully arrived asylum seekers, whose claims are accepted, remain entitled to permanent protection visas. So the TPV regime, in both of its recent legislative formats, applies to unauthorised arrivals.

The TPV was introduced to deter people from moving from countries of first asylum. People who are processed in countries of first asylum and resettled in Australia under our offshore program, receive visas which allow them to live in Australia permanently with full rights, including family reunion. The TPV was designed to send a message that, if a person moved beyond a country of first asylum and sought to enter Australia unauthorised, they would only be entitled to a much less generous visa class. The creation of the TPV was to send a signal to have people stay and seek to be processed where they were. The tightening up of the TPV regime in 2001 was designed to send a strong message that people who move through a number of transit countries without seeking their care and protection would be in the worst possible position on entering Australia. Such persons would only ever get to stay here on a temporary basis and would never be entitled to reunite with their families.

Post the 2001 changes, it was envisaged that almost everyone entering Australia by boat, that is on an unauthorised basis and predominantly by boat, would only ever be able to get a TPV. In almost all cases, such persons would have spent more than seven days in countries like Malaysia or Indonesia, where they could have contacted UNHCR and sought care and protection. Seeking to discourage movement beyond countries of first asylum and through transit countries is a good policy aim—make no mistake about that. Labor believes that seeking to discourage movement beyond countries of first asylum and through transit countries is a good policy aim. To make such movements, people put themselves in the hands of people smugglers and engage in dangerous journeys. As a nation, with the tragedy of SIEVX, we know what that can mean.

As noted by UNHCR, the issue of secondary movement is undermining the international protection system and needs to be addressed. However, despite the policy goal behind the adoption of TPVs, it appears that TPVs are in fact encouraging people-smuggling and unauthorised arrivals. Specifically, it appears that the families of persons who will only ever be entitled to TPVs have been using people smugglers because it is the only way in which they will ever be able to reunite with their family members in Australia. For example, it has been estimated that up to half the asylum seekers on Manus Island in Papua New Guinea and on Nauru—those caught in the so-called Pacific solution—are women and children seeking reunion with husbands in Australia on temporary protection visas.

The first 30-month temporary protection visas will start to expire later this year and the claims of such asylum seekers will be reassessed. Temporary protection visa holders who applied prior to 27 September 2001 will be assessed for permanent protection visas under the 1999 legislation. Those who applied after that date will be assessed for a further TPV under the 2001 legislation. It is not clear how these reassessments will be undertaken and what the costs will be. There are also a number of legal uncertainties. Some argue that the 2001 legislation is fatally flawed and that, despite its intention, temporary protection visa holders will still be entitled to apply for permanent protection visas. Given these matters—the fact that TPVs appear to be acting as a push factor for people-smuggling; the fact that the reassessments which need to be undertaken are characterised by legal uncertainty, unknown procedures and unknowable costs; and the fact that a subclass has been created in Australia of persons who will live forever with the uncertainty of not having a permanent status, of not being entitled to family reunion rights and without access to full settlement services—Labor believes it is time for the government to look again at the area of temporary protection visas. An appropriate way to facilitate such a reassessment may be through a parliamentary inquiry that works on a bipartisan basis to ensure that, in the structuring of visa classes in the humanitarian and refugee area, Australia meets the following three goals: one, the defeat of people-smuggling; two, the taking of a compassionate approach to those who have real protection needs and who are refugees as defined by the refugee convention; and, three, the minimising of legal complexity and costs in the assessment and reassessment of protection needs.

Having dealt with the status of temporary protection visas as a matter of law as the visa applies to the class of unauthorised arrivals, let me turn now to the question of the conditions under which temporary protection visa holders live. As indicated by the second reading amendment, temporary protection visa holders do not have access to full settlement services; indeed, they do not even have access to English-language tuition. They are further confined to the margins of society by their lack of access to intensive Job Network services with their entitlement being limited to the job matching service—the billboard-style service for the notification of vacancies.

To understand the position that these people find themselves in requires some act of imagination—but not a huge act of imagination. Just imagine that persecution required you to flee your home. Let us be very clear about this, because there is a lot of unclear terminology used in this area of government policy. By definition, the people about whom we are talking, temporary protection visa holders, are people who have been found to have fled their home because of persecution. If they had not been able to evidence that, they would not have been granted a temporary protection visa. So there is no question of illegal entry, queue jumping or any of the other rhetoric; these are genuine refugees by any person's standard.

We need to think about how we would feel if we were required to flee our home because of persecution, if we were genuine refugees and ended up in a country where we did not speak the language and then were told that the very money on which we rely for our basic survival—that is, the money required to put food on our tables and in our mouths—would be taken away from us unless we met some tests that we would be unlikely to understand or fulfil. The task being set for these people is the equivalent of asking us to find a way—without assistance and without speaking the language—to find work and to fend for ourselves in Ulaanbaatar. If people do not know where that is, that might assist them to imagine how difficult it would be to turn up there and fend for themselves in terms of work and training opportunities when no-one is assisting you to speak the language.

We already know that many of these people do not cope and that either they become completely marginalised and despondent or they seek assistance from state governments or voluntary welfare agencies. At this point, I will echo the words of the member for Reid. In my capacity as shadow minister for population and immigration for the Labor Party, I travel extensively and meet with service providers to our ethnic communities, and there are no issues raised with me more frequently than the humanitarian needs and circumstances of temporary protection visa holders. Whilst the pages of, particularly, the broadsheet media in this country would lead you to believe that the biggest issue in the refugee and asylum seeker area is detention policy, let me tell you that, from the issues that are raised with me, the humanitarian needs and circumstances of temporary protection visa holders are bigger issues.

These people present for assistance. They do not have a formalised right to assistance, so they end up throwing themselves on the mercy of state governments—some of which do provide assistance to temporary protection visa holders—and, much more so, presenting themselves to voluntary agencies. From our dialogue with voluntary agencies, we know that many of these agencies, particularly those in the bigger cities of Australia—Sydney and Melbourne—are cracking under the strain because the settlement patterns of temporary protection visa holders tend to mean that they settle in relatively geographically confined areas. So all of them are presenting to the same voluntary services for assistance.

This matter has been studied by a number of reports, but I will briefly take the parliament to one. The Queensland government issued a research paper entitled *Temporary protection visa holders in Queensland*. I would like people to note that this research paper dates from February 2001—that is, before the time that we created a subclass of temporary protection visa holder who would never be entitled to permanent settlement. So the actual visa classes and the problems have

worsened since this report was issued. The key findings of this research are:

… the detention experience for most TPV entrants has left them feeling exposed, vulnerable and disillusioned;

the physical health of TPV entrants has been undermined by detention experiences, post traumatic stress disorder symptoms and bureaucratic problems;

TPV entrants are experiencing significant mental health difficulties;

the denial of services to TPV entrants has led to social isolation;

the denial of English language tuition by the Commonwealth is a major barrier to TPV entrants' participation in society;

the capacity of TPV entrants to obtain employment is severely affected by their lack of English language skills and the Commonwealth's denial of employment assistance; and

unattached minors experience unique psychosocial issues ...

I do not think any of that would surprise the House, but it is important to put that before the House as a research finding in relation to temporary protection visa holders and their status and humanitarian needs. The research goes on to point the way forward and says that we need to explore a capacity building approach to service delivery to ensure the material welfare of TPV entrants and that we need to look at the provision of English, education and skills and the implications of social exclusion of TPV entrants.

Having taken the House to that report, I would now like to come back to the bill before us. In my view, the flaw in this bill—and it is the flaw pointed to by the second reading amendment—is that you can have it one of two ways but you cannot have it both ways. The government is trying to have it both ways. If it wants to provide temporary protection visa holders with settlement services—most particularly with access to English-language tuition and full access to Job Network—then it would be more than reasonable to require activity testing for continued access to special benefit. I would have no objection to that. If you want, as this government does, to continue to deny temporary protection visa holders access to English-language classes and access to the full services of Job Network—that is, that you seek to deny them the very tools that would enable them to realistically undertake training or get work—it is unfair and inhumane to activity test them. So there are two clear paths here: you give them something and you expect something in return; or you continue to give them nothing, in which case you should expect nothing in return. The government is trying to put those two things together and give them nothing and expect something in return. In my view, that is a flawed path and not one that the government should go down.

As I conclude, let me make it very clear that Labor's preference in this area is that temporary protection visa holders get access to settlement services, most particularly English-language services and access to Job Network. In those circumstances, we would support there being activity testing for their continued access to special benefit. That would be fair. That would be part of the mutual obligation system of arrangements that we apply more broadly to the social security system. But what is being envisaged here is not fair—give them nothing and expect something in return. That is the flaw in this legislation. In summary, the messages coming out from the bill today are twofold: that the government needs to review what it is doing with this bill, so that we go down the track of providing settlement services, particularly English-language services and access to the Job Network, before activity testing; and that—on a more broadly based view—it is time for the government and the opposition in a bipartisan way, through the officers of a relevant parliamentary committee, to look again at the whole status of temporary protection visas.

**Mr ANTHONY** (Richmond—Minister for Children and Youth Affairs) (4.30 p.m.)—I would like to thank all members of the House for their contributions and, indeed, the previous speaker, the member for Lalor, for her contribution. The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 gives legislative effect to one of the meas-