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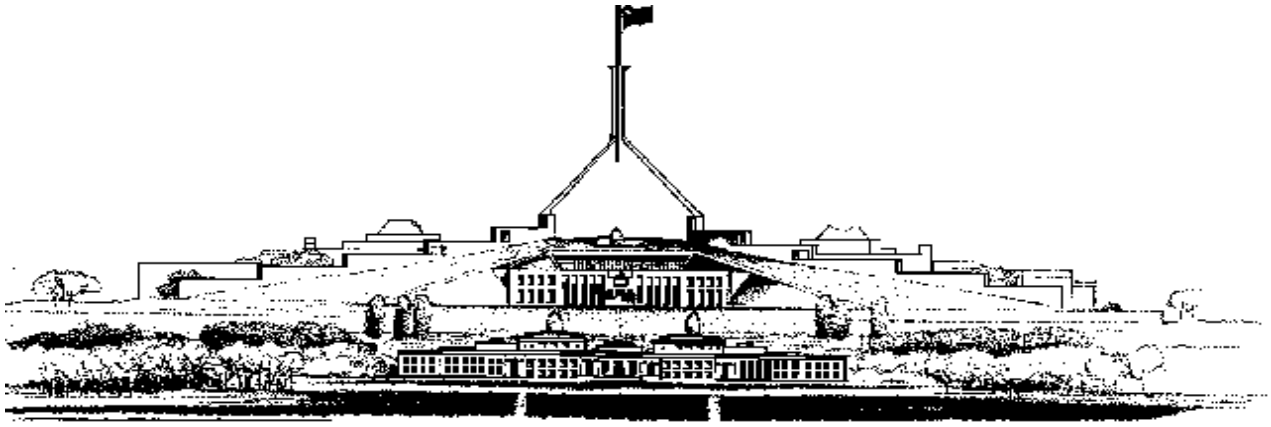

SENATE

Official Hansard

No. 16, 2002
THURSDAY, 12 DECEMBER 2002

FORTIETH PARLIAMENT
FIRST SESSION—THIRD PERIOD

BY AUTHORITY OF THE SENATE

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SITTING DAYS—2002

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February	12, 13, 14
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June	17, 18, 19, 20, 24, 25, 26, 27
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ADELAIDE	972 AM
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Thursday, 12 December 2002

The DEPUTY PRESIDENT (Senator Hogg) took the chair at 9.30 a.m., and read prayers.

PETITIONS

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

Immigration: Asylum Seekers

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

This Petition of certain residents of Australia draws the attention of the Senate to a public meeting held in Forster NSW on 2 October 2002 at which more than 80 people called for the immediate reform of the treatment of asylum seekers after they have arrived in Australia.

Your petitioners therefore ask the Senate to implement such reform, including, in particular;

- Ensure the full rights of asylum seekers under Australian and International Law;
- Detention be limited to the period necessary to check that an individual does not present a threat to the Australian community on health or criminal grounds;
- Children be treated in every respect as we would expect our own children to be treated;
- No unreasonable restraints be place on community or media access to asylum seekers held in detention.

by **Senator Faulkner** (from 84 citizens).

Simplot: Potato Plant Closure

Senator ABETZ (Tasmania—Special Minister of State) (9.31 a.m.)—by leave—I present to the Senate the following petition, from 2,018 citizens, which is not in conformity with the standing orders as it is not in the correct form:

The Dorset community calls on the Simplot family and management to reverse its decision to close the Simplot Australia factory in Scottsdale for reasons that with good management and strategic investment the plant would continue to be profitable into the future.

Petitions received.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.31 a.m.)—I move:

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

Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002.

No. 9 Taxation Laws Amendment (Venture Capital) Bill 2002 and a related bill.

No. 10 Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002.

No. 11 Aviation Legislation Amendment Bill 2002.

National Environment Protection Council Amendment Bill 2002.

Question agreed to.

NOTICES

Presentation

Senator Brown to move on Wednesday, 5 February 2003:

That the Senate—

(a) approves a question time each day encompassing a minimum of 14 questions, or more if the hour permits;

(b) allocates questions as follows:

		Number of senators
Opposition	28	28
Government	15	35
Australian Democrats	7	7
Crossbench	6	6

(c) notes that this involves a loading for non-government senators; and

(d) notes that the Australian Democrats and crossbench groups will work out an order of senators asking questions, based on these two groups having the sixth, eighth and twelfth questions each day and the fourteenth question on Wednesday.

Postponement

Items of business were postponed as follows:

General business notice of motion no. 327 standing in the name of Senator Stott Despoja for today, relating to the commercial release of genetically-engineered crops, postponed till 4 February 2003.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.32 a.m.)—I move:

That on Thursday, 12 December 2002:

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) not be proceeded with;

(c) the routine of business from not later than 4.30 pm shall be government business only;

(d) divisions may take place after 6 pm; and

(e) the question for the adjournment of the Senate shall not be proposed till a motion for the adjournment is moved by a minister.

Senator BROWN (Tasmania) (9.33 a.m.)—To expedite things, I ask whether the government has considered having a dinner break this evening. That would help a lot.

The DEPUTY PRESIDENT—I interpret from the nod from the parliamentary secretary that the answer is yes and, as *Hansard* cannot record nods, I will tell you the answer is yes.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—by leave—We will obviously schedule a dinner break as appropriate. But it is possible, if everyone works really hard this morning and this afternoon, that we could actually be finished by dinner time. I know it is a forlorn hope, but we should all aim for it. Then we could have a really long dinner and a more relaxed one.

NOTICES

Postponement

Senator FORSHAW (New South Wales) (9.34 a.m.)—by leave—I move:

That general business notices of motion nos 329 and 330 standing in his name for today, relating to Australian Film Institute awards, be postponed till the next day of sitting.

Question agreed to.

COMMITTEES

Economics References Committee

Reference

Senator JACINTA COLLINS (Victoria) (9.34 a.m.)—I move:

That the following matter be referred to the Economics References Committee for inquiry and report by the last sitting day in June 2004:

The structure and distributive effects of the Australian taxation system, with particular reference to:

(a) the level, extent and distribution of the current tax burden on individuals and businesses;

(b) the impact of (a) on taxpayers' families;

(c) the use and efficacy of various tax and expenditure incentives to influence social and economic conduct, for instance participation in the workforce;

(d) the long-term social and economic impact of the current distribution of taxation, government spending and employment, including the intergenerational consequences of the tax structure;

(e) the respective roles of the Commonwealth and the states in relation to the collection and distribution of taxation revenue; and

(f) any other relevant issues which may arise in the course of the inquiry.

Question agreed to.

Superannuation Committee

Reference

Senator FERRIS (South Australia) (9.35 a.m.)—At the request of Senator Watson, I move:

(1) That the following matter be referred to the Select Committee on Superannuation for inquiry and report by the last sitting day in June 2003:

Planning for retirement.

(2) That in conducting the inquiry the committee examine, in particular:

(a) the effects of ageing on workers' productivity;

(b) the continuing relevance of the concept of a fixed retirement age;

(c) the potential to encourage progressive transitions from work to retirement, including through possible new benefit access and contribution arrangements, and part-time work;

(d) any scope for older workers to access their superannuation to finance retraining to continue work that is more suitable for older people;

(e) ways to assist older workers plan for their retirement;

(f) the short- and long-term effect on the Budget of any proposals for change; and

(g) any issues for the federal or state workplace relations systems

Question agreed to.

CHINESE GOVERNMENT: TIBETAN ACTIVISTS

Senator BROWN (Tasmania) (9.35 a.m.)—as amended, by leave—I move:

That the Senate opposes the death sentence, including the sentences on the Tibetan Buddhists in China.

The DEPUTY PRESIDENT—The question is that the motion, as amended, be agreed to. The noes have it.

Senator Brown—That is not my understanding.

Senator MACKAY (Tasmania) (9.36 a.m.)—by leave—I apologise to the Senate. Apparently there were last minute negotiations and I understand that the Labor Party is now supporting this motion.

Question agreed to.

MICROCREDIT SUMMIT + 5

Senator RIDGEWAY (New South Wales) (9.37 a.m.)—I move:

That the Senate—

(a) notes that:

(i) the Microcredit Summit + 5 Conference held in New York in November 2002 reported that microcredit schemes are on track to reach 100 million of the poorest families benefiting the lives of 500 million of the world's poorest people,

(ii) there are more than 2 000 microcredit institutions operating worldwide,

(iii) more than 54 million microcredit borrowers have been reached, and

(iv) nearly 27 million of the total microcredit borrowers reached were amongst the poorest in the world when they took out their first loan, but are now lifting themselves out of poverty;

(b) congratulates RESULTS Australia for its advocacy work on microcredit loans;

(c) urges the Federal Government to consider increasing aid for microcredit funding to at least $40 million per year; and

(d) urges the Parliament to actively promote the critical role of microcredit in the alleviation of poverty and its contribution to the achievement of the Millennium Development Goal of halving the proportion of people living in absolute poverty by 2015.

Question negatived.

SCIENCE: FUNDING

Senator BROWN (Tasmania) (9.38 a.m.)—I move:

That there be laid on the table by the Minister representing the Minister for Science, no later than 4 February 2003:

(a) all material, including advice, given to the Government, including the Prime Minister (Mr Howard), by the Chief Scientist or his office regarding funding or allocation of money or benefits to:

(i) the Rio Tinto Foundation for a Sustainable Minerals Industry,

(ii) any other Commonwealth funding to Rio Tinto,

(iii) the Australian Cooperative Research Centre (CRC) for Renewable Energy,

(iv) the CRC for Coal in Sustainable Development,

(v) the CRC for Greenhouse Gas Technologies (and its precursor, the Australian Petroleum CRC), and

(vi) the CRC for Clean Power from Lignite;

(b) the advice of the CRC committee to the Government on the above CRC's for the funding round announced by the Minister for Science (Mr McGauran) on 10 December, 2002; and

(c) the advice of the Chief Scientist and his office concerning carbon sequestration, clean coal and related energy matters in determining the National Science Priorities.

Question agreed to.

AUSTRALIAN FILM INSTITUTE AWARDS

Senator RIDGEWAY (New South Wales) (9.39 a.m.)—I move:

That the Senate—

(a) congratulates:

(i) all winners of the 2002 Australian Film Institute (AFI) awards, and

(ii) all of the people involved in the making of *Rabbit-Proof Fence*, which won the AFI award for Best Film.

(b) notes that for the first time in the history of the AFI awards, every film nominated in the category of Best Film—*Australian Rules*; *Beneath Clouds*; *Rabbit-Proof Fence* and *The Tracker*—was an Indigenous-themed story;

(c) congratulates the four Indigenous people who won awards on the night:

(i) director Ivan Sen,

(ii) actor David Gulpilil,

(iii) director and producer Rachel Perkins, and

(iv) cinematographer Allan Collins; and

(d) calls on the Government to continue to support the development and production of Australian films so all Australians can continue to see and hear our own stories in cinemas and on our television screens.

Question agreed to.

TRADE: GENETICALLY MODIFIED FOOD

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.39 a.m.)—At the request of Senator Stott Despoja, I move:

That there be laid on the table by the Minister representing the Minister for Foreign Affairs and representing the Prime Minister (Senator Hill), no later than 4 pm on 4 February 2003:

All communications in the period June 2001 to the present between:

(a) the Department of Foreign Affairs and Trade or the Prime Minister's office and Food Standards Australia New Zealand;

(b) the Department of Foreign Affairs and Trade or the Prime Minister's office and the National Farmers Federation;

(c) the Department of Foreign Affairs and Trade or the Prime Minister's office and the Department of Health and Ageing; and

(d) the Prime Minister's office and the Department of Foreign Affairs and Trade,

relating to GM Food in the context of the current free trade agreement negotiations with the United States and of the labelling of genetically modified and genetically engineered food, including communications to or from organisations formed or created under the auspices of any of the above agencies, officers of departments.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Reference

Senator COOK (Western Australia) (9.40 a.m.)—I move:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 27 November 2003:

(1) The relevant issues involved in the negotiation of the General Agreement on Trade in Services (GATS) in the Doha Development Round of the World Trade Organisation, including but not limited to:

(a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation;

(b) Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability;

(c) the GATS negotiations in the context of the 'development' objectives of the Doha Round;

(d) the impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water; and

(e) the impact of the GATS on the ability of all levels of government to regulate services and own public assets.

(2) The issues for Australia in the negotiation of a free trade agreement with the United States of America, including but not limited to:

(a) the economic, regional, social, cultural, environmental and policy impact of such an agreement;

(b) Australia's goals and strategy for negotiations, including the formulation of our mandate, the transparency of the process and government accountability; and

(c) the impact on the Doha Development Round.

Question agreed to.

INTERNATIONAL RIGHT LIVELIHOOD AWARD

Senator ALLISON (Victoria) (9.40 a.m.)—I move:

That the Senate—

(a) notes that Professor Martin Green, Director of Research at the University of New South Wales' Centre for Photovoltaic Engineering won an International Right Livelihood award at Stockholm and was described by the award panel as 'the world's foremost researcher and inventor in the field';

(b) congratulates Professor Green for winning this prestigious award; and

(c) encourages the Government to heed Professor Green's suggestion that the cost of developing new energy sources could be borne by affluent communities rather than the poorer communities that were most in need of them.

Question agreed to.

NAMATJIRA, MR ALBERT

Senator RIDGEWAY (New South Wales) (9.41 a.m.)—I move:

That the Senate—

(a) pays tribute to Mr Albert Namatjira as the first Indigenous professional artist in Australia, who was born 100 years ago and died in 1959 after achieving national and international acclaim for his exceptional ability as an artist;

(b) acknowledges that Albert Namatjira:

(i) adapted western-style painting to express his cultural knowledge and the strength of his connection to his traditional country, and

(ii) is now regarded as a national treasure in recognition of the cultural legacy he has left all Australians, as well as the inspiration he is to generations of Indigenous artists who have followed in his footsteps;

(c) recognises that:

(i) the legal protection of Mr Namatjira's works provided by the *Copyright Act 1968* will expire in 2009, bringing to an end the ability of the copyright owner to exercise an exclusive right to use and reproduce his works, or to allow others to do so in return for a financial benefit, and

(ii) the Public Trustee of the Northern Territory Government authorised the sale of Mr Namatjira's copyright to Legend Press in 1983, thereby ending the ability of the descendants of Mr Namatjira to benefit from on-going income from the reproduction of his works; and

(d) calls on the Government to:

(i) enter into discussions with the Northern Territory Government to buy back the copyright in Albert Namatjira's works, so that exclusive control of the use and reproduction of his works is restored to his descendents, as well as the receipt of all financial benefits that result from the use and reproduction of his works under copyright protection, and

(ii) in recognition of the contribution Mr Namatjira has made to the development of Australia's cultural identity and the need to protect his legacy for future generations, explore all relevant legal and other measures that will provide ongoing protection of the Namatjira name and his reputation and standing as one of our pre-eminent artists.

Question negatived.

Senator Brown—I would like to record the Green vote in favour of that motion.

BUSINESS: DAYS OF MEETING

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.41 a.m.)—I move:

(1) That the Senate notes:

(a) that the scheduled program of sittings for 2003 is just 63 days;

(b) that the scheduled sittings for 2002 and 2003 are the shortest parliamentary sitting years since 1988 that have not been election years; and

(c) that by providing for minimal sittings of the Senate the Government does not allow the Senate enough time to properly consider and evaluate the Government's heavy legislative program.

(2) That the order of the Senate relating to the days of meeting of the Senate for 2003 be varied as follows:

(a) by adding additional sitting weeks as follows:

Monday, 24 February to Thursday, 27 February 2003

Monday, 7 April to Thursday, 10 April 2003; and

(b) the routine of business for the week beginning Monday, 7 April 2003 be in accordance with standing order 57 except that, on each day, general business orders of the day relating to private senators' bills shall take precedence of government business.

Senator LUDWIG (Queensland) (9.42 a.m.)—by leave—I do not want to take up too much of the Senate's time. I only wish to express the position of the opposition in relation to this motion. We understand that the import of the motion is effectively to seek to add a couple of weeks to the sitting pattern. We find it is always difficult to say to the government in such an instance, 'We want you to do something.' If they are agreeable to it then I suspect they will do it, but if you have to pass a motion to gain their agreement one wonders whether in fact you have actually got their agreement. The opposition looks at it from this perspective: the government usually sets the sitting pattern. However, if they require additional days or additional time, they usually, if not always, put it to us in one of two forms: one form is to ask for additional weeks; the other form is to ask for additional hours. We would, as in past practice, usually grant that, so we would end up with either additional hours or additional weeks to provide sufficient time for the Senate to deal with the various business that is put before it.

If you look at the last year—and I think it is instructive to examine it for this issue to be borne out—there have been about 60 additional hours. If you take an average week in the Senate—that is, a week where 55 per cent of the work of the Senate is government business—you have something in the order of 15 hours of government business. If you then examine last year, when there were effectively 60 hours of government business, you see that four additional weeks were utilised by the government anyway—four weeks that were agreed to by this house to allow the business of the Senate to be dealt with. With regard to adding two weeks at this early stage—in other words, before we actually know what the business of next year is going to be—we say that it is far better to see how the work is going to progress. If the time is required then the government will make the request and we will consider it, depending on the program that is before us, and we will deal with it accordingly.

Senator HARRADINE (Tasmania) (9.44 a.m.)—by leave—I do not know that there was any consultation about this with my office. It is important that we try and get some agreement as to sitting days. I also notice that there is no mention in this motion of the estimates committees. I think that it is vital to restore the number of days that we used to have on estimates committees. Tracking down the money trail is a very important aspect of our functions in this place. I think that is very important. I would hope that, when consideration is given to these sorts of things, we do restore the number of estimates days to the number we previously had. I think they have been cut by at least one, if not two.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.46 a.m.)—by leave—I am not going to speak for long. In relation to Senator Harradine's point, I think that there

is either misinformation or confusion about the sitting patterns. Senator Ludwig put it quite accurately in terms of how much time we have sat this year. We have had some very extended hours—although we sat a week later at the beginning of the year and then we missed some time because of CHOGM. We were short-changed at the beginning of the year in terms of sitting days, but we have really had a totally normal pattern in the second half of the year. Next year is a totally normal pattern. It is 20 weeks, with a normal number of estimates days. I made the point yesterday, Senator Harradine, that we are negotiating with the opposition about an extra estimates day in November.

I will circulate the statistics about parliamentary sitting patterns over the previous, say, 20 years so that people can have a look. It ebbs and flows with elections and so forth. But in relation to estimates, in 1997 we had 16 estimates days. In 1998 we had 10 estimates days; that was an election year, so that would explain that. We had 19 in 1999 and 20 in the year 2000—these are actual estimates committee sitting days. In 2001, we had 15. Of course, that was an election year, so that was down a little bit; I think we missed one entire week, from memory, because of the election. This year we have had 18 estimates days. So this year we were about on average, and next year we have scheduled 18 days, and we could easily add another two days to that. So really there has been no diminution of estimates days and, with the spillovers, we have provided for any committee which wants extra time. Up to four committees can sit for an extra whole day, and my recollection of that is that virtually every one of those slots has been taken up every time.

Senator Ludwig—We think you are still short-changing us, to be honest.

Senator IAN CAMPBELL—We are negotiating that, as Senator Ludwig knows. I will make sure that all honourable senators can look at the statistics on how often the Senate has sat going back for 20 to 25 years and will also include the number of estimates days, because it is something we should not talk down. I think it is something we talk up. The Senate does sit for a long period of time. I think it does very good work.

Senator MACKAY (Tasmania) (9.48 a.m.)—by leave—I just wish to add very briefly to the comments of Senator Ludwig. When the sitting pattern was first produced for this year, we had discussions with the government in relation to what we regarded as the lack of days in the first half of the year, which resulted in the predictable log-jam before the summer recess. That was unfortunate, but we did point out from the very beginning that that was going to happen. We are aware that there is spin coming out of the Prime Minister's office and from the office of the government manager in the House of Representatives—and this is absolutely no reflection on anybody up here—about Senate obstruction. We are aware of that. We have been reading it in the papers and we are aware that the government—for, I think, fairly nefarious political reasons—is going to start talking about Senate obstruction. So it is good that the government manager has made the point about the additional hours. It is not the fault of anybody in this chamber, but it is not helpful when you get spin coming out of the Prime Minister's office and from the office of the manager in the House of Representatives that the Senate is not being cooperative and has not sat sufficient hours. That is not helpful for the cooperative running of the chamber, which I think runs pretty well. If that is what the Democrats are on about, the Labor Party agrees with the sentiments. But the bottom line here is that the government sets the program. The government will live and die by the hours it sets, and the Manager of Opposition Business is dead right—

Senator Ferguson—Not too much emphasis on the dying!

Senator MACKAY—That is right; live and die. Some of us may die earlier than others. But we did make the point, and I wish to reiterate and put it on the record, that at the very beginning of this year we said that there was not enough time for business. The log-jam that occurred prior to the summer recess was unacceptable—unacceptable for the people in the Senate and, more particularly,

for the staff who work here. I just wished to make those comments.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.51 a.m.)—by leave—The motion that I moved on behalf of the Democrats acknowledges some of the problems that people have mentioned. It does not go to the issue of estimates hearings, which is another issue.

Senator Ferguson—You guys hardly ever go, so it doesn't matter.

Senator BARTLETT—We cannot get any space. But the fact is that the number of days that the Senate sits as a full chamber to consider legislation and other matters is very low by historical standards, and the number of pieces of legislation from the government we have to consider, let alone the number of regulations and other instruments, is increasing.

On top of that there is the other business—what you might call general business or private senators' bills that also do not get adequate time for consideration. In the Democrats' view, whilst historically the government may be the one that sets the days, we need to acknowledge that the Senate is not the government; the Senate is separate from the government and, indeed, the Senate is probably the only opportunity the people of Australia have to oversee and actually constrain some of the actions of government, and we should be more independent in determining our business and how we deal with it.

The other point—this is what Senator Ludwig was saying—is that I agree that that is the way things work, but that tends to mean what we are going to get tonight: when we are in difficulties we sit late. From the Democrats' point of view it is far better to make the time available in the first place rather than do the inevitable sitting through till midnight. I think we all recognise that apart from it being unpleasant, unhealthy and generally undesirable to have lots of late night sittings, it means that the degree of consideration that should occur for legislation does not occur. We do not consider the issues as fully as we should at 12 o'clock at night. From the Democrats' point of view the Senate has an important role. It is not the only work we do, obviously, but our legislative role is an important one. Frankly, we believe that the number of days being put forward is not adequate to do that role properly. We think there should be more days set in advance for us to do that part of our job more effectively and more adequately than we are doing.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.53 a.m.)—I seek leave to incorporate a table which shows the actual number of sitting days and sitting weeks and estimates committee hearings, starting in 1977 and going through to next year.

Senator Harris—I raise a point of order, Mr Deputy President. Senator Campbell has walked around the chamber and shown that document to everybody in the chamber other than me.

The DEPUTY PRESIDENT—Your point of order is being addressed now, Senator Harris. Is leave granted to incorporate the document?

Leave granted.

The document read as follows—

PARLIAMENTARY SITTING PATTERNS

As at 11 December 2002

	No. of actual sitting weeks				No. of actual sitting days			
		Senate				Senate		
Year	House	Total	Sittings	Estimates (including spillovers)	House	Total	Sittings	Estimates (including spillovers)
1977*	22		22		68		72	
1978	22		22		75		76	
1979	22		22		68		71	

	No. of actual sitting weeks				No. of actual sitting days			
		Senate				Senate		
Year	House	Total	Sittings	Estimates (including spillovers)	House	Total	Sittings	Estimates (including spillovers)
1980 *	17		17		51		57	
1981	21		23		62		72	
1982	19		24		53		73	
1983 *	17		19		49		63	
1984 *	13		16		52		63	
1985	18		19		66		74	
1986	20		22		79		86	
1987 *	19		20		74		84	
1988	21		23		65		89	
1989	18		23		59		92	
1990 *	12		15		38		59	
1991	21		24		67		83	
1992	19		22		60		76	
1993 *	14		15		46		53	
1994	18		21		68		80	
1995	18		20		70		78	
1996 *	16		17		61		71	
1997	20	24	20½	3½	76	98	82	16
1998 *	14	17	14	3	54	65	55	10
1999	19	24	19½	4½	73	98	79	19
2000	19	22	17½	4½	73	91	71	20
2001 *	15	17	14	3	56	67	52	15
2002	18	19	15½	3½	69	77	59	18
2003 as at 24 Oct	19	20	16½	3½	72	80	62	18

* election held that year

Question negatived.

HEALTH: FOOD IRRADIATION

Senator NETTLE (New South Wales) (9.55 a.m.)—I move:

That the Senate condemns:

(a) the Government's 1999 decision to lift the federal moratorium on food irradiation without adequate public notice or consultation; and

(b) the decision of the Minister for the Environment and Heritage (Senator Hill) to approve the construction and operation of the gamma radiation sterilisation and decontamination plant at Narangba in Queensland, based on 'preliminary documentation' as the means of assessment, rather than requiring a full environmental impact assessment under the *Environment Protection and Biodiversity Conservation Act 1999*.

Question negatived.

Senator Brown—I ask that my support for the motion be recorded and note that the Labor Party opposed it.

Senator Harris—I ask that One Nation's support be recorded.

COMMITTEES

Publications Committee

Report

Senator COLBECK (Tasmania) (9.55 a.m.)—I present the sixth report of the Publications Committee.

Ordered that the report be adopted.

Finance and Public Administration References Committee

Report

Senator FORSHAW (New South Wales) (9.56 a.m.)—I present the report of the Finance and Public Administration References Committee entitled *Departmental and agency contracts: Report on the first year of operation of the Senate order for the pro-*

duction of lists of departmental and agency contracts.

Ordered that the report be printed.

Senator FORSHAW—I move:

That the Senate take note of the report.

I have a short tabling statement but I am happy to seek leave to incorporate it in *Hansard*, in the interests of speeding up the business of the Senate.

Leave granted.

The statement read as follows—

Today I am tabling the report of the Senate Finance and Public Administration References Committee on the first year of operation of the Senate order for the production of lists of departmental and agency contracts.

The rapid expansion in the number of government contracts with many confidentiality clauses has been of concern to the Senate for some time. Convergence of the public and private sectors in accounting, auditing, financial administration and service delivery has resulted in conflict between commercial considerations and contractors' wish to maintain competitive advantage, and the need for access to information about government contracts by parliament and the public. The key to public sector accountability is openness and transparency and the challenge is to achieve a balance between the interest of all parties.

The ability of parliament to scrutinise the efficiency and effectiveness of government operations, including those outsourced, is crucial to accountability. In resolutions dating back to 1971, the Senate has reiterated that the operations of bodies in receipt of public funds are open to parliamentary scrutiny. While the means of delivery of public services may have changed, the need for the Government to account for the provision of goods and services that are funded from the public purse remains.

The Senate order is an effective means of scrutiny of government contracts. It is also vital to ensuring that contracting processes are properly documented and that effective competition and value for money are being achieved.

The order has been described in the media as 'arguably the most important accountability requirement to have emerged from the Parliament for ages'. It has been a catalyst for action on the part of government for greater accountability and transparency in relation to government contracting. In response to the order, new accountability requirements were included in the revised Commonwealth Procurement Guidelines (CPGs) of October 2001. And best practice guidance on the determination of commercial confidentiality for government contracts is due for release by the Department of Finance and Administration by the end of 2002.

The order requires the six-monthly publication of lists of contracts to the value of $100,000 or more by all FMA agencies, that is, those covered by the Financial Management and Accountability Act 1997. Ministers are also required to table letters in the Senate regarding compliance with the order by agencies for which they are responsible. Contract lists must indicate whether each contract is subject to commercial confidentiality conditions. Publication of government contract information has been the norm in other countries for some years. In some jurisdictions this includes publication of the full text of contracts.

The Committee appreciates that most agencies have responded positively to the order and that changes in contracting practices are occurring as a result. It notes, however, that, in taking a literal and over-cautious response approach to the letter of the Senate order, some agencies may still be resisting the spirit of the accountability requirements of the Senate. Understanding and reacting positively to the spirit of the order will hasten progress and a satisfactory outcome.

The Committee believes that all government contracts must be transparent. It does not wish to restrict the scope of the order, for example, to procurement-related contracts only. Instead, the order should capture all arrangements that could be considered contracts at law. This could include grants and funding agreements, sales contracts, building leases, certain employment contracts and demand-driven contracts.

The order requires the Auditor-General to conduct audits of compliance at six-monthly intervals. A high proportion of contracts examined in those agencies assessed so far have not complied with the contract commercial confidentiality guidelines developed by the Auditor-General in response to this Committee's first report on this matter. This non-compliance can be partly explained by the fact that lists published to date include many contracts negotiated prior to the establishment of the new accountability framework.

The Committee considers it is important to continue to monitor commercial confidentiality regarding government contracts for some time and at intervals of six-months, at least until reliable statistics on the application of commercial confidentiality to different types of contracts can be quantified.

The Committee strongly supports administrative efficiency and reduced duplication in reporting on government contracts. It notes the timely development of enhancements to the Gazette Publishing System or GaPS to assist compliance with the Senate order. The Committee also encourages ways of linking reporting under the Senate order, GaPS and for annual reports. However, because GaPS contains information about procurement-related contracts only, because the enhancements to GaPS are not yet finalised and because agency practice is not yet standardised, reporting of government contract information through GaPS alone will not be sufficient.

The order has been operational for a relatively short period of time. The Committee considers that wholesale changes to the order at this stage would weaken its intent and undermine the progress being made towards development of a new culture of openness and accountability in relation to government contracting. The Committee prefers that the order remain less prescriptive in favour of guidance from the Auditor-General, where necessary, to assist with compliance. It also wishes to reduce imposing an additional administrative burden on agencies.

It therefore recommends only minor changes to the order. The most important are:

- to align reporting periods with financial and calendar years, rather than with parliamentary sitting years as at present; and
- to extend the time allowed for tabling of ministers' letters to the Senate and publication of contracts lists to not later than two months after the end of the financial or calendar year, as the case may be.

These changes will not only standardise reporting under the order with other reporting (for example, of financial information and annual reports) but will also give agencies more time to compile and check contract lists and to brief ministers, before letters are tabled in the Senate and lists are published. The Committee also recommends including some additional contract information to enhance the context of the published lists. Information such as contract commencement date and duration, and identification of the relevant reporting period and the twelve-month period relating to the contract listings should be readily available.

The Committee is committed to maximum transparency and accountability by government. Therefore, it wishes to include, in addition to FMA bodies, all bodies subject to the Commonwealth Authorities and Companies Act 1997 (that is, CAC Act bodies) within the order from the beginning of 2004. In preparation for this, it recommends that CAC Act bodies extend the best practice commercial confidentiality guidance expected from Finance to all new contracts entered into from the beginning of 2003.

The Committee notes that all parliamentary departments have complied with the order except for the Department of the House of Representatives. If the Senate agrees that, in the interests of transparency and accountability, the Department of the House of Representatives should comply with the order, it suggests that the President of the Senate could convey this view to the Speaker of the House of Representatives

The Committee is also concerned at the lack of transparency in relation to contracts let by ASIO and ASIS and considers that these agencies would have many 'common stores' contracts that could be listed under the order. It does not accept that a blanket exemption (on national security grounds) should apply to ASIO and ASIS and recommends that these agencies apply the commercial confidentiality guidelines expected from Finance to their contracts from the beginning of 2003.

The Committee acknowledges the progress being made towards a new culture of openness and accountability in relation to government contracting, in large part as a result of the Senate order. It hopes that the Senate will agree to minor amendments to the Senate order to clarify its intent and assist agencies to achieve better and smoother compliance with the order.

I foreshadow the Committee's intention to report on the order again at the end of the second year of its operation. By this time, agencies will have well-established systems and processes for compliance and a good understanding and more experience in determining and negotiating commercial confidentiality for contracts.

Senator FORSHAW—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee

Report

Senator JOHNSTON (Western Australia) (9.57 a.m.)—I present the report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the examination of the annual reports for 2000-2001 in fulfilment of the committee's duties pursuant to section 206(c) of the *Native Title Act 1993*,

together with the *Hansard* record of proceedings.

Ordered that the report be printed.

Senator JOHNSTON—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

The Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, on the examination of Annual Reports for 2000-2001 reviews the performance of the National Native Title Tribunal, the Indigenous Land Corporation and the Land Fund in the reporting period.

The Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Fund has a statutory duty to examine the Annual Report of the National Native Title Tribunal. This report is prepared pursuant to s 206(c) of the Native Title Act 1993.

Section 206(c) of the Act requires the Committee to report at its discretion to both Houses of Parliament on matters concerning annual reports to which Parliament's attention should be directed. This, the eighth annual report of the Tribunal, covers the financial year 2000-2001. It was presented out of session on 5 October 2001, tabled in the Senate on 12 February 2002 and in the House of Representatives on 13 February 2002.

To assist in its evaluation, the committee held public hearings on 25 June 2002 (National Native Title Tribunal) and 17 June (Indigenous Land Corporation), in Canberra.

National Native Title Tribunal

Mr Deputy President, I would like to outline briefly, some of the issues which have arisen in the course of the Committee's perusal of the annual report for the National Native Title Tribunal:

Consultants

On the last occasion the Committee expressed some disquiet about the number and level of consultants retained by the Tribunal. The Committee is pleased to note that the expenditure on consultants has been reduced by $700,000, and there has been a decrease from 43 to 15 consultants over the period 2001-2002.

Indigenous Land Use Agreements

The Tribunal has taken steps to increase the number of Indigenous Land Agreements registered. In the previous reporting period, the Committee noted that a number of ILUAs presented for registration did not comply with the Act. The Tribunal has taken a number of initiatives, including the issuing of guidelines, and early compliance checking to increase the compliance rate. The Committee notes that these improvements have increased the cost to the Tribunal of registering an ILUA but have increased the efficiency with which applications are moved through the process.

The Committee also notes the efforts made by the Tribunal to inform parties about native title generally and to provide appropriate material to assist this process. This material included a CD ROM, a videotape and a number of question and answer booklets.

The Committee noted that the National Native Title Tribunal Annual Report covers the required reporting areas, and complies with the legislative and other formal requirements concerning the provision of Annual Reports.

Overall I am pleased to report that the Tribunal has again produced an informative and accessible Annual Report.

Indigenous Land Corporation, and the Land Fund

Mr President, I now turn to the Annual Report of the Indigenous Land Corporation, which also includes the report on the operation of the Indigenous Land Fund.

The Corporation has a primary responsibility to assist indigenous Australians to purchase land and also to assist in the management of Indigenous-held land. The Corporation's Annual reporting requirements can be found in the Aboriginal and Torres Strait Islander Commission Act 1989.

This report, for the year 2000-2001 was provided to the Minister on 27 August 2001 and tabled in the Senate on 15 February 2002 and the House of Representatives on 13 February 2002.

Committee suggestions: previous report

The Committee notes that the ILC has adopted suggestions made by the Committee in its eighteenth report. These include a suggestion that the ILC return to previous report format, and include information about the factors to be accorded priority when the ILC exercises its land acquisition and management functions.

Decline in properties approved

The ILC report notes that there was a decline in the number of properties approved for purchase, purchased and divested. The ILC explained that this was due to a revision of its major policies during the reporting period.

However there was also a decline in this activity in the period 1999-2000, and the Committee ex-

pressed some concern on that occasion. The Committee will continue to monitor this aspect of the ILC's work, and notes that the revised National Indigenous Land Strategy, and the Land Acquisition and Land Management Programs guide were launched on 4 December 2002. In the light of this, the Committee expects that the ILC will be able to devote more of its resources to these responsibilities.

The Committee notes that the 2000-2001 Annual Report confirms the Committee's concerns regarding the ILC's financial performance over the last two years. The Committee hopes that this trend has been reversed, with the appointment of a new Chairperson, and that the 2001-2002 Annual Report demonstrates an improvement in the performance of the Corporation.

The Committee notes that the presentation of the Annual Report of the Indigenous Land Corporation complies with the legislative and other formal requirements.

The Land Fund

Finally Mr President, I refer to the Land Fund Report 2000-2001. The requirements for this report are established by s193I of the Aboriginal and Torres Strait Islander Commission Act 1989. The Report was provided to the Minister on 15 October 2001 and was tabled in the Senate on 12 February 2002 and in the House of Representatives on 13 February 2002.

The Land Fund was established in the 1994-95 Budget. In 2004 Government allocations to the Fund will cease, and the intention was that the capital base of the Fund would be sufficient to guarantee ongoing operational funding for the ILC. The return on investment may not yet be sufficient to allow this to occur. The Committee has noted that the target amount is assured by the Commonwealth.

Senator HARRIS (Queensland) (9.57 a.m.)—I seek leave to continues my remarks later.

Leave granted; debate adjourned.

Corporations and Financial Services Committee

Report

Senator CHAPMAN (South Australia) 9.58 a.m.—I present the report of the Parliamentary Joint Committee on Corporations and Financial Services on the review of the *Managed Investments Act 1998*, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHAPMAN—I move:

That the Senate take note of the report.

In deference to the Manager of Government Business in the Senate and to Senate colleagues who want to progress with the legislation in the Senate today and finish at a reasonable hour, I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

The managed investments sector saw dynamic growth during the nineties. Since the introduction of the Managed Investments Act on 1 July 1998, the assets held in managed investment schemes has almost doubled to $175 billion. This is a substantial figure and serves to emphasise how important it is for the 3 million Australians who have invested in managed investments schemes that regulation of this sector is appropriate and effective. We need to ensure that investors' interests are properly protected, and also that domestic and overseas confidence in the integrity of our financial markets is maintained.

The Committee was concerned that Mr Malcolm Turnbull's Review of the Managed Investments Act 1998 did not appear to examine in any depth the fundamental elements of the single responsible entity arrangements introduced by the Act. This may have been due to the relatively tight timeframe—4 months—within which the Review was undertaken in the latter half of last year.

In any event, the Committee thought that proposals for mandatory third-party custodianship and proposals for change should be more closely examined, along with specific governance issues relating to board and audit independence.

On 6 April 2002, the Committee advertised its terms of reference and called for submissions. The terms of reference focussed on the findings of Mr Turnbull's Review and sought comments on:

1. whether the current arrangements adequately protected investors' interests given the quite significant corporate collapses over the past two years and the questions they raise about corporate governance issues;
2. global best practice in investor protection of managed funds;
3. whether section 1325 of the Corporations Act, in providing for actions against parties other than the responsible entity, was inconsistent with the empha-

sis on the RE's liability under the Managed Investments Act;

4. the pros and cons of allowing for the appointment of an external compliance entity for compliance purposes; and
5. fees and costs in the managed investments sector.

Altogether the Committee received 12 submissions plus 2 supplementary submissions. The Committee is grateful to those who invested the time and effort to make sometimes very detailed submissions.

The Committee held public hearings in Sydney on 11 and 12 July 2002 and 7 August 2002. The Committee thanks those who so generously made themselves available at these hearings.

The Turnbull Review didn't consider the effect of September 11 on the performance of the managed funds sector in Australia and whether this had put MIA regulation to the test. While evidence to the Committee was that the response by the managed funds sector to September 11 had been timely and effective—possibly more so than under the previous regime—the Committee's overall conclusion was that the stresses exerted were not of sufficient magnitude to provide a litmus test of the regime's efficacy.

Probably the most controversial issues were those concerning:

1. the compliance framework and whether the MIA had made sufficient provision to ensure the independence of those undertaking the compliance monitoring function;
2. costs and fees under the MIA; and
3. whether the single responsible entity or (single RE) structure should allow for mandatory third-party custodianship of scheme assets.

Independence of in-house compliance monitors

The Committee was encouraged to hear that the MIA had engendered a strong compliance culture within the managed investments industry. However, some witnesses referred to technical and systemic problems with the regulatory framework which they said had reduced the effectiveness of in-house and external compliance monitoring. The most serious allegations concerned the independence and qualifications of compliance monitors—whether on the RE's board or on a separate compliance committee.

The Committee heard evidence that has caused it to seriously doubt that the MIA has made proper provision to ensure the independence of compliance monitors. Merely to require a compliance monitor to be an 'external' director or member, without more, does not guarantee that that person will be 'independent'.

The Committee consequently has made recommendations to ensure that compliance monitors will be more independent. Apart from correcting more technical anomalies in the legislation, the recommendations are designed to keep a check on the RE's powers to appoint and remove compliance monitors by making the process more transparent and removing opportunities for the arbitrary exercise of these powers. In particular, the Committee has recommended that the RE should disclose all appointments, retirements and removals of compliance monitors to ASIC within a limited timeframe and to all investors on an annual basis. Reasons for removals and resignations should be given. ASIC is also to be given powers to remove compliance monitors who are not performing or otherwise where it would be inappropriate for them to continue in the role.

External corporate compliance entities

The Committee heard proposals for the appointment of an external corporate compliance entity either to conduct the compliance monitoring itself or to act as an external member on a compliance committee. It was argued that corporate compliance entities would be more likely to maintain their independence and also provide expertise where this was hard to come by.

Some said that outsourcing compliance monitoring to an external entity was undesirable because it would encourage REs to delegate their responsibility for ensuring compliance. The Committee decided that this possibility could be kept in check by allowing a corporate compliance entity to act only as one member of a compliance committee and not as the committee itself. The Committee believes this arrangement will not only provide schemes with well-resourced and qualified candidates but will also enlarge the pool of potential candidates.

Qualifications and expertise of compliance committee members

In the United States, the United Kingdom, Canada and Australia moves are afoot to improve corporate governance standards. The Committee was particularly interested in the emphasis given by the Sarbanes-Oxley Act of 2002 in the United States on the need for a company's auditing compliance monitors to have the necessary expertise to properly perform their role.

The Committee believes more should be done to set minimum standards of competency and integrity for compliance committee members. We have therefore recommended that the compliance plan

of a registered scheme should be required to set out minimum standards of competency and integrity for compliance monitors and that these standards should be disclosed to investors annually. In addition, ASIC should develop model minimum standards, in consultation with industry for use by the industry.

Compliance plan auditor

The Committee did not hear a great deal of evidence on the independence of external compliance monitoring per se. Of the evidence presented, the major issue was whether merely prohibiting the same auditor from auditing both the scheme's financial statements and the compliance plan was a sufficient guarantee of independence.

The possibility of allowing professionals other than accountants to undertake compliance plan auditing was also raised.

In its assessment of auditor independence issues, the Committee was able to draw on the findings of several studies, among them, Professor Ian Ramsay's report, Independence of Australian Company Auditors: Review of Current Australian Requirements and Proposals for Reform, ASIC's auditor independence survey concluded in December 2001, CLERP 9's issues paper, the Joint Committee of Public Accounts and Audit's Review of Independent Auditing by Registered Company Auditors, and a recent Ernst & Young review of Australia's top 200 companies.

All of these indicated that additional measures were needed to improve auditor independence. Interestingly, the Ernst & Young study indicated that more than 25 per cent of the 200 companies surveyed would not meet the basic independence and expertise requirements for audit committees under United States law and the listing rules of the New York Stock Exchange. This is not merely academic. There are very real practical regulatory implications for Australian companies with securities registered under US law or those planning to branch out into overseas markets.

In the light of these reports and the evidence presented, the Committee concluded that there was a need for additional measures to ensure the independence of the compliance plan auditor. These involved the introduction of new reporting requirements concerning the management of independence issues and to guard against any attempts to corrupt the integrity of an audit.

The Committee considers that the overall integrity of compliance monitoring would benefit from the extension of qualified privilege and whistleblower protection to employees of REs and, where the application of the legislation may be uncertain, to employees of compliance plan auditors.

The Committee sees merit in allowing individuals other than registered company auditors to conduct compliance plan audits. This is provided of course that they have the qualifications and experience to equip them for the task.

The Committee has not made recommendations regarding audit partner or audit firm rotation but awaits with interest CLERP 9's conclusions in this regard. In the meantime, the Committee encourages industry initiatives to develop best practice audit standards for performance audits.

ASIC made a number of proposals to clarify the existing law about compliance plan audits which the Committee supports. In addition, the Committee believes that greater transparency in reporting should be encouraged and endorses ASIC's proposal for compliance plan auditors to report to scheme members on an annual basis.

Costs and fees

Much of the evidence to the inquiry reflected a strong polarisation of views regarding the effect of the new regime on costs and industry structure. However, the Committee was not able to properly test this evidence given the absence of reliable, independent quantitative data.

While some of the data presented indicated a downward trend in MERs, there was no hard evidence that this had translated into lower fees to investors or whether the downward trend could be attributed either wholly or in part to the changes introduced by the MIA.

Given the absence of any reliable, independent data on the subject, the Committee felt it was ill-equipped to draw any conclusions. The Committee would be particularly interested in information about the MIA's impact on costs and fees, competition and overseas investment in the industry.

The Committee has consequently recommended that a costs/benefit analysis be undertaken to determine the MIA's impact:

- on fees and costs;
- on competition within the industry; and
- on the level of consumer understanding of this area.

The Committee notes that better disclosure by managed funds to enable an investor to compare fees, will promote competition within the industry. The Committee therefore commends ASIC's recent initiatives to improve disclosure of fees within the managed funds industry.

The single responsible entity structure

Mr David Knott, Chairman, ASIC, when commenting on the spate of recent corporate failures in Australia, suggested that one contributing factor had been a growing complacency towards corporate governance. This, he proposed, had been nurtured by sustained economic growth during the '90s and Australia's 'remarkable' survival of the Asian financial crisis so that corporate governance 'lost momentum as an effective program for corporate risk management'.

There is no doubt that the corporate collapses in the US and Australia have shaken market confidence and focussed attention on corporate governance, particularly with regard to the independence of company directors and auditors.

The United States has already made significant changes to its corporate governance regime in the Sarbanes-Oxley Act of 2002. In Australia, the Government has commenced the process of corporate governance reform, particularly in the area of auditor independence, with its CLERP 9 issues paper released in September 2002.

Against this background, questions raised about corporate governance and, in particular, the effectiveness of internal and external compliance monitoring and self-regulation under the MIA take on an added resonance.

The Committee notes that the MIA's regulatory framework was devised following several years of sustained buoyancy and confidence in Australia's financial markets. The framework places considerable confidence in the independence and integrity of its compliance monitors which, in view of HIH, One-Tel, Harris Scarfe and the corporate debacles in the United States, may have been misplaced.

Evidence presented to the Committee has raised concerns that the key investor-protection elements under the MIA may not be delivering the level of protection that investors are entitled to expect and, indeed, which is needed to maintain confidence in the managed funds sector among domestic and overseas investors.

The Committee has made recommendations about licensing requirements for REs, specifically, that ASIC review NTA and insurance requirements for REs. In this regard, the Committee's main objective is to ensure that an RE has a sufficient financial buffer to enable it to ride out the consequences of poor investment decisions or otherwise to guard against the risk of a disorderly wind-up if the business fails.

The Committee is also concerned about start-up and on-going costs imposed on managed funds by the MIA and whether they have translated into lower fees for investors. Tied in with this is the effect of the MIA on market structure and competition which ultimately has an impact on investor protection.

Although important, these matters should not divert attention from the fundamental objective of the MIA—to ensure that scheme property will be protected in the event of a scheme's collapse or an RE's malfeasance.

As a start, it is essential that in-house and external compliance monitors have the requisite degree of independence to enable them to carry out their role so that conflicts of interest are promptly identified and successfully managed before they threaten the viability of a fund.

On the basis of the evidence heard during its inquiry, the Committee questions whether the Act makes adequate provision for the independence of the key players in the compliance framework—the RE's board, the compliance committee, and the compliance plan auditor.

Indeed, the Committee's recommendations put forward in earlier chapters of this report reflect the Committee's concern and seek to strengthen the independence of the compliance framework.

In the United States, the United Kingdom and Canada, scheme property must be held by an independent custodian.

There is no question that, in not requiring mandatory third-party custodianship of scheme property, Australia has chosen to deviate from what some consider to be global best practice. Australia has therefore broken new ground.

Clearly there are two distinct schools of thought on the new MIA regime. Those belonging to the old school hold serious doubts about the wisdom of dispensing with a mandatory third-party custodian. They believe that a third-party custodian of scheme property is crucial to protect investors' interests and strongly advocate a return to the dual-party structure. They point to global best practice and suggest that Australia is out of step with the major financial centres of the world where an independent custodian is a minimum standard.

Those belonging to the new school are convinced that the safeguards built into the new regime, such as the statutory duties imposed on the RE, the rigorous compliance obligations and ASIC's surveillance role, offer sound investor protection. They see great strength in having a single responsible entity which is designed to provide clear accountability and cost savings.

The Committee understands the concerns of those looking to return to the old dual-party structure

with a trustee and a fund manager. It appreciates that there is no precedent for the RE system. Further, the Committee acknowledges that the new arrangements for protecting investor interests have yet to be genuinely tested by market conditions—that it is still early days and some sectors of the business community harbour lingering uncertainty about the soundness of the MIA.

However, the evidence presented to the Turnbull Review and the Committee's current inquiry, has failed to establish a convincing case that the MIA's regulatory framework would benefit from the imposition of mandatory third-party custodianship or any other major structural changes. The Committee is satisfied that the framework currently in place, together with the measures recommended by the Committee to ensure that conflicts of interest are properly managed, is delivering a high standard of protection to investors in managed funds.

The Committee consequently does not intend to make any recommendations regarding structural changes to the regulatory framework. Having said this, the Committee stresses that there are areas of concern with the MIA's management of conflicts of interest. The Committee therefore strongly urges the adoption of its recommendations to deal with these.

However, in acknowledgment of the arguments put in favour of optional third-party custodianship, the Committee believes that the current provisions of the Act in this regard should be monitored by ASIC.

The Committee recommends that the current provisions of the Managed Investments Act 1998 relating to third-party custodianship, should be monitored by ASIC with regular reports being made to the Parliamentary Joint Committee on Corporations and Financial Services with particular regard to:

- the number of entities opting into third-party custodianship; and
- providing some qualitative comparative analysis of the performance of those entities with, and those without, third-party custodians.

The Committee further recommends that on the basis of these reports, the Committee should regularly review the efficacy of the current opt-in provisions in the Act compared with an alternative opt-out provision regarding optional third-party custodianship.

Senator CHAPMAN—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUDGET

Proposed Expenditure

Consideration by Legislation Committees

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.58 a.m.)—I table the following documents:

Particulars of proposed additional expenditure for the service of the year ending on 30 June 2003 [Appropriation Bill (No. 3) 2002-2003].

Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2003 [Appropriation Bill (No. 4) 2002-2003].

Statement of savings expected in annual appropriations made by Act No. 43 of 2002 (Appropriation Act (No. 1) 2002-2003) and Act No. 44 of 2002 (Appropriation Act (No. 2) 2002-2003).

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.59 p.m.)—by leave—I move:

That the documents, together with the Final budget outcome 2001-02 be referred to legislation committees for examination and report.

Question agreed to.

Portfolio Additional Estimates Statements

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.00 a.m.)—I table the portfolio additional estimates statements for 2002-03 for portfolios and executive departments in accordance with the list circulated in the chamber. I advise all honourable senators that copies are available from the Senate Table Office.

WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

CRIMES LEGISLATION AMENDMENT (PEOPLE SMUGGLING, FIREARMS TRAFFICKING AND OTHER MEASURES) BILL 2002

NATIONAL ENVIRONMENT PROTECTION COUNCIL AMENDMENT BILL 2002

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.01 a.m.)—I indicate to the Senate that those bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the *Notice Paper*. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.01 a.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—

WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION BILL) 2002

This bill proposes to amend the Workplace Relations Act 1996 to ensure fairness in termination of employment, and to promote the creation and protection of jobs for Australian workers.

The bill will restore for businesses the previous level of protection from dismissal claims from short-term casual employees. It will also move provisions imposing a filing fee for dismissal applications from the regulations into the Act, and provide for the fee to be indexed annually in line with CPI.

These measures demonstrate the Government's commitment to a system of dismissal laws that is fair to employers and employees and a system which protects and creates jobs.

Last November, the Federal Court ruled invalid the regulations excluding short term casual employees from making dismissal applications, on the technical ground that they went further than allowed by the regulation-making power in the Act.

The regulations excluded casual employees from accessing termination of employment remedies, unless they had been working for their employer on a regular and systematic basis for at least 12 months, and had a reasonable expectation of continuing employment with the same employer.

Excluding short-term casual employees from termination of employment remedies is not new. Indeed, the exclusion for short-term casuals was first introduced in 1994, by then ALP Industrial Relations Minister, Laurie Brereton. It is worth noting, that, on the reasoning applied by the Full Federal Court in Mr Hamzy's case, Mr Brereton's regulations would also have been invalid.

The 1994 provisions have remained largely unchanged, except that in 1996, the Government, with the support of the Democrats, amended the regulations to require casuals to work for their employer for a minimum period of twelve months, rather than six months, before being able to make dismissal applications.

For almost a decade then, businesses have organised their employment practices around an exclusion of short-term casuals, and it is important that they continue to be allowed to do so. The exclusion ensures that businesses have the flexibility they need to hire short-term casuals without worrying about dismissal proceedings if it turns out that the employee is not needed permanently.

After the court decision, as an interim measure, the Government made replacement regulations giving employers the widest protection possible within the parameters of the Hamzy decision. If the Government had failed to do this, then employers may have been reluctant to hire casuals. This could have affected their ability to do business, and could have left those seeking casual work, such as working parents, without a job.

However, the Government cannot not re-instate the full casual exclusion through regulations. This requires changes to the Act. This bill will move the short-term casual exclusion out of the regulations and into the Act, and restore its full scope.

In addition, in order to provide certainty for businesses that made employment decisions based on the law as everyone understood it to be at the time, this bill validates the operation of the invalid regulations.

These provisions will declare that, as far as possible, the rights and liabilities of employers and employees are the same as they would have been had the invalid regulations been validly made—and as if the interim replacement regulation made after the Hamzy decision had not been made.

However, casual employees who have already had their cases determined by a court or by the Australian Industrial Relations Commission, are specifically protected by the bill and they will be unaffected by the validation provisions.

This bill also contains measures to ensure that the exclusion provisions are easy to find and understand. Currently, regulation 30B excludes other

types of employees from accessing dismissal remedies, such as probationers and high-income earners. Also, regulation 30BA excludes some types of employees from particular dismissal provisions, including requirements for employers to provide notice of termination. Examples of employees excluded under regulation 30BA include longer-term casuals and daily hire employees in the construction and meat industries.

It is again worth noting that in 1994, the then Labor government excluded broadly similar categories of workers from termination remedies. The bill will move these other exclusions in regulations 30B and 30BA out of the regulations into the Act. This means that employers and employees wanting to know their rights and obligations will only need to check one piece of legislation, rather than two.

The bill makes slight and non-substantive alterations to these other exclusions. For example, the exclusion for employees on probation in regulation 30B(1)(c) has been simplified with the removal of the term 'qualifying period of employment'. The Workplace Relations Amendment (Termination of Employment) Act 2001, now requires all employees, whether probationers or not, to work for their employer for a qualifying period, unless they agree in writing in advance to alter or waive the period. The use of the phrase in two different provisions could have proved confusing. Therefore the reference to qualifying period in regulation 30B(1)(c) has been removed.

Other changes are necessary to keep the provisions relevant and up-to-date.

Further measures in this bill deal with the $50 filing fee for lodging dismissal applications. This requirement is currently in the regulations. The bill would honour the Government's election commitments by moving the provisions out of the regulations and into the Act, ensuring that the filing fee is a permanent requirement, and providing that the fee be indexed annually in line with movements in the CPI.

The filing fee will discourage frivolous and vexatious claims, while ensuring that genuine dismissal applications can be dealt with efficiently.

In fairness to low-income earners, the Act will continue to provide that the fee can be waived where it would cause financial hardship. Further, the fee will be refunded where an application is discontinued at least two days before being dealt with by the Commission.

The Senate has repeatedly endorsed regulations containing the filing fee. However, there has been disagreement over whether the fee should be made permanent, or continue to be subject to parliamentary review. With this in mind, the Government included in its election platform, a commitment to making the fee permanent, and now has a mandate to implement it.

CRIMES LEGISLATION AMENDMENT (PEOPLE SMUGGLING, FIREARMS TRAFFICKING AND OTHER MEASURES) BILL 2002

The Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002 will introduce new strong and effective offences into the Commonwealth Criminal Code to deal with people smuggling and interstate firearms trafficking.

It also proposes to deal with a number of other important criminal law issues.

In recent years people smuggling has emerged as a major global issue. It is rapidly becoming one of the most lucrative illicit trades in the world. This bill is an important part in the Government's overall strategy to combat people smuggling.

The new people smuggling offences will target activity not covered by the regime in the Migration Act 1958.

In particular, the offences will prohibit the smuggling of persons from Australia to another country, or from a country other than Australia to a third country, with or without transit through Australia.

Where there is no transit through Australia, the offences will apply where the person who organises or facilitates the smuggling either engages in that conduct in Australia or is an Australian citizen or resident.

This bill also provides for aggravated people smuggling offences.

These offences provide larger penalties for people smugglers who endanger the lives or safety of the people they are smuggling, or who subject the people being smuggled to cruel, inhuman or degrading treatment.

An aggravated people smuggling offence is also proposed for people smugglers who smuggle five or more persons at a time.

The aggravated people smuggling offences also criminalise smuggling a person to a foreign country with the intention that that person will be exploited in that foreign country.

'Exploitation' is defined in the bill to include slavery, sexual servitude, forced labour and the removal of a person's organs.

This type of activity is commonly associated with the illegal trafficking of persons.

The people smuggling and aggravated people smuggling offences will apply to all Australian citizens or residents who are involved in overseas smuggling operations.

The broad coverage of these offences demonstrates Australia's commitment to combating people smuggling activity both in Australia and in the region.

The offences also fulfil a commitment to criminalise people smuggling made by participants in the Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, which was held in Bali in February this year.

It is hoped that the introduction of these offences will encourage other countries in the region to adopt similar offences.

The people-smuggling offences are supported by new offences which will prohibit making, providing or possessing false travel or identity documents where those documents are intended for use in securing the unlawful entry of a person into a foreign country.

An offence of taking possession of or destroying another person's travel or identity documents is also included.

The bill also proposes to deal with the issue of interstate trafficking of firearms.

The trafficking of firearms to supply the black market is an increasing problem facing the Australian community.

Research indicates that those who engage in firearms crime are invariably sourcing their weapons illegitimately and do not comply with licensing and registration requirements.

The cross-border trade in illicit firearms is specifically targeted in the new firearm offences contained in this bill.

These offences will work with the existing State and Territory schemes, to make it unlawful, in the course of trade and commerce between the States and Territories, to dispose of or acquire a firearm, where the disposal or acquisition of that firearm is an offence under a State or Territory law.

The bill will also make it unlawful to take or send a firearm from one State or Territory to another, intending that the firearm will be disposed of in the other State or Territory in circumstances which would constitute an offence against the law of that State or Territory.

Implementation of these offences is an important step towards achieving a nationally consistent approach.

Differences in the relevant laws pose major challenges in our efforts to combat interstate firearms trafficking.

The offences will provide the means by which people engaged in the illegal interstate trade in firearms can be prosecuted under Commonwealth law.

The offences should also be a significant deterrent to those engaged in firearms trafficking across State and Territory borders.

In addition to people smuggling and interstate firearms trafficking, this bill makes amendments to a number of criminal justice laws to enhance their effectiveness.

The bill will fine tune the theft and fraud offences in the Criminal Code, which have been operating for over a year, to address minor problems which have emerged with the offences.

The bill will also repeal sections 16G and 19AG of the Crimes Act 1914.

That amendment will mean that courts will no longer have to take into account whether or not remissions are available in a State or Territory when sentencing federal offenders in that State or Territory.

This shift follows the abolition of remissions in most States and Territories and the move towards removal of remissions in the remaining jurisdictions.

The bill proposes to include the drug gamma-hydroxybutyric acid, better known as 'fantasy', as a psychotropic substance under the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990.

The substance is commonly used in drink spiking incidents.

This will enhance the ability of law enforcement agencies to investigate and prosecute domestic manufacturers and suppliers of that substance.

The bill also amends the Financial Transaction Reports Act 1988 to ensure that remittance dealers are covered by the definition of 'cash dealer' in that Act.

A technical amendment is also proposed to correct a cross-reference to the Commonwealth money laundering legislation following the passage of new money laundering offences earlier this year.

The bill also proposes to amend the International Transfer of Prisoners Act 1997.

These amendments will clearly define the role of the Minister for Immigration and Multicultural and Indigenous Affairs (the Immigration Minister), while ensuring that the Attorney-General and

the Immigration Minister consult on the eligibility of prisoners prior to their transfer.

The amendments will also ensure that the Immigration Minister is given the opportunity to consider cancelling a prisoner's citizenship or visa prior to their transfer to Australia.

If the Immigration Minister does cancel a prisoner's citizenship or visa that person is no longer eligible for transfer to Australia.

The Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002 deals with a number of important criminal justice issues facing Australia and our region.

The measures contained in the bill will go a long way to dealing with people smuggling, firearms trafficking and other important issues.

NATIONAL ENVIRONMENT PROTECTION COUNCIL AMENDMENT BILL 2002

This bill will amend the National Environment Protection Council Act 1994:

- to provide a simplified process for making minor variations to National Environment Protection Measures;
- to require five yearly reviews of the National Environment Protection Council Act 1994; and
- to allow the NEPC Service Corporation to provide support and assistance to other ministerial councils.

At the time when the National Environment Protection Council Act 1994 was enacted in 1994, it was an important landmark in the history of environment protection in Australia, marking the commitment of the Commonwealth and the States and Territories to work cooperatively to develop national environment protection standards or 'national environment protection measures' as they are called in the Act. Each of the States and Territories introduced mirror legislation to the National Environment Protection Council Act 1994 to ensure a seamless legal jurisdiction for making national environment protection measures.

In 2000-2001 the Commonwealth, State and Territory Acts were reviewed as required by section 64 of the Act. In responding to the review, the National Environment Protection Council concluded that it had made significant progress on matters of national priority in environment protection and noted that the five national environment protection measures in place at the time were making a real contribution to providing equivalent protection from pollution to all Australians.

The Howard government has put in place six national environment protection measures. These are for ambient air quality made in July 1998; the movement of controlled waste between States and Territories made in July 1998; a national pollutant inventory made in July 1998; the assessment of site contamination made in December 1999; used packaging materials made in July 1999; and diesel vehicle emissions made in June 2001.

Since 1998, the contribution of these measures to environmental protection in Australia has been considerable.

- The National Pollutant Inventory has 2,350 facilities reporting in the third year of operation—nearly double those of the first year. There are now more than 150 major industry sectors reporting, and estimates are available of emissions from non-industry sources, such as from motor vehicles, for 30 airshed areas and 24 water catchments.
- All States and Territories now have approved air quality monitoring plans that enable soundly based and consistent reporting on performance against the ambient air measure. Preliminary monitoring results indicate that in most cases the NEPM goal is being met.
- There is now a national scheme under the controlled waste measure to ensure that controlled wastes are moved from one Australian jurisdiction to another only if they are transported and disposed of safely, and with the consent of all State and Territory authorities;
- The Used Packaging Materials NEPM requires brand owners who are not signatories to the National Packaging Covenant to take-back and reuse a percentage of their packaging. There is strong evidence the NEPM is working well, as there are now over 500 signatories to the Covenant, covering major food, beverages, paint and supermarket brands, and including key packaging supply chain companies.
- The diesel vehicle emissions measure is already reducing emissions of particles, oxides of nitrogen and smoke from in-service diesel vehicles. Along with smoky vehicle programs in every state, a major testing and repair program on Sydney's buses is now underway, with other projects to follow shortly.

A further measure on air toxics is due to be completed in April 2003.

Two of the amendments to the Act put into effect recommendations arising from the 2000-2001 review.

The first is that Council should be able to make minor variations (such as corrections or technical updates to standards) to a national environment protection measure by using a process that is more streamlined than the existing process in Section 20.

The second is that there should be provision for the Act to be reviewed at further 5 yearly intervals.

The third amendment follows from the review of ministerial councils by the Council of Australian Governments that resulted holding joint meetings between the National Environment Protection Council, which remains a statutory body, and the new Environment Protection and Heritage Council. The new Council also deals with environment protection and heritage issues previously dealt with by the Australian and New Zealand Environment and Conservation Council (ANZECC) and the Heritage Minister's Meeting.

Under the current Act, the National Environment Protection Council Service Corporation, which provides secretariat services and project management for the National Environment Protection Council, is unable to extend its support and assistance to the new Environment Protection and Heritage Council. The bill will amend the National Environment Protection Council Act 1994 to allow this to occur.

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

Ordered that the bills be listed on the *Notice Paper* as separate orders of the day.

Ordered that the resumption of the debate be made an order of the day for a later hour.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

Prohibition of Human Cloning Bill 2002

Research Involving Human Embryos Bill 2002

COMMITTEES

Legal and Constitutional Legislation Committee

Report

Senator FERRIS (South Australia) (10.02 a.m.)—On behalf of Senator Payne, I present the interim report of the Legal and Constitutional Legislation Committee on the statutory powers and functions of the Australian Law Reform Commission.

Ordered that the report be printed.

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

Leave granted.

Senator FERRIS—I move:

That the Senate adopt the recommendation of the report relating to an extension of time for the inquiry.

Question agreed to.

BUSINESS

Rearrangement

Senator FERRIS (South Australia) (10.03 a.m.)—by leave—At the request of Senator Heffernan, I move:

That business of the Senate order of the day no. 2, relating to the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Australian meat industry and export quotas, be postponed till a later hour.

Question agreed to.

COMMITTEES

Superannuation Committee

Report

Senator FERRIS (South Australia) (10.04 a.m.)—On behalf of Senator Watson I present the report of the Select Committee on Superannuation on tax arrangements for superannuation and related policy, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator FERRIS—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

I present the report of the Senate Select Committee on Superannuation, entitled Superannuation and standards of living in retirement—report on

the adequacy of the tax arrangements for superannuation and related policy.

This inquiry has been one of the broadest inquiries yet undertaken by the Committee, canvassing as it does the issues relating to the adequacy of superannuation, under the present taxation regime, and how the super system relates to social security measures.

The inquiry attracted considerable interest in the community, with the Committee receiving over 150 submissions. The Committee conducted eight public hearings in connection with the inquiry, the last of which was held in the form of a roundtable hearing on 8 October 2002. The Committee was particularly appreciative of the standard of contribution made by participants at the roundtable.

One of the main issues arising during the inquiry was the identification of appropriate modelling assumptions to be used when projecting retirement incomes. The Committee was confronted with conflicting modelling advice on what projected retirement incomes could be expected by retirees who have had a full working life with superannuation contributions at the current maximum of nine per cent of wages. The Committee commissioned the Institute of Actuaries of Australia (IAA) to assist with resolving the different modelling outcomes.

A key feature of the IAA report was the identification of replacement rates of pre-retirement income as the most appropriate focus for assessing the adequacy of retirement incomes. Replacement rates are more robust and less subject to distortion by differences in modelling approaches than a dollar level.

The other issues which arose related to:

- The adequacy of superannuation, including:
  - the amount of income that would be needed in retirement;
  - the expenses likely to be incurred in retirement for health and aged care;
  - the levels of superannuation contributions and other measures that could cover expected expenses in retirement;
- The equity of the tax arrangements for superannuation, especially the overall fairness of the taxation regime for superannuation;
- The integration of superannuation with the social security system, including improving the coordination of superannuation with other social security measures; and
- The simplification of the superannuation system, including streamlining the operation of the system and improving member understanding.

In short, the Committee found that:

- The available evidence demonstrates that the current arrangements for superannuation may not provide an adequate income in retirement for most people and that strategies need to be identified to address the shortfall;
- The current taxation treatment of superannuation produces some inequities which need to be addressed;
- The relationship between superannuation and the age pension and other social security measures could be better integrated;
- The superannuation system in Australia is very complex, not easily understood and requires simplification.

Identifying and quantifying adequacy

In particular, the Committee found that there is a need to define the meaning of the term 'adequacy' of superannuation and a need to establish clearly articulated objectives for Australia's retirement incomes system, which include targets for representative groups of Australians.

In order to provide an adequate standard of living in retirement, the Committee noted the high degree of consensus expressed by witnesses at the roundtable that the desirable target for a person on average earnings is a replacement rate of 70-80 per cent of pre-retirement expenditure (which equates to approximately 60-65 per cent of gross pre-retirement income), a target which would need to be higher for those on less than average weekly earnings, and lower for those on high incomes.

The Committee found that, should this replacement rate be accepted, the available modelling shows that the current arrangements are unlikely to deliver these outcomes, and that other strategies are required to address the anticipated shortfall.

Closing the adequacy gap

The Committee considers that strategies to close the adequacy gap include:

- Providing more incentives for voluntary contributions;
- expanding the government co-contribution concept by raising the threshold and improving coverage to lower to middle income earners;
- widening access to superannuation as a savings vehicle by removing the work test for making voluntary contributions, providing a cost-effective savings vehicle, and permitting contribution of non superannuation assets to superannuation; and

- lowering front-end taxes in the long term.

The Committee considered the evidence in favour of additional compulsory contributions by either employers or employees, but concluded that these could not be supported in the current economic climate.

Factors inhibiting adequacy

The Committee noted that a number of factors inhibit the effectiveness of the current contributions in delivering adequate retirement incomes, including the impact of front-end taxes, the impact of fees and charges and the impact of rising household debt.

Although the Committee received no compelling suggestions on how the revenue shortfall could be addressed if front-end taxes were removed or reduced, the Committee favours a gradual move away from front-end taxes. The Committee also re-emphasised the importance of transparent disclosure up front of fees and charges, and notes that there is a need to monitor the relationship between the effect of household debt and the ability of people to save for retirement.

Baby boomers

Given that the compulsory superannuation scheme has only been in operation since 1992, the Committee noted that most baby boomers will not have the benefit of a full working life under the compulsory superannuation system and, other savings aside, that their incomes in retirement are likely to fall well short of the consensus target level of 70-80 per cent of pre-retirement expenditure (approximately 60-65 per cent of gross pre-retirement income).

The Committee considers that a number of its recommendations for change which apply to the wider community will also assist baby boomers to achieve an adequate income in retirement.

Other adequacy issues

The Committee notes that there are a number of arrangements which could impact on the adequacy of individuals' or groups' retirement incomes. These include:

- arrangements for the self-employed;
- member protection arrangements; and
- the $450 SG earnings threshold.

The Committee has identified in this report a number of strategies to assist people affected by these measures to improve the adequacy of their income in retirement, including examining the option of extending to the self-employed the same contribution arrangements that apply to employees and examining the removal of the $450 earnings threshold.

The Committee has also identified strategies to assist women and others with broken work patterns, to achieve an adequate income in retirement.

Equity

The Committee found that the current taxation arrangements applying to superannuation are not delivering equity to all Australians because of flat rate contributions and earnings taxes and end benefit taxes that encourage lump sums.

The Committee considers that equity in the superannuation system is best achieved through a whole of life approach to taxation concessions. The Committee has suggested that, together with industry, the Government undertake a review of the appropriate benchmark for determining and measuring the impact of superannuation taxation concessions.

The Committee prefers to gradually move the taxation of superannuation away from the accumulation phase, that is at the front-end, in favour of end benefit taxation. However, not all members of the Committee are attracted to the suggestion of providing front-end rebates on individual contributions. Instead, the majority of the Committee prefers phasing out the contributions tax in the long term.

The Committee considers that by implementing the measures outlined in this report, there is scope to improve the ability of individuals, such as women and others with broken working patterns and baby boomers, to increase their retirement incomes.

The Committee considers that the surcharge is an inefficient tax which is costly to administer. It causes serious inequities for members of defined benefit funds. It also imposes costs on all members, irrespective of whether they are liable to pay the surcharge or not. For this reason, the Committee would prefer to transfer the administration of the surcharge to the ATO and to introduce a maximum 15 per cent cap on employer financed benefits in all defined benefit fund schemes.

In the context of the Committee's preference to remove or reduce superannuation taxes during the accumulation phase, the Committee considers that lump sum benefit taxes should be adjusted in order to provide for equity through the progressive tax system and to replace revenue lost through any reduction in front-end taxes.

In addition, the Committee considers that, while the current RBLs should be retained, the annual indexation applicable to the RBL thresholds should be limited.

Integration

The Committee found that Australia's public and private health and aged care system is well regarded, but, in the light of projected expenditure identified in the *Intergenerational Report* and other reports published in the last decade, the system faces significant challenges in the future as Australia's population ages.

The Committee believes that the Government could consider a number of strategies to address these challenges, including:

- identifying ways to make savings in health care costs, through further examination of options such as voluntary heath insurance through superannuation protocols; and
- monitoring community and residential aged care programs to ensure their effectiveness and sustainability.

The Committee notes that Australia has a modest universal age pension system which includes targeting through the assets and incomes tests. The Committee also notes that the costs associated with the system are expected to increase in the future, and that strategies need to be identified to deal with this anticipated development.

To address this, the Committee believes that there are a number of initiatives that the Government could undertake to enhance integration of the three pillars of the retirement income support system in Australia: compulsory employer SG contributions, voluntary superannuation, and social security measures. Specifically, as discussed in this chapter, the Committee believes the Government should:

- continue to strive for universal and adequate superannuation coverage, with a focus on assisting those who face the greatest challenges in achieving an adequate retirement income—the low and middle income earners;
- review current arrangements for access to the Commonwealth Seniors Health Card scheme to ensure that it focuses on those in greatest need of Government support;
- explore options to encourage workers to remain in the workforce beyond the current superannuation preservation age;
- monitor the uptake of complying annuities, to ensure that they offer an attractive investment option for retirees;
- consider the appropriateness of the current minimum draw-down limits for allocated annuities;
- develop a standard set of rules applying to income streams; and
- develop means by which those who wish to could draw an income stream from their owner-occupied housing assets for retirement income purposes, including health and aged care expenses.

Simplicity

The Committee accepts that there are some real and perceived complexities in Australia's superannuation system which need to be addressed in order to streamline the operation of the system and improve individual's understanding of their entitlements.

Some of these complexities include:

- the ongoing amendments to the legislative framework, specifically relating to transitional arrangements for older workers, the preservation age of benefits, and the tax and social security consequences of either cashing out, rolling over or purchasing a retirement income product;
- the 'grandfathering' of taxation provisions for superannuation when calculating superannuation entitlements;
- the arrangements governing who could make a contribution to a superannuation fund (i.e. the work test for making voluntary contributions);
- the proliferation and loss of monies in superannuation fund accounts; and
- the lack of understanding of superannuation in the Australian population generally.

The Committee has recommended that the Government consider the matters raised in this report in order to identify ways to make the superannuation system less complex and more comprehensible to the Australian people.

The Committee considers that the implementation of its major recommendations would significantly reduce the complexity of the superannuation system, enhance member understanding, and assist with the efficient administration of superannuation funds.

Other issues

The Committee notes that, in order to improve the safety of superannuation, the Government has recently announced the requirement for all trustees of APRA regulated superannuation funds to obtain a superannuation trustee licence and has proposed a number of other measures designed to provide greater protection of employee retirement savings.

While the Government's initiative is to be commended, the Committee considers that there are some other issues which the Government should consider in a timely manner to ensure that people

have confidence in the superannuation system and that they have adequate savings and incomes in retirement. These include:

- developing alternative savings vehicles, to maximise the potential for increasing national savings and to assist long-term savings for purposes such as health, housing and education;
- considering indexing Commonwealth funds superannuation benefits to the CPI or MTAWE, whichever is the higher, to maintain parity with community living standards for Commonwealth public sector and defence force retirees and considering linking the preserved benefit to the fund earning rate, rather than the CPI.

In its report, the Committee has made a number of recommendations for reform to the superannuation system and related areas. If implemented, the Committee considers that they will assist in improving standards of living in retirement, reduce budget outlays in the longer term, and instil greater confidence in superannuation as a retirement savings vehicle. However, as some of the matters raised in the report have the potential for significant impacts on the budget, the recommendations would have to be viewed in the light of the budget position at the time.

I place on record my appreciation to all those who participated in the inquiry, by making submissions and appearing as witnesses. It is only by the high standard of evidence received that the Committee can make informed judgements about future policy directions. I also wish to record my appreciation to the secretariat which assisted the Committee during the inquiry—in particular, the Committee Secretary, Sue Morton, Peter Downes, Stephen Frappell and Dianne Warhurst and the other staff who contributed in so many ways to the inquiry.

I commend the report to the Senate.

Senator FERRIS—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

In Committee

Consideration resumed from 11 December.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, as amended. The question is that opposition amendments (23), (25), (28), (29) and (33) to (35) on sheet 2764 and Democrat amendments (1) to (3) on sheet 2788, moved by Senator Greig to opposition amendment (25), be agreed to.

Senator GREIG (Western Australia) (10.05 a.m.)—When we adjourned the debate yesterday, I was speaking to Democrat amendment (3) on sheet 2788. I argued that there was little point in permitting a person in detention to contact another specified person, if the person is not provided with the facilities required to make such a contact. This amendment is almost identical to Democrat amendment (5), which follows on sheet 2779, and which I intend to withdraw if opposition amendment (25) were to pass as amended by this amendment.

Senator NETTLE (New South Wales) (10.06 a.m.)—I rise to ask some questions of Senator Faulkner about this package of ALP amendments and the form of the questioning and detention regime that the ALP seek to put in place. I want to hear from Senator Faulkner about the sorts of time frames that the opposition are anticipating that their questioning and detention regime will result in. What periods of time are we anticipating that people will be held for? We have heard that the opposition are proposing that four hours be extended to eight hours, with an opportunity to extend that to an additional eight hours, giving us 20 hours of detention in total. We heard from Senator Faulkner, and we have talked before in this committee, about how this period does not include the time during which people may be resting, talking to lawyers, talking to interpreters, consuming food or engaging in a whole range of other processes that will take place outside of the questioning regime but will still be a part of the detention regime being proposed. We heard Senator Faulkner say before that this may include, therefore, detention for a day or so. He also referred to the fact that detention may go into a second day. I want to hear from Senator Faulkner about the sorts of time frames that we are anticipating that people would be held for

under the questioning and detention regime being put forward by the opposition.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.08 a.m.)—One of the reasons that the opposition believes that it is important to have a person of appropriate seniority and standing as the prescribed authority is not only that the prescribed authority will obviously oversee some of the matters that Senator Nettle refers to but that there will be occasions when the prescribed authority will have to make decisions about these matters, which I am sure the senator appreciates.

I indicated previously that these amendments are broadly in concert with the unanimous Senate committee recommendations on these particular issues. Amendment (25) provides that when a person appears before a prescribed authority they may be questioned for a period not exceeding four hours. As I understand it, some of these continuous periods of questioning go on for one or two hours, although I must say to Senator Nettle that I have had no personal experience of this. That is why we have looked at trying to fall back on the well-established procedures that are in place currently under the Criminal Code. We have said broadly, as the senator has reflected, that when a person first appears they can be questioned for a period not exceeding four hours. We have said that that period can only be extended by up to eight hours if, on application by ASIO, the prescribed authority is satisfied that there are reasonable grounds to believe that further questioning is likely to yield relevant information. We have also ensured that such an extension past four hours can only be agreed to if a person has legal representation.

These are important matters, as I am sure the committee would agree. We think that these sorts of time frames are appropriate. I have indicated what the exception to this might be. I think this committee has to take account of a situation where there is an imminent threat of a terrorist attack. There again, if the prescribed authority is satisfied that the situation is urgent and it believes that there are reasonable grounds to believe that further questioning is likely to yield information relevant to that imminent threat, then of course the prescribed authority can allow the person to be questioned for a further eight hours.

I do think the Senate committee and the Senate need to take account of these urgent situations. This is the sort of balance that we have to apply our minds to. This is the sort of situation that we hope will never be faced under the provisions of this legislation, but realistically we do have to contemplate that situation as we look at determining what the appropriate provisions might be. I stress to the committee that this is one of the reasons why it is so important that you have a person of standing, an experienced judicial officer, making these sorts of judgments and being satisfied on application by ASIO that there are reasonable grounds to believe that further questioning may yield information relevant to a terrorist attack. In those circumstances, we say that it is appropriate that a person be held for further questioning. I think it is difficult to mount a case against that principle. But, in the broad, we fall back on the time limits that have been established in the Crimes Act, which apply to people who may be suspected of committing a very serious offence. We need to keep in our minds also the fact that any questioning regime is very likely to apply to non-suspects. They are the sorts of balances that have been in the opposition's mind as we have tried to work through an approach that is workable and that offers maximum protections but that gives ASIO the capacity to undertake the fundamental intelligence gathering role that is proposed under this legislation.

Senator NETTLE (New South Wales) (10.15 a.m.)—I recognise that it is a difficult question for the opposition to answer on this issue because, whilst they have stipulated the time frames in which questioning must take place, it has not been proposed to put a time limit on the activities extraneous to questioning. Senator Faulkner talked before about the very substantial down times that would be part of the questioning and detention regime, so I recognise that it is a difficult question to answer. In practicality, in the way in which this legislation is implemented, we do not know about that. Clearly, there will be a capacity for people to be held for more

than a day. This down time involving sleep and rest potentially takes it to an additional day. We could be looking at twice the number of hours that the opposition is proposing for a questioning regime when we incorporate questioning and detention. That brings us closer to the 48 hours in the original bill for questioning to take place. I recognise that it is a difficult question for the opposition to answer.

I also recognise that the model they are proposing is based on the Crimes Act. The clear distinction that we need to continue to make is that the Crimes Act does not involve the detention of nonsuspects, which is the additional component of this legislation. It is an expansion into an area that we have not been into before. We previously heard Senator Faulkner talk about what he believes to be the similarity between the model being proposed by the opposition and that which exists within the Australian Crime Commission and the former National Crime Authority. It is important to point out the differences between those models. In the procedures of the Australian Crime Commission and the National Crime Authority a summons is issued for people to appear before those bodies and then subsequently, if they fail to appear, a warrant is issued and they can be taken into custody and brought before those bodies. That is a different regime from what is proposed in this legislation, which goes straight to bringing people into custody rather than having any process of a summons being issued and then being called before those bodies; it goes straight to the warrant and bringing them into custody. I think it is important that people are aware of the distinction between the model being put forward by the opposition and the existing model in the Australian Crime Commission, and that the questioning and detention regime being put forward by the opposition is exactly that—questioning and detention—and that we do not have a clear time frame as to how long both of those activities, once combined, will last.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.18 a.m.)—The government opposes the opposition amendments and it does so for a number of reasons. Firstly, the proposals of the opposition go to the very heart of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002. The opposition says that this bill should be about a questioning regime rather than a detention regime. Of course, this bill is designed to assist ASIO in its role of intelligence gathering, and that is crucial when you are dealing with terrorists and terrorist organisations.

I was interested to hear what Senator Ray said yesterday on this point, when he conceded that there is a need for limited detention for the purposes of intelligence gathering. The government believes that we do need this detention regime if this bill is to be effective. It is a shame that Senator Ray's views do not prevail in the opposition, because he certainly has had long experience in matters dealing with security. The opposition proposes a regime whereby someone can be questioned for four hours and that can be extended by eight hours. There is the capacity for questioning under a warrant for a period of 12 hours. The government says that, while some people might think that is a lengthy period to conduct questioning, when you look at an operation of this sort you have to remember that the information gained has to be checked and other inquiries may have to be made—in fact, most probably would have to be made—whilst you have the person detained for questioning. That is an essential part of the intelligence gathering exercise. We say that ASIO should have the ability to detain a person for questioning to ensure that that person is not released while the investigation is taking place, and therefore cannot tip off their colleagues or associates who are the subject of an investigation. We believe that it is essential for the people at the sharp end of things, those who are carrying out these investigations, to have the tools to do their job. Of course, ASIO is very much in that position.

Whilst we say that there should be a detention regime, we also say that there should be significant safeguards, and we say that those safeguards are in the bill. The bill provides that all persons are to be treated with humanity and respect for human dignity. The safeguards in the bill will prevent question-

ing for inappropriate periods. The protocols to be developed governing custody, detention and questioning of persons will also give guidance as to the appropriate period for which a person may be questioned while subject to a 48-hour warrant. But of course you have to have flexibility if you are to provide your security agency with the necessary powers to gather that crucial intelligence.

It would be absurd not to have a power to detain a person for a limited period in a situation that might put public safety at risk. You have to remember that we are talking about matters which strike at the heart of the security of our community, the security of our country and public safety. Those people at the front line of meeting this threat tell us that, in order to protect the community from this kind of threat, they need the power to hold a person incommunicado. They agree—and we say as a government—that this should be subject to strict safeguards whilst questioning is carried out for the purposes of intelligence gathering. We reject the idea that this regime should be one of questioning only. You have to have a detention regime if this bill is to be effective. If you are serious about tackling the security threat to our nation as it exists in the current environment, you have to provide ASIO with the ability to do its job.

The provisions of the Crimes Act have been mentioned. Of course, the Crimes Act 1914 is designed to protect the interests of an accused who is in a situation where the information that he or she discloses can be used against them in a criminal prosecution. This bill is about intelligence gathering, not a criminal prosecution. The Crimes Act is structured for an entirely different purpose. Under this bill, the information provided by a person questioned under a warrant cannot be educed against them in a subsequent criminal prosecution and is educed in circumstances where the issuing of the warrant prime facie acknowledges a significant threat to public safety.

Opposition amendments (28) and (29) deal with offences outlined in the bill concerning those who fail to provide information requested of them under a warrant. It will be a complete defence if the person does not have the information requested. The amendments would delete the notes in the bill that refer to the evidential burden being placed on the defendant who wishes to mount this defence. It is consistent with Commonwealth criminal policy to place an evidential burden on persons where the matters to be proved are peculiarly within the knowledge of the defendant, and that is a principle which we have in our criminal law. It is there already and we believe that it is fair to place that evidential burden on the person concerned, in view of the principle that I have just stated.

If the evidential burden were not placed on the defendant in these cases, the defence of not having the information required would be raised in every case, regardless of whether there was any merit to the claim whatsoever. This would make prosecutions incredibly difficult to mount and would waste vast amounts of time and money in dealing with spurious defences. If we are serious about compelling people to answer questions—and from what I understand, the opposition has no problem with that; the opposition does not suggest that we should not have that power—we must have effective sanctions in place. We have seen this in other regimes, such as the legislation dealing with the new Australian Crime Commission. The point of this bill is to obtain intelligence, not to create opportunities for defence lawyers to mount defences with no merit.

I have described the government's position in some detail because I think it is very important for people who are looking at this debate to understand that the government believes that this bill has to have a detention based regime in order to be effective. It has to have that regime for the reasons I have mentioned. If ASIO is to do its job effectively, it has to have these powers. For those reasons we cannot accept the opposition's amendments. I note again the comments by Senator Ray, which I have found quite useful and interesting. It is just a shame that the opposition cannot see its way clear to support what Senator Ray is saying.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that

the amendments moved by Senator Greig be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that the amendments moved by Senator Faulkner be agreed to.

Original question agreed to.

Senator Faulkner—Mr Temporary Chairman, I raise a point of order. It is a minor point. Amendment (31) was not put then, was it?

The TEMPORARY CHAIRMAN—No, it was withdrawn.

Senator Faulkner—Yes. I just wanted to be clear on that, thank you.

Senator GREIG (Western Australia) (10.27 a.m.)—I move Democrat amendment (6) on sheet 2779 revised:

(6) Schedule 1, item 24, page 18 (line 23), at the end of subsection (9), add:

; (c) information obtained as a consequence of anything said by the person, or any document or thing produced by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information or to produce a document or thing.

Democrat amendment (6) relates to 'admissibility into evidence'. The amendment seeks to apply a limited derivative use immunity to information obtained during the course of questioning under the legislation. As we know, people detained under the legislation will have no right to silence. However, nothing they say during the course of questioning, nor any document or thing they produce, can be used as evidence against the person in criminal proceedings other than for an offence under the legislation. In other words, a use immunity applies to information obtained during questioning, but derivative use immunity does not apply to such information under the bill in its present form.

We Democrats believe that the absence of derivative use immunity from the bill goes to the heart of whether this legislation is ultimately concerned with intelligence gathering or criminal investigations. There has been a good deal of debate, discussion and focus on the appropriateness of ASIO as an intelligence agency being vested with what are essentially police powers. However, it has been emphasised that the primary purpose of the legislation is to enable ASIO to collect intelligence relating to terrorism. If this is the case, we believe a limited derivative use immunity is consistent with the purpose of the legislation and ought to apply. On the other hand, if the purpose of the legislation is to facilitate criminal investigations against suspected terrorists, then those being questioned should have access to full protection under the law, including the right to silence and the right to have a lawyer present at all times, without exception.

This amendment proposed by the Australian Democrats introduces limited derivative use immunity, which would apply only to the use of derivative evidence against the person questioned. In other words, any evidence obtained as a result of information given by that person during questioning cannot be used against that person. However, such evidence could still be used in criminal proceedings against other people. We Democrats believe that this is consistent with the purpose of this legislation and would not unduly hinder ASIO in its task of gathering evidence concerning terrorism, or the Australian Federal Police in its tasks of investigating terrorist offences.

Question negatived.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.30 a.m.)—I move opposition amendment (30) on sheet 2764:

(30) Schedule 1, item 24, page 18 (after line 23), at the end of section 34G, add:

(10) A person who is or has been before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

(11) A legal practitioner who is accompanying or has accompanied a person appearing before a prescribed authority for questioning under warrant may not

disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

(12) Subsections (10) and (11) do not apply to contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:

(a) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or

(b) section 22 of the *Complaints (Australian Federal Police) Act 1981*;

as the case may be.

This amendment provides for enforceable secrecy provisions governing disclosure of attendance at interviews. Given the nature and the possible context of the information being dealt with, it is appropriate that the prescribed authority be the judge of what can be said and to whom it can be said. As such, it ought to be an offence to breach any such order made by the prescribed authority in relation to these provisions. They apply to both the person who is the subject of the warrant and their legal adviser. I commend the amendment to the chamber.

Senator GREIG (Western Australia) (10.31 a.m.)—I move Democrat amendment (4) on sheet 2788:

(4) Amendment (30), omit paragraph 34G(12), insert:

(12) Subsections (10) and (11) do not apply to:

(a) contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:

(i) sections 10 and 13 of the *Inspector General of Intelligence and Security Act 1986*; or

(ii) section 22 of the *Complaints (Australian Federal Police) Act 1981*;

as the case may be; or

(b) contact between the person or the person's legal adviser and a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

I will not speak to this amendment. I spoke to that issue at some length when I addressed Democrat amendments (1) to (3). It goes to the heart of making it very clear that none of the provisions in section 34F, 34G or 34U in any way limit the right that I spoke of in terms of the doctrine of habeas corpus and ensuring that the legislation enshrines the right of a person to apply to a court to determine the legality of their detention and to seek remedy from a court in relation to their detention. Democrat amendment (4) to opposition amendment (30) is similar to those amendments which I have spoken to on sheet 2788, and I seek the committee's support.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.33 a.m.)—The government opposes opposition amendment (30) and Democrat amendment (4), but I will confine my remarks to the opposition amendment. What the opposition is saying is that anyone who appears before a prescribed authority must never disclose information about the questioning unless authorised by a prescribed authority to do so. A similar provision is proposed for lawyers who provide advice to those subject to a warrant.

When you look at the National Crime Authority model, secrecy obligations apply to those who provide information in a compulsory process. However, those obligations do not last forever; they exist until the law enforcement investigation is completed or until the person is released from that obligation. We believe that the opposition amendment goes too far. We believe that it could possibly deprive the person concerned of the option of seeking further legal advice or taking further action. We do not believe that it is necessary in the interests of security to have it in the form that secrecy lasts until the prescribed authority releases a person from that obligation. We believe that the opposition amendment is not necessary and that, in the process, the person who is the subject of that obligation is deprived of various remedies.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.35 a.m.)—I think those remedies are dealt with by Senator Greig's amendment to my amendment. On that basis, the opposition will be supporting both amendments.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that Democrat amendment (4) on sheet 2788 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that opposition amendment (30) on sheet 2764, as amended by Democrat amendment (4), be agreed to.

Original question, as amended, agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.36 a.m.)—by leave—I move government amendments (19) and (20) on sheet DT377:

(19) Schedule 1, item 24, page 19, after proposed section 34HAA, insert:

34HAB Inspector-General of Intelligence and Security may be present at questioning, taking into custody or detention

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning, taking into custody, or detention, of a person under this Division.

(20) Schedule 1, item 24, page 19 (after line 9), at the end of subsection 34HA(1), add:

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34HAB, or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b).

These amendments implement recommendation 10 of the Senate Legal and Constitutional References Committee's report on the bill. It is worth while remembering that that recommendation stated:

> The Committee recommends that the Bill should expressly provide that legal professional privilege is not affected.

It is the government's view that the Inspector-General of Intelligence and Security already has this capacity by virtue of his existing statutory functions. However, for the avoidance of doubt, the government amendments make it clear that the Inspector-General of Intelligence and Security may be present when a person is questioned, taken into custody or detained under warrant. We are saying that we just need to make this point very clear and place it beyond doubt. That is what these amendments do.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.37 a.m.)—by leave—I move opposition amendments (1) to (3) on sheet 2787:

(1) Amendment (19), heading to section 34HAB, omit "**questioning, taking into custody or detention**", substitute "**questioning or taking into custody**".

(2) Amendment (19), omit "questioning, taking into custody, or detention,", substitute "questioning or taking into custody".

(3) Amendment (20), omit ", or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b)".

The purpose of the opposition amendments is twofold: they take out the cross-references to provisions that have already been deleted from the bill or dealt with, and they ensure that the consistency of the key principle—that this is a questioning regime, not a detention regime—is maintained in relation to the government amendments. The opposition will support the government amendments, as amended by the opposition amendments I am proposing now.

Senator NETTLE (New South Wales) (10.38 a.m.)—The Greens are in a position to support these amendments to make it clear that the Inspector-General may be present during any questioning and detention regime. We recognise that the so-called safeguard of having the Inspector-General of Intelligence and Security there is a mechanism to provide some redress for people who are subject to this questioning and detention regime and warrant. We do not believe that it goes any-

where near far enough in terms of providing people with access to a range of different realms through which they can have their detention regime reviewed and through which they can make complaints about the way in which they were treated.

We have talked about the vulnerability of people who will be caught in this detention regime and we need to recognise that it is those people who are most vulnerable who need the easiest avenues, the avenues they are most familiar with, to seek redress for the way in which they have been treated, to ask questions and to be able to appeal the way in which they have been treated. People are not familiar with the Inspector-General of Intelligence and Security as a body they can appeal to. The Inspector-General is not on the same level as the Ombudsman, who I recognise is a part of this legislation as well. The Inspector-General is not on the same level as the Human Rights and Equal Opportunity Commission, from which intelligence organisations are exempt, and so there is no opportunity for people caught under this legislation to appeal on a human rights basis through the Human Rights and Equal Opportunity Commission. We will support these amendments as taking one step in a journey of accountability and safeguards that has not been taken with regard to this legislation by either the government or the opposition.

Senator GREIG (Western Australia) (10.40 a.m.)—I echo the comments of Senator Nettle and indicate that the Australian Democrats will also support the amendments proposed by the opposition on the basis that they will, to some degree, improve the accountability mechanisms of the legislation we are dealing with.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.41 a.m.)—I would like to make the position of the government clear. The opposition seeks to amend the government's proposed amendments. If those amendments succeed then the government will not be supporting its own amendments, which would then be in an amended form. We believe that the government amendments per se are sufficient. They carry out the recommendations of the Senate Legal and Constitutional References Committee. The opposition amendments would bring in an aspect which would change the regime of the bill. We have spoken at length about that previously and I will not go over that again. In case people think it is odd that the government opposes its own amendments when amended, that is why.

The TEMPORARY CHAIRMAN (Senator Cook)—There are two lots of amendments before the chair: government amendments (19) and (20) and opposition amendments (1) to (3). The question is that opposition amendments (1) to (3) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that the government amendments, as amended, be agreed to.

Original question, as amended, agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.42 a.m.)—I move government amendment (21):

(21) Schedule 1, item 24, page 20 (after line 9), after section 34J, insert:

34JA Entering premises to take person into custody

(1) If:

(a) either a warrant issued under section 34D or subsection 34F(6) authorises a person to be taken into custody; and

(b) a police officer believes on reasonable grounds that the person is on any premises;

the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) However, if subsection 34F(6) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

(a) commencing at 9 pm on a day; and

(b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into

custody under subsection 34F(6), either at the dwelling house or elsewhere, at another time.

(3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

34JB Use of force in taking person into custody and detaining person

(1) A police officer may use such force as is necessary and reasonable in:

(a) taking a person into custody under:

(i) a warrant issued under section 34D; or

(ii) subsection 34F(6); or

(b) preventing the escape of a person from such custody; or

(c) bringing a person before a prescribed authority for questioning under such a warrant; or

(d) detaining a person in connection with such a warrant.

(2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.

(3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or

(b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:

(i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and

(ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

This amendment inserts new proposed sections 34JA and 34JB into item 24 of schedule 1 of the bill. These are technical amendments to ensure consistency with the Crimes Act 1914. The new section 34JA makes it clear that a police officer has lawful authority to enter premises in order to take a person into custody in accordance with a warrant. It has always been envisaged that police may need to enter premises in order to take a person into custody. Police have a general power to enter premises when exercising powers under warrants. The government's amendments make it clear that these powers apply to action taken under warrants under the bill and substantially follow existing provisions in the Crimes Act. These amendments make it clear that the powers to take a person into custody are vested in the police and not ASIO.

New section 34JB provides that a police officer may use such force as is reasonable and necessary in order to take a person into custody and detain them pursuant to a warrant or a direction of a prescribed authority. Police officers, of course, have common law powers to use force in executing their duties. As a matter of safety for the public and for police officers themselves, it is sometimes necessary to use reasonable force to take a person into custody or detain them. The government amendment makes it clear that the common law powers of the police to use reasonable force extend to performing duties under a warrant. The Crimes Act includes specific limits on the use of force to ensure that police behave appropriately. For example, the Crimes Act provides that a police officer must not use more force than is necessary and reasonable. The government's amendment includes provisions based on those in the Crimes Act to ensure consistent standards are maintained.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.45 a.m.)—Can the minister provide the committee with an assurance that the

provisions being dealt with in this amendment go no further than the provisions that currently exist in the Crimes Act?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.45 a.m.)—I can give an assurance to the committee that that is the case: they do not go beyond what is currently in the Crimes Act.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.45 a.m.)—by leave—It might be appropriate for me to move the opposition amendments to the government amendments at this stage. I move opposition amendments (4) to (7) on sheet 2787:

(4) Amendment (21), paragraph 34JA(1)(a), omit "or subsection 34F(6)".

(5) Amendment (21), omit subsection 34JA(2), substitute:

(2) A police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

(a) commencing at 9 pm on a day; and

(b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time.

(6) Amendment (21), heading to section 34JB omit "**and detaining person**".

(7) Amendment (21), section 34JB, omit paragraphs (1)(a), (b), (c), and (d), substitute:

(a) taking a person into custody under a warrant issued under section 34D; or

(b) preventing the escape of a person from such custody; or

(c) bringing a person before a prescribed authority for questioning under such a warrant.

I am pleased to have heard the assurance that the minister has given in relation to not extending the current provisions that apply in the Crimes Act. The amendments that I am moving are similar to those moved to the previous government amendment that we were dealing with. Effectively, this change just removes cross-references to deleted provisions and ensures that we maintain the integrity of this regime as a questioning regime, not a detention regime.

Senator NETTLE (New South Wales) (10.47 a.m.)—I am wondering if the minister could tell us what part of the Crimes Act this is modelled on.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.47 a.m.)—Whilst we are obtaining those provisions, can I say that the government opposes opposition amendments (4) to (7). Amendment (4) would remove the references to the prescribed authority's ability to order that a person who fails to appear before it should be taken into custody and detained. We do not support the opposition's amendment in relation to the prescribed authority's powers. The government's position is that the prescribed authority should be able to order that a person is detained if, for example, they have failed to attend for questioning at the time specified in the warrant. Amendment (5) would have the effect of restricting the time for the execution of all warrants to between the hours of 6 a.m. and 9 p.m. This is unacceptable. Warrants issued under the bill are to be exercised immediately. They will, of their very nature, be critical, and we believe that immediacy is essential.

The government's amendments provide that, firstly, an order issued by a prescribed authority because a person has not appeared must only be executed between the hours of 6 a.m. and 9 p.m. unless there is no other way to take the person into custody. This is a different process from the warrant process. Secondly, warrants issued by an issuing authority for a person to be detained from the outset may be executed at any time. This is because these warrants are issued when it is necessary to take a person into custody and detain them immediately. To impose a time restriction on the exercise of these warrants would defeat their purpose. They are designed to be warrants of last resort and of course would be used in a circumstance when time is critical. I think we can really take it no further than that.

In relation to the Crimes Act provisions, what I said earlier was that we were making the powers clear—and I answered Senator Faulkner's question on that—and that we

were transposing the police powers exercised under the Crimes Act to the ASIO bill and that there was no extension of those powers. What you have to remember is that the regime under the ASIO bill is different from that under the Crimes Act, and the time for questioning is different. Of course those differences are understood, but the transposing of police powers from the Crimes Act to the ASIO bill is not extended. The provisions of the Crimes Act that we are talking about are 3ZB and 3ZC; 3ZB is 'Power to enter premises to arrest offender' and 3ZC is 'Use of force in making arrest'. They would be rather lengthy to read out here. I will table a copy of those provisions for Senator Nettle.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that opposition amendments (4) to (7) on sheet 2787 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that government amendment (21) on sheet DT377, as amended, be agreed to.

Original question, as amended, agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.52 a.m.)—by leave—I move government amendments (23) and (24) on sheet DT377:

(23) Schedule 1, item 24, page 21 (line 24), omit "subsection (3)", substitute "subsections (3) and (3A)".

(24) Schedule 1, item 24, page 22 (after line 27), after subsection (3), insert:

(3A) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.

The conduct of strip searches is governed by strict rules. The rules in the bill are taken from those in the Crimes Act and it was always intended that they should be consistent with the Crimes Act. Under the Crimes Act a person may not be searched in the presence of someone of the opposite sex unless the second person is a medical practitioner or a parent, guardian or other representative of the person and the person consents. The bill provides for medical practitioners to be present during a search but is silent in respect of parents, guardians or other representatives. In order to make the bill consistent with the Crimes Act, government amendments (23) and (24) amend the bill to allow a person to consent to the presence of a parent, guardian or other representative during a search, even if they are of the opposite sex.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.53 a.m.)—The opposition supports the government's proposed amendments. We believe they are improvements to the bill.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.54 a.m.)—I move government amendment (26) on sheet DT377:

(26) Schedule 1, item 24, page 28 (after line 5), after section 34NB, insert:

34NC Complaints about contravention of procedural statement

(1) Contravention of the procedural statement mentioned in section 34C of this Act may be the subject of a complaint:

(a) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or

(b) to the Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*.

(2) This section does not limit the subjects of complaint under the *Inspector-General of Intelligence and Security Act 1986* or Part III of the *Complaints (Australian Federal Police) Act 1981*.

This amendment will provide for the avoidance of doubt that contravention of the statement of procedures that the bill requires to be developed would be grounds for the making of a complaint to the Inspector-General of Intelligence and Security or the Ombudsman. The government is of the view that this has always been the case by virtue of the statutory powers of the Inspector-General of Intelligence and Security and the Ombudsman. However, in the interests of clarity, we are willing to include a provision to make this clear on the face of the legislation.

Senator GREIG (Western Australia) (10.54 a.m.)—I have a question for the minister in the context of complaints against procedures and authorities. I ask if the minister is aware that recent antiterrorism legislation passed by the New South Wales parliament would, among other things, seek to provide that certain police behaviour may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before a court, tribunal, body or person in any legal proceedings or restrained, removed or otherwise affected by proceedings in the nature of the prohibition or mandamus.

I realise that is state legislation and not what we are addressing here, but I ask the minister in that context: has the government sought any advice on the constitutionality of that state legislation? Also, more broadly, does the government have some kind of uniformity and consistency of approach for addressing state based antiterrorism legislation, which seems to be appearing on an ad hoc basis?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.56 a.m.)—Senator Greig is referring to state legislation. We have not sought advice in relation to it, but we do note that there are aspects of the state legislation that Senator Greig has alluded to that we have not included in the federal legislation because we do not think it is necessary or appropriate. You have to remember that the Carr Labor government has brought this legislation into place and the Commonwealth has nothing to do with it. Of course, we do not have those provisions in the bill, nor do we think they are appropriate. However, it is not necessary for us to seek any advice as to the constitutionality or otherwise of that state legislation. It is interesting to note that a state Labor government has enacted legislation that we believe should attract criticism. When one considers the criticism that this bill has received one wonders how that sort of legislation is passed without comment. It is interesting that no-one seems to be saying much about that. I note Senator Greig's point; it is a good one.

Senator BROWN (Tasmania) (10.57 a.m.)—The Greens, for one, have been very critical of that legislation. Would the minister outline his reason for describing that legislation as neither necessary nor appropriate?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.58 a.m.)—I did not say that the legislation was neither necessary nor appropriate; I said the provision that Senator Greig was referring to was neither necessary nor appropriate. That was about complaints against police officers. What Senator Greig was saying was that the New South Wales Labor government had removed the provision for making complaints about the behaviour of police officers. I am saying that that is a provision that we have not included in this federal legislation and we do not believe it is appropriate. I was not saying that the security legislation was not necessary; I was saying that this provision was not an appropriate provision to have and that we believe we have a balance with this bill that is not achieved in the New South Wales legislation.

Senator BROWN (Tasmania) (10.58 a.m.)—Why has the government not adopted that provision here? Why does the government see the Carr legislation as inappropriate?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.59 a.m.)—It is an obvious question and I thought that the answer was equally obvious. We have a complaints mechanism in relation to the behaviour of officers. We believe that is important. I think that, when you have law enforcement officers or officers from a security agency exercising powers, it is appropriate that there be a complaints mechanism. We have that across the board in relation to the Commonwealth government and Commonwealth agencies. I think that it stands to reason that you have a complaints mechanism to give the individual a course of redress.

Senator BROWN (Tasmania) (10.59 a.m.)—I agree with the government. The Carr government's removal of that provision is outrageous. It speaks for itself as being an anticipatory cover-up of misbehaviour against citizens and it is extraordinary that the Carr government has implemented that. Indeed by silence there has been support for

it from the relevant authorities in New South Wales. I ask the minister: the complaint mechanism is here; what is the outcome of the process when a person justifiably complains?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.00 a.m.)—The Ombudsman has the power of a royal commission in making recommendations, and the Inspector-General of Intelligence and Security also has those powers. Complaints against a police officer can be directed to the Inspector-General of Intelligence and Security and to the Ombudsman, and complaints against an officer from ASIO to the Inspector-General of Intelligence and Security. Both of those bodies can make recommendations to the government that are the equivalent of a royal commission's recommendations to the government. The government then takes appropriate action.

Senator BROWN (Tasmania) (11.01 a.m.)—Why is it not an offence for an officer to breach the provisions of this legislation?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.02 a.m.)—We should remember that if an officer commits an offence that officer is subject to the law. For instance, if an officer assaults someone during the course of questioning then that officer could be charged with assault. The normal laws apply in relation to things such as assaults and threats, notwithstanding the complaint mechanism in this bill.

One of the recommendations of the report on the bill by the Parliamentary Joint Committee on ASIO, ASIS and DSD was to include penalties for officials who did not comply with the safeguards in the bill. In the bill we have included that a person who knowingly contravenes a condition or restriction on a warrant, fails to make arrangements for a person to be brought before a prescribed authority immediately upon being taken into custody, contravenes a direction of the prescribed authority, fails to allow the subject of a warrant to contact someone they are entitled to contact, fails to provide the subject of a warrant with an interpreter if necessary, fails to treat the subject of a warrant humanely, or fails to follow the rules set out for the conduct of strip searches will commit an offence punishable by a maximum of two years imprisonment. We have set out breaches by an official which will attract a penalty. That came about as a result of a recommendation by the parliamentary joint committee, which carried out its inquiry earlier this year.

Senator NETTLE (New South Wales) (11.03 a.m.)—I thank the minister for outlining what happens if, in the implementation of this legislation, the process for warrants is breached—that it is listed as an offence under the act and there are penalties for it. Could the minister explain why, in relation to this amendment, which is about the procedural statement that shows the way in which the legislation will be implemented, if people breach the procedural statement should it not then be listed as an offence under the act rather than what we have currently, which is that a complaint can be made?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.04 a.m.)—For a start, I do not think the parliamentary joint committee made that recommendation—that is one aspect of it. The statement relates to operational matters and goes into some detail. We do not believe that it is appropriate or necessary to go that far in defining offences or breaches for officials. The list I have read out is comprehensive. Certainly, the complaint regime provides that, in the case of a breach of any of those provisions in the statement, a complaint can be founded, that complaint can be dealt with and action can be taken. We believe that, really, you cannot legislate for every possible breach that could occur. We therefore think that it is getting down into the weeds of the operation. It is better to have a complaints mechanism which covers those issues covered by the statement and then on top of that to have the provisions I have mentioned, which are offences. They really are comprehensive. I will not go through them again. Perhaps I could table that list.

Senator Brown—Or incorporate it.

Senator ELLISON—I seek leave to incorporate the list, and table it as well. That means you can have a look at it.

Leave granted.

The document read as follows—

One of the recommendations of the Parliamentary Joint Committee on ASIO, ASIS and the DSD's report on the Bill was to include penalties for officials who do not comply with the safeguards in the Bill.

The Government accepted the recommendation and amended the Bill accordingly.

A person who knowingly:

- contravenes a condition or restriction on a warrant;
- fails to make arrangements for a person to be brought before a prescribed authority immediately upon being taken into custody;
- contravenes a direction of the prescribed authority;
- fails to allow the subject of a warrant to contact someone they are entitled to contact;
- fails to provide the subject of a warrant with an interpreter if necessary;
- fails to treat the subject of a warrant humanely; or
- fails to follow the rules set out for the conduct of strip searches will

commit an offence punishable by a maximum of 2 years imprisonment.

Senator ELLISON—It is contravening a condition or restriction on a warrant, but that is really very wide and that is an offence. When you look at 'contravening a direction of the prescribed authority', that again is wide. Failing to treat the subject of a warrant humanely is an offence. That is very wide. I think we have really covered the actions of the officer as much as we can by this offence regime. The statement is another matter and that is appropriately dealt with by a complaint mechanism.

Senator NETTLE (New South Wales) (11.07 a.m.)—I would like to thank the minister for clarifying that the breaking of conditions of certain operational aspects of the issuing of a warrant and the conditions of a warrant are listed as an offence under the bill. The minister has also clarified that he does not believe that certain procedures relating to operational aspects of the questioning under these warrants should be listed as an offence under the bill. These procedures include ensuring that people are given adequate food, drink, medical care and breaks in questioning and transporting people into custody and the facilities where questioning could take place. I think the minister has made it clear that he believes it is appropriate that certain aspects of the operations of this warrant be listed as an offence. However, he does not believe it is appropriate for breaches of certain other operational aspects, such as those I just indicated, to be listed as an offence under the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.08 a.m.)—I would just make the point that the matters that Senator Nettle has raised could quite possibly found a prosecution for failing to treat someone humanely. That is why I said earlier that the provision of failing to treat someone humanely is wide indeed. But, once you get down to saying it is an offence to fail to provide someone with a cup of tea or coffee or something of that sort, it really does invite more of a limitation on the prosecution than a facilitation of the prosecution. We believe that the provision of failing to treat a person humanely is very broad indeed and could cover, I think, any of the concerns that anyone might have.

Senator NETTLE (New South Wales) (11.09 a.m.)—Due to the way in which this legislation and the procedural statement are written, it would be clear for the government to say that a break of the procedural statement, including all of the aspects that I read out, would be an offence under the bill. You do not need to go through each of the individual aspects of the procedural statement and list them as offences. Simply not following the procedural statement about the operations implemented under this legislation could be listed as an offence under the bill.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.09 a.m.)—I move opposition amendment (39) on sheet 2764:

(39) Schedule 1, item 24, page 29 (line 27) to page 32 (line 4), omit section 34U, substitute:

34U Legal advice during questioning

(1) Subject to subsections (2) and (3), a person appearing before a prescribed authority for questioning under warrant may be accompanied by a legal adviser.

(2) If the prescribed authority is satisfied on application by the Organisation that the legal adviser chosen by the person being questioned may prejudice the collection of intelligence that is important in relation to a terrorism offence, the prescribed authority can deny the person their legal adviser of first choice.

(3) In the circumstances mentioned in subsection (2), the prescribed authority must assist the person to locate a suitable legal adviser.

(4) If the prescribed authority is satisfied, on application by the Organisation, that there is a threat of an imminent terrorist act, questioning may commence before the arrival of the person's legal adviser.

Breaks in questioning to give legal advice

(5) The prescribed authority before whom a person is being questioned must provide a reasonable opportunity for the legal adviser to provide advice .

Removal of legal adviser for disrupting questioning

(6) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the prescribed authority may direct a person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.

(7) If the prescribed authority directs the removal of the person's legal adviser, the prescribed authority must assist the person to locate a suitable legal adviser.

Communications by legal adviser

(8) The prescribed authority must not refuse to authorise the legal adviser to communicate to a court, for the purposes of seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant, information relating to the questioning or custody of the subject in connection with the warrant.

This amendment provides a right to legal advice during questioning. I can summarise our amendments by saying that they provide that a person being questioned should have the right to legal representation of their own choice and a right to private consultation during questioning. Accepting that certain lawyers may prejudice an investigation, we say that provided the prescribed authority were satisfied, on application by ASIO, a person could be denied a lawyer of first choice, but in such circumstances the prescribed authority should assist the person to locate another lawyer. We also say that if the prescribed authority were satisfied—again, on application by ASIO—of a real and immediate threat to public safety, then, as we have canvassed previously in the committee, we believe it is appropriate that questioning could commence before the arrival of the person's lawyer.

It is worth remembering that one of the key concerns of the PJC right from the outset in relation to this bill was the lack of provision of legal representation. The government introduced amendments which met the PJC's concerns in part, with the government insisting that people not be able to have a lawyer for the first 48 hours of their detention if the Attorney-General is satisfied a terrorist offence may be committed. The government's proposed 48-hour time period without a lawyer is completely arbitrary. It cannot be justified. In fact, all the committees that have reviewed this bill have unanimously opposed it. The grounds for allowing 48 hours of detention and questioning without a lawyer essentially relate to an emergency situation and the possibility of a terrorist offence being committed. No argument has ever been provided to uphold the notion that an emergency means no lawyers. An emergency can only mean no waiting for lawyers. If the government are talking about security leaks, I think they have to ask themselves if they have got other weaknesses, other holes elsewhere in the dike. Why would you say of the profession which most successfully practises confidentiality that they are the ones to be kept out? There is no mention of the translators and the prescribed authorities themselves.

I am not suggesting, of course, that that is necessarily a problem. But it comes back to the fundamental principle that the govern-

ment puts forward: if you are in an emergency situation, you should not have a lawyer. We say that, if it is an emergency situation, we should not wait around—we should not have ASIO and the prescribed authority wait around for a lawyer. It is a very significant difference. In ordinary cases under the proposed regime, a person might be given two hours to contact a lawyer before questioning could start, but in urgent cases, where a terrorist attack might be imminent and intelligence is crucial, ASIO could put grounds to the prescribed authority to allow questioning to commence immediately. That is how the opposition believes the balance should be struck on this issue.

The government's proposed system of security clearing lawyers is quite problematic. Under proposed section 34AA, a person would become an approved lawyer based on a security assessment and any other matter that the minister considers is relevant. The Law Council of Australia stated that it was totally opposed to a regime where a person is granted access only to government approved and vetted lawyers. I would like to quote Mr Bret Walker SC from the Law Council, because I think he put this very well before the Senate Legal and Constitutional References Committee. He said:

> The notion of a government approval necessary in order to be a lawyer to represent the interests of and to be present ... for people who have been subjected to very serious questioning otherwise in secret by the executive government is, in my view, extremely dangerous. You must not have, in my view, the capacity for executive government ... to vet the lawyers who can be there in order to be a physical, mental, institutional inhibition on an abuse of power by the executive government. It seems to me that there is something very important about 'lawyer of one's own choice', once one puts aside the fact, of course, that quite often one does not have a practical choice if one does not have any money.

Of course, Mr Walker preferred the New South Wales Crime Commission model, stating that there might be circumstances where ASIO could show grounds to the prescribed authority why a particular lawyer should not appear. He said:

> I see absolutely no reason why that would not work, with grounds shown to the prescribed authority. There is the sanity check; this is not just paranoia. The profession fears that, under the pretext of approving lawyers, there will be a determined effort to remove all lawyers generically. That is, it will not be an objection to a lawyer because of what he or she has or has not done in the past; it will be an objection to lawyers, and it will be very easily dressed up as an objection to particular people.

Again, this is a difficult issue on which to get the balance right. But we go back to a fundamental principle—that is, that a person should have the right to legal representation of their own choice. That is the fundamental principle which this parliament has always defended and which committees of this parliament looking into this bill have recently strongly defended. It is certainly a right which the opposition, and I hope the Senate, does not want to move away from. But we have accepted that there are emergency situations and, if there is a real threat to public safety, then we say that ASIO—obviously in the presence of the prescribed authority, which is a very important safeguard—can commence questioning. We have also accepted that ASIO might want to make a case about certain lawyers it believes can prejudice an investigation. If they make such a case and the prescribed authority is satisfied about such a case, then the opposition's approach ensures that, in that sort of situation, the prescribed authority should assist a person to locate another lawyer. I think that this is a regime that deals effectively and in a principled way with the important issues of legal advice, the right to legal advice and legal representation during questioning.

The Senate references committee has done an excellent job in ensuring that we have a balanced outcome in relation to this important principle. It is not limited to the Senate references committee; this has been a strong view of the JPC, a strong view that has been defended and protected before this Senate and in this parliament up until this legislation, and it has been defended in equivalent parliaments around the world, as senators would be aware.

We say that this fundamental principle of the right to legal advice should not be breached in relation to this legislation. We say that the Senate ought to show the gov-

ernment the way through. The Senate committee system has shown the appropriate wit and capacity to deal with an urgent and immediate threat to public safety. It is a real concern and we need to deal with it. If the prescribed authority is satisfied of concerns that ASIO might have in relation to a particular lawyer who might prejudice an investigation, that needs to be dealt with. After a lot of hard work, we see a proposal before this committee where an appropriate balance is achieved, and I commend this amendment to the Senate.

Senator NETTLE (New South Wales) (11.23 a.m.)—I want to ask Senator Faulkner a question about the amendments. The Australian Greens will be supporting the amendments and supporting the right of people questioned and detained under this regime to have access to a lawyer. Senator Faulkner has already raised the issue that this form of amendment allows capacity for questioning to begin without a lawyer if there is a threat of an imminent terrorist act. It also allows a legal adviser whom the prescribing authority believes to be disrupting questioning to be removed.

We have had amendments before that talked about giving the person being questioned under this regime information as to their rights to access an interpreter, to access a lawyer and to have explained to them who is present. I ask Senator Faulkner: in the regime that is being proposed by the opposition, if questioning began because of an imminent terrorist threat and took place for four hours without the presence of a legal adviser, when would the individual detained be given and be read their rights? Would that occur without the legal adviser present or is there provision for that to occur after the four hours when a legal adviser is present?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.25 a.m.)—I thank Senator Nettle for her questions in relation to this. It does come back, as we have canvassed before in this committee stage, to the importance of the prescribed authority and the role of the prescribed authority. You must remember that in this emergency situation that we speak of, when there might be a real and immediate threat to public safety, which is something that I think this parliament has to take account of, where a person may be questioned without the presence of a lawyer—the opposition believes it has to contemplate such a circumstance and that a regime has to contemplate such a circumstance—the prescribed authority would be present. We argue very strongly for a prescribed authority of seniority and standing, a prescribed authority who will ensure appropriate safeguards and appropriate protection. It is very important, obviously, in the sort of circumstance that you speak of.

I would envisage advice being provided to the person being questioned—it would obviously be in the hands of the prescribed authority—at the earliest available opportunity. As I understand the broad thrust of what the government proposes in relation to the statement of procedures and the like, there would be no suggestion that a person would not be informed to that level of detail of their rights and what was occurring in terms of the procedures from the moment the process commenced. I am not sure why Senate Nettle thinks this might wait for a four-hour period. I would not contemplate that it would take a great length of time. It could be done as the process began. I think that would be a responsibility the prescribed authority would take very seriously, particularly in the circumstance where a lawyer was not present.

Senator HARRIS (Queensland) (11.28 a.m.)—I rise to indicate that One Nation will support Labor amendment (39). I would like to pick up the issue that Senator Nettle has raised, particularly in relation to proposed section 34U(8). I would like to direct my questioning to the minister, because I believe it is very important that we hear from the minister how he sees this process being carried out. An earlier opposition amendment successfully amended section 34E(3) by replacing 'at least once in every 24-hour period' with 'at least once in every four-hour period'.

I believe Senator Nettle's question is very important. Does that four-hour period start from when the person is first questioned in the presence of the prescribed authority, or does it only start when subsequently that

person has legal representation? This ties in very importantly with opposition's amendment (39) in which subsection (8) states:

> The prescribed authority must not refuse to authorise the legal adviser to communicate to a court, for the purposes of seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant, information relating to the questioning or custody of the subject in connection with the warrant.

The two are very closely related. This subsection of the amendment that we are debating now, if successful, will place a requirement on the prescribed authority that they must not hinder the legal representative's ability to make that application. It is very important to clearly determine when the four-hour period starts. I seek that information from the minister.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.32 a.m.)—No doubt the minister may care to comment on these matters and of course Senator Harris can progress the issues that he wishes to with the minister. I think we have to be absolutely clear about this. The clock starts when the first question is asked. I cannot make that any simpler. I think that is a very clear and precise answer to the question that Senator Harris has asked and, although he has not directed it to me—he has directed it to the minister—I have taken the opportunity to answer. I do not know whether Senator Harris heard the response I gave to Senator Nettle, but the prescribed authority is obligated to explain certain things to anyone being questioned, and of course that would occur straightaway.

The key point here—and I think it is important that this committee understands it—is that we are saying a person is always entitled to have a lawyer present from the start, but the exception is in relation to questioning. Questioning can start straightaway in an emergency situation. We have proposed a further safeguard: questioning in an emergency cannot be extended beyond four hours without a lawyer being present. I think the key point—and the only way that I can sum this up in relation to the principle here, because it is an important principle—is that there is no suggestion that an emergency situation means no lawyers or no right or entitlement to a lawyer. There is no suggestion of this at all. None is contemplated by the opposition; none is proposed by the opposition.

We do say that it is up to ASIO to satisfy the prescribed authority in relation to the immediate threat to public safety. In that situation there is no waiting for lawyers. So there is no waiting for lawyers in an emergency. This is not a suggestion that affects rights or entitlements. That is clear, and I do not think that we should resile from that. The issue is: do you wait in an emergency for a lawyer to be present? The opposition says, 'No, with the safeguards that are built into the bill, we shouldn't.' As I have said before, this is the sort of issue that has been addressed at some length, and it is an important distinction. I think it needs to be made absolutely clear, as we debate this very important amendment, which goes to the right to legal advice and representation, that there is no suggestion at all that that could or should be abrogated in any way.

I draw that distinction to make absolutely clear that there is no suggestion that an emergency situation means no lawyers or no right to legal representation. It does mean on those occasions where there is a real and immediate threat to public safety that, if the prescribed authority is satisfied that is the case on application by ASIO, you do not wait for lawyers and the questioning starts. In my view, that reinforces how essential it is for the prescribed authority to have such seniority and standing in the community that the Australian community can have confidence in such a regime.

Senator NETTLE (New South Wales) (11.37 a.m.)—I recognise the comments by Senator Faulkner that these amendments are not designed to remove the right to have a lawyer at all. I do not make the suggestion that they do that, because they do allow questioning to start without waiting for a lawyer. I accept your statement that you are not suggesting that a lawyer would not subsequently arrive, that we now have in place a regime where they need to arrive after four hours and that that time frame cannot be extended to eight hours until a lawyer is there. I

am not suggesting that you are taking away the right to a lawyer. I think you clarified that, and the assumption is that you have the right to a lawyer. But I think it is important to point out that you can start the questioning without a lawyer being present, so this model does allow for a regime which involves questioning without a lawyer being present.

Senator Faulkner—In certain circumstances: in an emergency when there is a real and immediate threat to public safety.

Senator NETTLE—Thank you, Senator Faulkner; that is correct. When we talked about it before, we pointed out that we are allowing a lawyer not to be there in those circumstances. With respect to when a person's rights are read to them, particularly concerning their right to an interpreter and their right to a lawyer, the way that that is currently written in the legislation is that it occurs as soon as the person first appears before a prescribed authority, which was what Senator Faulkner was talking about before. If that occurred without a lawyer being present, I would want to ensure that there was the capacity, once a lawyer did become present, for that lawyer to be able to ask that those rights be reread so that the lawyer was aware of those rights, not just the individual who heard them when they first came before the prescribed authority. It is likely that in this instance that they might not remember what those rights were, so this would allow the capacity for the rights to be reread when the lawyer was there. I imagine that the lawyer would be able to ask the prescribed authority about that to ensure that did occur.

One government amendment that we passed in this committee process related to the obligation to inform a person being questioned about the reason for a particular person's presence. This was describing the role and function of those individuals who were there for the questioning. That particular amendment does stipulate that this need only be complied with once. It does not rule out that subsequently that information could be provided once a lawyer was present. The reason I raise these concerns is to ensure that, if a lawyer became present subsequently and wanted to hear the rights read out, they would be able to have that done. I imagine a lawyer would also be able to look at them in the legislation, although they may not be available in the questioning facility at the time. I just wanted to explain my concern about ensuring that they are made aware of their rights in the presence of a lawyer, given that the first instance in which they were read their rights may not have been in the presence of a lawyer.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.41 a.m.)—Senator Nettle raises a scenario that might realistically occur under this regime. I accept it is one of any number of scenarios that might occur. At the end of the day, surely we depend on the experience and the commonsense of the prescribed authority to be able to make decisions about, in the case of this scenario, what seems to me to be a perfectly reasonable request from a lawyer who arrives in an emergency situation some time after the questioning has started. Senator Nettle raises that scenario. It seems to me that an explanation of rights by the prescribed authority would take a minute or two. I think we have to depend here on the good sense of the prescribed authority.

You raise this hypothetical scenario of a reaction by a prescribed authority and the need to take a minute or two to go through those details again in the presence of a lawyer. I imagine a prescribed authority would determine to do that. Effectively, this process is being overseen by the prescribed authority and it is making that decision. When we are legislating and looking at the provisions of the bill, I think our obligation is to try and ensure that we provide that authority and responsibility, as I have said consistently, to people of standing and seniority in the community, people the community can have confidence in, people whom we would expect to bring the appropriate level of experience, good sense and judgment to such decisions. I suspect that, whatever scenario might be contemplated by the senator, we are inevitably going to be in a position to say that this is a matter for the prescribed authority. But we want to ensure that under such a regime we can have maximum confidence in the capacity of the prescribed authority to make sensi-

ble and appropriate decisions about these sorts of issues.

Senator GREIG (Western Australia) (11.45 a.m.)—I move Democrat amendment (5) on sheet 2788 as an amendment to the opposition amendment:

(5) Amendment (39), omit paragraph 34U(8), substitute:

Communications

(8) The prescribed authority must not refuse to authorise the person being questioned or the legal adviser of that person to communicate with a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

I think this amendment might go some way to improving this scenario a little. I have spoken to this before. To recap, Democrat amendment (5) would replace the very similar provision in Labor's amendment (39) but, unlike Labor's amendment, it would quite deliberately extend the right to the person being questioned to communicate with a court. Labor's amendment would limit the right simply to a person's legal adviser. Our amendment would seek to recognise that in some circumstances the person being questioned under the act might choose not to take legal advice—that is unlikely but possible—and might nevertheless want to pursue their right to seek a remedy, relating to the detention, from a court. This amendment provides that the person being questioned or the person's legal adviser may contact another legal adviser for the purposes of seeking a remedy from a court. This simply recognises that the person's legal adviser is likely to be a solicitor who in all likelihood would want to brief a barrister for the purposes of any court proceedings.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.46 a.m.)—The government opposes both the Democrat amendment and the opposition amendment. The Senate Legal and Constitutional References Committee considered the suggestion carefully. In part, the government has put into this bill an acceptance of what the parliamentary joint committee said in relation to legal representation. We believe that the regime of an approved lawyer should be set in place to avoid the possibility of an argument, when a person is brought in, over whether their lawyer is appropriate or not. There should be a panel of approved lawyers in place and the person can have access to those lawyers without any need to canvass their security status or otherwise. We believe that having that put in place in advance is much more transparent.

We also note that subsection (4) of the opposition amendment states:

If the prescribed authority is satisfied, on application by the Organisation, that there is a threat of an imminent terrorist act, questioning may commence before the arrival of the person's legal adviser.

There could well be questioning in the absence of legal advice. We believe that the opposition's amendment lends itself to the possible scenario where the suitability of a lawyer is being canvassed and time is ticking away. In this sort of environment, time is of the essence. We want to see the warrant being executed, the person being brought before the prescribed authority immediately and access to the lawyer being straightforward. The approved lawyer process would allow that, and you could get down to the questioning as soon as possible in the presence of a lawyer. That is all regulated by the prescribed authority. It is a much more certain scenario than that canvassed by the opposition, where there could still be a delay in working out whether the lawyer is suitable or not. I think that sort of certainty is what we need when dealing with the important scenarios that we are envisaging with this bill. We certainly oppose both of those amendments. We believe that the government's regime is appropriate. We have taken on board what we believe to be the workable aspects of the recommendation of the parliamentary joint committee, but we do not see this as being as clear and certain as it needs to be.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that Senator Greig's amendment to the opposition amendment be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that Senator Faulkner's amendment, as amended, be agreed to.

Senator HARRIS (Queensland) (11.50 a.m.)—I come back to the original question that I put to the minister. By way of explanation to Senator Faulkner, this bears no inference on his answer; I accept Senator Faulkner's answer. My specific reason for directing the question to the minister is that section 15AB of the Acts Interpretation Act refers to extrinsic material in the interpretation of an act. That section lays out very specifically what a court would be required to take into consideration. My concern is that in the committee stage of this debate the comments by the opposition might not carry the weight of a force in law that an answer from the minister would. It is for that reason that the question was directed to the minister. I put the question to the minister again. Proposed section 34E, subsection (1), states:

> When the person first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the person of the following ...

Then the bill goes through a series of paragraphs, (a) to (e), including subparagraphs (e)(i) and (e)(ii). In proposed section 34E(2) the bill then deals with a separate issue. It states:

> To avoid doubt, subsection (1) does not apply to a prescribed authority if the person has previously appeared before another prescribed authority for questioning under the warrant.

In proposed subsection (3), the bill then deals with the issue on which I am asking for clarification from the minister and states:

> At least once in every 24-hour period during which questioning of the person under the warrant occurs, the prescribed authority before whom the person appears for questioning must inform the person of the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant.

My question to the minister is: does proposed section 34E(1) continue through to and include proposed subsection (3)? For clarity, I am saying that there is no joining 'and' or 'or' between the proposed subsections. Proposed subsection (1) clearly sets out that the prescribed authority must carry out a certain list of issues. Does that also include proposed subsection (3) when the person first appears?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.54 a.m.)—Just to make sure that I have got this right, I think Senator Harris is saying that proposed section 34E(1) states what must be explained in the first instance when the person is brought before the prescribed authority. Of course, when the warrant is renewed—that is, when the period of detention is extended—on a rolling basis at the commencement of each new period, the person will have it again explained to them that they may seek from the Federal Court a remedy relating to the warrant or the treatment of the person.

I think Senator Harris is asking: do these two proposed subsections operate in isolation of each other or are they are linked? As I understand it, in relation to the first advice—that is, at the initial appearance—there is an inclusion of reference to a Federal Court judge. When the warrant is extended, again the person is told—and on each occasion of an extension the person is told—that they have this avenue of action to a Federal Court judge. So the person will get the big explanation at the beginning and then, at subsequent extensions, they will get the further reminder that they are entitled to go to a Federal Court judge if they feel aggrieved. I think that explains it.

Senator HARRIS (Queensland) (11.55 a.m.)—I thank the Minister for Justice and Customs for his answer. Just for clarity, I am asking the minister: among that group of things that the prescribed authority must do at the start when the person is first brought in, because there is no linkage between the paragraphs under proposed section 34E, is the prescribed authority required to inform that person of their rights under proposed subsection (3) at the initial stage? In other words, regarding a person who is taken in to be interviewed and who has the issues read to them relating to proposed subsection (1), are they informed of the information in proposed subsection (3) the first time they go in to be interviewed?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.57 a.m.)—I will clarify my remarks, because my previous remarks do need a slight correction. I said that, at the extension of each warrant, a person will get advice as to the remedy to the Federal Court. In fact it is better than that, because they will get that reminder every 24 hours. That may or may not coincide with an extension of the warrant, but it matters not. The fact is that the minimum requirement is that a person gets that reminder once every 24 hours. In response to Senator Harris's question, proposed section 34E(1), regarding that initial advice given when a person is brought before the prescribed authority, states:

> When the person first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the person of the following ...
>
> … … …
>
> (f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant ...

If you look at proposed subsection (3) you will see those words repeated, and that is where you get the tie-up.

Senator HARRIS (Queensland) (11.58 a.m.)—For the record, I thank the Minister for Justice and Customs for stating that very clearly.

Original question, as amended, agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.58 a.m.)—I move government amendment (27) on sheet DT377:

(27) Schedule 1, item 24, page 34 (after line 26), after section 34W, insert:

34WA Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

Government amendment (27) implements recommendation 10 of the references committee's report. I touched on this earlier in relation to the previous amendment. It is not the government's intention to affect the application of the law relating to legal professional privilege. This amendment makes it clear on the face of the legislation, for the avoidance of doubt. The provision is consistent with existing provisions in the Crimes Act, and I think it speaks for itself.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.59 a.m.)—It is supported by the opposition. It is a good amendment. I note again a bit of cherry-picking by the minister in relation to—

Senator Ellison interjecting—

Senator FAULKNER—It is an important point. So many of the government amendments that have been moved have come out of the Senate Legal and Constitutional References Committee report that the government was debunking. Anyway, you got this one right, Minister, and it has the warm support of the opposition.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.00 p.m.)—I move government amendment (28) on sheet DT377:

(28) Schedule 1, item 27A, page 35 (lines 21 to 33), omit subsection (1A), substitute:

(1A) The report must include a statement of:

(a) the total number of requests made under section 34C to issuing authorities during the year for the issue of warrants under section 34D; and

(b) the total number of warrants issued during the year under section 34D; and

(c) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority); and

(d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(a) and the total of all those hours for all those persons; and

(e) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be

taken into custody, brought before a prescribed authority and detained); and

(f) the following numbers:

(i) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(b);

(ii) the number of hours each person spent in detention under such a warrant;

(iii) the total of all those hours for all those persons; and

(g) the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year.

(1B) A statement included under subsection (1A) in a report must not name, or otherwise specifically identify, any person to whom information provided in the report relates.

Note: Subsection (4) lets the Minister delete information described in subsection (1A) from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

Government amendment (28) implements recommendation 25 of the references committee's report. The bill already requires ASIO to include specified information in its unclassified annual report. These amendments add to the information that is to be included, following the recommendation of the Senate committee. Recommendation 25 states:

The Committee recommends that proposed subsection 94(1A) should be amended to require the report to include information about the total number of hours of questioning under warrants, the hours of questioning and length of detention in respect of each person questioned, and number of warrants for questioning heard before each Prescribed Authority.

This amendment makes it clear that the information provided must not identify the persons involved. This, of course, is to protect the privacy of the subjects of the warrants and prescribed authorities. This amendment also clarifies that, in accordance with the existing provisions of the ASIO Act, the minister may delete information from the copy of the report tabled in parliament, if it is necessary in order to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's internal affairs or privacy of individuals. I note that, in addition to the Attorney-General and other members of the National Security Committee, the Leader of the Opposition, the Inspector-General of Intelligence and Security and the Parliamentary Joint Committee on ASIO, ASIS and DSD are briefed on the contents of ASIO's classified annual report before any material is removed prior to publication of the unclassified version. I commend this amendment to the chamber.

Senator HARRIS (Queensland) (12.02 p.m.)—I would like to make a brief comment in relation to government amendment (28), which goes to the content of the report that is brought before the house. My comment goes to the footnote under (1B), which states:

Subsection (4) lets the Minister delete information described in subsection (1A)—

that is, the actual contents of the report—

from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

In that we do have an amendment that will allow the reporting of the total number of requests by ASIO and the hours of inquiry, the amendment itself also gives the minister the ability to rule that certain instances may not be part of that report. While I support the government's amendment, I want to put clearly on the record that the real figures that this chamber may be looking for as a result of that report may not be factually correct, because the minister has the ability to override the report and take sections of it out.

Question agreed to.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.04 p.m.)—I seek to reconsider an amendment that the committee has dealt with: opposition amendment (6) on sheet 2764, which was agreed to on Tuesday. I have circulated two amendments that would supersede that amendment. With your indulgence, Chair, I would like to deal with that now, if I could.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—You may, Senator Faulkner.

Senator FAULKNER—I seek leave to move amendments (1) and (2) on sheet 2976 together.

Leave granted.

Senator FAULKNER—I move:

(1) Definition of ***superior court*** as amended, add at the end "or a Territory or an equivalent".

(2) Section 34B as amended, omit the section, substitute:

34B Prescribed authorities

(1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.

(2) If the Minister is of the view there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or their equivalent) and has done so for a period of at least 5 years.

(3) If the minister is of the view that there are insufficient persons available under (1) and (2), the minister may, by writing, appoint as a prescribed authority, a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President and who is enrolled as a legal practitioner of a Federal Court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.

(4) The Minister must not appoint a person under subsections (1), (2) or (3) unless the person:

(a) has by writing consented to being appointed; and

(b) the consent is in force.

(5) A person can only be appointed as a prescribed authority for a single three-year term.

(6) The Minister must cause to be kept a list of names of people who have consented to being appointed as prescribed authorities.

(7) If a person whose name is included in the list requests the Minister to have their name removed from the list the Minister must cause the list to be amended to give effect to the request.

(8) The Minister may, on his or her own initiative, cause the name of a person to be removed from the list.

(9) A person appointed as a prescribed authority in accordance with this section shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he or she shall be paid such remuneration as is prescribed.

The amendments that were moved on Tuesday by the opposition—and agreed to by the Senate—on the issue of retired judges serving as a prescribed authority were moved for the purpose of achieving a workable and constitutionally valid regime for questioning for the purpose of obtaining intelligence that may prevent a terrorist incident. It was in that context that we proposed, as recommended by the Senate Legal and Constitutional References Committee, that retired senior judges serve as prescribed authorities. We did so to ensure that prescribed authorities were persons of appropriate legal authority and independence while avoiding potentially complicated questions regarding the use of judicial power.

During this committee stage, the government has expressed practical concerns regarding the availability of a sufficient number of suitably senior retired judges who would be both able and willing to act as the prescribed authority. The Attorney-General has also shown the opposition confidential legal advice to the effect that the employ-

ment of serving judges in the regime proposed by the government would withstand constitutional challenge. Without disclosing that advice, we note that the constitutionality of employing serving judges as prescribed authorities in a questioning regime is arguable.

Quite clearly, Labor's preference remains for retired senior judges to serve as prescribed authorities but, in a spirit of practical compromise, we now propose, in the two amendments before the chair, that in the event that sufficient retired judges are not available to serve as prescribed authorities the Attorney-General may appoint serving state judges who consent to perform that function. Even further, we are proposing that in the event that there are insufficient persons in either of those two categories—retired judges and serving state judges—the minister may appoint an appropriately experienced and qualified member of the AAT.

This category will increase the pool of persons available to serve as a prescribed authority by a further 21. There are 21 experienced and qualified members of the AAT in that third category. There are 12 judges who are presidents or presidential members and nine who are deputy presidents. Our purpose in moving these amendments is to ensure that the questioning regime for ASIO, which is reflected in this bill as now amended—a regime that we argue and will continue to argue is appropriate and necessary—will not fail on the basis of what is essentially a technicality. While we believe that there are sufficient retired judges to undertake the task, we do not want to leave ASIO's hands tied in circumstances where there may not be.

We expect that after this legislation is passed the Attorney-General will contact state and territory governments to identify the current and serving judges who might be available to serve as the prescribed authority. If there is any delay in filling the first and second pools then it should be possible to use the third pool—in other words, the appropriately qualified AAT members. We say that this is a flexible and workable mechanism which should facilitate the introduction of this questioning regime as soon as possible. I commend these amendments to the Senate.

Senator HARRIS (Queensland) (12.11 p.m.)—After quickly perusing Labor's amendments to the previous amendment, I would like to ask Senator Faulkner a question. Under the previous amendment, Labor had in 1(c) a reference to an age limit on the judiciary. That does not appear to have been picked up in the new amendments that you are proposing. Is there a particular purpose for that or was it just an oversight?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.12 p.m.)—It is not an oversight, and the senator is correct to point it out. The senator might also point out the other change in relation to the prescribed authority going to judges who have served for a period of five years. The effect of reducing the time period from 10 years to five years increases the size of the pool. It is also true that removing an age constraint also increases the size of the pool. I cannot say by how many judges the pool will be increased.

The clear approach the opposition are proposing here is a cascading amendment. We want to try and ensure that the prescribed authority is a retired judge, and I am sure increasing the pool of retired judges will assist the Attorney-General in having an adequate panel to draw from. As I have indicated, I do not want to see some logistical or technical problem mean that there are insufficient judges to undertake this task. That is the spirit in which the opposition have proposed this amendment. You are correct to point out that change and I have identified another one, possibly to save you asking a follow-up question. The amendment has been worded in this way to ensure that we maximise the pool of retired judges and that, if a retired judge is not available, we maximise the available pool of judges serving in the state jurisdictions—that is, in the state or territory supreme courts, district courts or their equivalent. Then it cascades into a third tier, which I explained at some length in my earlier contribution in relation to judges who are presidents, presidential members and deputy presidents of the AAT. It is quite deliberate and it has the effect of widening the

pool from which the prescribed authority can be drawn.

Senator HARRIS (Queensland) (12.15 p.m.)—Through you, Mr Temporary Chairman Lightfoot, I thank Senator Faulkner for his explanation and I indicate for the record that One Nation will support the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.15 p.m.)—The government opposes this amendment for a number of reasons. Most importantly, it believes that the amendment is unworkable and also unconstitutional, and perhaps I can address that second aspect first. The parliamentary joint committee included in its discussion the status and role of the prescribed authority. It stated:

> The problem arises, however, that if a Federal Magistrate was to perform the role of a PA—
>
> prescribed authority—
>
> as set down in the Bill, then, based on evidence provided to the Committee, the High Court might find the Bill unconstitutional.

I will not go into much more detail than that other than to say that, if you look at the committee's report, it talks about how a judicial officer—a judge or a magistrate—can issue a warrant but not be a prescribed authority, for the reasons outlined in the case of Grollo and Palmer. We believe that the parliamentary joint committee made a good point, and our advice is certainly that the proposal that you have here, with a judicial officer acting as a prescribed authority, is indeed a problem. We have done it in relation to the AAT, because we believe that is appropriate and does not risk the problems that I have outlined in relation to this amendment.

We also say that our proposal—and I do not want to go through the whole debate again—is appropriate. On the one hand, we have our Federal Court judges and magistrates issuing the warrants, and on the other we have our AAT members being prescribed authorities. Then, to supplement those people, we have the retired judges who can act as either, but not both, in the same case of a particular person. We believe that is much more workable.

We have already said that you cannot rely just on retired judges, because there are insufficient numbers, and we have not heard from the opposition where it says the numbers are in relation to that. As best we can, we have provided information on that. We do believe that in this particular amendment the unconstitutional aspect of this is quite clear, and we fail to see how the opposition can persist with this amendment, particularly given what the joint parliamentary committee has said. We also think that it is unworkable, and I will not go over the previous arguments that we have raised in relation to that. For those reasons, the government opposes this amendment.

Senator NETTLE (New South Wales) (12.19 p.m.)—I rise to indicate that the Australian Greens will be supporting this amendment. We have already had a lot of debate about who should be an appropriate prescribed authority. We believe that the model put forward by the opposition is an improvement on the existing model, for a range of reasons. Constitutionality, which we talked about previously, is one—trying to make a distinction between those people who are prescribed and issuing authorities and the executive of the government, and trying to further differentiate between those two groups to minimise the impact and opportunity for influence of the executive government upon those people who are employees of the government making these decisions, such as the Administrative Appeals Tribunal. I recognise that this model is not as solid on that aspect as the previous model put up by the opposition, but I recognise and acknowledge what Senator Faulkner has said about trying to increase the number of people who could act as prescribed authorities.

I am wary of the arguments that the government initially put forward to say that we did not have enough retired judges to fulfil this role. As I said previously, the reason that I am wary of this argument is that, during the committee process, we heard from Dennis Richardson that this legislation would have been used two or three times if it had been in place since September 11. Premising an argument, as we saw the government do previously in relation to the opposition's regime,

on the basis that there would not be enough retired judges to fulfil this role indicates that perhaps the government is assuming this legislation would be used more frequently than the Director-General of ASIO indicated in the committee process that it would be used.

So we are in a position to be able to support this amendment but we are wary of the premise put forward by the government, which has been responded to by the opposition with this amendment, that there simply are not enough judges to fulfil this role. Given the reason that we are wary, we hope that that is not an indication that the government intends this legislation to be used more frequently than the Director-General of ASIO indicated during the committee process.

Senator GREIG (Western Australia) (12.22 p.m.)—I ask either Senator Faulkner or perhaps the minister two questions. Paragraph (3) of Labor amendment (2) refers to an AAT member, or at least the 'President or Deputy President and who is enrolled as a legal practitioner of a Federal Court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years'. Firstly, is it the case that there is only one president and one deputy president, or are there a number of deputy presidents? Secondly, is it possible that an AAT member could be enrolled as a legal practitioner but not practising as such? Is it possible to be on the books, as it were, but not employed within that system, or does it follow that you would have to be on the books in order to be on the AAT in the first instance?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.23 p.m.)—There are a number of deputy presidents. I can answer that question. I am sorry, I missed the second question.

Senator GREIG (Western Australia) (12.23 p.m.)—Minister, I asked: is it possible that a practitioner could be enrolled but not working as such? In other words, could they be on the books as being recognised officially as a legal practitioner but not necessarily be working within that field? Or is that a contradiction given that, to be on the AAT in the first place, you would need to be practising?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.23 p.m.)—Certainly a practitioner can be enrolled without practising. You could have a practitioner who has been enrolled for at least five years but has not necessarily been practising for five years. That answers Senator Greig's question.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.23 p.m.)—Very briefly, I do not accept the arguments that have been put forward by the minister on this. The opposition's proposal is at least as constitutional and at least as workable as the government's model. If it is not constitutional, you have to ask yourself—as does this committee—why this was in the original bill. The truth is that, on the best advice that is available to the opposition and in relation to federal and state retired judges, there is a pool of at least 100 in that category as well as, of course, the extra 21: as I understand it, 12 judges who are presidents and presidential members, and nine who are deputy presidents. I think this is a very good and positive amendment and I urge the committee to support it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.25 p.m.)—Just for the record, we have always had members of the Administrative Appeals Tribunal as prescribed authorities. That was in the original bill; it has always been there. We did that for constitutional reasons.

Senator GREIG (Western Australia) (12.25 p.m.)—If this amendment were to be successful and thereby extend the opportunities for issuing warrants to come from serving state judges as well as those that are already proposed, can the minister give an indication as to what extent that would increase the number of people available to process the appropriate paperwork? Could the minister perhaps indicate—I know it is a difficult question, given the uncertainty of this—that, given the number of both state and retired judges who would then be available to facilitate this, to what extent would the minister consider that option (3)—that is, going to serving AAT presiding officers—be

utilised? I can perhaps summarise that a better way: if the amendment is successful and we are dealing with both serving state judges and retired chapter III court judges, how many times would the minister consider it necessary to go to the possibility of seeking approval from AAT officers?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.26 p.m.)—I think the basic problem we have is that the proposal by the opposition is unconstitutional. We say that you merely have to look at the parliamentary joint committee, as I said, when it looked at this situation. It said that, with regard to the federal magistrates, there was a problem. We say that, if you want to put in current serving judges in a state or territory, you are running into the same problem. We think that you do not need to look at numbers because you have asked how many—

Senator Faulkner—Don't give up your day job.

Senator ELLISON—We are saying it is unconstitutional. Look at the parliamentary joint committee.

Senator Faulkner—Go and get some advice.

Senator ELLISON—We are relying on the parliamentary joint committee as well. I might add that we have had advice on this in any event, but that is the government's firm position.

Senator NETTLE (New South Wales) (12.27 p.m.)—If the minister's opposition to this amendment moved by the opposition is that it is unconstitutional, how does that become his argument when his original model involved federal magistrates and serving judges? Why is it unconstitutional in the opposition's case?

Senator Ellison—It didn't.

Senator NETTLE—The evidence that came before the committee was that the current model was potentially unconstitutional. So why are the government now turning around and saying their problem with the model being put up by the opposition is that it is unconstitutional when it is exactly the evidence that we heard in the committee about the government's model that was being proposed?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.28 p.m.)—Senator Nettle is wrong. The fact is that we never proposed that Federal Court judges or magistrates would be prescribed authorities. We never did. We said that they should be members of the Administrative Appeals Tribunal.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments.

Adoption of Report

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.29 p.m.)—I move:

That the report from the committee be adopted.

Senator GREIG (Western Australia) (12.29 p.m.)—I move:

At the end of the motion, add:

"but the Senate:

(a) notes the recent anti-terrorist laws passed by the New South Wales Parliament which, among other things, seek to provide that certain police behaviour "may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus";

(b) notes the increasing incidence at both State and Federal level of laws being proposed and enacted that put various Government officials beyond the reach of legal proceedings in certain circumstances; and

(c) refers the following to the Senate Legal and Constitutional Affairs References Committee for inquiry and report by 16th May, 2003:

(i) whether State laws seeking to exempt certain officers or people from legal action are constitutional, with particular reference to sections 75(v) and 106 of the

Commonwealth Constitution, and the separation of powers;

(ii) whether the various laws and proposals in regard to security and anti-terrorism measures at both State and Federal level are consistent and whether or not they strike an acceptable balance between public security and the legal rights of all Australians;

(iii) the extent of privative or ouster clauses that now exist in State, Territory and Commonwealth law to exempt certain people from judicial oversight of particular actions".

There has been much rhetoric about the need for a coordinated response to terrorism, although I think this rhetoric is often used to justify the undermining of fundamental rights and freedoms. We Democrats agree with the basic principle that a coordinated response is required. We believe that the responsibility for ensuring a coordinated response lies with the Commonwealth and it must provide leadership in addressing the threat of terrorism. In this context we Democrats now raise our concerns with various antiterrorism measures proposed or enacted at both the state and federal levels.

In this instance we are particularly concerned by the Terrorism (Police Powers) Act recently passed by the New South Wales parliament. This legislation contains a number of deeply concerning aspects. It gives police special powers with respect to people who are suspected on reasonable grounds of being the target of an authorisation. Those powers require disclosure of identity and enable police to stop and search a person, vehicle or premises without a warrant. The Law Society of New South Wales expressed its concern that these powers will be available to be exercised whether or not the officer has been provided with or notified of the terms of the authorisation. It is difficult to comprehend how a police officer could act under an authorisation or form a suspicion based on reasonable grounds if he or she does not know the terms of the authorisation.

The Australian Democrats are particularly disturbed by section 13 of the New South Wales act, which provides:

An authorisation (and any decision of the Police Minister under this Part with respect to the authorisation) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

This limitation is exacerbated by clause 29, which provides that, if any proceedings are brought against any police officer for acts done in pursuance of an authorisation, the police officer is not to be convicted or held liable merely because the person who gave the authorisation lacked the jurisdiction to do so. In other words, if the authorisation was given by someone who had no power to do so, an officer acting on it cannot be held liable. These provisions represent just one of the increasing incidences at both state and federal levels of laws that put various government officials beyond the reach of legal proceedings and in certain circumstances. We Democrats are deeply concerned by this trend. We believe this level of immunity for public officials is not only bad policy but also unjustified by the threat of terrorism and possibly unconstitutional.

We are also convinced that there is an urgent need for an inquiry into the consistency of antiterrorism measures at both the state and federal levels and whether these measures strike an acceptable balance between public security and the legal rights of all Australians. Clearly it is undesirable and possibly unconstitutional for Australians in some states to face a more dramatic undermining of their fundamental human rights than those in other states. The Democrats believe that the determination of these issues is well and truly within the responsibility of the Commonwealth and that an inquiry by the Senate Legal and Constitutional Affairs References Committee as set out in the proposed amendment provides an appropriate starting point to do that. I commend the amendment to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.35 p.m.)—The government opposes the Democrat amendment for a number of reasons. Briefly, questions relating to state laws are matters for the states. I reiterate my comment

that it is interesting to see that the opposition has criticised this bill for a number of reasons—excess power and not enough protection of individuals—but you do not hear the opposition talking about the provisions of the states, particularly New South Wales. The inconsistency there just shows a lack of seriousness in the attitude of the opposition to this whole question. We do not need another reference to a committee. We have had three inquiries so far—two dealt with by Senate committees and one by a parliamentary joint committee. This has had exposure rarely seen by legislation in the federal parliament. We agree that it is serious legislation, but we cannot agree to another reference to a committee.

I also indicate strongly that the government opposes the amendments which have been made to this bill, but in the interests of the bill going back to the other place for consideration we will not be opposing the bill in its amended form for risk of achieving a majority and killing the bill in the Senate. We want to see the bill go back to House of Representatives so it can be reconsidered. When it does come to the third reading we will be under protest supporting a bill that has been amended by amendments that we do not support. Just so it is made clear, that is the government's position and that is why we are taking that course of action.

Senator NETTLE (New South Wales) (12.37 p.m.)—The Greens will be supporting the amendment put up by Senator Greig. We will be supporting it because the bill put forward in the New South Wales parliament and passed just last week is an absolutely abhorrent piece of legislation. As we have pointed out in the course of this debate, it does, in some instances, go far further than the piece of legislation that has been put forward in the federal parliament. It allows for the sections of that act to be acted upon without a warrant. The Greens have voiced strong opposition to this federal legislation and to the legislation proposed in New South Wales. In New South Wales we put up amendments to say that a report on the carrying out of the powers under that piece of legislation should be provided to parliament. A simple amendment like that was not even supported in the New South Wales parliament. So the Greens are happy to support this proposal put forward by Senator Greig. We believe that no acceptable balance between public security and the legal rights of Australians has been reached with regard to this legislation at a federal parliament level and certainly not at the New South Wales parliament level.

Senator ROBERT RAY (Victoria) (12.38 p.m.)—There is a motion before us to refer this to a committee and I want to take this opportunity, as I did not have time to come down earlier, to make a point to the minister about his very last statement in this debate. I want him to go back and reflect on that statement, and he might reflect on it before it comes to the third reading. As I watched it on the monitor, Senator Ellison made the statement that the original legislation never intended to have Federal Court judges or magistrates act as a prescribed authority. He can correct me if I have misinterpreted what he said, but as I understand it the original legislation certainly did that and did it in spades. It was one of the reasons why the joint intelligence committee challenged the constitutionality of that bill when we looked at this particular piece of legislation. It is why we recommended that Federal Court judges and magistrates be allowed only to issue the warrants and not act in an administrative role. We have had the minister come in here today blatantly saying, 'The original legislation never allowed for that.' Well, it did, in my view, and I want him to reflect on that. On the third reading, either he can correct the record or I will come in and withdraw my comments, having been proven wrong. But I would like that clarified when it comes to the third reading.

Senator HARRIS (Queensland) (12.40 p.m.)—I rise to place on record that One Nation will also support the Democrat motion to refer the matter to a committee. All the way through the inquiries we have had substantive submissions from such groups as the Law Institute of Victoria, the Law Council of Australia and the Law Society of New South Wales. All of them have raised substantive issues relating to the power of this bill. As Senator Greig has so aptly high-

lighted in his motion, we have also had antiterrorist laws passed by the New South Wales parliament which impinge greatly on the civil rights of New South Wales residents. I believe this amendment is important. If we look at the Australian Constitution, it clearly tells us that, with regard to the laws that are produced by this parliament, if there is an inconsistency between the Commonwealth law and the state law then the Commonwealth law takes precedence but only for the aspect of the inconsistency. That is the importance of Senator Greig's amendment. It clearly sets out, on a constitutional basis, that there is an inconsistency between that law in New South Wales and this Commonwealth law, and the Commonwealth law must take precedence.

Question put:

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

The Senate divided. [12.46 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……	12
Noes……	42
Majority……	30

AYES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Harris, L.
Lees, M.H.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
Ridgeway, A.D.	Stott Despoja, N.

NOES

Barnett, G.	Bishop, T.M.
Bolkus, N.	Boswell, R.L.D.
Buckland, G. *	Calvert, P.H.
Campbell, G.	Colbeck, R.
Collins, J.M.A.	Cook, P.F.S.
Crossin, P.M.	Eggleston, A.
Ellison, C.M.	Ferris, J.M.
Forshaw, M.G.	Heffernan, W.
Hill, R.M.	Hogg, J.J.
Hutchins, S.P.	Johnston, D.
Kirk, L.	Knowles, S.C.
Ludwig, J.W.	Lundy, K.A.
Macdonald, J.A.L.	Mackay, S.M.
Marshall, G.	McGauran, J.J.J.
McLucas, J.E.	Moore, C.
O'Brien, K.W.K.	Payne, M.A.
Ray, R.F.	Reid, M.E.
Santoro, S.	Sherry, N.J.
Stephens, U.	Tchen, T.
Troeth, J.M.	Watson, J.O.W.
Webber, R.	Wong, P.

* denotes teller

Question negatived.

Original question agreed to.

Report adopted.

BUSINESS

Rearrangement

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.51 p.m.)—I move:

That, after consideration of the government business order of the day relating to the National Environment Protection Council Amendment Bill 2002, government business order of the day no. 7 (Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002) be called on to enable second reading speeches to be made till no later than 2 pm.

Question agreed to.

CRIMES LEGISLATION AMENDMENT (PEOPLE SMUGGLING, FIREARMS TRAFFICKING AND OTHER MEASURES) BILL 2002

Second Reading

Debate resumed.

Senator GREIG (Western Australia) (12.51 p.m.)—The Australian Democrats welcome this legislative initiative of the government which will introduce new offences relating to people-smuggling and the interstate traffic of firearms. Indeed we Democrats have previously called upon the government to address the issue of interstate trafficking of firearms. The Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002 is based on the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime. We would, however, like to draw attention to the fact that Australia has not signed or ratified this treaty with which we agree and we encourage the Australian government to do so.

People-trafficking is an ugly crime, quite separate from people-smuggling, which, as we all know, preys upon desperate people in places where their lives are in extreme danger. It is essential that Australia sign protocols such as this and incorporate their goals into domestic laws. The United Nations protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime enforces the rights, obligations and responsibilities of states and individuals under international law, in particular where applicable, the 1951 convention and the 1967 protocol relating to the status of refugees and the principle of non-refoulement as contained within that convention. This is increasingly necessary in the current political climate.

We Democrats support the thrust of the provisions relating to the trafficking of firearms across state borders and appreciate the urgency of addressing this pressing issue. Nevertheless, we do have a concern relating to the absolute liability provision in proposed section 360.2(2). The effect of this provision is that, in prosecuting an offence under section 360.2, it will be unnecessary for the prosecution to prove that the accused knew that his or her conduct constituted an offence under a state or territory firearms law. We Democrats acknowledge the government's argument that in order to be guilty of an offence under a state or territory firearms law it would be necessary for the prosecution to prove that the person intended or was reckless as to the commission of that offence. On balance we accept this argument. However, we urge the government to carefully monitor the application of these provisions and instigate any changes that may later prove necessary.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.54 p.m.)—The people-smuggling measures will broaden the focus of Australia's people-smuggling legislation and clearly demonstrate our commitment to tackling people-smuggling not just in Australia but also in our region. The passage of these offences also fulfils a commitment to criminalise people-smuggling made by participants in the ministerial conference on people-smuggling, trafficking in persons and related transnational crime which was held in Bali earlier this year. The interstate firearms trafficking offences located in the Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002 are also an important step in the combined Commonwealth, state and territory effort to fight the spread of illegal firearms. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TAXATION LAWS AMENDMENT (VENTURE CAPITAL) BILL 2002

VENTURE CAPITAL BILL 2002

Second Reading

Debate resumed from 9 December, on motion by **Senator Alston**:

That these bills be now read a second time.

Senator LUNDY (Australian Capital Territory) (12.56 p.m.)—The Taxation Laws Amendment (Venture Capital) Bill 2002 attempts to overcome the flaws of the existing regime by extending an exemption to certain tax exempt non-residents and non-resident venture capital funds of funds and certain taxable non-residents. The entities covered by this exemption will be partners in a venture capital limited partnership or Australian venture capital funds of funds, which are tax exempt entities, including pension funds, endowment funds and foundations. This will apply to such entities from Canada, France, Germany, Japan, the UK and the USA. These investors may hold up to 100 per cent of the committed capital of the venture capital of the venture capital limited partnership or Australian funds of funds. The bill goes on to provide for other circumstances where VC funds of funds established and managed in Canada, France, Germany, Japan, the UK and the USA can hold up to 30 per cent of the committed capital of a VCLP or Australian funds of funds.

The point I would really like to make without going into the detail, because I think it is sufficiently explained in the explanatory memorandum of the bill, is that these changes have been a long time coming. Labor has welcomed this legislation but its passage into law has taken a very long road.

The Ralph review found that Australia needed to develop its venture capital industry and recommended changes to Australia's capital gains tax, but not before Labor in the lead-up to the 1998 election recognised that there needed to be movement here to attain some level of parity with the laws in Australia to ensure that Australia too attracted venture capital to provide the capital necessary to grow innovative start-up businesses at quite a crucial time in Australia's economic development. However, the coalition only introduced a limited capital gains tax exemption contrary to the advice from the industry at the time. That change led to one investment of $10 million. The primary fault with that change was that it provided for the exemption for foreign investment to be made into companies themselves rather than the tax flow-through vehicles, which is the regime this bill sets up.

The main benefit of this bill is that it does create parity between Australia and comparable Western economies where venture capital is a crucial part of the capital food chain that provides sustenance to new start-up companies and to the growth prospects of companies that, for whatever reason, cannot get the capital they need through commercial banking and loans. Whilst the venture capital industry sector has grown significantly in Australia, the issue of parity is particularly crucial if we are going to ensure that venture capital is flowing through to Australian start-up companies and established companies that need to grow. That is the sort of capital they need to get them through those phases. We have the opportunity to strengthen our economy in the area of research and development and innovation, and venture capital is essential in allowing the initial commercialisation of good ideas to become commercial entities. With a view to creating jobs here in Australia, these new businesses are driving forward with good ideas.

Finally, we have the prospect of these changes at what is quite an uncertain time in Australia. We know that with the downturn, particularly in ICT, there are a great range of pressures on some of the innovative sectors in our economy. Whilst the government has identified some projections of the impact of this bill, the downturn in that sector and the current lack of investment because of a great deal of uncertainty will perhaps mean that we will not see the effects of this bill as soon as we would like. Nonetheless, the bill makes a critical and very important change to the law that will allow Australia to have some parity with particularly the laws in the US and UK and, hopefully, will stimulate the interest of foreign investors in sending some venture capital to this country so that Australian ideas, Australian start-ups and Australian businesses that are already on track can continue to grow with the necessary capital behind them.

Senator MURRAY (Western Australia) (1.01 p.m.)—I seek leave to incorporate my speech in the second reading debate on the Taxation Laws Amendment (Venture Capital) Bill 2002 and the Venture Capital Bill 2002.

Leave granted.

The speech read as follows—

The Australian Democrats welcome the Venture Capital legislation. It is something that should have come forward sometime ago and is overdue.

Venture capital is the term used to describe investments in businesses at various stages of development, but is particularly important in the early stages.

Venture capital includes start-up and seed capital, expansion-stage capital, later-stage development capital, and finance for management buy-outs and buy-ins of established businesses.

Venture capital is an essential catalyst for new industries, for jobs, for a healthy economy, and for dynamic wealth creation. While venture capital is available regardless of legislative incentives, it increases enormously if there are legislated incentives.

Venture capital in Australia has helped small enterprises which began with seed capital, with some notable examples being Energy Development Ltd, Austal Ships Ltd, LookSmart, ResMed, and Cinema Plus Ltd, the Imax cinema venture.

However, there has been a disturbing decline in the provision of venture capital, even in a period of good economic growth. In 2001-02, $894.7 million was raised in venture capital by 18 firms, compared to $1.27 billion in 2000-01 by 34 firms and $1.75 billion in 1999-00 also by 34 firms.

The EM indicates that the Taxation Laws Amendment (Venture Capital) Bill 2002 (the TLA(VC) Bill) amends the Income Tax Assessment Act 1936 (ITAA 1936) and the Income Tax Assessment Act 1997 (ITAA 1997) so as to extend the scope of the existing tax exemption for venture capital investment to registered Venture Capital Limited Partnerships (VCLPs) and Australian Venture Capital Funds of Funds (AFOFs).

The measures propose to alter taxation of the venture capital manager's share of gains made by a VCLP or an AFOF on the sale of eligible venture capital investments, not as income but as a capital gain.

Administrative measures are also contained in the Bill for the registration and revocation of registration of VCLPs and AFOFs.

The Government announced during the November 2001 Election a commitment to improve incentives for foreign investment in the venture capital sector. This was set to cost $60 million over three years beginning in 2003-04. The estimate has now been revised to $76 million for this period.

During the election the Government foreshadowed that it would review taxation arrangements for venture capital investment, recognising that access to venture capital is a critical factor in facilitating the growth of Australian companies.

In "The golden chance", Business Review Weekly, June 6-12, 2002, p. 55 it said that there are good prospects for growth in the Australian venture capital sector. Economic analysis undertaken by Econtech for the Australian Venture Capital Association has estimated that the imminent limited partnerships and tax changes will attract an additional $1 billion in foreign capital over the next five years.

You need to put that $1 billion into perspective. The HSBC Report this week indicated that total foreign direct investment in Australia has been revised up to $23.2 billion for the year.

The key features of the new legislation are:

- venture capital limited partnerships will be able to access flow-through taxation treatment—allowing the income, profits, gains and losses of the partnerships to flow through to partners;
- the current Capital Gains Tax (CGT) exemption provided to certain foreign pensions funds on profits or gains from the sale of investments in eligible venture capital investments will be extended to a wider pool of foreign investors;
- general partners of limited partnerships must apply to the Pooled Development Funds (PDF) Registration Board to qualify for tax exemption;
- a venture capital manager's 'carried interest' or entitlement to a distribution from a limited partnership will be taxed as a capital gain, rather than as income.

By extending the current CGT exemption, the venture capital sector should experience an increase in funds flowing in to the sector from foreign tax-exempt entities, including overseas superannuation funds and from tax paying entities.

The only drawback is that the exemption applies to a restricted list of countries, which could be seen as discriminatory, however the Australian Democrats understand that the Government has indicated it will consider adding other appropriate countries as required. We understand that the criteria for addition will be that of having a significant source of funds available for such investment.

The new provisions in respect of the carried interest paid to investment managers, which will be treated as capital gain rather than income, will make it easier to attract US or UK expertise in managing funds in Australia. Venture capitalists will be taxed at 24.25 per cent, the same as in the US.

In time the reporting processes and ongoing obligations may become a cost burden for smaller fund operators, as the registration procedures for limited partnerships and the ongoing reporting obligations will result in higher running costs for venture capital funds that qualify for tax exemption. This will be something that we will be keeping an eye on.

While the current legislation is a good outcome for Australia, we believe that it could be improved in four important ways.

Firstly, merge the benefits of PDFs into VCLPs. The venture capital initiatives provide tax-free returns to certain foreign pension funds investing through VCLPs and AFOFs, but there are no incentives to encourage Australian super funds or individuals to invest in the VCLPs or AFOFs.

(I would remind the Senate that as a real motivator, the Democrats have previously advocated a

mandated 1% investment of Super Funds portfolios into risk or venture capital. At present, that would be over $4 billion.)

Australian super funds obtain tax-free returns from their investments in Pooled Development Funds (PDFs). On that principle consideration should be given to the feasibility of providing tax-free returns from their investments in VCLPs and AFOFs.

Australian individuals are effectively provided with 15% tax on their investments in a PDF, and they too should be accorded the same treatment when investing in a VCLP. It does not make sense to have two vehicles trying to do the same thing. We should therefore consider combining the best features of a PDF with a VCLP.

Secondly, the $250 million asset value cap is a restraint. The $250 million cap is the gross value of the assets of the investee business. Venture capital industries in other countries are not subject to such limits. Fund managers are able to offer to investors funds that can achieve wide diversification across early stage businesses to large buyout deals. Investors can achieve diversification by investing in funds that specialise at each of these stages.

Applying the $250 million cap as the net value of the assets of the investee business would be a simple way of increasing the diversification available to investors and fund managers.

Thirdly, investors need to be encouraged from Countries other than those already listed.

There are very large investors located in other countries than those already listed in the legislation and who are already significant investors in venture capital funds around the world. Many of these investors are interested in investing in the Australian venture capital industry but are deterred by having to pay tax on the gains from their investments.

Australia should examine whether the already existing "portfolio investor" concession in the income tax system (any investor from any country holding less than 10% of the equity of a listed company is not taxed on the gains from these investments) should be extended to the venture capital industry.

That would mean that any investor from any country would be entitled to tax free returns from their investments in VCLPs and AFOFs provided they hold less than 10% of the committed capital of the VCLP or AFOF.

Fourthly, there is a need to support Australian venture capital backed companies. Australia has a chronic shortage of venture capital. Yet one Australian super fund, as an example, Military Super, invests more in offshore private equity than Australia. So while our SAS Officers are fighting a war against terrorism in Afghanistan, Military Super here in Canberra is happily investing truck loads of their dollars in offshore private equity. Surely their first priority ought to be to help us commercialise our own ideas.

ResMed is an example of what can happen. ResMed was backed by Australian venture capital, and is now a world-leading medical device company, with the majority of its employees in Sydney. One of their proudest achievements is making the Forbes 200 Best Small Companies in America list (with revenues of about A$ 1 billion), for the past 6 consecutive years.

Given the poor record of some Australian Super funds in supporting Australian venture capital backed companies like ResMed, we ought as a nation require that all Australian super funds commit a set percentage of their funds to Australian venture capital. There are some enlightened super funds that are doing this—but at best many of them have only a token commitment to the sector.

Australian superannuation funds do continue to be the largest source of venture capital, with 35 per cent of the $4.9 billion (or $1.733 billion) committed for investment at the end of June 2000, followed by non-residents with 21 per cent. While this figure compares favourably with the percentage of venture capital sourced from pension funds in other countries, it still represents only 0.5 per cent of the superannuation funds' investment portfolio.

The relative importance of super funds as a source of venture capital is borne out in industry surveys, although the proportion of super funds' contribution to the growth of venture capital in Australia is declining. According to the 2000 Australian Venture Capital Yearbook, contributions from these sources accounted for 31 per cent of all capital under management, a decrease from 38 per cent in 1999 and from 40 per cent in 1998.

One of the things that seems to be passed over by many people is the issue of how much money is being put into compulsory super funds. This is of importance when one looks at the issue of the investment that is needed within regional and rural Australia. This cannot be done without looking at both the issue of venture capital and super fund support.

In regional and rural Australia it has been found that monies paid into super funds by employers under the superannuation guarantee pro-

visions are flowing out of these local regions, rather than being invested in them.

During the mid-1980's compulsory superannuation was introduced initially through industrial awards. Later the superannuation guarantee legislation came into effect in 1992. This has led to a rapid growth in superannuation fund assets. Studies have shown that a particular problem for regional Australia has emerged in that the savings (or potential consumer spending) of regional employees have generally been diverted away from regional areas.

Compulsory contributions to super funds from regional areas is substantial. It has been estimated by the Australian Regional Investment Plan Alliance (the Alliance) that over $5.7 billion in compulsory superannuation is generated annually in regional Australia. Not surprisingly the majority of this is from NSW, some $1.9 billion.

These studies have also pointed out that most of the funds derived from contributors in regional areas are invested in metropolitan or overseas equities. This continues to significantly affect economic opportunities within regional economies. Aside from the estimated annual $5.7 billion from regional communities, the Senate Superannuation and Finance Services Select Committee received from the Bendigo Bank an estimate that less than one per cent of the $400 billion held by super funds—that is, only $4 billion—is invested in regional Australia.

The Committee noted in its Issues Paper Investing Superannuation Funds in Rural & Regional Australia released in February 2002, that access to capital is a major constraint to regional development. It is not only the absence of economic capital but the potential collapse of social capital which is at stake.

The Committee considered that superannuation funds have the potential to make a major difference to rural and regional areas by reinvesting in projects and businesses in these areas. 'Gems' such as the Colac meat processing venture are indicative of the sort of projects which have demonstrated the success of a regional investment initiative.

With an estimated $5 billion in compulsory superannuation being generated annually in regional Australia, superannuation funds have the potential to make a major difference to rural and regional areas by investing in projects and businesses in these areas. This is one of the ways in which there could be a narrowing of the great divide between the country and the city.

The Australian Democrats believe that increasing investment in infrastructure is crucial to our nation's future development, job security and wealth creation.

Recent research by 'new growth theory' economists and the World Bank has highlighted the vital importance that spending on infrastructure has on economic growth, on improving productivity, on job creation, and on building national competitive advantage for nations in a globalised economy.

Yet, despite the compelling evidence, Government spending on infrastructure in Australia has collapsed to pretty well its lowest level since World War II, with Governments focussing on recurrent expenditure and budget cuts ahead of longer term planning.

A significant targeted increase in infrastructure spending is needed, funded by a combination of normal capital budget allocations and public borrowings, and assisted through sympathetic financing and tax policy where appropriate.

It is also crucial to addressing unemployment, with research by the National Institute of Economic Research showing that each $1 billion of infrastructure spending creates as many as 18,000 public sector and 7000 private sector jobs when flow-on effects are taken into account.

The ability for us to be able to make an impact into the financial and economic problems across regional a rural Australia is often seen as such an overwhelming task. Before us are two mechanisms that can be used, that is super funds and venture capital, which can make significant impacts on many of these ailing communities.

In closing, I would like to thank Andrew Green and Mark Goldsmith for their assistance in backgrounding me on the venture capital issues. The Australian Democrats will support these bills.

Senator GEORGE CAMPBELL (New South Wales) (1.01 p.m.)—I rise to make a number of brief remarks about the Taxation Laws Amendment (Venture Capital) Bill 2002 and the Venture Capital Bill 2002. You will not hear this government say it—and it is a fact that many Australians are not aware of this—but manufacturing is the engine room of the Australian economy. There are 45,000 private and public enterprises across the country, which currently provide over one million jobs and an annual turnover of more than $250 billion. Supporting and growing that sector has been of ongoing importance to Labor, and that is why I rise to support these bills today.

This legislation is not enough to ensure that our manufacturing industries achieve their potential. Only one party is going to be able to do that, and that is Labor; but the government are proposing a step in the right direction. The total capital in the venture capital sector now stands at $9.3 billion a year, thanks to a fantastic period of growth made possible by Labor's commitment to compulsory superannuation. This legislation will help lay the basis for newer and bigger foreign entrants to participate in the Australian venture capital market. The truth is that, for all this government's rhetoric about globalisation, it has been Australian super funds, not foreign private capital, that has been responsible for the growth in our venture capital markets. The coalition have now finally realised that they cannot just talk but also must act to address the situation. I am glad the government have come to this belated realisation. As Australians have suffered the downside of economic globalisation that has come from the government's policy program, they must also be able to enjoy the benefits such as foreign venture capital helping to grow our manufacturing industries.

The Venture Capital Bill 2002 is also cold, hard proof that free markets do not fix themselves, that the governments must be there to stimulate their operations and observe and respond to their failures. The government appears to be learning that it is a good thing to intervene to amend the operating environment of a market in order to promote jobs and security. Labor's support for the superannuation funds that provide the backbone of Australia's venture capital markets is in stark contrast with the government's failure to improve on Labor's legacy. Under the government's watch, the number of firms raising venture capital this year has practically halved since last year from 34 to 18, while the amount raised by venture capital in the past 12 months is only half of that raised in 1999-2000. Thankfully, something is now being done to address the situation—and the situation is urgent. We have fallen well behind the rest of the advanced industrial economies. We need a high-growth strategy for Australian industries to catch up, and this has got to get the balance right between what needs to be achieved by established businesses and what needs to be achieved by newly emerging businesses.

In Australia, the private equity manager base and funds available for expansion deals, turnarounds and management buy-ins appear to be adequate for established firms in manufacturing and other industries. However, for newly emerging firms the venture capital market manager base and funds for seed, start-up and early expansion deals are seriously deficient and a significant constraint on growth. The most recent data benchmarking Australia's underinvestment in venture capital suggest that Australia was investing 0.12 per cent of GDP in classic, or institutional, venture capital in 2000 compared to an average investment across 23 other countries of 0.23 per cent of GDP. Less than 10 per cent of what we do invest goes to manufacturing.

To ensure the maximum possible benefits are delivered to Australian society by this legislation, we must also be aware that changes may be made in the future. If venture capital funds face increasing running costs as they attempt to qualify for the concessions this bill proposes, it is our obligation to consider the ways to address this burden. Furthermore, while this legislation should provide significant assistance to medium and large enterprises looking for substantial capital injections, it will not assist those at the lower end of the market looking for perhaps a few hundred thousand dollars to develop their potential. This is an area of significant failure in the venture capital market, it is an area that remains unaddressed by this government and it is an area that is substantially impeding the early growth of many new firms and companies. If we as a nation are serious about backing Australia's ability, then we will be vigilant in backing everyone's ability, which includes looking after the lower end of the venture capital market. We cannot merely support glamorous projects, major developments or the work of politically friendly companies. I am committed to ensuring that Labor looks after everyone who needs access to venture capital, and I hope the government will do the same.

A good start for the government in taking the needs of small and medium enterprises seriously would be to look at what it can do to encourage angel investors to start investing where they are needed—and they had better do it soon, otherwise Australia will be so far behind the rest of the OECD that we will never, ever catch up. I would like to reassure those interested in this issue that, regardless of any government action—or inaction—on angel investors, Labor is committed to developing a comprehensive policy program on this matter. I do not think it will take us six years in government to address the issue effectively to provide a support base for small and medium enterprises who need it. I would like to conclude on a positive note. It is a pretty rare thing, but it is good to see the government actually deliver on one of its election promises, particularly one that is not about cashing in on human misery.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.07 p.m.)—The Taxation Laws Amendment (Venture Capital) Bill 2002 and the Venture Capital Bill 2002 are extremely important to Australia in realising the potential for increased foreign investment in innovative Australian projects. The measures deliver a world's best practice venture capital investment vehicle for venture capitalists and improve Australia's access to overseas expertise. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

TAXATION LAWS AMENDMENT (EARLIER ACCESS TO FARM MANAGEMENT DEPOSITS) BILL 2002

Second Reading

Debate resumed from 11 December, on motion by **Senator Minchin**:

That this bill be now read a second time.

Senator O'BRIEN (Tasmania) (1.09 p.m.)—The opposition supports the speedy passage of the Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002 so that there can be a resolution of a fundamental problem. The operation of the Farm Management Deposits scheme is a matter of direct concern to many thousands of Australian farmers. The current scheme is a direct successor to Labor's Farm Management Bond scheme. It has been suggested that farm management deposits are the brainchild of this government; that is not the case. Farm management bonds were created by Labor in 1992 as part of the national drought strategy. These bonds were introduced as part of a suite of measures designed to encourage and support appropriate risk management by farmers. I am pleased to note that the minister responsible for the introduction of farm management bonds and the implementation of the national drought strategy was the then Minister for Primary Industries and Energy and current Leader of the Opposition, Mr Simon Crean.

Labor has a strong record of support for primary producers, and the reforms in this bill build on a scheme containing an investment product created by Labor. The bill amends the Farm Management Deposits scheme in three ways. Firstly, it provides an exception to the 12-month waiting period for access to farm management deposits for primary producers in exceptional circumstances declared areas. Secondly, it allows part of a farm management deposit to be withdrawn within 12 months provided certain conditions are met. Thirdly, it allows farm management deposits to be held in accounts of any term provided the amount is not withdrawn within 12 months of the date of deposit. Each of these measures represent sensible reform of the Farm Management Deposits scheme and have the support of the opposition.

The provisions relating to access for farmers in exceptional circumstances declared areas and the compliance of short-term farm management deposit products were announced by the government late last week. The announcement followed Labor's call on 19 November for changes to the Farm Management Deposits scheme. Senators will be aware that point 2 of Labor's six-point drought plan identifies farm management deposit reform as a policy priority. Although the government has been churlish in its fail-

ure to acknowledge Labor's policy initiative, I am pleased to acknowledge its full embrace of our farm management deposit plan today.

On a related drought policy matter, the government has announced a partial adoption of our plan to protect core breeding herds through the provision of interest rate subsidies. Although it has not adopted the 100 per cent subsidies proposed by Labor, the government has at least responded to Labor's call for action. With two points of Labor's six-point plan already adopted, I urge the government to delay no further in the adoption of the other four elements. These are to improve the assessment of exceptional circumstances applications to ensure prima facie assessment within seven days and full assessment within 28 days, to adopt a whole of government approach to drought policy by working with the states rather than engaging in pointless political point scoring, to address feed grain shortage concerns by ordering a feed grain audit and conducting a review of import protocols and to coordinate federal government programs to assist rural communities to cope with drought conditions.

While the bill introduces sensible reform, one of its provisions points to the Minister for Agriculture, Fisheries and Forestry's failure to manage his portfolio. The uncertainty over short-term farm management deposits—those offered for terms less than 12 months—is not new. According to evidence given at a recent Senate estimates hearing, the government has known about this uncertainty since July last year. For almost 18 months the government has done nothing while farmers invested in short-term farm management deposit products, some of which have been promoted on the Department of Agriculture, Fisheries and Forestry's own web site. While this bill clarifies the conditions under which these products comply with the scheme rules, the government has left it far too long to deal with this problem.

I wish to briefly address one final matter, outlined in more detail by the shadow Treasurer during debate on this bill in the other place. The explanatory memorandum to the bill provides scant detail about its financial impact. It is disappointing that the government has paid such little attention to its obligations to provide this parliament with detailed costings of the revenue measures proposed in this bill. Just as Labor was pleased to support and indeed to propose the reforms in this bill, it is pleased to provide the bill with speedy passage through the parliament.

The Senate regularly deals with matters pertaining to tax. On 4 December we dealt with a motion moved by Senator Brown, recorded on pages 6767 and 6768 of *Hansard*, relating to another tax matter: plantation forestry and the 13-month rule. The motion proposed by Senator Brown—and fortunately defeated—alleged that the tax concessions would 'promote the clearing of 70,000 hectares or more of native forests by Gunns'. It has been drawn to my attention that the *Hansard* of a committee hearing in Tasmania shows that on 29 November—less than a week prior to the motion being put by Senator Brown—in answer to Senator Murphy's question, 'How many hectares have you put in under managed investment scheme arrangements?' Mr Baker, on behalf of Gunns, said, 'We have sold a total of about 17,000 hectares.' That is a difference of 53,000 hectares from the number outlined in the motion proposed by Senator Brown. Senator Brown's motion extrapolates certain costs to the Commonwealth from the 13-month rule tax scheme which would accrue to Gunns as a result of a number which does not accord with the facts and does not accord with the *Hansard* record of evidence—evidence given in the presence of Senator Brown.

Whilst I understand that the connection between this matter and the bill before the Senate is only that they both deal with tax, it is important to draw the attention of the Senate to a difficulty with—and let me be charitable—detail by Senator Brown in a motion proposing that the Senate adopt a resolution which did not reflect the facts set out in *Hansard* and at a hearing in the presence of Senator Brown. The opposition also note that certain other propositions were extended in that motion which do not accord with the facts. The motion suggested that the entirety of the area cleared was cleared of native forest, when the evidence showed that much of the land had already been cleared and was

farmland planted with plantation forest. Senator Brown should have known that and should have put that before the Senate. The opposition will be exercising extreme care with motions proposed by Senator Brown, having regard to this divergence from the facts.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.17 p.m.)—The Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002 has been under constant monitoring by the government and under constant scrutiny since the initiative first came in. The Agricultural Finance Forum, which I chair, has provided constant feedback to the government on the issue of farm management deposits. Industry, in the form of the four major banks and the National Farmers Federation, have also provided constant feedback to government, and we have been noting that. As well as the onset of the drought, that is part of the reason why we have decided to make these changes. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AVIATION LEGISLATION AMENDMENT BILL 2002

Second Reading

Debate resumed from 10 December, on motion by **Senator Coonan**:

That this bill be now read a second time.

Senator ALLISON (Victoria) (1.18 p.m.)—I seek leave to incorporate a speech on the Aviation Legislation Amendment Bill 2002.

Leave granted.

The speech read as follows—

The Aviation Legislation Amendment Bill 2002 amends 2 acts and repeals 1:

The bill introduces an objects clause in the Air Services Commission Act which promotes economic efficiency through competition and provides for the delegation of the Commission's powers and functions.

The amendments to the Air Navigation Act 1920 define an aviation industry participant, and creates an offence for the carriage of munitions on an aircraft, and permit the secretary to require aviation security information from industry participants.

Under 22ZVA(2) the Secretary may require by written notice that an aviation industry participant provide aviation security information to the Secretary. The Secretary must have reasonable grounds for requesting the information (22ZVA(1)). If the person fails to provide the information, or fails to provide it within the time required, the person faces a fine upon conviction (22ZVA(4)).

Section 22ZVB provides that an individual is not excused from giving aviation security information on the grounds of self-incrimination.

Section 22ZVC protects both information and the person providing the information from disclosure under subsequent sections. Information given in the course of an investigation under this Act (unless it is in compliance with a notice given under 22ZVA) is not protected. The Act provides for investigation of accidents and serious incidents. Section 22ZVD and ZVE restrict the disclosure of protected information.

Section 22ZVFG ensures that protected information cannot be admitted in evidence in a criminal proceeding except under section 137.1 or 137.2 of the Criminal Code (provision of false or misleading evidence).

The Democrats support this legislation but with reservations.

On the one hand, it purports to encourage employees in the aviation industry with information relevant to aviation security to come forward in a no-regrets context and give information to the Secretary or his/her delegate. The bill provides some protection for the information, particularly in relation to the use of the information in criminal or civil proceedings. On the other hand, the bill is punitive—and advice from the department indicates that the bill can be used to extract information from employees in order to ascertain and if necessary correct systemic security problems in the aviation industry.

We are not entirely convinced that the Government is clear about what it wants to accomplish and how but we note that security provisions will be the subject of a review in the not too distant future.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NATIONAL ENVIRONMENT PROTECTION COUNCIL AMENDMENT BILL 2002

Second Reading

Debate resumed.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Adjournment Speeches

Senator MACKAY (Tasmania) (1.20 p.m.)—I seek leave to incorporate several adjournment speeches which were to be made last night but through some confusion—there was an early conclusion to the extended adjournment—were not. I understand that all of these have been cleared with the Government Whip. I seek leave to incorporate two adjournment speeches by Senator Marshall, two by Senator Bishop and one by Senator Forshaw.

The ACTING DEPUTY PRESIDENT (Senator Cook)—Is leave granted?

Senator McGauran—Not as yet.

Senator MACKAY—It has all been cleared—I just said that.

Senator McGauran—Leave is not granted at this point. In particular, Senator Lundy's speech is not cleared.

Senator MACKAY—Lundy's was not read out, mate.

Senator McGauran—You have caught us off guard. Could you give us one minute?

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

Second Reading

Debate resumed from 21 October, on motion by **Senator Ellison**:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (1.21 p.m.)—The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 seeks to dust off some measures that were announced three budgets ago, in May 2000. It was part of a package of measures to address the issue of unauthorised arrivals in Australia. One has to question the government's commitment to introduce the changes contained in this bill, given the time lapse since it was first flagged. It would not be unreasonable to say that the government has been keeping this in the bottom drawer, ready to dust it off at a time of political convenience. However, putting aside the government's motives, let us turn to precisely what the changes are, as contained in the bill.

The bill seeks to introduce a legislative framework of mutual obligation and activity testing for unauthorised arrivals of work force age, who have been issued temporary visas and are granted special benefit after 1 January 2003. It is worth pointing out that this principle is not new. The current guidelines in relation to special benefit set out circumstances where a special benefit recipient should be subject to an activity test. Labor has no issue with the concept of a work force age income support payment recipient being subject to certain requirements as a condition of payment. But where we have disagreed stridently with the government has been in relation to its failure to reciprocate the effort of job seekers by providing adequate assistance and support to enable them to make a successful transition to work. For this reason, Labor has had significant concerns about the fact that the group of special benefit recipients that would be subject to these changes are denied access to English language tuition as well as the full range of Job Network services. In light of this, Labor was concerned about the ability of special benefit recipients with little or no language skills to satisfy the obligations placed upon them.

For this reason, the bill was referred to the Senate Community Affairs Legislation Committee to examine concerns relating to access to English language tuition and Job Network services, Centrelink's ability to effectively communicate with TPV holders

subject to activity testing requirements and the ability of TPV holders with poor language skills to fulfil their obligations under the activity test requirements and thus place themselves at risk of incurring an activity test breach. There was a high level of input into the consideration of the bill with over 50 submissions lodged. The committee process was useful in teasing out the detail of the proposed measures in the bill and clarifying precisely what obligations would be placed on special benefit recipients and the services the government will offer to them.

One point of concern related to the nature of the mutual obligation that special benefit recipients would be subject to and how it compares to the existing arrangements. The Senate committee heard that TPV holders receiving special benefit are currently subject to a range of activity test requirements. The proposal put forward for the most part codifies activity testing arrangements that are currently in place. Currently, TPV holders may be required to search for work and document their efforts fortnightly. Those who fail to undertake specified activities may have their payment completely withdrawn. Under the changes proposed, additional activities may be required, such as Work for the Dole and a requirement to maintain a job seeker diary and employer contact certificates. Also, rather than the complete withdrawal of payments, the graduated breaching regime that applies to other job seekers will be utilised. These changes do not represent a significant change from the current arrangements, although Labor does have concerns about the ability of some to comply with requirements that assume language and literacy skills.

I will turn now to access to English language tuition. Labor's initial concern with the measures in this bill related to the fact that TPV holders are denied access to DIMIA AMEP language tuition. Without language skills, TPV holders on special benefit could flounder with activity testing requirements such as job seeker diaries. This concern is not trivial, and it really ought to make the government reconsider the range of assistance that it is proposing to provide to this group. The government has a responsibility not only to the special benefit recipient but also to the taxpayer to provide appropriate assistance. It is not in anyone's interest that special benefit recipients flounder, unable to communicate effectively with potential employers. If the government wants these people to be self-sufficient, it must provide them with the tools to be so, and that includes access to English language tuition. It was therefore positive that the Senate committee heard TPV holders subject to the requirements in this bill would have access to language training.

Rather than the DIMIA program, tuition will be offered through the Department of Education, Science and Training Language, Literacy and Numeracy Program, the LLNP. The LLNP provides basic English language, literacy and numeracy training for eligible job seekers whose skills are below the level considered necessary to secure sustainable employment or pursue further education or training. The LLNP also provides advanced English language training, designed to help remove a major barrier to employment or the pursuit of further education or training. The basic English language training caters for clients who have no or very low English language skills up to those whose skills are not quite at the level needed for sustainable employment. Clients with any skills below National Reporting System level 3 are eligible for assistance. The LLNP provides up to 400 hours of training. The training is undertaken at between six and 20 hours a week over a period of 20 to 52 weeks.

Under the current program guidelines, clients who have completed their first round of training and still meet the eligibility requirements for the LLNP are able to undertake a second round of training of up to 400 hours, provided they still have at least one element of their language, literacy or numeracy skills below NRS level 3. Assistance available under the LLNP program is comparable to the AMEP program through DIMIA, of 500 hours. It is also positive that, during the Senate committee, FACS expressed the view that the LLNP program would be a central part of most TPV holders' activity agreements. With this additional information, Labor's view is that the arrangements for the

provision of English language classes appear to be satisfactory.

Notwithstanding this somewhat positive outcome, Labor still has concerns as to how those with marginal language skills will negotiate their activity requirements. It is this issue that will be at the centre of Labor's amendments to the bill. I will discuss in detail these amendments in the committee stage of the bill, but in summary they seek to limit mutual obligation activities to the English language course itself until such time as the special benefit recipient could be reasonably expected to fulfil additional activities. Labor takes this issue seriously, which is why we will be insisting on these amendments to the bill for it to pass.

Also worthy of consideration is the fact that these measures will apply only to TPV holders granted special benefit after 1 January 2003. Accordingly, the 4,262 TPV holders currently receiving special benefit will be unaffected by the changes in this bill. Notwithstanding this, a TPV holder who loses access to special benefit—for example, due to earnings from work—and then reapplies for special benefit after 1 January 2003 may be affected.

Another area of concern with this bill is the fact that TPV holders will have access to job matching only from the Job Network. Labor again calls on the government to provide full access, and I would be interested to hear from the Minister for Family and Community Services as to why these people should not have access to it. I make the point again that the government has a responsibility not only to the special benefit recipient but also to the taxpayer to provide appropriate assistance. It is not in anyone's interests that special benefit recipients have little or no skills that would help make them employable. If the government wants these people to be self-sufficient, it must provide them with the tools to do so, and that includes access to the full range of Job Network services.

Putting to one side the assistance offered to TPV holders, a central issue is Centrelink's ability to communicate effectively with TPVs about the terms of activity agreements and their ability to comply. In the Senate committee FACS was adamant that Centrelink's translation services would be adequate and there would be a high level of sensitivity to each individual's circumstances and capacity to comply. While these are only assurances, it is positive to see that in the bill the formulation of the terms of the agreement by Centrelink must include explicit consideration of a person's ability to comply with those terms. Notwithstanding these measures, it again reinforces the need to pursue amendments that safeguard TPVs on special benefit from being subject to inappropriate requirements under the new activity agreements.

To sum up, it should be obvious to all why the government has resurrected this proposal. As it stands, it is not balanced. It does not match obligations with supports. The government says that the group affected by this bill should be treated as any other job seeker. Labor does not disagree with this view but, if it is the case, why doesn't this group also gain access to the full range of Job Network services? It should be in the government's interest to assist all people on benefits to enter the labour market as soon as possible.

All the problems in the bill are the same for us as those that permeate the broader social security system. Mutual obligation must be a two-way street. If it is not, many people will remain trapped on welfare benefits. Labor will be moving amendments to this bill to ensure special benefit recipients are treated fairly. Labor's support for the bill will be contingent upon the success of these amendments.

Debate interrupted.

BUSINESS

Adjournment Speeches

Senator McGAURAN (Victoria) (1.34 p.m.)—Earlier, Senator Mackay sought leave to incorporate certain adjournment speeches. The government has agreed to that request.

Leave granted.

The speeches read as follows—

Senator Marshall:

I rise in recognition of the significance of Tuesday, that being the 52nd United Nations International Human Rights Day.

Human Rights Day was initiated in 1950, under a resolution of the United Nations General Assembly.

According to Resolution 423 (v), carried two years after the adoption of the Universal Declaration of Human Rights, the intention behind the marking of an International Human Rights Day was:

- To recognise a distinct step forward in the march of human progress;
- To play a role in the common effort to bring the Universal Declaration of Human Rights to the attention of the peoples of the world; and
- To express appreciation to all those countries, Members or non-members of the United Nations which have already celebrated the anniversary.

The resolution invited all States and interested organisations to adopt 10 December of each year as Human Rights Day, to observe this day to celebrate the proclamation of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948, and to exert increasing efforts in this field of human progress.

For the benefit of Honourable Senators and the listening public, I would like for a moment to outline a number of the key principles enshrined within the United Nations Universal Declaration of Human Rights.

According to the Franklin and Eleanor Roosevelt Institute's website dedicated to the Declaration—I quote:

> 'The Universal Declaration of Human Rights is the primary international articulation of the fundamental and inalienable rights of all members of the human family.
>
> 'Adopted by the United Nations General Assembly on December 10, 1948, the Universal Declaration of Human Rights represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings.
>
> 'Among others, these include civil and political rights such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum and to freedom of thought, conscience, religion, opinion and expression.
>
> 'The rights outlined in the UDHR also include economic, social and cultural rights such as the right to food, clothing, housing and medical care, to social security, to work, to equal pay for equal work, to form trade unions and to education.
>
> 'Originally intended as a "common standard of achievement for all peoples and all nations", over the past fifty years the Universal Declaration has become a cornerstone of customary international law, and all governments are now bound to apply its principles. Because the Universal Declaration of Human Rights successfully encompasses legal, moral and philosophical beliefs held true by all peoples, it has become a living document which asserts its own elevating force on the events of our world.'

In 2002, the international community is in a precarious situation. Human rights violations are rife and are not simply confined to areas of the globe that could be considered the 3rd world.

While many areas of the world are subject to war on a daily basis, many Western nations are now faced with an increased presence of and threat of terrorism and as such, violations of human rights.

In addition, a United States-led war in Iraq looms off in the distance.

It is precisely for the reasons just mentioned that the need for an annual day commemorating Human Rights and the Universal Declaration of 1948 exists.

In his message on the occasion of Human Rights Day, the United Nations High Commissioner for Human Rights, Sergio Vieira de Mello, said—and I quote:

> 'On this day, I would like us to think in particular of the countless number of civilians who are living in the midst of war and conflict and who continue to endure atrocities which should outrage the conscience of humanity. Their basic rights, though enshrined in human rights and humanitarian law, are denied.
>
> For many, war is distant and the graphic images of human suffering enter their lives only through the media. But for the millions of victims of armed conflict, war represents a daily reality.
>
> Men and women are killed, maimed, raped, displaced, detained, tortured, and denied basic humanitarian assistance, and their property destroyed because of war.
>
> Children are abducted, forcibly recruited into arms, separated from their families, sexually exploited, suffer hunger, disease and malnutrition, and are unable to go to school.
>
> They are not only denied their present, but also their future'.

Violations of human rights are often associated with being committed in areas of the world under

the control of totalitarian regimes and just simply in other foreign places. However, it is true to say that here in Australia—our historic track record with human rights is less than perfect. Human rights abuses have occurred in the past and are occurring today.

Take for example past government policies that embraced the removal of indigenous children from their parents and their family units, bringing about what is now known and referred to as the "stolen generation". Even today in 2002, the current federal government steadfastly refuses to apologise or say "sorry" for the injustice and violations of human rights caused by those decisions of the past.

Now for a current example, let me take the treatment of people being held in Australia's Immigration detention centres.

A recent report written by the Australian Human Rights Commissioner, Dr Sev Ozdowski, on visits he undertook to Australia's detention centres throughout 2001, outlined a number of human rights violations existent with the current immigration detention process.

To quote the report:

> 'detainees raised a number of concerns ranging from minor complaints about daily conditions through to perceived serious injustices, including mental health issues. Some of the issues raised were specific to a particular facility. However, many of the issues are common, in greater or lesser degree, to all the immigration detention facilities managed by ACM and reflect systemic problems which need to be addressed.'

On top of the fact that in 2001, the average number of days detainees spent inside detention facilities was 155 days—nearly 5 and a half months, basic human rights afforded to people in detention, such as some access to the outside world through telephones, magazines, newspapers and televisions were reported to be in many cases and facilities, either inadequate or non-existent.

General health, dental health and mental health services in many cases were reported as poor, as was some accommodation, including a case in the Curtin facility where 18 people were sleeping in one small donga designed for one person.

The Report also outlined, and I quote:

'a number of detainees complained that they had not been fully informed of their status and the progress of their asylum applications, including their right to access legal assistance. Many detainees interviewed indicated they had never been informed of the reason why they were in detention.'

One detainee in the Port Hedland facility was quoted as saying:

> 'I don't know why I'm still here in detention. Nobody explained the process. They just said to ask my friends.'

This example and the report in general is a disturbing account of various abuses of human rights existent within the current immigration detention system and of numerous contraventions of international laws and treaties.

It is imperative to remember that our federal government has an obligation under international law to ensure that all people who arrive in Australia, without exception, are treated with dignity, respect and are viewed and valued as people.

The cases of Mr David Hicks and Mr Mamdouh Habib, two cases I have repeatedly raised through forums in the Senate, highlight yet another example of this Government's clear failure to protect human rights.

Both of these men have been remanded in detention under the command of the United States—for Mr Hicks, yesterday marked the one year anniversary of his capture and for Mr Habib, a slightly shorter time, yet still 7 months.

No charges under US, Australian or International law have been laid against either man and they remain in detention without access to legal counsel, Australian consular officialdom or their own families.

A US district court, under judge Colleen Kollar-Kotelly, which dealt with the case of Mr David Hicks stated that the Australian Government, at its will, could pursue rights Mr Hicks would have under International law. The same principle must also apply to the case of Mr Habib. Yet, when I asked the relevant Minister through a question on notice "is the Australian Government making any representations on behalf of Mr Hicks and Mr Habib to secure their release from US detention", the answer provided to me by Senator Hill was a plain and simple no.

This is just simply not good enough. This government cannot sit idly by while its citizens' human rights are being denied.

In conclusion, I'd like to finish this evening by echoing some further words delivered by the UN High Commissioner for Human Rights through his 2002 Human Rights Day message:

> 'The best chance for preventing, limiting, solving and recovering from conflict and violence lies in the restoration and defence of the rule of law. Armed conflict stands as a

bloody monument to the failure of the rule of law. We must break the cycle of violence. Where armed repression strips people of their rights and dignity, let those responsible answer under the rule of law. Where terrorism inflicts misery, let those responsible answer under the rule of law. Let the fundamental rules of human rights and human dignity apply to every state and every armed group, every individual and every collective, every public entity and every private corporation.'

Senator Marshall:

Recently I was fortunate enough to visit a workshop in the Canberra suburb of Mitchell, where Australia's first owned and built satellite in over 3 decades has been constructed, beneath the offices of Auspace by the Cooperative Research Centre for Satellite Systems.

The experimental satellite—Fedsat, a 50 cm cube weighing just 58 kilograms, has been successfully attached to the rocket from which it will be released into space in just under a weeks time.

Whilst the satellite is relatively small in size, it will carry a number of high-technology payloads, the instruments carried by the satellite to gather data for research and development.

Among the payloads carried by Fedsat will be a magnetometer to measure features of the earth's magnetic field related to investigations of space weather; a computer that can be reconfigured in space by reloading software from the ground station; a new means of gathering environmental information through satellite communications; and a global positioning system (GPS) receiver.

Fedsat will be one of four satellites to be placed into orbit by the H-IIA launch vehicle, which will be that vehicles fourth launch. In an agreement signed in September, the National Space Development Agency of Japan will launch Fedsat in exchange for scientific data from the Australian research mission.

The HII-A rocket, over 53m tall, is able to carry up to 6 tonnes into geostationary orbit, and a larger amount into lower orbits. It is powered by solid-fuel strap on boosters and cryogenic main engines burning liquid hydrogen and oxygen.

Over two years has been spent working on the satellite, with 15 Australian engineers and scientists having had an opportunity to create it.

Fedsat, our first owned and built satellite since 1967 is expected to collect data and operate for a period of three years.

Fedsat will orbit at about 803 kms above the Earths surface and will circle the planet every 100 minutes. The satellite will be controlled from a ground station in Adelaide that will have two twenty-minute periods each day to communicate with the satellite, communication which will include downloading data and maintenance work. The first signals are expected about ten hours after launch on 14 December.

The satellite has withstood rigorous testing, including violent shaking and having been 'cooked' in a special oven to ensure it can stand the severe temperatures of space.

Complementing the research side of the mission, the purposes of Fedsat as stated by the Cooperative Research Centre for Satellite Systems include: to establish Australian capability in microsatellite technologies; to develop expertise necessary for sustaining space industries and profiting from them; to test and qualify Australian-developed space engineering systems and to provide a research platform for space science, and to investigate applications of satellite communications and GPS technologies.

The level of engineering that's being applied to components of the satellite is intense and unique to this project within Australia. The completion of the satellite and its eventual launch and operation will demonstrate that despite three decades of little investment or interest in an Australian space program, Australian ingenuity and know-how has been able to complete this project despite funding short-falls and a company that was contracted to assist in the production of the satellite becoming insolvent.

As I mentioned earlier Fedsat is the first Australian owned and built satellite to be produced since 1967, when the WRESAT, Weapons, Research, Establishment Satellite, was launched from Woomera.

The launch of WRESAT saw Australia become only the fourth space-faring nation, and it is worth noting that it occurred just 10 years after Sputnik first orbited the earth, demonstrating that Australia had advanced quite quickly in the early years of space research and exploration.

Unfortunately three decades between launches has done little to constitute a comprehensive and vibrant space program in Australia. Hopefully the launch of Fedsat will help restart Australia's satellite industry and further demonstrate that Australia has the knowledge and skill to effectively take on such ventures and succeed.

We are living in a high-tech era and it is essential that the Australian space program does not return to hibernation after the launch of Fedsat.

It is important that Australia ensures that the skills, experience and intellectual capital developed during the construction, launch and eventual communication with Fedsat is maintained and further developed for the future benefit of Australia.

The experience and knowledge that is developed during the lifetime of this project may assist in providing more advanced communication services on an affordable basis. Communication services such as two-way internet access that is efficient and effective in helping to link up all sections of the Australian community, and assist us in breaking down the barriers of distance that inevitably exist within a nation as large as Australia.

The Cooperative Research Centre for Satellite Systems is aiming to do just that through the establishment of a Broadband Satellite Working Group, which will aim to explore how to assist the Commonwealth in implementing modern communication services via satellite and related wireless systems.

If Australia invests in these sorts of programs we are going to benefit from the returns, we will be smarter as a nation and we will open new export markets.

The potential acquisition and sharing of knowledge and innovation across Australian industry and society that projects such as Fedsat can produce is worth further investment by Australia.

Projects such as Fedsat demonstrate Australia's capability to participate in space research and is a potential medium for creating new and valuable spin-off technologies. These include bio-engineering, robotics, optics, software, electronics, power cells, ground control systems, data processing and advanced manufacturing technologies.

I commend those associated with the development of Fedsat and wish them every success in their endeavour to demonstrate that Australia is back in the race, we do have the knowledge to get out in space and explore the various possibilities that come with such research. I hope the successful launch and completion of the Fedsat program will be a catalyst to bigger and better things for the future of the Australian space program.

Senator Mark Bishop:

Mr Deputy President, I rise to speak on the recent visit to Papua New Guinea of ex-service men and war widows to commemorate the battles of Milne Bay, Gona and Buna, 60 years ago.

As background I should also mention that I also had the privilege in September to join a similar party to the commemoration of the new memorial at Kokoda, high in the Owen Stanleys. The Senate may recall that I have already spoken briefly on that event and on the Battle of Milne Bay previously on the Adjournment.

From the outset may I say that commemorative visits such as these serve a very special purpose.

Thanks to the Australia Remembers Program initiated by the ALP in the first instance, there is amongst Australians, especially the younger generation and families of veterans, a strong and growing awareness of the importance of these battles—and many others—60 years after they took place.

It is in fact salutary to consider current threats such as the so called "war" on terror and compare the reality of these new threats against those of 1942.

1942 was probably the worst year of the war for Australia. One disaster followed another. Everywhere, in Europe the Middle East and in SE Asia the enemy were making ground. Singapore fell, Darwin was being bombed, and the HMAS Sydney was sunk with the loss of all crew.

Prime Minister Chifley was fighting to get the 9th Division returned from North Africa, but only succeeded in doing so after the Battle of El Alamein in which 660 Australian lives were lost, having taken the brunt of Rommel's punishing assaults.

The news of war casualties had become a daily horror story—and the losses continued, particularly from New Guinea.

There were good signs though. El Alamein was a breakthrough, but probably too far away to relieve the direct threat to our north.

The onslaught of the Japanese along the Kokoda Track also stalled, and at Milne Bay after two weeks of bloody fighting, the Japanese invasion was repelled.

The cost was enormous though, with 161 men lost and a similar number seriously wounded.

High in the mountains the Japanese retreated as well, but with continuing loss of Australian lives, emerging to defend their positions on the northern coast at Popondetta, Buna and Gona.

In total 1300 Australians died in this phase of the war, as well as 1000 Americans and 6000 Japanese.

In reading the excellent accounts prepared for the occasion, one cannot but be humbled by the awesome nature of the task—so much so that it does not bear repetition here—suffice it to say how-

ever, that to be in the company of the small band of veterans visiting these sites after 60 years, was indeed something very special.

For the record, Mr Deputy President, those travelling to Papua New Guinea were as follows:

Qld: Ken Allen, Frank Beitz, Mrs Gloria Lee, Frank McCosker, Stan Powell, and Neil Russell

NSW: Bob Aylward, Malcolm Coppock, Bob Crawford, Norm Ensor, Peter Gibson, Griff Spragg and Peter Wright

SA: Ray Baldwin, and Mrs Elizabeth McDougall

Vic: Neil Barrie, Bob Brazenor, Eddie Cooper, and Don McKay

WA: John Corbett

Each of these people were worthy travellers, and despite the elapsed time, were, like all of us, affected by the occasion.

For these veterans who experienced some of the worst conditions imaginable, with constant rain, mud, debilitating diseases such as malaria, impenetrable jungle and kunai grass—the visit I am sure was truly memorable.

To undertake this journey, to see the sights, smell the air and again experience the tropical jungle after such an absence is a demanding and daunting task.

Yet like their original journey, they did it with pride.

It was also a pleasure to see that attendance at each of the commemorative services of the local Papua New Guinea people.

As we all know, the fuzzy wuzzy angels as they were known, were the saviour of a large number of wounded and ill Australians—and at the same time suffered from the cruel hands of the Japanese invaders.

That bond should never be forgotten, but it is a stereotype to some extent for it must be remembered that the Papuan people had their own fighting force which fought alongside the Australians for much of the Kokoda campaign and elsewhere.

The Papuan Infantry Battalion (PIB) was raised in Port Moresby in June 1940, and three more battalions were raised before the end of the war by which time they had come together as the Pacific Islands Regiment.

This included many Australians as well, in fact 500, to which were added 3,850 Papuans and new Guineans. Of these 21 Australians lost their lives, as well as 134 native people.

What is also not commonly known is that some villagers were commandeered by the Japanese and indeed worked with them during their invasion and retreat—working as bearers and guides, but also as informants and collaborators. Quite a number of people were executed by the Japanese when handed over after capture, and some of these were hanged after the war.

Overall though, the native people were an excellent source of support to the Australian campaign, and it was obvious from their attendance at the ceremonies at Milne Bay and Popondetta that they remain proud and loyal to the cause they then served.

That bond should never be forgotten, but in passing I must say that it is tragic to note the obvious decline in the economic health of this young nation.

I know that we are already generous donors of aid, but I do feel some regret that the magnificent effort made by so many young and brave Australians so long ago cannot be better preserved through a more enduring legacy which might see the growth and well being of the country restored.

Certainly these magnificent, kind and welcoming people who helped our men so much deserve a better future than the one currently facing them.

Wouldn't it be better for example to be investing the millions of dollars we have spent on memorials on development projects, perhaps like that at Kokoda initiated by Rotary, where tourist and other facilities could be established to encourage Australians and others to visit, climb the Track, and visit the battle sites and the cemeteries?

Despite the issues of corruption and public safety, a special effort could be made on a local basis with the people to develop something along these lines in a more cooperative way.

In conclusion Mr Deputy President may I congratulate the veterans and war widows who travelled with me on this commemorative visit. I wish them well and I am sure that their trip was a most fitting recognition of not just their own effort and courage, but also of all those others who fought with them side by side, and those who never returned.

My thanks also to the officers of the Department of Veterans' Affairs and the ADF who made all the arrangements.

Senator Mark Bishop:

Tonight I wish to address concerns about the outcomes of the Estimates hearings on 21 November for the Department of Veterans' Affairs, con-

ducted by the Senate Foreign Affairs, Defence and Trade Legislation Committee.

What concerns me most is the state of estimates prepared by the Department of Veterans' Affairs, oversighted by the Repatriation Commission, flowing from not just the most recent hearings, but also from previous hearings including Additional Estimates last February and the Budget estimates for 2002/2003.

There are two features of DVA's budget and they are that estimates are inaccurate, especially in the Health program where there seems to be repeated need to obtain more money during additional estimates—not just of a million dollars or so—but hundreds of millions.

The reasons for his are not clear to me. The Department claims their model needs tweaking, or alternatively that health care costs are increasing because veterans are getting older, using more services, and that the cost of medical services and technology is also increasing. I don't believe any of those problems should prevent accurate estimates being given to the Parliament.

And I should add, that this is for a portfolio where the client numbers are falling noticeably.

The second feature of DVA budgets is probably endemic to government, and I referred to this game yesterday in this place—and that concerns phoney savings proposals submitted and accepted as offsets for new spending proposals—but where the savings are not made, or cannot be shown because there are no measures in place.

As I mentioned I have an unanswered question on the notice paper seeking this information, but after 9 weeks I suspect the Department simply doesn't know. They have probably never been asked to reconcile previous savings.

The recent savings initiatives of reducing fraud in veterans pharmaceuticals is a good example. The numbers were simply extrapolated across from the Department of Health and Ageing—yet there may be no relationship except that veterans use pharmaceuticals. Those savings won't be made and the Department at Budget estimates as much as admitted it.

The other trap in estimates is that of a good idea which can't be proven, and here I refer again to the Veterans Home Care Program which is now being cut all around Australia, simply unlike other veterans programs it is capped and there has been unpredicted demand not budgeted for.

The concept of this program is indeed sound—that is, that it is better and cheaper to keep ageing people in their own homes than to have them institutionalised—so provide those services which will make that happen. The savings ought to outweigh the costs of the new program. But how do we know?

In this case an evaluation has been conducted by the University of New South Wales under contract, and we know a report has been provided. But silence prevails. What are the findings we ask—but we will probably never know because it will be so vague and based on uncertain assumptions. We wait patiently.

In the meantime the charade continues—the program is under funded, but the Minister has falsely claimed that the budget has been increased (it has not) and a further $6 million has been found from a mystery place for related services such as respite care and community nursing—funds we suspect have already been appropriated as part of a standing appropriation.

This is truly smoke and mirrors. Veterans may think this generosity marvellous, but in reality it is a desperate and deceitful act to cover incompetent management.

Further, it is a deliberate attempt to mislead not just veterans, but this Parliament as well.

The list of savings proposals is a long one, but another worth highlighting is that of a Departmental Management Information System (DMIS) which was budgeted for first in 2000/2001 at a cost then estimated at just over $20 million over 4 years, but with projected savings over that same period of $50 million. As far as I am aware there has been no evaluation of this project, and when I last asked, a methodology had not been agreed with Finance.

Turning to other matters, Mr Deputy President, there has been another financial fiasco and here I refer to the proposed new war memorial in London to commemorate the contribution of so many Australian lives to the British war effort last century.

The Office of Australian War Graves is building this memorial at the behest of the Prime Minister at a cost of $6.4 million. It has now been delayed by 12 months as the result of the bungled selection of a design team—and one I suspect could have been avoided by a proper selection process rather than the old mates network. Instead we have a bungled project with $550 000 being wasted on cancelled contracts and other remedial action.

This is scandalous.

The other ongoing saga for the Howard Government with its veterans' policy is the fate of the Gold card.

Despite constant denials by the Minister which remain in the briefs of Minister representing in the Senate, it is now quite clear that the Gold card is rapidly losing currency.

In Estimates we were informed that to that date only 57 % of the 12 000 GPs in the scheme had indicated their agreement to extend for 6 months beyond 13 December. According to the press, this has risen to 90%, but that leaves the ranks of doctors accepting the Gold Card much depleted.

Further, over 240 specialists were known to have indicated their intention not to accept the Gold Card as payment for treating veterans and war widows.

These are very dramatic figures, especially considering that there are few specialties of relevance to veterans, and in those areas, such as ophthalmology and orthopaedics, there is already extreme difficulty getting treatment.

Unless the Government acts quickly, the great benefit and security of the Gold Card will be rapidly eroded. Agreement with the AMA must be reached as a matter of urgency. The time for fudging and denial has run out. Veterans and widows are now becoming alarmed and seriously inconvenienced.

Moving on through estimates, the next issue of note is a regrettable one.

It has long been a tradition in this portfolio that there should be a bipartisan approach to veterans issues, respecting the contribution of veterans to the nation—but acknowledging at the same time the responsibility of an Opposition to scrutinise the estimates and administration in the interests of veterans and the taxpayers.

It is sad to note though that the Department now seems to be becoming a machine for the promotion of the Government and the incumbent Minister. Questioning at Senate Estimates recently has revealed that departmental advice of country visits to veterans is only provided to Government Members of Parliament, and the Minister has taken over the DVA function of writing tens of thousands of personal letters to veterans and widows advising them of minor pension changes at the cost of tens of thousands of dollars.

Further, decisions on grants made under programs such as Saluting Their Service, BEST and Community grants are only being advised to Government Members and Senators. This effectively disenfranchises veterans living in non government electorates, but it also marks the commandeering of DVA's processes for the promotion of the Minister and the Government. This is cheap political stuff, is not worthy of this portfolio, and is very disappointing.

It also seems that a practice has developed of having the Minister's staff having direct membership of steering committees for example the SAS health study—which is unusual to say the least. The tradition in the veterans' portfolio as I understand it is that the Repat Commission was at arms length from the government—but now seems to be completely captured by the political process, along with the DVA which is its administrative arm.

Mr Deputy President, there is a swag of other issues on the agenda for Estimates, some of which are simply information gathering to better understand policies and programs, but many of which seek to test the proper appropriation of taxpayers' money.

They include the performance of former repatriation hospitals which by and large do appear to be living up to our commitment to care for veterans. I have spoken previously here about some dissatisfaction within the T&PI community about the availability of treatment in Perth from the Hollywood hospital, and I note that they have now been advised that the monopoly given to them by the Repatriation Commission, while disputed, will not be changed.

For many veterans, linking their service with current disabilities has long been difficult where they believe they have been exposed to radiation or hazardous chemicals. Research seems to be patchy and the progress of health studies on which further research might be based is painfully slow.

The health study of Australia's Gulf War veterans for example is over 12 months late and it is to be hoped that we do in fact see it before Xmas as we have been promised.

Mr Deputy President I draw these issues to the attention of the Senate to show the value of the Estimates process, particularly in identifying shortcomings in government and administration which are detrimental to Australians or which are negligent with taxpayers' funds.

We can only hope that the outcomes of the process are heeded.

Senator Forshaw:

ABC

On Thursday 5 December Senator Alston was asked a question regarding the possible appointment of former Minister Peter Reith to the ABC Board. Senator Alston refused to rule out appointing Mr Reith.

Given the track record of the Howard Government regarding appointments it is not unexpected

that Senator Alston would be considering appointing a former ministerial colleague to the ABC Board. Since its election in 1996 there has been a plethora of political appointments by the Howard Government.

For example the following Liberal politicians have been rewarded with diplomatic appointments: Andrew Peacock (Ambassador to the USA); John Spender (Ambassador to France); Michael Baume (Consul-General to New York); David Connolly (High Commissioner to South Africa); Jim Short (Special Envoy to Cyprus); Bob Halverson (Ambassador to Ireland and the Holy See); John Herron (Ambassador to Ireland and the Holy See); Bill Taylor (Administrator of Christmas Island); Allan Rocher (Consul-General to Los Angeles); John Olsen (Consul-General to Los Angeles); and Tony Messner (Administrator of Norfolk Island).

In addition Victorian Liberal Party President Michael Kroger was appointed to the ABC Board and former Liberal Minister and Liberal Party President Michael Staley was appointed to the National Museum along with well-known Liberal supporters Christopher Pearson and David Barnett.

This is not a complete list of all the political appointments under this government but it is still substantial for only six years in office.

I do not want to suggest that all these appointments have been unsuitable but one has to draw the line when it comes to the possibility of Peter Reith being appointed to the board of the ABC. Such an appointment would be an outrage considering the history of Mr Reith's period as a Minister.

When Senator Alston was asked last Thursday how the Government could consider appointing to the board of the ABC someone who has been found by the Senate Select Committee on a Certain Maritime Incident to have 'deceived the Australian people during the 2001 Federal Election campaign concerning the state of the evidence for the claim that children had been thrown overboard from SIEV4' he replied, inter alia:

> The idea of somehow taking the view of a committee on which the government does not have the numbers as a benchmark for deciding to appoint people to the ABC board is pretty breathtaking stuff, I have got to say. (Hansard 5/12/02, p 6846)

Apparently, Senator Alston has very little regard, if any, for the findings or recommendations of Senate Select Committees.

In the light of this response it is interesting to recall Senator Alston's own views when he chaired the Senate Select Committee on ABC Management and Operations in 1994/1995.

Recommendation 21 of that Committee, chaired by Senator Alston, stated that:

> The ABC Act should be amended so as to ensure that at all times the Board is made up of persons with an appropriate mix of skills, particularly proven management, financial and personnel skills, in large public or private sector organisations and recognised broadcasting experience.

It is difficult to see how a former Minister who was unable to manage his Telecard and had to repay around $50,000 for improper use of his Telecard has the necessary financial or management skills to be appointed to the ABC Board.

It is difficult to see how a former Minister who provoked the waterfront dispute and the use of guards with balaclavas and dogs against waterside workers has the necessary personnel skills that Senator Alston believes are necessary.

It is impossible to see how a person who was unable or unwilling to pass on vital information to his ministerial colleagues during the "children overboard" incident and thereby allowed the media and the public to be misled during the election campaign has the appropriate broadcasting experience to be a member of the board of our national broadcaster.

However, if Peter Reith is being considered for appointment to the ABC Board then, to be fair, he should be given the chance to have his credentials examined. This is indeed what Senator Alston's Committee recommended in 1994. Recommendation 22 of the Select Committee Report stated:

Before the appointment of a person to the Board, the proposed nominee should be required to appear before a joint parliamentary committee to enable the Parliament to scrutinise the person's credentials. The committee would not have the power of veto, but would be able to comment on the suitability of a nominee prior to appointment.

The chances of this happening of course are zero. Given that Peter Reith refused to appear before the Senate Select Committee Inquiry into a Certain Maritime Incident it is unlikely that he would agree to appear before any other Committee of the Parliament.

In any event Senator Alston has ignored his own committee's recommendations when he has appointed other persons, such as former Liberal Party President Michael Kroger, to the Board. This is not surprising because Senator Alston has ignored other recommendations and findings of that Select Committee which he chaired.

Since becoming Minister for Communications in 1996 Senator Alston has, contrary to his own Committee's report, slashed funding to the ABC resulting in large scale redundancies, the sale of ATV, substantial reductions in the services of Radio Australia and a decline in the morale of ABC staff.

To cap it all off he supported the appointment of Jonathan Shier—the most disastrous Managing Director the ABC has ever had! Fortunately the ABC Board last year finally took action to get rid of Jonathan Shier and restore some stability to the ABC.

The ABC is a great Australian institution. It is one of the world's great national broadcasters. Let's hope Senator Alston doesn't make another mistake by appointing Peter Reith to the ABC Board.

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

Second Reading

Debate resumed.

Senator GREIG (Western Australia) (1.34 p.m.)—I rise this afternoon to speak to the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. The Australian Democrats are gravely concerned about the extension of mandatory activity testing and the harsh current penalty regime to an already disadvantaged and vulnerable group of people. This group has been specifically denied much of the assistance made available to other unemployed people in Australia. TPV holders have limited access to services and programs that, if undertaken, may otherwise meet the activity requirements. They have no access to free Department of Immigration and Multicultural and Indigenous Affairs funded English language classes, the personal support program or intensive assistance through the Job Network.

What is wrong with this bill is that TPV holders will now be subject to complicated administrative demands without even the most basic assistance necessary to comprehend what it is they are expected to sign. It is too late to offer them English classes after they have entered into a complex contract in the form of an activity agreement barely after they have left the detention centre and before they have had the chance to gain basic English literacy. They are being set up for failure and for breaches that carry extreme penalties. Successive reports by the Pearce independent review into breaching, the Commonwealth Ombudsman, the Hanover Foundation, the Brotherhood of St Laurence and the Salvation Army have all found that the duration and severity of breach penalties are damaging to disadvantaged Australians and do nothing to help them gain work. It will be even more so for TPV holders on special benefit who may already be on a reduced rate due to the dollar-for-dollar income test or the two-thirds rate payable if they are receiving free board and lodging.

Tomorrow, in this place, the Australian Democrats were to be doing what the government has failed to do—that was the plan—and that was to introduce the Pearce amendments into the Social Security Act. Clearly, that is something we can still look at doing, but in the meantime this bill introduces penalties, the duration and extent of which are excessive in relation to already disadvantaged Australians. TPV holders are only temporarily protected in Australia. They are not eligible for public housing unless they are granted permanent residency or permanent protection and, under the current harsh provisions, they would never gain that permanent protection. They can only, however, apply for emergency housing that is of a temporary nature but are not eligible to apply for public housing unless granted a permanent visa. They will continue to experience housing distress and unstable accommodation. Other job seekers are eligible for public housing. Those in public housing enjoy a benefit that TPV holders do not have. They are advantaged in their job search activities because they have secure and affordable accommodation. If the work activity test is to be extended to those on TPVs, then all those subject to the work activity test should at the very least receive the same benefits, including public housing eligibility.

The Australian Democrats are significantly concerned at the inability of the work activity test to deliver reasonable employment outcomes for the most disadvantaged. Breaching does not help a disadvantaged,

illiterate, innumerate or homeless person to get work. It does nothing to assist a person who is suffering post-traumatic outcomes of torture and persecution or one who suffers from an undiagnosed mental illness and is episodically unable to comprehend, let alone act upon, written instructions.

The wide, scattergun approach of breaching, with the aim of somehow catching the few who are generally not seeking work, is mistargeted and causes most damage to those who should not be subject to it. The minister would have the Australian community believe that TPV holders do not have any existing obligation to look for work. This is simply not correct. In order to receive special benefit, a recipient of work force age must register as a job seeker with Centrelink, enrol with at least one Job Network member, actively seem to be, and be, available for employment and apply for at least four jobs per fortnight.

It can be fairly argued that these existing obligations, without the requirement to negotiate agreements and without complex mutual penalties, do take account of the inequity and disadvantage that TPV holders already have. It is already the most appropriate level of activity testing, given that TPV holders are presently unable to access Family and Community Services programs, intensive assistance through the Job Network, and DIMIA funded settlement programs. People on TPVs already experience many barriers in accessing mainstream services. We know, for example, that TPV holders will find it extremely difficult to comprehend the hoops and hurdles of the administrative system. There is significant evidence that people with poor language skills, temporary accommodation and few personal resources or family support are more likely to be breached. They are very active in pursuing seasonal rural and regional work such as fruit or vegetable picking, which will mean that they miss Centrelink letters, which, in any case, they would be unlikely to be able to read, miss appointments or, in the ultimate irony, be breached for moving to another area. Either way, in the end they will unwittingly fail and lose their entitlements. Indeed, it seems that this is the outcome sought by the government.

The Democrats believe that if there is to be any change it must address the present inequities of language, communication, accommodation, community support, income testing and intensive assistance. These factors must be given legislative force. This bill fails to do so and thus we reject it. Special benefit is an emergency payment for people in hardship who cannot receive other Centrelink payments. It was never intended to be a long-term income support payment. This bill attaches mutual obligation requirements to the receipt of this benefit and thereby changes the nature of the payment and imposes unnecessarily harsh conditions on disadvantaged recipients.

If the government wishes to impose these conditions on TPV holders, it should instead allow those holders access to Newstart and Youth Allowance on an equal footing. If the government wishes to assist TPV holders to find work it can allow them access to DIMIA funded English language courses, allow them to enrol in vocational courses full time and provide access to intensive assistance and the personal support scheme without the requirement to enter into an activity agreement. To encourage TPV holders to take up casual work, the withdrawal rate of special benefit should, at the very least, be the same as for Newstart. Currently, special benefit is withdrawn at a rate of 100 per cent—that is, for every dollar earned a dollar is taken away.

TPV holders are also likely to have problems with fair access to the review and appeals process. Language and other barriers will make it more difficult for them to understand the legalistic and bureaucratic administrative system. Legal aid guidelines prevent TPV holders from getting legal aid in most social security cases. Research reports that those in the community who are the most vulnerable and marginalised are not only the most likely to incur a breach but also the least likely to be able to withstand the penalty and the least likely to be able to negotiate the appeals process. TPV holders will be vulnerable to be drawn into this marginalised group, if the legislation was passed, simply

due to their limited English skills and knowledge surrounding law and justice issues in Australia.

Successive Australian governments have not fulfilled their obligations to asylum seekers, particularly since the introduction of the temporary protection visas. For the government to now argue mutual obligation in relation to TPV holder access to special benefit is a travesty. The measures contained in the bill aim to encourage social and economic participation by treating TPV holders in a similar way to Australian nationals, thus emphasising the requirement to be self-reliant and to fulfil a mutual obligation to the Australian community.

Mutual obligation is also a requirement on government, as it has an obligation to protect refugees and assist in their settlement. The government's obligations are currently not being fulfilled. Without major changes to the range of government policies affecting TPV holders, so that they are given access to a whole range of programs and services offered to permanent protection visa—PPV—holders, the activity testing of TPV holders will only compound this group's marginalisation and experience of poverty. TPV holders in the community are already denied access to essential settlement and assistance services. They are experiencing notable poverty brought on by difficulties in obtaining employment due to language skills, lack of recognition of qualifications, lack of local experience and the short-term nature of their visa.

If the aim of the government is to move TPV holders from special benefit to work, then the infrastructure for this to happen must be established—especially free English classes for TPV holders—without the need for them to enter into the trap of activity agreements which their very lack of English prevents them from fully comprehending in the first place. Limited access to English classes means that those who get work are potentially endangering themselves and others, as even labouring jobs or process work requires some English in order to meet workplace safety requirements. Those who are unable to get work become further marginalised and are excluded from the very settlement services that may counteract their situation.

TPV holders are already vulnerable to exploitation in the labour market and commonly accept jobs that pay under award wages and have poor working conditions. TPV holders may not be aware of their rights under Australian industrial law nor understand that they will be breached for failing to accept work paying under award wages. The 26-week non-payment period, where a person reduces their employment prospects by moving, and the seasonal workers preclusion period will further disadvantage TPV holders on special benefit. TPV holders usually relocate once they are released from detention to locations with more support services and a greater number of community members from their cultural background.

TPV holders are simply not equipped to meet the demands of mutual obligation and will be severely disadvantaged if this bill is passed in its present form. For this reason, the Australian Democrats cannot support it. In its present form, the bill provides that breaches and penalties will follow almost automatically for many TPV holders. In light of this, the Australian Democrats propose that the penalties attached to noncompliance with obligations should not be imposed for a period of at least 26 weeks after the person has been granted their TPV or released from detention. Additionally, if this bill is implemented, given the language difficulties and other settlement problems arising for refugees, TPV holders must have full access to full-time DIMIA English classes. This should be the only mandated requirement of any activity agreement. We look forward to the opportunity to present these amendments in the committee stage of the bill.

Senator MOORE (Queensland) (1.46 p.m.)—In Minister Anthony's second reading speech introducing the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 into the House, he said that the aim of the bill was to:

> ... encourage social and economic participation by treating work force age holders of visas issued for temporary protection, humanitarian or safe haven purposes in a similar way to Australian nationals

of work force age; that is, they will be required to be self-reliant and to fulfil a mutual obligation to the Australian community.

When the bill was referred to the Senate Community Affairs Legislation Committee, over 50 submissions were received from a number of people—welfare groups, churches and individual members of the community. What they said was that the people we are talking about, people who are currently on temporary protection visas, are not being treated the same as work force age people who are Australian nationals. Currently, people who are on temporary protection visas are, by nature of receiving TPVs, genuine refugees. But by nature of being temporary protection visa holders they have no rights to residency, no rights to family reunion, currently no rights to English training and, most particularly, no rights to feel part of the Australian community. We heard from the department that the system currently works quite well for people who are on temporary protection visas. They receive special benefit. Special benefit is not a new payment. It is a tough payment. It was described by ACOSS as one that has:

> ... different, tighter eligibility and payment criteria and much stricter income testing policies than any other income support payment.

And this was accepted. In return for getting the special benefit, currently people on temporary protection visas are part of the system. They are required to communicate regularly with the department to fulfil quite strong administrative arrangements—they have to prove that they are looking for work; they have to communicate and they work within the system. Under the proposed change that this bill seeks to bring in to prove mutual obligation, the full participation provisions, which we have already debated in this house, and the full process of an implementation of a punishment regime to enforce compliance will be introduced to people who are on temporary protection visas.

We have heard the arguments about this and we will not run through them all again. However, we acknowledge that there have been a number of reviews of this system and, in particular, as we have heard, the independent Pearce review specifically addressed the concept of participation and penalties. We have heard from the department, and we acknowledge that the department has made significant efforts to implement changes to make the system work better. However, despite the range of communication and despite the protestations, what we hear from the welfare agencies and people who work within the system is that they still do not trust it. The system does not fulfil their concept of mutual obligation, which must be that they feel part of the system and that they feel protected by the system. We know why the implementation of penalties has been suggested by the department. We have heard the arguments that the only way to ensure compliance is to make sure that people sense that there could be some penalty for noncompliance. We know that; we have heard it—but we do not believe it. We believe there has got to be much more evidence of people feeling part of and trustful of the system. When you have immediate distrust and fear, you cannot and will not have compliance.

Currently, over 4,000 people on temporary protection visas are in the system—they are receiving special benefit. It was acknowledged through the committee process that Centrelink staff have made significant efforts to provide sensitivity and support to the people on special benefit. Many people spoke about the special efforts that the department makes. The department restressed the fact that social work services, interpreter services and understanding of special needs would be put in place to help people who are on temporary protection visas. We acknowledge that. We think that that is strong and good. However, we believe that there must be more—there must be more acknowledgment and there must be acceptance that these people have special needs.

There are parts of the proposed legislation that we welcome. The most common statement from people who provided evidence to our committee was of the concern that, under the current system, people who are on temporary protection visas do not have access to the English classes and support that are available to people on permanent protection visas. That has been mentioned in previous

statements in this place. Under the new provisions, a key element is that there will be access to English classes for people who are receiving special benefit who are on temporary protection visas, and this is welcomed. However, there are different English classes.

In the supplementary questions, to which we received answers from the department, we particularly asked what the difference is between the English classes currently provided for people who are permanent residents and those proposed—not currently offered—for people on temporary protection visas. We received the answer, not in the original documents but in the supplementary responses, which said that there is a different focus to the English classes being provided under this particular bill. There is less available in terms of numbers of hours. There is a different process in the training and, in particular, there is a particular focus for the people in this group on eligibility and effectiveness for work.

We accept this. We think it is valuable, and there has been no question that there has been any attempt by the people within this group to not seek work. However, in terms of the offer of English classes, there must be some question as to why there is a difference. If there is currently a working arrangement for English classes for people on permanent protection visas, which were acknowledged by the people who presented to our committee as being helpful and supportive, why then should the reciprocal component from the government be different for people who are now, under this provision, going to be expected to provide more accountability for their access to Australian services? If you are acknowledged to need English support to get your language skills up and to get your ability to be effective in the work force—if it is acknowledged that you need that support—then why should it be provided to you in a different way? Why not just provide the existing services and ensure that people feel part of the whole process? Given that, however, we welcome the introduction of English classes and we acknowledge that this does respond to a major demand and need of the people about whom we are speaking.

The other really positive aspect of this proposal is that, should this proposal be accepted, people who are on temporary protection visas who are receiving special benefit will for the first time be able to retain their payment whilst studying full time. This is a major development for people who are already wanting to improve their circumstances and be able to exist effectively in the community and who are seeking work. For the first time, under this provision, they would be able to maintain their income stream whilst proving that they are undertaking full-time study.

There is, of course, a downside to this offer. While acknowledging that people would be able to study full time and keep their payment, there is still no availability for people who are on special benefit who are temporary protection visa holders to have access to HECS or Austudy. So, sure, under this proposed change people will be able to take up study. They will be able to retain their payment, but how they are going to pay for whatever course of study they take has not been acknowledged in the process. That is still the great unknown. As we have already identified, these people are severely disadvantaged and have great difficulty in finding employment and acceptance in the community. And it is then said that if they are going to seek study now they will be able to do it without losing their income stream but they will not be able to have any form of support to pay for whatever form of training they are receiving. We think that is something that should be genuinely looked at to make this whole provision much more equitable.

People on special benefit who are temporary protection visa holders are already required to communicate with the department. They are part of the system. They need to acknowledge that they are seeking work. They need to access the Job Network services to an extent and they need to ensure that they are part of the whole Australian community. In the changes proposed in this bill, there is an acceptance that they will need to fulfil the whole range of expectations currently applied to ‘Australian nationals of work force age’.

There is one major oversight, though, in what these people will be able to access. This is at the heart of what the government's mutual obligation proposal is all about. There is an acceptance that people seeking work will have special needs. There are provisions by various parts of the government in support networks for people who are seeking work. One of the key planks of that provision of support is the intensive assistance program. It is a part of the ongoing relationship between those seeking work and the Australian government which is helping people to find work. A key component of that is the intensive assistance program, which is added support for people who have gone through the hoops and are now at the stage of not being able to find work. That is available for Australian nationals of work force age but, when and if this legislation comes in, that particular component of assistance will not be made available to people who are currently on temporary protection visas and receiving special benefit—that is, to people in the community who are fulfilling all the other expectations of the system.

It is almost without understanding. If you have a bill that is proposing to treat people the same, it would seem to me to be quite obvious that they would be treated the same. If people on temporary protection visas actually identify who they are and identify to the department that they are seeking work and if, under this proposed generous change, they are receiving English assistance and also the ability to study—if they have done all those steps and are still unable to find work and there is a component of assistance available to Australian nationals of work force age, why then should they not be able to access that component? I question whether that is direct equity of access.

What we need to establish in this process is that there are people who are living in our community who have severe disadvantage. The government has provided assistance to the rest of the community who are seeking work. Already we have acknowledged that the department has put in place a range of support networks for all of us who would be in that situation. At the same time as we are supporting a program of mutual obligation, we are keen to impose the obligation but we do not seem to be quite so keen on the mutual nature of it. If the mutual nature is going to be imposed, we should be quite clear that everybody seeking work in our community is treated the same.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Telstra

Senator LUNDY (2.00 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. Can the minister confirm that Telstra has made serious billing errors with its ADSL broadband Internet product, with this error resulting in many customers not having received a bill for months after subscribing and then receiving a huge bill? Can the minister inform the Senate how many customers have been affected? Can the minister also confirm that Telstra's response to this billing error has been to demand payment for outstanding accounts in an unreasonably short time frame, despite the fact that this billing error has not been the fault of customers? Given these problems are no fault of customers, does the minister condone Telstra's arrogant and out of touch attitude towards its customers? If this is Telstra's approach now, what hope have customers got under a fully privatised Telstra?

Senator Conroy—You lost a billion dollars yesterday. Be careful what you say.

Senator ALSTON—I tell you that you ain't seen nothing yet. If we went down your path, there would be nothing left. They would probably have to delist the company if we went down your path!

The PRESIDENT—Minister, I remind you that you have a question to answer.

Senator ALSTON—As far as Senator Lundy's question is concerned, the first point to make is that the government does not have responsibility for supervising Telstra's commercial activities. Clearly, Telstra does not have any vested interest in making billing errors. One would assume that it is very much in their interests, as much as anyone else's, to rectify any problems that might occur and to ensure that its systems are up to date. Senator Lundy, who seems to have this

same visceral hatred of Telstra that permeates the opposition these days, talks about 'Telstra's arrogant and out of touch attitude', but I do not understand the basis on which she says that. One cannot criticise Telstra for making billing errors because they get—I forget the number, but it is something like—11 billion calls a year. There are obviously going to be problems, no matter how perfect the system might be. Senator Lundy talks about an unreasonably short time frame but does not specify what that is, so it is a bit hard to ask me to comment on that. If that is somehow the basis for saying Telstra are arrogant and out of touch, then I think that we would need a lot more detail before coming to anything like that judgment.

Senator LUNDY—Mr President, I ask a supplementary question. Is the billing error connected to the failure of Telstra's main ADSL application processing system, which has led to hundreds of ADSL applications from consumers sitting unprocessed? Can the minister provide advice as to when this application processing problem will be fixed, given this failure affects Internet service providers who compete with Telstra in providing ADSL, as well as consumers? Isn't this just another example of Telstra using its monopoly position to disadvantage competitors that rely on its network?

Senator ALSTON—I will start by pointing out to the opposition that all this is occurring while Telstra is majority government owned. I cannot possibly understand the logic in therefore saying that somehow things could get worse later on. If you think that you need to impose standards, then you do so. We have consistently tightened the regulatory requirements, we have imposed customer service guarantees and the like. But we do not micromanage the business. We do not get out there and tell them that they have to have a perfect result on ADSL. We know that other countries have experienced problems with ADSL. If there were any suggestion, for example, that Telstra was deliberately causing problems in its own network or going out of its way to disadvantage its competitors, we would be down on Telstra like a ton of bricks, and you know that. The idea that somehow Telstra should be held to a standard of perfection just because it suits your political purposes to point out a few mistakes here and there is not the real world and it is just a further example of your vicious hatred of a great Australian company. *(Time expired)*

Commonwealth Property: Management

Senator BRANDIS (2.04 p.m.)—My question is directed to the distinguished Special Minister of State, Senator Abetz. Given the Howard government's proven commitment to the prudent expenditure of taxpayers' money, is the minister aware of Commonwealth property arrangements that do not represent value for money? What is the financial impact of these arrangements on government finances and, especially, the impact on taxpayers?

Senator ABETZ—I thank Senator Brandis for his timely question. Senators will remember that, in 1993, Labor arranged to lease their Canberra property Centenary House to the Australian National Audit Office. The lease was for 15 years, which is considerably longer than the usual five years. To make matters worse, Labor claimed a rental increase of nine per cent per year or the increase in market rents, whichever was the larger—a gross example of greed. Hardworking Australians are now paying $845 per square metre for office space at Labor headquarters. Yet the Audit Office sought a sublease and it could only ask market rates of $320 per square metre—a massive $525 per square metre less than the amount the Audit Office is forced to pay Labor.

This year, Santa Claus will be bringing Labor a present of $3.3 million, and that is not the whole amount: that is just the amount above market rates. That $3.3 million present has been ripped out of the pockets of hardworking Australians. Over the full life of the lease, the rip-off will be $36 million. In the past, other senators from this side, such as Senators Campbell and Brandis, have called for the lease to be renegotiated to reasonable levels. On every occasion, the Labor Party, under its ineffectual leaders of Messrs Beazley and Crean, have rejected those calls. They use the weasel words such as, 'It isn't illegal.' Just because something is not illegal

does not make it right, and Labor's rip-off is plainly wrong.

But I would ask Labor to consider what this ill-gotten $3.3 million could actually buy. It could actually buy 25,000 Bob the Builder tool kits for Senator Lundy and her mates in the CFMEU, or it could buy 125,000 Tonka trucks for Senators Conroy and Hutchins and their mates in the TWU, or it could buy 82,000 stuffed sheep for Senators Forshaw and Buckland and the shearers of the AWU. But I have a funny feeling that they have enough of those over that side already. It could buy 165,000 Barbie gift sets for Joan Kirner and the EMILY's List sisterhood.

Senator Bolkus interjecting—

Senator ABETZ—Or it could buy more than eight million public phone calls for Senator Bolkus. Sadly, one thing Labor cannot buy is leadership and integrity, let alone policies. Now is the time for Labor to show its Christmas spirit and give back the ill-gotten gains rather than being the Grinch. We know that Labor is not good at giving. It has not given us a leader or a policy over the past six years. Labor needs to make a New Year's resolution to kick its addiction to the Centenary House rental rip-off. Though I doubt that this will be my last question for this year, can I wish everybody a happy Christmas and a prosperous New Year.

Telstra

Senator MACKAY (2.09 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. What does the minister say to figures in Telstra's so-called customer service improvement database, which is in fact a faults database, showing that the total number of faults in the network has gone up from around 104,000 in February to around 112,000 as of last Friday, an increase of 8,000 this year alone? Can the minister confirm Telstra's evidence to the Senate that there are 15,000 faults in the highest priority categories and that these are all customer affecting and safety related faults? Isn't it also the case that New South Wales country is the worst affected region, with around 5,000 faults in these safety related and service affecting categories? Why has Telstra now said it cannot put any resources into fixing the 13,700 faults in priority 3, which are all customer affecting and safety related, but has at the same time sacked over 2,000 customer field staff this year alone?

Senator ALSTON—I thank Senator Mackay for her question, which I acknowledge comes straight from trade union house. To give Senator Mackay her due, she deserves some credit because, consistently in the face of explanation on this issue, she has still managed to con some presumably young and gullible journalist that somehow there is a serious issue behind Telstra's customer network improvement database. As Telstra has pointed out many times, its CNI database is essentially a proactive maintenance database—a list of jobs to do. The fact that tasks are listed in the database does not mean that customers' services are at risk. The CNI database is not a fault database as such. Actual faults are dealt with separately as they arise and are subject to the government's customer service guarantee. While priority 1 and 2 CNIs relate to escalated faults and safety, they are potential issues rather than actual issues requiring immediate attention.

To claim that CNI means Telstra's network is riddled with faults or that people should be scared for their safety—which is the line peddled consistently by Senator Mackay over some months now; she does get a bit of a run from time to time—is highly misleading, if not irresponsible. While the total number of entries might be high, it needs to be considered in the overall context of the Telstra network, which has over 10 million fixed line services. Therefore, CNIs represent only about 1.12 per cent of services. Telstra has made sound progress in reducing priority 1 CNIs from 2,000 in July 2001 to 348 and priority 2 CNIs from 2,000 12 months ago to 943. Any CNI detailed as potentially affecting customer service or as safety related is actioned as soon as possible. Older CNIs are old because they are not affecting service or are not safety related. They relate to work that can be done when the opportunity arises.

What all that means is that Senator Mackay should concentrate on the main game,

which is ensuring that customers of Telstra are not disadvantaged. That is what the customer service guarantee is all about. In other words, you look at results—outputs, not inputs. The unions, of course, are obsessed with inputs because they want to justify having every man and his dog in every country town getting a travel allowance and whatever else, but it is not an efficient way of operating. We are concerned to ensure that the customers are not disadvantaged, and Telstra's CNI database tells you absolutely nothing about the level of actual faults affecting customers in the system.

Senator MACKAY—Mr President, I ask a supplementary question. I would point out that the figures are from Telstra. I am interested that the minister has repeated Telstra's outlandish claims this week that the CNI faults database is merely a list of maintenance faults when Telstra officer Mr Rix told Senate estimates on 20 November:

> The first three … categories are escalated tickets of work that need work done straightaway, that are a safety issue or that relate to a complaint. All of those are service affecting …

What does the minister have to say to the 15,000 Australians who do not even know that they have safety related faults on their phone lines?

Senator ALSTON—As I said a moment ago, while priority 1 and 2 CNIs relate to escalated faults and safety, they are potential issues rather than actual issues requiring immediate attention. The fact is that customers need not have any concern at all unless they have problems with their phone. You are not interested in what is inside the television set; you are interested in whether it is working. If it is not working, you get the technician to come out. You do not need to go to an electronics lecture so you have a sophisticated understanding of what is driving the set. Turning the switch on and off is probably good enough for most consumers, and as long as they get the picture they want then they are satisfied. The same goes for telecommunications services. That is why we introduced the customer service guarantee. Your approach was: Telstra will fix your phone when they are good and ready. It was not good enough for us; it is not good enough for consumers. They should be very confident that the CSG will deliver the goods.

Telstra

Senator EGGLESTON (2.15 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Is the government committed to providing a comprehensive response to the Estens inquiry recommendation regarding pair gains—the technology which enables multiple telephone services to operate on a single copper line? Is the minister aware of any alternative policies in this area?

Senator Lundy—Here we go!

Senator ALSTON—Just be patient; we will get to it. As most people in this chamber probably know by now, because Senator Lundy seems to be a self-proclaimed expert in the field, pair gains allow two telephone services to be provided over the same copper line, even though it was originally designed only for voice calls. This is a way of extending the life of an existing network. However, there have been some problems, and the ACCC has noted that the use of pair gains and other technologies, known as RIMS, do limit the availability of ADSL broadband services.

Senator Lundy—And myriad other examples.

Senator ALSTON—Your turn will come in a minute. Estens has also reported on this and recommended that Telstra demonstrate that it has a strategy to address any data issues arising from poorly performing pair gains. So we are on the case; we are dealing with the issue. Because Senator Lundy spent a lot of time talking about pair gains, I am asked whether there are any alternative approaches. Given that she has made at least three speeches, put out about 16 press releases this year and boasted about having a pair gains web site, and all the rest of it, I think it is probably important that we presume she has a sophisticated understanding of the technological issues involved. We should therefore look very closely at what she has said on this subject so we can get some insight into what the Labor Party's approach might be in government. I take the

Senate to the *Hansard* transcript of an estimates hearing on 20 November. Senator Lundy asked Mr Paratz, a Telstra representative:

I was asking about SCADS before. Can you tell me what a DCRS20 system is and whether or not it carries ISDN services and ADSL?

There is a lot of gobbledegook there. It sounds impressive, doesn't it? Mr Paratz answered:

I am going to have to ask you to clarify that because we have DRCSs—

not DCRSs—

and we have DCS20s—

in other words, combining two pair gain technologies into a completely new entity—

we do not have any of those animals. So which one are we talking about?

Senator Lundy responded:

Whatever.

Mr Paratz said:

Ask me the next question, and then I can infer what it is we are talking about.

And Senator Lundy responded:

I do not know what I am talking about. I did not know what SCADS was and I do not know what the DRCS or whatever is.

The Telstra response was:

Ask whoever it is to tell us and then we can get back to you.

Merry Christmas, Senator Lundy!

Financial Planners: Independence

Senator BUCKLAND (2.18 p.m.)—My question is to Senator Coonan, Minister for Revenue and Assistant Treasurer. As 72 per cent of Australia's top 50 financial planner groups are wholly or partially owned by major financial institutions, how can the minister assure consumers that advice provided by these planners is genuinely independent?

Senator COONAN—I thank Senator Buckland for the question. The answer of course comes back to the Financial Services Reform Act and to the very extensive regime that has been implemented by the parliament to ensure that disclosure is transparent and that all the indicia of independence are set out in the Financial Services Reform Act. It is a shame that when the regulations came before the House—particularly in respect of setting out with greater particularity the requirements of superannuation funds for disclosure for those who wish to purchase financial products, particularly superannuation products—the Labor Party voted the regulations down. It ill behoves Senator Buckland to be suggesting that there is some real problem in relation to identifying ways to ensure that analysts are independent when the Financial Services Reform Act sets out a comprehensive regime. And when further attempts to elucidate and to give particularity to what would need to be disclosed to ensure the independence of advice was put forward in regulations, the Labor Party voted them down.

If Senator Buckland has a concern about being able to ensure that analysts' independence is transparent and fair and that those who deal with them can deal with them fairly and transparently, he should not have been a party to voting down the regulations and he should be doing everything he possibly can to ensure that Senator Sherry and all those on the other side pass the government's legislation on choice. That will do more than anything else to ensure that all the financial planners and all the funds concentrate very clearly on providing adequate advice to those who wish to buy products. The Financial Services Reform Act provides a very comprehensive review. We thought that some particularity could add to it, but in those circumstance it was completely thwarted by the irresponsible attitude of the Labor Party.

Senator BUCKLAND—Mr President, I ask a supplementary question. What is the Assistant Treasurer doing to address the problem of commission based selling by financial planners that will be significantly greater under her deregulated so-called superannuation choice model?

Senator COONAN—Thank you for the supplementary question, Senator Buckland. The very simple answer to that—I do not know how to explain it any more adequately to you—is the word 'disclosure'. The word 'disclosure' says it all, Senator Buckland. It will ensure that trailing commissions and any other fees and charges can be adequately

disclosed and that analyst independence and the fairness and transparency of advice that is given can be ensured.

Women: Paid Maternity Leave

Senator STOTT DESPOJA (2.22 p.m.)—My question is addressed to the Minister for Finance and Administration. I ask whether the minister is aware of figures released yesterday by the Human Rights and Equal Opportunity Commission, which commissioned NATSEM to cost national paid maternity leave for Australia, that demonstrate that a national paid maternity leave scheme could be provided in Australia for $213 million net per annum. I also ask why the minister refused to provide the costings of the Department of Finance and Administration to HREOC. Given the government's unwillingness to provide those figures, does the minister accept the figures released yesterday?

Senator MINCHIN—I am not aware that we denied any figures to HREOC. I thought we had released our figures, which showed that the sort of model which was being discussed would cost, at a minimum, $475 million to provide $430 per week for 14 weeks to all mothers. That figure has basically been confirmed, as I understand it, by Ms Goward's report. It reveals that that sort of scheme would cost around that amount—between $465 million and $475 million. Of course, the option put forward by Ms Goward discounts the baby bonus, the various tax benefits et cetera for any mothers who take taxpayer-funded maternity leave under her scheme. So once you discount all that you come up with her figure of some $200 million.

We are very interested in the proposition Ms Goward has put up. The responsible minister, my colleague Senator Vanstone, has said that this option of Ms Goward's will be considered in the context of our review of work and family policies to see whether it is an option that should be pursued in our examination of the appropriate policy settings for work and family. All I can say is that, from the evidence I have seen, what has been released does confirm the original costings that we released. My recollection is that we released those costings publicly.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for his answer and for that clarification. The report stated:

> Although the Government has declined to provide details of the Department of Finance and Administration's costings to HREOC ...

I was reading that from the report but, if that is the case, I am glad to hear that the government has provided the figures. I acknowledge the minister's response and ask whether this means he may have changed his view that paid maternity leave represents middle-class welfare.

Senator MINCHIN—The government, as has been said, will consider this particular option. But I have to say that, as finance minister, I have always had difficulty with propositions that are open-ended, that are not means-tested, that anybody on any sort of salary—

Senator Jacinta Collins—Did you think that about the baby bonus?

Senator MINCHIN—You have to understand that what we are being asked to consider is a proposition that people on $150,000 or $200,000 per year should be entitled to a benefit paid for by the taxes of families earning $30,000 or $40,000 per year. I think these are relevant considerations that we will obviously take into account when we come to consider whether there is a place for Ms Goward's proposition in our lexicon of family benefits.

Taxation: Capital Gains

Senator MARK BISHOP (2.26 p.m.)—My question is addressed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Can the minister confirm that the ATO's compliance program for 2002 announced yesterday includes cracking down on complex capital gains tax avoidance schemes? Can the minister outline what sorts of schemes are being scrutinised by the ATO? Do they include schemes where people falsely claim the sole and principal place of residence exception?

Senator COONAN—What I can tell the senator about the compliance program for next year is that the commissioner has decided to release an outline of this year's tax

office compliance program to provide the community with confidence that the tax system is being managed fairly and efficiently in an open and accountable way. It is important for the community to be informed of how the resources provided by the government to the tax office are used for collecting revenue.

In our self-assessment tax system, the tax office has to make choices about how best to direct its activities to address the areas of greatest risk. The compliance program identifies risks to our revenue system and the strategies which the tax office has under way to manage them across the range of taxpayer segments. The tax office continues to provide a high level of help and education to assist the vast majority of people who do the right thing. However, its focus has shifted to more active compliance, including verification activities, field visits and other audits. A key priority remains big business and other high-wealth individuals.

In the past five years the tax office's extensive audit program has netted an extra $2.64 billion for the community. This year, one in 10 businesses will be subject to some form of audit and more than 135,000 people will be required to confirm their tax deductions. The tax office will boost its GST compliance staff to around 350 and its serious non-compliance compliance investigations group to 300. Other high-profile risks which are receiving close scrutiny from the tax office during 2002-03 are aggressive tax planning, the cash economy, work related and rental property expenses, the correct reporting of capital gains and losses, and illegal tobacco and fuel substitution.

I am advised that this is indeed the first time that the commissioner has detailed in a single document the measures that the tax office puts in place to ensure the integrity of the tax system. The commissioner advises me that he intends to update and release the document annually. It is a very good initiative; it is one that I support. Neither I nor any senator—at least on this side of the chamber—would condone any evasion of tax. Under those circumstances, the detailed plan of the commissioner to focus on the areas that I have outlined, where it is thought that there might be some need for additional compliance, has not only my support but the wholehearted support of the government.

Senator MARK BISHOP—Mr President, I ask a supplementary question. I do not think the minister addressed the issue of residence, so I ask: can the minister confirm that the ATO announced yesterday that capital gains tax adjustments have resulted in a large proportion of the $2.3 billion in extra tax and penalties raised in 2001-02? Can the minister advise the Senate what proportion of this $2.3 billion relates to those exposed as falsely claiming exemption from CGT on the basis that a property is their sole or principal place of residence?

Senator COONAN—That is information that would go way beyond any detail that you could possibly be expected to have without notice in any brief from the commissioner. Then again, the Labor Party are not interested in the detail; the Labor Party are interested in a smear campaign, and they are bitterly disappointed that, despite three weeks of trying to dish dirt and trying to find something, they have fallen flat on their faces because they are totally incapable of proving that I have any interest in a property at Clareville.

Forestry: 2020 Vision

Senator MURPHY (2.31 p.m.)—My question is addressed to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald. Can the minister inform the Senate what, if any, research his department has done to determine the progress of the plantation industry 2020 Vision strategy? Has any assessment been done to determine whether or not the types of trees and areas being planted will assist in the reduction of Australia's $2 billion trade deficit in forest products?

Senator IAN MACDONALD—I appreciate the question from Senator Murphy and I also appreciate his interest in forest issues. As those of you from Tasmania will particularly understand, our forests—both our native forests and our plantation forests—are a great asset for Australia. Indeed, the 2020 Vision to which Senator Murphy refers is an example of what can be achieved through a

partnership approach between the state and federal governments, the companies, the unions and the workers. As an aside, I have to say what a great union the CFMEU is—the 'F' part of it, anyway. It is a union which is interested in the welfare of its members and which understands the importance of a successful native and plantation industry within Australia.

Senator Murphy will know that plantation investments do contribute very significantly to the economic, social and environmental wellbeing of communities in rural and regional Australia. They contribute something like $300 million to rural economies. That is something very important to all of us from rural and regional Australia, and I know that Senator Murphy and my Tasmania colleagues appreciate the significant economic gain for Tasmania from the plantation forests.

Senator Murphy will know that the vision was implemented in 1997 with the objective of increasing the plantation estate from one million hectares in 1996 to three million hectares by the year 2020. Again, the review of the 2020 Vision undertaken through the National Plantation Inventory in the year 2001 by the Bureau of Rural Sciences showed that 85,777 hectares had been planted in 2001, bringing the total plantation estate of both softwoods and hardwoods to something like 1.56 million hectares. Average annual plantings of 75,000 hectares are required to meet the vision target, and current average plantings indicate that Australia remains well on track to meet that target.

As Senator Murphy will recall, one of the very early pieces of legislation that went through this parliament following the reelection of the Howard government this time last year was the taxation laws amendment act that provided a fair relief to those who would invest in the plantation industry. I think the passing of that law by the parliament does demonstrate the commitment of both the government and the parliament to the plantation sector and to our intention to support the various forestry industries around Australia. Senator Murphy, I know, follows this issue very keenly. I understand that at times he has some concerns about how some of the states administer their plantation estates, but by and large I think Senator Murphy would concede that the states do a good job in managing their forest industries, both native and plantation, and that generally speaking Australia has world-class industries.

Of course, part of the arrangement with the forests is that a very significant part of the forest estate is locked away in reserves—some three times more reserves than the peak world conservation body that Senator Brown sometimes highlights as having all wisdom. Australia has three times the amount of reserves required by the IUCN. It is obviously a very good news story for the timber industry in Australia. *(Time expired)*

Senator MURPHY—Mr President, I ask a supplementary question. I note the minister's response—and it is a response rather than an answer. I ask you again, Minister: has your department done any assessment to determine whether or not, for instance, the types of trees and areas being planted will assist in the reduction of Australia's $2 billion trade deficit in forest products?

Senator IAN MACDONALD—I am not sure that my department as such does. The Bureau of Rural Sciences does a lot of work on that, as Senator Murphy knows. Senator Murphy, you referred me to a CSIRO report that you indicated might help me with this. You were going to give me the references to it. I have not yet got those. I have had my staff looking for that CSIRO report. They phoned the CSIRO, and I regret that nobody in the CSIRO knows anything about it. If you give me that, it may help me to answer questions you mentioned in a conversation we had a week or so ago.

Obviously, the companies which invest in that, and the investors who put their money in it, rely on the companies researching and understanding what is the best particular species of tree for that area and how it will achieve a market value at the time that one would expect it to be harvested. It is no good shaking your head. People put their money into it. It is their money and they obviously do the research that is necessary to get a good return from their investment. *(Time expired)*

Consolidated Revenue Fund

Senator CONROY (2.38 p.m.)—My question is to Senator Minchin, the Minister for Finance and Administration. Given the minister's claim that this government has 'revolutionised the transparency of the budget', how does the minister explain why the government has not published details of the consolidated revenue fund, which is enshrined in the Constitution as the fund through which all Commonwealth moneys are received and paid, in the budget papers since the new financial framework was implemented in the 1999-2000 budget? Minister, doesn't the absence of the consolidated revenue fund mean that it is impossible for parliament and taxpayers to determine the true financial position of the Commonwealth?

Senator MINCHIN—Regrettably, it is the case that Senator Conroy simply does not understand how to read the budget papers. There is such a welter of information in current Commonwealth government budget information as to stagger most financial journalists. If anything, they are complaining about the amount of information that we now provide in the budget about the state of the Commonwealth's financial affairs, which is recorded in both accrual terms and cash terms. We now have a very detailed mid-year economic statement, we have the consolidated financial statement at the end of the year and we have monthly financial statements. As I said yesterday, Australia is held up to the world as an example of what is a very good, proper, accountable and transparent public release of Commonwealth government statistics. The international organisations point to Australia as the example to follow when it comes to the revelation of Commonwealth government statistics. This is a furphy about the consolidated revenue fund. Technically that is the mechanism through which all the money passes.

Opposition senator interjecting—

Senator MINCHIN—Yes, it is in the Constitution and technically the money does pass through there. But it is obviously a notional account and there is any amount of information in the budget about what happens to Commonwealth moneys in and out. As I said, the world is claiming Australia to be the leading nation when it comes to governments revealing to the public, the opposition and the community the full extent of the financial affairs of the nation. That is why accrual accounting is just so important: it gives you a much better guide to the impact of the Commonwealth, the biggest financial entity in the nation, upon the total economy. Every financial journalist acknowledges that. Yes, they think we could do this, that or the other in modifying or improving the way we reveal the accounts, but most of the criticism that comes to us is a result of the welter of information that we provide, which regrettably people like Senator Conroy and others simply cannot get their heads around or do not understand.

I imagine over time they will eventually understand it. We have offered any amount of guidance to Senator Conroy to help him in a factual way and to take him through all the information that we now provide to the opposition to enable them to have a very close examination of the Commonwealth's financial affairs. On a regular basis we invite him to receive those sorts of briefings. I really am concerned to ensure that Senator Conroy overcomes the ignorance that he has. One day in the long distant future he may well be a minister for finance in a Commonwealth government, and I very much hope that if that day ever comes he really does understand what he is talking about. If there is any advice he would like to get, we will be happy to help.

Senator CONROY—Mr President, I ask a supplementary question. Minister, you claimed today and you claimed in your answer to a question on 2 December:

> Under our government, the budget is as strong and as transparent as any budget in the Western world.

If this is true, can you explain why you abolished the legal requirement that the budget outcome be subject to independent audit by the Auditor-General?

Senator MINCHIN—This is a lovely confirmation of the ignorance of Senator Conroy, which I just described. The fact is that the Deputy Auditor-General has confirmed in writing that the ANAO has never

audited the final budget outcome. I will supply a letter to that effect later.

Senator Conroy—That is not what I asked.

Senator MINCHIN—That is what you asked. You are completely confused. The consolidated financial statements are fully audited by the Auditor-General but the final budget outcome, which was the subject of the allegations made by Senator Conroy in estimates, has never been audited. It is the consolidated financial statements which are audited by the Auditor-General.

Transport: Alice Springs to Darwin Railway

Senator FERRIS (2.42 p.m.)—My question is to Senator Minchin, the Minister representing the Minister for Industry, Tourism and Resources. Will the minister advise the Senate of progress in constructing the Darwin-Alice Springs railway—so important to our home state of South Australia?

Senator Bolkus interjecting—

Senator FERRIS—And yours too, I would have thought, Senator Bolkus. How is the railway's construction providing an economic boost in regional Australia, and is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Ferris and acknowledge her very strong interest in this great railway project. Tomorrow Senator Nigel Scullion, the great representative of the Northern Territory, will be representing the Prime Minister at a major milestone in the construction of the Adelaide-Darwin railway—the meeting in the middle of the track being built south from Katherine and north from Tenant Creek. This ceremony will mark the completion of almost half of the 1,400 kilometres of track being laid. Following the start of construction in the year 2000, the railway is now four months ahead of schedule in its building program and it will be completed in less than 12 months time, in November of next year. The first trains will be running on this great new railway by early 2004. It is more than 100 years since politicians began talking about this railway, and it will have been built by early 2004. It was in fact in 1901, in the first speech by a Governor-General to this great parliament, that the Commonwealth government spoke about building this magnificent railway. Indeed, the Northern Territory Acceptance Act 1910 committed the Commonwealth government to building this railway as the quid pro quo for South Australia giving up the Northern Territory.

The great state of South Australia actually gave up the Northern Territory to the Commonwealth in exchange for having a railway built, and wouldn't you know it: who was in office in 1910? It was the Labor Party. They were in government and what did they do? They tore up the promise and the act and threw them away—and it never got built. Of course it was not the first time that Labor failed to deliver on this promise. The bloke they stabbed in the back, Bob Hawke, proudly boasted in the 1983 election campaign:

> I promise you that only the Labor government can be trusted to build the Alice Springs-Darwin railway.

Really! They had 13 years to act on Bob Hawke's 'never a child in poverty' stuff and build a railway, and of course they never ever delivered in 13 years of government—never ever, Senator Sherry. Of course it has taken a coalition government to actually deliver on a promise made first by Prime Minister Fisher and then by Prime Minister Hawke. We have made this railway a reality by supporting it with a $191 million injection into the construction. We worked of course with two other conservative governments—in South Australia and the Northern Territory. This was a combined effort by three great non-Labor governments to make sure this vital piece of railway was actually built.

Senator Chris Evans—What happened to those governments?

The PRESIDENT—Order! Senator Evans, you do not have to shout.

Senator MINCHIN—It is going to create a great trade route through to a market of 500 million people.

Senator Chris Evans—What happened to those great conservative governments?

The PRESIDENT—Order! Senator Evans, shouting across the chamber is disorderly.

Senator MINCHIN—What the Labor Party are not interested in is the fact that this has generated over 7,000 jobs, including 2½ thousand jobs in my home state of South Australia. All up, it is a $1.3 billion infrastructure investment made possible by our government, and of course that is where the growth is coming from in this country. So it is a great project and it is one we are very proud to support. This is a great ceremony that is going to take place tomorrow and it again demonstrates our commitment to national infrastructure in this country.

Superannuation: Surcharge

Senator GEORGE CAMPBELL (2.46 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Will the minister confirm that it is the government's intention to bring back the superannuation surcharge tax cut legislation early in the New Year and so confirm the Liberal government's tax cut Christmas present for those lucky few Australians earning more than $90,500 a year? Can the minister confirm that this tax cut will apply to only around five per cent of working Australians and that the other eight million-plus taxpayers who do not pay the surcharge will get absolutely nothing as a tax cut for Christmas from the Liberal government to boost their retirement nest eggs?

Senator COONAN—Thank you, Senator George Campbell, for the question. It is a bit rich—isn't it?—for the Labor Party to be talking about opposing the surcharge when the people who are charged the surcharge, which is in fact a penalty, are the people who can make the best contribution to their own retirement. What this government has done is to offer to wind back the surcharge, a promise that we took to the last election and a promise that went through the whole budget process—and guess what? We get to the stage where it is presented in a piece of legislation that provides a very fair package with a modest cut in the surcharge, together with a very generous and necessary co-contribution for low-income earners. It is a very balanced package that delivers to those who most need some assistance to save—that is, some low-income earners—an extra incentive. The Labor Party has a very divided view on this because, in the report brought down yesterday by the Senate Select Committee on Superannuation, Senator Sherry agreed to a reduction of the surcharge. Yet, when the bill is rolled out, the surcharge is opposed.

Senator Sherry is not here today to advocate the Labor Party's view on anything, and it is left to Senator George Campbell to try and pick up the tarnished flag of the Labor Party in relation to its superannuation policy. So for the Labor Party to be talking about the superannuation surcharge is not only a bit rich but it totally ignores the policy intent that, in order to help people to save for their retirement, those who are most capable of saving for their retirement should be allowed to do so without this incentive being taken away. Those who cannot afford to save for their retirement clearly need some assistance, which is what this government has done with its co-contribution measure. It is a very balanced package, and when it is brought back I will urge those opposite to pass it.

Senator GEORGE CAMPBELL—Mr President, I ask a supplementary question. Can the minister confirm that, while she is happy to hold the line that you cannot cut tax for millions of working Australians, she will personally benefit from the surcharge tax cut to the tune of approximately $4,700?

Senator COONAN—What I want to say about this is that, by indicating that they will oppose the mandate granted to this government by the Australian people, the Labor Party and the Democrats are ensuring that no co-contribution will be paid to low-income earners, that the much less generous existing tax rebate will remain in force, that no surcharge reduction will occur and that the existing 15 per cent maximum surcharge rate will remain in force. This means that for both low- and high-income earners, which includes Senator George Campbell, voluntary superannuation will not be as attractive as it could have been. It is an absolute disgrace that the Labor Party opposes such an important measure for the people of Australia.

Australian Taxation Office: Rulings

Senator HARRIS (2.51 p.m.)—My question is directed to the Minister for Reve-

nue and Assistant Treasurer. Minister, is it true that the taxpayers charter guarantees that taxpayers will be treated as individuals by the ATO? Is it true that tax ruling 92/20 issued by the Commissioner for Taxation states that a tax ruling is binding on the commissioner to the extent that it is favourable to the taxpayer? Is it true that the commissioner failed to take into account tax ruling 94/4, which requires a consideration of four criteria specific to an individual before applying penalties to a cooperative project, and that he continued to fail to do so when threatening to continue to apply penalties to any one of the investors who did not offer to settle?

Senator COONAN—I thank Senator Harris, who does at least try to assist his constituents. The taxpayers charter states that the Australian Taxation Office is committed to treating individuals fairly and reasonably by making both reasonable and consistent decisions in accordance with the law. The taxpayers charter also guarantees that people's individual circumstances will be taken into account. However, treating people as individuals does not mean that the law is applied differently to different people when the circumstances are the same. It is true that a tax ruling is binding on the commissioner. However, it does not follow that the commissioner failed to take into account the tax ruling mentioned by Senator Harris in imposing penalties on taxpayers who declined to settle.

The chapter and verse about how penalties were calculated for scheme investors is obviously a matter for the commissioner, as Senator Harris would know, the commissioner being an independent statutory agent responsible for administering the tax law. But I am advised that there is no reference in the tax ruling to four criteria specific to an individual. The income tax law imposes penalties automatically in certain situations but gives the commissioner the power to remit penalties. The commissioner advises me that he exercised that power for most scheme participants. Even participants who did not settle in most cases still had penalties remitted to 10 per cent. In making this decision the commissioner advised that he did refer to the relevant rulings.

I would also note that the scheme investors who chose to settle had penalties remitted to zero and were able to enter into arrangements giving them two years interest free in which to pay. In these circumstances, the commissioner does have to walk a fine line between fairness to investors who are caught in circumstances which they may not have fully understood and the interests of the wider community in ensuring that people meet their tax obligations when they are found to be liable to pay tax. The specific detail of the ruling is a matter of some technicality but in making those comments to Senator Harris I believe I have basically addressed his question.

Senator HARRIS—Mr President, I ask a supplementary question. Minister, would the failure by the commissioner to apply tax ruling 94/4 render void the amended assessments continuing to apply the penalties? Is it true that the ATO is still holding requests from MMTEI taxpayers under FOI relating to an AAT appeal up to 20 months after the FOI requests were received by the department? Would the minister give an undertaking to look into those specific FOI requests?

Senator COONAN—Thank you for the supplementary question. The answer to the first part of the supplementary question is clearly no. The commissioner did not ignore the ruling. As I understand it, the next question you ask, Senator Harris, would not follow. I have already said that I have been advised that there are not four particular criteria to be applied to individual taxpayers. Nevertheless, the rulings do list factors which can be relevant in considering the level of penalties, and the commissioner takes those factors into account. I am not entirely sure what the last part of the question is getting at but I am advised that FOI issues between investors and the ATO have been largely resolved. I have checked that. If Senator Harris is talking about a particular case, I adhere to my normal policy of not commenting on individual cases in the Senate. Of course, if Senator Harris wishes to make a specific representation on behalf of a particular taxpayer I will refer the individual's circumstances to the commissioner. *(Time expired)*

Superannuation: Entitlements

Senator STEPHENS (2.56 p.m.)—My question is to Senator Coonan, the Minister for Revenue and Assistant Treasurer. Is the Assistant Treasurer aware that on page 26 of its compliance program for 2002-03 the ATO states that up to 500,000 employees may not be receiving their correct superannuation entitlements and that 12,000 complaints from employees are expected this year? If the Assistant Treasurer is serious about doing something to help these 12,000 Australians who lodge complaints about non-payment of super, will she move to remove the secrecy requirement that currently prevents employees from being told anything about the progress of their complaint?

Senator COONAN—Thank you for the question. The situation with respect to the superannuation guarantee raises some very complex issues which relate obviously to people's privacy and to the privacy of employers. Clearly, the legislation that has been passed this year has improved not only the opportunity for compliance with the superannuation guarantee but also the ATO arrangements enabling it to provide information to those who need to have information about whether their payments have been made.

It is obviously a difficult issue. Some businesses, unfortunately, do go broke and there are some that do not make these payments and compliance is an issue. The provisions can always be streamlined. They are matters that can be looked at to ensure that the best information can be made available to contributors and that the superannuation guarantees are made when required. The government's election policy, the amendment to the superannuation guarantee and the different time frames that require more frequent deductions are the things that mean people's savings are much more protected and that information is available to them if they are not able to otherwise access their information. All of the measures taken by the ATO are calculated to ensure that these guaranteed payments are made and that penalties are inflicted and exacted when those payments are not made.

Senator STEPHENS—Mr President, I ask a supplementary question. I do not think the minister answered my question. Perhaps she can help me in this regard: can the Assistant Treasurer confirm that, if an employer becomes insolvent while owing statutory superannuation entitlements to employees, the government's so-called employees entitlement scheme will not pay one cent of those lost retirement savings? As the minister responsible for superannuation, what is being done to correct what is an outrageous and unfair loophole in the system?

Senator COONAN—Thank you for the supplementary question, which certainly does not come under my portfolio. It is a matter for the Minister for Employment and Workplace Relations.

Economy

Senator BARNETT (3.00 p.m.)—My question is to the Minister for Family and Community Services and the Minister Assisting the Prime Minister for the Status of Women, Senator Vanstone. Will the minister inform the Senate of how the sound economic management of the Howard government has benefited Australian women and families? Is the minister aware of any alternative approaches to these important policy areas?

Senator VANSTONE—Mr President, as this is the last question for this year, I would like to take the opportunity to wish you and all our Senate colleagues a very happy Christmas. I thought it would be appropriate to reflect on how much happier a Christmas everyone would be having if when we came to government in 1996 there was not $95 billion or $96 billion worth of debt that needed to be paid off. If we look back at what this government has done over the last four years, we can see how much better off Australians are. Let us look at jobs, for example. Jobs are really important and the best form of welfare is a job. Under Labor, unemployment peaked at 10.9 per cent—in those years no-one had a happy Christmas—but, of course, we have managed to bring unemployment down. We have created over one million jobs since we have been in government, and over 500,000 more women are working.

Let us turn to interest rates. Isn't it great that there is more money for Christmas presents for kids and more money for people to give to charities and that more people on low incomes can afford to buy a house now that interest rates are lower? Under good sound economic management, so many Australians are feeling more secure in their homes and more people are able to pay their rent. Sound economic management really affects low-income Australians and it affects women. Low interest rates are very important. They allow Australians to buy their own homes. They help small business to keep people in jobs. What chance did ordinary low-income Australians have when interest rates were around 17 per cent, when people on the other side were in office? Nobody had a very happy Christmas during those years either.

Let us look at what has been done for women. The reality is that women often bear the brunt of poor economic management, as do low-income earners. Under this government the wages gap has been closing and there is still further to go. This government has spent record amounts on child care—$8 billion over four years. That is more than $7 billion in the last six years. That is over 70 per cent more in real terms than Labor spent in their last six years in office. We spent over 70 per cent more in real terms on child care than you did in your last six years in office. So women are having a much better Christmas. The economy is good; they have got more chance of getting a job; there are more child care places. Things are really good.

I remember Paul Keating saying to people during the recession, 'This is as good as it gets.' I tell you what: this is not as good as it gets. We are going to get even better. So stick around. Stick with us and things will be really good. All people need to remember, as they go around doing their Christmas shopping, is this: how much better could that government have been if they did not have to pay off in debt $60 billion? Every minister here looks over there and says, 'What could I have done with my share of the $60 billion in my portfolio?' What could Senator Patterson do with her share of the $60 billion over six years? Or Senator Ellison? Or Senator Alston? Or Senator Minchin? You see? You borrowed from the future. You took money out of the pockets of hard-earning Australians and we have had to pay it back. So, thank heavens they are sticking with us. Jack Nicholson got it wrong. This is not as good as it gets.

Senator Hill—Mr President, I am sorry to do it, but I have to ask that further questions be placed on the *Notice Paper*.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Immigration: People-Smuggling

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.04 p.m.)—On 4 December, Senator Bartlett asked me a question regarding Abu Qussey. I undertook to get back to the Senate with further information. I table that information and seek leave to incorporate the answer in *Hansard*.

Leave granted.

The answer read as follows—

Earlier this year the Commissioner of AFP, Mr Keelty informed the Senate Committee into a certain maritime incident that the AFP was conducting "ongoing investigations in relation to the criminal activities of those responsible for the organisation of the voyage of SIEV X which of course resulted in the death of 353 people. Can the Minister confirm that the AFP was preparing a homicide case against Abu Quassey, the people smuggler widely identified as being responsible for organising the boat known as SIEV X. The Minister may be aware that Abu Quassey is currently imprisoned in Indonesia and is due to be released on 1 January. Has there been or will there be any attempts by the Australian government to ensure charges are laid against Mr Quassey or to request his extradition to Australia.

Supplementary

Can the Minister at least guarantee to the Australian people and the Senate that those investigations are concluded before Mr Quassey is released from jail and able to abscond from justice. In addition, given the positive cooperation that has occurred between AFP and Indonesian authorities to bring those responsible for the mass killings in Bali to justice, can the Minister outline what cooperation has been occurring to ensure that those responsible for the mass killings of those on board the SIEV X are also brought to justice.

Answer:

Abu Quassey is believed to be an Egyptian national who it is alleged has been involved in people smuggling from Indonesia to Australia since early 2000. He was sentenced by the Jakarta Southern District Court on 4 September 2002 to six months imprisonment for offences against Indonesian immigration law. He is due for release on 1 January 2003.

The Australian Government is working with other Governments in the region to seek to apprehend Abu Quassey in relation to his alleged involvement in people smuggling activities and bring him to Australia to face the charges.

As people smuggling is not currently an offence in Indonesia, the dual criminality required for Australia to request his extradition from Indonesia does not currently exist. Australian authorities are continuing to work towards criminalisation of people smuggling in the region and Indonesian authorities have indicated that legislation would be introduced into the Indonesian Parliament this year criminalising people smuggling.

In relation to a potential murder charge in either the Australian or Indonesian jurisdiction, the AFP has not been able to establish the location where SIEV X sank, therefore, it is not possible to establish the relevant jurisdiction for any prosecution relating to the deaths on board.

Four first instance arrest warrants have been sworn in Australia in respect to Quassey for alleged offences relating to organising Suspected Illegal Entry Vessels (SIEVs). The first three warrants for his arrest were sworn on 3 June 2002 and span alleged offences that occurred between February 2000 and August 2001. The latest warrant for his arrest is in relation to his alleged involvement in organising SIEV X in which 353 people died when it sank in October 2001.

The issue of the fourth warrant in Brisbane on Friday last week follows the compilation of a brief of evidence which was submitted to the Commonwealth Director of Public Prosecution. This brief of evidence in relation to SIEV X includes evidence from interviews with survivors of SIEV X in Australia. The strength of the evidence supporting any warrant is a matter for the courts to determine. It is not appropriate for the brief of evidence to be scrutinised by Parliament prior to any legal proceedings and any public discussion could prejudice the investigation. Once an existing warrant is acted upon, the matter becomes sub judice.

The swearing of first instance warrants means an Interpol alert can be issued and it will ensure that the Australian Government can seek to extradite Abu Quassey should circumstances allow.

Australia respects that Indonesia, as a sovereign state, must make its own decision whether or not to investigate any particular matter.

National Security

Senator HILL (South Australia—Minister for Defence) (3.04 p.m.)—On 11 December, Senator George Campbell asked me a question on the government's national security public information activity. I have further information in answer to that question. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

The answer read as follows—

The answers to the honourable senator's questions are as follows:

- Government advertising operates under exactly the same guidelines that were in use under the Keating Labor Government.
- That means there is close scrutiny of the procedures and processes involved in all stages of the proposed public information activities.
- The assertion that there was no tender process is incorrect. The process undertaken was consistent with processes for the employment of consultants for urgent campaigns, including proper consideration of presentations from a variety of tenderers in the areas of research consultant, advertising agency and NESB consultant.
- The successful applicants were, respectively, Worthington Di Marzio, Brown Melhuish Fishlock and Cultural Partners Australia.
- Officials confirmed that the tender and selection processes were appropriate and within guidelines.
- Part of any public information activity involves undertaking appropriate research, and I can confirm that that research and development has commenced.
- This is a particularly important public information activity, and has to be dealt with in both a sensible and sensitive manner.
- The activity will have a variety of components, but I do not intend to go into specifics about what these components may be, nor their estimated cost, as these matters have not yet been finalised.

HMAS *Westralia*

Senator HILL (3.05 p.m.)—On 9 December, Senator Chris Evans asked me a question relating to the HMAS *Westralia* fire tragedy. I have some further information in answer to that question. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

The answer read as follows—

On 9 December 02 Senator Chris Evans asked a series of questions relating to the Westralia fire tragedy. I provide the following responses.

"Didn't the Western Australia Coroner also highlight a number of areas not investigated by the naval board of inquiry into the fire?

The Western Australia State Coroner's decision to hold a public inquest was based on a range of matters including some not required to be considered by the Naval Board of Inquiry. For example the Coronial hearing will include the views of the family members of the deceased, as they were not represented at the Board hearings and have issues they want to raise.

"Are you confident that the Navy inquiry covered all relevant issues and that there is no need for further investigation?"

The Naval Board of Inquiry comprised expert and experienced Navy and civilian members. It was conducted in public and persons appearing had the right to be represented by counsel. The families were equally entitled to appear in person or by legal representatives. That they did not, is not a point of criticism but it is appropriate to note that they had the opportunity. The Board heard from relevant experts including the Arson Squad of the Western Australia Police who advises the Western Australia State Coroner on forensic fire issues and whose view as to the cause of the fire was adopted by the Board. Similarly the Board accepted the opinion of the pathologist appointed by the State Coroner, as to cause of death.

The Board's findings have not been challenged by those who appeared before it.

"Are you confident that the matters that were uncovered post the naval board of inquiry being held do not warrant further investigation by the Navy?"

The recent allegations of an alternative cause of the fire have been closely examined by the Navy and its expert advisers. Navy has submitted to the State Coroner that the alternate cause allegations are unreliable as they are technically implausible. Navy does not consider that these matter warrant further investigation.

Education: Northern Territory University

Senator ALSTON (3.05 p.m.)—On 11 December, Senator Carr asked me a question without notice regarding the Northern Territory University. I undertook to provide additional information. I seek leave to incorporate the response in *Hansard*.

Leave granted.

The answer read as follows—

The Minister for Education, Science and Training has provided the following additional information in relation to the question asked by Senator Carr.

There is absolutely no truth in the claim that the Northern Territory University (NTU) is to be closed. The University's role as the leading education provider in the Northern Territory and its importance to the economic, social and cultural development of the Territory remains strong. The NTU has unique strengths in teaching and research, particularly related to its regional environment; skilled and dedicated staff; and well-appointed campus facilities.

It is true that the University faces significant challenges as a dual provider of higher education and vocational education and training in the Northern Territory. But these challenges are not insurmountable and both the Commonwealth and the Territory Government have been working with the NTU to help progress reform.

The NTU has made significant progress in implementing reforms and has recently appointed Professor Ken McKinnon A0, a person with a distinguished record in the university sector, as interim Vice-Chancellor to take the reforms forward.

As proof of the Government's support for the university it will be providing an additional $3m over 2002-03 to assist the university in implementing reforms. The Government also announced this week, funding of $lm for the University under the Capital Development Pool Programme for the construction of a computing and learning centre at the Casuarina campus, and $20 million for a Cooperative Research Centre in Desert Knowledge.

The financial performance and financial position of the higher education sector remains sound. Universities' published audited financial statements for 2001 shows that they generally retain strongly positive liquidity, low levels of borrowings and a significant level of assets. This is despite Senator Carr's best efforts to continually undermine the hard work being undertaken across the Sector and attempts, through questions such as these, to target particular universities such as

the Northern Territory University, and potentially undermine the confidence of staff and students in the ongoing viability of their university.

Environment: Renewable Energy

Senator ALSTON (3.05 p.m.)—On 11 December, Senator Brown asked me a question without notice regarding the Chief Scientist and the Cooperative Research Centre for Renewable Energy. I undertook to provide additional information. I seek leave to incorporate the response in *Hansard*.

Leave granted.

The answer read as follows—

The Minister for Science has provided the following additional information in relation to the question asked by Senator Brown.

- The Rio Tinto Foundation for a Sustainable Minerals Industry is part of the $137 million
- Commonwealth investment incentive to Comalco (wholly owned subsidiary of Rio Tinto) for the construction of its alumina refinery in Gladstone.
- The Government agreed to provide Comalco with this investment incentive, by way of a loan, in October 2001.
- On 1 November this year it was announced by Minister Macfarlane that $35 million of this loan will be spent on mineral industry sustainable development research undertaken by the Foundation.
- Rio Tinto intends to provide matching funding of up to $35 million.
- This Government is a strong supporter of sustainable development.
- The Foundation demonstrates our commitment to work with business to ensure development occurs in a way that meets new environmental challenges and our recognition of the importance of technological solutions.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Telstra

Senator LUNDY (Australian Capital Territory) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to questions without notice asked by Senators Lundy, Mackay and Eggleston today relating to Telstra.

In doing so, I would like to acknowledge the extremely gratuitous response from the minister in relation to complaints raised by constituents to my office, particularly about ADSL. My office received a phone call from a constituent, a small business owner, who claimed that he had been on ADSL for eight months and had never received a bill. He assumed that it had been bundled into his Telstra bill like his mobile fixed line and BigPond accounts had been. Telstra contacted him and said that he had an amount of $500 owing on his ADSL account and that he had only two months to pay it. He replied that he thought he had been paying it with a bundled Telstra account and was told ADSL was billed separately. When he pointed out that he had never received a separate ADSL bill, he was told that there had been some errors in the ADSL billing process and that some people had not been billed.

The reason I asked the minister how many people were affected by this error was that a story on whirlpool.net.au alleges that Telstra had mistakenly been undercharging around 60,000 ADSL customers after its usage metre underestimated their customers' usage by up to 50 per cent. If this is the case, Telstra have got a big problem. They are out there promoting this service, on television and in newspaper advertisements, yet they have not got their billing system right. In the meantime, frustrated Telstra customers find themselves being lumped, right before Christmas, with a huge bill and being given very little time to deal with it.

I also mentioned in my question to the minister—for which I received, again, only the very gratuitous response that the government could not possibly have anything to do with what the minister described as the 'micromanagement issues of Telstra'—that on 28 November Telstra's main ADSL application processing system apparently failed, leaving hundreds of would-be ADSL applicants waiting to receive the service. Apparently, this is called the 'status 70 bug'. Many of these people are customers of ISPs, Internet service providers, who actually compete with Telstra. These ISPs, on-sellers or resellers of ADSL, are being blamed by their customers, yet they cannot fix the problem

because it is Telstra's problem and they have to rely on Telstra to fix it. However, Telstra apparently only decided to fix the problem some five days later, on 3 December, and we have got very unofficial reports to date that the bug was only finally repaired on 6 December.

These issues go to the heart of the quality of service for Telstra customers. Very clearly the minister said that it is none of his business and it is none of the government's business how Telstra micromanage their problems and fix their billing arrangements. Yet, in the very next question from his own side, he responded by talking about these issues—specifically about how Telstra manage their technology and the types of service they hope to provide. It was with some hilarity that the minister quoted some of the *Hansard* relating to DCS20s, which I think exposes how complicit the minister is in trying to talk the talk and go down Telstra's line of trying to hide the details of their network. This is certainly Telstra's strategy in relation to the Estens inquiry and the Senate inquiry. Telstra do not want people to know about their network technology. They do not want people to know about pair gains. They certainly do not want people to know about what I now know are called DCS20s—a very large type of pair gain which inhibits the level of services provided to people who live in what Telstra describe as minor rural exchange areas.

The problem is that the government can no longer hide behind Telstra's spin on services. We know more about the network now. We know more about Telstra's technology. We know that they used pair gain technology and that that was a cost-cutting exercise to save money during a period when they were trying to fatten up their bottom line. We are talking about what Telstra hate most and Telstra have the minister now saying, 'We want to try and hide this. It's not relevant.' At the Senate inquiry just last week Telstra said, 'We don't want to tell you about our network technology. We want to hide all that.' The minister waltzed in here today and said, 'I am going to tip out some of Telstra's spin here. You do not want know about the network,' and he made fun of questions which asked about the technical detail. Those questions are incredibly important, and they have done more to acknowledge and to find the reasons behind Telstra's poor service to the bush, to outer metropolitan areas and to inner city areas, where Telstra customers are angry and frustrated, and to find out more about their service levels that this government—*(Time expired)*

Senator TIERNEY (New South Wales) (3.11 p.m.)—Senator Lundy shows a very poor sense of history in talking about what is provided in telecommunications in this country. She was not actually here in the Senate when the Keating government was trying to run Telstra. We all look back to that era when we had a total monopoly. This is the scheme that Labor would like to return us to. They would like to have the core services in a government monopoly and flog off all the rest. That would return us to the days that we had back in the seventies and eighties. I remember those days well. You would receive a bill from Telstra and you would think, 'This is a one line, itemised bill. That's wrong.' You would ring Telstra and tell them that the bill was wrong and they would say, 'No, it's not. If you don't pay it, we'll cut off your service.' That is the sort of system you want to send us back to: a monopoly on the central core of Telstra. That is not the way to go. The way to go is the competitive telecommunications regime which we have provided and which has dramatically improved telephone services in this country. People like Senator Mackay and Senator Lundy are trying to make out there are massive problems in the system.

Senator Mackay—There are.

Senator TIERNEY—There are minor problems in the system, Senator. I turn particularly to your misleading comments and the things that you have put out on the network improvement scheme. You are trying to make out that that is a list of a whole series of faults through the system, when Telstra keep telling you time and time again that it is a proactive maintenance database. It is a list of jobs to do. Senator Mackay, you obviously do not understand that.

Senator Mackay interjecting—

Senator TIERNEY—No, you do not.

Senator Mackay interjecting—

Senator TIERNEY—Why are you making such misleading statements about it? What you do with a network system like this is try to anticipate where the faults are going to be in the future and try and upgrade and fix on a series of priorities. Look at the real record, Senator, in terms of priorities 1, 2 and 3 on the CNI. Telstra is doing very well on the improvements, and you must acknowledge that. Do not try and make out that this is a list of faults right across the system. The faults right across the system were back in 1994, when a secret Telstra document, which fell off the back of a truck, showed the absolutely appalling state of the service network in western and southern New South Wales. This was an internal Telstra document under the Keating government. If you look at the situation that we had in the early nineties and compare it to the situation now, it is light years ahead.

Under the customer service guarantee that we have set up with major fines if services are not provided, there has been a dramatic improvement in the system. The creation—and being a regionally based Senator, I have watched this very carefully—of organisations such as Telstra CountryWide means that we have a much more responsive system close to the grassroots that can go out and respond quickly. The response rates have gone up dramatically and the improvements have gone up dramatically. With the introduction of digital technologies you find that the whole system is far more reliable than it was before.

The thing that you have to acknowledge about Telstra right through its history is that it has really good engineers. It is a good engineering company. It comes up with good engineering solutions to the telecommunications problems in this country and, if you compare this with a lot of systems around the world, it is far better. The approach of this government, where we have sold half of Telstra but still have the majority in government hands at the moment—

Senator Mackay—Are you going to sell the rest?

Senator TIERNEY—We have said what the process is for doing that and, when the standards get to a point where we are happy, we are going to look at it again. You know that, and you are part of an inquiry that is now going around Australia looking at it. I note that the great interest in this inquiry seems to have dropped off. You were very anxious to have it finished by the end of this year. We are now almost to the end of this year and I think we have had three or four hearings. There is not a great deal of interest in the parliament in the inquiry. There is not a great deal of interest in the community, and the reason for that is the dramatic improvements in standards in telecommunications in this country that have occurred under the regime established by this government over the past five years. *(Time expired)*

Senator MACKAY (Tasmania) (3.16 p.m.)—I guess all I can say about Senator Tierney is: he would say that, wouldn't he? He has got the same Telstra brief that the minister had. The advice that I would give to the minister before he gives this information to Senator Tierney is to get himself some new staff, because that was a straight Telstra line. It was not simply a Telstra line; it was a line that Telstra itself had contradicted.

Let me go to the Orwellian termed 'customer network improvements database', which I referred to. The interesting thing about this is that it shows without a doubt, I have to say, that the Estens inquiry was a whitewash. Why? Telstra told us last Friday at the hearing that Senator Tierney, Senator Moore and I attended that they gave the Estens inquiry a figure for faults—the CNI database. As of 1 October 2002, the figure that they gave the Estens inquiry was 108,772 faults. They gave that to the Estens inquiry in October before the Estens inquiry report was brought down. But, if you turn to page 70 of the Estens inquiry report, you note that Mr Estens—a member of the National Party—chose to quote a figure from February. Telstra gave two sets of figures to the Estens inquiry. The first figure of 104,500 was provided in February and they then gave an additional set of figures to the Estens inquiry in October—and that figure was 108,772. Which figure did the Estens

inquiry choose to use? They chose to use the earlier, lower figure. The Estens inquiry, despite having that information from Telstra—and I have to say they probably have had more luck than Senator Moore, Senator Lundy and I have had in getting any information out of this mob at all—chose to use the lower figure. Why? The reality is they wanted to make the picture as pretty as they possibly could. I do not think that the Estens inquiry really, after this revelation, have much credibility—if they ever did from the start, being stacked with two members of the National Party and a long-time friend of Mr Anderson.

Let us go to the spin that Senator Alston was just reading out from the Telstra brief—and I would advise Senator Alston to get some new staff, or alternatively, get the department to have a look at Telstra's briefs before they punt them on to the poor old minister. Let me quote Telstra itself about categories 1 to 3. Category 3 is safety related. Mr Rix said the first three categories:

> ... are escalated tickets of work that need work done straightaway—

This is what Telstra said—

> that are a safety issue or that relate to a complaint. All of those are service affecting.

All of those first three categories are service affecting. He goes on—

> When we talk about the CNI database being a maintenance program, we are generally talking about categories 4 and 5, which are potentially things like broken pits...

I think we have been extremely fair to Telstra. We have not talked about categories 4 and 5. We accept that generally they are minor. But I would suggest that somebody is misleading somebody. It is either Telstra misleading the minister, or the department misleading the minister, or the minister potentially misleading the parliament. I say to the government, 'Don't buy Telstra's line. Don't be so lazy. Go out there and get the information yourselves and report to the people of Australia the truth of the network.' Just to reiterate: Mr Paratz, another Telstra official, at the Friday's hearing in relation to the first three categories said:

> I think we can say that 1 to 3 may be service affecting, yes.

So poor old Minister Alston gets up here and in a Pavlovian fashion reads out a brief that has come from Telstra. It has not even been through the department. It has not been checked off by his own office, and I suspect it has inadvertently misled the Senate. I ask the minister to go back and check these figures. I ask the minister to read the *Hansard* as assiduously as he did with regard to Senator Lundy, and to come in here and set the record straight.

Senator EGGLESTON (Western Australia) (3.21 p.m.)—Senator Mackay was talking about customer network improvements and alleging or implying that in some way that means that Telstra services are at fault, that they have broken down and that people are being badly dealt with. I have to say that that is just absolute rubbish and it shows that Senator Mackay simply does not really understand what the CNI figures are all about. The tasks listed on the CNI database are not necessarily customer services at risk. It is not a fault database as such. Actual faults are dealt with separately as they arise and are subject to the government's customer service guarantee. As Senator Tierney has said, that is a very important guarantee which the Howard government introduced to provide and ensure that telecommunications services to the public were well maintained and of a high standard. To claim, as Senator Mackay is doing, that the CNI means that the Telstra network is riddled with faults and that people should be scared for their safety is very misleading, if not totally irresponsible. While the total number of entries may appear high, it needs to be remembered in the overall context of the Telstra network, which has over 10 million fixed services per annum, that the CNIs represent only about 1.12 per cent of services. That is very low indeed, Senator Mackay. Telstra has made very sound progress in reducing priority 1 CNIs from 2,000 in July 2001 to 348. Priority 2 CNIs are down from 2,000 a year ago to 943 recently. Any CNI identified as potentially affecting services or that are safety-related are actioned as soon as possible.

So there we are, Senator Mackay. It is not a story of poor service; it is a story of good service and better service once again deliv-

ered by the Howard government to the people of Australia. In a general way, we should look at what the Howard government has done for telecommunications and encouraged Telstra to do. On Tuesday I went to the Telstra lunch where the CEO of Telstra, Ziggy Switkowski, was telling us what Telstra planned to do in the future. We know what has happened in the recent past under the Howard government with the assistance of Telstra. We have had the Networking the Nation program, which has brought improved telecommunications to rural areas. We have seen mobile phone coverage extended so that there is now coverage along the great highways of this country. Through programs such as the Wireless West program CDMA coverage is being extended throughout country areas. A special contract of $150 million was let to ensure that those people living in the most remote areas of Australia have improved fax, Internet and telephone services provided by satellite.

We also heard from Ziggy Switkowski that Telstra is going to offer broadband delivered by satellite to people throughout Australia. This means that whether people live in Vaucluse in Sydney, in Claremont in Perth, in Alice Springs, in some remote area of North or South Australia or on a mountain top in Tasmania they will have access to a very high-quality broadband Internet service. Through the Optus-Foxtel deal we are going to see about 200 channels available on pay TV. The Howard government has an unbelievably successful record in improving the telecommunications services to the people of Australia, which you know is true, Senator Mackay, just as Senator Lundy knows it is true. You have a little bit of fun trying to knock this government's record but it has such a fine record that you can make no impact. This government has been the most extraordinarily successful government in the field of telecommunications that this country has ever seen.

Senator MOORE (Queensland) (3.26 p.m.)—I seem to be continuing the common theme of Telstra today. In response to one of our questions today, the minister said, 'As long as they get the service they want, they will be satisfied.' We strongly support that response. We accept that, as long as Australian consumers get the service they want, they will be satisfied. But there is one problem. The Australian Communications Authority report which was released yesterday—the minister very happily quoted the bits that he liked yesterday—said that complaints against Telstra had risen by around six per cent. It stated:

> The ACA telecommunications consumer satisfaction survey for 2002 generally indicated decreases in customer satisfaction with telecommunications providers and services since the previous survey.

So the people out there using the services are not satisfied. They would like to be able to get the service that the minister talked about today when he used his video analogy. They would like to be able to have the same confidence in and acceptance of their telecommunications.

We have heard the complaints about Telstra and the magical CNI data. It is really difficult because, once again, it is a matter of language. We hear that these are not really faults; they are issues or tasks. We know that we have agreed numbers, but over 112 'issues or tasks' have been logged by Telstra as requiring some effort. What we have not been able to extract from Telstra or the minister is exactly what effort is required and when, but we know that the 'issues or tasks' need some help. For some of us who have used Telstra services—I am a strong supporter of Telstra—it is not an easy thing to tell Telstra about our 'issues or tasks'. To get onto the Telstra network, to sit and wait in the queue to advise of the issue or task is not simple. If somebody is upset and stumbles upon an issue or task that they take the trouble to tell Telstra about, it is not good news. What they are saying is that there is an issue or task which is upsetting their telecommunications service. That may or may not be a fault, but it does affect their service. We believe that these should be noted and understood.

The same ACA report that we have, as well as the Telstra submission to the committee last week, bedazzles us with graphs and information about how things are improving. We welcome information telling us what is really happening, but we would like

clear, unarguable data about exactly what is happening in Telstra. Today the minister said, 'We need a lot more detail before coming to any judgment.' We accept that, Minister: we need a lot more detail before we come to any judgment. He also said that we on this side, particularly Senator Lundy, were showing a visceral hatred of Telstra. This is just not true. What we have is a visceral need to support Telstra. We need to find out exactly what is going on in the network so that we can work together to provide the services that senators in this place are seeking.

We actually want to know and we want to be clear about exactly what is happening in the network. We do not want be arguing about issues or tasks. We want to find out how to make the network better. From my own state of Queensland, the Minister for Innovation and Information Economy, Paul Lucas, will be in contact with Minister Alston about issues or tasks which are needed in the Mount Isa region to improve services and, in particular, services to the Mount Isa School of the Air, which is going to be using more of Telstra's services to improve education in that region.

Last week, we heard at length about why there was going to be greater support for education from the various telecommunications services. That is all well and good but, when someone at the Rifle Creek School of the Air has to wait seven times as long as someone in other areas to actually receive service in that region, that is a fault. It is not an issue and it is not a task; it is a fault. We want to make sure that, when those issues or tasks are brought to the attention of Telstra and to the minister, they are fixed, they are acknowledged and they are respected.

Question agreed to.

MICROCREDIT SUMMIT + 5

Senator RIDGEWAY (New South Wales) (3.32 p.m.)—I seek leave to recommit general business notice of motion No. 323 standing in my name for today relating to microcredit and the alleviation of poverty and to amend the motion by omitting 'to at least $40 million per year' in paragraph (c).

Leave granted.

Senator RIDGEWAY—I move the motion, as amended:

That the Senate—

(a) notes that:

(i) the Microcredit Summit + 5 Conference held in New York in November 2002 reported that microcredit schemes are on track to reach 100 million of the poorest families benefiting the lives of 500 million of the world's poorest people,

(ii) there are more than 2 000 microcredit institutions operating worldwide,

(iii) more than 54 million microcredit borrowers have been reached, and

(iv) nearly 27 million of the total microcredit borrowers reached were amongst the poorest in the world when they took out their first loan, but are now lifting themselves out of poverty;

(b) congratulates RESULTS Australia for its advocacy work on microcredit loans;

(c) urges the Federal Government to consider increasing aid for microcredit funding; and

(d) urges the Parliament to actively promote the critical role of microcredit in the alleviation of poverty and its contribution to the achievement of the Millennium Development Goal of halving the proportion of people living in absolute poverty by 2015.

Question, as amended, agreed to.

COMMITTEES

Reports: Government Responses

The DEPUTY PRESIDENT—In accordance with the usual practice, on behalf of the President, I table a report of parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in *Hansard*.

Leave granted.

The report read as follows—

PRESIDENT'S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 12 DECEMBER 2002

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators' Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of tabling of a report. The committee monitors the provision of such responses.

The entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

A guide to the legend used in the 'Date response presented/made to the Senate' column

* See document tabled in the Senate on 11 December 2002, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 27 June 2002, for Government interim/final response.

** Report contains administrative recommendations only—response is to be provided direct to the committee in the form of an executive minute.

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
A Certain Maritime Incident (Select)			
Report on a Certain Maritime Incident	23.10.02	-	Time not expired
Appropriations and Staffing			
37th Report: Administration of parliamentary security	18.11.02	Not required	-

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
ASIO, ASIS and DSD (Joint Statutory)			
An advisory report on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002	18.6.02	*(final)	No
Annual Report 2001-02	2.12.02	-	Time not expired
Community Affairs References			
The patient profession: Time for action—Report on nursing	26.6.02	*(interim)	No
Participation requirements and penalties in the social security system [Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002]	25.9.02	-	Time not expired
Corporations and Securities (Joint Statutory)			
Report on aspects of the regulation of proprietary companies	8.3.01	*(interim)	No
Corporations and Financial Services (Joint Statutory)			
Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001	23.10.02	-	Time not expired
Review of the Managed Investments Act 1998	12.12.02	-	Time not expired
Economics References			
Report on the operation of the Australian Taxation Office	9.3.00	*(interim)	No
Report on the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies	8.3.01	*(interim)	No
Inquiry into mass marketed tax effective schemes and investor protection—Interim report	25.6.01	*(interim)	No
Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement	27.9.01	*(interim)	No
Inquiry into mass marketed tax effective schemes and investor protection—Final report	12.2.02 (presented 11.2.02)	*(interim)	No
Economics References (continued)			
Inquiry into the framework for the market supervision of Australia's stock exchanges	12.2.02 (presented 11.2.02)	*(final)	No
A review of public liability and professional indemnity insurance	21.10.02	-	Time not expired
Electoral Matters (Joint Standing)			
The integrity of the electoral roll: Review of ANAO report no. 42 2001-02	11.11.02	-	Time not expired

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Employment, Workplace Relations and Education Legislation			
Workplace Relations Amendment (Paid Maternity Leave) Bill 2002	18.9.02	-	Time not expired
Employment, Workplace Relations and Education References			
Education of students with disabilities	10.12.02	-	Time not expired
Employment, Workplace Relations, Small Business and Education References			
Universities in crisis: Report into the capacity of public universities to meet Australia's higher education needs	27.9.01	11.11.02 (presented 24.10.02)	No
The education of gifted children	12.2.02 (presented 2.10.01)	19.8.02 (presented 6.8.02)	No
Environment, Communications, Information Technology and the Arts Legislation			
Report on the Broadcasting Services Amendment (Media Ownership) Bill 2002	19.6.02 (presented 18.6.02)	*(final)	No
Environment, Communications, Information Technology and the Arts References			
Report on the powers of the Commonwealth in environment protection and ecologically-sustainable development in Australia	27.5.99	*(interim)	No
Inquiry into Gulf St Vincent	5.6.00	*(interim)	No
Inquiry into electromagnetic radiation	22.5.01 (presented 4.5.01)	*(interim)	No
Above board? Methods of appointment to the ABC Board	25.9.01	29.8.02	No
Environment, Communications, Information Technology and the Arts References (continued)			
The value of water: Inquiry into Australia's urban water management	5.12.02	-	Time not expired
Finance and Public Administration Legislation			
Report on the Charter of Political Honesty Bill 2000 [2002] and 3 related bills	29.8.02	-	No
Finance and Public Administration References			
Re-booting the IT agenda in the Australian Public Service—Final report on the government's information technology outsourcing initiative	28.8.01	*(interim)	No
Departmental and agency contracts: Report on the first year of operation of the Senate order for the production of lists of departmental and agency contracts	12.12.02	-	Time not expired

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Foreign Affairs, Defence and Trade (Joint Standing)			
From phantom to force—Towards a more efficient and effective army	4.9.00	*(interim)	No
Conviction with compassion: A report into freedom of religion and belief	27.11.00	14.11.02	No
A report on visits to immigration detention centres	18.6.01	9.12.02 (presented 6.12.02)	No
Australia's role in United Nations reform	25.6.01	*(interim)	No
Australia's relations with the Middle East	19.9.01	19.9.02	No
A model for a new army: Community comments on the 'From phantom to force' parliamentary report into the Army	24.9.01	*(interim)	No
Review of Foreign Affairs, Trade and Defence annual reports 2000-01	23.9.02	-	Time not expired
Enterprising Australia—Planning, preparing and profiting from trade and investment	15.10.02	Not required	-
Visit to Australian forces deployed to the international coalition against terrorism	23.10.02	-	Time not expired
Foreign Affairs, Defence and Trade References			
Japan: Politics and society	27.9.01	*(interim)	No
Recruitment and retention of ADF personnel	12.2.02 (presented 4.10.01)	*(interim)	No
Information Technologies (Select)			
In the public interest: Monitoring Australia's media	13.4.00	*(interim)	No
Legal and Constitutional Legislation			
Inquiry into the provisions of the Proceeds of Crime Bill 2002 and the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002	14.5.02 (presented 26.4.02	*(final)	No
Inquiry into the provisions of the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and 4 related bills	14.5.02 (presented 8.5.02)	*(final)	No
Statutory powers and functions of the Australian Law Reform Commission—Interim report	12.12.02	Not required	-
Legal and Constitutional References			
Inquiry into the Commonwealth's actions in relation to Ryker (Faulkner) v The Commonwealth and Flint	30.4.96 (presented 29.4.96)	*(interim)	No
Inquiry into sexuality discrimination	2.12.97	*(interim)	No
Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999	13.3.00	22.8.02	No
Humanity diminished: The crime of genocide—Inquiry into the Anti-Genocide Bill 1999	29.6.00	26.9.02	No

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Order in the law: Management arrangements and adequacy of funding of the Australian Federal Police and the National Crime Authority	28.8.01	19.9.02	No
Inquiry into the outsourcing of the Australian Customs Service's information technology	16.5.02	14.11.02	No
Migration zone excision: An examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters	21.10.02	-	Time not expired
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters	3.12.02	-	Time not expired
Migration (Joint Standing)			
Not the Hilton—Immigration detention centres: Inspection report	4.9.00	*(interim)	No
2001 Review of Migration Regulation 4.31B	18.6.01	9.12.02 (presented 6.12.02)	No
National Capital and External Territories (Joint Statutory)			
In the pink or in the red? Health services on Norfolk Island	6.8.01 (presented 9.7.01)	*(interim)	No
Risky business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort	20.9.01	*(interim)	No
Norfolk Island electoral matters	26.8.02	-	No
Striking the right balance: Draft amendment 39, National Capital Plan	21.10.02	-	Time not expired
National Crime Authority (Joint Statutory)			
The law enforcement implications of new technology	27.8.01	*(interim)	No
Australian Crime Commission Establishment Bill 2002	11.11.02	-	Time not expired
Examination of the annual report for 2000-01 of the National Crime Authority	11.12.02	Not required	-
Native Title and the Aboriginal and Torres Strait Islander Land Fund (Joint Statutory)			
Second interim report for the s.206 inquiry: Indigenous land use agreements (19th report)	26.9.01	*(interim)	No
Examination of the annual reports for 2000-01 in fulfilment of the committee's duties pursuant to s.206(c) of the Native Title Act 1993	12.12.02	Not required	-
Public Accounts and Audit (Joint Statutory)			
Corporate governance and accountability arrangements for Commonwealth government business enterprises, December 1999 (Report No. 372)	16.2.00	*(interim)	No

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Review of Coastwatch (Report No. 384)	23.8.01	19.9.02	No
Review of the Auditor-General Act 1997 (Report No. 386)	26.9.01	19.9.02	No
Review of the accrual budget documentation (Report No. 388)	19.6.02	*(interim)	No
Review of Auditor-General's Reports 2001-2002, First, second and third quarters (Report No. 390)	29.8.02	**	-
Review of independent auditing by registered company auditors (Report No. 391)	18.9.02	-	Time not expired
Annual report 2001-02 (Report No. 392)	14.11.02	Not required	-
Rural and Regional Affairs and Transport Legislation			
An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements	7.6.00	*(interim)	No
The proposed importation of fresh apple fruit from New Zealand—Interim report	6.8.01 (presented 18.7.01)	*(interim)	No
Rural and Regional Affairs and Transport Legislation (continued)			
Inquiry into the administration of motor vehicle standards and regulations	18.6.02	9.12.02 (presented 6.12.02)	No
Quota management control on Australian beef exports to the United States	26.6.02	*(interim)	No
Administration of the Civil Aviation Safety Authority—Interim report	27.6.02	Not required	-
Proposed importation of fresh apple fruit from New Zealand—Interim report	27.6.02	Not required	-
Administration of AusSAR in relation to the search for the Margaret J—Interim report	27.6.02	Not required	-
The Australian meat industry consultative structure and quota allocation—Interim report: Allocation of the US beef quota	24.9.02	-	Time not expired
Australian meat industry and export quotas	12.12.02	-	Time not expired
Rural and Regional Affairs and Transport References			
Air safety and cabin air quality in the BAe 146 aircraft	12.10.00	19.8.02 (presented 28.6.02)	No
Airspace 2000 and related issues	5.4.01	*(interim)	No
The incidence of Ovine Johne's Disease in the Australian sheep flock—Second report	6.8.01 (presented 25.7.01)	*(interim)	No
Scrutiny of Bills			
Fourth report of 2000: Entry and search provisions in Commonwealth legislation	6.4.00	*(interim)	No
Sixth report of 2002: Application of absolute and strict liability provisions in Commonwealth legislation	26.6.02	*(interim)	No

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Superannuation and Financial Services (Select)			
The opportunities and constraints for Australia to become a centre for the provision of global financial services	26.3.01 (presented 22.3.01)	14.11.02	No
A 'reasonable and secure' retirement?: The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes	5.4.01	*(interim)	No
Report on the provisions of the Parliamentary (Choice of Superannuation) Bill 2001	9.8.01	*(final)	No
Prudential supervision and consumer protection for superannuation, banking and financial services: First report	20.8.01	11.11.02 (presented 24.10.02)	No
Superannuation and Financial Services (Select) (continued)			
Prudential supervision and consumer protection for superannuation, banking and financial services: Second report—Some case studies	30.8.01	11.11.02 (presented 24.10.02)	No
Prudential supervision and consumer protection for superannuation, banking and financial services: Third report—Auditing of superannuation funds	24.9.01	*(interim)	No
Report on early access to superannuation benefits	12.2.02 (presented 31.1.02)	*(interim)	No
Superannuation (Select)			
Taxation Laws Amendment (Superannuation) Bill (No. 2) and Superannuation Guarantee Charge Amendment Bill 2002	25.6.02	Not required	-
Taxation treatment of overseas superannuation transfers	19.8.02 (presented 25.7.02)	-	No
Provisions of Superannuation (Government Co-contribution for Low Income Earners) Bill 2002 and Superannuation Legislation Amendment Bill 2002	26.9.02	Not required	-
Provisions of Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002	12.11.02	-	Time not expired
Tax arrangements for superannuation and related policy	12.12.02	-	Time not expired
Treaties (Joint Standing)			
UN Convention on the Rights of the Child (17th report)	10.11.98 (presented 28.8.98)	*(interim)	No
Privileges and immunities of the International Tribunal on the Law of the Sea and the treaties tabled on 27 February and 6 March 2001 (39th report)	22.5.01 (presented 18.4.01)	19.9.02	No
Extradition—a review of Australia's law and policy (40th report)	6.8.01	*(interim)	No

Committee and Title of report	Date report tabled	Date response presented/made to the Senate	Response made within specified period (3 months)
Who's afraid of the WTO? Australia and the World Trade Organization (42nd report)	24.9.01	29.8.02	No
Thirteen treaties tabled in August 2001 (43rd report)	27.9.01	*(final)	No
The Statue of the International Criminal Court (45th report)	15.5.02	*(interim)	No
Treaties tabled 12 March 2002 (46th report)	24.6.02	*(final)	No
Treaties tabled on 18 and 25 June 2002 (47th report)	26.8.02	Not required	-
Treaties tabled in August and September 2002 (48th report)	21.10.02	-	Time not expired
The Timor Sea Treaty (49th report)	12.11.02	-	Time not expired
Treaties tabled 15 October 2002 (50th report)	10.12.02	-	Time not expired

DOCUMENTS

Auditor-General's Reports

Report No. 22 of 2002-03

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General's Act 1997, I present the following report of the Auditor-General: Report No. 22 of 2002-03—*Business Process Support Audit—Payment of accounts and goods and services tax administration by small Commonwealth organisations.*

Commonwealth Ombudsman: Report

The DEPUTY PRESIDENT—On behalf of the President, I present the report of the Commonwealth Ombudsman on activities in monitoring controlled operations conducted by the National Crime Authority and the Australian Federal Police.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Report

Senator FERRIS (South Australia) (3.36 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the committee's report entitled *The Australian meat industry consultative structure and quota allocation*, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator FERRIS—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DELEGATION REPORTS

Parliamentary Delegation to Egypt

Senator McGAURAN (Victoria) (3.37 p.m.)—by leave—I present the report of the Australian parliamentary delegation to Egypt, which took place in September 2002.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

Debate resumed.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.37 p.m.)—I move:

That this bill be now read a third time.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.37 p.m.)—Getting to this point on this bill has been a long and difficult process. The government introduced the ASIO bill into the House of Representatives on 21 March this year. But the bill the government introduced in March is very different to the

bill we now have before us. The ASIO bill as introduced on 21 March 2002 would have allowed adults and children to be detained, strip searched and held by ASIO for rolling two-day periods that could be extended indefinitely, even after questioning had concluded. While detained, Australians could be denied access to people outside of ASIO and could not inform family members, their employer or even a lawyer of their detention. The proposed section 34F(8) of the bill stated:

> A person who has been taken into custody, or detained, under this Division is not permitted to contact, and may be prevented from contacting, anyone at any time while in custody or detention.

Under the original bill, a 10-year-old child could have been held in detention by ASIO and strip searched. There is no way that this bill could have been accepted by the opposition. There is no way that this bill could have been accepted by the legal profession. There is no way that this bill could have been accepted by ordinary Australians. The opposition used the processes of parliament to ensure that the bill was thoroughly examined and to provide an opportunity for the many organisations and individuals with an interest in this bill to have their say. The original bill was referred to the Parliamentary Joint Committee on ASIO, ASIS and DSD. It was also referred to the Senate Legal and Constitutional References Committee. The PJC on intelligence services undertook a detailed examination of the bill, including public hearings, and they produced a bipartisan advisory report which was heavily critical of the government's bill. The report stated:

> The bill in its original form would undermine key legal rights and erode the civil liberties that make Australia a leading democracy.

The parliamentary joint committee made 15 substantive recommendations that were intended to go some way towards making the bill more acceptable. At that time, the Senate Legal and Constitutional Legislation Committee did not conduct a detailed inquiry into the bill, but it reserved its right to do so if the government did not accept all of the PJC's recommendations. The government's amendments to the bill did not adequately address the concerns of the two committees. The amendments fell well short of what the joint committee considered the minimum necessary for the bill to be acceptable. In effect, the government only fully accepted 10 of the PJC's 15 recommendations. Even more importantly, the government still proposes that people who are not suspected of any offence may be detained in secret for up to seven days.

In contrast, under the Crimes Act, murder suspects can only be detained by police for a maximum of 12 hours. They must then be charged or released. In fact, the government is making the absurd proposal that a terrorist suspect can only be detained and questioned for 12 hours but a non-suspect who may have information about a terrorist activity can be detained and questioned for seven days. In light of the completely inadequate response from the government to the PJC's recommendations—and I stress that they were bipartisan findings of the Parliamentary Joint Committee on ASIO, ASIS and DSD—the opposition successfully moved at the second reading stage in the Senate that the bill be referred to the Senate Legal and Constitutional References Committee. The committee's main task was to examine alternative ways of enhancing the capacity of our law enforcement agencies to counter terrorism without compromising civil liberties. The Senate committee undertook a detailed examination of the bill in a very short time frame. In the view of the opposition, the committee members should be commended for the excellent report that they produced. Again, it was a report with a high degree of bipartisanship on the essential elements of principle that are contained in the bill.

The committee recommended a viable, alternative model for strengthening counterterrorism powers, one which the committee believes provides:

> ... a basis for improving and progressing the legislation, while keeping its provisions within acceptable bounds and respecting the rights and freedoms that are fundamental to the Australian community.

All the parliamentary committee considerations led to a substantially revised model for strengthening the intelligence gathering powers of the Commonwealth with regard to

fighting terrorism. At the same time that these committee considerations were under way, the opposition continued to discuss with the government the provisions of this bill with a view to resolving our differences and, if possible, reaching agreement on changes to the bill. I have to say that, while I appreciate the government's readiness to engage in these discussions, it has been ambivalent in its approach. At times the government seemed to genuinely want an accommodation; at other times it seemed to me that it preferred differentiation. At times it appeared to have been seized as to the urgency of the bill; at other times it seemed to have been perfectly happy to leave this bill on the backburner. The end result of this necessarily lengthy process of consideration and consultation is the bill that we now have before us. It is a bill which significantly enhances ASIO's intelligence gathering capacity in relation to terrorism offences and it provides strong protections for those who are subjected to questioning.

There are those who argue that we should not be increasing ASIO's powers at all. Let me be clear about this: the Labor Party does not agree with those arguments. There is no question that we are facing an enhanced threat of terrorism in the wake of September 11 and the Bali bombings. We must respond to that threat. As legislators, we owe it to the Australian public to ensure that our security and intelligence agencies have all the necessary powers to detect and prevent terrorist attacks. ASIO is our front line against terrorism. At the moment ASIO can ask questions but it cannot demand answers, and that is quite clearly a problem and it needs to be fixed. Why should we permit a compulsory questioning regime for royal commissions, the Independent Commission Against Corruption and other state crime commissions, and agencies such as the Australian Securities and Investments Commission, but not for ASIO? Why should we treat corporate crime as more important than terrorism? Quite clearly we should not do that, and that is why the opposition has looked to these models in trying to determine what a reasonable, compulsory questioning regime might look like.

The government has proposed a detention regime, and a very harsh detention regime at that—up to seven days and with the detainee potentially being incommunicado for the first two days without access to a lawyer. Why should a person who is not suspected of any offence, but who is simply thought to be able to assist with information relevant to the investigation of a terrorism offence, be treated worse than a murder suspect? In other words, why should a nonsuspect be treated worse than a suspect? The opposition remains very firmly of the view that such an approach cannot be justified.

What are the new powers that we are giving ASIO in the bill now before the Senate? What are the new protections that we are providing to those who might be subjected to this new regime? Through amendment, the Senate has largely put in place the alternative model that was envisaged by the Senate committee. It has a significant number of features and safeguards: compulsory questioning by ASIO officers before a prescribed authority; custody directly linked to the questioning and no detention for other purposes; access to legal representation of choice; protection for children under the age of 18; a detailed statement of questioning procedures; and the maintenance of comprehensive and proper parliamentary scrutiny of the system and of the outcomes of the system.

Each time the government has come up with a problem or a sticking point. The opposition has been assiduous in considering the issues and developing solutions consistent with the principled position it has taken on the bill. I can even say that the opposition has bent over backwards to find solutions to the workability problems raised—and raised at short notice—by the government. As an example, the government's constitutional issues concerning chapter III limitations on using serving federal judges were raised as a stumbling block to the workability of the questioning regime. The opposition proposed an alternative pool of judicial experience to address this issue, and then the government came up with further problems with this solution. The government says there are not enough retired judges. Senator Ellison ban-

died around the figure of 22. On the basis of our own inquiries to state and territory governments, we are confident that the pool of retired judges is in excess of 150.

Nevertheless, the opposition have again addressed the government's concerns and provided an appropriate and workable alternative. We urge the government to accept it. In other words, the opposition has laid our bona fides on the table and we have done that right here in the chamber during the committee debate. We are intent on providing workable and appropriate tools for gathering intelligence on terrorism and we have bent over backwards during the Senate's consideration of this bill to ensure that the government's concerns—those stumbling blocks—are overcome.

We are providing powerful new tools for ASIO in their fight against terrorism. We say and strongly believe that the protections are appropriate, that the protections are adequate and that the protections are balanced. The government will no doubt argue that the enhanced powers do not go far enough and that the protections go too far. I am sure that is what the government will say. We simply do not agree. The government might be disappointed that it has not got everything it wanted in the committee debate. We are very pleased, and I think the Australian community as a whole should be very relieved, that that is the case.

The government now has a choice: it can vote for the bill as amended or it can reject it. The government can accept the new powers that the Senate is offering for ASIO, along with the protections that the Senate is insisting upon. Alternatively, it can reject those powers, and I suppose it always has the opportunity of using this bill politically. At the end of the day, the issue here is whether the government and this parliament act in the national interest—and for the government the issue is not only whether it acts in the national interest but whether it acts in its own perceived political interest.

I say that the solution that is being determined by the Senate is a balanced and principled outcome. I believe that the powers in this bill are tough and unprecedented. I also say that they are necessary. But when you have tough and unprecedented but necessary powers, you also need adequate safeguards and protections. I believe that the bill, the third reading of which is now to be voted upon in the Senate, delivers both those objectives. The opposition will be supporting the amended bill and I urge the Senate to do the same.

Senator GREIG (Western Australia) (3.57 p.m.)—In this third reading debate on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, I begin by emphasising that we Democrats abhor and oppose terrorism as much as any other Australians. Like other Australians, we are angered, saddened and shocked by terrorist attacks such as the ones we saw on September 11 and more recently with the Bali bombings. We recognise that the threat of terrorism poses new and, I dare say, complex challenges for governments around the world. But there is no obvious way in which to address that threat effectively. As many have observed, terrorism is a threat not just to the lives of innocent civilians but also, at times, to democracy and freedom. The Democrat response to terrorism is to ensure that we seek to protect lives as well as democracy and freedom. On 17 September last year Prime Minister John Howard said:

> Wouldn't it be a terrible, tragic, obscene irony if, in responding ... to these terrible, terrorist attacks, we forsook the very things that we believed had been assaulted ...

He was referring to the events of September 11. Unfortunately, in making that statement, the Prime Minister prophesised the ultimate flaws in what has become his government's response to terrorism. We Democrats have been dismayed to see the terrible, tragic and obscene irony of that response over the past 14 months manifested principally in the suite of antiterrorism bills we dealt with earlier this year.

The government has consistently made the case that effectively responding to terrorism requires a departure from fundamental human rights and freedoms. Since September 11, we have repeatedly heard the mantra from many politicians around the globe that the world has changed. This mantra has been

relied upon to challenge the foundational tenets of our political and legal system. The thinking seems to be that the world has changed and therefore the way we deal with the world must change too. The presumption of innocence, the right to a lawyer, the right to remain silent and the right not to be detained arbitrarily have all been threatened. This is wrong and it is dangerous, and in many ways it plays into the hands of the very people seeking to destabilise our accepted way of life and general stability and security. If the aim of terrorists is to cause fear and uncertainty then we must not let their presence and activities induce a climate of fear and uncertainty in our own day-to-day lives, causing us to abandon the very legal protections that we acknowledge as being important to the essence of freedom and democracy.

I take the opportunity to record the Democrats' great disappointment that this bill is even being considered at a time when there is a complete absence of an Australian bill of rights or at least a charter of rights. This legislation clearly illustrates that the rights and liberties of Australians are not inalienable but may be overridden by clear legislative intent. Australia is now one of the only remaining common law countries which lacks a bill of rights, and there is no reason which justifies Australians being exposed to potential derogations of their fundamental human rights and freedoms when the citizens of other common law countries are not.

Two months ago today, Australia was confronted with the tragedy and sorrow of the Bali bombings, in which so many innocent lives were lost. In the wake of that incident, it became clear that Australia needed to examine and assess its intelligence capabilities in order to effectively combat terrorism in our own immediate region—although, of course, this bill was introduced prior to 12 October. The Democrats are acutely aware of the need to ensure that Australia's intelligence agencies operate effectively in order to protect the safety and welfare of the Australian community. As legislators, we have a responsibility to act in the best interests of those whom we represent. Often this involves a delicate balancing between competing interests. I am sure MPs would acknowledge that we have all received countless emails and letters from people expressing their very serious concerns regarding this legislation and the severe effect that it will have on the rights and civil liberties of all Australians.

I say 'all' Australians because the legislation does apply to all Australians, not just those suspected of involvement in terrorist activities. The scope of this bill is perhaps its most disturbing flaw. I believe the government has failed to demonstrate why it is necessary for Australians to be seized, dragged away and questioned by ASIO, when citizens of other nations are not subject to such draconian powers under comparable legislation. It seems to me that the tragedy of Bali has united all Australians in our resolve to fight terrorism and prevent further attacks, particularly in our own region. I do not believe that either the government or the opposition, despite being asked on numerous occasions, has provided any compelling arguments or reasons as to why such power is necessary in Australia when it has not been considered necessary in comparable jurisdictions such as the United States and the UK.

Of course, we must consider appropriate arrangements for the detention of terrorist suspects and for the questioning of those involved in terrorist activities. However, the government has yet to make out its case for extending such arrangements to all Australian citizens. I believe that an honest assessment of this legislation should lead to the conclusion that it is not ordinary, everyday Australians who are at issue here. There is no evidence to suggest that Australian citizens would be unwilling to assist ASIO or any intelligence or law enforcement agencies in the gathering of information relating to terrorism. The fact that the government finds it necessary to detain us incommunicado and threaten us with imprisonment if we do not answer questions is very worrying.

My understanding of the Australian people leads me to believe that such powers are entirely unnecessary and unjustified and, indeed, offensive to many within the Australian community. Of course, there are a number of other concerns associated with this

legislation, despite the significant improvements that I will acknowledge have been made over the past few days. These include the fact that the right to silence is removed; there is only a limited use immunity in relation to information provided by the person; foreign nationals detained under the act will be prevented from contacting their embassy during detention; and police powers are vested in an intelligence agency, raising serious questions about accountability implications.

Where does that leave us? At the end of 2½ days of debate and discussion in the chamber we have a bill that, I would argue, effectively changes ASIO from an intelligence service into an investigative police power and in some way sees ASIO become a secret police without the accountability or experience of, arguably, the Australian Federal Police or the newly formed Australian Crime Commission. The constitutionality of the legislation is suspect and potentially breaches the separation of powers. The introduction of this legislation takes place, as I said, in an environment in which there is no bill of rights.

The legislation applies to all Australians, regardless of whether they are suspected of terrorism, and in this respect is more far-reaching than legislation that has been enacted or proposed in either the UK or the USA. There is no right to silence and no privilege against selfincrimination. A detainee would bear the burden of demonstrating that they did not have the information ASIO is seeking and thereby effectively reversing the presumption of innocence until proven guilty. The government has failed, I believe, to demonstrate why the legislation is required and has failed to show where existing criminal laws and policing powers are inadequate to deal with terrorism and suspected terrorists.

Most of all, I think it is worth noting yet again—and I do not think we can say this often enough—that the full effect of this legislation, if it were to become law, would be to enable non-suspects to be immediately detained just because they might have information relating to terrorism. I have to pose the question: what is the point of that? I would like to quote Professor George Williams, whose contribution to this debate was significant. He said:

> Despite the many amendments that have been made to the bill, it remains rotten at its core.

On that basis, and in defence of what we believe are appropriate civil liberties and freedoms and the protections for those, we Democrats will oppose this legislation.

Senator NETTLE (New South Wales) (4.07 p.m.)—I take this opportunity to speak to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, which is an extraordinary and, as others have said, an unprecedented piece of legislation for this parliament to be discussing. The Australian Greens do not believe that this piece of legislation has the balance right between the security concerns of this country and the individual freedoms of Australians. It is a piece of legislation that goes far beyond similar legislation in comparable countries. It is a piece of legislation in which there remains a fundamental flaw—that being the ability to detain people not even suspected of being involved in criminal activities.

If this piece of legislation were designed to deal with people who were about to commit a terrorist offence then the argument could be put that it would be very close to what was appropriate. The Greens say that it would not be so appropriate as our current criminal justice system in that it goes beyond that by extending the period of time under which people can be detained and questioned. It places further restrictions on the ability of people detained under this legislation to have access to a lawyer, and it extends the power of ASIO, which has previously been just an intelligence gathering organisation.

This piece of legislation is not just for dealing with people who are about to commit a terrorist act; it is also designed to entrap citizens who are ordinarily going about their business and who are not suspected of being involved in any criminal or terrorist activity. In that light we can clearly see how unprecedented and extraordinary this piece of legislation is and how it goes far beyond the basic tenets of our legal system. As we have said

before, the Magna Carta itself says that people should not be detained unless they have come before a court and are found on reasonable grounds by that court to be guilty or suspected of being involved in a criminal activity.

This piece of legislation goes far beyond that and in doing so represents an abrogation of our civil and political rights. The amendments that have been made fiddle around the edges of what is a fundamentally flawed piece of legislation. They improve significantly the ambit claim that was originally put forward by this government in the post 11 September climate. This piece of legislation, in its entirety, really draws on the atmosphere of fear and suspicion that has been created in the post 11 September climate. It tries to use that atmosphere of fear to push through this undermining of our civil liberties.

The Australian Greens oppose this piece of legislation because, even after the amendments put forward by the opposition, it allows for innocent people to be taken off the street without warning, to be interrogated in secret and to be jailed for five years if they refuse to answer questions. These measures establish a very serious precedent in Australian law, one that goes well beyond any comparable country's response to the worldwide terrorist threat. The powers that ASIO and the AFP already have clearly are sufficient to allow them to do their jobs properly and these laws as such are an unnecessary and dangerous attack on Australia's civil rights.

The government and the Australian Labor Party have failed to make the case for extending these powers to capture non-suspects. Even in the course of two full legislative committee inquiries they have failed to make that case. Throughout those inquiries we heard from numerous prominent legal professionals and organisations about the ways in which our current criminal justice system allows us to deal with the current terrorist environment. The implications in this legislation are wide reaching for all citizens: for journalists, for political activists, for politicians and for members of the community who are under suspicion for a variety of reasons. These implications are extremely serious. This power to arbitrarily detain is a blunt weapon in the fight against terrorism and it is not in keeping with a country that values its civil and political rights.

The amended bill allows for people not suspected of being involved in a terrorist act or in a terrorist group to be detained without warning for questioning and detention. The proposals put forward by the Australian Labor Party allow for that questioning and detention regime to continue well beyond one day of detention and indeed without a time limit for that detention and questioning regime. This amended bill allows, where there is any refusal to answer a question, for a punishment of five years imprisonment. This bill is unprecedented and unnecessary and demonstrates a fundamental abrogation of our civil and political rights in this country. As such the Australian Greens will not be supporting this bill.

Senator HARRIS (Queensland) (4.14 p.m.)—I would like to commence my contribution to this third reading debate by clearly indicating that One Nation will not be supporting the legislation, even in its amended form. I clearly indicate to the chamber and to the people of Australia that, had it not been for a combination of the opposition and the cross-benchers, this bill would be considerably worse in its impact on the rights of innocent Australians. In contributing to this debate, I would like to quote from a letter from the Law Institute of Victoria. In a letter to me on 1 August, they wrote:

> The Law Institute of Victoria urges you to vote against this bill in its present form. It is the institute's opinion that the government has not demonstrated that existing powers held by the Australian Security Intelligence Organisation—

that is, ASIO—

> are inadequate to meet any potential security threat. This stance is put forward in particular by the Institute's Young Lawyers Section Law Reform Committee. In the alternative, we urge you to insist on the implementation of the recommendations of the Joint Standing Committee on ASIO, ASIS and DSD report and of the Senate's Legal and Constitutional Committee report tabled on the fifth of June.

If we then go further to the submission by the Law Council of Australia, again to the Senate Legal and Constitutional Legislation Committee, we move to the concerns relating to the unconstitutionality of the bill:

> The Law Council of Australia respectfully adopts the following warning given by Justice Kirby on 11 October 2001 against potential excess in the adoption of an anti-terrorism law—

and it is referring to the rejection by the Australian people of a proposal, by way of referendum on 22 September 1951, to add a new section—that is, section 51A—to the Constitution to legislate with respect to communists and communism. It goes on to quote:

> Given the chance to vote on the proposal to change the Constitution, the people of Australia, fifty years ago refused. When the issues were explained, they rejected the enlargement of federal power. History accepts the wisdom of our response in Australia and the error of the overreaction of the United States. Keeping proportion. Adhering to the ways of democracies. Upholding constitutionalism and the rule of law. Defending, even under assault, the legal rights of the suspects. These are the way to maintain the love and confidence of the people over the long haul. We should never forget these lessons ... Every erosion of liberty must be thoroughly justified. Sometimes it is wise to pause. Always it is wise to keep our sense of proportion and to remember our civic traditions as the High Court Justices did in the *Communist Party Case* of 1951.

If we look at the report of the Senate Legal and Constitutional Legislation Committee entitled *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and related matters*, we see that two issues of constitutionality were raised, and I will speak briefly about the first one, the constitutionality of the executive authorising 'the detention of a person who is not a suspect'. The committee says:

> 1.14 In their correspondence to the Committee, Professor Williams and Dr Carne contended that the High Court's comments in Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs (1992) 176 CLR 1 raised doubts about the administrative power to detain Australian citizens not involved in or suspected of a criminal offence, save in a relatively limited set of identified and exceptional circumstances.

So we have these eminent professors raising the probability of constitutional challenges where the government implements the ability to take into detention a person who is not suspected of an offence. If we look at the progression of the bill, we see that, when the bill entered this chamber, it would have—for the first time I believe—eroded the civil and constitutional rights of the Australian people in a way that no other legislation that I have seen has. The opposition moved a sunset clause to the legislation, which was passed, so at least we have at this point in time the confidence to know that this legislation will cease to have effect at the time of its sunset.

There are definition changes to the act of terrorism. The government itself brought in an amendment to ensure that a search of a person, whether a strip search or frisk, would be carried out by a person of the same sex. The government's amendments relating to former judges were defeated and the alternative opposition proposal was put forward. We have seen quite a considerable number of amendments moved to the legislation but the legislation itself, even in its amended form, carries great concern for the innocent Australian citizen.

I have no reservations, and neither does One Nation, about the powers in this bill being used against a person who intends to carry out or who has carried out a terrorist activity against Australia and its citizens—whether that be here in Australia or anywhere in the world. This debate is not about stopping the government using its powers to protect Australians. The debate is about protecting the rights of the innocent Australian. It is no reflection on this government. The concern that One Nation has is not for our present political system or the form of political process that we have in Australia today.

Had it not been for the sunset clause, this legislation would have stood until repealed and that would have presented Australians with the greatest danger. Had this sunset clause not been in place, this legislation could have been used in subsequent years by a person or persons not having the greatest intent for the benefit for the Australian people. It could have been used politically against political opponents within Australia.

I clarify those words by saying that there is no inference whatsoever that any present political party in Australia would want to do that. In passing legislation in this chamber, if that legislation does not have a sunset clause we have to take that into consideration. As I have previously quoted from one of our eminent High Court judges, there are times when we need to pause and think through the ultimate process that this legislation could be used for.

At all times in this chamber we are, I believe, so involved with the legislation that we are working on at the time that there is insufficient ability to go back and look at the impacts of the legislation that we have passed. We could use the example of the deregulation of the dairy industry. Has this chamber reassessed the impact on the dairy industry—whether it has been positive or negative? No, it has not; it has not had time to do that.

In conclusion, One Nation places on the record that it is not our intent in any way in opposing this legislation to assist any person that has any intention now, had in the past, or will have in the future to carry out an action that is detrimental to the Commonwealth of Australia or the Australian people. Our concern in opposing the legislation is based on the impacts on Australia's innocent citizens.

Senator BROWN (Tasmania) (4.26 p.m.)—There is no place in civilised society for people who take violence, explosives and death dealing and maiming measures against innocent citizens to pursue some point, dictum or dogma that they may have. We have to remain vigilant in this age of global transfer not only of information but also of people in a way which we have never seen before and which is going to increase. They are great advantages to people who are opposed to the views of others and who think that violence is going to solve problems in the human community. It will not. That is a message that also needs to go to the White House.

You cannot just look at this legislation in isolation. It is an effort—and I accept that from all parties involved—to meet the menace of terrorism. The Greens have a differing point of view about where the balance is set between the efforts of fanatics to bring fear and terror into our society and the rights of our society to have its freedoms and liberties upheld. As Senator Nettle has said, this legislation infringes on the latter as never before.

That said, let us look at some of the advice. No doubt ASIO's advice to the government has been very instrumental in this legislation being framed in the way it has. ASIO has also advised the government—as the CIA has advised the US government—that the impending invasion of Iraq and capture of Baghdad is fraught with the danger of increased terrorism as a result. It is part of the new political correctness that you do not discuss that aspect of the equation. But I am not going to be held captive by that new dictum, as is the doyen of new political correctness, Andrew Bolt, who would have it that you either go with the government in this matter or you go with the terrorists. That is fatuous. It is simplistic. It debases the argument and debate that we must have in a society like ours if we are going to find the right answers. However, we are not a society bristling with guns like the United States. We are a much softer target. It does concern me greatly that our Prime Minister nevertheless sees siding with the Bush administration in the United States in this matter of terrorism and in the matter of the invasion of Iraq—despite some recent separation from his previous line—as not being without consequence. It has huge consequences for the Australian community. We must note what ASIO has said.

If the Prime Minister opts to be part of the United States attack on Iraq to service the Bush administration's need domestically in the United States to say, 'We have friends with us,' Australia becomes more vulnerable because of that. That is a price that the Prime Minister must size up in the coming months. Parliament is not going to be here to tackle him on that. If we are called back, it will be after the event that he has decided to send a contingent of Australians to Iraq. This is a matter of huge national importance. The Prime Minister has enormous responsibility on his shoulders for the lives of Australians—not only those going to Iraq but those

travelling elsewhere and going peaceably about their lives in this country.

We should have an independent foreign policy; we should have an independent view of the world. In this country we should be looking independently at how we defeat terrorism, not only by trying to prevent it when people have it in mind but by trying to undermine it through getting at the root causes of division in this world—the greatest of which, I believe, is the gap between rich and poor in human society. There is a gap between those of us who live in extraordinary and unprecedented luxury and the billion or more people on this planet who are living in utter and degrading poverty. Australia would be very well placed if it were pushing for a new Marshall Plan to directly address that problem, but there is no hint of that from the Howard government. I think that is an enormous pity and something of great disservice to Australia.

I do not think President Bush is up to this, and it is a great disservice to the world that he is not. He ought to look at the history of the post Second World War situation and the magnanimity—in the full sense of that term—of the Marshall Plan that came from his own country to recognise that there are answers other than threatening to use nuclear weapons or to top the weapons of mass destruction usage by anybody else, be it Saddam Hussein or some other cruel manifestation of humanity in power around the world. The Greens, as Senator Nettle so well put our position, will be opposing this legislation.

Before I conclude, I want to say that there has been a sea change for me in this place in the last five months, and that is because of the presence here of my colleague Senator Nettle. She is a young and extremely devoted Australian. Her carriage of this piece of legislation, on behalf of the Australian Greens, has been admirable, to say the least. I congratulate her. She is a great addition to the Senate and she has obviously brought a great deal not just to the advocacy of the Greens point of view but to the debates in this chamber, as manifested in this debate about the ASIO legislation. I look forward to the coming years as we seek to balance the debate on matters like this and argue against the current and prevailing view that economic rationalism is the best credo for the world to manage its affairs with. It is not, and we have better alternatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.33 p.m.)—The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 is a very important bill for Australia and one which is essential for ASIO if it is to look after the security of this country. The bill is aimed at intelligence gathering and is essential for an agency such as ASIO in dealing with any threat of terrorism. The government's position on this bill has always been emphatically clear. I reject totally any statement by the opposition that we have in some way been ambivalent. The statements by the Prime Minister and the Attorney-General have made it very clear that we need this legislation to give our intelligence agencies vital tools to deter and prevent terrorism. This is a bill that we need to look after Australia's interests. We have not wavered from this position, and we do not intend to do so now.

Unlike the opposition, which has ducked and weaved the difficult questions on this bill, we are serious about protecting the Australian community. The opposition has itself been divided on this bill, whereas the government have demonstrated time and time again our commitment to community safety. We have been emphatic that the ability to question and detain, in strictly limited circumstances, for the purposes of intelligence gathering to prevent and deter terrorist activity is fundamental to this bill. That is something we have stuck to throughout the whole course of this bill and the inquiries and debate on it.

Let us make no mistake: this bill is designed to enhance the capacity of authorities to combat terrorism and to prevent and deter terrorist activities. It is designed to enable the collection of information about potential terrorist attacks so we can better prevent them before people are hurt or killed. There is no greater human right than to be able to live one's life without fear of attack, harm, assault or even death from a terrorist activity. In fact, the greatest breach of human rights is

that which we see perpetrated by terrorist organisations in the world today. We have always said that we recognise that this bill is extraordinary—it is designed for extraordinary circumstances. What we have here is a regime which gives our intelligence agencies the ability to gather that crucial intelligence but which maintains those safeguards that can preserve the interests of the individual.

The government have repeatedly said that we will not entertain proposals that render the bill impotent or unworkable. That is why we voted against the amendments moved by the opposition and the minor parties. We certainly cannot accept amendments that would render the bill unconstitutional either. The opposition's amendment in relation to sitting state and territory judges would do just that. The opposition amendments go to matters of fundamental principles that we cannot accept. We are forced, however, into a position where we have to support the bill as amended to ensure that we can take it back to the House of Representatives and undo the damage that has been done. We do not do so lightly, because the opposition's amendments, as I said, go to the heart of the bill and fundamentally change the nature of what the government have proposed.

The amendments proposed make the bill, at best, unworkable and, at worst, unconstitutional. Our advice is that there is a significant risk in appointing sitting judges as prescribed authorities and that this would be unconstitutional, regardless of whether they be state, territory or federal judges. This advice was confirmed as late as last night and conveyed to the opposition in confidential discussions. We also sought specific advice on the opposition's amendment today in relation to prescribed authorities which again confirms our position that the opposition's amendment will render that part of the bill unconstitutional. Under the opposition's amendment, which was passed with the assistance of the minor parties, sitting state and territory judges will be performing functions under Commonwealth legislation that would give federal executive functions to state judges. Our advice is that there would an unacceptable risk that this would be held to be incompatible with their judicial functions and hence be unconstitutional. The risk is not just an arguable one but a significant one. In the face of such a significant risk and on the basis of advice available to it, the government cannot support the amendment in this form—and I outlined that to the Senate previously.

In my earlier remarks, I mentioned that the government's original proposal was to have AAT members perform the role of prescribed authority and not judges. I would like to clarify my remarks and correct the record. The bill, as originally drafted, did not make a distinction between the role of issuing and prescribed authorities. Under that proposal, the prescribed authority could both issue warrants and preside over questioning, although they need not have done both. The original bill provided that AAT members and federal magistrates could perform this role, but the bill and the explanatory memorandum made it clear that the role of the prescribed authority was conducted as persona designata. I stress that a previous statement that also included federal judges as prescribed authorities was incorrect. Where the record has to be corrected is that we did have federal magistrates in that role.

The Parliamentary Joint Committee on ASIO, ASIS and DSD expressed concerns in relation to this. The committee acknowledged that the High Court in Grollo v. Palmer had decided that the issuing of a warrant by the judiciary is permissible provided that the judiciary exercise the power in a personal capacity. The committee, however, was also concerned about the possibility that federal magistrates presiding over questioning could go further than the decision of Grollo v. Palmer would allow. Under the government's original proposal, the person who issued the warrant need not have been the person who presided over the questioning. Federal magistrates could confine themselves to just issuing warrants. The parliamentary joint committee recommended a splitting of the roles so that judges issued warrants but AAT members presided over them.

The government accepted the concerns and amended the bill in accordance with the recommendations of the parliamentary joint

committee. We sought our own advice on the constitutionality of the amended provision. The result was a splitting of the prescribed authority function into issuing authority and prescribed authority. The government accepted that, by splitting the functions, the government's concerns were addressed and the constitutionality of the bill was assured. The opposition, however, has proposed amendments that contradict the parliamentary joint committee's recommendations. The government's advice on the opposition's proposals in relation to sitting state and territory judges is that they pose an unacceptable risk and would be unconstitutional. I reiterate that, on that basis, we cannot support those amendments. If the opposition were serious about this bill, it would not be exposing its amendments to such risk of invalidity.

I will finish by saying that the government is deadly serious about ensuring that the security of this country is met and that there is community safety in relation to the current environment of threat. We believe that this bill is essential to ensuring that. We have taken on board recommendations of the parliamentary joint committee and the Senate Legal and Constitutional References Committee—recommendations which we believe to be constructive. We have not taken on board all of those. There is nothing unusual in that. We have not cherry picked the recommendations, as alleged by the opposition. We have said that we will take on board that which is reasonable, but we will not take on board that which will render this bill unworkable and expose it to constitutional challenge.

We urge the opposition to reconsider its position, to look carefully at the amendments that were put forward and to look carefully at the reason that we have put this bill forward. This bill has been subject to a great deal of scrutiny—no fewer than three parliamentary committees have looked at this bill. That is very unusual for any piece of legislation in the federal parliament. This is unusual legislation, and it is very serious in its objectives, in the powers that are bestowed and in the safeguards that it contains. But one thing should be made very clear: in this current threatened environment, this bill is essential to the package of measures that we need to ensure Australia's safety.

Question put:

That this bill be now read a third time.

The Senate divided. [4.47 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……	45
Noes……	12
Majority……	33

AYES

Barnett, G.	Bishop, T.M.
Bolkus, N.	Boswell, R.L.D.
Brandis, G.H.	Buckland, G.
Calvert, P.H.	Campbell, G.
Campbell, I.G.	Carr, K.J.
Colbeck, R.	Crossin, P.M.
Denman, K.J.	Ellison, C.M.
Evans, C.V.	Faulkner, J.P.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Harradine, B.
Hogg, J.J.	Hutchins, S.P.
Johnston, D.	Kirk, L.
Knowles, S.C.	Ludwig, J.W.
Macdonald, J.A.L.	Marshall, G.
Mason, B.J.	McGauran, J.J.J. *
McLucas, J.E.	Moore, C.
O'Brien, K.W.K.	Payne, M.A.
Ray, R.F.	Reid, M.E.
Santoro, S.	Stephens, U.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Vanstone, A.E.
Watson, J.O.W.	Webber, R.
Wong, P.	

NOES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Harris, L.
Lees, M.H.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
Ridgeway, A.D.	Stott Despoja, N.

* denotes teller

Question agreed to.

Bill read a third time.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER

2001 BUDGET MEASURES) BILL (No. 2) 2002

Consideration of House of Representatives Message

Consideration resumed from 5 December.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (4.52 p.m.)—I move:

That the committee does not insist on the division of the bill to which the House of Representatives has disagreed.

Senator CHERRY (Queensland) (4.53 p.m.)—I move an amendment in the terms set out on sheet 2792 revised:

At the end of the motion, add:

> "but reasserts the principle that the division of any bill by the Senate is a form of amendment of a bill, not different in principle from any other form of amendment, and should be considered as such".

The reason I am moving this amendment is the approach taken by the House of Representatives to the division of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002. I was quite disturbed by the statement about the division of this bill from the Speaker, and I would like to read out some of the words contained in that statement. It says:

The Speaker reminded the House that, on two occasions since 1995, the Senate had requested the House to consider a proposal to divide a House bill. The position of the House has been that the division of a bill in the house in which the bill did not originate was not desirable. Also, I understand that there may be grounds for the Senate action in purporting to divide a House bill being considered to provide the first stage of a failure to pass a bill for the purposes of section 57 of the Constitution. On the two previous occasions on which a Senate message purported to divide a bill originating in the House, the House did not consider the message seeking the concurrence of the House in the Senate action. It rests with the House as to whether it will consider the Senate message on this occasion.

We do have a message that has been sent back from the House of Representatives, but I believe that the Senate should not be prepared to accept the general intent of the advice from the Speaker to the House, which is why I think this assertion of the principle of what a division of a bill means is quite important. I sought advice from the Clerk of the Senate on this issue, and the Clerk made this point:

Because dividing a bill is simply a form of amendment, in the case of a bill which has been received from the House of Representatives, the Senate must inform the House that the bill has been divided and seek the agreement of the House (in effect, of the government) to the division of the bill. If the division of the bill by the Senate is not agreed to in the House, this has the same effect as disagreement to a Senate amendment: the bill cannot pass unless the Senate does not insist on its division of the bill or the government ultimately agrees to the division of the bill. Disagreement over division of a bill is exactly the same in principle as disagreement over amendment in the case of a bill received from the House.

He went on to say:

There is no rational basis for the apparent view of the government's advisers that the division of a bill has to be dealt with in some different fashion from a bill amended in the Senate.

If the government does not agree with the division of a bill by the Senate, it simply registers this disagreement in the House and informs the Senate of this decision, as with other amendments.

I think that is an important principle. We should assert the principle quite emphatically that, while we are prepared to look at the issue of recommitting this bill in the Committee of the Whole, the House should not adopt an odd attitude to a reasonable action of the Senate in its suggestion that the best way of moving these bills was in fact to divide them into the non-controversial and the controversial components.

Moving to the content of the legislation, it is a pity that the government did not accept the division of these bills. If it had, we would have had the Working Credits Scheme up and running now and we could have sat down and had a debate about the very important, complicated and detailed issues involved with the breaching regime and the penalties regime, which obviously impact on the matters that the government proposed

relating to mature age allowance holders and parenting payment recipients.

It is a pity that the government did not accept the splitting of this bill. It is a pity that it has been done, from the House's point of view, on a technical objection to the bill being split by the Senate. Certainly, whether it be on the technical grounds or the policy grounds, it is a pity that the House did not agree to that action. I have moved this motion because I think it is important to note that we would prefer that if the government does not agree to the splitting of a bill that it be on policy grounds and not on technical grounds.

Senator NETTLE (New South Wales) (4.58 p.m.)—I support the Senate's insistence on our amendments. Last month the Australian Greens supported the splitting of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 so as to pass in the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 the beneficial measures, including the Working Credits Scheme to assist people returning to paid work, while declining to approve the imposition—

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—Senator Nettle, can I remind you that the amendment before the chair is that which Senator Cherry spoke to, which is on sheet 2792 revised. Are you speaking on that?

Senator NETTLE—The Australian Greens will support both of those, but I am speaking to them.

The TEMPORARY CHAIRMAN—Please proceed, Senator Nettle.

Senator NETTLE—Nothing that the government has said since we voted on the first splitting of the bill has changed our position. The bill extends to more Australians a system of mutual obligation with which the Australian Greens strongly disagree. The government contends that its policy prepares people for work. However, the Work for the Dole program provides no proper training and it punishes people for circumstances beyond their control, such as those who have lost their jobs through structural changes or a downturn in business. The program fails to acknowledge the scarcity of paid work, while the government refuses to address the imbalance of work evident in the countless continuing jobless rate, the number of discouraged job seekers and the excessive hours of work that some people are required and feel compelled to undertake. The Work for the Dole system imposes harsh fines that can cause considerable hardship. The Commonwealth Ombudsman, in a submission to an inquiry about extending this regime to temporary protection visa holders—which we will discuss later today—who are in receipt of a special benefit, stated that people who have been fined had advised that they had lost their rental accommodation as a result.

The Australian Greens support government assistance for people who are seeking work and access to proper and adequate training and education. We do not support coercion or an unwillingness to recognise that some people may wish to make their contribution to society in ways other than paid work. They may wish to make their contribution as carers or as people working in their community to improve the quality of life for their fellow Australians. These people deserve an adequate income.

The Minister for Family and Community Services accuses the Senate of being soft on welfare compliance because it declined to support the objectionable measures in this bill. She objected to the Senate requiring the government to soften the impact of the breaching regime—a regime which the Australian Greens fundamentally disagree with. What the Senate wanted, and I hope still wants, was for the government to adopt the recommendations of the independent Pearce review of the breaching regime. The review, which was commissioned by community groups, recommended reducing penalty rates and the length of time for which they are imposed, and permitting people to recover the money if they subsequently comply with the requirements. Under current arrangements, a single unemployed person can be fined between $877 and $1,500. Compare this with the weekly single adult rate of in-

come support of $187. The breaching regime is also counterproductive because it can reduce a person's capacity to search for paid work—which costs money—and can cause homelessness, crime and family breakdowns.

The breaching regime remains harsh and excessive. The number of breaches last financial year was 260,000. The community sector appealed to senators not to support the bill without the adoption of the Pearce recommendations, and the sector continues to call for the Senate to stand firm in its requirement of this as a condition of the bill's passage. The minister has suggested that it will cost between $400 million and $700 million to implement these changes. If she is right, that is an extraordinarily large amount of money for the people of Australia, through their parliament, to take away from some of the poorest and most vulnerable people in our community. More disturbingly, the minister's comments suggest that the government is relying on saving this amount of money through its breaching regime, in spite of her comments last month that no-one needs to be breached. The Australian Greens believe that the Senate should insist on our amendments.

Senator MARK BISHOP (Western Australia) (5.02 p.m.)—I rise to make a few comments about the message from the House on the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and about the Australian Democrat amendment proposed by Senator Cherry. The Senate has received a message from the House requesting that the bill be considered as a whole. We have come to this point because the government did not wish to support its own measures in the House. This in itself was extraordinary. The government had an opportunity to pass the parts of the bill on which there was no disagreement in order to expedite these measures but it baulked. The government got itself into a position of having a split bill, because it did not wish to discuss any amendments whatsoever. This was not an acceptable way to deal with the bill and now, if anything, the split bill has focused the government on the issues of disagreement and has sparked a real debate. This is a positive development and, ultimately, the reason why Labor will agree to consider the bill as a whole today.

Shortly, Labor will move two broad groups of amendments in the committee. Labor's first group of amendments go to the provisions in the bill. These amendments put in place safeguards for the two new groups who will be subject to new participation arrangements. For certain parenting payment recipients and the mature age unemployed, the amendments will provide for more appropriate exemptions, more tailored activity agreements, clear expectations of requirements and assistance and better steps before breaches may be applied. Other amendments improve the administrative processes in Centrelink in relation to these groups and to other job seekers, with requirements for reasonable periods of notice, more thorough steps before breaching and more thorough formulation of activity agreements. These agreements are comprehensive and carefully drafted. We hope the government and minor parties will agree to these changes in due course.

This brings us to the second broad group of amendments, which propose substantive changes to the breaching regime as recommended by the Pearce report. At the end of the day, this second package of amendments is where the battle with this bill will be. The government has indicated that it will not support these changes, but Labor is determined to put forward these amendments and debate them through. They are badly needed, and Labor is determined to pursue them to the fullest extent. If that means the bill has to return to the lower house on a number of occasions before some agreement is reached, then so be it. Let us hope that we can have a rational, mature and fair outcome for those people whom this bill and these amendments will affect. Senator Cherry's amendment seeks to add to the motion:

"but the Senate reasserts the principle that the division of any bill by the Senate is a form of amendment of a bill, not different in principle from any other form of amendment, and should be considered as such".

After the bill was split some two or three weeks ago, the opposition received some

advice from the Clerk of the Senate, Mr Evans; I think it was the same advice that Senator Cherry referred to, or similar. That advice made it quite clear that the splitting of a bill in the Senate is not without precedent, that it is indeed to be regarded as an amendment to the bill. To the extent that this amendment replicates the advice received from the Clerk and circulated to the Labor Party, we do not have any problem with it and we will not oppose it.

Question agreed to.

Original question, as amended, agreed to.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

In Committee

The TEMPORARY CHAIRMAN (Senator Collins)—I remind honourable senators that the committee has already agreed to a number of government amendments to the original bill and any further amendments to the bill will need to be dealt with now. We go first to sheet 2700 revised. The question is that schedule 1, as amended, be agreed to.

Senator CHERRY (Queensland) (5.07 p.m.)—The Australian Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, page 3 (line 6), to page 27 (line 4), items 1 to 53, **TO BE OPPOSED**.

We seek to delete schedule 1 from the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 because it imposes activity test requirements on sole parent families with teenage children. The Democrats believe that these provisions should simply not be in this bill. We do not think that imposing a flawed, failing and discredited breaching and penalties regime on sole parents is the best way we can progress welfare reform at this point in time. The Senate has heard an awful lot about the breaching regime and the penalties regime and Centrelink's management of breaching and penalties. As the Minister for Family and Community Services has asked me to do so, I will acknowledge on the public record that the government has tried to address these issues and has released significant policy changes at the administrative level to try to improve the breaching regime. But it still has not gone far enough. It has left significant penalties in the system, which it now proposes to knock on to sole parent families. The Democrats simply cannot see any merit in this.

We see merit—great merit—in encouraging sole parents to engage in the labour force on a voluntary basis if they feel they can do so. ABS data shows that sole parents already participate in the labour force more than any other beneficiary group. About 50 per cent of sole parents already participate in work. There is plenty of evidence to show that, as a general rule, sole parents want to engage in the work force and want to find the extra economic boost to improve their family situation if they can possibly do so. The impediment is not so much willingness but issues about child care, access to retraining, the huge waiting list for the JET program and trying to ensure that people are job ready and get their self-esteem up. The government should be addressing these issues rather than trying to impose a compliance regime which is clearly failing for other groups of beneficiaries. Now they are seeking to impose it on sole parents as well.

The Democrats believe that by putting this regime into place for sole parent families we are devaluing the significance of caring for children. The provisions in this schedule do not sufficiently take into account the link between the work and family responsibilities of sole parents. It is almost as though this government has two rules—the rule for two-parent families and the rule for one-parent families. The Prime Minister announced only two weeks ago that work and family balance would be one of his key priorities for this term, but when it comes to sole parents the balance is about trying to force them into work with inadequate safeguards to protect their family responsibilities. We find that principle offensive. It discriminates between two-parent families, which appear to be approved under the government's model, and one-parent families, which are somehow odd. This attitude comes through quite

strongly in the reform paper released by the minister today. It includes somewhat misleading figures about the extent to which sole parent families rely on income assistance as their primary source of income. There are also suggestions that the pension payments at the moment encourage them not to repartner, stop them getting married and a whole range of other things. I talked with the Sole Parents Union earlier today, and they said that they cannot find a single person who has refused to take on a new partner because of the pension arrangements. It is something which, frankly, is quite offensive to find in a government document.

The amendments in this schedule will directly impact on the welfare of children. It should be up to the parent to decide whether the balance between their work and family responsibilities is such that they should not participate in the work force in order to ensure that they are there for their children when they come home from school or when they are going through particular difficulties. We do not believe this is adequately reflected in the legislation and in the safeguards the government is proposing, and we just do not trust Centrelink to run a decent exemption program. The Commonwealth Ombudsman's report contains scathing criticism of Centrelink's administration of the penalties procedures. It says they are ignoring their own policies and their own legislation and that they are cutting corners and not giving sufficient attention to the individual circumstances of the cases they are dealing with. From that point of view, I do not believe it is time to impose a discredited system on sole parents. I understand and acknowledge that the minister is trying to reform this system, but it is still discredited. Until it is fixed and working effectively and fairly for other income groups, it should not be imposed on one of our more vulnerable and most stressed groups—sole parent families. For these reasons, the Democrats urge the committee to delete this schedule from the bill. We will deal with the rest of it on its merits.

Senator MARK BISHOP (Western Australia) (5.13 p.m.)—This amendment seeks to oppose in total schedule 1 of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002—the participation framework that the government is seeking to introduce for parenting payment recipients. If successful, the amendment would effectively retain the status quo. Whilst agreeing with the Democrats' view that the extension of participation arrangements to parents may present some problems, we are not convinced that these cannot be addressed through amendments to schedule 1. Labor therefore cannot support this amendment to wipe out this part of the bill.

Labor has considered carefully the merits of a participation framework for parenting payment recipients with older dependent children. With appropriate safeguards, as canvassed in our amendments, we believe that a participation framework is a positive reform. It is important to bear in mind that the parenting payment recipients who will be subject to the participation framework are just two years from being placed on Newstart, which will be an infinitely greater shock than the progressive frame work advanced here.

Labor's position has also been confirmed by Bob Gregory's excellent research using longitudinal data sets. These show that, while previous claims of low average length of receipt of single parenting payment—3½ years, when the maximum continuous period of eligibility in respect of a single child is 16 years—are accurate, they hide the fact that many individuals will return to payments after brief periods in employment or repartnering and then separating. Mr Gregory's work shows that around 50 per cent of parenting payment recipients end up on income support within five years of exiting parenting payment when their youngest child turns 16. Something clearly needs to be done about heading off this poverty cycle.

Labor has a strong record on parents. Labor's social security reforms of 1991 produced the JET program for people receiving parenting payments. The program is consistent with a broader approach that encourages women's participation in the work force and recognises that most parents no longer voluntarily retreat from the work force perma-

nently upon the birth of a child. That said, the voluntary nature of JET under Labor attempted to juggle the importance of recognising the difficulty for single parents of balancing work and family responsibilities and the need to ensure that single parents were not suddenly shunted onto an activity tested payment without skills or work experience when their youngest child turned 16.

Recent pilots by the current government emphasise the success of schemes such as JET but point to the fact that take-up rates for voluntary schemes are relatively low. A 1996 evaluation of JET found that participants were almost 1.56 times more likely than nonparticipants to leave parenting payment for employment and 1.34 times more likely to earn income from employment. With the amendments Labor are proposing to schedule 1 of the bill, we are confident that the new arrangement will work fairly and equitably and will not conflict with parenting responsibilities.

Senator NETTLE (New South Wales) (5.16 p.m.)—The Australian Greens supported the splitting of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 to remove objectionable provisions, including the extension of the activity test requirement, under threat of fines, to sole parents receiving the parenting payment. Regrettably, the Labor Party has not held firm to its original opposition to extending these requirements and the breaching regime to sole parents and older unemployed people. Labor's leader, Simon Crean, told the nation on Tuesday that he wanted to improve life for Australian families—that he wanted a fair, more tolerant and compassionate society. But here Labor is abandoning those Australians who are most vulnerable—those people who struggle every day to support themselves and their families. If this is what we can expect from a modernised Labor Party, Australia will reject it.

The level of income support this country provides to those of its citizens who do not have paid work, who are carers of the aged, ill or young or who themselves are too ill to work is barely enough to keep people out of poverty. The breaching regime imposed under this government's flawed mutual obligation policy is punitive and does nothing but make life harder for these people. The government uses the policy to create a false impression that taxpayers are getting something for their investment in income support, while it avoids focusing on the causes of unemployment, on unequal distribution of paid work and on barriers to training and education and refuses to acknowledge the legitimacy of other roles through which people choose to contribute to society.

The government has no difficulty handing out public moneys to corporations and wealthy Australians: witness the goods and services tax—a regressive tax that hurts most those with the least income—the low company tax rate, the subsidisation of multinational companies to lure them to Australia and keep them here and the propping up of energy intensive and greenhouse polluting industries. The list is endless. It seems that all of this is permissible, supportable and desirable but providing a decent level of income support, access to secure and affordable housing, genuine training and education and investment in job creation—investment in a fairer, better society—is all too difficult.

Labor's amendments will expand the minimal safeguards in the bill for sole parents receiving parenting payment, but we say that these people should not have to enter into a participation agreement or lose their income support in the first place. The Minister for Family and Community Services says that these measures are designed to assist parents to make a transition to paid work when their children are older. By all means let the government assist people to make this transition, but there is absolutely no need to compel them and threaten to plunge them even deeper into financial stress.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.20 p.m.)—The government's view on splitting the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 is clear. Apropos of some remarks made by Senator Cherry and Senator Nettle, one thing

needs to be put on the record about sole parents. Let it be clear that, through the changes it has made to family tax payments, particularly family tax benefit B, this government has advantaged sole parents more than any previous government has ever done and has done that quite happily. So any suggestion that this government is 'out to get' sole parents is a joke—it is not plugged into reality. We can have polemics if you like, but as this is the last day I just put that fact on the record.

I also put on the record that I am aware that sole parents are the strongest economic contributors of any welfare group. The government is clearly aware of that. They have the highest percentage of people on benefit who are participating in the economy in some way. They want to get work. It is clearly understood that sole parents are largely not teenagers who have babies to go on welfare, which is a myth perpetrated by those who are not plugged in. A small percentage might be in that position. Sole parents are largely women and largely on their own as a result of a permanent relationship—usually a marriage but sometimes a de facto relationship—breaking up and leaving them with the children. They want to participate; they want to get jobs. We believe it is perfectly fair and sensible to require them to have one interview a year when the youngest child turns six—that is, when the youngest child is already at school. We want to interview them once a year when there is no child at home. Studies and past experience make it very clear that a compulsory interview will be far more effective than a voluntary one, and we want this to be effective so that people can maintain their skills.

It is very clear that we have community support for people on a benefit doing something when the youngest child turns 13 and is in high school. It is perfectly sensible to expect an average of six hours work a week over, I think, a six-month period, not required in holidays and not inconvenient to organise. What would be criminal would be to continue the situation we now have whereby we put money in their bank account every fortnight and then send them a letter when their youngest child turns 16 saying, 'Now you have to get a job,' having not done enough before. I am very satisfied that these are positive changes to help sole parents to continue to be the greatest economic participators of all people on benefit. I think they are very fair. We oppose the amendment.

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that schedule 1, as amended, be agreed to.

The committee divided. [5.29 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes……	42
Noes……	10
Majority……	32

AYES

Barnett, G.	Bishop, T.M.
Boswell, R.L.D.	Brandis, G.H.
Buckland, G.	Calvert, P.H.
Campbell, G.	Campbell, I.G.
Carr, K.J.	Colbeck, R.
Collins, J.M.A.	Cook, P.F.S.
Crossin, P.M.	Denman, K.J.
Eggleston, A. *	Ferguson, A.B.
Ferris, J.M.	Harradine, B.
Hogg, J.J.	Johnston, D.
Kirk, L.	Knowles, S.C.
Ludwig, J.W.	Lundy, K.A.
Mackay, S.M.	Marshall, G.
Mason, B.J.	McLucas, J.E.
Moore, C.	O'Brien, K.W.K.
Payne, M.A.	Ray, R.F.
Reid, M.E.	Santoro, S.
Stephens, U.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wong, P.

NOES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Lees, M.H.
Murray, A.J.M.	Nettle, K.
Ridgeway, A.D.	Stott Despoja, N.

* denotes teller

Question agreed to.

Senator MARK BISHOP (Western Australia) (5.33 p.m.)—I move opposition amendment (1) on sheet 2791:

(1) Page 2 (after line 11), after clause 3, insert:

4 Evaluation

(1) The Minister must conduct an evaluation of the measures contained in Schedules 1 and 5 of this Act.

(2) Without limiting the generality of subsection (1), the evaluation must include the following:

(a) the numbers of parenting payment (single) recipients and parenting payment (partnered) recipients required to enter into participation agreements and the number of such recipients granted an exemption;

(b) details of expenditure on ancillary assistance provided to those affected by the measures such as expenditure on job network and training;

(c) employment outcomes of parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients targeted by the measures compared to the employment outcomes of these groups prior to the implementation of the measures;

(d) details of average earnings of the target population affected by the measures compared to earnings of the target population prior to the implementation of the measures;

(e) details of compliance with the activity agreements for parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients, including the numbers for each group in situations where a breach penalty was applied, and the reasons for applying a breach penalty;

(f) details of total savings resulting from breach penalties applied to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients required to enter into activity agreements;

(g) an assessment of the impact of the measures in Schedule 1 on children of parenting payment recipients;

(h) a cost benefit analysis of the new participation measures applying to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients.

(3) The evaluation must be completed and tabled in each House of the Parliament by 30 June 2005.

This amendment will require the Minister for Family and Community Services to conduct an evaluation into the measures in schedules 1 and 5 for new participation arrangements for parents and the mature aged. It will require detailed information on the success or otherwise of the measures. The amendment proposes detailed consideration of the changes including, but not limited to, numbers affected, expenditure on ancillary assistance to help parents and the mature aged comply, employment outcomes under the new measures compared with the existing arrangements, earnings of those affected before and after the changes, compliance with agreements and the numbers affected by penalties, dollar value of penalties, impact on children of parents required to participate and a cost-benefit analysis of the measures.

As drafted, the evaluation will have to be completed within 2½ years from the commencement of the measures. This amendment is essential. Too often in this policy area changes are made without comprehensive evaluation of their effectiveness. Labor recognises that the government would prefer that the detail of the evaluation should not be included in the legislation—that an undertaking by the minister in the Senate should be adequate. Labor would be happy to accept this approach except for the fact that undertakings have been given in this place previously by Senator Newman in relation to shared care changes for family tax benefits but have not been followed through. There are also instances where evaluations have been commissioned but the government has not made them public. A recent example is the evaluation of the pension bonus scheme.

Australia is a leader in social research. This amendment will strengthen our understanding of measures to assist people into work. As I said at the outset, this amendment requires a minister to conduct an evaluation of measures in schedules 1 and 5. Schedule 1 outlines proposed new arrangements for people receiving the parenting payment, and schedule 5 establishes a new participation requirement for those formerly receiving

mature age and partner allowances and also establishes new participation requirements for those who would have received prior allowance now going onto Newstart. The requirements are now more flexible and broader and essentially establish a new regime. The requirements are more flexible than for other Newstart clients and will be extended to Newstart recipients over the age of 50. There is a new modified breach regime proposed. Activity agreements will be more flexible, with a more flexible report period.

The total of the changes we suggest is neither gradual nor incremental. The two groups most affected, essentially single parents with parenting responsibility and unemployed persons over the age of 50, are potentially the two most disadvantaged groups within our community. One group still has parenting and family responsibilities and the other group is really a product of significant structural change in the economy over the last 20 years. So, whilst flexibility and change might be warranted, the opposition is of the view that caution and responsibility with respect to these changes are also equally valid principles.

Accordingly, the aim of this amendment is to seek information on aspects of the new scheme, to determine the impact and outcomes on the two particular groups and to analyse and evaluate the new regime. The ALP says changes without proper and substantial evaluation of new critical measures being introduced are potentially counterproductive. Hard evaluation after two or three years provides up-to-date information; it enables comparison between past assertion and current reality. It can be a signpost for future governments who need to continue down the path of welfare reform, and it provides empirical data upon which current reform can be analysed and future reform can be progressed. For those reasons, the opposition urges passage of the amendment as moved.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.38 p.m.)—The government is concerned with the precedent being set and notes also that doing it this way, putting it in legislation, could—and I am not saying it would, but it could—limit the methodological options available to an evaluator. But I have listened to what the senator said. I understand the reason he wants it this way. We are going to do an evaluation anyway, so we will not be opposing the amendment.

Senator NETTLE (New South Wales) (5.39 p.m.)—The Australian Greens will be supporting this amendment and are supporting the evaluation as an appropriate mechanism for reviewing the impact of these changes on some of the most vulnerable people in our community. We support its inclusion in the legislation as a mechanism for ensuring that it is done thoroughly and properly.

Senator CHERRY (Queensland) (5.39 p.m.)—The Democrats will be supporting this amendment. We believe that what we are talking about here is bad law, and merely reviewing a bad law, in terms of imposing activity testing requirements on sole parents, does not lessen its impact. But we will support a review, as we would prefer that the information came forward to ensure that we can look at ameliorating this law in the future. Having the information might at least ensure that we can prevent unfairness being multiplied.

Question agreed to.

Senator CHERRY (Queensland) (5.40 p.m.)—by leave—I move amendments (2) to (7) on sheet 2700 revised:

(2) Schedule 1, item 11, page 6 (line 5), omit "8 weeks", substitute "1 week".

(3) Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

> (3) Subject to subsection (4), the participation agreement breach non-payment period starts 14 days after the day on which notice is given to the person.

(4) Schedule 1, item 12, page 10 (lines 22 to 34), omit subsection (2), substitute:

> (2) For the purposes of subsection (1), a person is an exempt person if:
>
> (a) the person has a PP child in respect of whom carer allowance is paid; or

(b) the Secretary determines that the person should not be required to enter into a participation agreement.

(2A) For the purposes of paragraph (2)(b), the Secretary must take into account the following matters when having regard to the person's capacity to enter into the terms of a participation agreement:

(a) the person's age, education, experience and skills; and

(b) the person's disability or illness, mental and physical condition; and

(c) the state of the local labour market and transport in the area where the person and the child or children live; and

(d) participation opportunities available to the person and any barriers to employment arising from paragraphs (a) and (b);

(e) family and carer responsibilities of the person, including the needs and interests of the child or children and the support services available; and

(f) current court proceedings; and

(g) current child welfare concerns; and

(h) length of travel time required to participate; and

(i) financial costs of compliance and the person's capacity to pay; and

(j) any other matters that the Secretary or the person considers relevant in the circumstances.

(5) Schedule 1, item 14, page 16 (line 13), omit "26 weeks", substitute "8 weeks".

(6) Schedule 1, item 14, page 17 (lines 27 to 29), omit subsection (2), substitute:

(2) Subject to subsection (3), the participation agreement breach rate reduction period starts 14 days after the day on which notice is given to the person.

(7) Schedule 1, item 14, page 18 (line 30) to page 19 (line 4), omit paragraphs (a) and (b) of Step 2 of the Method statement, substitute:

(a) if the participation agreement breach is the person's first breach in the 12 month period:
Maximum payment rate x 0.10
(b) if the participation agreement breach is the person's second breach in the 12 month period:
Maximum payment rate x 0.15

The six amendments deal with the requirements for parenting payments. Possibly the most important amendment from my point of view is amendment (4). It might sound like an odd place to start, but I will start with amendment (4). It is a very important amendment. It covers the situation where a person will be exempt from entering into a parenting payment agreement—for example, if they have a child with a disability or difficult family circumstances. The bill currently only exempts parents with profoundly disabled children, which is a very limited, specified definition of this. It does not include, for example, children with cystic fibrosis or diabetes. Our amendment (4) will provide for all family circumstances which impair participation, including disability of children, family trauma, Family Court matters, transport, local labour market, child welfare concerns, financial costs of compliance, parenting and caring responsibilities.

We believe it is much more important to exempt them at that point, before they actually go into a participation agreement, rather than trying to deal at the end with some sort of exemption as to whether they should be breached. This is a fundamental amendment from my point of view. It is trying to ensure that the amendments we make to this act reflect what is, as I understand it, the policy intention of the Labor Party. I have here the statement by Mr Swan on the issue of where Labor will be coming from on this bill. They have made it quite clear that they do not want to be supporting amendments which will interfere with caring responsibilities. The only way to do that is to ensure that if there is any risk that the legitimate and real caring responsibilities of a sole parent will be impacted on by an activity testing regime,

they should not be in it: they simply should not be in it. On 15 November, Mr Swan said:

> Our amendments go to the heart of our objections about that proposal, which is that there should be no mutual obligation where it conflicts with a person's parenting responsibilities.

Amendment (4) achieves that. I hope that the Labor Party votes for it, because it is about making sure that, before you even consider entering into a parenting agreement, if it is going to impact on the parent's caring responsibilities, their family responsibilities, they are not required to enter into the agreement. Rather than doing it after the fact, when they are being breached, when that argument is coming up, do it at the beginning so we can ensure that we do not have people going through some activity testing regime, with the stress of that, when it is not appropriate for them to do so.

Amendment (2) seeks to reduce the non-payment period for a breach from eight weeks to one week. Whilst this is not strictly in line with the independent review of breaches and penalties—the Pearce report—both Pearce and the Ombudsman's inquiry into breach penalties report that non-payment periods are intolerable, they cause homelessness and they render the person unable to participate economically. Amendment (3) is almost identical to a Labor Party amendment, other than for a slight technical change. I suspect the Labor Party's amendment might actually be superior. I may seek leave to withdraw our amendment, depending on what Senator Bishop says about his. This is about making sure that a parenting payment breach cannot be imposed until 14 days after a notice. This is very much in line with the Pearce report recommendation No. 26. It is also in line with the Ombudsman's report recommendation No. 7, which recommends 10 days as an appropriate notice period. Job seekers are often unaware of a breach until their ATM fails to produce a payment. That results in an inability to meet bills, a loss of credit ratings, overdrawn fees, and it denies the opportunity to seek speedy review. Our amendments will ensure that there is adequate notice to enable recipients to seek review, make necessary budgeting adjustments or seek to have the breach expunged before application.

Amendment (5) is a very important one and, again, it is in line with the Pearce recommendations. I notice that it is identical to opposition amendment (2). Amendment (5) seeks to change the parenting payment breach reduction period from 26 weeks to eight weeks. This is directly in line with recommendation 25 of the Pearce report, which said quite clearly:

> The duration of penalties should not exceed eight weeks ...

The prolonged reductions that come out of the penalty periods being as long as 26 weeks are a severe deterrent to continued job search as well as being unduly damaging to job seekers and families. They also achieve little, if any, increased impact on compliance. The fact that Pearce went through this report with his committee and came to the firm view that it was absolutely essential that we look at that reduction in the payment period is something which I believe the government needs to take into account. I have a number of letters from various welfare organisations around Australia urging us to look at this particular issue. For example, the Chief Secretary of the Salvation Army Australia Eastern Territory wrote:

> It is acknowledged that since the commissioning of the Independent Review the Government has made a number of constructive reforms to the breach penalty system and these are welcomed.

And I share that welcome. He continued:

> However the following key issues remain to be addressed.
>
> - The high rate of penalties—

on which we have amendments—

> - The duration of penalties

We have to make sure that we deal with this issue. We have to make sure that we get a duration of penalty period that is much more reasonable and fair, one that does not result in people going into a period of extreme financial hardship that will lead them to homelessness or an inability to meet basic needs. That is why the Pearce recommendation to reduce it from 26 weeks to eight weeks, which we are putting as an amend-

ment, is so fundamentally important in order to get some fairness into this system.

Amendment (6) is in line with Pearce report recommendation No. 26, making sure that the breach rate reduction for parenting payment starts 14 days after notice has been given. Amendment (7) reduces the accumulation report for parenting payment breaches from two years to 12 months. Again, this is in line with the Pearce committee recommendation No. 24. Repeated activity test breaches automatically lead to escalating penalties, yet each breach may have been a very minor breach. In our view, it is quite important to ensure that the accounting period over which breaches are accumulated becomes much more reasonable. It is about trying to make sure that there is not an endless cycle of breach piling upon breach, leading to more and more financial pressure and disadvantage. Reducing the breach accumulation period from two years to 12 months at least ensures that people have a chance each year to start on a fresh slate if they are still on benefits and make sure that they get into a situation where they can do the right thing in terms of their mutual obligations. I move these amendments, but in terms of amendment (3) I will seek Senator Bishop's guidance as to whether his amendment is superior—I think it may be so. With that I will sit down.

Senator MARK BISHOP (Western Australia) (5.48 p.m.)—These amendments seek to amend the terms of agreement and breach arrangement for parenting payment recipients. Labor are sympathetic to the Democrats' concerns about agreement terms and breaches for PP recipients, but we decline to support these amendments. Labor believe the safeguards we will be moving will remedy deficiencies in the bill and should result in very few, if any, parents being breached. In relation to the changes to breach penalties, we have our own amendments on sheet 2688, which for consistency's sake also extend to penalties for other payment types. The Democrat amendments seeking a differential breach rate structure will add complexity where there is no need to do so.

By way of advice on a process matter to Senator Cherry, we have indeed looked at the amendments circulated in his name. A lot of them are very similar, if not identical, to amendments to be moved by the opposition at a later stage. The common ground in the philosophical roots of the ALP amendments and, from our understanding, the Democrat amendments is the Pearce report, so there is no great divergence of perspective there. We are simply more comfortable with retaining the structure that we have developed. We will work sequentially in respect of each amendment because we know that if they go through in that form we will have covered the critical areas. That is just by way of advice. For those reasons, we probably will not accept the amendments that you have outlined.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.50 p.m.)—Just for the sake of simplicity and ease, it might speed things up if I indicate that the government will support all of the opposition amendments on revised sheet 2791 and none of the opposition amendments on sheet 2688. That leads me to the second point that is worth making at this point. Senator Bishop said the government was not prepared to entertain any amendments when this bill was last before the chamber. That is not correct, either strictly speaking or in any other form. We were interested in talking about some amendments. We were not willing, and we remain unwilling, to discuss amendments to the breaching system for reasons that I made clear last time.

We have made some announcements and put some changes into place. I think the breaching in the quarter we have just finished is something like 35 per cent down on that quarter in the previous year. We have certainly had a 30 per cent drop off in breaches on a year-to-year basis. We believe our breaching changes should be given the opportunity to be properly assessed before people assume that they are not working. So we were prepared to entertain the amendments, but not those that are now outlined on sheet 2688, and we remain that way. The reason we did not get to that point is that the bill was then split. I say that for the sake of

keeping the record straight. I will try to take up as little of the Senate's time as possible by simply indicating that we will support all of the amendments on sheet 2791 and none of the amendments on sheet 2688.

Senator NETTLE (New South Wales) (5.51 p.m.)—The Australian Greens will be supporting these Democrat amendments. We oppose the punitive mutual obligation regime that fines and breaches people in receipt of income support who are subjected to activity test requirements. The Pearce review of the breaching regime concluded that the requirements and the way that they are implemented were causing considerable hardship. We acknowledge that the government has implemented administrative changes that have reduced the number of breaches, but the Australian Greens say that this is insufficient.

The Pearce review recommended that breaching penalties not exceed 25 per cent if the fines were fully recoverable, or 15 per cent if they were not. Clearly, the report's recommendations provide flexibility for the government but that does not mean that the breaching rates need to rise, as Labor is proposing in its amendments. We suspect that this rise in the rate is the price that Labor has been prepared to accept in reaching an agreement with the government to permit changes to the breaching regime. For its part, the government, no doubt, will point to a higher breaching rate to argue that it has not 'gone soft on welfare compliance', to use its own turn of phrase.

The financial impact of the changes Labor is proposing will mean less hardship than under the current regime. The fines will be lower and most of the money may be reinstated if the person undertakes certain activities. For these reasons, the Australian Greens will support these Labor amendments in the event that the Senate declines to support the Democrat amendments, which we believe are superior because they substantially lower the breaching rate and shorten the period. We will not, however, support this bill, even as amended, because the consequence of these measures becoming law is that the punitive breaching regime will be extended to many more Australians. This is no way to address long-term unemployment and chronic disadvantage, and it is no way to encourage and assist people to undertake paid work, even if that is available and suitable to their personal circumstances. These problems can be addressed and should be addressed without the threat of depriving people of the modest income support that we, the privileged members of our society, provide to them to ensure that their basic needs can be met and that they can live in dignity.

Senator CHERRY (Queensland) (5.54 p.m.)—Having listened to the Minister for Family and Community Services with respect to the fact that the government is agreeing to all of the amendments on sheet 2791, I seek leave to withdraw Democrat amendment (3), as it is very similar to amendments on sheet 2791. I also seek leave to have amendment (5) put separately. I wish to have Democrat amendment (5) voted on separately from the others as it is identical to opposition amendment (2).

Leave granted.

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that Democrat amendments (2), (4), (6) and (7) be agreed to.

Question negatived.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.55 p.m.)—I am getting some advice on assertions Senator Cherry has made. Senator Bishop might like to say something useful.

Senator MARK BISHOP (Western Australia) (5.56 p.m.)—I indicate to the chamber, whilst the Minister for Family and Community Services is taking some advice, that the minister previously said that the government was going to be supporting all opposition amendments on sheet 2791 and opposing all opposition amendments on sheet 2688. In the interests of brevity, I propose to move in one hit all of the opposition amendments that are going to be agreed to by the government but speak to each and formally put on the record our reasons for moving those. That is some advice for the chamber and the minister.

The TEMPORARY CHAIRMAN—The question is that Democrat amendment (5) be agreed to.

Question negatived.

Senator MARK BISHOP (Western Australia) (5.57 p.m.)—by leave—I move opposition amendments (3), (10), (17), (27), (4), (16), (23), (5), (R6), (7), (8), (9), (11), (18), (28), (12), (19), (29), (13), (20), (30), (2), (14), (15), (21), (22), (24), (25) and (26) on sheet 2791:

(3) Schedule 1, item 12, page 9 (lines 23 to 33), omit subsection (4), substitute:

(4) In having regard to a person's capacity to comply with the terms of a participation agreement and the person's needs, the Secretary is to take into account, but is not limited to, the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person, (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and

(e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and

(f) the length of travel time required for compliance with the agreement; and

(g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(h) any other matters that the Secretary or the person considers relevant in the circumstances.

(10) Schedule 1, item 12, page 12 (line 28) to page 13 (line 4), omit subsection (4), substitute:

(4) In having regard to a person's capacity to comply with the terms of a participation agreement and to the person's needs, the Secretary is to take into account, but is not limited to, the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person, (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and

(e) current court proceedings in the Family Court or criminal courts or current child welfare concerns such as drugs or school truanting; and

(f) the length of travel time required for compliance with the agreement; and

(g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(h) any other matters that the Secretary or the person considers relevant in the circumstances.

(17) Schedule 1, page 20 (after line 13), after item 21, insert:

21A Subsection 544B(4)

Repeal the subsection, substitute:

(4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and

(f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

(27) Schedule 5, page 45 (after line 29), after item 11A, insert:

11B Subsection 606(4)

Repeal the subsection, substitute:

(4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and

(f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

(4) Schedule 1, item 12, page 10 (lines 6 to 10), omit paragraphs (a) and (b), substitute:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(16) Schedule 1, page 20 (after line 10), after item 20, insert:

20A After subsection 544(2)

Insert:

Secretary must contact person before determining failure to comply with terms

(3) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a youth allowance activity agreement unless the Secretary:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(23) Schedule 1, page 20 (before line 30), before item 27, insert:

26C After subsection 593(2A)

Insert:

(2B) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a Newstart Activity Agreement unless the Secretary:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(5) Schedule 1, Item 12, page 10 (line 18), after "subsection (2)", insert "or (2A)".

(R6) Schedule 1, item 12, page 10 (after line 34), after subsection (2), insert:

Exempt persons—periodic exemptions

(2A) For the purposes of subsection (1), a person is an exempt person for a particular period determined by the Secretary under this subsection if:

(a) the person has one or more PP children:

(i) who suffer from a physical, intellectual or psychiatric disability; and

(ii) whose care needs are such that the person could not be reasonably expected at that time to comply with the terms of a participation agreement; or

(b) a critical event occurs that was not within the person's control (eg family or personal crisis, the Secretary is satisfied the person has separated from his or her partner on a permanent or indefinite basis in the past 26 weeks, person's house burning down, evidence of domestic violence, serious illness of PP children) and, as a result, the person is temporarily unable to comply with the terms of a participation agreement.

(2B) At any one time the maximum period for which the Secretary may determine that a person is an exempt person under subsection (2A) is:

(a) if paragraph (2A)(a) applies to the person—12 months;

(b) if paragraph (2A)(b) applies to the person—26 weeks.

(2C) The Secretary may make more than one determination under subsection (2A) in respect of a person.

(7) Schedule 1, item 12, page 11 (line 29) to page 12 (line 2), omit subsection (1), substitute:

(1) A participation agreement is a written agreement between the Secretary and another person, in a form approved by the Secretary, under which the person agrees to undertake, during each period of 26 weeks that the agreement is in force, approved activities anticipated to take 150 hours or such lesser number of hours as are agreed between them. Participation agreements will set out the support that the Secretary undertakes to provide to assist the person to meet his or her participation requirements in the negotiated agreement.

(8) Schedule 1, item 12, page 12 (line 17), after "program" add "as defined in section 23 of the *Social Security Act 1991*".

(9) Schedule 1, item 12, page 12 (lines 19 to 21), omit paragraph (k), substitute:

(k) another activity that the Secretary regards as suitable for the person, including voluntary work, and that is agreed to between the person and the Secretary.

(11) Schedule 1, item 12, page 13 (line 7), after "varied", insert "(in negotiation with the person)".

(18) Schedule 1, page 20 (after line 13), after item 21, insert:

21B Paragraph 544B(5)(a)

After "varied", insert "(in negotiation with the person)".

(28) Schedule 5, page 45 (after line 29), after item 11B, insert:

11C Paragraph 606(5)(a)

After "varied", insert "(in negotiation with the person)".

(12) Schedule 1, item 12, page 13 (after line 13), after subsection (5), insert:

Cooling-off period

(5A) Within 14 days of the terms of the participation agreement being approved,

those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

(5B) The Secretary must advise the person of the effect of subsection (5A).

Avoidance of doubt

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(19) Schedule 1, page 20 (after line 13), after item 21A, insert:

21C After subsection 544B(5)

Insert:

Cooling off period

(5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

(5B) The Secretary must advise the person in writing of the effect of subsection (5A).

Avoidance of doubt

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(29) Schedule 5, page 45 (after line 29), after item 11C, insert:

11D After subsection 606(5)

Insert:

(5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

(5B) The Secretary must advise the person in writing of the effect of subsection (5A).

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(13) Schedule 1, item 12, page 14 (line 23), after "agree to", insert "the reasonable".

(20) Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subparagraph 544C(1)(b)(iii)

After "agree to" insert "the reasonable".

(30) Schedule 5, page 45 (before line 30), before item 12, insert:

11E Subparagraph 607(1)(iii)

After "agree to", insert "the reasonable".

(2) Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

(3) Subject to subsection (4), the participation agreement breach non-payment period starts on the 14th day after the day on which the notice is given to the person.

(14) Schedule 1, item 13, page 17 (after line 25), after subsection (1), insert:

Notice to contain reasons

(1A) A notice under subsection (1) must contain reasons why the participation agreement breach rate reduction period applies to the person.

(15) Schedule 1, item 13, page 17 (lines 27 to 29), omit subsection (2), substitute:

(2) Subject to subsection (3), the participation agreement breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(21) Schedule 1, page 20 (before line 26), before item 25, insert:

24B Subsection 550C(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3) and to sections 550D and 550E, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(22) Schedule 1, page 20 (after line 30), after item 26, insert:

26A Subsection 557B(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3) and to section 557C, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

26B Subsection 558B(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3), the administrative breach rate reduction period

starts on the 14th day after the day on which the notice is given to the person.

(24) Schedule 1, page 21 (after line 11), after item 30, insert:

30C Subsection 630B(2)

Repeal the subsection, substitute:

(2) Subject to subsection (3) and (6) and to sections 630BA and 630BB, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(25) Schedule 1, page 21 (after line 28), after item 34, insert:

34B Subsection 644AB(2)

Repeal the subsection, substitute:

(2) Subject to section 644AC, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

34C Subsection 644C(2)

Repeal the subsection, substitute:

(2) Subject to subsections (3) and (6), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(26) Schedule 5, page 45 (after line 29), after item 11, insert:

11A After subsection 606(1)

Insert:

(1A) If the person is at least 50 years of age but less than 60 years of age, the particular number of job vacancies shall not exceed 24 per 12 weeks in the period specified in the notice.

(1AB) If the person is at least 60 years of age, the particular number of job vacancies shall not exceed 12 per 12 weeks in the period specified in the notice.

(1AC) Subsection (1A) does not apply unless the person has been receiving an income support payment for a continuous period of at least 9 months and the person satisfies the Secretary that the person has no recent workforce experience.

Turning first to opposition amendments (3), (10), (17) and (27) on sheet 2791, which relate to factors for compliance, the opposition is of the view that these amendments will improve the formulation of activity agreements for parents and also for mature age and other income support recipients who are required to enter into activity agreements. The amendments will ensure that a person's circumstances are fully considered before determining the nature of the agreements. The government touted the introduction of the so-called 'preparing for work' agreements by saying that they allowed a tailor-made plan to be formulated to help a person return to work. This sounded good in principle, but the delivery was anything but that. Insufficient time is devoted to the negotiation of these agreements that set out the requirements of the job seeker. The agreement should of course take into account the job seeker's circumstances. On balance, they are in some instances lacking.

Accordingly, these amendments seek to set out the factors that must be considered when formulating the agreements. In the case of parents, the negotiation of the terms of the agreement would be more thorough, including recognition of the needs of children, the health of a parent, transport costs and travel time, the financial costs of compliance, local employment conditions and current proceedings before a court or child welfare body. In the case of other job seekers, including the mature age Newstart recipients and Youth Allowance recipients, the negotiation of the agreements will be more thorough, including recognition of their health, transport costs, other costs of compliance, any court proceedings and any other matters that are relevant. In some instances the negotiation of agreements by Centrelink is thorough; in other instances it is not. It is our view that codifying the steps involved in negotiating agreements will improve service delivery and ensure requirements in agreements are appropriate.

So this group of amendments, as outlined before, goes to the heart of the compliance debate. It is a continuation of the debate under amendment (1). That amendment required that the minister conduct an evaluation of the measures contained in schedules 1 and 5. This group of amendments seeks to improve the formulation of activity agreements for parents and mature age people. These factors were discussed in the Senate committee report. A central feature of the

amendments is to ensure that a person's circumstances are fully considered before determining the nature of agreements. The Senate committee made a number of points. In the case of parents, it said that problems and issues were identified where parents should not be forced to act against the reasonable care needs of their children, that participation requirements should not unreasonably interfere with care of a dependent child and that due recognition needed to be given to the needs of children. Hence, the details of this group of amendments go to the needs of children, the health of the parent, transport costs, the financial costs of compliance and proceedings before courts or child welfare bodies. I refer in this context to amendment (17)—and there is a mistake in subclause (4), paragraph (e) of that amendment. To make things consistent and accurate, I seek leave to amend that amendment to delete paragraph 601(2A)(g) and insert in its place paragraph 541D(1)(g).

Leave granted.

Senator MARK BISHOP—I turn next to amendments (4), (16) and (23) on sheet 2791, which deal with the factors to consider before determining the failure to comply. The opposition believe that these amendments will improve the decision-making process where there is a view that a person has failed to comply with their activity agreement. There will be improved steps before application of breach. Often this is not given sufficient thought and breaches can be wrongly imposed. With this group of amendments, before contemplation of the application of a breach and in determining whether a parent has complied with the terms of a participation agreement, the secretary will be required to: (1) review whether those terms are likely to improve the prospects of a person gaining employment; (2) make reasonable steps to contact the person; (3) have regard to reasons for not complying; and (4) review whether appropriate support has been provided to the person under the terms of the agreement. We submit that these amendments will ensure better outcomes from the decision-making process.

The heart of this group of amendments can be found in chapter 3 of the Senate report—in particular, in paragraph 3.7 on page 36. Essentially these amendments seek to codify or legislate the concept of a fair go. The opposition have expressed support in the past for activity agreements. We do not say that it is unfair to impose obligations upon recipients. But it is reasonable to expect that the system of benefit delivery will have integrity and transparency and not be subject to the whim or desire of individual case officers. The amendments seek to provide a guide on the matters that a secretary should consider before breaching a recipient. The origin of those matters may be found in the Pearce review. This is essentially a new obligation, where the amendments seek to ensure that the secretary review the terms of participation agreements under four areas—that is, whether the terms are likely to improve the prospects of persons gaining employment, that reasonable steps have been taken to contact the person, that there is regard for reasons of noncompliance and that there is a review of whether appropriate supports have been provided.

Turning next to amendments (5) and (R6) on sheet 2791, these amendments relate to temporary exemptions and specify the period in which an exemption from the parenting payment activity agreement may apply and the circumstances in which such an exemption would be granted. Section 501(2) of the bill details the exemptions from the parenting payment activity agreement. When the bill was considered by the references committee there was a great deal of concern about the narrowness of the exemption clause as it was drafted. Accordingly these two amendments in this case broaden the circumstances where an exemption may be granted to include more general provisions for children with disabilities, domestic violence and relationship breakdown.

Labor's two amendments also enable these exemptions to apply on a temporary basis, with the option for renewal of the exemption. These exemptions are important, as they enable a period of grace where a parenting payment recipient may not be subject to the activity agreement at crucial times, such as following a marriage breakdown. These two amendments relate to the follow-

ing categories: disabilities, personal circumstances that restrict the capacity to participate, extreme problems of homelessness or housing instability and partner separation. The amendments seek to cover circumstances giving rise to the need for exemption of a temporary nature. We believe the appropriate analogy is emergency care. Amendments (5) and (R6) are responses to Senate recommendations 3 and 4 on pages 16 and 17.

I will turn now to amendment (7), which has to do with the form of agreement. This amendment recasts the general nature of the participation arrangements that parenting payment recipients will be required to enter into when they are not exempted from participation requirements. The amendment is different in a number of ways to that which the government originally proposed. First, the redrafted clause provides for a more general requirement in relation to the number of hours of participation that a parent is required to undertake. Whilst 150 hours over a six-month period is not onerous—around six hours per week—there should be more flexibility in relation to this requirement. Whilst a fewer number of hours may be negotiated as part of an agreement, Labor is concerned that circumstances may change in the course of the agreement that may restrict their hours of participation but not necessarily trigger a temporary exemption. Whilst we accept that a new agreement may be negotiated for a fewer number of hours, we believe there should be some buffer within an already negotiated agreement. In addition to this flexibility, the new clause will also require the secretary to provide up-front details of the support that will be given under the agreement including, for example, training and assistance with child-care arrangements.

Turning now to opposition amendments (8) and (9) relating to approved activities, these two amendments clarify the drafting of the sections in the bill that specify the range of activities that may constitute an activity agreement. Amendment (8) clarifies that the reference to a rehabilitation program is in specific reference only to a disability rehabilitation program, not any other rehabilitation program such as a drug rehabilitation program, which would be dealt with by the personal support program. Amendment (9) ensures that some type of volunteer work could occur only with agreement of the parent.

Amendments (11), (18) and (28) come under the category of variation of agreement. These amendments clear up provisions in relation to the variation of parenting payment, Newstart and Youth Allowance activity agreements. As the provisions are currently drafted and exist in the Social Security Act, the terms of an approved agreement may be varied by the secretary without negotiation with the person who the agreement applies to. This is clearly unfair, and these amendments will require that the secretary negotiate variations to the agreements that apply to them.

Turning now to amendments (12), (19) and (29) under the heading of cooling-off period, these amendments follow a recommendation of the Senate Community Affairs References Committee, which examined this bill, and also the Pearce report. They provide for a 14-day cooling-off period where a person may negotiate with the secretary a change to the terms of an activity agreement. The amendments also require that the secretary advise the person of their rights to seek a change to the agreement in accordance with the cooling-off period. Labor has decided to move these amendments on advice that many people are forced to sign activity agreements without having had time to consider the requirement they are being asked to agree to. The amendments will ensure that they are advised of their right to change the agreement with negotiation, which will allow job seekers to consider carefully the agreement terms and whether more appropriate terms may be negotiated.

The evidence to the Senate committee highlighted a range of shortcomings in this area of the cooling-off period. The Senate committee concluded that the cooling-off period should be available. It allows people to consider the nature of the agreement and to seek advice, which is considered standard practice in legal negotiations where there is a possibility of power imbalance or knowledge. The Senate committee also found that

there was a two-day cooling-off period but that it is accessed by very few claimants because so few of them are aware of it. We believe this particular issue is important because it allows for full disclosure, full consideration of obligations and the making of informed decisions. In the long run, if you have full disclosure, full consideration of obligations entered into and you make an informed decision, with respect, that would probably encourage fuller compliance because of a deeper understanding of the nature of the agreement.

I will turn now to amendments (13), (20) and (30) under the heading terms of the agreement. This agreement relates to activity agreements for Youth Allowance—specifically, the provisions concerning the failure of a job seeker to agree to the terms of the agreement. Currently a job seeker may be breached for failing to agree to the terms of an agreement, even when the job seeker may disagree with the terms put forward by the secretary on the grounds that they are unreasonable. The introduction of preparing for work agreements was supposed to involve a more tailored approach to planning a pathway back to work. It was good in principle, but in practice job seekers are presented with an agreement which is pretty much a fait accompli. If they fail to agree with it, they may be breached even if they view some elements as unreasonable. These amendments simply insert the term 'reasonable' into the clause that allows a job seeker to be breached for failing to enter into an agreement because of a disagreement over the terms. Following these amendments, the clause will allow a person to be breached only if they fail to agree to the reasonable terms of the agreement.

Turning now to amendments (2), (14), (15), (21), (22), (24) and (25) under the heading of requirement for notice, these amendments will require 14-days notice to be given to all income support recipients prior to the application of a breach penalty. It is a recommendation of the Pearce report into breach penalties. Currently, the breach penalty applies from the date of the notice. This leaves many with no capacity to rearrange their budgets to take into account the reduction in their benefits. *(Extension of time granted)* Often it leaves job seekers without money for things like rent, food, bills and other financial commitments. These amendments will bring the breach regime closer into line with most other statutory penalties, which often allow a person 28 days or more to pay fines. The charities in particular have raised this issue as one of concern, as they deal with people suddenly left without financial means. The amendments will also allow sufficient time for a person to take steps to contest a penalty if it has been imposed unfairly. Currently, many lose payments and suffer financial hardship, only then to have the penalties overturned on appeal. Providing some notice is, by community standards, the fair thing to do.

This group of amendments is relatively straightforward. Essentially, it seeks to provide that the participation agreement breach non-payment period will start 14 days after the date on which the notice is given to the person. This particular issue was examined in detail by the Senate committee. The opposition makes a number of points. Generally, welfare and advocacy groups are opposed to the provision as it currently is in the bill. They argue that the current system is harsh, counterproductive and diminishes a person's capacity to seek work. In particular, the penalty is felt most harshly by those people who are sole parents with dependent children. Removing income support for these groups would lead to a serious risk of financial harm for their families. The imposition of immediate breaches is really counterintuitive. We ask why a single parent with parental responsibilities would deliberately flout the system and open themselves up to financial harm. We suspect that very few deliberately engage in breaching activities. We note that there was no evidence given to the Senate committee on the number of prosecutions initiated and successful in this area. The opposition believes that the emphasis in these particular clauses is incorrect. It should be to encourage compliance and not act as a form of amendment.

That takes me to opposition amendment (26) under the heading of number of job vacancies. This amendment will ensure that the

dignity of mature age job seekers is kept intact by ensuring that unreasonable demands to look for work are not required for those over the age of 50. For those aged 50 to 60, the maximum requirement for applications for work would be no greater than two per week or 24 over each three-month reporting period—that is, half the maximum requirement for young job seekers. For those aged 60 to age pension age, the maximum requirement would be no more than one per week or 12 over each three-month reporting period. It should be pointed out that the amendment in no way prohibits the job seeker from applying for more vacancies. It does, however, place a cap on the number of applications that the person would be forced to undertake under the activity test and activity agreement. That concludes my discussion of all amendments on sheet 2791.

Senator CHERRY (Queensland) (6.20 p.m.)—The Australian Democrats will be supporting these amendments, but I just want to put two things on the record. The first is that a number of these amendments are, of course, very similar to the amendments that the Democrats have moved. It is good to see that the Labor Party has picked up some of the ideas we put down when we moved our amendments three weeks ago. I thank the Labor Party for that. It would be good to see some acknowledgment of it from time to time. In particular, I note that the amendments provide a 14-day notice period before the breaches can be imposed, reduce the breach accumulation period from two years to 12 months and provide for the consideration of compliance capacity after a breach, although that is too late for a person with a mental illness, who is homeless or who has some other disadvantage.

I do not want to deal with the other amendments in any great detail, but I do want to note a general concern about the approach that the Labor Party and the government are taking to these provisions. The fundamental concern I have with the Labor Party's approach, which has obviously been agreed with the government, is the notion that you fix it when you get to the breaching stage. The key difference, as I outlined in my earlier speech, was the notion that if you are going to put sole parents into this fundamentally flawed breaching regime—which, as I understand it, the government is not prepared to change terribly much in terms of the overall penalties, periods and so forth, but we will have that debate later—the best thing to do is, if there is a conflict between work responsibilities and family responsibilities or between work responsibilities and caring responsibilities, not to put those people into an activity test. That comes back to that fundamental issue of who is exempted from having to go into a parenting payment participation agreement.

Our amendment was much broader than that. Unfortunately, a lot of the provisions we had in our amendment have been picked up not so much as exemptions from participation agreements but rather as exemptions from the breach. They are factors that the secretary, the department and Centrelink need to take into account before they breach people. To be perfectly honest—and I have to say this—I know that Centrelink is improving its processes and so forth, but I just do not trust them to actually deliver a decent consideration of the circumstances of individuals. When you are talking about whether a sole parent is to be breached and knocked off benefits for up to 26 weeks, I just do not trust Centrelink to do that properly. I want to read into the Senate *Hansard* an extract from the Commonwealth Ombudsman's report entitled *Social Security Breach Penalties—Issues of Administration*. It says:

> Review of a sample of 100 complaint records 8 identified some significant deficiencies in Centrelink procedures and practice in relation to breach penalties. It was not possible, at that stage, to determine whether those procedures and practices were in accordance with
>
> Centrelink guidelines or instructions from the policy department (FaCS).
>
> - In most of the cases reviewed, there did not appear to be any attempt by Centrelink to discuss the circumstances of, or reasons for, the person's actions prior to making a decision to impose a breach penalty.
> - Where the person did receive an opportunity to explain their actions to the decision maker, they were often presented with an unreasonable burden of proof. Typically they were required to obtain and provide written evidence

from third parties to support any explanation before it was accepted.

- It appeared that many of the Centrelink decision makers involved did not have an adequate understanding of the activity test breach provisions.
- There was little evidence of adequate investigation in cases involving a penalty for under reporting of income from earnings.

And it is goes on from there. All of these pages and pages of amendments are about trying to ensure that the secretary, essentially Centrelink and the department, actually takes into account all of these new factors that we are adding to the legislation, when the evidence from the Ombudsman is that they do not look at the factors there now or that they put in an excessive burden of proof. That is the fundamental problem with what we are doing here: we are taking a flawed penalty system and a department that is overstressed with work because of the excessive compliance burden that has been put on it and saying, 'We're going to put sole parents into it'—a very vulnerable group—'and we're going to expect the department to change its culture overnight and take into account their personal circumstances.' We are going to expect that somehow all these problems that the Ombudsman identified only a couple of months ago will be fixed and that we can now expect the secretary and the department to ensure that all these new factors we propose to put in will be taken into account in whether people are breached.

I do not think it is going to happen, because there is a culture here we have to deal with. Unless we deal with the culture by changing the nature of the penalty breach provisions and changing the training and getting some more staff into Centrelink, we are not going to be able to deal with these issues of individual circumstances. So, while we will support these amendments with extreme reluctance, I do not think they are going to achieve the outcome that the Australian Labor Party has set. And I do not think they will achieve the benchmark that Wayne Swan has set of making sure that the care responsibilities of parents are taken into account adequately when determining how this activity testing will actually apply. It is very disappointing. The ALP has not achieved the objective of its own amendments in this deal with the government. The Democrats will support it with extreme reluctance, but it just is not going to work.

Senator MARK BISHOP (Western Australia) (6.26 p.m.)—I want to respond briefly to the comments made by Senator Cherry. We have not obtained, pinched or stolen some or all of the Democrat amendments and incorporated them as our own. They were devised by the Australian Labor Party following the recommendations of the Senate Community Affairs Committee inquiry. In turn, that Senate inquiry had high regard for the previous findings of Mr Pearce in his report. Indeed, the Pearce findings, as considered by the Senate report, are the philosophical underpinning of our approach to the amendments just passed and nothing else. The other point I would make is that some of the last criticisms raised by Senator Cherry were a little premature. We are dealing with a range of amendments that are on the running sheet arising out of the Pearce report, and that will take some time, but they will address all of the issues raised by Senator Cherry. So I would suggest that it is a little early to be giving the opposition a bit of a backhander.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.27 p.m.)—I would like to briefly make two points. Senator Cherry, I can assure you that my understanding of how events played out in this matter concurs with Senator Bishop's—namely, none of your amendments have been stolen. You may have to come to the frightful realisation that your mind is not individual and special and that you are not the only one in the world who thinks in a certain way. We all come to the realisation eventually that other people do sometimes think the same way as we do and do it at the same time if not before.

The second thing is that I completely and utterly reject your view of Centrelink in describing it as having a culture that is negative towards welfare recipients. I think Centrelink is a tremendous improvement on the old Department of Social Security. We do not have

those poky, crummy little offices and people lining up in queues in the demeaning way that used to happen in the past. I think the management and the staff of Centrelink do a tremendous job. There will always be mistakes made in any system. There are mistakes made here, and probably even the Democrats make them every now and then, if you can accommodate that proposition.

The Ombudsman's report refers to a period some time ago. There have been very significant changes since then. I frankly do trust Centrelink. I know the senior management quite well and I know that they are committed to continual improvement and to doing a better job. The concept of Centrelink being staffed by people who somehow want to do the wrong thing or who somehow do not care about welfare recipients is one that I completely and utterly reject.

Senator NETTLE (New South Wales) (6.29 p.m.)—The Australian Greens will support the amendments put forward by the opposition, because they are an improvement on the existing punitive regime of mutual obligation as played out by the government. We do not support this regime or its extension to sole parents or to mature age unemployed, but in recognition that the amendments put forward by the opposition are an improvement on that regime we will support them.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that opposition amendments (2) to (30)—including amendment (17), as amended—on sheet 2791 revised be agreed to.

Question agreed to.

Senator MARK BISHOP (Western Australia) (6.30 p.m.)—Senator Cherry previously put Democrat amendment (5), which was lost on the voices. I am advised that an identical amendment cannot be put at a later time to achieve the same purpose as a previous amendment; however, there are identical amendments on ALP sheet 2688. If Senator Cherry were to seek leave to re-put Democrat amendment (5), the opposition would support that, and that would achieve his original purpose.

Senator CHERRY (Queensland) (6.30 p.m.)—I seek leave for the chamber to reconsider Democrat amendment (5) on sheet 2700 revised.

Leave granted.

Senator CHERRY—I move Democrat amendment (5) on sheet 2700 revised, which was discussed earlier in the debate:

(5) Schedule 1, item 14, page 16 (line 13), omit "26 weeks", substitute "8 weeks".

Question agreed to.

Senator CHERRY (Queensland) (6.31 p.m.)—by leave—I move together Democrat amendments (10) to (13), (15) to (18) and (20):

(10) Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subsection 550B(1)

Omit "8 weeks", substitute "1 week".

(11) Schedule 1, page 20 (after line 25), after item 24, insert:

24B After subsection 553C(4)

Add:

(5) If:

(a) a person ceases to be qualified for youth allowance because of a failure to comply with a requirement to enter into a Youth Allowance Activity Agreement; and

(b) the Secretary, under section 80 of the Administration Act, cancels or suspends the person's youth allowance because of that loss of qualification; and

(c) within 4 weeks after the date of effect of the action taken by the Secretary, the person enters into a Youth Allowance Activity Agreement;

the person's qualification for youth allowance is taken, for the purposes of paragraph 540(c) of this Act, never to have ceased.

(12) Schedule 1, page 20 (after line 30), after item 26, insert:

26A Paragraph 557(b) and note

Repeal the paragraph and the note, substitute:

(b) the latest breach is the first or second activity test breach in the 12 months immediately before the day after the latest breach.

Note: If the latest breach is the third or subsequent activity test breach in the 12 months before the latest breach, an activity test non-payment period applies to the person (see Subdivision D of Division 2).

(13) Schedule 1, page 20 (after line 30), after item 26, insert:

26B Subsection 557A(1)

Omit "26 weeks", substitute "8 weeks".

(15) Schedule 1, page 20 (after line 30), after item 26, insert:

26D Subsection 557B(3)

Omit "the period starts on the day", substitute "the period starts on the 14th day".

(16) Schedule 1, page 20 (after line 30), after item 26, insert:

26E Subsection 557E(1) (step 2 of the method statement)

Step 2. Work out the rate reduction amount as follows:
(a) if the activity test breach is the person's first breach in the 12 month period:
Maximum payment rate x 0.10
(b) if the activity test breach is the person's second breach in the 12 month period:
Maximum payment rate x 0.15

Repeal the step, substitute:

(17) Schedule 1, page 20 (after line 30), after item 26, insert:

26F Subsection 557E(2)

Omit "***2 year period*** means the 2 years", substitute "***12 month period*** means the 12 months".

(18) Schedule 1, page 20 (after line 30), after item 26, insert:

26G Subsection 558A(1)

Omit "13 weeks", substitute "4 weeks".

(20) Schedule 1, page 20 (after line 30), after item 26, insert:

26K Section 558G (step 2 of the method statement)

Omit "0.16", substitute "0.08".

I indicate that I will not be moving amendments (14) and (19), as they have been covered in items on sheet 2791. The amendments moved deal very much with the Pearce report and the recommendations which flow from it and, in this instance, with the Youth Allowance. We are seeking with these amendments to ensure that we improve and reform the breaching regime for Youth Allowance. Amendment (10) seeks to change the non-payment period from eight weeks to one week. This is not strictly in line with what is said in the Pearce review; however, both Pearce and the Ombudsman's inquiry into breach penalties report that non-payment periods are intolerable. They cause homelessness and render the person unable to participate economically. This amendment will mean that the financial penalty will be short and sharp. Non-payment for a period of one week is only roughly double the second breach rate of 15 per cent for four weeks. It will mean that there will at least be some money in the person's account for the fortnight, and that is very important in terms of keeping people from emergency aid and homelessness.

Amendment (11), which again goes to Youth Allowance, seeks to expunge the breach if the person complies within four weeks. This follows Pearce recommendation No. 25. It will provide greater encouragement for job seekers to rectify their breaches as soon as possible and it will induce job seekers to contact Centrelink to get the breach dealt with rather than go underground. Amendment (12) seeks to reduce the accumulation period for breaches on Youth Allowance from two years to 12 months. Pearce recommendation No. 24—I have discussed this earlier—is very important in terms of making sure that an accumulation of problems does not emerge; that has resulted in huge levels of indebtedness for young people, as reported on by ACOSS very recently.

Amendment (13) seeks to change the 26-week breach reduction period to eight weeks. This is in line with Pearce recommendation No. 25. Amendment (15) is a technical one. Amendment (16) is very important for the Democrats. This amendment seeks to bring

in an activity test breach rate reduction of 10 per cent for the first breach and 15 per cent for the second breach, which is a reduction from the 18 per cent and 24 per cent in place now. In our view, this is in line with the broad recommendations of Pearce recommendation No. 25.

It is important to discuss what is the appropriate percentage in terms of Pearce. When we discuss the Labor Party's amendments, we will be considering their proposal to have a reduction of 20 per cent for admin tests and 25 per cent for activity tests. We are told that this is broadly in line with what was in Pearce. Certainly Pearce said that a 25 per cent reduction in rates should be the maximum. However, it should also be noted that Pearce acknowledged that it should be borne in mind that breach penalties often trigger extra penalties, such as bank overdraft fees, utility charges for late payment or reconnection, and even the cost of eviction and trying to find alternative accommodation. The review says that there needs to be an element of flexibility in terms of the repayments where a person gets into financial difficulty or hardship. Some other penalty rate might be more appropriate. It noted, for example, that it is significant in this context that the standard deduction rate used by Centrelink to recover overpayments from job seekers who have no other income is 14 per cent. This presumably reflects a view that a higher rate would leave them with insufficient money for necessities.

Whilst we are talking about a breaching regime, it is important to note that even within the Pearce report there was an acknowledgment that, whilst 25 per cent might be a maximum rate of reduction, there was an issue of trying to make sure that where other circumstances came into play, particularly where someone was going to be suffering financial hardship, there should be an element of flexibility. One of the criticisms the Democrats have of the Labor Party's approach, with their 20 per cent and their 25 per cent proposed reduction rates, is that we do not think it provides the flexibility that the Pearce report was recommending, even though there was that maximum figure of 25 per cent in the Pearce report. I will deal with that issue again when we get to the Labor Party's amendments.

Amendment (17) is about the reduction of the accumulation period from two years to 12 months. Amendment (18) seeks to reduce the administrative breach period to four weeks from its current 13 weeks, which is broadly in line with Pearce recommendation No. 25. Amendment (20) seeks to reduce the admin rate reduction to eight per cent from 16 per cent. This is an interpretation of Pearce report recommendation No. 25 to recognise the less serious nature of administrative breaches. That was also something that the Ombudsman commented on. I commend the amendments to the Senate.

Senator MARK BISHOP (Western Australia) (6.37 p.m.)—I have some advice for Senator Cherry. My adviser has just told me that Democrat amendment (13) is almost identical, but not identical, to one of the amendments to be put later by the ALP. The same complication that we previously discussed could arise again. The suggestion has been made that if you were to withdraw Democrat amendment (13) relating to breach periods at this time we would not have the complication later on of having almost the same amendments to the same bill.

Senator CHERRY (Queensland) (6.38 p.m.)—I seek leave to withdraw amendment (13) on sheet 2700 revised.

Leave granted.

The TEMPORARY CHAIRMAN (Senator Brandis)—The first question is that Democrat amendments (10) to (12) and (15) to (18) on sheet 2700 revised be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The next question is that Democrat amendment (20) on sheet 2700 revised be agreed to.

Question agreed to.

Senator CHERRY (Queensland) (6.39 p.m.)—by leave—I move together Democrat amendments (21) to (31) on sheet 2700 revised:

(21) Schedule 1, page 20 (after line 30), after item 26, insert:

26L Paragraph 576(2)(b) and note

Repeal the paragraph and the note, substitute:

(b) the latest breach is the third or subsequent activity test breach in the 12 months immediately before the day after the latest breach.

Note: If the latest breach is the first or second activity test breach in the 12 months before the latest breach, an activity test rate reduction period applies to the person (see Subdivision B of Division 5).

(22) Schedule 1, page 20 (after line 30), after item 26, insert:

26M Subsection 576B(1)

Omit "8 weeks", substitute "1 week".

(23) Schedule 1, page 20 (after line 30), after item 26, insert:

26N Subsection 576C(2)

Omit "starts on the day", substitute "starts on the 14th day after the day".

(24) Schedule 1, page 20 (after line 30), after item 26, insert:

26P Paragraph 582(b) and note

Omit "2 years" (wherever occurring), substitute "12 months".

(25) Schedule 1, page 20 (after line 30), after item 26, insert:

26Q Subsection 582A(1)

Omit "26 weeks", substitute "8 weeks".

(26) Schedule 1, page 20 (after line 30), after item 26, insert:

26R Subsection 582B(2)

Omit "on the day", substitute "on the 14th day after the day".

(27) Schedule 1, page 20 (after line 30), after item 26, insert:

26S Subsection 582D(1) (step 2 of the method statement)

Repeal the step, substitute:

Step 2. Work out the rate reduction amount as follows:
(a) if the activity test breach is the person's first breach in the 12 month period:
Maximum payment rate x 0.10
(b) if the activity test breach is the person's second breach in the 12 month period:
Maximum payment rate x 0.15

(28) Schedule 1, page 20 (after line 30), after item 26, insert:

26T Subsection 582D(2)

Omit "***2 year period*** means the 2 years", substitute "***12 month period*** means the 12 months".

(29) Schedule 1, page 20 (after line 30), after item 26, insert:

26U Subsection 583A(1)

Omit "13 weeks", substitute "4 weeks".

(30) Schedule 1, page 20 (after line 30), after item 26, insert:

26V Subsection 583B(2)

Omit "on the day", substitute "on the 14th day after the day".

(31) Schedule 1, page 20 (after line 30), after item 26, insert:

26W Section 583G (step 2 of the method statement)

Omit "0.16", substitute "0.08".

These amendments are the same as the ones I just moved for Youth Allowance payments but applying to Austudy payments. These amendments seek to reduce the accumulation period for breaches from two years to 12 months, to reduce the non-payment breach period from eight weeks to one week, to ensure that the non-payment period cannot be imposed until 14 days after a notice, to reduce the breach rate reduction period from 26 weeks to eight weeks and to change the activity test breach reduction rate to 10 per cent for the first breach and 15 per cent for the second breach—down from 18 per cent and 24 per cent as currently apply. I have spoken to these issues previously in relation to Youth Allowance. These amendments address identical issues; we are simply moving them to apply to Austudy as well.

Senator MARK BISHOP (Western Australia) (6.41 p.m.)—These amendments are similar to those canvassed by Labor. However, these apply to the Austudy schedule of the act while Labor's focus is on the labour market and activity tested payments—of which Austudy is not one. From the feedback that we receive, breaching in relation to Austudy does not really hit the radar screen. These amendments will not benefit all that many people. However, we acknowledge that Labor's amendments assist youth allowance recipients who study so, for the sake of consistency and in the absence of ALP amendments for this group, we will not oppose this batch of Democrat amendments.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that Democrat amendments (21) to (31) on sheet 2700 revised be agreed to.

Question agreed to.

Senator CHERRY (Queensland) (6.42 p.m.)—by leave—I move together amendments (32) to (38), (40), (41) and (43) to (46) on sheet 2700 revised:

(32) Schedule 1, page 21 (after line 11), after item 30, insert:

30A Paragraphs 624(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(33) Schedule 1, page 21 (after line 11), after item 30, insert:

30B Paragraphs 625(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(34) Schedule 1, page 21 (after line 11), after item 30, insert:

30C Paragraphs 626(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(35) Schedule 1, page 21 (after line 11), after item 30, insert:

30D Paragraphs 628(c) and (d)

Omit "2 years" (wherever occurring), substitute "12 months".

(36) Schedule 1, page 21 (after line 11), after item 30, insert:

30E Paragraphs 629(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(37) Schedule 1, page 21 (after line 11), after item 30, insert:

30F Paragraphs 630(2)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(38) Schedule 1, page 21 (after line 11), after item 30, insert:

30G Paragraphs 630AA (2)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

(40) Schedule 1, page 21 (after line 25), after item 33, insert:

33A After section 634

Insert:

634A Qualification for Newstart Allowance

If:

(a) a person ceases to be qualified for Newstart allowance because of a failure to comply with a requirement to enter into a Newstart Activity Agreement; and

(b) the Secretary, under section 80 of the Administration Act, cancels or suspends the person's newstart allowance because of that loss of qualification; and

(c) within 4 weeks after the date of effect of the action taken by the Secretary, the person enters into a Newstart Allowance Activity Agreement;

the person's qualification for allowance is taken, for the purposes of subparagraph 593(1)(b)(i) of this Act, never to have ceased.

(41) Schedule 1, page 21 (after line 28), after item 34, insert:

34A Section 644AA

Omit "26 weeks", substitute "8 weeks".

(43) Schedule 1, page 21 (after line 28), after item 34, insert:

34C Paragraphs 644AE(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) if the activity test breach is the person's first breach in the 12 month period:

Maximum payment rate x 0.10

(b) if the activity test breach is the person's second breach in the 12 month period:

Maximum payment rate x 0.15

(44) Schedule 1, page 21 (after line 28), after item 34, insert:

34D Subsection 644AE(3)

Omit "***2 year period*** means the 2 years", substitute "***12 month period*** means the 12 months".

(45) Schedule 1, page 21 (after line 28), after item 34, insert:

34E Section 644B

Omit "13 weeks", substitute "4 weeks",

(46) Schedule 1, page 21 (after line 28), after item 34, insert:

34F Subsection 644H(2)

Omit "0.16", substitute "0.08".

I will not be moving amendments (39) and (42), because they have a similar effect to amendments on sheet 2791. The amendments I have moved apply to Newstart allowance and seek to put into place the recommendations of the Pearce report. I have spoken to the arguments in favour of these before. These amendments reduce the accumulation period for breaches from two years to 12 months, ensure that a rate reduction period cannot be imposed until 14 days after a notice, ensure that a Newstart allowance breach is expunged if a person complies within four weeks, reduce the maximum rate reduction period from 26 weeks to eight weeks, and reduce breach rates to 10 per cent for the first breach and 15 per cent for the second—down from 18 per cent and 24 per cent. The Newstart allowance administrative breach rate reduction is also reduced, from 16 per cent to eight per cent. These amendments follow recommendations Nos 24, 25 and 26 of the Pearce report. I discussed these previously in relation to payment periods. I commend these amendments to the Senate.

Senator MARK BISHOP (Western Australia) (6.43 p.m.)—As with the Democrats Youth Allowance amendments, these amendments are almost identical to ALP amendments improving safeguards for activity agreements, notice requirements and breach penalties. Some of these amendments have already been agreed to; others are similar to ALP amendments on sheet 2688 revised, yet to be considered. Labor declines to support these amendments but will be moving its own amendments to deal with the issues raised.

The TEMPORARY CHAIRMAN (Senator Brandis)—The first question is that Democrat amendments (34) to (38), (40) and (43) to (46) on sheet 2700 revised be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The next question is that Democrat amendments (32), (33) and (41) on sheet 2700 revised be agreed to.

Question agreed to.

Senator CHERRY (Queensland) (6.45 p.m.)—The Democrats oppose schedule 4 in the following terms:

(9) Schedule 4, page 40 (line 2) to page 42 (line 28), **TO BE OPPOSED**.

Schedule 4 goes to the closure of mature age allowance and partner allowance. Partner allowance recipients—that is, married women—may have not worked for many years, if at all, and are unable to compete in the labour market. We do not believe that there is assistance to enable older Australians to compete effectively in the labour market. In 1997 the government abolished pretty much all of the programs which existed to assist older workers, and the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002 provides no incentives or subsidies to employers to take on older workers.

Older workers face serious prejudice because of age and may have workers compensation issues. Frequently, employers simply will not touch them. It has been recognised for many years that the mature age allowance and the partner allowance exist because the labour force, unfortunately, simply does not have room for a lot of mature age workers. I would like to see a lot more employers around Australia change their attitudes towards employing mature age workers, but it is simply not happening fast enough. This came out in the Productivity Commission review of the Job Network, which showed that the Job Network itself was letting down this group of people. It has come out in various surveys. The ABS survey showed that

mature age employees are being discriminated against in the labour force.

I cannot see the point of requiring people to chase jobs that they are just not going to get. In my view, most mature age people who can get employment will seek employment and take it on. But, when you are talking about a group with low skills or those who may have been left behind by the economy, you sometimes have to acknowledge—and it is acknowledged in the policy paper released today by the Minister for Family and Community Services—that the social security safety net does need to pick up people who would otherwise be left behind. That is why the Democrats believe that mature age allowance and partner allowance have served a valuable purpose in our social security system. We find it quite offensive to impose activity testing on this group. People with Disabilities New South Wales wrote to me of their concern about these provisions and the extension of activity testing to their members and a large number of other people. They commented:

> PWD is concerned that the AWT bill expands participation requirements and the breach and penalty system currently applied to unemployed income support recipients, to sole parents, parenting payment recipients and older employed people. We believe this will have a significant negative impact on people in receipt of these payments. ... The introduction of participation requirements to these payments will create serious difficulties for this group as many, because of their disability may not be able to meet participation requirements, or will have extreme difficulty in meeting the requirements.

I believe that a lot of the people PWD talked about are in this category, and I do not think that has been adequately taken into account by the government in developing this schedule of proposals.

Senator MARK BISHOP (Western Australia) (6.48 p.m.)—The Democrats seek to oppose schedule 4 of the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill (No. 2) 2002, which closes entry to mature age allowance and partner allowance from 1 July 2003. They seek to retain the status quo. Labor have carefully considered the issues to do with the closure of mature age allowance and partner allowance. We, too, are firmly of the view that these are very disadvantaged job seekers and that they need to be treated with dignity and respect.

Labor created mature age allowance in recognition of the fact that many of those who were eligible faced little prospect of working again. Mature age allowance removed this group from the requirements that exist under Newstart and, for many, the view that they were part of the active labour market. However, these allowances were always envisaged as transitory measures. When the mature age allowance was introduced there had been a large influx of mature age workers from the labour market onto income support. Most were from low-skilled industries that were closing as a result of rapid advances in technology and as a result of our economy. Many of these people lacked the skills to be competitive in the new labour market and found it difficult to obtain work even when they were reskilled. Employers were reluctant to take on older workers and would not give them a fair go. Accordingly, Labor put in place non-activity-tested allowances for those who had been out of the labour market. There was no fairness in requiring such people to hit their heads against a brick wall by applying for the same number of jobs as younger job seekers. It was about dignity and respect.

However, times are changing. Older workers leaving the labour market today are, by and large, more highly skilled and adaptable to modern technologies than a similar person was more than a decade ago. We have an ageing population and it is important that people pursue work consistent with their capabilities up to retirement age. The changes proposed by the government will bring new mature age people leaving the labour market back within the Newstart population and will ensure that some are more engaged in retraining or reskilling. For others, it may impose participation requirements that are not appropriate to their circumstances. Accordingly, Labor's approach is to safeguard 50-plus-year-olds from any unreasonable obligations. Labor will move amendments similar to those moved in relation to schedule 1

to ensure that the participation agreements properly and fully take into account the circumstances of the mature age unemployed.

Labor are also concerned to ensure that the mature age group are not forced to apply for countless job vacancies where they have little or no prospect of success. Accordingly, Labor will seek to introduce caps on the number of job vacancies this group are asked to apply for. These caps will apply only where job search is required by the activity agreement. In many instances, voluntary or paid work may be undertaken in lieu of job search. Current recipients of partner allowance and mature age allowance will be saved. The changes will involve no loss of benefits or concessions. Newstart allowance recipients aged over 60 who have been in receipt of benefits for nine months will still be eligible for the higher rate of allowance, the pharmaceutical allowance and a pensioner concession card. Taking all of these factors into account, we decline to support the Democrats' opposition to the closure of these payments.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that schedule 4 stand as printed.

Question agreed to.

Senator MARK BISHOP (Western Australia) (6.53 p.m.)—by leave—I move opposition amendments (1), (3) to (18), (22) and (24) to (30) on sheet 2688:

(1) Schedule 1, item 11, page 5 (line 20), omit "2 years", substitute "12 months".

(3) Schedule 1, item 14, page 18 (line 31), omit "2 year", substitute "12 month".

(4) Schedule 1, item 14, page 19 (line 1), method statement, omit "0.18", substitute "0.20".

(5) Schedule 1, item 14, page 19 (line 3), omit "2 year", substitute "12 month".

(6) Schedule 1, item 14, page 19 (line 4), method statement, omit "0.24", substitute "0.25".

(7) Schedule 1, item 14, page 19 (line 10), omit "*2 year*", substitute "*12 month*".

(8) Schedule 1, item 14, page 19 (line 12), omit "***2 year***", substitute "***12 month***".

(9) Schedule 1, item 14, page 19 (line 12), omit "2 years", substitute "12 months".

(10) Schedule 1, page 20 (after line 25), after item 24, insert:

24B Paragraph 550(2)(b)

Omit "2 years", substitute "12 months".

(11) Schedule 1, page 20 (after line 25), after item 24, insert:

24D After paragraph 553B(3)(d)

Insert:

(da) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move; or

(12) Schedule 1, page 20 (after line 30), after item 26, insert:

26C At the end of section 557

Add:

(2) If:

(a) a youth allowance becomes not payable to a person because of:

(i) a failure to enter into a Youth Allowance Activity Agreement; or

(ii) an unreasonable delay in entering into a Youth Allowance Activity Agreement; or

(iii) a failure to take reasonable steps to comply with the terms of a Youth Allowance Activity Agreement; and

(b) the Secretary is satisfied that, not more than 8 weeks after the start of the activity test rate reduction period applicable to the person by reason of the breach referred to in paragraph (a), the person:

(i) has entered into such a Youth Allowance Activity Agreement; or

(ii) is no longer unreasonably delaying entry into such a Youth Allowance Activity Agreement; or

(iii) is taking reasonable steps to comply, or to resume compliance, with the terms of a Youth Allowance Activity Agreement that is in force in respect of the person or, if there is no Youth Allowance Activity Agreement in force in respect of the person, with the terms of the Youth Allowance Activity Agreement that was in force in respect of the person

immediately before the commencement of the rate reduction period; as the case requires; this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

(3) A determination that a person has commenced to take reasonable steps as referred to in paragraph (2)(c) may be expressed to have effect from the day on which those reasonable steps are taken, whether or not the determination is made on that day or a later day.

(13) Schedule 1, page 20 (after line 30), after item 26, insert:

26D Subsection 557E(1) (Method statement and step 2, paragraphs (a) and (b))

Omit "2 year" (wherever occurring), substitute "12 month".

(14) Schedule 1, page 20 (after line 30), after item 26, insert:

26E Subsection 557E(1) (paragraph (a) of step 2 of the method statement)

Omit "0.18", substitute "0.24".

(15) Schedule 1, page 20 (after line 30), after item 26, insert:

26F Subsection 557E(1) (paragraph (b) of step 2 of the method statement)

Omit "0.24", substitute "0.25".

(16) Schedule 1, page 20 (after line 30), after item 26, insert:

26G Subsection 557E(2)

Repeal the subsection, substitute:

Meaning of 12 month period

(2) In this section:

12 month period means the 12 months immediately before the day after the activity test breach.

(17) Schedule 1, page 20 (after line 30), after item 26, insert:

26H At the end of section 558

Add:

(2) If:

(a) a youth allowance becomes not payable to a person because of a failure to comply with a requirement to attend at a particular place for a particular purpose in accordance with a notice issued under paragraph 63(3)(c); and

(b) not more than 8 weeks after the start of the administrative breach rate reduction period applicable to the person by reason of the breach referred to in paragraph (a):

(i) the person attends that place for that purpose; or

(ii) the person complies with an alternative requirement that the Secretary notifies to the person (whether orally or in writing);

this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

(18) Schedule 1, page 20 (after line 30), after item 26, insert:

26J Subsection 558A(1)

Omit "13 weeks", substitute "8 weeks".

(22) Schedule 1, page 21 (after line 25), after item 33, insert:

33A After paragraph 634(3)(c)

Insert:

(ca) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move;

(24) Schedule 1, page 21 (after line 28), after item 34, insert:

34D Paragraph 644AE(2)(a)

Omit "0.18", substitute "0.20".

(25) Schedule 1, page 21 (after line 28), after item 34, insert:

34E Paragraph 644AE(2)(b)

Omit "0.24", substitute "0.25".

(26) Schedule 1, page 21 (after line 28), after item 34, insert:

34F Section 644B

Omit "13 weeks", substitute "8 weeks".

(27) Schedule 5, item 13, page 47 (lines 8 and 9), omit paragraph (b).

(28) Schedule 5, item 13, page 47 (line 10), omit "26 weeks", substitute "8 weeks".

(29) Schedule 5, item 14, page 48 (lines 5 and 6), omit paragraph (b).

(30) Schedule 5, item 14, page 48 (line 7), omit "13 weeks", substitute "8 weeks".

I wish to make a few remarks, which may take some time, about the need for breach reform and about the Pearce report. It is now beyond argument that our system of breaching is flawed and unfair. St Vincent de Paul, the Salvation Army and other welfare services, not to mention the Ombudsman and the Pearce review of penalties, have all drawn attention to the large increase in the number of people being breached, often unfairly, and the negative impact this has had on their wellbeing and their continuing efforts to find work. It has been noted that the current regime is a contributing factor in homelessness and crime. It has acted disproportionately on young people. Perhaps the most telling statistic is the fact that over a quarter of a million breach penalties were meted out last financial year alone. Of those that do appeal, around 43 per cent have the breach overturned. This is clear evidence of arbitrary penalties that have been misapplied in many cases. The impact of those penalties varies, but for most it meant a loss of income of at least $800 over six months, regardless of their actions to remedy the situation that caused the breach. As St Vincent de Paul has noted, the penalty for failing to lodge a tax return is just $110. The opposition says there is clearly a need for change.

To an extent, the government has recognised this and initiated some administrative changes that came into effect from 1 July this year. The government has argued that it would like to see these changes through before it contemplates any substantial reform of the penalty regime. As part of Labor's desire to engage the government in a debate about a change to the penalty regime, we have held discussions on the operation of the current regime and potential changes to it. The discussions have been lively with different points of view, but positive progress has occurred. At least now we have the government engaging in a debate and examining the pros and cons of various proposals. As part of the discussions, the government was willing to obtain the very latest data on breach penalties at Labor's request. In a positive move, the government has provided this information to allow informed debate.

If we are to believe the government's figures, the impact of the 1 July changes has been positive. According to the government's figures, overall breaching levels for the September quarter are down fairly substantially on the same quarter last year. The government figures indicate a reduction of a little more than 50 per cent on the same quarter last year and 35 per cent on the March quarter this year. There has also been a shift from activity test breaches to administrative breaches, which is also positive. However, Labor cautions that Centrelink has had problems of late in obtaining accurate breach data. These problems led to it providing wrong information to the Senate Community Affairs Legislation Committee at Senate estimates. The minister also utilised this incorrect information, so there could still be issues with the accuracy of the latest data that the government has obtained from Centrelink. Notwithstanding these accuracy issues, the direction is positive; however, Labor is still firmly of the view that more fundamental change is required. The government's progress to date has been as a result of administrative changes, and they could be reversed at the stroke of the minister's pen.

Although we have examined the latest developments closely, we have decided that full debate should occur in relation to the new breaching model. Accordingly, Labor will be moving amendments today that give effect to the Pearce report recommendations on substantive adjustments to the duration and level of breach penalties. Whilst I intend to discuss the merits of each component in detail shortly, it is important to say that this is a package of amendments and it represents a moderate and considered change to the current outdated and punitive breaching regime. They are not about going soft on compliance; on the contrary, the changes will yield an increase in compliance. The carefully targeted changes as put forward by Labor will actually increase fortnightly penalties as a counterweight to the proposed reduction in the period that the breach penalties apply.

The fact is that the current breach regime is not compliance focused. For example, the penalties are no different for a job seeker

who remedies their error than for those job seekers who do nothing to correct their actions. The current structure of breaches sees penalties applied over a long duration—up to six months in most instances—rather than shorter periods. The long duration of penalties seriously diminishes the financial resources available to a job seeker over a protracted period. This in turn diminishes their ability to participate—for instance, to pay for bus fares to look for jobs and attend job interviews. This negative impact undoubtedly leads to job seekers being stuck on benefits for longer than they otherwise would be. It is not good for them and it is not good for taxpayers.

The government has said the centre of welfare reform efforts should be participation. Participation costs money—money that this government is taking from job seekers for unnecessarily long periods. Now it has an opportunity to back up its participation rhetoric by making its breach regime participation focused. Labor hopes that minor parties and government will see sense in these proposals, and they should receive support from the Senate. They are a necessary part of advancing welfare reform and essential in the context of the measures in this bill that propose to subject new groups to activity testing and breach penalties. I will address each individual measure shortly.

Turning to the breach period, these amendments seek to reduce the accumulation period for activity test breaches from two years to one year. The accumulation period is the period over which subsequent activity test breaches may escalate in severity from a first breach to a second breach to a third breach—a non-payment period. The amendments follow a recommendation of the Pearce report into breach penalties. This change is intended to reduce the risk that relatively diligent job seekers may be subject to a second or third breach for minor transgressions. It is not inconceivable that a person may be late for or miss an interview twice over the course of a two-year period on benefits. Under the existing rules, on the second occasion they would lose 24 per cent of their income for six months. While there should be higher penalties for persistent failures, the current two-year accumulation period sees even fairly diligent job seekers treated in the same way as the worst.

Turning to the issue of the breach rate reduction period, that group of amendments reduces the period over which an administrative first or second activity test breach may apply for parenting payment recipients, Newstart recipients and youth allowance recipients. The amendments propose that administrative breach penalty periods be reduced from 13 weeks to eight weeks and activity test breach penalty periods from 26 weeks to eight weeks. These amendments are in accordance with recommendation 25 of the Pearce report. Breach rate reduction periods apply for far too long. It has become apparent, over time, that the continued reduction in income for up to six months has caused significant financial hardship for job seekers and impaired their subsequent ability to participate and fulfil their ongoing obligations. For a second activity test breach, 24 per cent of income is withdrawn for a period of six months. This lasting penalty remains, despite their effort to rectify the action that triggered the breach. Putting aside the fact that such long-lasting penalties are unfair, it is likely that they will also lead to job seekers being stuck on benefits for a longer period.

The problems with this effect are self-evident. An increase in the average duration of payment receipt leads to an increase in outlays. How do we know that this is likely to be the case? The government has argued the converse effect. The McClure report model is built around the notion of participation support because it helps precipitate reentry to the labour market. The bottom line is that participation costs money. This is one of the key principles of the government-commissioned McClure report and why it argued for a participation supplement. Using the same rationale, it stands to reason that withdrawing financial resources from a job seeker for a protracted period will reduce their ability to participate, thus reducing the likelihood that they will make the transition into employment. These amendments are not about going soft; they are about increasing compliance and participation. The unem-

ployed move off benefits sooner. This is good for job seekers and good for taxpayers. Along with Labor's other amendments, these amendments represent moderate and considered change for the better.

Before I conclude, it would be appropriate to examine the costs of this change. The government has costed the reduced breach reduction period of eight weeks at $69 million per year, the cheapest of the Pearce options. However, since Labor's amendments propose a simultaneous increase in the percentage rate reduction for an administrative and first activity test breach, the cost would fall to $63 million per year. However, the cost would be less than this due to the positive effect that a reduced breach rate reduction period would have on job seeker participation. This saving is difficult to quantify.

I turn now to the issue of the breach rate reduction. These amendments propose changes to the percentage fortnightly payment reduction that occurs in relation to administrative and first and second activity test breaches. They propose that the fortnightly percentage increase marginally to balance the reduction in the period that the breach would apply. These amendments propose that the administrative breach percentage increase from 16 per cent to 20 per cent, the first activity test from 18 per cent to 20 per cent and the second activity test from 24 per cent to 25 per cent. The changes would apply to the parenting payment affected by the bill as well as Newstart recipients and youth allowees. These increases are meant to be complementary to the other changes Labor has advanced. Accordingly, we are opposed to pursuing them in isolation. These increases are not a huge increase in burden for job seekers who suffer a breach but they are intended to send a strong message up-front to job seekers to encourage them to comply and to remedy any failures. They simplify the range of breach reduction rates that may apply and are in the spirit of the flexibility that the Pearce report allows. Pearce proposed a maximum fortnightly percentage reduction of up to 25 per cent. These amendments mitigate the costs of the other amendments but not significantly so. They are about achieving a balanced set of changes.

Turning to the issue of housing affordability, covered by amendments (11) and (22), these amendments seek to restore some balance to the rules that allow youth allowance and Newstart job seekers to be breached if they move to an area of lower employment prospects. Labor does not disagree with the principle of penalties where a person moves deliberately to an area of lower employment prospects to minimise the chances of their finding work. These penalties originated from concerns about large numbers of job seekers moving to areas for lifestyle reasons—Byron Bay and numerous beach havens come to mind. Labor makes no bones about penalties in these cases, but there have been some unintended consequences from these provisions. Unfortunately, many job seekers trying to survive on allowance payments find it very difficult to maintain their housing arrangements. Often the high cost of rentals forces job seekers to find more affordable housing. The difficulty is that the areas of higher housing costs where they may be moving from have better employment prospects than the areas of lower housing costs that they are moving to. As a consequence, these people have substantial non-payment periods applied where all they were seeking to do was find affordable accommodation. These amendments provide an exemption for job seekers from the non-payment period when the secretary is satisfied that the cost of housing was a significant factor in forcing the person to move. No-one should be penalised for simply trying to keep a roof over their head.

I turn now to the last set of amendments, which are to do with the waiver of the amount of breach reduction period. These amendments would allow the remaining portion of a breach rate reduction period to be waived, effectively restoring payments to a job seeker when they rectify the incident that triggered a breach penalty. This is another Pearce recommendation that aims to enhance the level of compliance by job seekers. The government has adopted this approach in the bill, enabling the restoration of benefits for both parenting payment and mature age Newstart groups.

These amendments seek to broaden this arrangement to other job seekers, namely all Newstart recipients and youth allowance recipients. The government has obviously seen the merit in this approach, since it has opted for this arrangement for the parenting payment and mature age Newstart groups in the bill. We say: why not extend it? There is merit in extending this approach. Currently, job seekers who remedy their errors are exposed to the same penalties as those who do not. This is not fair and does not send the right message to job seekers. We should not have a system in place that says to job seekers, 'Don't get your act together, because we will treat you the same as if you do nothing.' Once again, the government has costed these amendments, although it has used some dubious assumptions—for instance, the government has assumed that all job seekers would remedy their failures within two weeks. Whilst we are confident that the vast majority of job seekers will do the right thing and remedy, there will be a proportion who will not be so diligent. In addition, the government has assumed that all breaches would have a clear remedy that would allow the remaining period to be waived. This again is not the case. For instance, a breach triggered by not properly declaring earnings could not have a clear remedy, as opposed to, for instance, a breach by a job seeker undertaking to reschedule a missed interview. So not all breaches would have a clear remedy that would constitute compliance by the job seeker.

Finally, the government has assumed that a third breach non-payment period may be remedied. Labor's amendments, in line with Pearce's position about persistent breaches, do not propose to allow the waiver of a remaining non-payment period. With more sensible assumptions, together with Labor's other Pearce related amendments, the total cost of a system that allows waiving a breach penalty period is approximately $85 million per year. This again is on the high side, since this amendment will have the same positive impact on participation as the previous amendments, which reduce the breach rate reduction period. This benefit cannot be quantified easily.

Senator CHERRY (Queensland) (7.10 p.m.)—The Democrats will be supporting these amendments. I want to commend the Labor Party and the work they have put into them. The whole breaching area is an incredibly difficult area and it has been difficult for some time. We have had several Ombudsman's reports. We have had the report from the independent panel. We have had the report of the Senate committee. We have also had various internal reviews within Centrelink and FACS. I commend also the measures that the minister introduced earlier this year to try to deal with the policy issues surrounding the administration of breaching. I have been very critical of Centrelink in my earlier comments, and I stand by those criticisms, but I acknowledge that the minister has sought to put in place significant measures to change what has been happening.

It is worth noting the enormous increase in breaching that has occurred over the last couple of years. I hesitate to quote ACOSS figures after the trouble I got into earlier in the year—but I will, for fear of contradiction. ACOSS figures suggest that the number of breaches in 2000-01 was around 189 per cent higher than the number of breaches in the year to June 1998. That is an increase in three years of 189 per cent, which suggests that as many as 350,000 breaches would have been imposed in that year. The minister might be able to correct those figures, but that was what ACOSS said was happening. I understand, from what my adviser is telling me, that the most recent figures from the department are that there has been a significant fall in breaches since the minister made her policy announcements earlier this year, and that the number of breaches for the most recent quarter is roughly half the number of breaches for the previous quarter. But I am concerned that we are about to put another 63,000-odd people into the Job Network—very disadvantaged people, with severe labour market participation difficulties. I think we will see a significant increase in breaches as a result of that, simply because of the nature of the people that we are dealing with. Whilst there has been a reduction in recent times, the figures are still much too big. I think we will probably be seeing an increase

coming up as more people get into the system.

The Pearce recommendations for dealing with breaching which the Labor Party have put into their package are really worth supporting. I hope that later tonight, when this is considered in the House of Representatives, the minister does seriously give some consideration to supporting this package. It is supportable because it is a package, as Senator Bishop has pointed out. We have a reduction in the maximum period to eight weeks. We have an ability for the person in breach to actually remedy their fault and be reinstated on payments. We have reasonable notice periods before they are actually breached, so that we ensure they know what is going on. We have that reduced period in terms of the accumulation of breaches, from two years to 12 months. As a package, that will ensure that there is some fairness in the system, but also that people are not getting away with things.

This is not, and the Democrats are not, about supporting welfare cheats. The Democrats are very much about making sure that there is genuinely mutual obligation. The government does its bit, the unemployed do their bit and the community as a whole does its bit to try to make sure that we make the transition from welfare to work something that actually works for people. We believe this is supportable as a package. I note, for the record, that my earlier amendments did suggest a lower percentage reduction than the Labor Party has proposed. The 25 per cent on activity tests and the 20 per cent on admin tests are an increase on what is there now, but we are prepared, as a fall-back position, to support those percentage figures rather than the ones which we proposed, because this is the Pearce package. It is a package which we are presenting to the government and saying, 'We believe this package will work.'

As one of the welfare lobbyists called it when I spoke to them today, it is a short, sharp shock that we are proposing here. Rather than having this pain stretched out over 26 weeks, as the current provisions allow, the notion is to get the behavioural change. The notion is not to raise money or save money. It is almost inappropriate to talk about how much this will cost the budget, because the government should not be budgeting on making money out of unemployed people being breached. This is one of the issues which has come up in the Ombudsman's report: whether there were in fact targets for savings from breaching. That is something which the government should not be including in its budget figures. If these proposals are rejected on the basis of budget cost, I personally will be extremely offended. The notion that every police minister in the country constantly denies is that they would in fact be in a situation of using—heaven forbid—speeding fines as a revenue-raising resource. And they always deny it. It is only about behavioural change. And that is what we are talking about here: behavioural change. It should not be about budgetary impact.

I want to read for the *Hansard* record the comments which came through from the St Vincent de Paul Society, because they were very important. They highlight the importance of these amendments to this legislation. The St Vincent de Paul Society's National Council wrote to me and said:

> Our view is that the legislation should NOT, under any circumstances, be passed without addressing the minimization of breaching of the unemployed and disadvantaged groups. For many the immediate effect of the breaching system is that it provides the most direct path to abject poverty.

They went on to say:

> Breaching is not about finding a job which simply does not exist for 600,000 Australians. It is rather a severe penalisation of the unemployed because there are no jobs. It is also about enhancing the myth that the $52 billion per year spent on welfare goes to the unemployed. The simple fact is that less than 16% ($8 billion) goes to the unemployed!

What we need to recognise here is that the St Vincent de Paul Society are asking the Senate to ensure that we fix this legislation. They want us to use this opportunity of the first tranche of the government's welfare reform package to fix what is probably the most dysfunctional part of the welfare system at the moment: the breaching penalties regime. Along with working credits, the per-

sonal support program and the other measures we have put in place, it provides a good base from which to get some of the worst holes in the social security system fixed at this point in time so that we can move to the next stage of discussion of welfare reform as a result of the policy paper we saw today.

The Democrats would prefer to see lower percentages than 20 and 25 per cent as the rate reductions, but we are prepared to support the Labor Party's amendments today. We commend them for moving these, because it is such an important issue. I note for the record that both the President of the Australian Council of Social Services and the President of the National Welfare Rights Network are supporting these amendments and saying this package is essential in order to get some fairness and equity back into the social security system. I commend these amendments to the Senate. Given the enormous evidence that has been developed from the Ombudsman, the independent panel, the Senate committee and the various welfare groups that there is failure in terms of the policy surrounding our current breaching regime, I hope that these amendments receive unanimous support.

Senator NETTLE (New South Wales) (7.18 p.m.)—I rise to indicate that the Australian Greens will be supporting these amendments as an improvement on a breaching regime that we do not support.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.18 p.m.)—I think it is important to put a couple of things on the record. The government by its actions over the last 18 months or two years has made it very clear that it does share the concern of other people in the community about the potential impact of breaching on vulnerable job seekers. But there are a few other things that need to be put on record too. When Labor was in government and Working Nation was in operation, the breach penalties—in equivalent 2002 dollars, not in nominal dollars—started at around $340 for the first administrative or activity test breach. The penalty was $2,355 for the third activity test breach. Subsequent penalty periods within three years just kept going up by six weeks at a time. For the long-term unemployed—that is 18 months and over, many of them arguably the most vulnerable job seekers—the first activity test breach penalty was over $1,000 and the third was an incredible $3,030.

New breaching penalties were introduced in 1997 with the full support of the then and current opposition. Our maximum administrative breach penalty is usually less than $390, with the average, I am told, at $360. Our activity test breaches reach a maximum of $1,500 for the third breach of a person's obligations, with the average less than $1,350. Let me go back to that point: for the long-term unemployed under Working Nation, the first activity test breach was $1,000 and the third was $3,000. The penalty for others was $2,355. What we are now looking at are maximum penalties of half of those which were applied to long-term unemployed, and significantly less than $2,355—and if it were not 7.20 p.m. I would give you the percentage. We have shifted from $2,355 down to $1,500, with the agreement of the opposition. Just in case anyone was under the impression that the Liberal-National Party came to government and increased penalties, I thought I would correct that misunderstanding for them.

It is my view that Labor and the Democrats would quite clearly like us to go even softer on compliance, having agreed, as the Democrats did, to the compliance regime that is now in place. I hear no mention of that. There is no mention of, 'Well, we agreed to this but we now think we're wrong.' But that is okay. We stand by the proposition that I put last time. We have done a tremendous amount over the last 18 months and we believe that that should be given the opportunity to have more time in place and that we should have a proper evaluation before we go even further. To name a couple of the things we have done, we introduced the third breach alert in June 2001; we had an internal review at Centrelink in October 2001 resulting in better training and tighter procedures; we have got new decision making tools; we have got multipurpose contacts; and we have intro-

duced personal advisers, who started in September this year. That work was acknowledged by the Ombudsman in his report. Again, I did not hear much mention of that from the opposition or the Democrats. It is that work that has resulted in breach numbers falling by 30 per cent in 2001-02 compared with the previous year. About 13 per cent of job seekers now would be breached in one year compared to 18 per cent in the previous year.

We have already implemented most of the Pearce recommendations as they relate to my portfolio. Nineteen have been implemented from 26 recommendations that are relevant to this portfolio. I do have some concern when people say, 'Pearce has been ignored; no-one has done what Pearce wanted.' The plain facts are that we announced most of those changes before the Pearce report was put out. I know that has put out of joint the noses of some of the people who were involved in the Pearce report. It was not done to put their noses out of joint; we just did not see any reason why we should wait for other people to tell us what to do if we were already prepared to do it.

We have significantly reduced penalties. In July this year we more than halved the penalty for many breaches. Most people will now get an administrative breach if they fail to attend a Centrelink interview. The July changes also allow Centrelink to suspend payment rather than impose a breach if a job seeker cannot be contacted. That means that Centrelink talks to every job seeker before a breach is imposed and before payment is restored. That provides much better protection for vulnerable job seekers and indeed—this is a happy accident—it provides a deterrent for non-genuine job seekers. There are broader waiver provisions for recipients of Newstart. They can have a breach waived by going to the Personal Support Program or some forms of training. That is in addition to the clean slate provisions if Newstart customers start on Work for the Dole.

The July changes introduced a whole new approach to breaching. The early evidence is very positive and shows that it is working. I have previously mentioned a small sample which indicated that over 25 per cent of job seekers had not been breached four weeks after being suspended and that around 25 per cent had their payments cancelled. We believe that needs more analysis before we can draw any firm conclusions, but it certainly very positively suggests that the policy is doing what we want it to do.

Centrelink has now provided new data on breach numbers since the July changes, indicating that total breaches fell by more than 35 per cent during the July-September 2002 quarter compared with the March-June 2002 quarter. I draw attention to those remarks specifically because I might have, in earlier remarks in this debate, indicated that it was a quarter to quarter comparison whereas there are different quarters being compared there. If I did make that mistake, I correct it now. They are now down by more than half compared with the July-September 2001 quarter. Clearly, we have to make a full assessment of the impact of these changes before any further changes are made. That is why the government will strenuously oppose and in the end—I need to make this clear—will not accept these amendments.

Senator MARK BISHOP (Western Australia) (7.25 p.m.)—I want to respond formally to some of the comments made by the Minister for Family and Community Services in her concluding remarks. Firstly, on the issue of the level of breaches, we are talking about a system designed by the current government. It is, after all, their breaching regime. It is over the last five or six years that the huge increases in the number of breaches have occurred. At the end of the financial year 2000, the number of breaches was 302,494. I want to pick up on a point raised by the minister. In contradistinction to the system that existed under the previous Labor government, yes, the minister is correct to identify that the figures involved in the penalties were higher and more significant. However, as always, the sin is that of omission, because the number of breaches in the last year of the previous government—the first year of the Howard government—was an estimated 104,000. There has been at least a tripling of the number of breaches in the last five or six years. The other point I note in passing is that there has been a re-

duction in the rate of breach activity of 35 per cent in the last quarter, but it is still in excess of 60 per cent over the figures of the previous Labor administration.

Having made those points, I want to turn briefly to the McClure report. The basis of that report was for a participation support orientated system. Participation, as we all know, costs money. You need adequate financial resources, and of course the achievement of breaching is to deny those resources to persons who are attempting to participate. People obviously need adequate financial resources. One of the consequences of a person being breached is that those resources are removed for a particular period of time. In that context, my question to the minister is: does the government support a breaching regime that is participation focused?

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.29 p.m.)—We could have quite a long debate on this. I think this a very difficult area, as a lot of welfare is. I will give you two examples. One is when people are in need—obviously, you want to give them more but, obviously, you do not want to give money to people who are not in need. So at some point—and we could always argue about where it is—you start a taper process of taking away the welfare for every extra dollar they earn to ease them back into being in the same situation as anyone else. The trouble is that for every dollar you add on as an extra benefit you actually create a higher hurdle to get back over.

It is one of the great tragedies of this policy area that you cannot have both: you cannot have more help when you are needy and no hurdle to get over. That is what we would all like, but it is impossible—unless you are prepared to keep paying people for ever and ever and discard the principle that people on the same income should be treated the same and you will not give welfare to people who are earning significantly increased amounts of money. That is a terribly difficult area faced by every government.

The other difficult area is this issue of breaching. You are right in saying that people do need money to participate—they need money to live, to pay the rent, to do a whole range of things. No-one could argue with that. But the other argument is also true: if you do not have a breaching regime, if you do not have some sort of penalty for not doing what you are meant to do, you end up with a system that does not have integrity and credibility, and you need that as well. So in the end it is all an argument about balance and where it should lie. We obviously have a disagreement here on where the balance should lie, but presumably we do not disagree with the assertion that welfare should go to the needy and not the greedy and that there should be some form of compliance system. We just have a disagreement at this point about where that balance lies.

The TEMPORARY CHAIRMAN (Senator Collins)—The question is that opposition amendments (1), (3) to (18), (22) and (24) to (30) be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted

Third Reading

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.32 p.m.)—I move:

That this bill be now read a third time.

Senator BUCKLAND (South Australia) (7.32 p.m.)—I seek leave to have Senator Hutchins's speech on the third reading incorporated in *Hansard*.

Leave granted.

The speech read as follows—

I rise to speak to the Family and Community Services Legislation Amendment (Australians Working Together and Other Budget Measures) Bill 2002.

As the Chair of the Senate Community Affairs References Committee, I was instructed to inquire into the potential impact of this Bill if it were to be passed by the Senate.

The Committee's report, tabled in the Senate on 25 September 2002, considered the recommendations of a number of community groups as a result of comprehensive consultation in Sydney and Melbourne.

The overwhelming opinion of groups as diverse as ACOSS, The Brotherhood of St Laurence, the Sole Parents' Union, UnitingCare and the Salvation Army was that the proposed changes to the provision of benefits to groups such as single parents and the mature age unemployed could be counter-productive.

The Brotherhood of St Laurence provided evidence of a survey which found that the vast majority of Australians support lower penalties for breaching participation agreements.

More importantly, the proposed changes demand additional commitments from recipients, without financially covering the costs of honouring those commitments.

While the Bill provides for a language, literacy and numeracy supplement of $20.80 per fortnight, numerous witnesses at the Committee's inquiry suggested that the additional costs incurred would be twice that amount.

The system of breaching and participation requirements must be finely balanced to be effective. On the one hand, it must provide significant incentives for welfare recipients to take part in training or work. But it must also ensure that penalties and breaches do not prevent recipients from continuing their efforts to find appropriate work and to live decently.

In the course of the Committee's inquiry, we were required to address the Pearce Review and its recommendations.

The Pearce Review presents a balanced and sensible approach to the issues of participation requirements and breaching.

The Senate Community Affairs References Committee determined that the Pearce approach represents a way forward both in terms of this legislation and the reform of the penalties regime more broadly.

I would like to note that last sitting week, the Senate passed a recommendation of the Pearce Review in the form of a motion. The result of that will now be that the Commonwealth Ombudsman should report to the Senate Community Affairs References Committee on an annual basis regarding the system of breaches and penalties.

The Government tried to oppose the motion, saying that the Department would be a more appropriate body to deal with such reporting. My suspicion is that their argument had more to do with politics than the effectiveness of the breaches and penalties system.

The legislation, as it stands, does not accurately reflect the reciprocal nature of the principles of mutual obligation.

The Bill proposes to enforce a series of requirements for single parents, which are determined by the age of their youngest child. The penalties which are proposed for a single mother's breach of their participation agreement are based on the amount for Newstart recipients.

But because single parents are paid a benefit not only for themselves, but to support their whole family, any breach would have a significant impact upon the standard of living of the single parent's children.

The first breach would mean a cut of $987 for a single parent and their children. Much of the debate surrounding welfare reform has focussed upon the need to prevent inter-generational dependency on welfare. Penalties of this order are bound to affect the life chances of any child of a single parent.

If a parent is punished for not attending an interview or for not attending training, the inevitable consequence would be that the children would suffer the financial impact. The last thing our welfare system should be doing is punishing children for the choices or mistakes their parents have made.

By the third breach, a parent and their children would be liable for a $3990 decrease in their standard of living over 14 months. Such a drop in income necessitates the prioritisation of expenses. If that meant a choice between food and school books, I know which one I would make.

One matter is absolutely clear, and that is that penalties as high as those proposed by this Bill would affect the quality of life and opportunities of the children concerned.

There are provisions for the care of children with special needs and disabilities, but the definition of disability is limited to disabilities of a physical nature. In this respect, the Bill is sloppy and does not address well-recognised issues regarding caring for children.

There are, however, elements of this bill which do make very good sense. The Bill provides for the re-introduction of the Working Credit scheme, which allows recipients to build up income credits at times when they receive little or no income, so that they are not overly disadvantaged when they do engage in paid work.

It's a great idea which was in operation under Labor Governments, which the current Govern-

ment then repealed, but has now decided to reintroduce. The same system is currently in place for Youth Allowance recipients and has significantly prevented young people from financial disadvantage as a result of short periods of employment.

Any system that punishes individuals for working is a strange one indeed. It is good to see that the Government has learnt from its mistakes and has decided to implement effective and proven Labor policy.

It is clear to almost all of us that there has been a significant shift in the academic and political debate surrounding welfare.

Over the last two decades, welfare has moved from being an entitlement for the individual to an obligation for both the individual and the Government.

Writers such as Lawrance Mead identified the need for the shift from entitlement to obligation, and he and others of his ilk won the intellectual and moral debate.

Our job is to ensure that Australia's implementation of mutual obligation is fair and that it serves a purpose. Obligation for the sake of it is quite simply demeaning. Some would consider overly punitive measures for the disadvantaged a revocation of the Poor Laws.

While I hardly think that we will ever again see the unemployed breaking rocks as punishment for their misfortune, we must guard against any scape-goating of welfare recipients. More often than not, their disadvantage is the result of misfortune and systemic barriers to achieving their potential.

The principle of mutual obligation, and its practical application of participation requirements, should have the aim of improving the skills of welfare recipients, and providing appropriate encouragement to take up those skills.

Breaches are an essential element of that encouragement, but they must be carefully and fairly implemented to ensure that the most vulnerable members of our society do not suffer.

The Bill does not take into account its impact upon children, nor does it consider the many and varied reasons why children require additional care from their parents.

Mutual obligation can deliver great advantages to welfare recipients. Instead of being a tool for training and a means of increasing the employability of our workforce, the Government uses participation agreements as a way of deceiving the electorate and cutting costs to the tune of tens of millions of dollars.

As a result, some of the measures contained in this Bill reflect a serious misunderstanding of the needs of Australians.

The Government must keep up its end of the bargain and allow Australians to flourish instead of punishing them and their families.

The McClure Report, which was commissioned by the Government, recommended that 'community capacity building' should be a key element of welfare reform.

Community capacity building is a concept where individuals, government and business work together to achieve mutually beneficial outcomes. It's a great idea which should be necessarily facilitated by the Federal Government.

The problem is that the Government's legislative response to Community Capacity Building has been to provide a token amount of funding for what should be a major program.

The Australians Working Together package contains spending to the order of $1.7 billion. Of that, only $22 million is to be spent on community engagement, or Community Capacity Building. $22 million, across the entire nation, will do little to implement one of the major recommendations of the McClure Report. And the spending is in an existing program, the main aim of which is to promote awareness of the program.

If the Government was serious about helping the unemployed, the disabled and single parents, it would act on the advice given to it by the authors of the McClure Report. Instead, we have seen Government ministers suggest that charities and the non-government sector should do more for disadvantaged members of our society.

That will quite simply not happen unless the Government gets serious about building community capacity and steering welfare recipients in the right direction, rather than merely denying responsibility for their well-being.

Instead of acting on an ideological basis, as this Bill would, we need to legislate according to common sense. Any change to the welfare system should have as its most basic aim an increase in the employability of all recipients.

Sending single parents to pointless meetings does no-one any good. If anything, it will place a significant strain on Centrelink, which is already grossly under-resourced.

The Community Affairs Committee was told by witnesses that single parents are already very likely to be employed or to take part in training. Instead of encouraging existing motivation, the Government is proposing to impose arbitrary

requirements on single parents and the mature aged unemployed.

It is quite simply illogical not to take advantage of very practical recommendations from a report which was commissioned by the Government, and instead to attempt to impose a system which punishes people for not doing what may well be entirely pointless.

While there are elements of the Bill which provide for positive welfare reform, such as the reintroduction of Labor's Working Credit scheme, many of the changes miss the target. One gets the sense that this is change for change's sake, so that the Government is seen to be reforming the welfare system.

But the Government's application of mutual obligation fails in two key areas.

Firstly, while the legislation increases the burden placed upon recipients, it only offers them ten dollars a week in return. Reform must be fair and must take recipients existing responsibilities and financial circumstances into account.

Secondly, the reforms will achieve very little in real terms, because the government itself will not commit to helping these people. The Government is not willing to invest in people and fulfil its side of the mutual obligation bargain.

Welfare reform is needed, but it must have the objective of alleviating the need for welfare at its core. This Bill is a half-hearted attempt at reform, many elements of which will do little or no good for the people it affects the most.

Question put:

That this bill be now read a third time.

The Senate divided. [7.36 p.m.]

(The Deputy President—Senator J.J. Hogg)

Ayes……	34
Noes……	8
Majority……	26

AYES

Bishop, T.M.	Bolkus, N.
Campbell, G.	Carr, K.J.
Colbeck, R.	Collins, J.M.A.
Cook, P.F.S.	Crossin, P.M.
Denman, K.J.	Eggleston, A.
Evans, C.V.	Forshaw, M.G.
Harradine, B.	Hogg, J.J.
Hutchins, S.P.	Johnston, D.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	McGauran, J.J.J. *
McLucas, J.E.	Moore, C.
O'Brien, K.W.K.	Patterson, K.C.
Ray, R.F.	Stephens, U.
Tchen, T.	Tierney, J.W.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wong, P.

NOES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Lees, M.H.
Murray, A.J.M.	Nettle, K.

* denotes teller

Question agreed to.

Bill read a third time.

BUSINESS

Consideration of Legislation

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.40 p.m.)—I move:

That government business order of the day no. 3 relating to the bill be discharged from the *Notice Paper*.

Question agreed to.

Sitting suspended from 7.40 p.m. to 8.30 p.m.

(Quorum formed)

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.32 p.m.)—I move:

That the order of consideration of government business orders of the day for the remainder of today be as follows:

No. 6 Trade Practices Amendment (Liability for Recreational Services) Bill 2002.

No. 7 Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

Workplace Relations Amendment (Fair Termination) Bill 2002.

Renewable Energy (Electricity) Amendment Bill 2002.

No. 4 Inspector-General of Taxation Bill 2002.

No. 5 Taxation Laws Amendment (Structured Settlements and Structured Orders) Bill 2002.

No. 8 Copyright Amendment (Parallel Importation) Bill 2002.

Question agreed to.

TRADE PRACTICES AMENDMENT (LIABILITY FOR RECREATIONAL SERVICES) BILL 2002

Second Reading

Debate resumed from 28 August, on motion by **Senator Alston**:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (8.32 p.m.)—On behalf of Senator Ridgeway, I seek leave to incorporated his speech on the second reading debate on Trade Practices Amendment (Liability for Recreational Services) Bill 2002.

Senator Mackay—Can you give us a summary of it?

Senator MURRAY—I think the whip is saying that she is quite content that it be incorporated but that, as she has not seen it, she would like a brief summary of it. So I will move to Senator Ridgeway's conclusion. He indicates that the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 should be supported but that it needs amendment. In arriving at that conclusion, he has run through a number of points concerning the important matters at hand, which, as you know, concern making sure that people take responsibility for risk but, equally, being aware that the providers of those services should ensure that they in fact allow for proper safety procedures.

Leave granted.

The speech read as follows—

Today I rise to speak about the Trade Practices Amendment (Liability for Recreational Services) Bill 2002.

This Bill is yet another attempt by the Government to solve the problems faced by the community with respect to rising insurance costs.

If we examine the track record of the Government so far on this issue, it is easy to see the pattern developing—all responsibility on the individual and no blame anywhere else.

The community has not only had their businesses, their services and events jeopardised by, among other things, an unfavourable insurance market, they have also borne the brunt of the reforms so far.

One the one hand, when the Government has shown reluctance to intervene, it has argued that while the cost of claims is a driver, this is a market issue and the downturn in the international market for insurance has had a huge impact on the cost and availability of reinsurance.

I assume the rationale here is that when there is an upturn in the market, the community can look forward to better pricing and more availability of insurance. I will come back to this point later.

Yet on the other hand, in relation to claims as a cost driver, with little hesitation, the Government has endorsed and facilitated a position whereby tort law reform should be implemented throughout the country.

This approach shows little regard for the way in which the courts have developed tort law over many decades, and little regard for those who rely on compensation to help with medical costs—sometimes long term.

Nor does it show much regard for claimants who will depend on compensation to meet other expenses when they have been injured or suffered damage as a result of another person's negligence.

As I have mentioned on previous occasions there is a general consensus that there is a lack of comprehensive data on claims costs. This is a significant constraint in the appropriate pricing of premiums by the insurance industry, and this is especially the case for sporting groups and adventure tourism operators.

While few people would argue that individuals should take responsibility for their own safety, we as legislators, must also ensure that people are encouraged to take responsibility for their own actions.

Having said this, I believe it is also our responsibility to strike the appropriate balance so that whatever measures are put in place today, we also reaffirm and indeed strengthen, community safety and business responsibility. It would be wrong to throw the baby out with the bath water, so to speak, and this is what I think the Government is doing in this Bill if it remains in its current form.

This Bill inserts a new section—68B—into the Trade Practices Act. This new section enables companies that supply recreational services to give effect to contractual terms which limit their liability for death or personal injury, where there

has not been a failure to provide services with due care and skill.

Currently, recreational service providers cannot contract out of their liability by virtue of section 74. Section 74 of the Trade Practices Act states that in a contract where a corporation supplies services to a consumer, there is an implied warranty that services will be rendered with due care and skill.

So in the event that companies do not provide their services with due care and skill, they will be in breach of the warranty implied into the contracts.

A service is deemed to be provided with due care and skill if it is of a standard and quality that could reasonably be expected from a competent person in the particular trade or profession.

While this may appear to be an appropriate safeguard for the protection of consumers, under the Government's Bill I fear that this protection will be lost and I fail to see where notions of safety and accountability have been captured in the Bill.

That is why I think that if service providers want to rely on waivers and disclaimers then there needs to be greater emphasis placed on the maintenance of high safety standards and minimising risk.

Recreational service providers should not be permitted to rely on contractual terms without ensuring that they have taken all steps within their control to minimise the risk of harm or injury.

A loose acceptance of waivers and disclaimers for a seemingly endless variety of activities is neither desirable for consumers nor high quality recreational service providers who take pride in their good safety record.

Opening up the operation of waivers and disclaimers in this way creates a real risk that less than scrupulous operators will be able to enter the market and skimp on safety in order to undercut safety conscious, more legitimate competitors.

That is why a more stringent standard must be applicable to service providers in circumstances where a waiver is to apply. I believe, and I am sure that you would agree, that a 'near enough's good enough' attitude to community safety is unacceptable and so there should be no leeway for the recreational services environment to diminish in any way its responsibility to safety.

The provisions of the Bill do not take into consideration the power imbalance between those who provide the service and seek to rely on the contract, and those who use the services.

Consumers who knowingly and honestly enter into contracts with recreational service providers do so under the impression that the service provider has gone to great lengths to ensure that the service is safe and reliable. Mere competence alone may not be an appropriate standard to ensure the safety of the community, let alone the unknown standard that might be applicable in the future should this bill proceed unamended.

In relation to what activities are potentially captured by this Bill, the new s.68B(2) of the Trade Practices Act defines recreational services. While the Government stated that this Bill was originally intended to allow providers of 'inherently risky activities' to contract out of the implied warranties in the Trade Practices Act, in fact, the proposed definition is broad enough to capture all companies that supply recreational services.

Even the Negligence Review Panel, whose members were appointed by the Assistant Treasurer, recommended a narrower definition of 'recreational services' than what is provided in the Bill. Leaving aside the definition of recreation services, Recommendation 12 states that a 'recreational activity' means an activity undertaken for the purposes of recreation, enjoyment or leisure, which involves a significant degree of physical risk.

The definition in the Bill captures all sporting and leisure activities regardless of whether they involve any degree of physical risk, not only those activities that could be considered 'inherently risky'. Ideally, the only risk that the consumer should be assuming are the ones that are intrinsic to the type of activity in which they are taking part.

Without greater protections for consumers and fine-tuning of the definition of 'recreational services', more uncertainty will be generated as to the effect of waivers and disclaimers rather than clarification on the issue.

Firstly, recreational service providers should not escape the implied warranty contained in s74 of the Trade Practices Act where the act or omission causing the injury was done recklessly. In these situations the term of the contract that limits liability should be void. As I mentioned previously, where are the safeguards for consumers and the community? I think it would be irresponsible to allow an unfettered right to enforce waivers.

Secondly, in no circumstances should the new s.68B apply to persons 18 years and under. By codifying the common law position with respect to minors, this will make it abundantly clear that children's rights will not be diminished in any way.

Thirdly, only recreational activities that can be regarded as inherently risky activities should be

covered by this legislation. It follows that the types of inherently risky activities should be prescribed in the regulations. These might include for example—skydiving, bungy jumping etc.

Currently, the activities that are subject to the Bill are those that are sporting or leisure time pursuits or activities that involve a significant degree of physical exertion or physical risk. This is a very broad definition. As I have already mentioned, the definition is broad enough to capture those activities that can be considered 'inherently risky', which was the original intent of the Bill—but it also captures activities that bear no real risks at all.

Even with the narrower definition provided by the Negligence Review Panel, there would still be a role for the courts in deciding if a particular activity fits within the definition. By highlighting in the regulations the particular activities where consumers could contract out of their right to sue under the Trade Practices Act, this would not only create greater certainty as to the applicability of the implied warranty, it would also overcome the safety concerns that I raised earlier.

Fourthly, in order for service providers to rely on the new s68B, contracts seeking to limit liability must be:

- written in clear and plain language,
- explained to the person assuming the risk, and
- signed by the person assuming the risk.

Since I believe that only a very limited and particular brand of activity should be captured by this legislation, accordingly, there should be an obligation on the service provider to ensure that they have done all that they can to explain the nature of the rights that the consumer is contracting out of, if they choose to participate in the activity.

This would necessarily involve the service provider explaining the terms, having plain language explanations and acceptance of these terms in writing by the consumer.

And lastly, following on from the previous point—in order to emphasise the need to explain contract terms to the consumer, service providers who wish to rely on the new provisions are required to take all reasonable steps to ensure that the person engaging in the inherently risky activity is aware of the risks that they are assuming when signing a waiver or disclaimer.

In addition, in acknowledging the special vulnerability of people from non-English speaking backgrounds, not only should care be taken in outlining the effect of signing a waiver, where practicable, signage and waivers should also be available in languages other than English.

Given Australia's international appeal as a premiere adventure tourism destination—we can safely assume that many of the people wanting to engage in adventure tourism in this country will be from overseas, and as a consequence, not always proficient in English.

As we gain a stronger foothold in international markets such as South Korea and China, for example, we need to be catering to the needs and indeed the rights of tourists from these destinations.

Again, this 'near enough's good enough attitude' is simply not acceptable with international visitors who are engaging in potentially highly risky activities.

Before I conclude, this Bill was created with the hope—albeit vein, that it would produce a more favourable insurance environment. Despite the fact that I see the Government's assumption as to the effect of this Bill as mistaken, I see no reason for not accepting, in principle, the notion that individuals sometimes do things at their own risk.

However, given the events of this year and the tort law reform taking place across the country that is causing severe erosions of individual rights to sue and receive damages, it would be wrong to further burden the community with more limitations of their rights without any corresponding responsibility being assumed elsewhere.

As I mentioned earlier, the Government has used claims costs as a basis for recommending sweeping changes to tort law and has used market forces as a reason not to get involved when the situation calls for it.

If we accept, which many people do, that market forces are a major cause of the high price of insurance experienced recently, then we need to keep reform measures in perspective and avoid making large scale changes that diminish consumer rights. I don't think we need to have any fear that the insurance industry won't bounce back at some stage soon with record profits (if indeed they were ever in any real trouble in the first place)!

What we need to be doing is correcting the market through more careful regulation and monitoring to ensure that the peaks and troughs in the future are not as severe as they are today. The problems with taking a path to erode consumer rights too far at this time may become increasingly inappropriate when there is a change in market conditions.

It is important then to consider that when consumers contract to waive their rights, not only should they be well informed of the nature and effect of the terms to which they are accepting, they must also be assured that the recreational service provider has acted with the upmost regard for their safety.

Rather that letting this Bill become another knee-jerk reaction to an insurance crisis, it should be a careful and measured response to a principle that many Australians support.

I commend the amendments proposed by the Australian Democrats to the Senate.

Senator LUDWIG (Queensland) (8.34 p.m.)—In relation to the Trade Practices Amendment (Liability for Recreational Services) Bill 2002, I seek leave to incorporate a speech on the second reading.

Leave granted.

The speech read as follows—

I rise to speak on the Trade Practices Amendment (Liability for Recreational Services) Bill 2002.

This Bill seeks to amend the Trade Practices Act to allow a contractual exclusion for liability for death or personal injury by the providers of recreational services.

This is achieved by amending the Trade Practices Act to allow waivers or exclusion clauses not to be subject to the implied conditions in section 74 of the Trade Practices Act.

Section 74 implies into every contract for a service that the services will be rendered with due care and skill, and that any material supplied in connection with those services will be reasonably fit for its intended purpose.

This Bill was introduced into Parliament on 27 June 2002 amidst spiralling public liability insurance premiums.

The Senate referred the Bill for inquiry by the Economics Legislation Committee.

The Committee reported this week and a Government majority report and two minority reports representing the views of Labor and the Democrats were tabled.

Over the last 12 months there has been a crisis in public liability insurance.

What was once a routine procedure for most groups in the community has literally become a nightmare.

But the Howard Government refused to accept its constitutional responsibility and act to curb the crisis.

After failing to act for 12 months, the Howard Government rushed out a premature press release before the end of the financial year.

This press release was issued to meet demands for action arising from a lack of action over the previous 12 months

The Government has an unflattering history of issuing press releases to convey the impression that it is addressing issues and then fails to implement proposals.

One just has to look at the area of airport security. The Government has taken an extraordinary 15 months to release its policy on airport security post September 11.

Yet another example of the Government saying it is concerned and then failing to act.

The solution proposed in the Minister's press release enabled businesses that provided inherently risky types of recreational activities to rely on exclusion clauses or waivers.

The inability to rely on these waivers is believed to have been a significant factor behind the sharp rise in insurance premiums for these types of businesses.

The Expert Panel on the Review of the Law of Negligence (the Ipp Report) was released after the legislation had been introduced.

The Ipp report recommended some amendments to the Bill.

Treasury evidence to the Committee confirmed that there was no proposal for Government amendments to the Bill in the Senate.

While we are disappointed the Government has chosen to ignore the advice of the Expert Panel, Labor is committed to implementing the recommendations of the Ipp report.

The Government has chosen to ignore the report despite the fact that the Bill appears to allow people to agree unlimited waivers releasing service providers from all liability for death and personal injury, including in those cases involving gross negligence.

The objective of this Bill is now, according to evidence from Treasury to the Committee, to meet the commitment made by the Commonwealth at the Ministerial Meeting on Public Liability Insurance in May 2002.

The communique from that summit states that:

"The Commonwealth will legislate to allow self assumption of risk for people who choose to participate in inherently risky activities such as adventure tourism and sports, subject to preserving adequate protection for consumers in the Trade

Practices Act. The States committed to introducing mirror legislation where required.

The appeal of this Bill, as represented by the Minister's press release, when the Bill was introduced, was to allow people to voluntarily assume the risks involved in risky recreational activities.

This was seen as addressing the need by tourism operators and sports providers for enforceable waivers so that they were not liable for "accidents" which arise from the inherent risks of participating in such activities.

At the time of the Bill's introduction, the Bill was strongly supported by pony clubs and operators of adventure tourism and other high-risk activities.

However, now that the true scope of this Bill has been revealed, this support is qualified.

The Australian Consumers Association have also indicated that, without amendments, they would be forced to issue a consumer warning to participants in recreational activities.

This Bill goes much further than the position originally advanced in the Minister's press release.

Instead of potentially removing liability for "accidents" or obvious or inherent risks in participating in recreational activities a waiver could also waive liability for negligence, however arising.

Labor are concerned that this Bill does not impact unfairly on the rights of consumers.

The Minister in her press release of 27 June 2002 indicated that in allowing people to voluntarily waive their right to sue, it was important to achieve a balance between protecting consumers and allowing them to take responsibility for themselves.

Indeed the press release stated that the amendments to the Trade Practices Act would still allow customers to sue if they are victims of gross negligence on the part of the operator.

However, in evidence to the Committee the Government confirmed it does not intend making any amendments to the Bill to prohibit the waiver of gross negligence.

Even the Australian Horse Industry Councils stated that the Bill as tabled would lead to an unreasonable impact on the rights of individuals.

Evidence before the Committee highlighted further problems, including the legal enforceability of waivers.

Thus the Bill appears to address the needs of recreational service providers but in many cases will just alter what is litigated.

On the other hand, there is a legitimate concern that this Bill may remove the incentive for businesses to ensure they provide safe services.

Evidence to the Committee suggested that the Government is aware of these problems but it claims it is concerned to be consistent with State reforms in the area of self-assumption of risk in recreational activities.

However, there is some variation between jurisdictions at this stage.

According to the communique at the Ministerial Meeting on Public Liability Insurance in October, every State and Territory made a commitment in relation to the provision of waivers to allow people to accept risk.

Only New South Wales, South Australia and Victoria have announced or implemented details of their commitment.

However, none of these States have legislated to completely exclude liability for personal injury or death.

Of the other States and Territories, the details are not known or the commitment is much vaguer.

Thus, it is not clear there is any uniformity among the States and Territory in any event.

Labor, on the other hand, has proposed a remedy which will deal with the problems associated with the current legislation.

The amendment that we are proposing is consistent with the legislation enacted in Victoria as part of their commitment to the Government in relation to the provision of waivers to allow individuals to accept risk.

This amendment allows the originally stated intentions of the Bill to be met.

However, the amendment will provide the important balance between protecting consumers and allowing them to take responsibility for their actions, as referred to by the Minister in her press release.

The amendment will make provision for prescribing the form of the waiver and what particulars must be included in the waiver.

Even the Government members of the Committee said, at paragraph 1.68 of its report, that reliance on unwritten waivers could present quite substantial problems of proof.

The waiver must also be signed by the consumer and will be rendered void if it is made on a false and misleading basis.

Finally the waiver will be ineffective if an act or omission causing injury was done with reckless disregard.

This Bill as it stands allows corporations which provide recreational services to completely exclude any liability for death and personal injury even if that death and personal injury is caused by the gross and wilful lack of care of those acting for the Corporation.

This is totally unacceptable.

At the very minimum, liability should be retained in cases where an act or omission is carried out with reckless disregard.

This also has the very positive outcome of creating an incentive for businesses to provide safe services.

While Labor supports appropriate measures to reduce insurance premiums and are of the view that this initiative will assist in resolving the current insurance crisis, this Bill will only assist recreational service providers if there is a mechanism to ensure that savings result in lower insurance premiums.

Without proper supervision the benefits of the well considered law reforms will end up in the pockets of the insurance companies and the public liability insurance crisis will continue unabated.

Labor has introduced a Private Member's Bill, Trade Practices Amendment (Public Liability Insurance) Bill 2002, granting the ACCC the necessary powers to protect consumers and ensure savings are passed on.

This legislation is necessary to realise the benefits of the law reforms undertaken by the States and benefits arising out of this amendment.

If not, the Bill will merely appear to address the needs of providers of recreational services but will have little practical effect.

In all reforms it is essential that the rights of the injured are adequately protected but also that there is a balance in the system so that organisations and businesses can continue to operate.

Yet the balanced solution proposed in the Minister's press release has not been translated into legislation.

It is clear from submissions to the Committee that there is substantial opposition to the Bill as it stands, including from those organisations which are set to benefit from the Bill.

Labor call on the Government to support the amendment and improve consumer protections without unduly compromising the objectives of the Bill.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.34 p.m.)—I thank senators for their contributions. I would just like to place on record that the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 is an important government initiative that will assist in ensuring available and affordable public liability insurance for the Australian community. The bill implements a commitment made by the Commonwealth at the ministerial meeting on public liability insurance on 30 May this year. At that meeting the Commonwealth agreed to legislate to allow self-assumption of risk for people who choose to participate in inherently risky activities such as adventure tourism and sports.

The Trade Practices Act is important legislation which protects consumers from unfair trading practices and confers rights upon consumers acquiring goods and services. However, the act was never intended to provide a substitute for negligence actions where people were killed or suffered serious injuries, except in limited specific areas dealing with product safety. So the purpose of this bill is to guarantee that the objective of the Trade Practices Act is not subverted for an improper purpose. Its passage will complement state and territory initiatives designed to ensure that outcomes in negligence actions reflect community expectations. The government recognises the need to strike an appropriate balance between the needs of business and the protection of consumers. This bill is a significant step towards ensuring that Australia's laws remain relevant to our economic and social environment so that business and consumers alike will benefit from fair outcomes in the marketplace. I commend the bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (8.36 p.m.)—I move Australian Labor Party amendment (1) on sheet 2777:

(1) Schedule 1, item 1, page 3 (after line 24), after subsection (1), insert:

(1A) For the purposes of paragraph (1)(d) the regulations must prescribe the form and contents of the exclusion, restric-

tion or modification which must include, but which is not limited to, a requirement that the consumer sign each exclusion, restriction or modification.

(1B) Any exclusion, restriction or modification which includes a false or misleading statement is void.

(1C) Any exclusion, restriction or modification is void if the corporation has acted recklessly in relation to a death or personal injury.

I will be as brief as I can be, but I think the amendment does need a bit of explanation. When we looked at the press release from the Minister for Revenue and Assistant Treasurer, Senator Coonan, in relation to the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 and examined the issues involved, we found some discrepancies between what was announced in the press release and what the bill actually provided for. Labor decided to examine the press release and try to provide amendments that were modelled more on the direction in which the minister said she was going rather than on the bill as it was finally drafted.

Proposed subsection (1A) deals with the provision for a person to waive their rights, rather than have the waiver attached to a form that a person might not see or that might be in small writing, which might concern people. I am sure the minister would recall, as I do, the cases about car park notices that used to be put up in some of the old car parks. Some notices were small and very difficult to read, and there was a case about whether or not that would exclude the owner of the vehicle from liability for illegally parking their vehicle.

The minister would recall, I am sure, the famous judge who dealt with those cases. I think that is a very good analogy. What those cases taught us is that we should put the notice on the back of the car parking ticket so that people can read it. In other words, we should bring the notice closer to the attention of the person who is going to assume the responsibility, rather than put it on billboards or in obscure places. In this instance we are saying that people should acknowledge the risk. If this bill is going to take away a substantive right that people have, they should at least have it brought to their attention in such a way that a court can be confident that they have acknowledged it, and in effect proposed subsection (1A) does that.

Proposed subsection (1B) does not allow false or misleading statements in waivers or in other forms of communication. So, if the waiver is void, proposed subsection (1B) provides that 'any exclusion, restriction or modification which includes a false or misleading statement is void'. So we want to ensure that the waiver has some rigour attached to it, that it purports to do what it says it will do and that there are no wild, false or misleading claims contained in the waiver, because to do so would make it void under our proposal.

Proposed subsection (1C) provides that 'any exclusion, restriction or modification is void if the corporation has acted recklessly in relation to a death or personal injury'. This ensures that the bill at least goes the distance to which it should go. In terms of the Ipp report, this bill goes further than Justice Ipp's recommendations. The concern is that the waiver should only provide for the inherent risks that might be associated with a sporting activity, for example, or whatever the waiver is seeking to encapsulate.

As the bill stands, we are concerned that it allows a person to waive negligence. I think that has probably gone a little further than what the minister originally intended and what the press release seemed to say. Perhaps we can deal with this in a couple of ways, but they are the major concerns that Labor has sought to address by this amendment.

Just to recap briefly—and the minister may be able to provide additional information that may assist—a problem that we have identified is how does a person understand or know where the content for an exclusion is. In proposed subsection (1A) we are saying that the exclusion should be brought to the consumer's attention and one of the ways we suggest this can occur is by the consumer signing the exclusion, which is a good form of acknowledgment. In proposed subsection (1B) we are ensuring that the waiver has some integrity and that a person does not make any outlandish claims. If that is not

right, Minister, perhaps you can put us right. But there does not seem to be any provision in the legislation that ensures there is some rigour attached to the waiver itself. In proposed subsection (1C), we are ensuring that the waiver is void as a consequence of negligence.

Senator MURRAY (Western Australia) (8.43 p.m.)—I will be as brief as I can, but I think I must respond because this is a particularly important amendment. There has been—and quite rightly so because of the shift in the way in which law is to be expressed—a great deal of concern expressed about the bill in its current form and about the protection that might be lost to consumers unless the bill is passed with amendments. In particular, the inquiry into the bill highlighted consumer concerns that there are no assurances that the recreational service provider will look after their safety; in other words, it depends on trust.

In dealing with this amendment—and our first amendment mirrors part of it—we think that the Labor Party is trying to address particular issues of concern. Currently, recreational service providers cannot contract out of their liability by virtue of section 74 of the Trade Practices Act, which states that in a contract where a corporation supplies services to a consumer there is an implied warranty that services will be rendered with due care and skill. In the event that companies do not provide their services with due care and skill, they will be in breach of the warranty implied in the contracts. A service is deemed to be provided with due care and skill if it is of standard and quality that could reasonably be expected from a competent person in the particular trade or profession—that comes from the ACCC's guidelines on warranties and refunds issued in April 2000.

While this may appear to be an appropriate safeguard for the protection of consumers, if service providers want to rely on waivers and disclaimers then there needs to be greater emphasis placed on the maintenance of high safety standards and minimising risk. Therefore, it is desirable that, if there is any recklessness on the part of the recreational service provider, they will not gain the advantage of the waiver, and this amendment is necessary to emphasise this. Recreational service providers should not be permitted to rely on contractual terms without ensuring that they have taken all reasonable steps within their control to minimise the risk of harm or injury.

A loose acceptance of waivers and disclaimers for a seemingly endless variety of activities is desirable for neither consumers nor high-quality recreational service providers who take pride in their good safety record. Opening up the operation of waivers and disclaimers in this way creates a real risk that less than scrupulous operators will be able to enter the market and skimp on safety in order to undercut safety conscious and more legitimate competitors. This was a concern raised by the Australian Plaintiff Lawyers Association and also shared by the Australian Consumers Association.

Under the bill as it stands, it seems that any provider of a recreational service will be entitled to exclude themselves from the application of the due care and skill requirements of the Trade Practices Act 1974, even where their conduct has been extremely culpable. Therefore, a person will be excluded from liability under the Trade Practices Act where that person has failed to exercise even a moderate degree of care and has disregarded obvious risks. Similarly, the person will not be subject to legal recourse even where their conduct exposes a person to very serious injury. Examples of conduct that could potentially be caught by this bill in its current form include a skydiving operator who fails to pack a parachute correctly, a bungee jumping operator who fails to replace a faulty bungee cord or a ski resort that does not service its chair lifts.

We are certain that the courts would have a particular view as to whether the recreational service provider should be protected by terms of a contract limiting liability. However, the bill does not clearly stipulate what the position would be in relation to a situation similar to those we have described, and we think that the Labor amendment, therefore, deserves support. It does produce additional clarity and additional protection without eroding the principles on which the bill is based and the approach being taken by

the government. Consequently, we will support the amendment.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (8.48 p.m.)—Before I go to the specific amendment, I want to make some general comments in response to the Labor and Democrat amendments. It is significant to put on the record, as I did in my second reading speech, that the bill implements a commitment made by the Commonwealth at the ministerial meeting on public liability insurance on 30 May this year. At that meeting, the Commonwealth agreed to legislate to allow self-assumption of risk for people who choose to participate in inherently risky activities, such as adventure tourism and sports. The decision was taken by the federal government because of direct representations by state Labor governments on this issue.

The amendments proposed by the opposition and the Democrats would make the Trade Practices Act less restrictive than complementary legislation in New South Wales, South Australia and the Northern Territory. This would provide plaintiff lawyers with a very real incentive to frame their cases as a breach of contract rather than having their case heard under the law of negligence, as amended by state law reform. Only two days ago, the Premier of New South Wales, Mr Carr, sent a letter to the Prime Minister in which he asks for the scope of the bill to be widened. The letter reads:

> Under the New South Wales reforms, liability waivers will be permitted in contracts of recreational services. These waivers will only be effective, however, if amendments are also made to the Trade Practices Act. I am pleased with the speed at which the Commonwealth government moved to introduce such amendments earlier this year. I am advised, however, that the bill may be narrower in scope than the final New South Wales reforms in two significant ways. First, I understand that some non-sporting recreational activities such as attending theatrical performances or photography courses may not be caught by the bill's definition of a recreational service. I also understand that the bill does not permit the exclusion of liability for property damage. Without amendment to the bill, the Trade Practices Act will limit the effectiveness of the New South Wales reforms, albeit at the margins only.
>
> While I appreciate that the bill does cover most cases in which waivers are likely to be used, I would be grateful if you would consider amending the bill to follow the broader New South Wales approach. This would ensure consistency with the New South Wales reforms as well as reduce the potential for unnecessary arguments about whether a waiver is effective for a particular kind of recreational activity. I believe that such changes would also be consistent with the aim of allowing participants in recreational activities to assume greater personal responsibility. I note, however, that the current bill makes a significant contribution to reducing the extent to which the Trade Practices Act might undermine the New South Wales reforms, and I would not wish consideration of further amendments to delay passage.

That is the general background in which we are considering the amendment before us. Proposed subsection (1A) of Labor's amendment, as described by Senator Ludwig, mandates a requirement that regulations be passed requiring waivers to be in a particular form and that they be signed by the consumer who is participating in the recreational activity. I can understand how Senator Ludwig would advocate that, and I acknowledge the line of authority that he referred to. However, the requirement that a consumer sign a waiver for it to be valid is impractical in many instances. Often contractual terms are established by prominently displayed signage—I am sure we are all familiar with that—and where a recreational service is supplied to a very large number of consumers, as in the case of ski lift tickets or a roller-coaster et cetera, the obligation imposed on business to keep records would be unduly onerous.

The government's view is that proposed subsection (1B) is unnecessary. Any exclusion, restriction or modification relating to section 74 would contravene other provisions of the Trade Practices Act, such as section 53, which prohibits misleading and deceptive conduct, or section 53G, which prohibits any false or misleading representation concerning the existence, exclusion or effect of any condition, warranty right or remedy. Any breach of these sections gives rise to a

statutory course of action independent of any contractual rights.

Proposed subsection (1C) is likely to increase the uncertainty attaching to waivers. In deciding whether or not to enforce a waiver, the court will need to determine whether the service provider acted 'recklessly'. Suppliers of recreational services will find it more difficult to determine whether they can rely on waivers. Reckless conduct by service providers is a different concept to gross negligence, which some people have argued should be an explicit exception where waivers ought not be capable of being relied upon. I was initially attracted to that, but I no longer am. The courts have proved to be reluctant to uphold the validity of waivers where a supplier is grossly negligent and have an important role to play in protecting the rights of injured litigants.

I turn briefly to the Democrat amendment. My view is that this amendment could increase the uncertainty attaching to waivers. It will be up to a court to determine whether the service provider acted recklessly. It is not known what the term 'reckless' might mean in this regard. Is a reckless action any different from a failure to act with due care and skill? Is it some higher standard or benchmark? It is difficult to know that. Whatever meaning is intended for the term 'reckless', it is clear that the amendment is intended to restrict the operation of the bill.

This brings me back to my original point: the context for the government's position on this bill. This restriction will undermine the Commonwealth's commitment to amend the Trade Practices Act so as not to impede the effectiveness of state law reform, which has marched ahead. It also ignores the fact that the courts have an important role to play in protecting the rights of injured litigants. When suppliers have acted in a manner which we might describe as grossly negligent, the courts have indeed proved reluctant to uphold the validity of waivers under the common law of contract. For these reasons, the government does not support this amendment. But I do stress that taking this position is very much predicated on the agreement that was struck between the Commonwealth and the states in the context of the broader need to rein in some of the difficulties in contract law and to make the Trade Practices Act complementary to common law and state laws.

Senator LUDWIG (Queensland) (8.56 p.m.)—It is helpful that the minister explained some of the reasons for not agreeing to our amendment. Perhaps she can turn her mind to the unresolved issues. For argument's sake, would a notice be sufficient for people who are under 18? There are also people, as the minister may be aware, who for a variety of reasons are challenged in their ability to read and who might assume risks that they are not aware of. If a signature to a document were required, it would at least provide some certainty. A guardian could sign for minors.

We recognise that there are practical difficulties, but for many activities these days there are documents and computer generated tickets. Skiing is one sport where, when you buy tickets, the ticket sellers do know who you are. When I buy those tickets, I generally use a Visa card to pay. That is an aside—but there is usually a face to face method of obtaining tickets where waivers could be signed. It is the same for theme parks and the like. When you enter the theme park, there is usually a place where you have to purchase your tickets. At those points, most of the theme parks—nearly all of the ones I have been to with my children—sell computer generated tickets and could certainly manage getting a customer's signature or having a guardian sign on behalf of a junior so that the content of a waiver would be brought to their attention.

The point is that if the waiver is not brought to their attention in some manner—and obtaining a signature is one way—then we think the courts would find a whole raft of grounds for saying that the waiver was not brought to the person's attention or was otherwise not known. As a consequence, the waiver could be avoided and the whole import of the legislation undermined in a serious way. We would then come back here with more amendments to try to overcome that. Our present amendment would at least go further and would bring sufficient cer-

tainty for the insurance industry to recognise that waivers may be upheld. As a consequence, premiums should follow a downward trend. The minister also commented on our use of the term 'acted recklessly' and suggests 'gross negligence'. Whether or not we are really arguing from the same basis using different words, we think that 'acted recklessly' encapsulates what the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 is trying to achieve and 'gross negligence' goes needlessly further than the bill requires.

Senator MURRAY (Western Australia) (9.00 p.m.)—The Minister for Revenue has made a number of propositions. Hidden behind them—and I think this reflects something of the minister's own thinking as shown in speeches made before she became a minister—is the concept of executive supremacy. Whilst it is always important to take into account the views of the executive governments of the states—particularly if they are in agreement with the federal government executive—and their views should carry weight and be given proper respect, the Senate is nevertheless entirely distinct from executive governments. It is a far more representative body than the House of Representatives. Nearly 20 per cent of first preference votes are not represented in the House of Representatives, in contrast to the Senate, where it is about five per cent. Furthermore, the senators in this place do not represent their executive governments; they represent their peoples. Therefore, we should only oppose a view of a meeting of any set of executive governments with proper consideration; but it is certainly not outside our powers and responsibilities to do so.

The minister gave particular credence to the views of Mr Carr. Mr Carr has some exceptional qualities and is a very capable political leader of the state of New South Wales, but I remind the minister that Mr Carr is not a person whose views on law should necessarily be taken by this chamber as well grounded. I remind the minister that Mr Carr's government has just passed laws in the New South Wales parliament saying that certain police behaviour 'may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed, or otherwise affected by proceedings in the nature of prohibition or mandamus'. This is a police force which has been the subject of royal commissions. This is a police force populated by human beings who have the same percentage quota of miscreants as any other body. This is not the act of someone who upholds the rule of law, and I will certainly deal very carefully and circumspectly with the views of any government that adopts vile statements of that kind which no lawyer, person or parliamentarian should ever have the gall to support. So do not read to me letters from a premier on matters of law when this is the kind of law he has introduced into this country. It is a disgrace.

Turning to the minister's more relevant remarks on the amendments made by the Labor Party, I stay with the views that I expressed earlier. If the minister believes that those amendments need modification, the House of Representatives exists for exactly that purpose and the Senate may consider its views, but Senator Ludwig has answered the criticisms. Frankly, Minister—and I do not mean this rudely—for a person of your experience and capabilities, which are very high in legal terms, to frame criticisms around the use of a word like 'recklessly' ignores extensive jurisprudence and extensive experience in the courts of which you are well aware. There are countless words in law which require evaluation, adjustment, understanding and interpretation by judges. That is exactly why we have them. The word 'recklessly' has been used in bills brought to this chamber by your own government, quite rightly, and supported by the Senate.

We should not assess anything other than the merits of the amendments before us, and they should be assessed not against a view that executive fiat should prevail but against a view as to whether they are appropriate to the bill concerned. No-one in this place, especially me, is full of profound wisdom and knowledge about everything, and amendments can of course be put which are not adequate, correct or well framed. But I think that the intention behind the Labor amend-

ment is a good one and the possibility that state governments might prefer a harsher regime does not invalidate its being put.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.07 p.m.)—I want to make a brief comment in response to Senator Ludwig, because he did raise an important point about minors—and no doubt that also includes people with disabilities. The provisions of the act being dealt with by the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 concern the rights of consumers to sue for breach of a term implied in contracts that the services will be supplied with due care and skill. I think it is important to note that, as any legal proceedings are based on a cause of action for breach of contract, the ordinary protection afforded to minors—and indeed to intellectually disabled persons—in relation to their capacity to contract will apply. What we are really looking at here with this bill is the extent to which it can make a significant contribution to reducing the extent to which the Trade Practices Act might undermine reforms in other states, not just in New South Wales.

The amendments that have been put forward show a fundamental lack of appreciation of what section 74 of the Trade Practices Act actually does. An action for a breach of warranty under section 74 would be taken under the law of contract, so we are really dealing with the law of contract. The contractual rights that consumers have by virtue of the Trade Practices Act were not enacted with any specific intention. If you go back to what it was all about and what was said at the time, you will find that contractual rights may be used to provide remedies where consumers died or were injured as a result of a breach of a condition or a warranty implied by the act. The purpose of this bill is to ensure that the object of the act is not subverted for an improper purpose.

I will turn to Senator Murray's comments, which I listened to very carefully. I am not for one moment suggesting that governments of any colour or complexion should be attempting to ride roughshod over the rights of the Senate to properly consider legislation that comes before it, and indeed to consider that legislation on its merits. In making my general remarks and setting the context for the way the government is considering this bill, I had intended to convey to honourable senators the need to strike a balance between the interests of consumers and those of business in these matters. In those circumstances, it is appropriate to decide whether the balance is correct and whether the merits provide in the way that I have described.

The government is not disposed to support the amendments, but I did think it appropriate to respond specifically to the matters raised in relation to minors, which is an important matter, and in relation to Senator Murray's view that it is not a rubber stamp or an executive prerogative that requires the Senate to pass this legislation. I am asking that honourable senators consider the very important broader public purpose for which this legislation is brought forward, the extent to which it does not cut down any rights that would not otherwise be dealt with in contract and, in those circumstances, the importance of having complementarity in legislative regimes between the Commonwealth and the states.

Senator CONROY (Victoria) (9.10 p.m.)—I indicate for the record that the Victorian government, which has escaped the mention of the minister so far—and I am glad she raised the issue of complementarity—does not support the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 in its current form and would welcome the amendments that are being moved today. I think it is important, while Senator Coonan likes to quote Premier Carr and the concerns of the New South Wales government, that it be put on the record that the Victorian government does not believe that this bill sits well with the stated intent of the communique in terms of waiving inherent risk, and that it actually goes further. The Ipp report made it clear that this bill goes further than waiving inherent risk. I would be interested in the minister's views on the Ipp report's comments on the bill, and I thought it was important to put that on the record.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treas-

urer) (9.12 p.m.)—I want to make a very brief comment. Victoria is slightly out of step with the rest of the Labor states in relation to the legislative responses to the matters we are debating tonight. I think it is very important to recognise that consumers in Victoria can still sue under the law of negligence but the constitutional underpinning requires, certainly from the point of view of the Trade Practices Act, that it is underpinned by the lowest threshold—or else you end up with regimes that are very much out of step. In my earlier contribution in response to Senators Ludwig and Murray, I was trying to convey the fact that the rights of consumers are still intact in each state.

What is most important with the Trade Practices Act, from a constitutional point of view, is that you do not have a different threshold so that a different range of rights apply in Victoria to those that might apply in New South Wales, using the Trade Practices Act as an aid. The need for complementarity is pretty well established. The intellectual point about whether or not Victoria should be followed as opposed to other states is not really for us. What the government is trying to do is accommodate a regime that will underpin the broad reforms that have been agreed with most states. It is important that we follow the broader approach rather than the narrower approach adopted in Victoria.

Senator LUDWIG (Queensland) (9.14 p.m.)—I want to clarify what the minister said about minors—having minors of my own, it does concern me. I understand it in the sense that you say it is a contract and a privity of contract would exist—notwithstanding Trident General Insurance, which I am sure the minister is familiar with—but it would not necessarily hold up all the time. Minors can sue. There is no doubt about that, especially in respect of negligence. What happens if a minor is of an age where comprehension of a waiver does not exist?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.14 p.m.)—Is the question: what happens if a waiver does not apply or a waiver does not exist?

Senator LUDWIG (Queensland) (9.14 p.m.)—I am happy to go through it again. I am thinking of a minor who is going to utilise the sporting activity and is unable to comprehend the waiver. They may be of an age such that the courts would say that a waiver such as that would be beyond their ordinary comprehension. We could pick an age—say, nine or five years of age. We say that in that instance the waiver should be signed by a guardian or someone else who could bring it to their attention. As I understand it—and perhaps I need more of an explanation—the minister is saying that a minor, whether they can comprehend the waiver or not, cannot sue for negligence, in any event, because it is a contract under the Trade Practices Act. I doubt whether that is quite right. My understanding is that a minor could sue for negligence if negligence had occurred. I was also going to say that, even if there were a contract and there were privity of contract, I doubt very much that the courts would hold that a third party such as a guardian could not stand in their shoes and sue on their behalf if there was damage. Of course, Trident General Insurance tells us quite clearly that privity does not always hold.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.16 p.m.)—It is important, in responding to Senator Ludwig's question, to make the point that the law of contract is not the usual or even perhaps the appropriate way to pursue an action for negligence. If the law of contract is varied by the statutory warranty provisions of the Trade Practices Act, as amended by this bill, and provides a more generous position, then plaintiffs will obviously seek a course of action under the Trade Practices Act rather than state law. What we are looking at here is a bit like a crack in the ground—water will follow a crack in the ground. What is proposed here is a situation where the Trade Practices Act is not an alternative route and contract is not an alternative route, whereas really the law of negligence ought to be the correct course of action in the way in which a minor would certainly be protected. I think that is the point that you were making and I think that is the appropriate response.

Senator CONROY (Victoria) (9.18 p.m.)—by leave—We and the Democrats have an identical amendment, so I will withdraw proposed subsection (1C) on that basis.

Question agreed to.

Senator MURRAY (Western Australia) (9.19 p.m.)—I move amendment (1) on sheet 2776:

(1) Schedule 1, item 1, page 3 (after line 24), after subsection (1), insert:

(1C) Any exclusion, restriction or modification is void if the corporation has acted recklessly in relation to a death or personal injury.

Question agreed to.

Senator MURRAY (Western Australia) (9.20 p.m.)—I move Democrat amendment (R2) on sheet 2776:

(R2) Schedule 1, item 1, page 4 (lines 8 to 15), omit the definition of ***recreational services***, substitute:

recreational services means:

(a) services that consist of participation in:

(i) a sporting activity or similar leisure time pursuit; and

(ii) that activity involves a significant degree of physical risk; and

(b) such inherently risky activities as may be prescribed in the regulations.

The principal change to the bill's existing definition of 'recreational services' is to more narrowly define item 1 in terms of the original Ipp recommendation 12, which was that a recreational activity should involve a significant degree of physical risk. The bill says 'involves a significant degree of physical exertion or physical risk'. The second main aspect being put is paragraph (b), which says 'such inherently risky activities as may be prescribed in the regulations'. The key point, of course, is giving the government the power to make regulations that would prescribe such a thing. I think the amendment is self-evident.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.21 p.m.)—The definition of recreational services presently used in the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 is broad in its terms and is likely to encompass, we think, most activities in relation to which it is intended to ensure that waivers can be effectively used. The proposed amendment will require the provider of every sport or activity to make a judgment about whether the activity involves physical risk, as you have said, and whether that risk is of a significant degree. The use of waivers in such circumstances would become, I think, a rather speculative exercise and the bill is likely to not achieve its purpose, or to have little impact in underpinning the state and territory reforms that I have referred to which are designed to ameliorate the effects of the spiralling public liability crisis.

If an activity sought to have the status of its waivers made certain by having itself prescribed in regulations, under paragraph (b) of the definition in the Australian Democrat amendment, it would become subject to the onerous requirements established by proposed amendment (4). It seems, from the way we are looking at it, that every waiver would have to be signed by the participant in the activity, and the signed form would need to be retained until the service provider was satisfied that there was no risk of litigation. The intent and application of subparagraph (b)(iii) are unclear. Is the intent, for instance, to require suppliers of recreational services to ban the use of tobacco products by participants in the activity? Would cigarette smokers be banned from horse trail rides and so forth? For those reasons, the government is not attracted to this amendment.

Question negatived.

Senator MURRAY (Western Australia) (9.24 p.m.)—I move amendment (R2A) on sheet 2776 revised:

(R2A) Schedule 1, item 1, page 4 (after line 15), at the end of paragraph (b), add:

(iii) the activity is undertaken for the purpose of recreation, but does not include smoking or the consumption of any tobacco products in any form.

Originally, this amendment was in with the previous amendment. It is the one that relates to tobacco smoking which the minister just referred to. The Democrats are notoriously

sensitive about the issue of smoking and health, but we share that sensitivity with very large numbers of people in all parties and all governments. I recall in my state of Western Australia one of the strongest exponents of the anti-smoking message was Graham Kierath, the minister renowned for being fairly tough on industrial relations matters. I was scratching in my memory looking for the arguments to motivate this amendment to do with the figures I have seen as to the cost of tobacco related injuries and deaths in our system. I think it is more than 10 per cent—it might be as high as 20 per cent; it is a high percentage—of all health costs that come from tobacco related illness. Somebody here might know, but I think about 19,000 deaths a year are consequent to it. It would be a great shame if somehow this area of concern slipped through under the guise of a bill which was intended for other purposes. I have no compunction in saying that we are being overcautious here. We are putting up a precautionary principle, which I think, given the nature of the problem, is worthwhile promoting. That is why we move this amendment.

Senator Coonan—I have already addressed that in my previous comments.

Question agreed to.

Senator MURRAY (Western Australia) (9.26 p.m.)—I move amendment (3) on sheet 2776 revised:

(3) Schedule 1, item 1, page 4 (after line 18), at the end of section 68B, add:

(4) A term of a contract for the supply by a corporation of recreational services is void if it limits liability in relation to:

(a) persons under the age of 18 years; or

(b) intellectually disabled persons.

This is a particularly sensitive area for everybody concerned, because it is the issue of minors and disabled persons. Able-bodied, fully competent adults, of course, can make their own decisions about their lives perfectly well, but when it comes to minors or anyone who is disabled, you get a little sensitive about them being exposed to unnecessary risk in the activities they undertake. Of course, minors in particular are attracted to such daft behaviour as jumping off a very high place with a rope attached to their ankle. We have to be concerned about that sort of thing. In the vast majority of submissions made to the inquiry into the bill, comment was made about the applicability of waivers and disclaimers to minors and people with intellectual disabilities. While the common law position with respect to minors does provide protection—and I am sure it is a point that the minister would make—we see no reason why this position should not be enforced and codified within the legislation.

In New South Wales, the Civil Liability Amendment (Personal Responsibility) Act includes amendments relating to recreational activity. Under the provisions of that act, where the defendant is a provider of recreational services the defendant will not be subject to a duty of care to a person who is engaging in recreational activity if a risk warning has been provided to the plaintiff. However, the legislation also states that, if the plaintiff is an 'incapable person', the defendant will only be able to rely on the risk warning in very limited circumstances. 'Incapable person' in that legislation is defined as:

... a person who, because of the person's young age or a physical or mental disability, lacks the capacity to understand the risk warning.

We often talk about plain English law. I think that is pretty plain English. We can understand that one. The New South Wales legislation clearly identifies minors as being a group who will continue to enjoy the full protection of the law of negligence in relation to the provision of recreational services. I think it would be wise to include some of the provisions in the present legislation. Submissions by the Australian Plaintiff Lawyers Association, the Consumer Law Centre of Victoria and the Australian Consumers Association all recommended that children should not be within the scope of this legislation. We think, therefore, this is an appropriate amendment to produce. We must appreciate the power imbalance that exists between consumers and service providers generally, and the added vulnerability of children and people with intellectual and physical disabilities. Waivers should be available only to those who fully understand

the risk that they will be assuming. That is why waivers should only apply to competent adults, since children cannot fully comprehend the seriousness of accepting to waive their rights to sue.

Children are the most vulnerable members of the community, and their rights must be preserved and protected at all times. Since there are no added safeguards with respect to consumer safety outlined in this bill, we must not allow the rights of children to be diminished in any way. This therefore requires the legislation to be absolutely clear about the effects on the rights of children. We appreciate that the courts will of course have a view as to the applicability of contracts applied to children. We are concerned that we affirm the position with respect to children in the legislation and leave no doubt.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.30 p.m.)—This is a very brief comment, because I have addressed some earlier comments to this issue. The New South Wales legislation referred to relates to both contract law and the common law of negligence. As a result, the New South Wales legislation needed to identify minors and their special circumstances. The second point I make is one that I made a little earlier: the provisions in this bill do concern the rights of consumers to sue for breach of a term implied in contracts that the service will be supplied with due care and skill. Any legal proceedings based on a cause of action for breach of contract involving minors and intellectually disabled persons will still allow them to have the ordinary protections that you would expect and, related, their capacity to contract. So for those reasons the government is not attracted to the argument.

Senator LUDWIG (Queensland) (9.31 p.m.)—In respect of the argument that has been progressing in relation to minors, what age does the minister say that a minor cannot contract for a recreational service, that would then exclude them from being able to sue in contract or their guardian from being able to sue in contract on their behalf? My recollection is that a minor cannot normally sue in contract for certain things, but they can sue in contract for basic necessities of life. That may be modified or amended by statute, but that certainly is the case. Perhaps the minister has a better recollection than I do, but I recall that that has been expanded somewhat of late because it is a lot more difficult nowadays to determine the basic necessities of life. That broad definition now can encompass more than what we might consider—more than bread and milk on the table. It might include in some parts recreational activities, particularly once a minor gets past a certain age, but certainly below the age of 18.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.32 p.m.)—Senator Ludwig, rather than speculating, the answer to your question is that contract law varies between states. That is really what would determine the age at which someone can contract. It is not information that I have got to hand from across each state. The answer to your question is that it would vary between states.

Senator LUDWIG (Queensland) (9.33 p.m.)—Given that New South Wales is your home state, you might have that at your fingertips.

Senator Coonan—I do not have it in my back pocket.

Senator LUDWIG—I am surprised your advisers do not have it, because it does have bearing on this. When you look at the amendment by Senator Murray, his argument is that a person under the age of 18, especially for the care and custody of the children, should not really be able to waive a right. Under two parts of your legislation your argument is that they would, (1), not be able to contract because they are a minor but, (2), that it would not apply in any event. But of course you may find that there is a gap in that. That is the part I am trying to ask the minister to explore a little more widely. If a person is a minor, but sufficiently capable to contract, then they are still a minor, and you are taking away their rights. That is the way I see it. That might seem a little more than what a person would expect you to do in these instances.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.34 p.m.)—I now have the definition in the Civil Liability Amendment (Personal Responsibility) Bill to hand, which is the New South Wales position. I am able to tell the Senate that the bill states:

In this section:

incapable person means a person who, because of the person's young age or a physical or mental disability, lacks the capacity to understand the risk warning.

Obviously that is a matter that would vary from person to person and circumstance to circumstance. That is obviously the New South Wales position, but I am certainly not saying that that is the case in every state. I think the fundamental and underlying point is that we are not taking away the rights of minors. They have the right to sue for negligence as provided by state legislation.

Senator LUDWIG (Queensland) (9.35 p.m.)—So if a person were 15 years old—a minor—in New South Wales, they might not be able to sue in tort as a consequence of this legislation; is that the point you are putting? That is the point I am really worried about. There is that grey area when a person is somewhere between 13 and 17 years of age, especially because people mature at different rates, which influences their ability to comprehend notices. That is why we were minded to examine Senator Murray's amendment in a little more detail. That is the grey area that we really do concern ourselves with. We might end up with a young person between 13 and 16 years of age who may not be able to comprehend a notice on a door, whereas I admit that when I was 14 years old I probably did. Not everyone is going to mature at the same rate, and this does not take it into consideration. Perhaps the minister could comment on that.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.37 p.m.)—I would have thought you would have comprehended a notice on a door at a much earlier age than 14. Senator Ludwig, I refer you again to the New South Wales definition. I think your concerns about any grey areas would be addressed by the fact that that young person, person with a disability or person with a difficulty in comprehending could certainly sue in tort. As I do stress, we are not taking away the rights of minors, because they still have the rights to sue for negligence.

Opposition senators interjecting—

Senator LUDWIG (Queensland) (9.37 p.m.)—I promise not to go too much longer; my colleagues are encouraging me to be short. I am a bit late in relation to the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 and I thank the Minister for Revenue and Assistant Treasurer for persevering with me. When you look at the New South Wales legislation, which seems to be the one that the minister has her fingers on, and this bill and you juxtapose them, does the federal bill take away any rights to sue in tort that a person would have in New South Wales as a New South Wales resident? Does that limit their tortious rights in any way?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.38 p.m.)—I am sure I will be corrected if I have not captured this correctly, but I think I have. The whole intent of the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 is to ensure that actions under contract law are not used as an alternative. The amendment is really concerned about the implied warranty. It is not going to limit rights in tort. It is also important to make the point that contract law is a state matter, more generally, in any event. But the intent of this bill is to make sure that actions under contract law are not used as an alternative. So we are really going down that track and we are not limiting the rights to sue in negligence.

Senator LUDWIG (Queensland) (9.39 p.m.)—I thank the Minister for Revenue and Assistant Treasurer for that. It is helpful in the sense that it then becomes a belt and braces approach, as I understand it. But you are trying then to deny the alternative—that is, the contractual path, so to speak, for plaintiffs to pursue. As a consequence, it really comes back to what Senator Murray argued, both for persons under the age of 18 and intellectually disabled people. It becomes very difficult in contract then to be

able to establish whether or not they have the requisite capacity to be able to sue in contract or breach of contract. It becomes very difficult to then determine whether a waiver would be effective or not in terms of a person with a partial intellectual disability as against a person with a severe intellectual disability. That is partly the concern, of course, in terms of what age their comprehension would have to be at for them to accept liability from a notice on a board.

The difficulty we find ourselves in, then, is whether or not the bill would ensure that it did not happen—that is, that the courts would not start overturning this. If that were the case, then you would open up the Pandora's box of liability down these paths. The way that Senator Murray has framed it at least provides a lot more certainty. The concern I have with your argument is that there is a grey area. At least Senator Murray makes the grey area a little bit finer. Although it may not go as far as you would like the legislation to go, it does make it a little clearer. They are all the comments I wish to make.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.41 p.m.)—Thank you for your comments, Senator Ludwig. Whilst the legislation will differ between states, I would have thought that the definition in the New South Wales act would still allow a finding that somebody was incapable because of their young age, physical or mental disability or lack of a capacity to understand the risk warning. And it would certainly not be cutting off every track, or at least cutting off the channel for someone in those circumstances to be able to use an implied warranty, which is really what we are concerned about here. But in no way are we restricting their rights in tort. What we are trying to do, I think, is look at an overall balance. It is quite right for the Senate to be concerned about minors and people with disabilities. It is a very important aspect under consideration in the Trade Practices Amendment (Liability for Recreational Services) Bill 2002. The regime that is provided appropriately deals with the implied warranty provision. But it also allows anyone who is in the grey area or who falls between the stools, so to speak, to still be able to avail themselves of their full suite of rights in tort.

Question agreed to.

Senator MURRAY (Western Australia) (9.43 p.m.)—Last on the list on sheet 2776 revised is amendment (4). I suppose one of the downsides—although that is probably an odd way to express it—of being both a multicultural country and a country which attracts literally millions of visitors for whom English is not a first language is, of course, the need to provide signage and the cost that goes with that signage to inform them as to the nature of activities. When you come from the part of the world I do, you know that there are people from Europe who arrive in an African area, see some wild elephants and get out of the car to feed them buns—then you find bits of them stuck in a tree days later. In other words, because they are not used to elephants in Switzerland and there are not any signs saying 'Do not feed the elephants', bad things result. I assume the same thing can happen to somebody who is not an Australian who comes here.

My proposed amendment seeks to indicate that suppliers supplying recreational services should provide appropriate signage. You have to be careful because, if you go too far with that, they would have to provide signs for every possible thing, and that is patently stupid. So we have attempted to constrain the extent of the requirement by saying that it must be an inherently risky activity. Ideally the risks that consumers should be assuming are those that are inherent to the activity and not those risks that would not be expected in any given activity. We are mindful that the amendment does need to be restrained. You do not need a sign that says, 'Don't walk off the cliff,' because any damn fool should be able to see that that is an inherently risky thing to do. But there are activities which do need proper signage. A recent case—Minister, you would know it better than I—which put some boundaries on how far local authorities can be dragged in terms of litigation was a useful one. Hopefully this is better constrained than it might otherwise have been. I move Democrat amendment (4) on sheet 2776 revised:

(4) Schedule 1, item 1, page 4 (after line 18), at the end of section 68B, add:

(5) Where a corporation supplying recreational services seeks to rely on the operation of this section and the activity is prescribed in the regulations as an inherently risky activity, the waiver, exclusion, restriction or modification must be:

(a) written in plain English or such other language as may be required where a significant proportion of users of the service are non-English speakers; and

(b) explained to the person assuming the risk including to non-English speakers; and

(c) signed by the person assuming the risk.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.46 p.m.)—I do appreciate, Senator Murray, that you have talked about the need to perhaps proscribe a little your amendment. You are quite right to refer to recent High Court authority which has taken a more restrictive view of the rights of public authorities. However, we think that this amendment would establish unreasonably onerous conditions applicable to certain activities. This is because at present many contractual terms are printed on tickets or drawn to the attention of participants in activities by prominent signage. Sometimes there are translations. For example, if an activity such as skiing were to be prescribed as an inherently risky activity and a ski resort wished to rely on a waiver, every single person buying a lift ticket would need to sign that waiver—I made that point a little earlier—and that would then need to be retained. I do concede that what you are trying to do here is very well intentioned, but our view is that the provision is impractical. It would impose very onerous compliance burdens on business.

There is an additional comment that I would like to make, and that is that you would really only be using the Trade Practices Act if it provided a more generous course of action than tort. I do urge senators looking at this bill to keep that in mind. We are only looking at this as an alternative and more profitable route to litigation. You would only use it if in fact you could do better than you would from suing in tort. So people's rights under the common law rule of negligence would be retained.

I want to refer to Senator Conroy's earlier comments about the Victorian position for a moment, because the issue comes up here again. If a state law requires a waiver to be in a prescribed form then the people in that state would need to provide a waiver in that form or they could still be sued in tort in that jurisdiction, even though they may be protected for a breach of a statutory warranty under contract law. The point here is that the Trade Practices Act would not undermine the Victorian requirement to follow a prescribed form. For those reasons, specifically in response to Senator Murray's comments, we are not attracted to this amendment—although I do acknowledge the thoughtfulness behind it.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (9.50 p.m.)—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 (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

Second Reading

Debate resumed.

Senator MACKAY (Tasmania) (9.51 p.m.)—I seek leave to have speeches on the second reading by Senators Denman, Stephens and Buckland incorporated in *Hansard*.

Leave granted.

The speeches read as follows—

Senator Denman

I rise to add my comments to the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

This Bill will affect people on a Temporary Protection Visa, who are granted the Special Benefit payment after 1 January 2003. The current number of TPV holders receiving the Special Benefit payment is 4,262 and these people will not be affected by this legislation unless they need to reapply for the Special Benefit payment after 1 January 2003. This Bill proposes that after 1 January, TPV holders receiving the Special Benefit payment, will be subjected to an 'activity test' and mutual obligation requirements, similar to those that apply to unemployed job seekers on Newstart allowance and Youth allowance.

The Explanatory Memorandum explains that the aim of this Bill is to, 'encourage social and economic participation by treating workforce age holders of TPVs 'in a similar way to Australian nationals of work force age: that is by requiring them to be self-reliant and to fulfil a mutual obligation to the Australian community'.

Currently, Temporary Protection Visa holders are required to submit fortnightly forms showing that they are looking for work, and their payment can be cancelled for failing to submit the fortnightly forms. Under this legislation, additional activities will be necessary such as 'Work for the Dole', requirements to maintain a jobsearch diary, and employer contact certificates. TPV holders will be subjected to the full penalty process including administrative breaching.

On 16 October 2002, in light of concerns including access to English tuition, Centrelink's ability to cater to the special needs of TPV holders, and the high possibility of TPV holders with low English skills being 'breached' by Centrelink; this Bill was referred to the Senate Community Affairs Legislation Committee, of which I am a member, for inquiry and report. A public hearing was held on 14 November. The Committee reported on 2 December 2002. My colleague, Senator Claire Moore and I made some additional comments outlining our concerns on this Bill and these comments are contained in the Labor Minority Report. I would like to thank the Committee members and secretariat for their assistance in meeting the rather tight schedule. The Committee received 52 submissions from various organisations and individuals.

I do want to make a general comment on our welfare system, before I speak specifically about this Bill. Labor supports the principle of 'mutual obligation'; we consider that it is fair and reasonable to ask unemployed people to participate in an activity such as job search, that will improve their job opportunities and make a contribution to their community, in return for financial support. However, bearing in mind the circumstances of TPV holders, any mutual obligation activity must be framed for clients of; no or low English skills, of a low financial position, and with sensitivity to the fact that they are not likely to have a social network established.

The principle of 'mutual obligation' is not in dispute, in fact I think it is important to remember in this discussion that people on TPV's want to work, they want to be financially independent, and make a contribution to their community. At the public hearing on this Bill, the Refugee Council of Australia commented, 'refugees have a very strong desire to work but people on temporary protection visas have multiple obstacles to gaining access to the workplace'.[1] And this brings us to the inadequacies in this Bill.

During the inquiry into this Bill, it was clear from evidence given to the Committee that TPV holders are not treated in a similar manner to Australian nationals. TPV holders receiving the Special Benefit Payment are subject to harsh restrictions. For instance, if free accommodation is given to a TPV holder by an agency or member of the community, their Special Benefit Payment is reduced to two-thirds of the rate of the Youth Allowance or New Start Allowance. Also, their Special Benefit Payment is reduced dollar-for-dollar for any paid work they may undertake, making the Special Benefit Payment the only income test that has no income free area or taper. These kinds of restrictions make it extremely difficult for TPV holders to 'get ahead', or establish a less stressful lifestyle.

The central theme of many of the submissions including: the National Welfare Rights Network, the Australian Council of Social Service, the Human Rights and Equal Opportunity Commission, and the Refugee Council of Australia was not an objection to the principle of 'activity testing', but rather that, Temporary Protection Visa holders are not treated in a manner that provides them with the necessary support and assistance to realistically meet their obligations, as outlined in this legislation. Support and assistance, that is currently made available to Permanent Protection Visa holders.

Unless adequate support and assistance is provided to TPV holders to meet their obligations, the Labor Party considers that this Bill is significantly lacking.

At this point, I would like to note that a recent Queensland government report into TPV holders found that the lack of settlement services provided, helped contribute to 'social isolation' and

'significant mental health difficulties' amongst visa holders. [2]

Before I speak about our concerns with this Bill I do want to acknowledge two praiseworthy initiatives contained in this Bill—English tuition and better access to education.

The National Council of Churches estimates that 90 per cent of people on a Temporary Protection Visa are from Iraq and Afghanistan.[3] When queried at the public hearing, DIMIA were unable to provide figures on the number of TPV holders who are able to speak some level of English—although other submissions suggested they are likely to have 'limited or non-existent English language skills'.

A constant theme of many submissions and at the public hearing, was how essential English tuition was to TPV holders satisfying an 'activity test' and their mutual obligation requirements. Being able to understand and speak English is vital to initially finding work; to being able to challenge any penalty or breach; to being able to protest to sub-standard wages and conditions, and also to ensuring that they are not penalised for declining inappropriate work.

The Labor Party is very pleased that the legislation addresses this critical issue. Currently, TPV holders are denied accessed to DIMIA's English courses because apparently these English courses are part of the settlement program geared towards permanent entrants—which TPV holders are not. However, this legislation very importantly provides for specific access to the Department of Education, Science and Training's English training. Information provided as a response to a question on notice to the Committee compared this English to the DIMIA program. The proposal appears effective and 'designed to help remove a major barrier to employment or pursuit of further education and training.' English training will now be able to form a vital part of 'activity agreements'. This does not entirely satisfy the observation, already made by my colleague, Senator Mark Bishop, over the ability for TPV holders with poor or no English language skills to initially enter into 'activity agreements'.

The other good news in this legislation is that it provides for access to tertiary education. Under this legislation it will now be possible for TPV holders to undertake full time study without losing their entitlement to the Special Benefit Payment. As TPV holders are not permanent residents they do not have access to HECS, so they would need to have the funds to be able to pay the full fees for overseas students; which given their situation is unlikely. So while the issue of access to education is addressed in this Bill, in reality the financial barrier will probably continue to prevent TPV holders gaining education.

I now want to move on to our concerns with this Bill.

A number of submissions commented on an inadequacy of this Bill being that TPV holders will not be given access to the Job Network Service, 'Intensive Assistance'; one of the very programs designed to assist disadvantaged job seekers. This service provides one-on-one support to assist individuals 'get and keep a job'. While TPV holders are denied access to the 'Intensive Assistance', they are given access to the job matching service—which is a list of job vacancies on display in English in the Centrelink and JobNetwork agencies. The job matching service requires that TPV holders are able to read English and are confident using touchscreen technology. These are big presumptions, and neglect to take into account the vulnerable position of TPV holders. The Labor Party considers access to the Job Network Intensive Assistance would be a more practical arrangement to assist TPV holders find a job.

As the name suggests, the Temporary Protection Visa is intended to be temporary. The visa entitles the holder to stay in Australia for a period of 30 months. At the end of the 30 months 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. However, experience shows that some people do remain on the TPV for longer than 30 months. To be granted a TPV, a person must have been found to have fled their home because of persecution. If they have not been able to prove that, they would not have been granted a TPV. These are genuine refugees.

It is difficult for a TPV holder once released from detention to establish themselves and their families, let alone navigate our social security system with limited support and assistance. In its submission, the National Council of Churches in Australia commented:

> 'More alarming is the way they are 'released' from detention with little money or support. After being locked up, often for years, in remote camps at Port Hedland, Curtin and Woomera, TPV refugees from Iraq and Afghanistan are bussed thousands of kilometres and then virtually abandoned in the cities, a practise that is extremely disorientating and stressful :[4]

The National Council of Churches in Australia also stated that 80 per cent of refugees have been the victims of torture or trauma.[5] It is likely these

are people who have probably had unpleasant experiences with bureaucracies in their own countries—to say the least. They are new to Australia, and not familiar with how our agencies work. Yet despite their disadvantaged position, TPV holders will be subjected to the full impact of the administrative breaches and penalties for not complying with an 'activity test'. One of the ironies of this Bill is that one of the defences to being 'breached' by Centrelink for not complying with an activity test is that you should have a reasonable reason. However, ACOSS commented that TPV holders suffering from torture and trauma are unlikely to open up and talk about their traumatic experiences.[6] It is likely they do not have the skills to convey to Centrelink staff a reason such as stress suffered from they trauma and torture that may have prevented them from being able to attend an interview or satisfy their activity agreement. Labor does have concerns about applying penalties to a group of people who are already deeply traumatised and disadvantaged.

The Labor Party considers that we cannot have it both ways. If we want to apply an 'activity test' to the Special Benefit Payment for TPV holders, then we must make the process fair. It makes sense to provide the necessary support and assistance to TPV holders—these are people who want to work but face significant difficulties when finding a job. Without assistance, they will remain trapped on welfare. We cannot say that we will treat TPV holders in a similar manner to Australian nationals without taking into account the vulnerable position of TPV holders. We must acknowledge that TPV holders need assistance to place them closer to the 'starting mark'. The provision of English tuition and allowing access to education are praiseworthy initiatives in this Bill. However, the Labor Party notes the major concern by welfare groups of extending the full penalty process including administrative breaching to TPV holders. Also, while this Bill proposes to treat TPV holders the same as Australians on Newstart or the Youth Allowance; the Special Benefit Payment is a lesser financial payment than either Newstart or Youth Allowance. TPV holders are also not given the support made available under the Jobsearch Intensive Assistance program. The Labor Party is moving amendments to this Bill which address these inadequacies, and ensure Special Benefit recipients are treated fairly—our support for this Bill is contingent on the success of these amendments.

[1] Committee Hansard, 14 November 2002, p. 8

[2] Mann, Renae, 2002: Temporary Protection Visa Holders in Queensland, Dept of Multicultural Affairs

[3] Sub. No. 36, p.3

[4] Sub. No. 36, p.4

[5] Sub. No. 36, p.4

[6] Committee Hansard, 14 November 2002, p. 5

Senator Stephens

Mr President, this is an important piece of legislation for Temporary Protection Visa holders who are in a unique and difficult situation. They are unsure of how long they will be able to stay in Australia, and they are not eligible for family reunion. By definition, they are fleeing persecution, and many have suffered torture or trauma. Often they have little English, and what job qualifications they do have may not be recognised here. They do not want to live off government handouts, but experience considerable obstacles to building a life and career for themselves when they know their family may not join them here, and they may be repatriated in 3 years time.

This group is at a significant disadvantage to other humanitarian visa holders. TPV holders are provided with Special Benefit and access to family assistance, but are not entitled to any of the range of special settlement services that are provided to people granted permanent humanitarian visas or who enter Australia with a visa and subsequently apply for asylum. TPV holders 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. They also have no right to family reunion.

If these people are to participate actively in our communities, they are going to need some help. The alternative is welfare dependence, systemic poverty and social isolation. Concerns have been raised by many groups about the creation of an 'underclass' of TPV holders, who are highly dependent on volunteer and community welfare, and who have few means of participating in Australian society. This is not a good outcome for Australia, and not a good outcome for those who come here seeking asylum.

There is conflict at the heart of this government's policy regarding Temporary Protection Visas. In providing the vast majority of them with no stability for the future, with no hope of ever settling their families here and little access to settlement services, this policy has made it very difficult for TPV holders to support themselves. At the same time the government does not want to live up to

its responsibilities and foot the bill to support them.

Under Labor, Temporary Protection Visas would be a truly short term measure. When the TPV expires, the conditions in the person's source country will be re-assessed. If matters have not changed, the person will be granted a permanent protection visa, with full access to family reunion rights. While on the TPV, people will also be entitled to access the full range of job network services, as well as English language classes. Unlike the Howard government, Labor will provide people assessed to be refugees with the transparency of process, and settlement support, that they need to begin rebuilding their lives.

The aim of this Bill, according to the government, is to encourage social and economic participation by nominated visa holders. This is a valid and important aim. In order to achieve it, however, the mutual obligation framework must also provide TPV holders with the opportunities to successfully gain employment. As it stands, this Bill will subject TPV holders to activity testing without giving them the assistance they will need to fulfil it. If this bill is to really help TPV holders to enter the workforce, it must grant them access to intensive employment assistance.

It is unfair to require mutual obligation whilst denying access to services that may be necessary for full participation in the job market, particularly full Job Network services. These services are available to others who are subject to such mutual obligation—without providing them to Temporary Protection Holders on a special benefit, we are further disadvantaging an already disadvantaged group.

These measures were part of the Unauthorised Arrivals in Australia Package in the 2000-2001 Budget, and were aimed at reducing the incentives for unauthorised arrivals.

Special Benefit is different from other benefits, as its guidelines are not set out in the Social Security Act but approved by the Secretary—as such, it is relatively discretionary, compared to other benefits under the SSA, as it aims to allow flexibility of provision, to recognise the different circumstances of those who do not otherwise qualify for payments under the SSA but are suffering hardship and in need.

For the first time, a significant amount of detail about the payment conditions attached to the provision of Special Benefit is being placed into the SSA. Provision of payments will be far less at risk of challenge or variance by courts or tribunals if it is supported by legislation, as opposed to guidelines attached to legislation.

Currently, Special Benefit recipients are required to look for work but do not have to meet additional requirements, such as completing job search diaries and employer contact certificates and participating in mutual obligation programs such as work for the dole.

This legislation will involve a more complex administrative system, with a higher level of interaction between Centrelink and its clients, involving those on Special Benefit in similar mutual obligation frameworks as apply to those on the Newstart allowance.

There are serious concerns regarding the ability of nominated Special Benefit recipients to comply with activity agreements, considering likely language barriers, the settlement challenges faced by TPV holders, and the frequent mobility of this group. These restrictions must lead us to question whether this bill is really going to be successful at increasing social and economic participation of this group of visa holders.

Many people in this group are severely disadvantaged in the job market, which means that if the government wants them to participate, it must take measures to support them to gain the requisite skills. If it does not, the only real objective of this bill will be punitive. These people will be set up to fail.

What we are beginning to see with this bill and the proposal to force those on disability pensions onto Newstart is a mutual obligation framework where the government is expecting more from the most disadvantaged people, whilst offering them less support. It is not helping people to be self-sufficient or build capacity, and it is not addressing the root causes of poverty.

Mutual obligation works well in a level playing field. TPV holders are, however, seriously disadvantaged compared to others who are subjected to the same level of activity testing, such as those on Newstart.

A more sensible approach would be one which aims to increase the self-sufficiency of TPV holders in the community, to help them gain jobs and participate on a more equal level. A recent study into TPV in the Queensland community recommends exploring a capacity-building approach to service delivery. The report also found that:

'the current model of service delivery was, of necessity, welfare based and that service providers needed to move to a community development approach to engender TPV entrants' self-sufficiency within the community ... Developing the capacity of TPV entrants as individuals and as a group to cope with TPV settlement demands is a key task. TPV entrants require an opportunity to

organise themselves and to have a voice or a structure that works alongside service providers.'

The two key obstacles to self-sufficiency among TVP holders at the moment are the lack of involvement in the workforce and, of course linked to this, poor English skills.

TPV holders cannot access free English classes through the Adult Migrant English Program if they do not have the functional English required in pretty much every workplace in Australia. Under this framework, they will for the first time have access to free English classes provided by the department of Education, Science and Training.

The Queensland study found that 'the denial of English language tuition by the Commonwealth was a major barrier to TPV entrants' participation in society and was likely to cause people to remain dependant of welfare.' It also found that 'the capacity of TPV entrants to obtain employment was severely affected by their lack of English language skills and the Commonwealth's denial of employment assistance.'

There are already strong incentives for TPV holders to participate in the workforce. As the Refugee Council notes: They want to feel that they are making a contribution; employment gives them status in the community; they need the income to support family members overseas. By all indications finding work is the highest priority for them—there are however multiple obstacles to them doing so.

Approximately 90% of TPV holders are either Afghan or Iraqi. Iraqi asylum seeker are typically highly educated people who have run into problems as a result of their opposition to the regime in Iraq because of their employment, eg doctors, lawyers, academics, politicians, scientists, etc. Skills recognition is difficult, however, without a high level of English language competence, and so in many cases the skills and knowledge of TPV holders are going to waste. TPV holders are also not eligible for the National Office of Overseas Skills Recognition loan scheme, which supports bridging training for overseas trained professionals.

For Afghan TPV holders, intensive employment assistance is particularly necessary, as the majority of this group have come from rural backgrounds and have little formal education.

The process of gaining employment in Australia is in no way simple; this legislation opens the way for TPV holders to be breached because they are not given a chance to participate. For example, TPV holders are not eligible for Job Search training, which helps with application writing and interview skills. They are not eligible for Intensive Assistance, which is targeted one-on-one help for those who are likely to experience difficulty in getting a job. This can include vocational training, work experience, language and literacy training, help in job search techniques and support after finding a job. This is exactly the kind of assistance that would best help a TPV holder to enter the workplace. The job matching that they are eligible for is both insufficient and inappropriate, as it is simply a 'billboard' style of job assistance, a list of vacancies—in English.

The Refugee Council of Australia argues that the lack of promised safety nets, like Job searching assistance, is a serious concern. As their submission to the Community Affairs Legislation Committee inquiry into the bill states;

'Because of their limited English skills, unfamiliarity with the Australian environment and other factors disadvantaging them in securing employment, significant numbers of TPV holders will not be able to comply with the complex mutual obligation requirements. Consequently they will be breached, in other words, lose their sole source of income. Unlike people established in the community, they have neither savings to fall back on nor a network of family and friends from whom to seek help.'

The risk of unintended breaches is particularly high considering the documented mobility of TPV holders as a group. The Community Affairs Committee, in its minority report, notes that:

'the Department provided evidence of support services available to TPV holders... however we share the concern about extending a penalty based system to people who are refugees and already affected by significant residential and financial restrictions.'

Margaret Piper, head of the Council, has also expressed concern that if this legislation were to pass unamended, the high number of TPV holders being breached could be used by a Minister or other politician to suggest that the refugees are of bad character and are undesirable people to have in this country. We have already seen enough vilification of refugees from this government.

There are also questions as to the administration of the measures outlined in this legislation.

There are limited safeguards in the bill, to ensure that people are not unfairly breached. Centrelink has recently reviewed its complaints handling procedures, but as was clear from the Commonwealth Ombudsman's report this year, people have not in the past been given sufficient opportunity to show reasonable cause as to why they have not met obligations; and have thus been

breached unfairly. As TPV holders are a group who will be particularly vulnerable to unintended breaches, we need to know that the process will be fair.

It is also difficult to know how Centrelink will be able to effectively formulate and police activity agreements, particularly considering that the vast majority of TPV holders live in small areas of Melbourne and Sydney. The pressure will be on a few Centrelink offices.

There was a considerable delay in putting these measures into place. They were announced in the 2000-01 budget, reannounced in 2001-02 budget, and are to commence 1 Jan 2003. This delay is probably due to detailed and complex arrangements necessary for the involvement of non-legal resident TPV holders in all of the activities and programs they could be potentially exposed to under activity testing and mutual obligation.

TPV holders tend to settle in large centres, Melbourne and Sydney. Concerns have been raised about the unwillingness of such people to settle in regional areas. A large part of this unwillingness is due to the lack of support services. TPV holders depend almost entirely on church and community groups—the support services that have developed, in the absence of government assistance, are based in the cities.

One concern raised by the Community Affairs committee when considering this Bill was in regards to the perilous financial situation of those on Special Benefit, particularly considering the high effective marginal tax rate they are subject to. The National Welfare Rights network and ACOSS note in their submission the income testing arrangements for Special Benefit:

'Any amount or earnings is directly deducted from entitlements with no free areas applying. This means that a Special Benefit recipient, who earns $50, has $50 deducted from their fortnightly Special Benefit entitlement. As the deduction is the amount of gross rather than net income, this means that the Special Benefit income test is the only income test that not only has no income free area or taper, but is also unique in that it leaves a person with earnings worse off financially than if they relied totally on the benefit payment.'

Clearly such a high EMRT poses another difficulty for people on very limited benefits trying to enter the workforce.

The committee also notes that this mutual obligation framework will allow TPV holders for the first time to continue accessing the Special benefit whilst carrying out full-time study. This is an important gain—but it is also worth noting significant challenges to TPV holders accessing fully time study, as they are not eligible for HECS and are required to pay full fees as overseas students. This is well beyond the financial reach of most TPV holders.

TPV holders are a bit of a conundrum for this government. The government does not appear to want them to stay here, but does not want to have to support them financially. The Government want them to be able to participate in the community only in so far as they can start to pay for themselves. In this, the government shows a lack of understanding as to the desire of TPV holders, who are refugees and have fled persecution, for some stability, and some sense of a future.

TPVs are acting not as a deterrent but as a push factor due to lack of right to family reunion. This has effectively created a subclass of people with uncertain status, who cannot make a life for themselves in Australia. The loss of social networks and separation from family are factors that compound psychological trauma experienced by many who arrive here as refugees.

By not allowing them to settle and bring their families, and providing limited assistance to them while they are here, the government is creating a situation whereby TPV holders have no choice but to be welfare dependant. It is denying them the opportunity to participate in and contribute to our nation, and it is denying Australians the benefits of their contribution.

The aim of this bill is a valid one. If it is amended to provide TPV holders with access to the services they need to participate fully in the workforce, it will be in a better position to achieve its aim. If the government wants to seriously enable TPV holders to participate in the Australian community, however, it should follow the leadership of the Labor party on this issue and abolish the system of rolling Temporary Visas, and really give these people the opportunity to rebuild their lives.

Senator Buckland

I rise to speak today on the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

The rationale behind this bill is to incorporate into the Social Security Act 1991 (SSA) the activity test and mutual obligation requirements, that are currently applicable for unemployed jobseekers on newstart allowance (NSA) and youth allowance (YA).

The key aim for doing this is so that it can also include specified Special Benefits (SpB) recipients.

Those SpB recipients that are accountable to the activity testing and mutual obligation requirements are the ones that possess a Temporary Protection Visa (TPV) issued for temporary protection, humanitarian or safe haven purposes.

This measure was part of the 2000-2001 Budget. That was three budgets since the Government announced a package to address the issue of unauthorised arrivals in Australia. It is evident to all that it has been quite some time since this bill was last in the limelight.

This particular Bill gives a legislative outcome for one of those measures outlined in the Government's 2000-2001 Budget.

As it stands, from 1 January 2003, specified recipients of special benefits who have a visa, of a type that has been issued for temporary protection, humanitarian or safe haven purposes will be subject to an activity test regulation that is comparable to the one that is currently in existence for the newstart allowance. This notion is not new.

The process will involve the new special benefit activity test, for nominated visa holders a mandatory requirement to search for work, participate in vocational training, participate in Work for the Dole programs and other prescribed activities. They will also be required to enter in to a Special Benefit Activity Agreement. Additionally they will be answerable to compliance testing, including fortnightly reporting requirements, and subject to penalties for non-compliance with the activity test or with the terms of their Special Benefit Activity Agreement.

Labor has been concerned that the Government, through this particular bill, will fail to provide the necessary mutual obligations criteria for this group of job seekers. This will occur by not providing the appropriate assistance and support to ensure recipients make a successful transition to work.

Labor's concerns have been noteworthy and properly founded. Our concern that this group of special benefit recipients, subject to the changes outlined in this bill, could possibly be denied access to English Language tuition as well as a full range of job network services is valid.

It would not be uncommon for a lot of these recipients to have minimal or no language skills, which would be a necessity to satisfy the obligations placed upon them.

The Bill was referred to the Senate Community Affairs Committee, in order to scrutinize a range of concerns surrounding this issue.

These concerns in addition to what I have already referred to included access to Job Network Services and Centrelink's ability to effectively impart the essential information required by TPV holders to assist them with their obligations for their activity testing requirements. The ability of TPV holders with poor language skills to fulfil their obligations under the activity test requirements makes them vulnerable to situations that place them at risk of incurring an activity test breach.

Accessibility to English Language tuition must be seen as a Government obligation.

During the course of the Senate Committees Inquiry, over 50 submissions were lodged for deliberation on this bill.

As the Committee progressed, it was further outlined that TPV holders receiving Special Benefits, currently subject to a range of activity test requirements, would under the new changes proposed be required to do additional activities such as Work for the Dole and be obliged to maintain a jobseeker diary and employer contact certificates.

Labor's concern that the mutual obligation requirements of special benefits recipients did not compare or balance out to the existing arrangements was addressed through this hearing.

The fact is that TPV holders were denied access to DIMA/ AMEP English Language Tuition. A very valid concern.

It would therefore come as no surprise those TPV holders without language skills on special benefits struggle with activity testing requirements such as jobseeker diaries. Particularly as these diaries are in English.

It was for this reason that the Government has had to clearly outline the measures they would take to fulfil their responsibilities, not only to the recipient but also to the taxpayer, in order to provide appropriate and effective assistance.

If the Government's aim is to make these recipients self-sufficient then it is only logical that they should be providing them with the necessary assistance, especially with language and literacy tuition.

It was, however, noted during the committee hearing that TPV holders subject to the requirements contained in this Bill would have access to language training. This was very reassuring.

It was further mentioned that language training would be provided by the Department of Education, Science and Training's Language, Literacy and Numeracy Programme (LLNP) rather than through the DIMIA program.

LLNP would provide basic English language, literacy and numeracy training for eligible job seekers whose skills are below the level considered necessary to secure sustainable employment.

LLNP would also be able to provide advanced English language training in order to remove major barriers to the employment and/or the quest for further education or training.

The criteria allowed recipients with any skills below National Reporting System (NRS) Level 3 to be eligible for assistance.

It was also expressed during the Senate Committee that the LLNP program would be a central part of most TPV holder's activity agreements.

Labor is still concerned as to how those with marginal language skills will manage to negotiate their activity requirements.

This is the issue that is at the centre of Labor's amendments. In summary they seek to limit mutual obligation activities to the English language course itself until such a time as the special benefit recipient could be reasonably expected to fulfil additional activities.

This is a serious issue and motivation behind our insisting on these amendments for the Bill to pass.

It is also important to take into consideration that the measures will only apply to TPV holders granted Special Benefits after 1 January 2003. In saying this, 4262 TPV holders who currently receive SpB will be unaffected by the changes in this bill.

Those TPV holders who could lose access to Special Benefits through, for example, earnings made from working and who then reapply for Special Benefits after 1st January 2003 may be affected.

Another concern I have is that TPV holders will have access to Job Matching only from the Job Network.

Labor believes the government should provide full access. The reason they don't provide full access needs to be addressed.

As the Bill currently stands it does not match obligations with supports.

The Government says that the group affected by this Bill should be treated the same as any other job seeker.

If this is to be the case then why do they not have access to the full range of job network services?

In assisting all people on benefits, the primary aim of government should be to get them into the labour market as soon as possible.

Mutual obligation should be precisely that, a two way street.

If the situation remains as it is, people will stay trapped on welfare benefits.

As it stands, Labor will be moving amendments to this Bill to ensure that Special Benefit Recipients are treated fairly. Labor will support this bill on the proviso that the amendments are successful.

Senator NETTLE (New South Wales) (9.51 p.m.)—I rise to speak on the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. This bill imposes additional activity test requirements on people holding temporary protection visas who are receiving special benefit, a safety net income support payment. The government argues that the legislation is designed:

> ... to encourage social and economic participation by treating work force age holders of visas issued for temporary protection, humanitarian or safe haven purposes in a similar way to Australian nationals of work force age ...

It says that these people will be required to be self-reliant and to fulfil a mutual obligation to the Australian community. These arguments are clearly absurd. On the one hand, the government refuses to grant these people, who have been assessed as having a well-founded fear of persecution if returned to their homeland, permanent protection in Australia and access to certain services, like English language tuition. On the other hand, it wants to insist that they fulfil a mutual obligation to the Australian community.

The Australian Greens oppose the use of temporary protection visas to offer a lesser form of protection to some refugees compared with others, simply on the basis of how they arrive in this country. They are not offered permanent protection. They are not permitted to sponsor relatives, including children and spouses. They have no right of automatic return to Australia if they leave the country temporarily. They are not permitted access to most of the settlement services provided by the Commonwealth government. It is disingenuous to argue that holders of temporary protection visas have some kind of duty to the community in the absence of a commitment from the community to facilitate their settlement and provide ongoing protection. How does the government expect the parliament to take seriously its assertion that these measures will assist people to be self-reliant when it refuses to give them any

certainty about their fate? In any event, the Australian Greens oppose compelling people to undertake activities in return for income support, although we do support assistance to help people find paid work.

The measures in this bill were announced in the 2000-01 budget in the context of a package designed to discourage what the government likes to describe as unauthorised arrivals. The measures were proposed to commence almost two years ago. Given the context in which the measures were announced and the delay in bringing forward the bill, we wonder whether the government is interested in this bill or just looking for another opportunity to put a wedge between the Australian public and people in need of refuge, as it has done for years. Our suspicions are further supported by the statement in the 2001-02 budget papers that the measures would reinforce community support for the humanitarian immigration program and the treatment of refugees. Is the government suggesting that Australians will support the rights of asylum seekers only if they participate in a punitive mutual obligation program? Instead of pandering to intolerance and ignorance about refugees, the government ought to be explaining to the community why refugees leave their homeland and why it is right and proper for Australia to provide durable solutions for people in these circumstances.

Special benefit was designed as a safety net payment to be issued at the discretion of the secretary for people in need and who did not qualify for another form of income support payment. There are currently around 8,800 temporary protection visa holders—just over half of whom are receiving special benefits. These people are ineligible for any other form of assistance because of their temporary migration status. People of working age who are capable of working and receiving special benefit are currently required to look for work, register with Job Network and report that they have made four contacts in search of work each fortnight. This includes temporary protection visa holders. People obliged to meet these requirements are not subject to fines.

This bill proposes to extend the flawed mutual obligation system, the work activity test, administrative requirements and fines, and the breaching regime. This may cause hardship to thousands of Australians. The government seems determined to ignore calls to reduce the harshness of the breaching system, having rejected so many of the recommendations of the independent Pearce review into the breaching system—despite the overwhelming support for the recommendations in the community sector. While the bill proposes to apply to anyone who obtains a temporary protection visa after 1 January next year, the Senate Community Affairs Legislation Committee inquiry into this bill was told that, if someone obtained work for a short period, they would be subject to these provisions if they reapplied for special benefit at the expiration of their work contract. Conversely, the proposal to extend language training to temporary protection visa holders will apply only to those people who commence or recommence receipt of special benefit after 1 January next year.

This bill might appear, on its face, to standardise work activity requirements, just as the government is seeking to extend the activity test and fines to older unemployed people and sole parents—a proposal with which the Australian Greens strongly disagree. Even if one accepts that this is reasonable—and the Australian Greens do not—it is preposterous to suggest that this bill is fair. The terms of the special benefit payment are substantially less favourable than those of Newstart or Youth Allowance. People in receipt of special benefit can be paid less than those in receipt of Newstart—the payment being subject to the discretion of the secretary of the department. There is no free allowance—an amount of income that may be earned without losing any proportion of the benefit—and the benefit is withdrawn at a faster rate. For each dollar earned, the special benefit recipient loses $1 of their benefit, while for someone receiving Newstart the withdrawal rate is half of this.

The applicability of the activity test for temporary protection visa holders is also questionable because of the temporary nature of their immigration status. Most of the cur-

rent holders of temporary protection visas are from Iraq and Afghanistan. Numerous community groups have expressed concern that language will be a major barrier to these people seeking and securing paid work. The Australian Greens would agree with this. The Department of Family and Community Services told the Senate inquiry that Centrelink will ensure that activity agreements made under this legislation are appropriate for the client's circumstances. We are talking about people with limited English language skills who have experienced traumatic events, possibly even torture, and who are unlikely to be assertive about exercising their right to a flexible activity test or their appeal rights, should they be breached.

The government has not been concerned enough to offer people holding a temporary protection visa access to the same level of English language tuition as other people deemed to be refugees. The committee was told that temporary protection visa holders will, under this bill, be offered the opportunity to participate in the language, literacy and numeracy program and that this will be the preferred activity option in many cases under the activity test this bill imposes.

The language, literacy and numeracy program provides 400 hours of tuition with the opportunity to have a further 400 hours, but it is focused on finding work, not on the full range of settlement needs. Community workers have expressed concern that the program is not tailored to the special needs of these refugees, in contrast to the program that the Department of Immigration and Multicultural and Indigenous Affairs funds and operates. Refugees granted permanent protection in Australia are entitled to 510 hours of tuition under the Adult Migrant English Program, which the government treats as a settlement service. As temporary protection visa holders are not entitled to settlement services, they are not entitled to tuition under the Adult Migrant English Program.

This simply illustrates the unfair treatment of temporary protection visa holders. They ought to have access to settlement services, including English language tuition, by virtue of their assessment as refugees, not as a condition of receiving modest income while Australia provides temporary protection and they wait for three years to learn if they will be granted permanent protection. Of course, under a further tightening of immigration law, those who arrived after September last year will be denied access to permanent protection at the expiration of their temporary protection visa if they spent as little as a week in a third country in which the Australian government assesses that they could have sought protection.

Under the guise of bringing temporary protection visa holders into line with other people of work force age required to work for their income support, the government is further entrenching its unfair treatment of temporary protection visa holders. For example, the bill permits temporary protection visa holders to continue to receive special benefit while undertaking full-time study, but it continues to require them to pay full fees, unlike refugees offered permanent protection, who are treated like Australian citizens for the purposes of tertiary education fees. People in receipt of special benefit who are not temporary protection visa holders will be treated more favourably than temporary protection visa holders in terms of the requirements imposed on them if this legislation is passed, including having their payments withdrawn if they fail to meet activity test requirements.

The Commonwealth Ombudsman, who has examined the social security breaching regime and receives complaints about the way it operates, has described the obligations imposed under the existing breaching regime as complex and considers that the risk of being fined for not fully understanding those obligations could be greater for people with language and cultural barriers. The Refugee Council of Australia has identified a number of other obstacles to temporary protection visa holders looking for and obtaining paid work, including the lack of local work experience and referees, the understanding of the Australian workplace and a lack of recognition for their skills, educational qualifications and experience.

There is nothing in this legislation to indicate that the government proposes to address

these matters. On the contrary, the government's half-heartedness about this measure was laid bare in evidence that the Department of Employment and Workplace Relations gave to the Senate inquiry into this bill. Asked about temporary protection visa holders not having access to intensive job searching assistance, a departmental officer responded:

> ... the policy judgment has been that, given the uncertain period of time for which these people will be in Australia, it is not appropriate to provide access to the more thoroughgoing and expensive intensive assistance regime.

The Refugee Council also notes that, unlike other members of the community who are established, temporary protection visa holders do not have savings to fall back on if they are fined or a network of family and friends to help them. This means they will be further at risk of experiencing hardship if their payments are withdrawn.

There is no exemption period from the activity test proposed to acknowledge that temporary protection visa holders need time to establish themselves in the community. The more onerous activity test would apply immediately upon being released from detention and granted special benefit. This is in contrast with the current 13-week exemption for refugees who are granted permanent protection. This is a serious anomaly. Temporary protection visa holders face the same demands after being released from detention, such as finding secure accommodation, without which they run the risk of having mail from Centrelink go astray, which could result in them being fined; learning how to manage the day-to-day activities in a strange place and unfamiliar culture; and dealing with trauma associated with their experiences that caused them to seek asylum outside their home country.

The Acting Race Discrimination Commissioner, Dr Bill Jonas, has expressed serious concerns about this bill. He told the committee inquiry that the failure to provide the same level of settlement services to holders of temporary protection visas could lead to significant long-term difficulties for them. He also said that the bill might contribute to the further marginalisation of this already disadvantaged group, exposing these people to even greater hardship and discrimination and possibly breaching the Commonwealth Racial Discrimination Act. We agree with Dr Jonas's view that genuine mutuality would entail providing temporary protection visa holders with the kinds of settlement services currently denied to them.

The measures in this bill and the government's general approach to asylum seekers who do not arrive with valid visas on an aeroplane contrast sharply with the government's proposal to permit families to buy temporary or permanent settlement for their parents. There are 22,200 parents seeking to migrate to Australia, with just 500 places available in the current migration program. The government has decided to expand this by 4,000. But most of the new places—indeed, 3,500 of them—will go to people who can afford to outlay around $40,000 for each adult seeking to migrate.

The Minister for Immigration and Multicultural and Indigenous Affairs argues that the high fees are designed to safeguard the public interest because older people can become a drain on the Australian health and welfare system. He described this sum of money as a fair contribution to these costs and said that during community consultations people indicated they were willing to make a fair contribution to the costs associated with the migration to Australia of their parents. How many of these 22,200 families will be able to find this amount of money, particularly as they struggle with a regressive goods and services tax and the funding of services that this government has decided are no longer the province of the state to provide? Family reunion is an important part of Australia's migration program, and the Australian Greens support the expansion of family reunion migration. Imposing these sorts of fees on people seeking to bring a parent to settle in Australia is unreasonable.

The Australian Greens will not support the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. We will support amendments that improve the bill but we will not support the legislation, because it entrenches a discriminatory refugee policy and extends a flawed

and harsh system of mutual obligation to one of the most vulnerable groups within our society.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.08 p.m.)—I will speak briefly on the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. I believe the bill is important and I think it is appropriate as Leader of the Democrats that I emphasise the concerns of the Democrats about the bill and that they be put on the record. The bill relates not so much to the activity test but to extending—

Senator Sandy Macdonald interjecting—

Senator BARTLETT—I beg your pardon?

The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator Bartlett, address the chair.

Senator BARTLETT—The bill extends not so much the activity test regime but, more importantly, the breaching regime to people who are on temporary protection visas. In our view, this is completely unacceptable. The Democrats have a longstanding policy of opposition to temporary protection visas. Indeed, it was the Democrats who moved in this chamber to prevent the introduction of temporary protection visas in September 1999. It is a matter of ongoing frustration and sadness that we were unable to get support from the Labor Party at that time. We now have many thousands of people in the Australian community—refugees—who are on temporary protection visas. Temporary protection visas are anti family: they keep families separated. They are also a clear form of discrimination against people who are part of the Australian community—a group of people who have been acknowledged and assessed as refugees, who are treated differently and who are given fewer rights than others in the Australian community.

This bill, in a way, re-emphasises that. The only payment that these refugees are eligible for is special benefit, unlike any other person who gets a long-term visa—what used to be a permanent settlement visa—and who has access to other payments. They also do not get access to settlement assistance because—using the wonderful twistings of the English language that the immigration department is so good at—even though they are refugees and we have given them a visa to stay here for three years, they are not settling. Of course they cannot settle because they are not allowed to as they only have a temporary visa. The facts show that the people who are the quickest to take up citizenship, something that I think all of us encourage in people who move to this country, are refugees. As soon as they have that opportunity to become citizens they do so much more quickly than people who come on business or skilled migration visas, and also more quickly than general family reunion visas. The temporary protection visa actually prevents people from settling in Australia and from contributing to Australia; it leaves them literally unsettled for a long period of time. Indeed, under the new temporary protection visa regime that was passed through this chamber in September last year, it leaves them unsettled permanently because their temporary visa can only be renewed with another temporary visa.

So the Democrats believe that strong emphasis needs to be given by all parties and by all in the community to recognising the need to abolish the incredibly unfair and destructive temporary protection visa. Not only is it harmful to the refugees themselves but, in the view of the Democrats, it is counterproductive to the Australian community that people who are part of our community are treated differently and prevented from being able to settle and contribute effectively to our community.

That spills over to our opposition to what this bill is about. We are already punishing these people. We believe that opening up the possibility of their being subjected to breaching when they are already given less assistance and are in a less advantageous situation than others in Australia is unconscionable. While parts of the bill mean that adopting an activity test will provide some access to services that they would not otherwise be able to get, those services should be automatically available, and they should not

have the threat of breaching hanging over their heads as part of that.

The Democrats have amendments to ameliorate a few aspects of the legislation to at least make it slightly less harsh than it would otherwise be, but that does not detract from our overall opposition to the legislation. My understanding is that this bill will not even be a savings measure. Usually when we introduce these sorts of compliance requirements and social security payments, part of the argument is that it is a saving to the taxpayer for people who will not comply. The Democrats would argue that the complexity required in implementing this change to the special benefit payment is not suited to this type of action and, given the small number of people who are affected, all of them refugees and all of them vulnerable, it will actually cost the taxpayer. So we are spending money to punish people and to make life even more difficult for them and to make them more likely to be kept in poverty. That is a ridiculous approach and it seems to the Democrats to be driven simply by an endless need to continue to target and grind down refugees who are a part of our community. Once we treat one group in our community in a negative way, the doors will be open, the principle will be there and it will be just as easy to do the same to another group in the future. That is why the Democrats believe it is important to defend basic rights and to defend people such as refugees. That is why we will continue to do so and that is why we oppose this bill.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.14 p.m.)—The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 aims to encourage social and economic participation by temporary protection visa holders. In the areas of mutual obligation and activity testing, we propose to allow special beneficiaries to undertake full-time study without losing their entitlement. We are also formalising the current administrative arrangements for introducing activity tests on certain recipients of a benefit. In the area of a TPV holder's ability to meet mutual obligation requirements, it is important to note that the government will provide extensive support to those people affected, by providing access to a language, literacy and numeracy program as one of the activities they can undertake as their mutual obligation.

The proposed policy for this measure is that, where language is a key barrier to participation, that will be addressed as a priority in forming an activity agreement. It is a generous provision that allows access to a minimum of 400 hours English language training. Centrelink will ensure that special benefit activity agreements include activities that are appropriate for individual customers' needs and capacity. Centrelink's multicultural services, including translation with on-site and telephone interpreter services, provide a comprehensive support service to people with low English skills.

In regard to Job Network assistance, from 1 July 2003 TPV holders will have access to Jobsearch support services, including development of a vocational profile and resume to be matched to employment opportunities in the Jobsearch database. As for the impact of breaching, I reiterate that, in circumstances where a customer has not complied with their activity test requirements, the reasons for the failure to comply will be assessed. If they have a reasonable excuse—taking into account their particular circumstances—no penalty will apply. That is what currently happens with other activity tests of customers. The bill will treat work force age TPV holders in a similar way to Australian nationals of work force age. The limitation on Job Network services recognises the temporary nature of their residency status, but in all other respects this measure provides a very significant increase in assistance to find employment—assistance that we believe the customer group will welcome.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Min-

ister for the Status of Women) (10.17 p.m.)—I seek some guidance from the Democrats in relation to their amendments to the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002. My understanding is that they initially had two amendments as circulated on sheet 2778, but we have since had discussions that mean that the amendment circulated in their name on sheet 2798 actually replaces the need for the amendments on sheet 2778. I understand that we are looking at only one amendment from the Democrats, and that is on sheet 2798. I am getting a nod that that is correct. On that basis, I think we can proceed. Mr Temporary Chairman Watson, we have two amendments being moved tonight—one by the Democrats, and the government will agree with that; and one by the Labor Party, and the government will agree with that.

The TEMPORARY CHAIRMAN (Senator Watson)—I propose that we first deal with the Australian Labor Party amendments.

Senator MARK BISHOP (Western Australia) (10.18 p.m.)—by leave—I move together opposition amendments (1) and (R2) on sheet 2775 revised:

(1) Schedule 1, item 22, page 10 (line 20), after "vocational", insert "or language".

(R2) Schedule 1, item 22, page 22 (after line 5), insert:

(1A) The Secretary is not to require a person to undertake any activity referred to in subsection (1) other than a vocational training course that is an approved program unless the Secretary is satisfied that the person could be reasonably expected to undertake such an activity.

(1B) For the purposes of subsection (1), "an approved program" means a literacy, language or numeracy program approved by the Secretary.

Labor's amendments have arisen from a genuine concern for the ability of special benefit recipients affected by this bill to fulfil the requirements which may be placed upon them. The amendments go to the heart of concerns about the application of mutual obligation to people with little or no English language skills. The amendments will direct the secretary to require that the only activity a person may be subject to as part of an activity agreement is participation in an approved English language program until the secretary is satisfied that the person could be reasonably expected to undertake other activities.

This is not an unreasonable expectation and should occur as a matter of course. Indeed, I am sure the government will argue that the current structure of the provisions dealing with the formulation of activity agreements in the bill will achieve this. For instance, formulation of the activity agreement requires the secretary to take into account a person's education status. That may be the case, but these amendments will make it clear that further activities should not be contemplated until such time as the person has language skills that would enable them to negotiate the additional requirements. The amendments will also ensure that such an approved language course will enable the person to satisfy the activity test.

Labor has thought carefully about these amendments and what they seek to achieve. It should be obvious to anyone that a person with little or no English language skills would flounder under some of the requirements that may be forced upon them under this bill. For example, how would someone apply for suitable work if they could not put together a resume or put an application for work in writing? Similarly, how could they complete a job seeker diary adequately if they could not clearly document their efforts?

The issue of language difficulties will also present challenges for Centrelink. Although there are translation services, it would be in everyone's interest that communication could occur effectively in English. Apart from these issues of fairness, there ought to be consideration of the benefits that flow from better equipping a person to find work. It is in everyone's interests that a person is made more capable of searching for and obtaining work. There can be little doubt of the role a basic grasp of English would play in this. I commend the amendments to the Senate and acknowledge the comments from the

minister that the government will be supporting the amendments.

Senator HARRADINE (Tasmania) (10.21 p.m.)—A lot has been said in the second reading debate on the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002—which I certainly will not repeat at this hour of the night—and the points were very well made. I support these amendments. They at least ameliorate the situation. Frankly, the bill is making it harder for those with temporary visas, and this explains who those people are. I support the Labor amendments, as I think they are the minimum that should be accepted by the committee.

Senator GREIG (Western Australia) (10.22 p.m.)—The Democrats will support Labor's amendments, which recognise that the ability of many TPV holders to undertake any activity other than vocational training must be considered. We would expect that in doing this Centrelink would give full consideration to the person's capacity and to the reasonableness of the proposed program. We support the amendments because they give recognition to the prevalence of innumeracy and illiteracy—in their own language, let alone in English—among TPV holders who have been unable to secure long-term employment. For many, lack of literacy and numeracy skills will compromise their ability to comprehend any written agreement they must enter into with Centrelink. Hence, it is vital that this issue be addressed.

Senator NETTLE (New South Wales) (10.22 p.m.)—The Australian Greens will be supporting these amendments put forward by the Labor Party. They are an improvement on a piece of legislation that we do not support. It is appropriate that people who are here on temporary protection visas are able to access English courses. These amendments enable them to do that, and we will be happy to support them.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that opposition amendments (1) and (R2) on sheet 2775 revised be agreed to.

Question agreed to.

Senator GREIG (Western Australia) (10.23 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 2798:

(1) Schedule 1, item 22, page 20 (after line 9), insert:

731JA Relief from activity test—grant of temporary protection, humanitarian or safe haven visa

A person to whom this Subdivision applies is not required to satisfy the activity test in respect of the period of 13 weeks commencing the day after the day on which the person is granted a visa included in a class of visas that is issued for temporary protection, humanitarian or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies.

(2) Schedule 1, item 22, page 21, line 13, after "731F" insert ", 731JA".

The Democrats have withdrawn the amendment previously circulated on sheet 2778. We advocate the amendments we have moved, for a number of reasons. We recognise that the period immediately following a person's grant of a TPV and release from detention is one of overwhelming stress upon their personal and financial resources. In the first instance, the person will need to seek accommodation, and this is generally unstable for an ongoing period. They must seek income support from Centrelink and find or travel to family or community members—all in an environment, community and culture which is utterly foreign to them.

TPV holders also suffer from a range of burdens. These include significant trauma caused by their time in detention and a perception of public antipathy, which in turn affects the way they view Australia and Australian people; the debilitating effects of institutionalisation caused by prolonged detention, which affect their ability to operate independently upon release; ongoing effects of trauma suffered in their country of origin; alienation from the Australian community due to their lack of language skills and an absence of support programs they can access; despair at the prospect of indefinite separation from immediate family members, including their spouse and children; anxiety about their future because of the short-term

nature of their visa and the prospect that they may be returned to their country of origin; and poverty brought on by difficulties in obtaining employment due to lack of language skills, lack of recognition of qualifications, lack of local experience and the short-term nature of their visas.

These are not circumstances in which it is appropriate to impose on these people those administrative obligations which those very circumstances would cause them to fail. The Australian Democrats do not submit that TPV holders do not have an obligation to participate economically. But even if they are able to address some of the barriers I have detailed, they will face many obstacles in entering the work force, including a lack of English language skills. Whereas all other refugees are entitled to 510 hours of subsidised language instruction, TPV holders are not. The state or community run language classes do not cover the need. TPV holders are burdened by their lack of local work experience and referees, given that employers typically look for people with a demonstrated work history. They lack familiarity with the Australian workplace, and they are typically unfamiliar with the process of applying for jobs in Australia and with how to translate their experience into the Australian context.

There is a lack of skill recognition; some TPV holders are highly qualified in their own countries as doctors, lawyers, engineers and the like but because these qualifications are not recognised here in Australia they find it very hard to find jobs allied in any way to their area of experience. TPV holders are ineligible for the free translation service available to other refugees that would enable them to have their employment related documents translated into English. Many employers are wary about employing someone on a temporary visa, fearing that the employee will have to leave and they will then have to go through the recruitment process again. TPV holders also experience community prejudice. Since the events of 11 September 2001 there has been a marked increase in community suspicion of people from the Middle East. As the vast majority of TPV holders fall into this category, they are affected. The existence of antidiscrimination laws does not provide sufficient protection to people of Islamic backgrounds seeking employment, in the current climate of fear and distrust.

Our amendments tonight do not exempt TPV holders from their obligations. They give recognition to the personal, economic and community barriers to fulfilling those obligations. We remain concerned that this bill will place disadvantaged people in significant danger of poverty. The notion of compelling people who may already be illiterate in their own language—let alone in English—to sign an activity agreement after a mere 13 weeks is alarming. We do not think 13 weeks is adequate. However, we recognise that the government is prepared to meet us part way on our original amendment, in which we sought 26 weeks. We acknowledge this, and it is for this reason that the Australian Democrats do not wish to proceed with our original amendment, amendment (2) on sheet 2778. Instead, we move these amendments which provide for relief from the activity test to TPV holders for a period of 13 weeks from the date of grant of temporary protection visa.

Senator NETTLE (New South Wales) (10.28 p.m.)—I rise to say that the Australian Greens will be supporting these amendments. They bring the conditions and benefits that TPV holders are able to receive into line with those of other refugees and recognise that people who have just come out of detention facilities need to be able to address their settlement needs.

Senator MARK BISHOP (Western Australia) (10.28 p.m.)—The opposition will be supporting the amendments moved by Senator Greig.

Senator HARRADINE (Tasmania) (10.28 p.m.)—The Tasmanian Independent Senator Brian Harradine Group will support the amendments.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (1) and (2) on sheet 2798 be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (10.29 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [10.34 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes……	32
Noes……	10
Majority……	22

AYES

Alston, R.K.R.	Barnett, G.
Bishop, T.M.	Brandis, G.H.
Buckland, G.	Calvert, P.H.
Campbell, G.	Colbeck, R.
Crossin, P.M.	Denman, K.J.
Ferguson, A.B.	Ferris, J.M.
Harris, L.	Hutchins, S.P.
Johnston, D.	Macdonald, J.A.L.
Mackay, S.M.	Marshall, G.
Mason, B.J.	McGauran, J.J.J. *
McLucas, J.E.	Moore, C.
O'Brien, K.W.K.	Ray, R.F.
Santoro, S.	Stephens, U.
Tchen, T.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wong, P.

NOES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Harradine, B.
Lees, M.H.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.

* denotes teller

Question agreed to.

Bill read a third time.

NOTICES

Presentation

Senator BROWN (Tasmania) (10.37 p.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That the provisions of the following bills be referred to the Economics Legislation Committee for inquiry and report by 20 March 2003:

(a) Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002; and

(b) Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002.

WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

Second Reading

Debate resumed.

Senator LUDWIG (Queensland) (10.38 p.m.)—I seek leave to incorporate my second reading debate speech on the Workplace Relations Amendment (Fair Termination) Bill 2002 in *Hansard*.

Leave granted.

The speech read as follows—

This is yet another of the Government's Bills designed to make it easier to sack workers. This Government is intent on removing protection for workers against unfair treatment in the workplace, and the main target behind this move by the Howard Government is a group in the labour market that is probably the most vulnerable, namely, casual employees.

Typically, casual employees are engaged by the hour. For many casuals, the extent of their job security goes to the next hour. Once given a start, casuals may not know whether they have a job past lunch. At the end of each day's work many casuals will be unsure of whether they have work on the following day. For many casuals, if they fall out of favour with their boss, or if their labour is simply not needed on a particular day or part of a day they will join the ranks of the unemployed. This precarious situation is compounded with no rights to paid leave or paid holidays. For many casuals a holiday with their family or a few extra dollars for the Christmas period remains nothing more than a dream. The reality is for the army of casual workers in the Australian labour force is that their rights are few and their pay is low.

This highly unsatisfactory situation was the subject of a recent groundbreaking case in the Australian Industrial Relations Commission. In the Metals casuals' case of 2000 the Commission was presented with extensive evidence and argument on the status of casual workers in contemporary Australia. In evidence before the Commission were affidavits of numerous workers employed as casuals for years on end and on low pay: they

were deprived of holidays, sick leave, family leave, income security and dignity. Aggregate evidence before the Commission showed that, despite the fact that most casuals are entitled to a loading of 20 per cent, many receive wages lower or not much better that their permanent counterparts. This harsh situation largely reflects the reduced capacity of casuals to bargain for better pay and conditions. Most casuals rely on award and statutory rights for protection against exploitation, and the Commission's decision did the right thing, it tightened up the award protections. It raised the loading for casuals from 20% to 25% and it gave casuals the right to convert to permanent employment after six months' employment.

However, the Commission's decision was limited to workers in the metal and engineering industry; the Commission's work here has yet to extend across the board. Nonetheless, what I do want to bring to the House's attention was the reaction to the Casuals' decision by the Chief Executive of the Australian Industry Group, the industry association that felt the full force of the Commission's determination. Mr Bob Herbert from the AIG said, and I quote:

> "There has been no adjustment to casual employment for 26 years. Certainly, there will be some murmurs among employers over the increased loading rates but, in reality the AIRC ruling simply brings casuals to roughly the same pay and condition levels as their full-time colleagues."

This shows that balance and fairness would dictate that casuals, who now constitute over a quarter of the workforce, deserve improved protections. However, balance and fairness is not what drives this government; instead, what we find in this bill is a further diminution of the rights of casual workers.

The Metals casuals' decision hasn't been the only decision of late to give aid to the lot of casuals. Late last year the Full Court of the Federal Court of Australia issued a decision that ruled invalid a regulation that prevented regular casual employees from mounting an unfair dismissal action until they had been with an employer for a year on a regular and systematic basis and had the expectation of continuing work.

In Hamzy v Tricon International Restaurants trading as KFC the Federal Court was faced with the question of whether the statutory discretion conferred on the Government to prescribe an exemption from unfair dismissal protection for "employees engaged on a casual basis for short period" meant that the Government could knock out casuals who had not put in 12 months' regular service with an employer or who could not hold out an expectation of continuing employment.

The full court was unanimous in holding that the prescribed regulation, namely, regulation 30B(3) of the Workplace Relations Regulations did not conform with what the Act allowed. In other words, the regulation unlawfully excluded various classes of casuals who were entitled, by an Act of Parliament, to the right to some measure of employment security.

In hearings in the Hamzy case the Commonwealth appeared and it tried to defend the impugned regulation with the argument that making it easier to sack casuals would help casuals because employers would be more inclined to pick up workers if they could dump them with a minimum of fuss. This argument moved attention away from the "employees engaged on a casual basis for short period" criterion to the ground found in section 170CC(l)(e).

To help make out the Government's case, expert opinion evidence was led from Professor Mark Wooden, a Professorial Research Fellow with the Melbourne Institute of Applied Economic and Social Research at the University of Melbourne.

In what must have been a huge disappointment for the Government, the Professor's evidence failed to convince the Court that job protection hindered job creation, the Court commented:

> "It seems unfortunate that nobody has investigated whether there is any relationship between unfair dismissal legislation and employment growth. There has been much assertion on this topic during recent years, but apparently no effort to ascertain the factual situation."

In this case the Government had an opportunity to justify its claims that unfair dismissal laws were bad for jobs, but when the Government put its case their myth making was exposed. The Government's approach to unfair dismissal laws is a scare-mongering fabrication.

So, with the Government's big-ticket policy in workplace relations looking ever so flimsy, it was no great surprise around the end of October when the Government came out with a study showing that unfair dismissal laws were costing an estimated 77 000 jobs and $1.3 billion. However, if the production of this study was somewhat predictable, what was always on the cards was the source of the amazing claim, namely, Melbourne Institute of Applied Economic and Social Research at the University of Melbourne. This is the same source a Government's discredited evidence put in the Hamzy case, and while it's unlikely that the Government will ever put this report before a

court of law for examination, it can, at least, be put to some scrutiny here in this Parliament.

The Institute's Assistant Director, Mr Don Harding, authored the Melbourne Institute's report.

Mr Harding's report is based on a telephone survey of small and medium sized businesses, and he prefaces his report with mention of earlier surveys of business and employers that touch on unfair dismissal laws. Unfortunately for Mr Harding, in earlier surveys, unfair dismissal laws barely rated mention as deterrent to hiring decisions. However, to Mr Harding's credit he does cite the results of earlier studies, and because, for reasons I will give later, Labor finds the results of these studies more reliable than Mr Harding's survey, I will inform the Parliament of what was found in:

1. The July 2002 Yellow Pages Small/Medium Business Questionnaire; and
2. The 1995 Australian Workplace Industrial Relations Survey ("AWIRS").

In the Yellow Pages survey 5.6 per cent of firms mentioned any of the following as a barrier to hiring new staff: employment conditions, unfair dismissal/ industrial relations and safety and health. Now, remember, unfair dismissal was lumped in with a bundle of other factors and one could assume that this figure is on the high side. And this assumption is borne out when one reconciles the Yellow Pages' result with the AWIRS findings.

According to the AWIRS survey, only 1.4% of respondents mentioned unfair dismissal laws as a discrete impediment to taking on new employees.

Of course, these are not the sort of figures that would not impress a panel of judges, nor any other free thinking person. 1.4 per cent hardly stands out as crushing figure.

So Mr Harding takes another tack, instead of asking employers freely to volunteer what they thought were influences on their hiring decisions, he resorted to push polling.

Mr Harding argues that a more reliable result can be obtained by prompt and suggestion, and that's what he does. For example, in the conduct of his telephone survey, when interviewers called up businesses seeking a dollar figure from the business on the cost in time and money of complying with the law and reducing the business's potential for exposure to an unfair dismissal action the interviewers were given the following instruction, and I quote:

> Instruction to interviewer. If response is that it is hard to quantify costs prompt by asking for best estimate. If response is that costs vary from year to year ask for cost in best year and cost in worst year and take midpoint. If a range is given code midpoint of the range.

After all this prompting, it should be pointed out that only about a third of businesses surveyed said that there was an increase in costs associated with unfair dismissal laws; however, buried in the report was the fact that a greater proportion of employers surveyed said that unfair dismissal laws had no effect on the bottom line, despite the prompting.

Moving along, when looking at the amounts proffered by employers after all this prompting there appears to be no rhyme or reason in the results. While Mr Harding said care should be taken in relying on these figures, some of them bounce around so wildly one can only be sceptical. Take the figures given for the costs of unfair dismissal laws on businesses in the finance industry. The average cost per full-time employee in the finance industry broken up by the size of the business, the sizes given are 1 to 5 employees; 6 to 10 employees; 11 to 20; 21 to 50; 51 to 100; and 100 plus employees. Now one would expect some fluctuation in the reported costs associated with unfair dismissal on different sized businesses. In the House Mr McClelland mentioned the finance industry, here I might go to the accommodation industry where you might expect some discernable pattern, but I can't find it. The figures are:

1 to 5 employees:	the average cost is $1087 per employee
6 to 10 employees:	the average cost is $1027* per employee
11 to 20:	the average cost is $453* per employee
21 to 50:	the average cost is $295* per employee
51 to 100:	the average cost is $0* per employee
For more than 100 employees:	the average cost is $0* per employee

* Note average is based on very few observations and should be treated with great care.

The figures are really useless for any statistical purposes or for any conclusions to be drawn from them.

Going across industries, for businesses with I to 5 employees the figures jump about from $44 per employee in the wholesale trade to $1087 in accommodation. Overall, the figure given per employee per year appeared to range from $30 000 to zero! Despite no apparent science or reason in these reported amounts, Mr Harding still aver-

aged them out to $296 per employee per year then multiplied this figure with the number of employees in small and medium sized businesses in Australia. This then gives a figure of about $1.3 billion, which was then picked up and put as the banner on the Minister's press release on the report. While the Minister buys this figure, we on this side of the House don't.

Labor stands committed to the ideal that workers deserve rights and justice, so with this Bill we won't vote with the Government to take rights away from workers that the Courts have given them. The exemption from unfair dismissal for "employees engaged on a casual basis for a short period" is the standard set by the International Labour Organisation's Termination of Employment Convention 1982, article 2.2(c). This Convention has been ratified by Australia and is a schedule to the Act. Labor has no intention of derogating from this.

It is also interesting to note that in 1999 the OECD compared the standard of employment protection legislation in member states, and ranked the standard from I to 26 with 1 being the least strict and 26 being the strictest. Australia ranked 4th, behind the US, the UK and New Zealand.

We do not stand out as a paragon of employee rights, we fall at the other end of the scale, but this is, apparently not good enough for this Government.

The Short-term casual exemption, a history

With this Bill the Government proposes to exclude casual employees of less than 12 months' regular and systematic service and who do not have a reasonable expectation of continuing employment.

In 1994, as the Minister acknowledged in his Second Reading Speech, Labor introduced an exemption for casual employees engaged for a short period. What he failed to mention was that in Labor's view a short period was 6 months, not 12 months.

In 1996, the Government broadened the exclusion to 12 months. Shortly thereafter, Labor moved to disallow the Government's amendment. We did so on that basis that 12 months is not, on any reasonable view, a "short period" of casual employment, and such a period would promote further casualisation in the workforce.

In a deal struck at the eleventh hour, the Democrats allowed the Government's amendment to stand. However, the Democrats did so on one important condition—that the Minister review the regulations after 12 months and that the Democrats be given an opportunity to review empirical evidence of the operation of the exclusion after that period. It is now more than 50 months since that occurred and we're all still waiting to see the evidence.

It is important to be clear about the impact of a 12-month exclusion.

Australia is close to leading the world in the trend towards casualisation of the workforce. According to the ABS, in 1982 there were 700,000 casual employees in Australia. By the turn of the millennium, there were 2.1 million. Casual employees now represent more than one quarter of the labour force.

The reasons for this trend are complex and its consequences are profound. Of course, this Government has shown no interest in exploring them.

But there can be no doubt, even from the Government, that federal legislation should not provide an artificial incentive to employers to prolong the period in which a person is employed as a casual unnecessarily. The Government professes to be concerned about the distorting effects of government regulation on people's economic behaviour.

We say that the Government's 12-month exclusion has precisely such an effect. If a casual employee has been working for 6 months and has every expectation their employment will continue indefinitely, it is likely that the Government's 12-month exclusion is playing some part in the employer's decision to maintain the employee's casual status.

The Government will claim it has addressed this concern by denying the benefit of the exclusion to an employer where a substantial purpose of holding the employee as a casual is to avoid their obligations under the Act. As I recall, the Democrats extracted this exemption from the Government. The Opposition does not regard this as an adequate protection. In the first place, it does nothing to correct the message that a 12-month exclusion sends to employers. In the second place, it only has any real effect if an employee can persuade the Commission, or a court, after lengthy evidence and argument, that of all the reasons advanced by the employer for keeping the employee's status as casual, a substantial purpose was to avoid the operation of the Act.

The Opposition recognises that an employer may have legitimate reasons for employing a person as a casual. What is often missed, and is certainly never mentioned by this Government, is that an employee has legitimate reasons for wanting security and stability in their employment. People simply cannot make major economic decisions without a measure of employment security.

One of the Minister's favourite themes is that people can prosper if they are prepared to take a few economic risks. No one would disagree with that. Sometimes risks produces rewards. Sometimes they don't. But no person, be they an employee or an employer, is likely to take those risks without an understanding of the security involved.

The Government should be concerned to ensure that risk and security are shared equitably. Instead, with measures like this, it has shown itself to be more interested in having employees bear all the risk, with illusory and unfounded promises of job creation down the track.

For these reasons, the Opposition will move an amendment to restore the 6-month period. Our amendment will also allow this period to be reduced by agreement between an employer and employee in an award or certified agreement. This is consistent with the Government's own principle of allowing employers and employees to agree on terms of employment in the workplace.

Fixed-term employees

We note that the Government proposes to exclude employees "engaged under a contract of employment for a specified period of time".

We are concerned that this exclusion does not require or impose any limit on the period of time, or require that the period of time be reasonable.

Under Labor, the regulations originally required that the period of time be reasonable. They were later amended by Labor to require the period to be less than six months.

The reason for this was simple. An employer should not be given an incentive to avoid their obligations under unfair dismissal legislation by placing an employee on a fixed-term contract, when in reality their employment will be ongoing.

Even the Productivity Commission has recognised this danger. In its research paper on fixed-term employment published in February this year, the Commission acknowledged:

> "an employer may believe that they can terminate a fixed-term employee at any point during their contract without the employee being able to take legal action for unfair dismissal. The employer may therefore perceive that fixed-term contract employees are less costly than ongoing employees to terminate."

In 1996, the Coalition Government removed the 6-month requirement from the regulations. To the Coalition's way of thinking, it makes no difference if an employee is engaged for a period of six months or six years—they should all be denied access to remedies for unfair dismissal. In reality, the Government was saying to employers: "Here is your ticket out of unfair dismissal legislation. Simply keep people on fixed-term contracts. Whatever you do, don't make them permanent." And this is a Government that talks about job security.

Appropriately, the Opposition moved to disallow the removal of the requirement from the regulations. We remain concerned about this provision.

As I mentioned earlier, we do not think the "substantial purpose" provision meets our concern.

We note, however, that courts have taken a sensible and realistic view of whether an employee has been engaged on a contract for a specified period of time. For example, they have taken the view that the exclusion might not apply to an employee engaged under a contract, which contains a power to dismiss the employee with notice, nor to an employee who has been engaged continuously under a series of fixed-term contracts.

We also note the paucity of systematic and ongoing data on the use of fixed-term contracts. It was a matter usefully addressed in the Australian Workplace Industrial Relations Survey in 1995. It is essential that the Government carries out another such survey in the near future and ensures that the survey examines this issue.

Because the courts have taken a sensible approach to the issue—in contrast to the Government—the Opposition will not move an amendment to this provision. However, we will continue to examine the extent to which the Government's provision has the perverse effect of encouraging the use of fixed-term contracts to circumvent the unfair dismissal legislation.

The filing fee

We are opposed to the inclusion of the filing fee for unfair dismissal applications in the Workplace Relations Act.

The Government first introduced the filing fee by regulation in 1996. It claimed then, as it does now, to be acting to deter frivolous and vexatious applications.

It is worth reminding the Government what the Access to Justice Advisory Committee said about filing fees in its 1994 report on access to justice:

> "Court fees may be used as a means of deterring frivolous litigation. Clearly, however, the deterrent effect will vary according to the means of the particular litigant. The present fee structure may well deter poorer litigants with substantial claims; yet not deter wealthy litigants from vexatious or tactical use of the courts. If courts fees are to be used as a deterrent, there should be a closer link between

> the fee and the degree of frivolity of the case. For example, one approach is to reduce or even remove fees, subject to a power in the court or tribunal to order cost recovery where an application is judged to be frivolous or vexatious."

Labor moved to disallow the filing fee in 1996 on precisely this basis. A person with a substantial claim and limited resources may well be deterred, while a person with a frivolous claim and ample resources would not be. A filing fee is a blunt instrument, with a real potential to deny access to justice.

The real motive of the Government in moving this amendment is to remove the filing fee from parliamentary scrutiny. Presently, the fee is contained in a regulation that will cease to have effect on 31 December 2003. Given the potential for any court fee to act as a barrier to justice, it is appropriate that the Government remain accountable to Parliament when imposing them. It is quite extraordinary for a filing fee to be prescribed in legislation passed by Parliament.

Like most of the Government's ideas in this area, entrenching the filing fee is a political gesture, rather than genuine attempts to ensure a fair go all round for employers and employees.

Labor will move an amendment removing this provision from the Bill. If the Government wants to make the fee permanent, it can seek to do so by regulation when the present regulation expires.

Conclusion

This Bill exemplifies the Government's approach to workplace relations, where workers have rights these must be reduced, where employers have obligations these must be reduced. Labor will continue to do all it can to stop this spiral. Casual employees have scant protection under the law now; there is simply no case to reduce further what little protection they have.

Senator MACKAY (Tasmania) (10.38 p.m.)—At the request of Senator Hutchins, I seek leave to incorporate his second reading debate speech on the Workplace Relations Amendment (Fair Termination) Bill 2002.

Leave granted.

The speech read as follows—

This Bill is another attempt by the Government to undermine the job security and workplace rights of a large portion of the Australian workforce.

Earlier this year, the Senate was once again required to dispose of the Government's plans to scrap unfair dismissal laws for small business employees. And now we're being asked to support a Bill that will put into the Workplace Relations Act express provisions for a further series of exemptions from unfair dismissal laws.

One of these proposed exemptions is to permanently exclude casual workers who have been employed by a single employer for less than twelve months.

As it is currently structured, the Workplace Relations Act already makes provision for this exemption.

Under section 170CC of the Act, a casual employee engaged for a short-term period is not protected from unfair dismissal. The phrase 'casual employee engaged for a short-term period' is taken from the International Labour Organisation Convention No. 158 (Termination of Employment at the Initiative of the Employer) from which federal unfair dismissal laws owe their origin as an act of parliament under the external affairs power of the Constitution.

Regulation 30B(3) gives effect to section 170CC by defining 'short-term' as a period of casual employment less than twelve months.

Regulation 30B(3) has a curious history. The Keating Labor Government first introduced it in 1994 to define a short-term period of casual employment as being less than six months. In 1996, the current Government altered that definition to increase from six to twelve months the required period of engagement. It was able to make this change by doing a deal with the Democrats in which the Government promised to review the change after twelve months. Not surprisingly, the Government has failed to follow through with this commitment to review the operation of the exemption.

Late last year, the Government was forced to reword Regulation 30B(3) to overcome disallowance of the regulation by the Federal Court in Hamzy's Case.

This revised Regulation remains in force and thus operates to already exclude casual employees employed for less than 12 months from accessing federal unfair dismissal laws.

The Government's aim then is to overcome the problems encountered in Hamzy's Case and to set in stone in the workplace Relations Act the provisions of Regulation 30B(3).

This Bill then will give unscrupulous employers a no-questions-asked, free ticket to sack casual employees who have been engaged for less than a year.

This is an exceptionally lengthy period of time for a casual employer to be without any real sort of job security. Labor's long-standing position on

this issue is that a short-term period, for the purposes of the International Labour Organisation Convention No. 158 (Termination of Employment at the Initiative of the Employer) from which federal unfair dismissal laws owe their origin, should be no more than six months.

This was the state of play when Labor left office federally in 1996, and is currently the state of play under the Industrial Relations Act in my home state of New South Wales.

The extension of this period to twelve months, in my view, has not only put Australia in breach of its international obligations under International Labour Organisation Convention No. 158 (Termination of Employment at the Initiative of the Employer), but has operated to further accelerate the rapid casualisation of the Australian workforce taking place.

From 1984 to 1999, casual employment levels more than doubled from 848 300 casual employees to 1931700—an increase of 117%. Over the same period, permanent employment increased by just 19%. As at August 2000, casual employees represented around 27% of the workforce. Between 1990 and 1999, 71.4% of total employment growth was casual. Since 1996, the year the Coalition was elected to Federal office, an extra 276,400 Australians joined the casual workforce.

The growing casualisation of the Australian workforce has seriously undermined the rights of many working Australians. The 27% of working Australians who are employed as casuals do not have automatic access to rights like sick and annual leave and employer contributions to superannuation. They suffer extremely low levels of job security with employment able to be cancelled with just one hour's notice.

Casual employees also have less access to employer-sponsored training courses. The tenuous nature of their employment also makes it difficult for casuals to establish a place in society as they are generally unable to gain finance for assets like houses and cars.

Generally speaking, casual employees receive lower remuneration for their hard work and are over-represented in the lower echelons of the labour market, working predominantly in low-paid and low-skilled jobs. The basic contention that demand for casual employment is linked to a reduction in workers' rights was recently supported by the Full Bench of the Australian Industrial Relations Commission in the Metals Casual Award Case.

Early next year, the Senate Community Affairs References Committee, of which I am chair, will be conducting an inquiry into poverty and the working poor. Two of the terms of reference for the inquiry are:

- An examination of the social and economic impact of changes in the distribution of work, the level of remuneration from work and the impact of underemployment and unemployment.
- The impact of changing industrial conditions on the availability, quality and reward for work.

The committee will be visiting various parts of the country to speak to hard-working Australians about how hard it is to make ends meet under this Government. I'm expecting that we will hear from many Australians employed in casual work who struggle by with poor pay, low levels of job security, and no leave entitlements. I'm looking forward to finding out first hand the effects that Bills like this have on the lives of working Australians.

There has been a great deal written on what has driven the trend towards casualisation in Australia over the last twenty years.

At the most basic level, casualisation is driven by labour market supply and demand.

On the one hand, there are a number of Australians who want casual work as they may be balancing work with other commitments like family or study. At the other end of the scale, there will always be demand for casual workers to perform work that may only be short-term.

For these reasons, there has been a long history in Australia of provisions in industrial awards making allowance for various kinds of casual work to be performed. When the federal Commission introduced casual work in 1920 in Australian Timber Workers' Union v John Sharp & Sons, it was determined that some work, such as ship repair, was urgent and could not be attended to adequately by permanent employees.

Although there is a large number of Australians who prefer casual work, unsurprisingly most Australians employed as casual workers would prefer to have more secure and stable employment. An ACTU survey in 1999 found that 59% of casuals would prefer permanent employment.

Demand has well and truly outstripped willing supply.

This has occurred in part due to the fact that the institutional arrangements in place governing casual employment provide a strong incentive for employers to employ casual instead of permanent or full time staff.

Changes introduced by this Government in the Workplace Relations Act in 1996 have made it

easier for employers to employ casuals instead of permanent staff, by removing determinations concerning levels of casual staff as an allowable matter to be included in an award.

In addition, the state of the law in relation to casual employment provides an incentive for employers to take on casuals instead of permanent staff. Many employers find that the twenty percent loading paid to most casual employees is much cheaper than having to employ extra staff to cover leave periods, having to make superannuation contribution, or pay overtime.

In relation to this Bill before us, laws governing the termination of casual employees also drive demand. As I mentioned earlier, many unscrupulous employers will see this Bill as giving them a blank cheque to sack casual staff willy-nilly.

Many employers will see this Bill as another incentive to employ casual staff. Not only do you not have to pay casual staff leave entitlements, superannuation contributions, overtime or provide training, but if they've been employed for less than a year, they can be sacked at will.

This Bill, if passed, will contribute significantly to the ongoing trend towards the increased casualisation of the Australian labour force. It provides an extra incentive not to employ full time permanent staff, but to put on casuals.

This, as I have mentioned earlier, ultimately leads to an overall decline in the employment conditions of Australian workers. It means that potentially, this Bill reaches much farther than merely affecting those in the workforce already employed as casuals. It indirectly threatens the job stability of those employed on a permanent basis, and in the long run, will make it difficult for future job seekers to attain permanent work.

As well as accelerating the rate of a casualisation, this Bill will also further undermine the already limited rights of casual workers. This outcome would be contrary to the growing trend in the courts and in industrial tribunals that have in recent years begun to afford greater rights to casual workers.

In 1996, it was determined in the decision in Reed v Blue Line Cruises that casual workers can be characterised as either 'true' casuals, those whose employment conditions are typified by ' informality, uncertainty and irregularity,' or 'long-term' casuals. 'Long-term' casuals are those who may be employed as casuals, yet in fact have quite stable and regular employment.

There are a large number of casual workers who may be defined as 'long-term' casuals. AWIRS data from 1995 found that the average job tenure of a casual is over three years. This suggests that most casuals have a relationship with their employer that is almost identical to that of a permanent employee.

There is a growing recognition of the fact that a large number of casuals are merely employed as such to save costs to their employer, whereas in fact the nature of their employment relationship is one that is permanent and long-term. Accordingly, courts and tribunals alike are becoming increasingly prepared to afford these long-term casuals rights akin to those of permanent employees.

For example, in the Metals Casuals Award Case, the Full Bench of the AIRC approved an award provision giving casual workers employed on a regular and systematic basis for six months the right to have their employment contract converted to permanent full-time or part-time employment.

The AIRC in its Parental Leave (Casuals) Test Case also decided to extend parental leave entitlements to casual workers who have been employed for more than 12 months.

This Bill then is contrary to the growing movement towards recognising wider rights and protections for casual workers.

The provisions of this Bill will also have an indirect effect on this growing area of casual rights. In the Parental Leave (Casuals) Test Case, the reason why the AIRC decided only to extend parental leave rights to casual workers after they have worked for twelve months was to conform with the standard set down in Regulation 30B of the workplace Relations Act.

Thus, this ridiculous prohibition on casual workers having access to unfair dismissal laws until they have worked for an employer for a year is having a ripple effect in terms of affecting other casual worker rights that are being developed.

Casualisation has fundamentally altered the nature of the Australian labour market. It has created a growing underclass of employees who are denied the basic rights, conditions and levels of remuneration that have principally developed in this country over the last century.

This Bill, in addition to further eroding the rights of casual workers, will have the effect of accelerating this already rapid rate of casualisation. It will create an institutional incentive for employers to choose to employ casual staff rather than permanent employees.

This directly threatens the viability of permanent, full time and secure jobs in Australia.

In addition, by defining a long-term casual employee as one who has had been engaged continuously by a single employer for a year, other

developing rights being afforded to casual workers will be undermined.

Twelve months should not be the standard against which a casual worker is determined to have the same basic rights as permanent employees. Labor supports a standard of six months. Not only is six months fairer, but it also more accurately reflects the reality of a labour market.

Hundreds of thousands of working men and women across Australia are employed as casual workers, but in effect have an arrangement with their employer which is more akin to that of a permanent employer. That relationship is well and truly entrenched after six months.

The Government should recognise this reality, afford long-term casual workers proper rights, and in doing so, ensure that a large majority of working Australians continue to have access to permanent, full time and secure jobs.

Senator MURRAY (Western Australia) (10.38 p.m.)—I think I will make a lengthy second reading speech! I have made numerous remarks on these matters on previous occasions. You might refer to them as 'Groundhog Day' remarks; therefore, they do not need to be repeated.

Senator NETTLE (New South Wales) (10.39 p.m.)—I rise to speak against the Workplace Relations Amendment (Fair Termination) Bill 2002. We have before us another piece of legislation that forms a part of this government's onslaught on workers, this time on some of the most vulnerable—and a growing group of people—in our work force: casual employees. This government is determined to wind back the clock to a time before the working men and women of Australia had battled for and won a whole range of rights. I am speaking of a time when employees were completely dependent on the goodwill and patronage of employers, and employers could hire and fire at whim without fair grounds, notice or regard for their workers.

The Australian Greens oppose this bill because it is a very clear example of the world of industrial relations that this government would like to impose. It removes yet another protection from the most vulnerable workers: casual employees. This legislation responds to a court ruling last year that upheld the right of a young casual worker to take action on the basis of unfair dismissal. The government had previously tried to remove this right not by legislation but by regulation. The court found that this regulation was invalid because it went beyond the powers provided for in the Workplace Relations Act. This government is so determined to remove this protection from casual employees that it introduced a new regulation to shore up its position. Senator Sherry attempted to have this regulation disallowed on the first day of this session. I am disappointed that the Senate did not see fit to support this disallowance motion.

We now have the government trying to entrench its position with this bill, with the additional dimension of retrospectivity. So the government has gone to a great deal of effort to close this loophole. It is worth asking: what is the threat to employers that this government is scurrying to address? What onerous and unreasonable burden has been placed on them that they must rush to relieve? It is the requirement that a fair and open procedure be followed when sacking casual employees who have been on the job for more than 12 months. Of course, this only applies to employees who are under Commonwealth jurisdiction. It is a relatively small section of all casual workers, but for the government this is only partly about real change. It is largely about pushing their ideological agenda at every opportunity. One of the characteristics of this government's industrial relations agenda has been the decline of security for many workers. Permanent jobs with adequate training and support have been cut back in favour of short-term positions with the emphasis on contractors.

Casual workers are at the front line of this structural change. As of August 2001, nearly 2.2 million Australians were employed on a casual basis. Statistics show that between 1990 and 1999 the proportion of casual employees in the labour force increased from 19.4 per cent to 26.4 per cent. The overwhelming proportion of new jobs created during that decade, 71.4 per cent, were in casual work. In addition, many employers are using casual employees on a long-term basis. This is often an attempt to avoid the responsibilities that come with full-time employment. Statistics show that more than 66

per cent of casual employees worked regular hours and more than 50 per cent had been employed for more than one year.

The Greens see this as a pattern of shifting risks and costs from the employers to individual employees. Individuals must now bear the burden of economic cycles. Employers have the benefit of casual labour when there is demand but no responsibility during the down times. Good employees, people who need jobs, can be tossed out at whim when it suits the bottom line. It is easy to assume that casual workers are those who do not really need to enter the full-time work force. We think of students, travellers or women who are financially supported by their families. For these people, to lose a job can be an inconvenience or a setback. But it would be a mistake to assume that these are the only casual employees. Hundreds of thousands of other Australians are trapped in a pattern of casual employment because that is all that is available. Many of these are untrained or poorly skilled, including migrants and young people. Some live on the margins of society, where the loss of a job is not a setback but a catastrophe. This income can mean the difference between renting and homelessness, being able to fund school activities for kids or missing out on those opportunities.

Take the common example of a single mother without particular qualifications who works in a casual job. She is vulnerable because she needs that job and has few other options. She may not be able to meet unreasonable demands in terms of working longer shifts or working without adequate notice, but under this government's industrial relations regime she would have little or no protection from being sacked without fair notice or reason.

If we want to protect the most vulnerable people in our society, we need a fair balance between employers and employees. This legislation is another step towards changing that fair balance to a subservient relationship where employees must come cap in hand to their employers to protect entitlements that should be their right. The Greens support employment relationships where each party has both responsibilities and privileges. This government is pushing too far in the interests of employers, and ordinary Australians are losing out. Of course, many employers do not act in such a heavy-handed fashion. There are many employers who fully understand that the basis of success is a reciprocal and cooperative relationship. But we must not forget that laws should make the unethical minority accountable. Under these changes, casual workers lose the right to stand up to employers who choose to act unfairly. This is simply not good enough.

Finally, it is worth noting that this legislation enshrines a $50 filing fee for making an unfair dismissal claim. This kind of fee is the worst kind of miserliness from a mean and nasty government. Asking $50 from people filing an unfair dismissal claim has no merit in stopping vexatious litigation. It is an administrative burden, it does not produce an income stream that is worth the time and, although there is an avenue for exemptions, it is complex and unwieldy. This fee is nothing more than a gesture. It is the government saying to everyone who wants to file an unfair dismissal claim, 'We assume your claim is groundless.' It is a petty penalty for those who try to defend their rights. There is no justification for this fee on the grounds of justice or administration, and it should be removed. The Australian Greens will not be supporting this bill.

Senator HARRIS (Queensland) (10.47 p.m.)—I seek leave to incorporate my second reading debate speech in *Hansard*.

Leave granted.

The speech read as follows—

About the Bill

In November 2001, the Federal Court in the Hamzy decision, ruled that regulations that excluded short-term casual from unfair termination remedies were invalid, because they went further than the regulation making power in the Act.

The regulations found to be invalid had excluded casuals from accessing termination of employment remedies unless they had been working for their employer on a regular and systematic basis for at least twelve months and had a reasonable expectation of continuing employment with the same employer.

A consequence of this decision is that casual employees are currently able to bring an unfair dismissal claim against an employer (unless they are

subject to some other exclusion from the provisions, for example during the 3-month probationary period).

The Government expressed concern that this decision would suddenly expose employers of many casual employees to the risk of an unfair dismissal claim, contrary to their understanding on engaging those employees, and create great uncertainty.

In introducing this bill the Government has stated that its purpose is to restore the casual exclusion that was in place prior to the Hamzy decision.

The bill would also insert a new provision into the Act requiring applicants seeking relief under federal termination laws to lodge a $50 filing fee. The fee, which is currently provided for under regulations, will be indexed annually in line with movements in the Consumer Price Index.

Australia situation

Australia has one of the highest rates of casual employment in the OECD. ABS data shows strong growth in casual employment over the past fifteen to twenty years. Figures cited in a recent Federal Court decision showed that casual employment more than doubled from 848,300 in 1984 to 1,931,700 in 1999—an increase of 117 per cent. In the same period, permanent employment grew from 4,509,900 to 5,372,500, a miserable 19 percent increase.

In little more than a decade, over a million Australians have been forced into insecure conditions of work, many working two or three jobs at once. Both inside and outside a business, employers now have at their disposal a cheap reserve capacity to which they can turn according to the situation prevailing on the market.

Globalisation is the driving force behind this push for a free and flexible labour force. The job killer strategies—downsizing, restructuring, outsourcing, deregulation and privatisation are more easily implemented with the use of casual labour—a strategy used to reduce costs.

Today, we have a special description for this process—the "casualisation of the workforce"—originating from the word "casual". For casual employees, wages are often lower. Working conditions may be poorer. There is little or no chance for career development. Flexible labour market legislation does not guarantee holiday pay, sick leave or other allowances. Increasingly, these entitlements are becoming a luxury.

For the partially employed, there is tendency for intensification of work. Employers either cut down the number of personnel or increase working load per each employee. There are longer working hours; higher work loads; increased rhythm of work during night shifts or in early morning hours; and increased work without pay or overtime.

There is no indication that the casualisation of the workforce is going to slow down. To this end, casual workers need adequate legal and industrial protection.

Queensland situation

Within the last five years, the Queensland labour market has had a disproportionate share of casual employment, with up to 31.1 per cent of all employees employed on a casual basis. This compares with an all-persons percentage of around 26.9 per cent for Australia as a whole.

In line with the national trend, the number of employees working under casual arrangements has increased substantially over the last 10 years. Approximately half of the 380,000 new jobs created in Queensland during the period 1988-1998 were defined as casual.

Pros & Cons

Supporters of this Bill argue that its passage will lead to greater employment in the small business sector because the fear of wrongful dismissal claims will be removed. It is claimed that unfair dismissal laws have stopped small firms hiring additional staff.

A survey by the CPA in February 2002 indicated that 5% of businesses surveyed out of a sample of 600 were concerned about unfair dismissal laws. In a media release, Minister Abbott claimed that the survey supported the Government's case for this legislation. Shadow Minister McClelland claimed victory for the opposition maintaining that a result of only 5 per cent demonstrated there was no need for this sort of legislation. It seems that both the government and the opposition are out of touch with small business. Where are their own surveys?

One Nation believes that there must be more consultation with small businesses—the genuine small businesses who are mum and dad operators to obtain specific information on this issue. We need to address the unique problems that small businesses face in the wake of sweeping economic reforms which have occurred over the last decade.

At the end of the day, fair termination laws are only part of a very heavy burden that small businesses face. The administrative nightmare of the GST, extended trading hours, predatory pricing, concentration of ownership in the retail sector, strong competition from imports particularly in our manufacturing and farming sectors and the

pressure to cut costs—to get competitive or get out—are some of the pressing issues for our mum and dad operators in the cities and for our farmers—the forgotten small business owners.

Senate Inquiry

The Senate Committee of inquiry into this bill received many submissions.

For the Bill

The Ai Group argued the need for this bill in order to restore the concepts of regular and systematic employment and reasonable expectation of continuing employment. It argued that these concepts are essential inclusions. It also explained the consequences if the bill was not enacted: It is not uncommon for a company to have a list of persons who may be available to carry out casual work and for the company to use that list from time to time when it needs casual labour. If a casual on the list works for a company irregularly and there is no reasonable expectation of continuing employment then it is unfair for an employer to be exposed to an unfair dismissal claim from such a casual regardless of whether or not the casual has been on the list and worked for the company on several occasions over a period of more than 12 months.

The National Farmers Federation (NFF) submission explained that the exclusion of casual employees under this legislation is essential for the efficient operation of agriculture.

Sadly, the NFF has hit the nail on the head. It all comes down to efficiency and what costs can be eliminated in this competitive world. A world in which Australia has lost its economic and political sovereignty to the markets.

Critics of Bill

Critics of the bill argued that casual workers should not be treated differently from other employees when it comes to termination remedies and that the casualisation of the workforce is undesirable.

During the Senate Inquiry into this Bill, it was argued that employees have changed their mindset and that young people, in particular, seek out casual employment because they can experiment with the market, to evaluate different careers in a quick Manner. It was argued that casual employment is not a market of the disadvantaged but rather a market of those that choose a particular lifestyle.

One Nation disagrees with this thesis. Relative to Western Europe, the extent of casualisation in Australia is comparable to Spain and Portugal, and well above the United Kingdom, France and Germany. Non-standard forms of employment have become more prominent as a response to the pressures posed by economic pressures, globalisation and the quest for a readily available pool of cheap workers.

Hospitality

I would like to give an example from the hospitality industry, which is particularly critical to Queensland. This industry comprises bar attendants, kitchen hands, housekeepers, laundry workers, apprentice chefs, porters and receptionists. While many casual workers are so by choice, there are an increasing number of others for whom this is the only type of employment on offer.

The Hospitality sector is growing at an amazing rate. From 1986 to 1997 the workforce doubled.

But the jobs created are in the main:

- low houred
- low paid
- short term
- casual.

Problems for small business

Employers are conscious that the casualisation of the workforce results in less loyalty to the enterprise and lower skill levels. Small businesses also recognise that casualisation is creating new problems of morale and motivation among employees.

Small businesses employers operate on very narrow margins. The mum and dad operators often have no choice but to employ casual labour. Due to some of the pressures I have already outlined, these businesses can no longer afford to employ part time or full time workers. This is a growing trend and it is not the fault of small businesses. It is a manifestation of the deep economic crisis that Australia currently faces.

Factors to consider

There are many questions that need to be answered about the long term impacts of casual employment:

- Workers are seldom eligible for superannuation—how will they save for their retirement?
- What are the long term impacts of people in casual jobs who receive very little training and have no opportunities for career advancement?
- What are the long term impacts for workers who are unable to get a bank loan with this sort of insecure employment?
- What are the long term effects upon the social welfare system with demands for payment when casual work ceases?

- How can casual employees participate in the government's mean spirited user-pays health system?

Apart from ABS aggregate data, policy makers seem to be operating in an information vacuum as to the factors leading to the increased importance of casualisation and the social and economic implications that flow from it. The vast majority of research in this area focuses on the demand perspective. There is little research available from the government about the impact of casual work arrangements on people's work and personal lives. We know very little about the quality of casual employment at the level of the firm, and very little about casual employment from a supply perspective.

Conclusion

Official national statistics compiled since 1982 reveal that the number of casual employees in Australia has more than doubled, a phenomenon which is arguably the most dramatic development in the labour market in recent times. Casual employees are often viewed as a homogenous group characterised by low levels of commitment and a solely utilitarian view of work. In reality, casual employment is a form of employment that is deprived of most standard benefits, rights and forms of protection and that is marked by substantial levels of precariousness.

The passage of this bill will deny short term casual employees access to federal unfair termination remedies. It would also repeal regulations whereby all casual employees with 12 months service are able to make a termination application. Only casuals with 12 months service who had been working on a regular and systematic basis for the period and had a reasonable expectation of continuing employment with their employer would be eligible to access federal unfair termination remedies.

Under this bill, people may clock up 12 months service as a casual but because their work is not as regular, they will be unable to seek redress if their employment is unfairly terminated. Casual employees would have their employment rights reduced rather than enhanced.

The amendments made by this Bill may well place small business further outside the regulated industrial relations system, and entrench a second rate employment market for employees.

Encouragement of a mass casual workforce is undesirable. Insecurity and fear for the future are spreading. Australians want a balanced and secure working life. While the present fair termination laws may well need to be overhauled—for example, there may need to be a limit placed on penalties which can be awarded in court—One Nation believes that underlying causes of work force casualisation must be fully debated and addressed. We must evaluate the long term social, economic and cultural costs of casual employment and strategies must be effected to deal with the ensuing problems.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.47 p.m.)—I seek leave to incorporate my closing remarks in *Hansard*.

Leave granted.

The speech read as follows—

I would like to thank Senators for their contribution to debate on this Bill.

The Bill is a key part of the Government's continuing drive to ensure that business costs do not push up prices and interest rates jeopardising employment growth. Under this Government inflation and interest rates are at or near historical lows and this is in large part attributable to the successful implementation of workplace relations reforms.

Recent independent research has again demonstrated that the costs to business of federal unfair termination laws are not inconsiderable and represent a significant drain on the economy.

It is a truism that laws designed to protect jobs can only be effective if they allow those jobs to be created in the first place.

In proposing these changes to the WR Act, the Government wants to address the wider implications of the decision in the Hamzy case (together with some less significant but nonetheless important matters) as they affect the well being of the workforce generally.

The changes proposed restore the status quo as it was widely understood as applying to short-term casual employees from 1996 until late 2001 without disturbing the rights of those who were involved directly in the Hamzy case. There is nothing new in such an approach. Governments for many years have followed a similar course when dealing with the fall-out of court decisions invalidating laws on technical grounds. As in those cases, the Government's approach here is to restore the law to what the Parliament had intended but without disadvantaging those who successfully argued a contrary view in the courts.

Exempting short-term casuals from unfair dismissal laws

Casual employment has grown significantly in the past two decades. In 1984 they represented 15.8%

of employees. By 2001 the figure was 27.2% or just over 2.1 million employees.

The strong growth in casual employment is in large part a rejection of an inflexible, rule-driven, one size-fits-all culture.

Despite claims made during the debate, the majority of employees are happy to be casuals.

- AWIRS 95 found that casual employees were more likely to be satisfied with their job overall than permanent employees. ABS survey data also show that the majority of casual employees accepted this form of work for family and personal reasons rather than because they could not get permanent employment.
- According to the Job futures/Saulwick Employment Sentiment Survey of September 2002, almost 80 per cent of casual employees felt either quite secure or very secure in their job.

Casual employees have been excluded from federal unfair dismissal remedies since the current legislation was first introduced by the Keating Government in 1994. The main point of disagreement between the present Government and those opposite is not over the matters ruled on by the Federal Court in Hamzy—as the Court would also have invalidated the Keating law—but on whether the casual exemption should apply to employees of less than 6 month standing or those who have served their current employer for less than 12 months.

The Government has taken the view that 12 months represents an appropriate community standard, given that over half of Australia's casual workers have been with their current employer for 12 months or longer.

Following the Hamzy decision, the Government responded quickly by making a new regulation to exclude short-term casual employees from unfair dismissal laws to the extent permitted by the Court's decision. [see tab 6]

The Hamzy decision, if it had not been addressed immediately would have created a situation where most casuals would only be subject to the general 3 month exclusion that applies to all employees even though this is not what was intended at the time that they were first hired.

There IS evidence that unfair Dismissal laws affect employment

Through debate in the Parliament, the Hamzy decision has acquired some notoriety from suggestions by members of the Federal Court that the link between changes to unfair dismissal laws and the hiring decisions of employers had not been clearly established.

Empirical evidence about the link between unfair dismissal laws and employment has not been produced in Australia or overseas. Such evidence—the statistical equivalent of the smoking gun—is simply not obtainable. Nor is there any evidence to support a contrary position.

- In response to the Hamzy decision, my Department approached the ABS for advice on whether such empirical research was possible. The ABS advised that a survey of employers' attitudes to unfair dismissal legislation would be the best way to establish the impact of such legislation on employment.

Accordingly, the Government commissioned further independent research from Melbourne Institute academic, Mr Don Harding. The research analyses specific questions on unfair dismissal laws included in the July 2002 Yellow Pages Business Index Survey. The Yellow Pages is a telephone survey which asks attitudinal questions of about 1800 small to medium businesses.

Mr Harding's research results are pretty clear, concluding that: unfair dismissal laws—both State and Federal—cost small and medium businesses $1.3 billion each year. In addition, the research shows that the dismissal laws have had a significant impact on staffing decisions—with unfair dismissal laws contributing to the loss of about 77 000 jobs from businesses who used to employ staff and now no longer employ anyone.

The Melbourne University's Melbourne Institute of Applied Economic and Social Research has undertaken independent academic research into the employment effects of unfair dismissal legislation. Such research has been widely called for, including by the Opposition.

The Opposition decided to attack the credibility of this report during debate. For the record, I should observe that Mr Harding, as an Assistant Director of the Melbourne Institute, is very experienced in conducting research of this type.

The Melbourne Institute has an excellent reputation for undertaking high quality independent research.

- The research was conducted independently of the Government.
- There has been no serious academic criticism of the methodology used by Mr Harding.

Filing Fees

The Bill will introduce a permanent, indexed filing fee for the lodgement of termination of em-

ployment applications under the WR Act and repeal the existing regulations.

The filing fee will further discourage frivolous or malicious claims while ensuring that genuine termination of employment applications are dealt with efficiently.

The Senate's Regulations and Ordinances Committee has expressed concern at constantly extending the sunset period for the filing fee.

This proposal honours the Government's election commitment to make the filing fee a permanent requirement. Currently, as set out in the regulations, the fee will cease operating on 31 December 2003.

The fee which is presently $50 provides only for part recovery of the cost to the taxpayer of providing the means for resolving what, in essence, are disputes between private individuals.

Filing fees exist in a number of other jurisdictions, including New South Wales and Queensland.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (10.48 p.m.)—by leave—I move opposition amendments (1) and (2) on sheet 2784:

(1) Schedule 1, page 3 (before line 6), before item 1, insert:

1A At the end of subsection 89A(2)

Add:

(u) issues arising in respect of a period for the purposes of paragraph 170CBA(3)(a).

(2) Schedule 1, item 1, page 4 (lines 25 to 27), omit paragraph (a), substitute:

(a) the employee is engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months, unless a shorter period is specified in an award or certified agreement; and

Amendment (1) adds the words 'issues arising in respect of a period for the purposes of paragraph 170CBA(3)(a)'. It provides for the commission to vary safety net awards to deal with qualification periods for casual employees to make an unfair dismissal claim. This would allow the commission to insert into award provisions those issues about proposing a six-month qualifying period. This amendment is, however, contingent on amendment (2) being accepted as well, because it sits with that. This makes the qualifying period for a casual for an unfair dismissal claim six months. The government proposed 12 months. However, as I have said, this period can be reduced when you look at the amendment in item 1 that I propose to move.

It is worth while looking at the short history. The government proposes to exclude casual employees with fewer than 12 months regular and systematic service and who do not have a reasonable expectation of continuing employment. As far back as 1994, the minister acknowledged in his second reading speech that Labor had introduced an exemption for casual employees engaged for a short period. What he failed to mention was that, in Labor's view, a short period was six months, not 12 months. In 1996 the government broadened the exclusion to 12 months and shortly thereafter Labor moved to disallow the government's amendment. We did so on the basis that 12 months is not, in any reasonable view, a short period of casual employment and, as such, a period that would promote further casualisation in the work force.

If I recall correctly, the Democrats agreed with the government at the time to allow the government's amendment to stand. However, the Democrats did so on one important condition, if the record is to be borne out. That condition was that the then minister review the regulation after 12 months and that the Democrats be given an opportunity to review empirical evidence of the operation of the exclusion after that period. It is 50 months since that occurred and, from the opposition's perspective, we have not seen or heard from the Democrats or from the government any of the substance of what we have just put down. Whether or not the government met the Democrats undertaking remains to be seen. We suspect not, but we are happy to hear from the Democrats as to whether or not that was ever the case.

It is important from our perspective to be clear on the impact of the 12-month exclusion. Australia is close to leading the world

in the trends towards casualisation. It is not at all a good thing in which to be leading the world. According to the ABS, in 1982 there were 700,000 casual employees in Australia and by 2000 there were 2.1 million casual employees, which now represents more than one-quarter of the labour force. The reasons for this trend are complex and its consequences are profound, in our view. This government has shown very little interest in exploring some of the more complex reasons. It has, as I have said, failed to really address what the Democrats asked some 50 months ago. It has failed to demonstrate any ability to grasp the significance of the figures that I have just mentioned or the need to address the issue. But there can be no doubt, even from the government, that the federal legislation should not provide an artificial incentive to employers to prolong the period for which a person is employed as a casual. We say that the government's 12-month exclusion has precisely such an effect. That effect is that, if a casual employee has been working for six months and has every expectation that that employment will continue indefinitely, it is likely that the government's 12-month exclusion is playing some part in the employer's decision to maintain the employee's casual status.

We think the government will argue that it has addressed this concern by denying the benefit of the exclusion to an employer where a substantial purpose of holding the employee as a casual is to avoid their obligations under the act. As I recall, the Democrats extracted this exemption from the government—at least that is what the record seems to demonstrate. As I understand it, the opposition did not regard it as adequate protection at the time, and it certainly does not now. In the first place, it does nothing to correct the message that 12 months exclusion sends to employers. In the second place, it only has any real effect if an employee can persuade the commission or a court after lengthy evidence and argument that, whatever the reasons advanced by the employer for keeping the employee's status casual, a substantial purpose was to avoid the operation of the act. The opposition has moved the amendment to restore the six-month period and to allow the commission the flexibility to deal with it. Our amendments will allow this period to be reduced by agreement between the employer and employee in an award or certified agreement. We say this is consistent with the government's own principle of allowing employers and employees to agree on terms of employment in the workplace.

Senator MURRAY (Western Australia) (10.55 p.m.)—The Workplace Relations Amendment (Fair Termination) Bill 2002 is not, as it has been portrayed in some quarters, an assault on the workers of Australia. It is not a set of new conditions. A Federal Court decision, Hamzy v. Tricon International Restaurants trading as KFC, 16 November 2001, declared regulations invalid. Those regulations had existed since 1996, and this legislation seeks to put matters which had been in law since 1996 and then were declared invalid by a court ruling back into law—in other words, confirming the intent of the act. The regulations that were declared invalid excluded certain classes of employees from unfair dismissal remedies, saying they went beyond the exclusions authorised by the act itself. This bill, as a consequence, seeks to deny short-term—which is defined as less than 12 months—casual employees access to the federal unfair termination remedies.

At the time this was addressed in debate and discussion, it was felt that if there were to be an exclusion for a probationary period for permanent employees then you would need a longer exclusion for casual employees. I think really Labor are suggesting that they recognise that you should have a longer exclusion for casual employees than for permanent employees, because the probationary period for permanents is three months—and they are suggesting six months. I remark to Senator Ludwig that one of my fears is that, in the drive for harmonisation, with which I agree, there will be a drive for a general six-month application for both permanent and casual in both state and federal jurisdictions.

Senator Ludwig might be aware of the schedule that has been provided, as a result of a request of mine, to one of the committee reports, which indicates that, although the probationary periods and exclusionary peri-

ods vary between state and federal jurisdictions, there are a number that already are around the six-month and nine-month area. As I understand it, the Queensland Labor government have introduced one of six months. There is something of a fear in me that your going this route will encourage the government to say, 'If we accept that as six months, we will make it six months for the whole lot now. How do you feel about that?' I suspect that will be a discussion later on. However, the proposition put by the opposition is an interesting one, because since 1996 the nature of our employment profile, if you like, has changed quite significantly. I did not bring down with me my files, but I recall that the numbers of casualised employees were very much lower in 1996, as a proportion of the working population, than they are now. Of course, many more were under state legislation than were under federal legislation. The number of casualised employees has increased. In those circumstances, it is a proposition worth attending to.

There are other aspects of the bill which simply, as I say, do not represent an onslaught upon the workers at all but restate conditions which have been there for some time and are repeated under labour law in state regimes. The act repeals regulations denying defined types of employees, including probation employees and persons employed for specified periods, access to federal unfair termination laws for a period. That re-enacts, with minor changes, those exclusions in the principal act. The bill seeks to retrospectively validate the operation of federal termination employment regulations held by the Federal Court to be beyond the regulation-making powers available under the principal act. They include in the principal act a provision requiring applicants for relief under federal unfair termination laws to lodge a $50 filing fee. That $50 fee has been imposed since 1996 by way of regulation. That filing fee will now be CPI indexed. Of course its real value is much less today than it was in 1996.

The Australian Democrats agreed to the Workplace Relations Act provisions that excluded short-term casuals and trainees. Those provisions have been in place since 1996 and, as I have said, this bill will reinstate them. Changes in the regulation of this area—and this, of course, is a concern—do generate uncertainty for employers and employees and are a source of business aggravation. It is always difficult with both unions and business to work out quite how much is genuine aggravation and how much is positioning, not denying that there often is genuine aggravation on both sides but also not denying that there is a bit of rhetoric and positioning that goes with these things.

Senator Jacinta Collins—A Federal Court case: that is genuine aggravation.

Senator MURRAY—I take the interjection, but since I represent neither business nor the unions I think I would regard my remarks as objective. A complicating factor—and that is why I am interested in the remarks made surrounding this—is the rapid growth in casual employment since 1996 and the need to attend to its consequences. Quite frankly, I think the Senate would do the country a great favour if at some time we had a deep look at the whole issue of casual work and tried to understand it a little more in terms of both state and federal trends and what is genuinely going on. It is difficult to know the numbers of employees likely to be affected by these laws. I saw some stats some time ago which indicated that in a particular industry, whereas a little over 50 per cent of employees were under state law, nearly 80 to 90 per cent of casuals were under state law. I did not really understand why that should be so. I might have misunderstood what I saw and heard, but there are those oddities out there in the ether. I have not arrived here with a position on the six months—contrary to your perceptions, Senator Collins, in your private remarks to me. Having heard the arguments of the opposition, I really would like to hear the arguments of the government against the proposition that the six-month period might be both fairer and more applicable for the year 2002 compared to the precedent in 1996.

Senator HARRIS (Queensland) (11.03 p.m.)—I rise to indicate to the chamber that One Nation will support Labor's amendment. In a brief discussion that I had with the government prior to this bill starting its progres-

sion, one of the concerns that I expressed was about a particular situation in which both employer and employee find themselves in North Queensland in relation to the hospitality industry. I will make some remarks relating to that shortly. But in relation to the Workplace Relations Amendment (Fair Termination) Bill 2002, in November 2001 the Federal Court's ruling in Hamzy v. Tricon International Restaurants trading as KFC was handed down. The decision ruled that regulations that excluded short-term casuals from unfair termination remedies were invalid because they went further than the regulation-making power in the act. Mr Hamzy succeeded in his action by successfully challenging the validity of the regulations 30B(1)(d) and 30B(3) on the basis that their making was not authorised by section 170CC of the principal act. The instant effect of the court's decision was that casual employees were able to bring unfair dismissal claims in the Industrial Relations Commission unless they were subjected to an exclusion. That exclusion could have been a three-month qualifying period.

If we look at the Australian situation, Australia has one of the highest rates of casual employment in the OECD. ABS data shows strong growth in casual employment over the past 15 to 20 years. Figures cited in a recent Federal Court decision show that casual employment more than doubled from 848,300 in 1984 to 1,932,700 in 1999. That is an increase of 117 per cent between 1984 and 1999. In the same period, permanent employment grew from 4,509,990 to 5,372,500, which is a 19 per cent increase. We have the situation where the rate of growth in the number of permanent employees was 19 per cent during that period and the growth of casual employment was 117 per cent in that period.

During the Senate inquiry into this bill, it was argued that employees have changed their mind-set and that young people in particular have adopted a more casual employment outlook because of the market conditions. In actuality, One Nation disagrees with this. One Nation believes that the young people in Australia have a very strong work ethic and that the majority of them would prefer to access full employment rather than part-time employment.

Part-time employment has another downside to it. It is like an ever-spiralling decline, because the more people we have in casual employment the more people we have with less ability to invest in large infrastructure by way of a home or a motor vehicle—that is, substantive outlays. They cannot make substantive outlays because they do not have the income to be able to afford them. So they are left with an alternative, and that is to purchase what we call whitegoods, such as stereos or TVs, which are smaller articles that are generally imported. So the higher the level of our casual employment goes, the further the level of personal infrastructure and large commitments reduces. It has an adverse impact in that our imports are continually climbing.

I would like to give some examples of the hospitality industry that I mentioned earlier on. The industry comprises bar attendants, kitchen hands, housekeepers, laundry workers, apprentices, porters and receptionists. While many are casual by choice, there is an increasing number of others for whom this is the only type of employment available. The jobs created have, in the main, lower hour content and lower pay and are short-term and casual. As I said earlier, one of the things that inclines me to support the opposition's amendment is that in North Queensland our hospitality industry tends to work on around a nine-month period. So during the summer period the tourist numbers in North Queensland drop off dramatically. As a result of that, people in the hospitality industry are laid off. The following year, at the start of the season, a lot of them come back and work successfully for those same employers. But within all industries there are exceptions, and we should not penalise those workers whose employment is cyclical and not allow them to have any remedy at all. I believe that the opposition's proposed amendment to set that at six months would then assist not only those people in North Queensland who work in the hospitality industry but also those who work in our fruit-picking industry and our substantive cane industry—which also works

for approximately six months of the year. This would assist all of those people.

There are many questions that need to be raised in relation to the long-term impacts of casual employment. These workers are seldom eligible for superannuation. So how do these people ultimately provide for themselves in their retirement? What are the long-term impacts of people in casual jobs, who receive very little training and have no opportunity for career advancement? And what is the long-term impact for workers who are unable to get a bank loan with that sort of insecurity of employment?

Official national statistics compiled since 1982 reveal that the number of casual employees in Australia has more than doubled. That is a phenomenon which is arguably the most dramatic development in the labour market in recent times. As I said earlier, the problem that we face is one particularly for North Queensland, and I believe that there are also similar circumstances in Western Australia and the Northern Territory as well.

I want to make the comment that the legislation we have before us now is a very important example of the separation of powers in our form of government. Under our separation of powers we have this parliament, the two houses, which produces legislation. It is administered through the executive government and the departments and then we have, totally separate, the judiciary, who implement the legislation. Here is a situation where the decisions of the judiciary are actually out of step with those of the parliamentary infrastructure.

It is very interesting, and I believe it shows the strength of our Australian Constitution that we have this situation where we can, as representatives of the people, redress an issue where we may believe the judiciary is out of step. I am not saying that the judiciary is out of step in all cases, but the government obviously believes in this case that it is. That is the difficulty this legislation brings—finding that balance between the rights of the casual employee and balancing those very carefully to ensure that those who employ them have a reasonable basis on which to carry out their businesses. As I said earlier, because the Labor amendment very clearly addresses one of the major issues that I have with the bill, I indicate One Nation's support for the amendment.

Senator JACINTA COLLINS (Victoria) (11.15 p.m.)—I would like to go back in my brief remarks to what I think the fundamental issue is here. I think Senator Harris, to give credit where it is due, highlighted it in his comments. We were talking about employees' rights to fair termination and whether casuals—and Senator Murray raised whether it was reasonable that there be a differential standard for casuals as opposed to full-time employees; I am not sure that I adopt that perspective—should need to wait for 12 months before they attracted any right to a fair termination. Senator Harris clearly highlighted that one of the principal issues here is whether the parliament should maintain an increase in security of employment for casual employees. The issues he raised about ability to attract credit or purchasing power or regularity of employment all relate to insecurity of employment—a significantly growing problem in the Australian work force, as was also highlighted by Senator Ludwig, and I think Senator Murray would also accept this. What this bill represents is reinforcing an increase in that insecurity.

As Senator Harris highlighted, we have had an inconsistency between the judiciary and the parliament on this matter, but courtesy of Senator Ludwig's comments—and I thank him for reminding me of some of these issues—I would like to revisit the nature of that inconsistency. Senator Murray and I have devoted time over many, many years to issues related to termination of employment, the rights of casuals and first wave, second wave and third wave industrial relations reform. Senator Murray, what wave are we up to at the moment, according to your theory? I think it is the fourth, isn't it? But through many of these waves, Senator Murray would accept that I have consistently pursued these issues related to casual employment.

Senator Ludwig kindly reminded me that when I sought the disallowance of the regulations in this matter the Democrats maintained that those regulations should not be disallowed but indicated that they thought it was appropriate that those provisions be re-

viewed. Senator Ludwig quite rightly highlights that the product of any such review would not really come before the parliament, except in a number of senses which I would like to address. Firstly, we have evidence of the growing incidence of casual employment, a trend that we have not been able to stem. We also have, as Senator Murray referred to, the Hamzy case. In my interjection earlier I highlighted to Senator Murray that I thought that was actually an indicator of the level of consistent and determined aggravation by some sectors of the industrial relations community in relation to this issue regarding casuals.

While I have addressed this, Senator Murray said that perhaps his perspective came from a more independent stance, and I would concede that issue. I am quite happy to concede to the chamber that my history and involvement in casual employment commenced when I was a 16-year-old casual working in the retail industry. Developing from that employment in the retail industry and then getting involved in organised labour in the retail industry, I have had ingrained in me the problems that casual retail workers face. This is why the retail union took this case right up to the Federal Court. We know that fair termination issues are often a significant and considerable issue for many retail workers.

Senator Murray also referred to some data he had on federal jurisdiction issues in relation to casual employment. I can perhaps enlighten Senator Murray that the federal jurisdiction is extremely significant for casual workers right across the retail sector. It is probably the principle jurisdiction for those workers. This is one of the reasons why the Hamzy case proceeded. Extending to 12 months the period where these workers will not have access to fair termination means that a considerable portion of these workers will never have access to fair termination rights. Senator Murray has said that one of his concerns is what the federal government's harmonisation agenda might be. With respect, I would say to Senator Murray that what the federal government's harmonisation agenda might be is no justification for abandoning appropriate casual standards. My association with the retail sector and the retail union has been quite consistent on this point.

Australian workers in the retail sector attract standards of employment that are perhaps the envy of the world. The reason for that is that a well-unionised and organised sector have been able to maintain those entitlements. They have principally done that within the institutional organisations that exist in Australia and those institutional organisations are the bodies that have played umpire and played independent party. So when Senator Murray says to me that perhaps the Democrats stance here is a tad more independent than my perspective might be, I concede that. But I would encourage the Australian Democrats to look at what the commission has said during this period of review about issues relating to casual employment. The Hamzy case is one example where the commission indicated that a short period of employment could not really be regarded as something more than a six-month period. I would also refer to the metals case in relation to casual employment, which indicated that casuals should have access, where possible, to full-time employment after they have been engaged for a period of more than six months. Again, it was a six-month benchmark.

I would be happy to concede that there are various considerations in how far you can extend that position or even about whether that position was relevant to this particular debate. But when we look at what is regarded by our independent umpire as a reasonable benchmark in relation to casual employment, we have had an indication twice—since the Hamzy case in the Federal Court—that six months is the appropriate benchmark. That would reinforce to you, Senator Murray, that perhaps your original caution in supporting the government, when the Labor Party moved the disallowance of the regulations in relation to that six-month period, was right. The review the Democrats sought has not been taken seriously by the government, and we have had no result of any such review. But we do have two decisions by the independent umpire on what is an appropriate benchmark in relation to casual employment. We have the Hamzy case decision and

the metals case decision. I can only encourage the Democrats to regard those decisions, not contradicted by any other decision of either the court or the commission, as perhaps the more appropriate benchmark at this point in time.

The government might indicate that 12 months might be a more appropriate position in the future. It might argue that, in a harmonisation agenda, that is a more appropriate benchmark. It might argue—as you, Senator Murray, indicated back as far as 1996—that it is appropriate to have a differential benchmark between full-time and casual employees, which is something I am far from convinced about. Perhaps I should briefly revisit that issue of whether there should be such a distinction between full-time and casual employees. In labour terms, people often regard it as a very clear distinction between a full-time worker, a part-time worker and a casual worker. In an industry where there is a very high proportion of regular casual workers that distinction is a bit less clear than people might often think. The retail industry is full of thousands upon thousands of workers regarded as regular casuals. These workers attract entitlements such as annual leave and sick leave in some states. A move towards reinforcing a 12-month exclusion in this matter for casuals would mean that such workers, even though they are entitled to holiday pay, annual leave and sick leave, have no entitlement in relation to fair termination.

This is a considerable concern for me. Given the caution that the Australian Democrats applied when they were not prepared to support the disallowance on the last occasion, I can only reinforce that the High Court and the commission have since reinforced that six-month benchmark. There are many good reasons for many casuals to deserve access to fair termination before a 12-month period, particularly those regular casuals who attract entitlements to a myriad of other conditions that most people do not realise, such as holiday pay, annual leave and sick leave. It is a bit difficult to see why they should wait for 12 months before they can attract an entitlement for fair termination.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.25 p.m.)—Both Senator Harris and Senator Collins seem to be proceeding on the mistaken apprehension that the court in the case that they referred to found that 12 months was too long a period.

Senator Jacinta Collins—I did not say that.

Senator ALSTON—I am glad that has been clarified; I hope no-one else thinks that. Presumably, you would also agree that the court found, on a technicality, that the regulation went beyond the regulation making power in the act, but it did not decide on whether 12 months was a short period and it did not indicate that six months was the appropriate period. The reason the government opposes these amendments is that, if the exclusion of casual employees from making claims for unfair dismissal is reduced from 12 months to six months, it will place an extra burden on businesses, particularly small business, by forcing them to rearrange their employment practices and leaving them open to termination of employment claims for a large number of casual employees. The expected duration of a job—and this is a very significant point because it is assumed that casual employees are only employed for a relatively short period of time—currently held by a casual employee has been estimated to be approximately 4.6 years. In this context, 12 months is a relatively short period of time. I know it is an article of faith—certainly on the part of the Labor Party, which take their riding orders from the unions, as we know. And the unions hate casual employment because almost, by definition, casual employees do not join unions.

Senator Jacinta Collins—That's not true.

Senator ALSTON—I said that overwhelmingly they do not join unions.

Senator Jacinta Collins—Not in my sector.

Senator ALSTON—I do not know why you are objecting then. Again, the assumption is that people are forced to work on a casual basis against their wishes. I have not heard any evidence, apart from Senator Collins's assertion—

Senator Jacinta Collins—Look at the ABS stats.

Senator ALSTON—The stats do not show you anything. They show an increase in the level of casualisation, but that is equally consistent with employers wanting more flexibility and employees wanting more flexibility. And you know that as well as I do, but it suits your purpose to continue to assert that this is some huge social evil, that no-one should be working in casual employment, that they are forced to do it against their will and that you can do something about it. The stats that you quoted go back to well and truly the Labor years. As the lights have gone out, we have gone back to 1975 at least! That is when we 'turned on the lights'—don't you recall? I hope we can deliver this time.

We take the view that the filing fee must be retained permanently as it discourages frivolous, vexatious and speculative claims against businesses. Provisions in the regulations for waiver of the filing fee in cases of hardship and refund in cases of discontinuance would be preserved. The Senate Regulations and Ordinances Committee has expressed concern at the constant extension of the sunset period for the filing fee. This proposal honours the government's election commitment to making the filing fee a permanent requirement. Currently, it is set out in the regulations that the fee will cease operating on 31 December. Filing fees exist in a number of other jurisdictions, including New South Wales and Queensland.

Senator LUDWIG (Queensland) (11.31 p.m.)—There are two points that I wish to make. One is in relation to the amendments that the opposition has moved. Since the Hamzy case of 16 November 2001, there has been no hue and cry from small business about suffering from the provisions that currently apply to them. In fact, small businesses got on with it. So I do not think that the world will end, as the government sometimes makes out that it will, or that small business will fold its tent and disappear. That in itself is instructive for those parties who are minded to assist in supporting Labor's amendments. What we are trying to do is ensure that there is fairness and that it does not tip the balance to a point that is unfair, as the government would have it.

I was going to raise the second issue during the first part, but I waited to see what the government would say. One of the difficulties in this area is that, if you do not address this in the way that we say it should be addressed, you do get some unusual results. A case in the Supreme Court of Victoria called Pettet v. Readiskill LMT Mildura 2001 ended up in the Supreme Court of Victoria Court of Appeal, before three judges of that court. The appellant, Mr Ian Edward Pettet, was a self-represented litigant who claimed wrongful dismissal because he was obliged to comply with the directions as to the use of a time clock given under the terms of his contract. The question was whether the refusal to comply amounted to repudiation.

During a certain period, the government would make no provision for a place for a person such as a casual worker to complain. In this instance, an employee who had only been employed for a very short period was seeking, whether rightly or wrongly, a remedy somewhere. That remedy in this instance took him to the full court of the Supreme Court of Victoria. You may argue about the fairness or otherwise of the ex-employee's case, but the argument we are making is that, if you do not allow the industrial tribunals to deal with these things and if you try to exclude them, there will always be an avenue for an employee to take to pursue their case. For all intents and purposes, the Supreme Court of Victoria is an unusual place for an employee to end up in. The judges, in dealing with that matter—and I think this is instructive—said:

> The dispute ... has generated a great deal of heat and not much light ...

The amendments that the opposition has put forward are fair and they deserve support.

Senator MURRAY (Western Australia) (11.35 p.m.)—I have listened to the debate with some interest. The opposition's amendment (2) differs from the government's bill in two ways. Firstly, the period is six months and not 12. That is an easy one to understand. A more difficult concept before us is the qualifier at the end, which says, 'unless a shorter period is specified in an

award or certified agreement.' My fairly long experience in workplace relations makes me ask what that means. One question that I would ask straight away, of course, is: what is the lower floor? Could a shorter period be one day? I am inclined to think that, in matters of small business, without being too rude to the sector, they are better off with as precise and clear a statement as possible.

Having listened to the debate, Minister, I am inclined to support the opposition's amendment, which will give them the numbers. If I did that, it would go down to the House and you would have to deal with it and bring it back. It would be easier from all perspectives—and I do not know what authority or riding instructions you are under from the cabinet in this matter—if you simply amended the opposition's amendment to knock off that last line. I would then accept the amendment as it is and down it would go and that would be the end of it.

If it came back here without that last line, I would accept it or amend it myself. I would be inclined to insist if it came back. You ought to know that. That is not a threat; it is just that this is the kind of the day when you tell people what you are going to do. Otherwise, we will be in here for eternity. What I am saying to you is that you could have a simple change from 12 to six and leave it at that with that being the only thing that changes in your bill, or we can have the bounce back situation.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.38 p.m.)—Senator Murray, the government would not accede to that request.

Senator SANTORO (Queensland) (11.38 p.m.)—I was going to make a more substantive contribution during the general second reading debate but, given the way that business is going in this chamber tonight—understandably—with speeches being incorporated, I will not proceed with that contribution other than to make a few remarks about the amendment before us and a few general points based on some experience that I had in another jurisdiction.

What we are debating with this particular amendment and the bill as a whole is one of the essential ingredients for business success. Senator Murray touched on the issue when he suggested that, by knocking out the qualifier and giving small business some definition in terms of the period that they may be confronting, we will be providing small business with a greater degree of certainty. He sought not to be patronising to small business, but the reality is that small businesses do like simplicity because they do not have the resources of larger businesses, whether they be accounting, legal or other representative resources, in order to go out there into the Industrial Relations Commission and argue the finer points of definition. If we are trying to create, as Senator Murray suggested, a simpler operating environment for small business while still maintaining a sense of fairness within the laws that we are considering here tonight, particularly the unfair dismissal laws, then that is a good thing.

The point of view that I am coming from is the experience that I had when I was the Minister for Industrial Relations in Queensland when, in May 1997, I announced and subsequently was able to put through the Queensland parliament—where, in reality, there was an upper house with one Independent who held the balance of power; I had to argue with her privately and subsequently within the parliament on some of the points that we are arguing here tonight in order to convince her that what we were suggesting was fair—a 12-month exemption from the application of unfair dismissal laws for small businesses with 15 or fewer employees.

Just so that honourable senators here are able to understand, it was not a scorched earth policy that I was putting through the Queensland parliament. That exemption did not apply, for example, where the dismissal was for an invalid reason such as race, union or non-union membership or temporary absence due to illness or injury. In other words, we had some very real protections within that exemption against dismissal as a result of invalid reasons.

But what that particular law did—and I have started talking to some of the senators within the opposition and the minor parties about this—was encourage a boom in full-time, casual and part-time employment in Queensland, particularly full-time employment. During the period that that law operated, 40 per cent to 45 per cent of all full-time jobs that were created by industry in Australia were created in Queensland.

I notice that Senator Ludwig is in the chamber. He may recall the many times, both within the parliament and outside the parliament, that I called on the Labor Party and the union movement to bring before the parliament—or indeed any other forum that they chose—one example of where an employee had been badly affected by the application of those particular unfair dismissal laws in businesses where the number of employees was under 15.

It is a matter of public record that I made that call. Not once was an example put forward where a Queensland worker was able to demonstrate that they had been unfairly dismissed or unfairly treated but had had no recourse to law as a result of the application of that law. The reason why I made that call was that when I introduced the bill, which later became law, the support I was given by the then Independent member for Gladstone was conditional on the laws not disadvantaging Queensland workers. That particular law encouraged a boom in employment in Queensland. That is not a boast by somebody who was intimately involved with the introduction and the application of that law; it is something that is statistically provable.

When we are talking about 12-month exemptions as opposed to any other period of exemption, in at least one jurisdiction where that exemption worked unfettered—and we are talking here about small businesses employing 15 employees or fewer, irrespective of whether they were part time, full time or casual—that law did demonstrably work. The challenge that I issued for just one example to be talked about either in the parliament or anywhere else—any other forum that the union or the Labor Party chose—was to the best of my knowledge never taken up and still has not been taken up.

Looking more specifically at the bill under consideration tonight, since it came into effect in December 1996 and the 12-month rule has applied, there has been phenomenal growth in casual employment. I hear members of the opposition saying that, unless we cut it down to the six months that applied under Labor law, an unfair situation will be created and there will be—to paraphrase Senator Collins's words—uncertainty created within the workplace, particularly for casual workers. One of the main contentions of senators on this side of the house is that you really must have jobs before the jobs become uncertain. The 12-month rule has applied for the best part of the period since December 1996, with phenomenal growth in casual employment. In Australia these days we have almost two million casual employees, which is a high number by any measure compared to other nations. Nevertheless, it is very applicable to the Australian situation where small businesses operating in the economy appreciate the flexibility of our laws in giving them a very strong capacity and ability to employ on a casual basis.

One senator has said that the voice of small business has not been heard in objecting to the Federal Court decision which reduced the exemption period to six months. The point we make is that these days small business really does not object; it just basically acts and stops employing. We can either provide small business with greater incentive to employ by creating more flexible labour market conditions within a fair legislative framework that protects employees from unfair dismissals or we can create an operating environment which will discourage them from employing further.

I strongly support the government's position. I was pleased to hear the minister respond in the way that he did in terms of the compromise that is being offered by those opposite. I have not heard much evidence in this place tonight, nor in the other jurisdiction with which I have some familiarity, of rampant abuse or of unfair situations that by any standard could be regarded as unbearable. But I do know from watching the performance of this government, admittedly from afar in Queensland before I came to

this place, that we have under this government, as we did under the government that I was a member of when laws much stronger than the one that we are considering here tonight applied, record employment growth at all levels—part-time, full-time and casual. With that comes the job security that comes with a strong economy and with that growing and strong economy comes job creation. You just cannot have job security unless you have jobs being created and taken up at the rate that have been taken up under the IR regimes that the government legislation and the government initiatives are seeking to put back in place.

Senator MURRAY (Western Australia) (11.48 p.m.)—Given the strength and understanding of workplace relations law on the Labor side, I must say—through you, Mr Chairman—Senator Santoro, it is nice to hear a coalition person who has a lot more experience than some of those whose views we have heard expressed. Frankly, I think in the future your own deep knowledge and understanding will add to the debate. Minister Alston, I want to wrap up the situation as I see it. Labor's amendment will go through intact, unless you move an amendment now, which I would accept, which would be to knock off the third line of item two. If it goes to the House and they do not accept Labor's amendment to change the period from 12 to six months, you will be left with a situation under the Hamzy case where there are no exclusions for casuals. I would have thought that six months is better than none—that was the Hamzy result. If you come back and say that you cannot accept it, that will be where it will lie.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.50 p.m.)—To clarify the matter for Senator Murray's benefit, the government are not prepared to cut the period of exclusion back from 12 months to six months. If this amendment is carried, I will foreshadow that we will be most unlikely to be supporting any other amendments, and on that basis the bill will be going back to the House of Representatives where I am sure they will insist on the view that I have outlined.

The TEMPORARY CHAIRMAN (Senator Cherry)—The question is that the amendments moved by Senator Ludwig be agreed to.

Question agreed to.

Senator LUDWIG (Queensland) (11.50 p.m.)—The opposition opposes schedule 2 in the following terms:

(3) Schedule 2, page 11 (line 2) to page 13 (line 12), **TO BE OPPOSED**.

This amendment on sheet 2784 relates to schedule 2, fees for application. Clearly, we oppose the inclusion of a filing fee for unfair dismissal applications in the Workplace Relations Act. The government first introduced the filing fee by regulation. I am sure the minister opposite would recall that it claimed then, as it does now, to be acting to deter frivolous and vexatious applications. But it is worth reminding the government what the Access to Justice Advisory Committee said about filing fees in its 1994 report on access to justice. It is a lengthy quote but I think it helps in this instance. It states:

> Court fees may be used as a means of deterring frivolous litigation. Clearly, however, the deterrent effect will vary according to the means of the particular litigant. The present fee structure may well deter poorer litigants with substantial claims; yet not deter wealthy litigants from vexatious or tactical use of the courts. If courts fees are to be used as a deterrent, there should be a closer link between the fee and the degree of frivolity of the case. For example, one approach is to reduce or even remove fees, subject to a power in the court or tribunal to order cost recovery where an application is judged to be frivolous or vexatious.

Labor moved to disallow the filing fee in 1996 on precisely this basis. A person with a substantial claim and limited resources may well be deterred, while a person with a frivolous claim and ample resources would not be deterred. It is helpful to reflect again on the case of Pettit v. Readiskill LMT Mildura 2001—involving a self-represented litigant—which I mentioned earlier in the committee stage. It appears that that applicant was not deterred by anything; this self-represented litigant, who may very well have been of very limited means, proceeded to the full court of the Supreme Court of Victoria. I would not like to hazard a guess at the expense that that has caused. I do not know

whether a $50 filing fee would have deterred him, but I can assure you that if he had had the ability to go to a tribunal we would have all encouraged him to go there to fight his case by himself—without a $50 filing fee. This would have avoided the expense of a full court hearing. I will spare you from hearing the one-liner again.

The regulation will cease on 31 December 2003. Given the potential for any court fee to act as a barrier to justice, it is appropriate that the government remain accountable to parliament when imposing such fees. If you are going to impose fees, it is far better to have a regulation than to prescribe them within an act. It is very unusual to take this course, but of course the government's idea is not about dealing with delegated legislation in an appropriate and proper manner. In this instance, the government is entrenching the filing fee as a political gesture rather than as a genuine attempt to ensure a fair go all around for employers and employees. I seek the committee's support for opposing schedule 2.

Senator MURRAY (Western Australia) (11.55 p.m.)—The filing fee has been in force since 1996. The Democrats will continue to support the filing fee. We will not support Labor's opposition to schedule 2.

Senator HARRIS (Queensland) (11.55 p.m.)—I rise to indicate that, in light of the amendment that has gone through on the bill which adds balance by bringing the period back from 12 months to six months, One Nation will not be supporting the opposition to schedule 2. To put the $50 application fee in context: $50 is less than the cost of what we in the north would refer to as two 'slabs'—in other words, two cartons of beer. I do not believe that that amount would create a substantive disincentive for a person who felt that they had been unjustly terminated. Clause 170CEAA(8) of page 12 of the bill refers to the refund of a fee if the application is discontinued in certain circumstances. It sets out quite clearly that this refund applies if the application is discontinued at least two days before the date specified for consideration. However, it is not clearly expressed whether the applicant is the beneficiary of that refund in the situation when the applicant withdraws the application or whether the refund only applies when the discontinuance is made by the respondent—although, that would be difficult to implement. I am seeking clarification from the minister that it is the actual applicant who is the beneficiary of the repayment of that fee.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.57 p.m.)—If Senator Harris is asking me about the effect of subclause (7), it does not require the payment of a refund. It simply exempts payment in the first instance, and so the applicant would not be required to hand over money.

The TEMPORARY CHAIRMAN—The question is that schedule 2 stand as printed.

Question agreed to.

Senator MURRAY (Western Australia) (11.58 p.m.)—by leave—I move together Democrat amendments (R1A), (1) and (2) on 2793 revised:

(R1A) Schedule 1, item 1, page 3 (line 9), omit "*Subdivisions B, C, D, E and F*", substitute "*Subdivisions B, D, E and F and sections 170CL and 170CM*".

(1) Schedule 1, item 1, page 3 (line 11), omit "Subdivisions B, C, D, E and F", substitute "Subdivisions B, D, E and F and sections 170CL and 170CM".

(2) Schedule 1, item 1, page 4 (lines 21 and 22), omit "Subdivision B, C, D or E", substitute "Subdivision B, D or E or section 170CL or 170CM".

I am indebted to *Bills Digest No. 95* 2001-02 for expressing the situation well. At page 7, it says:

More generally, and this is a criticism that might be made of both the present proposal and the Keating Government's approach, it is inappropriate to exclude any casual workers from the *unlawful* dismissal component of federal unfair termination laws. The latter refer to those grounds of termination specifically enumerated at section 170CK(2) of the Principal Act. Excluding employees from the protection against unlawful dismissal denies, for example, a casual employee who is dismissed because their employer discovers they are/are not a member of a union, or a homosexual or a member of a particular racial group, relief available to other workers under the Principal Act. In short, even if there is an argument for denying casual workers access to federal

unfair dismissal laws, the basic standards of fairness and decency established by the *unlawful* dismissal requirements in section 170CK of the Principal Act ought to apply to all employment relations.

My memory of all my discussions with ministers and shadow ministers is that none of them have ever envisaged a situation where the unlawful dismissal provisions in the act should not apply to all workers. I cannot conceive of that. It is a basic standard throughout our legislative regime for employees that you simply cannot be dismissed on grounds of race, gender, sexual preference or anything of that sort. These amendments are designed to rectify an oversight: that is why I have moved them and expect unanimous support for them.

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Senator LUDWIG (Queensland) (12.01 a.m.)—Having listened to Senator Murray in respect of these amendments, we are persuaded to support his position and agree with the amendments. When you distil the argument down to its basic component, it is that we should not discriminate between a casual or a permanent in this instance, nor should we discriminate be it for one hour, one day or two days, depending on their length of employment. When you look at the issues of the discrimination provisions of race, sex and the like, it makes eminent sense to ensure that unlawful dismissal will stand as has been provided for. We find that Senator Murray has put a strong case for the opposition to support.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.02 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

First Reading

Bill received from the House of Representatives.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.03 a.m.)—I move:

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

Senator BROWN (Tasmania) (12.03 a.m.)—I object to the fact that the Renewable Energy (Electricity) Amendment Bill 2002 is being brought in here at this hour on the last day of sitting this year. This is a major piece of legislation and it requires major amendment. The opposition, the Greens and the Democrats have all flagged major and important amendments to this piece of legislation and the government ought to have either held it over until the February sittings or, much better still, have presented this legislation to the parliament for consideration before this. I am not going to be an impediment to the bill, but the temptation to do that is very strong. Seeing that the government wants to bring this legislation on after midnight on the last day of sitting, I will not be under pressure to hurry it along. It is too important for that and the government must recognise that.

Question agreed to.

Bill read a first time.

Second Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.05 a.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 Renewable Energy (Electricity) Amendment Bill 2002 amends the Renewable Energy (Electricity) Act 2000 to clarify key definitions in the original legislation and to provide for greater efficiency and effectiveness in the administration of the legislation.

The implementation of the legislation by the Office of the Renewable Energy Regulator has revealed a number of minor deficiencies in the operation of the legislation which, collectively, need to be addressed to ensure the maintenance of the integrity of the legislation and the full achievement of its objectives.

The amendments contained in this bill are administrative in nature and relate to the following:

- The clarification of definitions including those related to eligible renewable energy sources, components of a power station, relevant acquisitions of electricity and penalty charges.
- The capacity of the Renewable Energy Regulator to vary decisions including those related to energy acquisition statements, energy shortfall statements and the 1997 eligible renewable energy baseline for an accredited power station. This action may be at the Regulator's own instigation or that of the liable party and will be exercised in a limited number of circumstances;
- The introduction of information gathering powers to underpin the monitoring, auditing and compliance requirements of the Renewable Energy (Electricity) Act 2000 and to bring this legislation into line with similar pieces of Commonwealth legislation;
- The extension of authorised officers to include officers appointed by the Commonwealth and by State and Territory governments;
- The capacity of the Renewable Energy Regulator to suspend entitlements, including the accreditation of a power station, in a number of limited circumstances;
- The inclusion of administrative review provisions covering decisions by the Renewable Energy Regulator to take action to vary or suspend.

The clarification of definitions is particularly important from the standpoint of investors in renewable energy. The amendments will provide greater clarity about what is an eligible renewable energy source, what is an accredited power station and what is a relevant acquisition of electricity. Similarly, the capacity to vary or amend documentation or decisions meets a pragmatic need of the Regulator to address mistakes made by participants or to respond to changing circumstances, additional information or the results of monitoring and compliance actions.

The power to gather information and documents will allow the efficient administration of the legislation and is a means by which informed decisions about the participants in the trading of renewable energy certificates can be made. Information will be confined to that which is relevant to the operation of the Renewable Energy (Electricity) Act 2000.

With the renewable energy target ramping up sharply in the coming years, it is highly likely that there will be considerable growth in the number of accredited power stations and the amount of renewable energy certificates that will be traded or acquitted. The administrative load for the Office of the Renewable Energy Regulator will greatly increase and in order to meet this demand, provision will be made to allow the appointment of Commonwealth officers or employees of State and Territory Governments to operate as authorised officers for the purpose of the Renewable Energy (Electricity) Act 2000 and therefore exercise the power to monitor compliance with the Act. The Act already provides that in order to be appointed as an authorised officer, the person must have sufficient maturity and sufficient training. As officers or employees of Australian governments, these authorised officers will be subject to the strict public service requirements for conduct and behaviour.

The suspension of an accredited power station is particularly important to ensure that the owners and operators of these businesses conduct themselves in a manner in keeping with the objectives of the legislation. A power station's accreditation can be suspended in a range of circumstances including where a power station contravenes or is suspected of contravening a law of the Commonwealth, a State or a Territory or where the Renewable Energy Regulator is reasonably of the opinion that a gaming arrangement has occurred. Gaming involves generators manipulating their output to increase the quantity of renewable energy certificates able to be created without increasing renewable generation, and the powers foreshadowed in this bill ensure that such action cannot pose a future threat to the integrity of the legislation.

Decisions by the Renewable Energy Regulator to vary or amend decisions or assessments or to suspend entitlements under the Renewable Energy (Electricity) Act 2000 will be subject to review by the Administrative Appeals Tribunal.

This bill, with its suite of administrative changes, is being introduced now to ensure that there is as little delay as possible in providing certainty to both the power generation industry and the renewable energy industry on the operation of the renewable energy trading system. Such certainty will enable these industries to make the type of

strategic investments needed to achieve this Government's challenging target of an additional 9 500 gigawatt hours of renewables-based electricity—an amount, I am informed, that is equivalent to the residential electricity requirements of a city the current size of Sydney.

The Renewable Energy (Electricity) Act 2000 was a world-leading piece of legislation and a number of countries have identified it as a model for promoting renewable energy through a market-based trading system. While the measure has been in operation only since 1 April 2001, I am pleased to be able to report that its implementation is already delivering significant benefits. To date nearly 150 power stations have been accredited and they encompass a wide range of fuel types.

Small and large producers are included in the trading scheme, and there are strong indications of investor confidence in the renewable energy sector, with many projects proposed for development including a substantial number of wind energy projects.

The amendments that I am bringing forward today in no way impact on the Government's commitment to conduct an independent and thorough review of the Renewable Energy (Electricity) Act 2000 as mandated under section 162 of the current Act. The legislation and the mandatory renewable energy target are a critical plank in this Government's greenhouse response and equally a significant and important step towards achieving sustainability in energy supply. As such, changes to the policy underpinnings of the Renewable Energy (Electricity) Act need to be made in an informed rather than a reactionary manner, having regard to all participants in the market and noting the importance of a stable investment environment for the uptake of renewable energy technologies. It is my intention that the policy review of the Renewable Energy (Electricity) Act 2000 commence in January 2003 and be conducted in a timely, open and transparent manner.

In the meantime, administrative changes are required to the Renewable Energy (Electricity) Act 2000 to improve the efficiency and effectiveness of its operation.

Senator MACKAY (Tasmania) (12.05 a.m.)—I seek leave to have my speech on the second reading of the Renewable Energy (Electricity) Amendment Bill 2002 incorporated in *Hansard*.

Leave granted.

The speech read as follows—

I rise to speak today on the Renewable Energy (Electricity) Amendment Bill 2002. As a Tasmanian Senator I have a strong interest in this Bill, as renewable energy generation is a significant part of Tasmania's economy, and therefore, this has great significance for my state. As Deputy Chair of the Environment, Communications, Information Technology and the Arts Senate Legislation Committee I was present at the Senate Inquiry into this Bill. The subsequent Senate Report outlines the findings of that Committee, which I intend to canvass today.

This bill amends the Renewable Energy (Electricity) Act 2000, and aims to clarify important definitions in the original legislation, and to provide for greater efficiency and effectiveness in the administration of the legislation. There have been a number of minor complications in the operation of the legislation that have been revealed by the Office of the Renewable Energy Regulator. These need to be dealt with to ensure the consistency of the legislation and the accomplishment of its objectives.

The purpose of the Act was to establish the Mandatory Renewable Energy Target, otherwise known as MRET. This target is to generate an additional 9,500 megawatts of renewable energy by 2010. This was to mean that renewable energy based generation would rise from 10.7 per cent in the late 1990s to the projected 12.7 per cent by 2010.

The scheme, therefore, was designed to increase investment in the renewable energy market and to potentially decrease greenhouse gas emissions by approximately seven million tonnes per annum by the target year of 2010.

This target has become problematic, as the predicted energy consumption of Australia was actually too low. We are consuming more energy than anticipated. Therefore, 9,500 megawatts does not equate to a 2 per cent increase as forecasted. Rather 13,500 megawatts would produce a true 2 per cent increase of renewable energy.

My colleagues in the House of Representatives have spoken of increasing the MRET to 5 per cent. I am in support of this as it would stimulate an increase of new renewable energy projects.

The objective of the MRET scheme is to accelerate the uptake of renewable energy—that is, energy that does not come from fossil fuels—so as to reduce greenhouse gas emissions and to provide an ongoing base for the development of commercially competitive renewable energy. Furthermore, the scheme is designed to contribute to the development of internationally competitive industries which could participate effectively in

the Asian energy market. An increase of the target to 5 per cent would surely provide the industry incentive and therefore, achieve these objectives.

The MRET scheme has enabled Tasmania to upgrade its aging hydro plants which are on average 45 years old. These upgrades will enable the plants to become more effective in their generation of renewable energy. The scheme has also underpinned development of new mini hydro projects and wind farms in Tasmania.

Hydro Tasmania has secured development approval for a substantially large 130-megawatt wind farm at Woolnorth in northwest Tasmania. The first 10.5 megawatts have recently been commissioned. Two other sites, Heemskirk, on Tasmania's west coast, and Musselroe, in the northeast of the state, are at an advanced stage of investigation and development applications have been submitted for them. These two projects will have a total installed capacity of around 300 megawatts. Furthermore, Hydro Tasmania is continuing with interstate wind development opportunities in South Australia and in Western Australia. In conjunction with Basslink these projects will make Tasmania a significant contributor to energy production in Australia. The most impressive part of this is that this energy will be renewable. The MRET scheme has provided incentive for this growth and investment to occur.

The current commitments by Hydro Tasmania to develop 420 megawatts of wind farm capacity in the state—and up to 1,000 megawatts could be developed—have been used to encourage investment in the local manufacture of wind turbine components.

An example of this is Vestas, a Danish company, which is in final negotiations with the Tasmanian Government and already there is a site chosen at Burnie for a Nacelle assembly plant. This equates to regional jobs and local investment in Tasmania.

MRET has contributed to this investment in Tasmania as the scheme stimulates further renewable energy generation and, from that, the stimulation of economic development, both directly and indirectly. The MRET driven renewable energy capital expenditure to 2010 in my home state, as I understand, will involve plant upgrades of $208 million, $5.5 million in mini hydro projects, wind farm projects of $620 million—that is just those involving Hydro Tasmania, not other private players—and wind farm developments on the mainland totalling approximately $440 million.

This highlights the significant investment undertaken in the renewable energy sector by Hydro Tasmania.

A number of submissions and witnesses at the Inquiry into this Bill suggested that Hydro Tasmania, in particular, generated renewable energy certificates, known as RECs, without any additional investment in renewable energy.

MRET requires liable entities to surrender to the Renewable Energy Regulator sufficient tradable RECs to cover their required purchases of electricity generated from renewable sources. RECs are produced by renewable energy generators and are sold to liable entities. The purpose of RECs is to enable liable entities to avoid or adjust the amount of any renewable energy shortfall charge that they would otherwise have to pay when they acquire electricity from non-renewable sources.

I disagree with the suggestion that Hydro Tasmania is in receipt of some kind of windfall arrangement. These submissions and witnesses seem to negate that the intention of the Renewable Energy (Electricity) Act 2000 was to generate additional renewable energy from both new plants and existing ones.

To ensure this would run smoothly the Renewable Energy Regulator set up baselines which for existing hydro generators were based on the previous 14-year average. Renewable energy produced above this baseline would generate RECs. Hence, production above the baseline is regarded as additional renewable energy.

Hydro Tasmania's ability to create RECs has enabled upgrades of plants and investment in new projects. Hydro Tasmania is, therefore, doing the right thing by Australia in generating and investing in clean, green energy.

This is possible through MRET and any fundamental changes to this scheme that were suggested in the Inquiry should be left until the Review which is to commence in January 2003.

The scheme is only 0.25 per cent completed. It is impulsive to make substantive amendments at this stage. Significant changes to the scheme so early in its implementation could severely undermine industry investment as the potential is there to create market uncertainty. Particularly when the Review will examine the policy issues regarding this Act in great detail. The Bill is for administrative changes only in which I give my support.

I further support, as mentioned earlier, the raising of MRET to 5 per cent. This will significantly generate new investment in the renewable energies industry.

I am proud to be living in a state which is committed to the renewable energy sector. Tasmania contributes over 60 per cent of Australia's renewable energy. This clean, green energy is helping to reduce greenhouse gas emissions. The MRET

scheme contributes to this and I am not in support of the CoAG Energy Market Review Panel, chaired by former Liberal minister Warwick Parer, that MRET should be abandoned.

This recommendation if implemented would be disastrous for the renewable energies industry in Australia, especially for the main renewable energy generator, my home state of Tasmania.

Senator O'BRIEN (Tasmania) (12.05 a.m.)—I rise to speak on the Renewable Energy (Electricity) Amendment Bill 2002. I am not sure what our status is, but I understand that the House of Representatives could have used some renewable energy a little while ago. The House of Representatives adjourned until they could see properly.

Senator Alston—They are more delicate than we are.

Senator O'BRIEN—I will take that interjection. I am sure your colleagues will appreciate it. In view of the fact that the minister has incorporated his second reading speech, I seek leave to have my speech on the second reading incorporated in *Hansard*.

Leave granted.

The speech read as follows—

The Renewable Energy (Electricity) Amendment Bill 2002 aims to improve the administrative integrity, effectiveness and efficiency of the Renewable Energy Electricity Act 2000. That act established the mandatory renewable energy target, frequently referred to by people as the MRET, of an additional 9,500 megawatts of renewable energy by 2010.

This bill seeks to clarify definitions used in the act, including the definition of eligible renewable energy sources and the components of a power station. It seeks to clarify the provisions in relation to a relevant acquisition of electricity to ensure that only one entity is made liable in relation to the purchase of a particular quantum of electricity.

Further, it seeks to clarify the provisions with respect to the claiming of renewable energy certificates associated with solar water heaters and to expedite the process by which certificates can be claimed for new solar water heater models as they become commercially available.

The bill seeks to provide the Renewable Energy Regulator with the power to vary a number of assessments and determinations under the act, including the energy acquisition statement, the renewable energy shortfall statement and the 1997 eligible renewable energy baselines for accredited power stations.

It also seeks to provide the Renewable Energy Regulator with information gathering powers to enable effective monitoring and compliance with the provisions of the legislation and to allow for the suspension of an accredited power station under a number of circumstances, including where there is thought to be 'gaming', whereby power station outputs may be manipulated to increase the number of renewable energy certificates that can be created without increasing the actual renewable energy generation.

I think it's fair to say that the government's proposed amendments represent an improvement to the MRET scheme and therefore Labor supports them.

The original Act sought to accelerate the uptake of renewable energy in grid based applications so as to reduce greenhouse gas emissions; as part of a broader strategic package, to stimulate renewable energy generation and provide an ongoing base for the development of commercially competitive renewable energy; and to contribute to the development of internationally competitive industries which could enter the growing Asian energy market.

The renewable energy sector can contribute significantly to Australia's well being—both environmentally and economically.

Besides the obvious greenhouse benefits, this sector has enormous potential to create jobs in regional areas such as Tasmania, and build Australia's skill base.

Overseas experience shows this to be the case. For example, the UK's fast wind turbine plant, a $30 million project, provides 170 jobs. And in California where they have a 20% renewable energy target, they expect to create 3,000 permanent jobs.

The signs are there for this to be replicated in Australia.

Hydro Tasmania, who currently produce 60% of Australia's renewable energy, and 100% of Tasmania's energy on a renewable basis, have unveiled plans to spend $208 million over the next ten years just on refurbishment of their existing assets to increase their efficiency.

In total, Hydro Tasmania plans to invest $1 billion in Australia over the next ten years. This money will go into projects such as the mini hydro at Butler's Gorge producing an additional 35.5 Mega Watts, and sustaining jobs in Tasmania.

Another major project is the Woolnorth Wind Generation project. This project is already generating 10.5 MW and will when completed, produce 130MW, much of it bound for effort to the mainland via Bass Link.

Because of the level of commitment Hydro Tasmania has to the wind generation business as well as to its home State, it has successfully entered into a joint venture arrangement with European firm Vestas to build a factory for Nacelle assembly.

Initially, 100 people will be employed in tower and nacelle construction. But with the continuation of wind generation development, there is a growing opportunity for blade manufacture to occur in Tasmania. This would mean potentially a further 400 jobs—high skilled jobs, contributing to the Tasmanian economy and the growing of a skill base within Tasmania that is increasingly in demand world-wide.

Another key driver of course of the significant investments proposed by Hydro Tasmania is the development of Bass Link.

For years, Tasmania has exported fine cheeses and wine, beef and forestry products to the mainland—even footballers of the calibre of Daryl Baldock And now, with the with the approval the Bass Link project, we shall soon export green energy to the mainland, and displace greenhouse gas emitting fossil. fuels in Melbourne during peak periods in the hot summer months.

Labor, in the States of Tasmania and Victoria, and Federally have shown their support for Bass Link by giving it approval after rigorous environmental examination.

What a pity that those opposite cannot claim such a position of solidarity with their State colleagues on the issue of Bass Link. Who can forget the grandstanding from the Victorian Nationals threatening to block the planning amendments that enabled the project to proceed?

What a telling indication of the coalition's commitment to Tasmania, their interstate colleagues standing in the way of the development of a new and valuable industry, and Tasmanian Senators opposite doing nothing to rein them in.

Of course we know that this government has very little commitment to Tasmania. This government's sugar tax will unfairly hit low income families in Tasmania, and damage the competitiveness of Tasmanian food and beverage industries against international rivals.

I note that Senators opposite who purport to represent the people of Tasmania were deafening in their silence when it came to speaking out against this grossly ill-conceived tom, one which in all likelihood will cost Tasmanian workers their jobs.

Labor is committed to Tasmania, to renewable energy and to the reduction in greenhouse gasses. This is why Shadow Cabinet have endorsed the position of my Colleague, the Shadow Minister for the Environment in proposing a 5% renewable energy target by 2010.

It should be remembered that the government's target of two per cent was revised by the government and converted into a target of 9,500 gigawatt hours.

The latest electricity generation projections developed for the Australian Greenhouse Office in projecting greenhouse emissions for the stationary energy sector anticipate higher rates of growth.

Based on these projections the Business Council for Sustainable energy anticipates electricity generation in 2010 to be considerably higher, at 270,000 GWh.

So as a consequence, instead of being a two per cent additional target, which it was supposed to be, 9,500 gigawatt hours really only constitutes a target of around half of one per cent.

So we have a Coalition that is not committed to Bass Link, has considerably less commitment to renewable energy targets that Labor has, and is not committed to Tasmania.

But the lack of commitment from this government to renewable energy now appears to be turning to outright sabotage.

I refer of course to the recently released draft report by former Liberal Minister and 'old mate', Mr Warwick Parer. His report has recommended that MRET be abolished altogether.

This is an irresponsible recommendation. It has destabilised what is a fledgling growth industry which has been making investment decisions on the basis of the expectations created by MRET.

It could potentially stop Bass Link in its tracks. Bass Link is effectively useless without Hydro Tasmania increasing its output to export levels. And remember also that Hydro Tasmania cites MRET as the key driver in their $1 billion investment plans.

Without MRET, this investment at risk, as are the jobs it will generate, as is the opportunity for the Tasmanian economy to add a major and sustainable export industry to its economic base.

Parer says we should move to a national carbon trading scheme, which is something that the Labor Party has always promoted.

But the renewable energy sector will need something more than that, because a national trading scheme will be of greatest benefit to the traditional generation industries.

My colleague in the other place, the member for Hunter has pointed out that the Parer review fails in a number of areas.

It does not offer sufficient consumer protection and guarantee affordable supplies of energy for Australian families.

It does not guarantee long-term energy supply security and competitively priced power for the development of Australian industries and jobs.

It does not provide effective mechanisms for encouraging greater investment in the renewables sector.

And what a surprise, it does not offer an achievable objective in terns of agreement with the states.

As my colleague the Member for Hunter said in the Other Place, the Parer recommendations simply set up the Howard government for a blame the states' approach to energy policy in this country.

A blame the States approach from the Howard Government—you can, Mr President, imagine my surprise!

This of course is the same approach that the Howard government takes on all the hard issues.

Take for instance Exceptional Circumstances drought relief reform.

The Federal Agriculture Minister, Warren Truss has been trying for two years to reform the EC process with the States. In fact, Mr Truss makes a virtue of his failure by constantly reminding us that he's been at it for two years.

Yet, after two years, on this issue as with so many others, he's dead in the water. And according to Mr Truss who is at fault? Of course, those evil Labor States.

According to Mr Truss his failure is the State's fault. How could he possibly be expected to negotiate sensibly with Labor Premiers and Ministers?

Possibly, one might answer, "in the same way that Simon Crean as Primary Industries Minister negotiated the National Drought Strategy in good faith with the States in 1994". And let's remember back in 1994, seven of the States and Territories were in the hands of the Liberal and National Coalition.

And yet Mr Crean, through good faith and good policy managed to get them to the table, and get them to sign up.

Instead of blame and cost shifting, games Mr Truss has excelled at in recent times, it is Labor's approach in 1994 that must be taken again to the hard issues such as natural resources and energy management.

Labor believes that MRET is vital to the development of the renewable energy industry and to reducing Australia's greenhouse gas emissions and to the welfare of regional Australia. Labor will not scrap MRET, which the government report recommends; we will increase the renewable energy target to a minimum of five per cent by 2010.

There is research available to demonstrate that increasing the target to five per cent would boost local renewable energy production, it would help us to achieve our Kyoto target by reducing greenhouse gas emissions and it would build a sustainable renewable energy industry for the future. This is an achievable, workable and significant target. It is an important step, and it represents a significant improvement on the present regime.

There was a lot of debate, when the original legislation went through, about the use of native forest biomass. Concerns were expressed about the difficulty in defining waste. Timber that is not to be harvested often has high biodiversity and habitat value. There were concerns about the difficulty in limiting use to legitimate waste, the potential for an increase in overall harvesting due to the added economic incentives associated with the renewable energy certificates as biomass extractions, not limited under the RFAs, and the impact on greenhouse emissions.

Labor believes that this is an issue that should be examined by the forthcoming review. Some of the things that the review should examine are whether the MRET target should be five per cent or a higher figure; whether there is a significant problem regarding the baselines and understandovers for existing hydrogenerators and, if so, how it should be resolved detriment to legitimate investment plans, undertaken by organisations such as Hydro-Tasmania in increasing renewable generation capacity.

The review should also address the use of native forest residue as a potential source of renewable energy eligible for renewable energy certificates—based on independent and scientific assessment of its impacts.

Such a review would need to examine the effect on forest biodiversity, the level of biomass remaining in native forests; the role of plantations and whether it is appropriate that they are excluded from the NMET definition.

These are all things that that the government's MRET review needs to consider.

It is interesting to note that initial CSIRO studies have already demonstrated that the use of forest residues, that is residues from forests already being harvested for other purposes such as saw and veneer log timber, has the potential to contribute to a reduction in greenhouse gas emissions if managed sustainably.

The reason we need to have a renewable energy industry in this country is that the world's past energy patterns are unsustainable. We are already suffering some of the impacts of this in climate change around the world, including here in Australia.

The Prime Minister, Mr Anderson, and occasionally even Mr Truss talk about government initiatives to assist people who are affected by the drought. Australia should do its bit to tackle climate change and to reduce our greenhouse gas emissions. CSIRO projections are that as a result of climate change, there will be more severe and more frequent droughts in years to come.

And in the short term at least, more drought will mean more rural communities afflicted by drought subjected also to the flat-footed and ill-conceived responses of this government to their plight.

We will see not only droughts but also more frequent and more severe bushfires, floods and cyclones.

If the Howard government is concerned about the plight of farmers and the impact of drought, it would get serious about tackling climate change. It would ratify the Kyoto protocol on climate change.

And if it were serious about regional development and rural communities, if it were committed to Tasmania, it would not seek to scrap the renewable energy target and to undermine that push into renewable energy.

It would seek to build on that work.

Senator ALLISON (Victoria) (12.06 a.m.)—The Renewable Energy (Electricity) Amendment Bill 2002 amends the Renewable Energy (Electricity) Act 2000 and the Renewable Energy (Electricity) (Charge) Act 2000 and seeks a number of administrative changes to the act, including clarification of definitions, such as what constitutes an eligible renewable energy source; the ability of the renewable energy regulator to vary decisions; the introduction of information gathering powers for monitoring, auditing and compliance purposes; and the inclusion of administrative review provisions covering the decisions of the renewable energy regulator. The Renewable Energy (Electricity) Act 2000 and the Renewable Energy (Electricity) (Charge) Act 2000 established the Mandatory Renewable Energy Target scheme, which requires the generation of an additional 9,500 gigawatt hours of electricity from renewable sources by 2010. The scheme operates by requiring wholesale purchasers of electricity to purchase renewable energy certificates, or RECs, equivalent to one megawatt hour each from accredited renewable generators that are sufficient to meet their yearly liability.

The Democrats opposed the original bills because of our concerns with a number of aspects of the scheme, including the inclusion of native forest timber as an eligible source of power generation. We are, of course, strongly supportive of establishing targets to increase the amount of electricity generated from renewable sources, and we said then that two per cent was not enough to make a real difference and that the industry could respond to a much higher figure without difficulty. However, it has become clear to us that this legislation is not worth even two per cent; we say that it is not even worth the paper it is written on. It is, or should be, about fostering new renewable energy and the renewable energy industry. In recent days, analysis from the Business Council for Sustainable Energy, or BCSE, has indicated that, far from increasing the amount of electricity generated from renewable sources by two per cent by 2010, the MRET scheme will only just maintain the 1996-97 level of market share. In other words, there will be no increase at all from 1996-97 levels. This is a farcical situation, and the government should be deeply embarrassed that its flagship renewable energy program has turned out to be such a dud.

Of course, this is not the only problem with this legislation. Our other big concern is that existing large hydrogenerators are able to earn a substantial number of renewable energy certificates from existing capacity, meaning that no investment in new generation is needed to create them. This is because

of the artificially low baseline, set at averages over a 14-year period and stuck at the 1997 level, that delivers a windfall gain for generating electricity with water already in the dam and using old infrastructure. Old hydroschemes benefit when they generate more than this artificially low baseline. It is artificial because hydroschemes in Tasmania generate as much or as little as necessary to meet the demand. In the future, Hydro Tasmania will be able to sell all of the electricity it can generate because it can be sent to Victoria via the Basslink cable.

Of course, in the unlikely event that electricity is generated at a level that is beneath the baseline, the generators are not required to hand back the renewable energy certificates. People involved in the industry refer to this as the issue of unders and overs. Hydro Tasmania is handsomely rewarded for the overs and does not have to pay any of them back when it generates less than the baseline. Firstly, this situation means that the MRET scheme will not lead to anywhere near the level of greenhouse gas abatement that was originally forecast. This is simply because, whenever RECs are created from generation that would have occurred anyway, there is no real additional abatement. Secondly, it means that consumers will pay more than $1 billion and possibly $1.5 billion extra on their electricity bills for no real additional generation. The Democrats believe that, at the very least, electricity consumers should be made aware of this situation. Thirdly, it means that MRET will not deliver the level of new investment in renewable energy that was anticipated. The key problem is that the windfall gain to existing hydrogenerators is creating a barrier to competition for other generators. According to the Business Council for Sustainable Energy:

> If all the RECs that could be produced from pre-existing projects were produced, no new renewable power projects would be required until 2008.

From our perspective, there is no sound public policy reason for advantaging existing hydro over other forms of renewable energy and in doing so advantaging Hydro Tasmania's renewable energy projects in particular over projects in other states. So, unlike its competitors, Hydro Tasmania's generation of RECs costs them nothing in investment and the RECs are generated from day one of the measure. While we accept and welcome Hydro Tasmania's decision to invest additional income earned from the sale of existing hydro RECs in new renewable projects, there is nothing in the legislation that obliges them to do so and there is no obligation on their part to report that they have done so.

The Democrats are also concerned about the market power that Hydro Tasmania can exercise in relation to the price of the RECs. Hydro Tasmania provided evidence to the committee that the electricity it produced above its baseline in 2001 was more than sufficient to register enough RECs to meet the entire first-year quota of 300,000 RECs. However, it has chosen to register only 118,000 or so RECs to date. Hydro Tasmania claims that the price of its RECs is similar to the price of other RECs in the market and rejects the idea that it is controlling the price. However, the key point is not whether or not Hydro Tasmania chooses to manipulate the price, but the fact that it is able to do so by virtue of its domination of the market in no-cost RECs for at least the first three years of the operation of MRET.

The Democrats note that the windfall gain to existing hydro generators is at odds with the government's assertion at the time the legislation was introduced that MRET was a market based economic model that ensured a level playing field for renewable energy providers. The minister, in his second reading speech, stated:

> The market based mechanism adopted to meet the target should send strong signals regarding the most cost-effective renewable energy options ...

This was not understood to mean that the design of the scheme would be used to create the most cost-effective option. The fact that Hydro Tasmania is able to generate RECs for no new investment is also at odds with the minister's statement, which said:

> The government has been clear that this measure is one of those beyond no regret policies.

In other words, you need to spend more in order to be part of this measure. In addition, it conflicts with the AGO's submission, which states:

Economic costs arise from this measure because additional capital is required to generate 9,500 gigawatt hours using renewable energy as compared to using fossil fuels.

Again, it is made quite clear that money is expected to be spent and capital is expected to be invested in order to generate that 9,500 gigawatt hours. The Democrats disagree with the chair's recommendation in the Senate report of the inquiry that further consideration of this issue should be left to the review. We argue that there is a danger in not moving to fix this problem now, since the review is not likely to be completed until 2004, with any potential changes to the legislation possibly delayed until a year or so later. By this time, enough no-cost RECs will have been produced to substantially undermine the objectives of the legislation.

It is difficult to escape the conclusion that this government is not committed to renewable energy and instead is wedded to 'no regrets' policies in order to ensure the continuing dominance of the fossil fuel industry. On Tuesday we learned in this place that the government has decided not to renew funding for the Australian CRC for Renewable Energy. That is a centre whose laudable aims are to cooperatively research, develop and demonstrate sustainable energy systems in market conditions; implement education and training to develop competencies for commercialisation and technology transfer; provide policy input to facilitate the take-up of sustainable energy strategies; build a growing business for the benefit of members; and improve the market access of members through ACRE's research, development, demonstration and education activities. That CRC has proved to be a great success. I will talk briefly about two of the centre's achievements.

The first achievement is the development of ACRELab, a national multimillion dollar renewable energy testing laboratory. ACRELab can test stand-alone and grid-connected renewable energy systems up to 50 kilowatts and it offers great assistance to the Australian renewable energy industry to compete overseas. The second achievement is that ACRE, in conjunction with the Centre for Alternative Energy, is in the process of delivering a coordinated infrastructure installation and support program for renewable energy in Indigenous communities. Groundbreaking ACRE research highlighted the need for the program. When the fifth-year review of the Australian CRC for Renewable Energy was conducted in late 2002, the panel assessing that work wrote:

The panel sees that the main strategic issue confronting the centre is the need to manage rapid conversion of research outcomes to commercial applications and increase the centre's capacity to support the renewable action agenda program jointly developed by industry and the government in 2000. The panel considers that discussion with government should be initiated to ensure that ACRE capability is enhanced in the immediate future and beyond year seven of the centre program.

However, between November 2001 and December 2002, something has drastically changed. In 12 months the decision was made not to fund the centre. One would have thought that, given the need to shift from dirty fossil fuels to clean, renewable fuels, the funding of such a centre would be essential for any government that is committed to renewable energy. But it is apparent that this government does not accept that such a shift is needed; in fact, the government is ideologically opposed to such a shift. It appears to be of the view that as a country we can spew out as much carbon dioxide and other greenhouse gas emissions as we like and that, by developing sinks and injecting carbon dioxide into the ground, we can go on the way we always have. If that is not the government's view, it is hard to explain why we now have three coal CRCs—that is, the CRC for coal and sustainable development, the CRC for clean power from lignite, and the new CRC for greenhouse gas technologies, with a total funding of $50.4 million. The government has also given $35 million to Rio Tinto for the establishment of a sustainable minerals industry foundation which will focus on carbon sequestration—obviously, the government's preferred approach to reducing greenhouse emissions.

At the same time, we have a zero federal dollar contribution for research into renewables. That is worth repeating: zero dollars. The coal industry does not need more gov-

ernment handouts. As an industry it is already heavily subsidised and it should be paying for its own efforts to reduce emissions from its operations. But our renewables industry is a fledgling industry and it needs financial support. It is an industry that will lead to substantial job creation. If the government does not assist this industry with research and development, we basically will commit ourselves to imported renewable technologies, even though we have expertise here in the country and we could be a world leader. We could certainly carve out a very significant market for ourselves in this region alone.

In the committee stage the Democrats will be moving amendments to fix some of the key problems with this legislation that I have already mentioned. There has been a huge windfall gain to existing hydro generators. We will also seek to increase the target to 10 per cent because, in our view, in addition to fixing the loopholes in the scheme, that is the best way to ensure that new and existing renewable energy projects continue to be developed and achieve the high level of job creation that was anticipated. We hope that other honourable senators in this chamber will be persuaded by our amendments.

Senator BROWN (Tasmania) (12.19 a.m.)—I congratulate Senator Allison on that speech. It is a pity there were not more honourable senators here to hear that and understand why this legislation and the government's policy on renewable energy—which is absolutely pivotal to meeting the problem of global warming as well as to ensuring that Australia is at the forefront of, and not left as a laggard in, the development of environmental technology this century—are failing. I will traverse somewhat different territory, but as a Tasmanian I nevertheless have to agree with Senator Allison that the windfall that has gone to hydro—and, in particular, HydroTasmania—because this legislation was not properly drawn up at the time and our attention was drawn to the government two years ago, has pulled the rug from under the intention that this legislation should stimulate new renewable energy sources. The ability of HydroTasmania, through the simple change of their use of its hydro system, to take 30 per cent to 60 per cent of the advantage out of this system and leave the whole of the stimulus of the renewable energy options—solar power, wind power, hydrogen power, potentially, and so on—stripped of the incentive that the legislation was meant to give them through the certificate system sees a crying need for this legislation to be amended to close that loophole. They have indeed done that in places like the UK, where they foresaw that existing energy users could manipulate their system to take advantage of a renewable energy certificate system and at the outset ensure that the legislation did not leave such a loophole.

As Senator Allison has said, this legislation, which was meant to ensure that there would be an additional two per cent in renewables used in the Australian system by 2010, has therefore failed. Indeed, there is good evidence to show that the legislation will have zero effect. In other words, if it had not existed at all then the growth of the renewable energy options in Australia would be exactly the same as if the government did not exist. That is an indictment not just of this policy but of the former minister for the environment, Senator Hill, who brought this legislation in here. He helped pull the rug from under Australia's initial signature to the Kyoto agreement. He got the extraordinary result out of Kyoto where Australia was allowed to expand its global warming gases by eight per cent between 1992 and 2010 rather than reduce them, as so many other countries are obliged to. Then he brought this legislation in, touting it as cutting-edge legislation when in fact it has been a failure—and demonstrably a failure. I add to Senator Allison's asservation that it will do—and it has done—precious little, at least measured against the intention to stimulate new renewable sources of energy in Australia.

We know that already this nation is producing some 18 per cent more greenhouse gases than in 1990. In other words, under this government, since the signature was put on the Kyoto agreement, the country is running at more than double the extra that was allowed by 2010 in exudation of global warming gases, and it has become the worst per capita polluter in the world. The worst

states in the world are Victoria and Western Australia. Victoria has its vast brown coalfield, which it intends to expand and exploit. And the Bracks government in Victoria in particular has a policy which is aimed straight at a massive increase of burning of fossil fuels—and brown coal at that, the worst fossil fuel of the lot except for shale. Aided and abetted by the federal government, the research dollar that should be going to renewable energy is being poured in to trying to make the dirtiest fossil fuels, like brown coal, somewhat cleaner.

I note that the Commonwealth Chief Scientist, Dr Robin Batterham, who is also the Chief Technologist with a massive coal/aluminium company called Rio Tinto, has said that you can equate renewable energy with reduction in pollution through new technologies, in things such as burning coal. That is a misconception. If that is what he put to the energy ministers in this country who gathered in Brisbane recently, then he was deceiving those ministers and leading them astray. The Chief Scientist needs urgently to come to grips with the entanglement he has engaged in between public relations—promoting the mining industry, not least the coal and aluminium industries, the great polluters, the great global warming creators—with science and renewable energy.

Renewable energy which brings on line energy for human consumption without increasing global warming gasses cannot be equated with burning fossil fuels at a less polluting rate. Burning fossil fuels to get zero production of global warming gasses is pie in the sky, Dr Batterham. If your advice to the Prime Minister or to other energy ministers around the country is that there is, in the foreseeable future, through carbon sequestration or other ways, a potential for burning coal with zero emissions, you are in cloud cuckoo land. Worse than that, you are diverting money from renewable energy to the old polluting industries to try to make them less dirty. This is a tragic direction for Australian government policy to be going. Over the last few years, what has happened in Australian policy is that money to renewables, which should be a great source of stimulus from the government, has gone instead to the coal and fossil fuel industries.

The one constant factor we can see in this is the Chief Scientist and his advice. Dr Batterham, who has been with Rio Tinto for 14 years and is their Chief Technologist and is also the Chief Scientist appointed by Prime Minister Howard, sits on the board that determines where funding from the government to the cooperative research centres in Australia goes. As Senator Allison has just reiterated, we have seen this week that, in the disbursement of money to those cooperative research centres, $68 million, the lot as far as mining and energy is concerned, has gone to four cooperative research centres, all of which can be seen to advantage Rio Tinto, the corporation for whom Dr Batterham is Chief Technologist. At the same time, the decision making panel on which he sits has decided to defund renewable energy. The Cooperative Research Centre for Renewable Energy, as Senator Allison said, just 12 months ago got a great tick from its independent review panel, which suggested that the money supply should keep up because of the potential of that renewable energy research agglomeration. Instead of that, they have been cut down. Answers are required here, and I would like to hear them during this committee session from the minister, who is listening to this.

How did the government come to make the decision that all of the money for mineral and energy cooperative research should go to the mining industry? How did the government make the decision that none of the money would go to renewable energy? Why is it that the government a month ago gave a further $35 million to what is called the Rio Tinto Foundation? Just today we have learned through question time in the parliament in a supplementary answer that the money is said to come out of some $160 million, which was government incentive to the establishment of the Gladstone Comalco smelter in your home state of Queensland, Madam Acting Deputy President McLucas.

The question is: who made the decision that, out of the $167 million incentive given by this government on a plate to the Comalco smelter in Queensland—and I think

Queenslanders could think of a lot of other ways of spending $167 million—$35 million should go to the Rio Tinto Foundation? They will investigate—amongst other things, but primarily—carbon sequestration, which is so far the fanciful idea that gas coming out of thermal power stations fuelled by coal can be put back into the ground so that in some way the carbon will be retained in the ground. Who made that decision? What influence did Dr Batterham, who is a spokesperson for Rio Tinto, have in seeing that that money went to studies to advantage that company, at the same time that the body on which he sits decided to defund renewable energy—which one can see as a competitor for the money going into trying to make burning coal less threatening for global warming?

Let me make it clear that there is a direct conflict of interest occurring here and, if Dr Batterham cannot see it and the Prime Minister cannot see it, any fair-minded independent other person can see it. There is horror out there in scientific circles about what has happened this week. Here we have the government bringing in this bill late at night to fix up in very minor ways the one piece of legislation on renewable energy it has ever brought into this parliament—and one which is patently failing. At the same time, that same government is failing to fund a sunrise industry which is hugely important not just to our nation but to the world's wellbeing.

Let this be clearly stated: without renewable energy, human life and social order on this planet are facing total meltdown—not just global warming but chaotic destruction in the coming decades, by mid- or late century. People might say, 'Here is an environmentalist, getting over-anxious,' but I remind the Senate that just seven years ago 1,200 scientists, including over 100 Nobel prize winners, warned governments around the planet of just that: if we do not change course many species of life on this planet, including our own—and we are only one of 30 million species on this planet—could be in dire trouble as far as our existence is concerned. But 'head in the sand' is the hallmark of the Howard government on this matter. In fact there is a certain vindictiveness towards those who want to say to the government, 'Get your head out of the sand and get back to the forefront in leading environmental excellence in the world!' Instead of that, we are left tonight with the imminent ratification of the Kyoto treaty by Russia and Canada, and we are one of only two countries in the developed world—the rich world—whose governments are resolutely refusing to sign the Kyoto protocol.

New Zealand decided to sign this week, but not Mr Howard and not President Bush. Russia is following suit—and Senator Allison reminds me that Canada is too. Why doesn't President Bush sign? Because the oil companies have him in their pockets. One alone, Exxon, put some $6 million into his recent election campaign. Why doesn't Mr Howard sign? Because the coal and aluminium industries here have a relationship with Mr Howard which does not bear scrutiny. That relationship, through the Chief Scientist, is going to come under scrutiny. The Greens will make sure of that because the connection between the government and the coal industry and the aluminium industry—and the funding that is being disbursed from this government to those other entities—is, on the face of it, a matter of enormous concern for this country. Of concern is not just corporate welfare or largesse to the corporations—some of whom at least return that through donations to the government—but the pulling of the rug from under the scientific research that is essential if this planet is going to have a secure future.

Let me read the latest report, dated yesterday, from Lester Brown—no relative—of the Earth Policy Institute in the United States. The report is headed *Global temperature near record for 2002 takes toll in deadly heatwave, withered harvests and melting ice*. This top world scientific body says:

> Temperature data for the first 11 months of 2002 indicate that this year will likely be the second warmest on record, exceeded only by 1998. These data from the Goddard Institute for Space Studies indicate that the temperature for the first 11 months has averaged 14.65 degrees Celsius (58.37 degrees Fahrenheit), down slightly from the record high of 14.69 in 1998, but well above the average temperature of 14 degrees Celsius that prevailed from 1951 to 1980.

Studying these annual temperature data, one gets the unmistakable feeling that temperature is rising and that the rise is gaining momentum. A year ago, we noted that the 15 warmest years since recordkeeping began in 1867 had occurred since 1980. Barring a dramatic drop in temperature for December, we can now say that the three warmest years on record—

in the last one and a half centuries—

have come in the last five years.

In addition to the longer-term annual temperature trend, recent monthly data also indicate an accelerating rise. In contrast to local temperatures, which fluctuate widely from season to season, the global average temperature is remarkably stable throughout the year because the seasonal contrasts of the northern and southern hemispheres offset each other. The temperature for January of this year of 14.72 degrees Celsius was the highest on record for January. The 14.91 degrees for March made it the warmest March on record. And in seven of the next eight months—April through November—the temperature was either the second or the third warmest. October was the fourth warmest.

Since 1980, decadal average temperatures have risen well above the 14 degrees Celsius average for the span from 1951 to 1980, which is defined as the norm. During the 1980s, the global temperature averaged 14.26 degrees. In the 1990s it was 14.38 degrees. During the first three years of this decade (2000-2002), it has been 14.52 degrees.

Rising temperature does not come as a surprise to atmospheric scientists who analyze the climate effects of rising atmospheric levels of carbon dioxide, the principal greenhouse gas. Each year since detailed recordkeeping began in 1959, the concentration of CO_2 in the atmosphere has climbed to a new high, making it one of the most predictable of all global environmental trends.

The report goes on to talk about massive melting of ice in Greenland, on Mount Kilimanjaro, in Alaska and elsewhere, and the sea rises consequent to that. And here we have a government which has its head in the sand and says, 'Let's leave that to the next generation to deal with.' That is immoral.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.40 a.m.)—Have we agreed to speeches being incorporated? Has anyone seen them?

The ACTING DEPUTY PRESIDENT (Senator McLucas)—Senator O'Brien has incorporated his comments. Leave was granted.

Senator IAN MACDONALD—Was leave granted by Senator Alston?

The ACTING DEPUTY PRESIDENT—Yes.

Senator IAN MACDONALD—I have no objection, if that has been done. I saw on the list that Senator Mackay was going to incorporate her speech. I was not aware that Senator O'Brien was going to do that. I have no objection to that, provided we have a look at them first.

The ACTING DEPUTY PRESIDENT—Leave was granted by Senator Alston.

Senator IAN MACDONALD—Not having had the opportunity to hear or read Senator O'Brien's speech, I am unable to comment on what he might have said about this matter. I must say that I am somewhat surprised that Senator O'Brien and the Labor Party generally might be opposing the Renewable Energy (Electricity) Amendment Bill 2002 by proposing the sorts of amendments which I have seen brought forward. The hour is late and those senators who are interested in the bill will understand what it is all about. I do not need to repeat what has been said or what the actual bill that the government is moving is all about.

I want to spend a little bit of time on the proposed amendments. I know that we will do that in detail in the committee stage of the debate but I want to make the government's position quite clear. The government's position is that we will not be accepting any of the amendments that come forward for reasons that I will elaborate on during the committee stage of the debate and I will briefly touch on here. This amending bill is all about fixing up some administrative errors that occurred when this bill was dealt with in a similar vein and in a similar fashion at the same time of night a couple of years ago. It was amended on the run and as a result it had all sorts of unintended consequences that have inhibited the proper application of the act. This bill was meant to fix those admin-

istrative errors so that the scheme put in place could run its course and could be dealt with appropriately.

Senator Allison has raised some issues and I am sure Senator O'Brien and Senator Mackay have too, although I have not had the opportunity of seeing their speeches. I suspect that they feel passionately about some aspects of renewable energies and that is good. There will be time to debate that at some other appropriate moment, but it is not now. This bill fixes a couple of relatively simple but far-reaching and very consequential elements of the act. If they are not fixed, it means that the renewable energy regime that is in place will start to crumble and fall apart. The reason for that is that two years ago at this hour we were doing amendments on the run and people were not thinking about them properly. As a result the act does not work properly. It needs to be fixed tonight and that is what the government's legislation intends to do.

Some of things that Senator Allison spoke about and that no doubt Senator O'Brien and Senator Mackay have spoken about, although I again say that I have not seen what they have said, will be taken up in the review of operation that was included in the original act. That stated that after two years of operation there would be a very thorough and full review of the act, and section 162 of the original act sets out the sorts of things that would be looked at. Some of the amendments before us deal with that review. We want to add a few things but I will go into those in detail in the committee stage.

There is to be a full review that will look at all aspects of the renewable energy regime to see if there is a better way of doing it. That will start, I am told—and Dr Kemp has announced this publicly—early in January, it is hoped. I understand that Dr Kemp has written to everybody, seeking input into the review and into the terms of reference. Anything anyone wants to look at—the sorts of things I heard Senator Allison talking about—will all be matters for attention in that review. The Democrats and the Labor Party are more than welcome to be involved, and I know that they will be involved, in that review.

That is not what this bill is about tonight. What we are trying to do tonight is to fix errors that we made as a Senate a couple of years ago because we did not give full attention to amendments that had been made on the run. For that reason, the government will not be accepting any of the amendments. If the consequence of that is that the Democrats join with the Labor Party to impose their amendments, or if the Labor Party join with the Democrats to impose their amendments, the government will not accept them. If the bill is carried through like that, the government will not be accepting them in the other place. I hope Senator Allison is listening to this. I might pause while she finishes her conversation, because I really want to emphasise this point: if unacceptable amendments are imposed—and they are all unacceptable to the government—this bill will not go forward today. That means that the regime that we all put in place, with the best expectations, will falter and fail.

I am told that the consequences of this legislation not passing tonight are that the renewable energy trading system established by the act is at considerable risk. If it is not passed, the effect will be that the whole renewable energy trading system will be subjected to unnecessary investor uncertainty surrounding what is and what is not an eligible renewable energy source. Anticompetitive behaviour in relation to product rollout of solar waste heaters will continue to occur. There will continue to be unnecessary constraints on the regulator to administer the legislation appropriately, thereby exposing the government to potential legal risk. Together, these consequences lead to suboptimal performance of what is the world's leading renewable energy initiative at this time. Senator Allison and Senator O'Brien will know that the rest of the world is copying the Australian government on renewable energy initiatives.

In December 2000, the Senate made numerous last-minute amendments, as I have mentioned, to the legislation; and the consequences of that were not fully appreciated. I beg the Senate not to repeat that process tonight. The bill before us is administrative in nature. The statutory review is just weeks

away. That statutory review is the proper vehicle for a thorough and comprehensive analysis of future policy underpinnings of the mandatory renewable energy target. Pre-empting the review process, in the absence of any robust analysis and consultation with the affected parties, is likely to mean that this chamber will, regrettably, repeat the mistakes of the past—and, if it does that tonight, it will do so knowingly.

I do not decry, Senator Allison, the points you have raised. As I say, there are appropriate times and places to deal with them and I am sure the same applies to Senator O'Brien, although I hasten to add that I have not seen or read his comments, as they have not been made available to me. However, if there are sensible proposals, there is an opportunity to deal with them. This is an administrative bill and it needs to be passed to make the scheme work. If it does not pass, there will be consequences which will mean that the whole regime will start to crumble. I ask senators to consider that in the way they address these issues tonight.

I point out that the Labor Party apparently now have some amendments. They were on the Senate committee that looked at this bill and came back with a recommendation that the bill be passed. The Democrats put in a minority report dealing with some recommendations which, with respect, whilst they may be sensible, are not relevant to this particular bill. But the Labor Party came back and recommended that the bill be passed. What has changed? Furthermore, in the other chamber the Labor spokesman said, 'We're all in favour of it. No amendments, no problems, good idea; let's go for it.' If I can get his actual words, I will read them into the *Hansard*. What has happened between the time when the Labor Party looked at the bill in the House of Representatives and tonight? They understood in the House of Representatives that this was simply an administrative bill, fixing up a few errors that the Senate had made, and that all of the other issues that might concern people would be dealt with in the review which is to start just weeks away. They understood when the bill went through the House of Representatives that if we did not deal with this tonight, we were going to put renewable energy in Australia back 12, 18 or 24 months. Mr Kelvin Thomson said:

> The government's proposed amendments represent an improvement to the MRET scheme and Labor will be supporting them …

That statement is quite clear. There is no suggestion of amendments there, with respect to the shadow minister, Senator O'Brien. What has changed? We are all flabbergasted. We want to get these administrative bits fixed up, so let us look at the substantive issues in the review. It was always intended two years ago, when we dealt with this, that there would be a full and complete review of the issue.

There is talk about targets. Again, that is a matter for the review. The government's belief, from talking with people who are in the industry, is that the targets being proposed are simply not achievable. We would love to see them achieved but they are simply not achievable. Whether they are or whether they are not, these are really matters for the review to look at. But we just cannot agree to an amendment tonight which says, 'These are the targets whether you like them or not' and 'These are the targets whether you can do them or not.' We want the review to look at the targets fully and properly with all the right support so that we can work out what are the right targets to have, what should be mandatory and what should not be mandatory. Again, I plead with the Democrats and the Labor Party to consider this matter, to move forward with the administrative bill and to deal with these other issues, that are no doubt quite appropriate, at a later stage.

I have not mentioned Senator Brown's contribution. It is late at night and I do not want to go into it. It has very little to do with the bill. Senator Brown just continued the old Marxist-Leninist approach of attacking anyone, particularly people who are not here to defend themselves. Yesterday he attacked Kate Carnell and today he is attacking Dr Robin Batterham, a very distinguished Australian. He is imputing ill motives to both of those people but he does it when they are not here to defend themselves. It is typical of the sorts of actions you come to expect from the people who masquerade as a Green party. All they really are is a very un-Australian, So-

cialist Left, Marxist-Leninist group hiding behind a Green facade. It has nothing to do with the bill before us. It is just another opportunity for Senator Brown to malign people who cannot be here to defend themselves. Yesterday I was appalled that even Senator Brown would make the personal, vindictive and vicious attacks that he made on Kate Carnell and tonight he attacked Dr Robin Batterham. He blamed Kate Carnell, when she was the ACT Chief Minister, for not supporting some Green motion in the ACT assembly about some forest in New South Wales. Why is that strange? Of course, the motion that Senator Brown talked about yesterday had nothing to do with the ACT; it was all about New South Wales. Senator Brown thought that was bad.

Senator Brown then blamed Kate Carnell for being employed in the forest industry. He called it the woodchip industry. In fact, she is employed by the sustainable native forest industry, one of the most sustainable industries in the world. Why she would be maligned for that I am not sure. Senator Brown then went on to use all the emotive words that he usually uses about the Styx Valley. He forgot to mention that 68 per cent of public forests in Tasmania are in reserves. Ninety-eight per cent of high-quality wilderness forests in Tasmania are in reserves. Sixty-eight per cent of old growth forests in Tasmania are in reserves. In fact, 86 per cent of Tasmania's old growth forests that are on public land are protected. Kate Carnell has been to the Styx Valley. In his personal attack yesterday, Senator Brown was suggesting she had never been there. She has been there a number of times. He went on with all the sorts of usual attacks that he does when people are not here to defend themselves. As best as I can do at this hour of night in the couple of minutes that are left to me, I just want to put on record again that this un-Australian behaviour should be unacceptable in this chamber.

Senator Brown was misquoting Ms Carnell about an article she wrote in a paper. Senator Brown described it as 'dropping incendiaries with napalm-like material'. This is all the sort of emotive stuff that might get him a vote or two in his Socialist Left, Marxist-Leninist group—a vote behind the masquerade of the Greens. Of course, if you look at the article you will see that what Kate Carnell was writing about was a very controlled, ordered and planned burning of the forest to ensure that the fires have little or no impact on the surrounding coupes, buffer zones or informal reserves. She sets out quite clearly how very necessary all that is. Senator Brown talked about the Styx Valley's ecosystem being destroyed. He forgot to mention that the Styx Valley has been logged for 100 years and there is still that ecosystem that Senator Brown now says has to be preserved and saved.

And so the whole speech went on. I wish I had time to properly defend these people who are not in this chamber to be able to defend themselves. When it comes to people who have made a contribution to Australia, put Kate Carnell and Dr Robin Batterham against Senator Bob Brown and I know who most Australians would pick at any time. Dr Robin Batterham and Kate Carnell are very distinguished, capable Australians who have made a great contribution. They are learned; they are honourable. Dr Batterham is a very distinguished scientist and neither he nor Kate Carnell deserves the vicious sort of personal attacks they get in this chamber when they are not here to defend themselves. I wish both of those people all the very best. I desperately hope someone like Kate Carnell could come into this chamber to replace Margaret Reid, but that is a matter for the ACT division of the Liberal Party, not me. The Senate would be a far better place if someone of the calibre of Kate Carnell were in this chamber.

This is a serious bill before us. I do, again, urge the Labor Party to consider what this bill is all about. I know Senator O'Brien understands the forests. He comes from Tasmania. He is involved with the workers there, the people who are desperate to make sure this industry proceeds in the sustainable and careful way that the Tasmanian government is currently managing the forests. It is very important that we address this fully. I plead with Senator Allison—if getting down on my knees would help, I would do that—because it is so important that this administrative bill

goes through tonight. If it is amended, that is the end of it. I have briefly mentioned the consequences. I know the Labor Party were briefed about this by Dr Kemp and his office. They know the consequences of this. This is why they agreed to it at the briefing, they agreed to it in the Senate committee report and they agreed to it in the House of Representatives. Why the change of opinion now?

We know you are green; we know you are genuinely concerned about the environment—so are we all. But this is not the bill to use to make those points. This is an administrative bill that really needs passing tonight so we can fix up the regime that this Senate unintentionally messed up—if I might say that—when it was dealt with before. We have got to fix these administrative areas. Let us deal with the substantive issues, which Senator Allison has raised, during the review which is about to start in less than four or five weeks.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (1.00 a.m.)—as amended, by leave—I move Green amendments (1) to (4) on sheet 2795:

(1) Schedule 1, item 33, page 8 (line 15), omit paragraph (j), substitute:

(j) plantation wood waste being wood waste from plantations which are on land, the major part of which, in 1990, was not covered with native vegetation and excludes native forest residue;

(2) Schedule 1, item 33, page 8 (line 28), at the end of subsection (2), add:

; (c) native forest residue which includes native wood waste.

(3) Schedule 1, item 33, page 8 (after line 28), after subsection (2):

(2A) Paragraphs 1(j) and (2)(c) cease to have effect 2 years after they commence.

(4) Schedule 1, page 9 (after line 6), after item 33, insert:

33A After section 17

Insert:

17A Review of the use of native forest residue which includes native wood waste as an eligible renewable energy source

(1) Immediately on the commencement of this Act, the Minister must cause an independent review to be undertaken of the implications of the use of native forest residue which includes native wood waste as an eligible renewable energy source.

(2) The review must include, but is not limited to, an assessment of the implications of such use on:

(a) net greenhouse emissions; and

(b) biodiversity; and

(c) the level of biomass extraction under Regional Forest Agreements; and

(d) the plantation industry.

(3) The review must be undertaken by a panel of 3 persons chosen by the Minister, including:

(a) one person representing environmental groups;

(b) one person representing the renewable energy industry;

(c) one person representing the Minister.

(4) The review panel must complete its review and give a written report of the review to the Minister within 12 months after the commencement of the review.

(5) The Minister must table a copy of the report of the review in each House of the Parliament as soon as possible after it is received.

The Minister for Environment and Heritage said in his second reading speech that the rest of the world is copying the legislation. Could he inform the committee just who has copied this legislation? That is my first question. Secondly, the Minister for Fisheries, Forestry and Conservation said that this is simply an administrative bill fixing up a few errors that the Senate made. Let us be quite clear that those of us who bring legislation into this place are responsible for it. It is the errors of the government—it is the errors of Senator Hill, the former and much failed Minister for the Environment and Heritage—that allowed the Renewable Energy (Electricity) Act 2000 to have the short-

comings which we are dealing with tonight. The Minister for Fisheries, Forestry and Conservation said that this bill was dealt with late at night two years ago—and here we are dealing with it again late at night. That is entirely the government's failure. This legislation should not be here at one o'clock in the morning. It should have been dealt with much earlier, but I reckon that it has been left as part of a grab bag simply because the government has no interest of any consequence in renewable energy. So do not let the government blame the Senate for its own administrative shortcomings.

The Minister for Fisheries, Forestry and Conservation also said that people in the industry had told him that the targets being mooted in amendments before the chamber—that is, five to 10 per cent of new energy to come from renewable energy—are simply not achievable. I ask the minister who in the industry has told him that. It is not good enough just to say that, because that is not what we are hearing at all. We hear people in the renewable energy industry saying not only that the targets of five to 10 per cent are well within reach but also that they are essential if we are going to tackle global warming; so I ask the minister to back up his statements by naming his sources. I also ask the minister what has been the advice of the Chief Scientist as far as this legislation is concerned. The minister said that the Renewable Energy (Electricity) Act might fail if it is not amended by this bill. What has been the advice of the Chief Scientist to the government on renewable energy? What degree of future growth in renewable energy has the Chief Scientist said is possible in Australia? Is he one of the people who have said that the targets of five to 10 per cent being looked at by the Democrats, the Greens and the Labor Party here tonight are not achievable? If the minister does not answer those questions—and I note that he is talking to other members in the chamber at the moment—I will ask them again until we do get an answer.

The amendments the Australian Greens are proposing would bring back into this legislation the exemption from so-called renewable energy production of the burning of native forest residue. Under the list of eligible renewable energy sources at page 8 of the legislation, item (j) is wood waste. This quite clearly includes native wood waste. In other words, it includes the native forests being burnt in furnaces in order to be converted into electricity classified as 'renewable energy' when it patently is not. Those forests and the ecosystems that are destroyed in this process are not renewable. They are not sustainable—they are destroyed by that process. The Greens amendment would remove that category from that list. Amendment (4) would also do that with a review of the use of native forest residue, which includes native wood waste as an eligible renewable energy source. The amendment would mean that, immediately after the act was brought into law, the minister would have an independent review undertaken into the implications of the use of burning native forests as a renewable energy source.

Mr Temporary Chairman Ferguson, you will know that Forestry Tasmania, for example, plans three forest furnaces: in the south, at Southwood near Judbury; in the north-west of Tasmania at Smithton; and in the north-east, near Scottsdale. Each year, these would burn hundreds of thousands of tonnes of native forest wood and, with it, the habitat of a whole range of native forest wildlife to produce electricity. We understand that, in the main, the aim is to sell that to the mainland through Basslink to help fire the 100,000 new air conditioners a year being put into place in Melbourne. The problem is that it will be sold as green or renewable energy on the Melbourne market to many people who would be horrified to know that that energy is coming from the destruction of Tasmania's wild native eucalypts and rainforest.

The review that the Greens are proposing would include, but not be limited to, an assessment of the implications of the use of native forest residues on net greenhouse emissions, biodiversity and the level of biomass extraction under regional forest agreements and the plantation industry. The review would need to be undertaken by a panel of three independent persons. That is important, because it is quite different from the

review forthcoming under the existing legislation, which is chosen by the government. These persons would be chosen by the minister but would include one person representing environmental groups, another representing the renewable energy industry and a third representing the minister. The review panel would complete its review and give a written report on the review within 12 months, and the minister would have to table that review in the Senate and in the House of Representatives.

What is important here is that that review, and the amendments that the Greens are putting forward, are in line with the Labor Party's public commitment to the Greens during the last national election campaign. In a letter to me on 2 November last year, Geoff Walsh, the Labor Party's national campaign director stated:

Dear Senator Brown,

After consulting with the shadow minister for the environment about policies on the environment, the ALP intends to announce the following policy:

Labor will implement an immediate moratorium, via regulation or legislation, on the use of native forest residues as an eligible renewable energy source and a mandatory renewable energy target, pending the findings of an independent review of the implications of such use.

That is absolutely in line with the amendments. He continued:

The review will include an assessment of the implications for net greenhouse emissions, biodiversity, the level of biomass extraction under the RFA agreements and the plantation industry.

That is absolutely in line with these amendments. He then said:

If the review finds that use of native forest residue will have a significant adverse impact on forest biodiversity and increased net greenhouse emissions will lead to an unsustainable increase in biomass extraction from native forest, then Labor will permanently remove native forest as an eligible fuel resource. The review is not intended to meet the requirements for a review under the Renewable Energy Electricity Act.

In other words, Labor explicitly committed itself to a separate review to the one under this act. The letter continued:

In establishing the review, a Labor government—

it moves to a Labor government then being elected—

as a consideration will consult with the state and territory governments and other stakeholders on any suggestions they may have regarding that panel and the time for a review.

That component of the election did not occur. We now have the position where Labor is being tested on that commitment to the Greens. We have here amendments which exactly comply with that commitment from Geoff Walsh and it was reiterated in public by the then leader, the Hon. Kim Beazley, a couple of days later. So I expect that we will have Labor's support on this. These amendments ought to be passed by this committee.

Senator ALLISON (Victoria) (1.11 a.m.)—The Democrats support the thrust of these amendments. We do see some problems with the two-year moratorium, if you like. The previous time this bill was debated we sought to exclude one of the items in the bill. I gather the ALP will not be supporting these amendments. So unless there is an indication otherwise, we will support the group.

Senator O'BRIEN (Tasmania) (1.12 a.m.)—Senator Allison is correct: the opposition will not be supporting these amendments. Senator Brown knows that we have proposed an amendment to proposed section 162 of the bill which would require a review of the issue of the use of native forest residues in terms of net greenhouse emissions, biodiversity, the level of biomass extraction under the RFA agreements and the plantation industry. I remind Senator Brown that after the election Mr Crean, the Leader of the Opposition, said that all opposition policies, except for the sale of Telstra, were up for review. It is, I think, extraordinary that Senator Brown refers to commitments which were proposed to be implemented upon attaining government and says they ought to be binding on us in opposition. The fact of the matter is that we are concerned that the issue of the use of native forest residues for the generation of greenhouse friendly energy has been the subject of an intense political campaign without regard for the science on this matter. The only scientific report on this matter that the opposition are aware of has

been prepared by the CSIRO in relation to the Southwood project—the project that Senator Brown referred to. My understanding of the report is that it found that the generation of electric power from native forest residues from that project would in fact be greenhouse friendly and that it was possible, subject to certain matters, that the issue of biodiversity could be properly addressed. We want this matter resolved on the science, not on political posturing and the campaign of hatred against the forest industry that emanates from the Greens and particularly Senator Brown.

In the Senate earlier today, I referred to a misrepresentation by Senator Brown, where he put a proposition before this Senate suggesting that the forestry company Gunns had leveraged 70,000 hectares of plantations through the 13-month rule, generating $129 million in taxation benefits for the company. I referred to the *Hansard* record of the committee hearing that Senator Brown attended—I know he was there at the time, because I was there at the time—when the official of Gunns, in answer to a question, told Senator Murphy that Gunns had 17,000 hectares of plantation forest which had been the subject of prospectuses and therefore the beneficiary of the 13-month rule, potentially at least. I am not sure if the evidence said that all of that had been the beneficiary of the 13-month rule in the taxation legislation that we were discussing, but at least some of it had. It is very easy to make allegations but, when the facts stack up against you, I expect that you would lose a bit of credibility, and that is what happened in relation to that matter.

What the opposition are keen to see, in considering the amendments that have been put forward and in considering some of the material that is being circulated which suggests things that are quite untrue about the generation of power from native forest residue, is that this matter should be resolved on the science. That is the reason that we think this matter ought to be part of the section 162 review that is mandated under the legislation as it exists. It is within the gift of the minister to require that anyway, but we thought it was better that the Senate say to the minister, 'We think that should happen,' because we think that the science of these matters ought to be addressed. If this matter is going to be resolved politically then so be it, but let it not be resolved politically without the science of whether the generation of power from native forest residues can be achieved in a greenhouse friendly manner and whether the biodiversity of the forests affected can be maintained in those circumstances. We had significant evidence at the hearing on this bill that a considerable amount of biomass would remain in the forest, even after sawlogs, veneer logs and timber for power generation were removed. I must say we were not able to test that evidence in the best possible scientific way; only a proper review could do that.

We are quite happy to indicate that we will be moving an amendment, but what Senator Brown has suggested is that we implement a moratorium, probably on the one state that is considering implementation of a scheme of power generation from native forest residue—his own state, the state of Tasmania—because there are effective moratoria in place in Victoria and New South Wales at the moment. What he is asking the Senate to do is implement a moratorium on the state of Tasmania in relation to a couple of projects, one of which has already conducted a scientific review to meet the sort of test we are talking about. We do not think that is warranted in the circumstances, and that is the reason that we believe these amendments should be defeated and that we will move the amendment we propose. We would be happy if the minister were to indicate that he would require such a review to take place. If that were the case then obviously I would have to consult with my party about the necessity of our amendments, but it has not been the case to date.

In relation to the comments that Senator Macdonald made with respect to a briefing from Minister Kemp's office to the shadow minister, Mr Thomson, the advice that I have just been given is that a briefing took place. Matters of the nature referred to by Senator Macdonald were referred to. There were comments in response from the shadow minister and we awaited a reply to those

comments. No reply has been received. That is the advice I have received. It was the shadow minister and staff involved in that meeting, I am advised; I did not want to mislead. Perhaps there are matters that remain outstanding from those meetings; that is why there has been a misunderstanding about where the parties have ended up in relation to this matter.

In relation to the committee's report, it was always made clear that the opposition would support the passage of the legislation but retain the right to look at the issue of other amendments. It is clear that other amendments are before the committee at the moment. Having said that, and given that we have certain other business to deal with tonight, I can only indicate that we will not be supporting these amendments.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.21 a.m.)—For the record, I indicate formally that we will not be supporting any of these amendments proposed by Senator Brown. I indicate that the inclusion of biomass as an eligible renewable energy source in the act was subject to very extensive debate at the time. To reflect the concerns surrounding the exploitation of natural resources for electricity generation, only wood waste was included as an eligible renewable energy resource in the act. Additional eligibility requirements that must be met if wood waste is to be considered eligible were also put in place. These criteria do allow wood products that are sustainably produced and genuine waste to be eligible for renewable energy certificates. The intent is to encourage more efficient use of existing resources rather than promote increased harvesting to supply wood waste for electricity generation. That has always been the case. I emphasise that this is wood waste and it is not intended to have increased harvesting to supply wood waste for electricity generation. To exclude native forest wood waste represents a significant change to the policy and it is inconsistent—and this is the point I was making earlier—with the objective of this bill, which is restricted to administrative change to improve efficiency, effectiveness and integrity of the legislation.

The Greens amendments would have other significant negative consequences—for example, wood waste from the eradication of non-native woody weeds, manufacturing processes, construction of buildings or furniture and sawmill residues would become ineligible for renewable energy sources. This suggestion flies in the face of good environmental management and waste reduction principles and introduces sovereign risk to those entities that have already become an accredited power station under the act and have generated renewable energy certificates in good faith. The statutory review, which is to commence in a few weeks, is the appropriate place to consider those policy matters. Indeed, section 162 of the act already provides for consideration of other environmental impacts that have resulted from the implementation of the provisions of the act, including the extent to which non-plantation forestry waste has been utilised.

We oppose the third of Senator Brown's amendments relating to (2A). It is not clear why the arbitrary time frame of two years has been imposed. We note that once the two-year time frame has elapsed the Greens' proposal—that is, that no woody biomass, be it plantations or native forest wood waste, would be regarded as an eligible renewable energy source—is unacceptable as it represents a substantial change to policy and the treatment of native forests under the act. It is again a matter that should be considered during the very full review that will be held with all the scientific and other support that it needs to look into these issues and to get the proper response.

The government will be opposing Senator Brown's other two amendments. I will not go through all my arguments against those amendments, but our objections are basically the same as the objections we have to the other amendments. I urge the Senate to deal with this bill in the way that it has been put forward to fix any administrative errors that have been made. With all its alleged imperfections—I do not want to debate those today—this regime is better than nothing. By insisting on these amendments we are going to end up with nothing. I think the arrangement is pretty good; this is not the time or

the place for arguments about its imperfections. What we want to do is fix the administrative points that the bill is focused on and have this debate at the appropriate time with the review. That was always the intention.

A couple of years ago we looked at this and said, 'It will need a full and proper review.' We put in place the arrangements to do that and they are a couple of weeks away from starting. Let us go with what we did two years ago. Let us look at it fully in the cold, hard light of day with all the support needed to distinguish fact from fiction. Let us give everyone the opportunity to put forward their arguments supported by the best science available and we will deal with those arguments. However, tonight we just want to get this administrative bill through to make sure that what is in place operates effectively.

Senator BROWN (Tasmania) (1.27 a.m.)—I say to the minister that the Greens are never going to allow this government to dictate what amendments we can or cannot bring forward to legislation. If we have amendments the government does not like, legislation will not pass. The minister needs to raise his game above that level. Also, when questions get asked in committee it expedites things if the minister answers them. I now have to repeat three questions which I asked half an hour ago and which the minister completely ignored. If he wants to keep us here later into the night than is necessary, I will have to ask the questions again. I do not want to do that; I simply ask for answers and I expect the minister to give them.

The minister stated, 'The rest of the world is copping this legislation.' I ask him: where and who? Also, he said that talking to people in the industry has shown the targets that have been put forward in these amendments are simply not achievable. I ask him whom in the industry he has talked to and what the advice of the Chief Scientist was on this matter. Furthermore, the minister referred to wood waste that was sustainably produced. I ask him what he means by the term 'sustainably produced' in relation to native forests. We are talking about old-growth forests and it seems ridiculous to me to suggest that you can cut old-growth forest in a sustainable manner. However, that is his term, so I ask him what he meant when he said that wood waste was 'sustainably produced'. He also said that a statutory review would begin in a few weeks. I ask him when it will begin, what the public input will be and who will be on the review panel that the government is establishing.

While the minister is considering that, I go back to Senator O'Brien's contribution and note that he is saying that opposition policy has changed. But I am not interested in what has changed in opposition policy. I am interested in a Labor Party commitment to the Greens which was related to getting preferences at the last election on 8 November last year. The first phrase of that commitment is:

> Labor will implement an immediate moratorium, via regulation or legislation ...

Here we have just that opportunity arising. The Greens have done the work on it, but Labor—I am not going to go into why they should or should not do it—have broken the spirit of that commitment. I do not accept that lightly. I will absolutely be insisting that the Greens take that into account in future dealings with the Labor Party. If the Labor Party are not big enough and honest enough when it makes explicit commitments on policy issues like this, whether it comes after an election into opposition or government, and says, 'Forget it. We're changing policies. We're going to dump you on that one, even though we've got the opportunity through numbers in the Senate to bring it into being,' then that has to be taken into future consideration.

I wrote to the Leader of the Opposition, Mr Crean, about this today and I have got no response. But he knows exactly what the situation is here. It is a very serious matter. The matter at hand—the moratorium and the review—is very serious. The political implications of not being able to keep your word in this sort of circumstance are extraordinarily important. I say again that I realise that Labor did not win office, but there is a matter of good faith in doing what one can to implement commitments. To have it just dismissed by Senator O'Brien as, 'Forget it, we have changed policies,' is not satisfying, is not good enough, is a complete breach of the spirit in which that agreement was made and

published. We insisted that it be published, and the Hon. Kim Beazley was good enough to publish it on 3 November last year. Let that stand on the record. Finally, I say to the minister: you may say that this is just an administrative piece of legislation or a piece of legislation to fix up administrative glitches; that is your priority, but that is not ours. I read to you a while ago, Mr Temporary Chairman, and the minister was listening, the assessment of the Earth Policy Institute.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Are you listening?

Senator BROWN—Mr Temporary Chairman, you asked if the minister was listening and he has indicated that he was. If the questioning is over, I will continue. I ask the minister to listen to further concerns from Lester Brown of the Earth Policy Institute. We are talking about global warming and the utter responsibility of governments to do something about it and about the prime responsibility of the government of the worst per capita polluting country in the world, Australia, to do something above all other countries. Lester Brown says:

> In May 2002, a record heat wave in southern India with the temperature reaching 114 degrees Fahrenheit (45.6 degrees C) claimed more than 1,000 lives in the state of Andhra Pradesh alone. In societies without air conditioning, there is no ready escape from the dangerous heat. To India's north, the temperatures in Islamabad, the capital of Pakistan, soared to ... 47 degrees ... during June.
>
> Farmers may now be facing higher temperatures than any generation of farmers since agriculture began 11,000 years ago. Crop yields have fallen as temperatures have climbed in key food-producing countries, such as the United States and India. Many weeks of record or near-record temperatures this past summer in the northern hemisphere, combined with low rainfall, withered crops in many countries, and reduced the 2002 world grain harvest to 1,813 million tons of grain, which was well below the projected consumption of 1,895 million tons.

This was before the awesome drought took hold in Australia. We have had both Senator O'Brien and Senator Ian Macdonald referring to the need for science in this matter and, Mr Brown, a globally renown scientist, says:

> One of the most sensitive indicators of higher temperature is ice melting. Scientists now report ice melting in all the world's major mountain ranges, including the Rocky Mountains, the Andes, the Alps, and the Himalayas. In Alaska, where temperatures in some regions have risen 5-10 degrees Celsius over the norm, ice is melting far faster than had earlier been reported.
>
> On Africa's snow-covered Kilimanjaro, the area covered by snow and ice has shrunk by 80 percent since 1900 ...

He goes on to say:

> Scientists report that ice cover in the Arctic Ocean shrank to 2 million square miles this summer compared with an average of 2.4 million ... during the preceding 23 years. The thinning of the ice is proceeding even faster. Since this ice is already in the water, its loss will not affect sea level, but when incoming sunlight strikes snow and ice, 80 percent of it bounces back into space and 20 percent is converted to heat. Conversely, when the incoming sunlight hits open water, only 20 percent is reflected and 80 percent is converted into heat, warming the region.
>
> Scientists are concerned with this warming because Greenland lies largely within the Arctic Sea. This past summer ice melting occurred over 265,000 square miles of the Greenland ice sheet—9 percent more than the previous maximum. If the Greenland ice sheet, which is 1.5 miles thick in some areas, were to melt entirely, sea level would rise 7 meters (23 feet). What happens to the ice in the Arctic Sea and the climate in the region is of concern to the entire world.

I can add that if the west Antarctic icecap were to melt—and I am speaking here from my own knowledge—and there is some danger that it will by mid-century, sea levels will rise 16 metres. Think of what that will mean in Sydney and Melbourne, let alone Calcutta and Dakar. We are confined, because the government scheduled it this way, to debating this legislation at 1.37 in the morning, and the minister is confined to saying that this has to be administrative—forget the substantive issue; he is concerned about administrative matters here.

It is time this government got its head out of the sand and recognised its obligation to stop the prodigious polluting, with global warming gases from this country—and particularly from the coal industry, which Chief Scientist Robin Batterham promotes—further threatening the world. This is a su-

premely serious matter. It should be at the top of the agenda. We should not be in a situation where the money is being ripped out of the hope of the future, renewable energy, which is what this bill is about—

Senator Ian Macdonald—Ha, ha!

Senator BROWN—and siphoned across into the coal industry, worsening the situation. The minister laughs; let that be on the record. These are serious amendments, which go to reviewing the situation and taking the burning of forests—which is a net greenhouse producer, regardless of what Senator O'Brien may say—out of the equation.

Senator O'Brien—CSIRO.

Senator BROWN—Senator O'Brien hides behind a misrepresentation of CSIRO. What the CSIRO is looking at is not the destruction of forests per se but a component of that. World science says that the best thing you can do as far as forests are concerned is to leave them standing, particularly the great carbon banks of the Southern Hemisphere in Tasmania, which Senator O'Brien and the Labor Party are cutting at the greatest rate in history.

Senator O'Brien interjecting—

Senator BROWN—Senator O'Brien thinks it is trite as well.

Senator O'Brien—You are being trite.

Senator BROWN—He says, by interjection, that I am being trite. Let people read that 50 years down the line and see what they think of him.

Senator Ian Macdonald—I am sure they can't wait to get their copy of *Hansard*.

Senator BROWN—The senator interjects about *Hansard*. However, we cannot progress very far with the mind-set that Labor and Liberal have. Tell that to people struggling with the problems being created by this attitude later down the line. It is a deplorable situation, and the way in which it is being treated speaks for itself. Finally, I would be interested to hear the answers to the questions I put to the minister at the start of this submission.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.41 a.m.)—Let the record show that I was laughing at Senator Brown for confusing this debate with some of the Marxist-Leninist rhetoric he goes on with. I do not know whom he is trying to impress. We are not on broadcast and I can guarantee that nobody is going to read *Hansard* in 50 years time, or even tomorrow. Senator Brown, no-one on my side listens to what you say, and I am sure that no-one on the Labor side listens to what you say. Senator Nettle, I am sure, has heard all of the Marxist-Leninist rhetoric from you before. Save the impassioned speeches for someone else. We are not interested in it. No matter what you say, this bill is about administrative changes. If you want to change the policy, enter into the policy review that you voted for two years ago when this bill was here.

You have asked me four questions and I will answer those questions. The other countries that have modelled their approach on the mandatory renewable energy target or on investigating a similar scheme now include the United Kingdom, Sweden and Japan. Your second question was about the target not being achievable. A government study on targets conducted by McLennan Magasanik Associates vindicates that five and 10 per cent targets are not achievable under the current penalty. This is important, Senator Brown, if you are interested in the real debate. Nobody has thought of changing the penalty. You cannot, because it is in a different bill. Five and 10 per cent targets are not achievable under the current penalty, since it will be cheaper for liable parties to pay the penalty. For example, under a five per cent target it would become cheaper to pay the penalty from around 2009. Under a 10 per cent target it will be cheaper in around 2005. This means that, for the majority of the time that the measure operates, liable parties will pay the penalty rather than helping with renewable energy. Much as you might want to change the penalty regime, none of us can. Even if I want to, I cannot—not in this bill—because it is in a different bill. If you had the wit to understand that, you would have introduced a bill to amend the levy bill.

Again, I hope Senator Allison understands the point—I think the Labor Party are aware

of it—that, because of these targets, people will pay the penalty because it will be cheaper than going into renewable energy. It is counterproductive, and that is why it is wrong to do these things at a quarter to two on the last night of sitting for the year, because we miss these important things. We need to deal with these important things during the proper review that the Senate voted on not two years ago.

The third question from Senator Brown was about the Chief Scientist, Dr Robin Batterham—that very distinguished, very able, very capable Australian. I think the question was: did he give any advice on this bill or on the original bill? It does not matter which one; the answer is no. Why would we seek his advice on this particular matter? The advice we got on this matter was from the Australian Greenhouse Office and from the Australian Government Solicitor. The Australian Government Solicitor has pointed out the administrative errors in the bill that need correcting. That is what we are trying to do today. We get our advice on greenhouse policy issues from the Australian Greenhouse Office—a very good element of government, which gives very sound advice.

The fourth question asked by Senator Brown was: who is going to be on the review committee and when will it commence? On 29 November, Dr Kemp wrote to a very wide range of people—and, I suspect, to all the political parties—seeking input into the terms of reference. The principal act says that we cannot start the review prior to 18 January 2003, Senator Brown. The act says that, but Dr Kemp is on record—and his letter of 29 November is an indication that he wants to get this moving—as saying that he wants this review under way at the very earliest time.

Senator Brown asked who was on the review. Nobody has been appointed to it yet. Dr Kemp is considering this matter. I say to all senators here, including Senator Brown, Senator Allison and the Labor Party, that if you have suggestions of who might be an appropriate person to put on this independent review—it must be independent, under the act—please send them in. Dr Kemp will consider all nominations, and the appointments will be made in due course. I hope that answers the four questions that you asked, Senator Brown.

Senator O'BRIEN (Tasmania) (1.47 a.m.)—I should put a couple of things on the record to round out our contribution to this debate. Senator Brown sought to downplay the CSIRO report. It is client report No. 1122, dated 31 May 2002. It is publicly available. So that there can be no doubt that what I was saying about its findings is correct, I will read from the executive summary. It says:

> The effect of fuel wood harvest on greenhouse gas balance of all harvesting scenarios examined was highly positive and was dominated by the offset of fossil fuel emissions during the generation of electricity. There is likely to be only a small difference in the seed stock in the forest as a result of the fuel wood harvest over an 80- to 100-year forest rotation. Harvesting of fuel wood may also lower emissions of non-CO_2 greenhouse gases.

I am not sure what study Senator Brown was referring to. I was referring to a particular report that I was aware of. It has been conducted in relation to the Southwood project. It was commissioned by Forestry Tasmania, National Power, and John Holland Development and Investment. It is contemporaneous and it deals with an actual circumstance. As I said, we prefer this matter to be resolved on the science. Senator Brown made some comments about commitments made during the last election campaign, but he conveniently omitted to refer to the fact that specified within the commitments given was that we would, upon attaining government, do certain things. I am sure it has not escaped Senator Brown's attention that that did not happen. I guess it is convenient for his argument today to suggest that we are bound to a commitment which could only be delivered in government: an immediate moratorium. We are now a little more than 12 months down the track.

I also pointed out in my contribution earlier that in the major states there is effectively a moratorium at the moment. Senator Brown has not conceded that, but that is the reality. I suspect that, until and unless the matter of the science of the greenhouse friendliness and biodiversity friendliness of

the generation of power from native forest waste is accepted, it will not be very easy to sell the renewable energy certificates from native forest waste, whatever the legislation says. That is the reality and the Labor Party accepts that that is a reality of life. We would prefer that the matter be determined on the science and that is why we would prefer that there be a review. That is why we are proposing an amendment which would require that this matter be examined in the context of the review that is just around the corner and that we get a pronouncement on the science which, one would expect, would say that it certainly is possible for all of the concerns about greenhouse friendliness and biodiversity to be addressed, depending on the project. But we would prefer to wait on the appropriate review to find that, because we do not want it to be determined on a political outcome, which Senator Brown obviously does, but rather on a scientific outcome.

It is a bit galling to be lectured by the Greens in relation to election commitments and politics. One of my staff has drawn to my attention an article by Dr Hewson in the *Financial Review* of 6 December—a week ago—about the Greens' lack of success in the Victorian election. A passage in it, referring to what Dr Hewson described as an 'inward-looking, insular, heavily regulated, poorly managed economy of the 1960s and early 70s', says:

> When asked by Brian Toohey in a recent Meet the Press interview whether this was going to be realistic, as it would cost $30 billion in revenue, Brown—

thereby meaning Senator Brown—

> responded: 'No, it's not going to happen. We're realistic about that.'
>
> To which Toohey responded, laughing loudly: 'How many of your other policies are not going to happen?'
>
> Brown replied: 'Well, the Greens are not going to get into government next time. That's coming further down the line.'

In other words, you can make policies and you can make promises but you are never going to have to deliver them.

In this area, Labor made a promise. It said that if it were elected then it would deliver, and it would have delivered it because we wanted the scientific review. We have an opportunity in opposition. I wish that the minister had said, 'We will mandate that,' because we believe that there needs to be on the public record a scientific determination of this issue. So we will not be supporting these amendments. We wish that the minister would, of his own volition, conduct the sort of review we are talking about, and we ask that the amendments not be carried.

Senator BROWN (Tasmania) (1.53 a.m.)—Every now and again you are opposed by people who are ignorant of what your policy base is, who have not even looked at the web site to see what it is and who make assumptions that are entirely false. I think the article in the *Financial Review* falls right into that category. However, as for the matter at hand, which is Senator O'Brien's asseverations about the CSIRO report, I repeat that the terms of reference precluded the CSIRO from making a comparison between keeping the native forests standing and destroying them and taking a component of that and putting it in furnaces. If they had been given that opportunity they would have found that the best option—other scientists right around the world have found this—is to keep the forests standing. That is the end of the argument, unless Senator O'Brien wants to assert that it improves the global greenhouse situation to cut down old growth forests.

On the matter of the Labor Party losing the election, I made that point clear in my earlier submission. I said that the Labor Party are breaking the spirit of that commitment. They are being given an opportunity in the Senate tonight, where we have the numbers, but they have said that they will not support the commitment that they made when the Greens raised it in an amendment. Let that be on the record.

I asked the minister what he meant when he referred to wood waste that is sustainably produced, but he did not answer that question. I put that question to him again: what does he mean by the term 'sustainably produced wood waste' referring, as we are, to native forest wood waste?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and

Conservation) (1.55 a.m.)—I will answer that briefly. Sustainably produced wood waste must meet the requirements of any relevant Commonwealth, state, territory or local government planning and approval process and be ecologically sustainable as defined in section 5 of the act. The approach for determining if wood waste from native forest and plantations is genuine is to apply a financial test. Broadly, for native forest wood waste, the regulators require the harvesting to be approved under relevant approval processes and the waste to be removed from a regional forest agreement, or RFA, equivalent area, and the primary purpose of the harvesting is to produce high-value products which are defined as saw logs, veneer panels, piles, girders and wood for carpentry and craft uses. The primary value is determined through the financial return for the various product strings. If greater than 50 per cent of the revenue for the product of harvesting is from the defined high-value products, the waste can be eligible.

Plantation eligibility criteria require that the harvest be approved under all relevant planning and approval processes, that no product of a higher financial value than biomass for energy production can be produced at the time of harvesting, that the plantations be managed in accordance with a specific Commonwealth approved code of practice and that plantations not be established on land cleared of native vegetation after 31 December 1989.

Senator BROWN (Tasmania) (1.57 a.m.)—There we have it. What the minister meant by 'sustainably produced' was that it sustainably produces dollars. It had nothing to do with the environment at all. Because we are talking about native forests—and, as Senator O'Brien has said, that means the native forests in Tasmania—I would like to ask the minister why he has failed to abide by a Senate request for him to lay on the table by noon today the documents relating to the answers to question on notice No. 404? That was my question about breaches of the forest practices code at Interlaken in Tasmania. Can the minister say why he has failed to meet that request from the Senate?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.58 a.m.)—As with so much that Senator Brown says, that is just plain incorrect; it is plain wrong. I have tabled the response to Senator Brown's motion. No documents have been tabled because, as my response shows, there are no documents. That is why none was tabled. You have the response, Senator Brown. It is floating around the ether somewhere. I am not quite sure of the Senate's procedures, but it is there, Senator Brown, and it is an explanation of why there are no documents.

Senator BROWN (Tasmania) (1.59 a.m.)—The document, whatever it was, was not supplied to me. But what the minister says is that, on that very important question, he has no document—no correspondence with the state government, none with the Forest Practices Board, none with the forest authorities in Tasmania, none with his own forestry advisers in Canberra, none with the environmental authorities and none which could elucidate the important matters that were put to him. What a minister! What a failure he is, as Minister for Fisheries, Forestry and Conservation, in carrying out his responsibility to the Senate and to the wider public. I commend the amendments to the chamber. I note that Labor is not going to support the amendments and neither is the government, but I still think these are very important amendments and should be getting the support of all components of the Senate tonight.

Question put:

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

The committee divided. [2.05 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes……	8
Noes……	46
Majority……	38

AYES

Allison, L.F. *	Bartlett, A.J.J.
Brown, B.J.	Cherry, J.C.
Greig, B.	Lees, M.H.
Murray, A.J.M.	Nettle, K.

NOES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Buckland, G.
Campbell, G.	Campbell, I.G.
Carr, K.J.	Colbeck, R.
Cook, P.F.S.	Crossin, P.M.
Eggleston, A.	Evans, C.V.
Ferguson, A.B.	Ferris, J.M. *
Forshaw, M.G.	Heffernan, W.
Hill, R.M.	Hogg, J.J.
Johnston, D.	Kirk, L.
Knowles, S.C.	Lightfoot, P.R.
Ludwig, J.W.	Lundy, K.A.
Macdonald, I.	Macdonald, J.A.L.
Mackay, S.M.	Marshall, G.
Mason, B.J.	McLucas, J.E.
Moore, C.	O'Brien, K.W.K.
Patterson, K.C.	Payne, M.A.
Reid, M.E.	Santoro, S.
Stephens, U.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wong, P.

* denotes teller

Question negatived.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.09 a.m.)—I will apologise, as much as it galls me to do so, to Senator Brown and to the chamber. I indicated previously that the response to the Senate order to produce documents had been tabled today. It left my office at about 2 p.m. today, but I am told that it was to be tabled in today's sittings after the legislation had been dealt with, which means that it is something that will come in the future. It is the response to the Senate order to produce documents, so if I need leave to table—

The CHAIRMAN—You can table that at any time.

Senator IAN MACDONALD—I table that now with an apology for indicating that it had been tabled earlier. I thought it had been.

Senator BROWN (Tasmania) (2.10 a.m.)—Firstly, the minister tried to cast all sorts of aspersions about me by saying that I was wrong when I said it had not been tabled. I want to thank Ben Oquist from my office, whose advice to me is unerringly correct and was so on this occasion. That having been said, I accept that the minister was wrong and has apologised. I thank him for the apology.

Senator ALLISON (Victoria) (2.11 a.m.)—I want to make a couple of remarks about the minister's statements. The Democrats acknowledge that this is a technical bill, and I apologise to my colleagues for keeping them from going home through the debate and the amendments that the Democrats are proposing to this bill. The point needs to be made that there is not going to be a more appropriate time than this. Two years on, after the implementation of this bill, serious anomalies have been discovered and they have been pointed out to the government. I think that the Democrats would have been quite willing to allow this bill to proceed as a technical bill without trying to fix it had it not been for the fact that the government seems uninterested in the problems that have been very apparent to the whole industry.

We are sympathetic to Senator Macdonald's argument that this is a technical bill but it would have helped the Democrats and others in this place if the government had admitted that this is not the outcome that any of us anticipated at the time that the bill was dealt with. Whilst there is a review—thanks to the amendment that was agreed in the Senate and it does start at the beginning of next year—it may well take a whole year to complete and it could be another year after that before this act comes back into the Senate for us to see right again. That is the reason we are going through this process. It is not because we want to stay up all night. It is because there are not going to be other opportunities. Quite frankly, your government has not shown any willingness to fix the problems and that is why we are doing this. I move Democrat amendment (1) on sheet 2660 revised:

(1) Schedule 1, page 10 (after line 16), after item 39, insert:

39A After section 19

Insert:

19A Offsetting of renewable energy certificates

(1) This section applies to an accredited power station that:

(a) has a nameplate rating of more than 20 MW; or

(b) generates an amount of electricity that is less than the power station's 1997 eligible renewable power baseline in a calendar year.

(2) A registered person who operates a power station to which subsection (1) applies must notify the Regulator of the number of MWh by which the power station's 1997 eligible renewable power baseline exceeds the amount of electricity generated in that calendar year (a ***deficiency***).

(3) When the Regulator is notified of a deficiency, the Regulator must offset the deficiency against any renewable energy certificates created in a subsequent calendar year.

Example: In year 1, an accredited power station creates 100 RECs in excess of its 1997 eligible renewable power baseline. In year 2, the power station produces a deficiency of 120MWh. The Regulator must offset the first 100 MWh of the deficiency against the 100 RECs created in year 1 and the remaining 20 MWh against any RECs created in year 3 or a later year.

Note: Nameplate rating is a defined term in the National Electricity Code and is "the maximum continuous output or consumption in MW of an item of equipment as specified by the manufacturer".

(4) To the extent that the deficiency was caused by a plant breakdown or other major system failure that would not have been accounted for in determining the power station's 1997 eligible renewable power baseline then the renewable energy that relates to this event need not be offset against certificates created in a subsequent calendar year.

This amendment is about what is known as the 'unders and overs'. It is a complex matter and I have a clear explanation for it, which I would like to work through. In their submission to the inquiry, the Sustainable Energy Authority Victoria explained the problem very clearly and neatly, and so I will quote from their submission. They said:

Seasonal variation in rainfall can provide short term increases in output for all hydro generators which have the excess capacity to take advantage of the extra resource available. In years where additional rainfall enables generators to produce electricity above their baseline, RECs can be produced. In some years however low rainfall will reduce output and generation will be below the baseline, preventing creation of any RECs. However, since the baseline is a long run average, generation in above average years produces RECs without any increase in the average amount of renewable energy generated in Australia.

The nature of the hydro resource means that the electricity generated from hydro generators can vary considerably. The structure of MRET means that a generator is able to create RECs when its output is above the baseline in any given year ... however there is no commensurate requirement for a generator to repay RECs in years where the generator is producing below the baseline.

… … …

It is estimated that RECs created from seasonal variations will account for approximately 0.8 million RECs per annum. These RECs do not represent any long term increase in the amount of renewable energy generated in Australia. As a result these RECs would not contribute at all to the MRET objectives of increased renewable energy generation and reduced greenhouse gas emissions.

The amendment seeks to address this problem by requiring registered persons to notify the regulator of the number of megawatt hours by which the power station's 1997 eligible renewable power baseline exceeds the amount of electricity generated in that calendar year. This will be called a deficiency and will have to be paid back, in a sense. However, a generator is not expected to surrender more RECs than they have produced. The magnitude of the unfair advantage created by the problem of unders and overs was highlighted in the report of the Australian EcoGeneration Association, now called the Business Council for Sustainable Energy. They found:

Using probability estimates for power generated as included in Transend's 2001 annual planning statement, on average Tasmania's hydro power stations can earn an additional 263,000 RECs on top of the 738,000 that an average yield would suggest. In Tasmania the average hydro yield is

10,186 GWh. However, 5 per cent of years 1 to 20 hydro production will be less than 7,000 GWh. Conversely, 5 per cent of years 1 to 20 hydro production will be above 13,000 GWh. On the basis that future hydro patterns are consistent with historical hydro patterns, then on average an additional 263,000 RECs could be produced on top of the 738,000 that the average yield would suggest.

This is a major problem. It is not just the baseline; it is the fact that, essentially, an average becomes the baseline. You are not penalised for achieving underneath that average; you are only given benefits and rewards for overproduction. This has been raised by numerous submissions to the inquiry into this bill. We think this amendment provides a sensible way of dealing with the unders and overs, so to speak. This amendment would lead to the use of an actual average, providing benefits for the overs and not for the unders.

Senator O'BRIEN (Tasmania) (2.17 a.m.)—The opposition opposes this amendment because it goes to the matter of how baselines were originally set. Also, we believe this is a matter of policy and, as such, is best dealt with in the properly resourced review of the Renewable Energy (Electricity) Act 2000, which begins in January next year. I understand that the baselines were developed by the Office of the Renewable Energy Regulator in conjunction with independent consultants. Over 30 different methodologies for determining baselines for existing hydrogenerators were considered, using Australia-wide hydrogeneration data dating back to 1955. It was determined that a three- to five-year data period was not stable. Ten-year data is more stable and 15-year data is even more so. It was determined that the 15-year mark was the best compromise. The Bureau of Meteorology confirmed that a 15-year cycle is consistent with rainfall- and weather-modelling techniques used nationally. In the end, the decision was taken to use 14-year data—roughly equivalent to one weather cycle—due to data availability. It was concluded that two analyses were needed to establish the typical 1997 value of each power plant—namely, a simple 14-year average of the data and a linear interpolation curve fitted to the data to extract the 1997 value.

By comparing these two analyses, it was possible to check several features of the data. For example, if the linear interpolation 1997 value was very close, it could be concluded that no growth in output was occurring at the power plant and that it was likely that the data set represented a full cycle. If there were a poor match between the two, this would indicate one of several things: the data may have been incomplete, it may have only represented part of the cycle or there may have been growth in generation from the power plant. Depending on the results of further examination of the data, either an interpolated value or an average value was adopted.

I understand that all of that means that there has been a scientific basis for establishing the baseline data. Perhaps more importantly, no-one has been able to demonstrate that the existing circumstance, the baselines, has prevented additional investment in renewable energy options around the country. We are about to have a review, commencing next month. It no doubt will take time if it is conducted properly but, if this is to be a system that goes on into the future, the opposition would much prefer that this issue be dealt with in an appropriate review that takes its time over the matter, rather than relying on the considerations of the Senate at 2, 3 or 4 a.m. on a Friday morning at the end of a session to determine policy for the next decade in terms of important renewable energy generators in the system.

There is no doubt that there are critics of the Tasmanian hydro system, but it will also be recognised that at present Tasmania generates 60 per cent of the renewable energy generated in this country. It should not be surprising that in Tasmania they have the capacity to generate significant renewable energy certificates. It also should not be surprising that they are investing many millions of dollars in extending the renewable energy generation situation in that state, particularly for wind power generation. For these reasons, the opposition will not be supporting this amendment.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.22 a.m.)—The government

will also be opposing the amendment. The amendment seeks to make fundamental changes to the manner in which pre-existing generators are included under the measures, by changing the circumstances under which they may create certificates. The consideration of this issue is—as I think Senator Allison would accept—a very complex policy matter that is intimately related to other policy areas fundamental to the scope and operation of the measure. These include the size of the target, the level of noncompliance charge, the mix of technologies and their relative contributions, the concept of banking of certificates, and the broader economic costs of the measure. Consideration of this issue should therefore, I suggest with respect, be addressed in the broad policy context of the statutory review, which is now only weeks away, rather than in the narrow administrative context of this bill at 2.30 a.m. on the last day of sittings for this year.

Senator Allison, we do not always agree with the Democrats in relation to environmental matters but I think all of us on this side accept that you have a genuine interest in the environment and trying to do the right thing. So do we all, I suggest. We might differ on how we get there. As a government, of course, we have to balance a lot of things, and people expect us to do that. Perhaps we cannot always do exactly what we would like to, because there are countervailing pressures, but I accept the genuineness of your proposals, whilst not at this stage and at this time of night agreeing with them. I accept that they are put forward in an honest and genuine attempt to try and improve a situation. But, Senator Allison, if I can again plead with you, this administrative bill to fix administrative and legal points that need to be fixed to make the existing system work better really is not the place to be doing it.

I urge you—and I know you will do it without me urging you—to take these issues to the review. I think you will be pleased with the way the review is set up and I think you will accept that it is a serious review that will be properly resourced with the right scientific support to get at all the issues that you are talking about and that the Labor Party have mentioned in some of their amendments as well. That is the right time to do it, not in this bill dealing with administrative matters. For those reasons, we will be opposing your amendment.

Senator ALLISON (Victoria) (2.25 a.m.)—I am not trying to make some minor point with this amendment, but the fact of the matter is that Hydro Tasmania will pick up the first three years of this measure through renewable energy certificates for which it is paid no money for investing in new renewable energy. It is very late and my next amendment goes to the same issue, so I do not want to labour this point, but I really wish, Minister, you would not underplay the seriousness of undermining this measure through the baselines that have been set, I would argue, erroneously.

Senator BARNETT (Tasmania) (2.26 a.m.)—I rise to oppose the Democrat amendment and to say that Senator Allison's view with respect to Hydro Tasmania is incorrect. They have an investment plan based on $208 million for upgrading the hydrostations in Tasmania. I make the point that it is not based on maintenance, as indicated by the Senator Allison.

Senator BROWN (Tasmania) (2.26 a.m.)—I rise to speak to the amendment too. I am not going to ask questions beyond this, but can the minister tell the committee what percentage of the certificates has gone to Hydro Tasmania and what the value of those certificates is.

Question negatived.

Senator ALLISON (Victoria) (2.27 a.m.)—I move Democrat amendment (2) on sheet 2660 revised:

(2) Schedule 1, page 34 (after line 14), after item 151, insert:

151A After subsection 161(1)

Insert:

(1A) Where an accredited hydro-electric power station with a nameplate rating in excess of 20 MW has access to major water storage capability, the regulations must provide that a 1997 eligible renewable power baseline for such a station is its long run average generation capacity.

Note 1: Long run average generation capacity is determined with reference to the average generation that the power station could have produced from its annually available water, if it had used the water to generate electricity in the year that the water was available rather than store the water for generation in subsequent years.

Note 2: Major water storage capability can be defined where the storage cycle has historically extended beyond a year. That is, water can be stored long-term and used in subsequent years to produce electricity.

This amendment seeks to change the way the baselines are set. I can read the mood of the Senate and I can understand that neither the government nor the ALP will support this, but I will explain what it attempts to do. I will also correct Senator Barnett. This measure is supposed to reward investment in renewable energy, not to pay for subsequent investment in renewable energy. There is a subtle distinction between those two. In fact, Hydro Tasmania may choose to do so, but they are not obliged to spend any of the money they get for these renewable energy certificates, which are for no extra investment at all, on new investment. They say they are doing that and that is very nice, but there is no obligation on them to do that under this bill.

This amendment changes the way the baselines are set for large-scale hydro-electric power generators. Currently, baselines for generation are based on an average of annual generation for the 10 years prior to 1 January 1997 and for four years after that date, so that is 14 years. However, the problem is that some pre-existing large-scale hydrogenerators are demand-constrained systems. That means that determining baselines in the way they are currently determined gives the generators the capacity to create renewable energy certificates for no additional investment in new generation, because the baselines are simply too low and are not an accurate reflection of the current generation capacity. The fairer way to determine baselines for these hydrogenerators is to look at what they could have produced over a designated period rather than what they actually end up generating.

Our amendment requires that, where an accredited hydro-electric power station with a nameplate rating in excess of 20 megawatts has access to major water storage capability, the regulations must provide that a 1997 eligible renewable power baseline for such a station is its long-run average generation capacity. In other words, it is not the actual generation but the amount of water stored which can generate the electricity. The long-run average generation capacity is determined with reference to the average generation that the power station could have produced from its annually available water if it has used the water to generate electricity in the year that the water was available rather than store the water for generation in subsequent years. In other words, it takes away that whole question of being able to manipulate the production of generation to meet demand. That is the problem with the baseline as it is currently set. Hydro Tasmania only generates what it needs. It could generate a great deal more because it has the water capacity there to do so. So that keeps the baseline down to an artificially low level, which is why we have this problem.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.30 a.m.)—The government will not be supporting this amendment either, for the same reasons that I mentioned before. The amendment seeks to substantially change the baseline concept for the inclusion of pre-existing generators under the measure. As with the previous proposal by Senator Allison, this is a very complex policy issue that is related to other policy areas which are fundamental to the scope and operation of the measure. Again, we say it should be looked at fully in the review rather than in the bill.

While I am on my feet, I might just mention something in relation to Senator Brown's question regarding the previous amendment. I can give you part of the answer to that, Senator Brown. Hydro Tasmania provided evidence to the Senate Envi-

ronment, Communications, Information Technology and the Arts Legislation Committee that in 2001 it generated between 118,000 and 119,000 renewable energy certificates. I think you also asked for the value, but I am told that we cannot actually give you a value because it is a market price that varies.

Senator O'BRIEN (Tasmania) (2.32 a.m.)—The opposition will not be supporting this amendment for the reasons we outlined in the debate on the previous amendment.

Senator BROWN (Tasmania) (2.32 a.m.)—I support the amendment and note that I am told that the minister's figure is some 30 per cent of the certificates. In the absence of a government explanation to the contrary, that is a real disincentive for the rest of the emerging renewable energy market. That is why it is a regressive component of the legislation, that is why it is not allowed under the legislation in other countries like the UK and that is why the Democrat amendment should be accepted. It would ensure that it would give a much bigger boost to the renewable energy options which this legislation was meant to target—not least of which are solar and wind power—if it weren't for the way in which the hydro producers are able to manipulate the market, as explained by Senator Allison, to take for themselves the advantage out of this system and away from these sunrise industries that we should be promoting.

Question negatived.

Senator ALLISON (Victoria) (2.33 a.m.)—I move Democrat amendment (3) on sheet 2660 revised:

(3) Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40 (table)

Omit the section, substitute:

40 Required GWh of renewable source of electricity

(1) The ***required GWh of renewable source electricity*** for a year up to and including 2010 is set out in the following table:

Required GWh of renewable source electricity	
Year	**Required additional GWh**
2001	300
2002	1100
2003	6916
2004	9990
2005	13064
2006	17290
2007	21517
2008	26127
2009	31122
2010 and later years	36500

This amendment is in line with what the industry says is achievable as a target for renewable energy by 2010 in that it adds 10 per cent renewable energy to the total. It does this not by introducing it as a percentage figure but as an actual target expressed in terms of electricity. We have calculated that on the basis of there being a growth of 3.5 per cent in energy consumption each year to the year 2010, which, I might say, is a conservative estimate. Between 1997 and 2001 I believe the average was 3.8 per cent, so this calculation is not unrealistic.

As I have said, the industry says that this target is achievable. It is on track, by 2010, with the right climate, to achieve this level of renewable energy in this country. Not just the industry but also plenty of analysts are saying that too. A report commissioned by Greenpeace and carried out by Next Energy found:

There is a strong case that enough renewable energy sources could be developed to meet our 10 per cent MRET of up to 36,500 gigawatt hours per year by 2010 at no or very low cost. This increase from the current 9,500 gigawatt hour MRET could be achieved using a combination of potentially high-volume sources including wind energy, solar water heating and sustainable biomass energy from multibenefit bioenergy crops. Meeting a 10 per cent MRET would bring significant environmental gains by reducing greenhouse gas emissions by some 26 million tonnes each year, equivalent of taking about 6 million cars off the road and creating direct permanent employment of about 14,000 new jobs, a large portion of

which would be in regional areas in Australia. Increasing MRET to 10 per cent will assist Australia to meet its Kyoto target of 8 per cent over 1990 levels by 2010.

As senators will be aware, Australia is currently projected to reach 111 per cent of 1990 emissions by the end of the decade. That works out to be a gap of about 14.6 million tonnes per annum, and that could be closed if we simply adopted a higher target of 10 per cent.

Senator O'BRIEN (Tasmania) (2.36 a.m.)—The opposition has on the running sheet a proposal which is consistent with the announcement by Labor's spokesman on the environment portfolio, Mr Kelvin Thomson, for a five per cent mandated renewable energy target. We will be supporting that proposition; we will not be supporting a proposition for a higher target. Indeed, for reasons that I will elaborate upon later, I can indicate that we will be supporting our amendment in preference to the other amendments which refer to a five per cent target. Given that I think that makes clear our position on the amendment, I simply say that we will not be supporting it.

Senator BROWN (Tasmania) (2.37 a.m.)—We support the amendment. You will see that we have a similar amendment coming up next, which I will comment on, but I want to note our support for the Democrat target, which is indeed achievable. For the good reason that Senator Allison mentioned, it would help us to meet the Kyoto target at the same time.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.38 a.m.)—The government does not support the amendment either. Senator Allison, I think, was involved in the development of the mandatory renewal energy target. She probably realises that, without changing the level of the penalty, the real operation of the renewable energy trading market and the likely behaviour of market participants are not going to be affected. That is the point I was making before. In another bill, which we are not dealing with in this amendment bill, you would have to do something with the penalties, even if we agreed with your proposal, which we do not. You would have to deal with the penalties in another bill. Because that is not being done, these sorts of proposals simply will not get the result that you are seeking. Again, we think it is better for this whole issue to be looked at more closely and in depth elsewhere.

Senator ALLISON (Victoria) (2.39 a.m.)—The Democrats did attempt to increase the penalty the last time we dealt with this legislation. Although I do not have the figures with me, it is my understanding that, with the low penalty of $40 per kilowatt hour, there are already retailers who are choosing to pay the penalty rather than to honour their obligations under this legislation. I do acknowledge that the penalty would need to be raised. I again say that we attempted to do that last time we dealt with this legislation.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.40 a.m.)—I do not want to carry this on, except to say that you are quite right, Senator Allison. I was not around, but perhaps you did, and I accept what you say, try to do something about the penalty—and I say this to you and the Labor Party—for all the right or wrong reasons. But unless you address that you cannot really deal with these things, and what you say is correct. But that is why I say—and perhaps I am not so much talking to you, as I have indicated that we are going to oppose it; I am saying it to the Labor Party, for the same reason—that without amending that other bill I do not think that this is going to achieve what those who have put it together would want it to achieve. Even if we wanted to support you, which we do not, without that other bill it is not going to make any difference.

Question negatived.

Senator BROWN (Tasmania) (2.41 a.m.)—I move Greens amendment (5) on sheet 2795:

(5) Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40 (table)

Omit the table, substitute:

40 Required GWh of renewable source of electricity

(1) The ***required GWh of renewable source electricity*** for a year up to and including 2010 is set out in the following table:

Required GWh of renewable source electricity

Year	Required additional GWh
2001	300
2002	1100
2003	6916
2004	9990
2005	13064
2006	17290
2007	21517
2008	26127
2009	31122
2010 and later years	36500

(2) The regulations must prescribe the required GWh of renewable source electricity for the years 2020, 2030 and 2050 at least 10 years before each of those years and in accordance with the following table:

Required GWh of renewable source electricity after 2010

Year	Required GWh
2020	not less than 25% of the estimated electricity consumption in 2020
2030	not less than 50% of the estimated electricity consumption in 2030

This is an excellent amendment and I have pleasure in moving it. It is very similar to that just put forward by Senator Allison for the Democrats, except it extends further into the future and requires that 25 per cent of estimated electricity consumption be renewable in the year 2020 and 50 per cent by 2030. Those figures are there because that is the trajectory that the world's top scientists are looking at being essential if we are going to rein in the menace of global warming.

It is very important that legislators understand the size of the commitment that is going to have to be made. Here we are looking at two per cent, but what is required is not just 50 per cent by midcentury but an 80 or 90 per cent reduction in the burning of fossil fuels and production of carbon going into the atmosphere by midcentury, and absolutely by the end of the century, if we are to avoid seeing the ice caps melting, the seas rising and the absolute destruction of the planetary living place as we know it. I know that we will get Labor opposing that. They are being very negative tonight—knocking and being negative. We will get the government doing likewise. But it is part of the positive amendment suite that the Democrats and Greens are putting forward tonight.

I want to go back to the consultant's report that the minister mentioned earlier. The consultant is saying that 10 per cent cannot be achieved. The information that both the Democrats and the Greens are getting is that 10 per cent is achievable, and that is coming from experts in the renewable energy industry. I know the minister quoted the report, but could he again answer the question: who was the scientist that informed the consultants, and therefore the minister, that 10 per cent is not achievable? Finally, he talks about this being the inappropriate place for this sort of amendment to be moved. It is exactly the right place. The matter is extremely important. This is the right place to move it and this is the right piece of legislation to be moving it in. The options are limited for the opposition and crossbenches, and this is exactly the place for us to be moving this amendment.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.44 a.m.)—Senator Brown correctly predicted the government's approach to his amendment—that is, we will be opposing it. In relation to the name of the scientist, I do not have that. There were consultants and there is a report around. No doubt we could find it, but we do not have it at the moment.

Senator Brown—Could I have a copy of the report?

Senator IAN MACDONALD—I am sure that we will not have it here with us. I would have to take some advice on that, Senator

Brown. This is Dr Kemp's portfolio, and I am not sure whether it is a public document and whether there is any reason it should not be. But if it is readily available, we will try to get you a copy of it.

Senator O'BRIEN (Tasmania) (2.44 a.m.)—For the reasons that we opposed the previous amendment, we will be opposing the Australian Greens amendment.

Question negatived.

Senator O'BRIEN (Tasmania) (2.45 a.m.)—I move opposition amendment (1) on sheet 2797:

(1) Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40

Omit the section, substitute:

Required GWh of renewable source electricity	
Year	**Required additional GWh**
2001	300
2002	1100
2003	1800
2004	4200
2005	6600
2006	9000
2007	11400
2008	13800
2009	16200
2010 and later years	18700

A report released recently by Origin Energy in our view discredited claims that cutting greenhouse gas emissions would lead to substantial increases in electricity costs. That report was done, as the minister is well aware, by McLennan Magasanik Associates. They assessed the impact on electricity prices of renewable energy and gas-fired generation. They concluded that the increase in electricity prices as a result of increasing the renewable energy target would be very small, that it would have a minimal impact on the cost competitiveness of Australian industries that are energy intensive and that Australia would remain amongst the countries with the lowest electricity prices. That research backed up modelling by the New South Wales Treasury which suggested that Australia could indeed meet its Kyoto target—that is, an eight per cent greenhouse gas emission increase between 1990 and 2008—without a significant rise in electricity prices for industrial consumers. We have also seen work done by the Tariff Network of Experts, who also concluded that an increase in the MRET target would have a very minor impact on electricity prices.

Development of the renewable energy industry means both reduced greenhouse gas emissions and, in our view, more jobs. Australia is uniquely placed, with ample supplies of renewable energy sources such as wind and solar, to lead the world. I also make the point that many of the jobs created from harnessing this clean energy can occur in regional Australia, and I believe that renewable energy projects should be developed as a matter of priority in regional Australia and that that is where the scope for these projects most successfully lies. Such an approach would give us a smooth transition to an energy mix that has an increased market share of renewables and, as the above examples demonstrate, would provide more jobs overall for regional Australia.

Labor announced earlier this week its proposal for a minimum five per cent MRET—a significant increase on the government's target of two per cent. Labor's position demonstrates our commitment to the renewable energy sector. This time Labor believes that a five per cent mandated renewable energy target is both balanced and achievable, but Labor has not shut the door on support for a higher mandated renewable energy target in the future. The forthcoming renewable energy target review should examine whether the target should be five per cent or a higher figure. Labor will consider raising the target if the evidence coming from the government's review or from our own policy development work warrants this and in particular if we are satisfied on the issue of electricity prices.

In terms of the form of our amendment, there are differences between the section 40 table that we propose and that proposed in, I think, the Democrat amendment, which also

goes to a five per cent target. There are a number of models that have been used to calculate the figure which would be associated with a five per cent additional renewable energy target. Labor has chosen the Origin Energy modelling as we believe it is credible and represents a middle ground. The Greenpeace-Next Energy modelling contains two different scenarios for energy demand growth, one which may never eventuate. That is contained on page 10 of the publication *Putting renewables on target*, the Greenpeace study prepared by Next Energy. Those two models are based on electricity demand growth rates of 2.2 per cent per year or 3.5 per cent per year, yielding targets of 18,400 gigawatt hours and 23,200 gigawatt hours, respectively. The Origin Energy modelling comes in at 18,700 gigawatt hours, in between these two figures, and Labor therefore believes that this is the most appropriate modelling to determine the target gigawatt hours per year of new renewable energy in 2010.

Senator ALLISON (Victoria) (2.50 a.m.)—Firstly, I would like to say that I welcome the ALP's decision to back a higher target. However, this amendment has the same problem that the original bill had. We started with what we thought was two per cent, but when you do not use the right calculations to establish what the actual electricity generated by renewable sources would have to be, based on an accurate increase in consumption levels to 2010—it is not easy to work that out—you end up with much less than two per cent. That is the problem we have now. Instead of two per cent, 9,500 gigawatt hours turns out to be somewhere between 0.9 and 0.5 per cent, by the time you get to 2010. So our preference is for there to be an agreed percentage and for that percentage to move with whatever the consumption is, as we move towards 2010.

The problem with the ALP's proposal here is that this will end up being a good deal less than five per cent, as the 9,500 gigawatt hours is a good deal less than two per cent. Senator O'Brien has pointed out the figures on which this is based, but I point out that he has taken a very low level of 2.2 per cent growth per year, when, in fact, the actual load growth between 1997 and 2000 was 3.8 per cent. The higher figure of 3.5 per cent, on which our coming amendment will be based, is much closer to what is likely to be the reality for the growth in electricity consumption by 2010.

So, for that reason, Senator O'Brien, the Democrats much prefer your amendment (2), which sets an actual percentage, and I think that is achievable. Again, I congratulate you for taking this step. I do hope it is sincere. I do hope this is not just a speech that can be thrown around in this place and that, when the bill is tossed back to us by the House of Representatives, the Labor Party will give in—or worse, that you expect this to sink the bill so that you will not have to stand by this amendment. I want to indicate that the Democrats would prefer to support your amendment (2), which we look forward to.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (2.53 a.m.)—Let me indicate again that the government will not be supporting the amendment, and for the reasons which I have indicated previously. Senator Allison uses the argument that I would use to oppose this: that there is a need for a thorough analysis of what the projected targets are. The need for that analysis has been really demonstrated by the divergent projections.

Senator Allison—It's still only 0.9 per cent compared to two per cent.

Senator IAN MACDONALD—I am agreeing with you. I am not sure if that is the figure, but you are in the ballpark. This really does need to be looked at very thoroughly. Altering the level of the target represents a fundamental change to the whole policy underpinning the legislation, and it is really beyond the scope of this particular administrative amendment bill. The act requires that the issue of the size of the target be considered as part of the formal statutory review, which is to be commenced in a couple of weeks. We decided that in the previous act. You could almost say, nicely, 'Why are you jumping the gun?' We decided, two years ago, that in a couple of weeks time we would start looking at that.

It really should be noted that the increase in the target to five or 10 per cent will not have the desired effect of increasing renewable energy generation without the consequential amendment to the size of the penalty under the Renewable Energy (Electricity) (Charge) Act 2000. This is because, as I have mentioned before, it would be cheaper to pay the penalty than it would be to buy renewable energy certificates. For example, under a five per cent target it will become cheaper to pay the penalty from around 2009, and under a 10 per cent target it will become cheaper around 2005. This means that the majority of times the measure operates the liable parties will simply pay the penalty. This perverse impact indicates the importance of thoroughly analysing how the market trading system operates before making fundamental policy changes. The statutory review provides the appropriate means of undertaking this analysis.

Again, I say to Senator Allison and Senator O'Brien that the government will not be accepting this because it will not work without the amendment to that other act. It really needs to be looked at thoroughly, with all the best support and policies. So, for the right reasons, we will not be accepting it. The RECs are acquitted on 14 February, so we need to do this administrative work today. If we do not, even the system we have, with all its alleged imperfections, will crumble away. Senator Brown suggested I was trying to blackmail or threaten people. I am just stating a fact: we will not support this because it will not work without the other amendment. If we do not deal with it by 14 February—and we will not be back in this place until then—the current system, even with its alleged imperfections, is going to go as well. We will be left with nothing. The review is there—the means and the facility for dealing with these things are there. We can start in a couple of weeks. It is going to be a long process. I am sorry about that, but it has to be done thoroughly. The whole procedure is there.

I plead with the senators to at least keep the current system with what you say are its imperfections—it is better than nothing. Let us keep it and look into this fully. I do not think anyone argues about the goal we are all trying to achieve. We all want renewable energy, but we have to do it in a balanced way. I plead with you. Senator O'Brien, it is your amendment. I am assuming, from what Senator Allison has said, that the Democrats are going to join with us in opposing it in this case—but we will be looking at something else later. Senator O'Brien, I understood that your shadow minister and his officers were briefed on this. The need to get this administrative bill through was explained. Even when it went through the House of Representatives, Mr Thomson did not raise this as an issue. He said the Labor Party will be supporting it. I am really at a loss to understand why there has been a change. I think Senator Barnett indicated he was on the committee where the Labor Party senators looked into this very thoroughly. I am not sure if there were Democrats senators there as well.

Senator Barnett—Yes.

Senator IAN MACDONALD—Yes; the Democrats were there. You wrote the dissenting report, although I understand that it was not on this measure.

Senator Barnett—Yes, it was.

Senator IAN MACDONALD—It was on this measure—okay. Well—and I say this in a friendly way as comic light relief—they were wrong and they are still wrong. Senator O'Brien, your senators obviously looked into this very carefully. Much as we might say things about them in question time, they are not dills; they are intelligent people. They went through and looked into this carefully. They had the benefit of the best advice and of the evidence that had been given, and they did not see a need for this sort of amendment. Mr Thomson himself did not see a need for this amendment. Again, we would very rarely agree with Mr Thomson but he is an able person and he went through this fully. He is the shadow minister and he has looked at it very carefully. Why has he changed his mind in the space of a few days? You are trying to tell me that Mr Thomson made a mistake in the House of Representatives. I do not accept that. I do not think Mr Thomson is the sort of person who would make a mistake.

It is very important that we all follow the advice given to us by the majority of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee—by our senators and your senators who have looked into this carefully. Mr Thomson obviously considered this very thoroughly before he made his speech on the bill. I have quoted part of that speech and I could quote all of it. He said quite categorically in the House of Representatives, 'We will be supporting this because we understand the importance of getting this administrative bill through.' Sure, a lot of things have to be looked at, but the bill that this parliament passed two years ago provided the wherewithal to look at those things properly. We are going to do that. We are going to start in a few weeks time, and Mr Thomson knew and understood that. His speech to the House of Representatives clearly shows that he understood that.

The current system might not be the most perfect but it is better than nothing. So can we please deal with these administrative things, make right the system we have and then all get together after 18 January, with input and goodwill from everyone. We are all heading towards the same end. Everyone agrees that we need more renewable power; there is no argument about that. So let us all work together to achieve that. I urge all parties not to support this amendment or the other amendments, so that we can get the administrative bill through this chamber tonight.

Senator BARNETT (Tasmania) (3.02 a.m.)—I rise to oppose the Labor amendment, support Minister Macdonald's comments very firmly and acknowledge our common objective of encouraging renewable energy. I acknowledge the consistency of Senator Allison's comments with the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee—which we sat on together—on the provisions of the Renewable Energy (Electricity) Amendment Bill 2002.

I am shocked and surprised that Senator O'Brien is moving this amendment on behalf of the Labor Party. I take issue with the statement that he incorporated into *Hansard*, and specifically with his statement that the coalition 'is not committed to Basslink, has considerably less commitment to renewable energy targets than Labor has and is not committed to Tasmania'. He goes on to say, 'The lack of commitment from this government to renewable energy now appears to be turning into outright sabotage.' Those sorts of comments are very inflammatory. On behalf of the Tasmanian Liberal Senate team, I find them offensive. We are committed to Basslink, we are committed to the $208 million worth of investment that the Hydro are making in upgrading their hydro power stations, and we are committed to supporting the Hydro's plans for putting $100 million per annum over the next 10 years into wind farm development in Tasmania.

I put it to this chamber that the amendment proposed by Senator O'Brien would put at risk and undermine these very investments and developments. As I indicated earlier, I am shocked by it. The minister quite rightly referred to the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, which is dated December 2002—it came down just last week. Senator O'Brien and Senator Mackay were on that committee with me and with other members of the government, and we gave a majority report. We said:

> 2.1 With limited exception, the bill has the support of almost all the submissions, which reflects the largely administrative nature of most provisions.

That is what the minister has been saying throughout the evening. The bill is about administrative matters. I refer to the conclusion of the report, which makes it very clear that the committee recommends that the bill be passed. That is what the report says: 'the committee recommends that the bill be passed'. Here we have amendments which are putting all that in jeopardy. The report says the bill should be passed:

> ... with consideration of the recommendations of this report.

I refer to paragraph 2.81 on page 28 of the report, where we talk about the actual target—the two per cent or the five per cent.

The minister has just referred to the target, which was carefully considered by the committee. The committee says:

> The Committee is sympathetic to these views but considers that it is too early in the life of the MRET scheme to fundamentally raise the target.

The two per cent has been supported by the committee in this majority report. I have acknowledged Senator Allison's minority report on behalf of the Democrats. That is why I am surprised that Labor is putting this up. This was tabled only a week or so ago in this chamber. There has been a total turnaround. We have had hearings, we have had submissions and we have looked at the research. We looked at the baseline studies and said, 'Look, these sorts of things should be dealt with in the review, which is starting in January next year.' Senator Mackay, in her speech incorporated into the *Hansard*, said:

> I further support, as mentioned earlier, the raising of the MRET to 5 per cent.

This is contrary to the committee report. She continued:

> This will significantly generate new investment in the renewable energies industry.

I say that is wrong and, indeed, the minister says it is wrong. You need to make it clear that consequential amendments are required. The advice is quite clear that the amendment is flawed. You need consequential amendments as to the size of the penalty under the act. This is because it will be cheaper to pay the penalty than to buy renewable energy certificates. For example, under a five per cent target it will become cheaper to pay the penalty in around 2009. Under a 10 per cent target, it will become cheaper in around 2005. The facts are there; it is on the table. It is very disappointing. The Tasmanian ALP state government—

Senator Mackay—The Hydro support five per cent!

Senator BARNETT—Listen to the advice that was put by your own state Labor government. The advice by the state Labor government to this committee made it perfectly clear that they supported the bill and that amendments like those that have been put forward tonight are fundamental and would be best dealt with in the review that is coming up in January, in a few weeks time. I hope that the state Labor government will put pressure on their federal Senate colleagues to not undermine the many investments and developments in Tasmania. It is a great concern. I would encourage Senator Mackay and Senator O'Brien to review their position and to reconsider, so that we can get these administrative matters dealt with. I recognise that the Greens and Senator Allison, on behalf of the Democrats, have a different perspective, a different view, but this is an administrative matter and it needs to be dealt with. I know it is of concern to all the Tasmanian Liberal senators, certainly, who will be calling on all the Tasmanian politicians, state and federal, to support the majority committee report which came down last week and not to undermine this legislation and the entire renewable energy regime.

Senator BROWN (Tasmania) (3.09 a.m.)—We have just had over half an hour from the government on why committees should be rubber-stamped in the chamber. That has been largely a waste of time. However, the Greens will, as will the Democrats, be favouring the second amendment by the Labor Party.

Senator O'BRIEN (Tasmania) (3.10 a.m.)—I point out to Senator Allison that our figures are based on 2.6 per cent growth in energy consumption, which is the figure proposed in the McLennan Magasanik Associates report. That is the basis of our numbers, not 2.2. Two point two is one of the numbers contained on page 10 of the Greenpeace *Next energy* report. That is the calculation basis of our numbers. I was trying to point that out, and I am sorry if I did not adequately make the point that we chose a target which was perhaps between the two poles which the *Next energy* report suggests were the two parameters within which one might expect energy to grow by over the decade. I hear what you say, and I am not going to waste the time of the Senate trying to argue that extensively. That is the basis of our argument. We think they are the correct figures, and that is why we have put them up.

In relation to the Senate committee report, I remind the Senate that this was a report where hearings were conducted and a report

prepared in a short space of time, immediately before the resumption of the last fortnight of sittings. The opposition position clearly was that we would support the passage of this legislation and that we reserved our right in relation to other amendments. The government has a majority on this committee, and it was clear that the report would be carried on the majority of the government.

Senator Barnett—You supported the report. You didn't make any reservations.

Senator O'BRIEN—We supported the passage of the legislation, which we are supporting. We will give this legislation our support at the third reading, as we did at the second reading, but we are moving an amendment which is consistent with our policy announcement—the one that I detailed earlier—which is that Labor supports a five per cent target.

Senator Mackay—So does the Hydro.

Senator O'BRIEN—Yes. Do many of the other renewable energy generators support it? Yes. Do we believe it is affordable? Yes. Is it a policy that, if the government insist that the amendments to this legislation cannot go ahead, we will be continuing to pursue? Yes. However, in relation to Senator Allison's comments about whether or not the Labor Party would insist on its amendments were the government to reject them—it is hypothetical and it is not my call tonight—I do recall the Democrats on a number of occasions taking positions only to change them when matters came back before the Senate.

Senator Allison—You can talk.

Senator O'BRIEN—Senator Allison says I can talk. That is certainly true, I can, because that is exactly what the Democrats do and, on occasions, so do the opposition. That is only reflecting the fact that sometimes the passage of a piece of legislation may be more important than the passage of a particular amendment. I am not attempting to call our position one way or the other but simply saying that it is a bit much for the Democrats to suggest that somehow they are pure on the issue of the passage of amendments and then insisting on them some time down the track. I do not think I need to say any more with regard to that. I hear the call of the numbers. We will move our next amendment, and apparently that will carry. Our preference would be for this amendment to carry because we think it sets a better framework in terms of the ongoing administration of renewable energy certificates. We do say, in relation to the minister's suggestion, that this would require the amendment of another piece of legislation. That is certainly true; but, as the minister himself said, the intersection of the workability of this legislation and the other comes about in 2009, so we have a bit of time to achieve the second leg of the equation.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.15 a.m.)—I rise only to give my colleague Senator O'Brien the opportunity to check with the shadow minister whose responsibility this is. It may be that Senator O'Brien is not aware of Mr Thomson's position; he is the shadow minister and it is his bill. To assist Senator O'Brien, I want to quote to the chamber what Mr Thomson said in the House of Representatives on 9 December, four days ago. He was talking about RFAs; this might help you in relation to RFAs as well, Senator O'Brien. Mr Thomson stated:

> I believe that this is an issue that should be examined by the forthcoming review. Some of the things that the review should examine are whether the MRET target should be five per cent or a higher figure; whether there is a genuine problem regarding the baselines and unders-and-overs for existing hydrogenerators and, if so, how it should be resolved; whether the use of native forest residue would have a significant adverse effect on forest biodiversity, increase its greenhouse gas emissions or lead to an unsustainable increase in biomass from native forests; and the proper role of plantations and whether it is appropriate that they are excluded from the MRET definition. These are all things that the government's MRET review needs to consider.

They are not my words; they are the words of Mr Kelvin Thomson, the Labor shadow minister. It is his bill; it is his issue. Not four days ago in the House of Representatives, he said quite clearly that these issues should be reviewed in the government's review. We agreed with him then and we agree with him now. I do say again that, for the reasons Mr

Thomson has outlined, we will not be accepting the amendment. If the amendment is pursued, we will get the situation where we will not have any relevant legislation on renewable energies come 14 February, and the current system, no matter how imperfect some may say it is, will not be workable at all. Again, I urge Senator O'Brien to seek clarification of Mr Thomson's view. If he has changed his view, nobody has indicated what the catalyst was to change it. Here we have Senator O'Brien talking about the Senate committee senators changing their minds—

Senator O'Brien—No, I didn't say that.

Senator IAN MACDONALD—I am paraphrasing. Whilst there may be some justification for what Senator O'Brien said in relation to a Senate committee report, I am not agreeing; I am saying there may be. But certainly the same thing cannot be said about the shadow minister, who, not three days ago, clearly said that this was a matter for review. He was right and he explained why he was right. He understood that it was an important issue and it needed a review, not a debate at 3.20 on the last day of sitting. I plead with the Labor Party and Senator O'Brien to get instructions from Mr Thomson to ensure that Mr Thomson's wishes, which he so clearly stated not four days ago, are in fact carried out. I am sure that is the Labor Party's position and I have confidence that Mr Thomson was right. He knew what he was talking about—he is an intelligent person—and he made it very clear. Can I suggest, Senator O'Brien, that you get instructions from Mr Thomson so that we can move on and get this administrative bill through so that we can fix up a few of the errors that we made at this time of night two years ago.

Question negatived.

Senator O'BRIEN (Tasmania) (3.19 a.m.)—I move opposition amendment (2) on sheet 2797:

(2) Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40 (table)

Omit the table, substitute:

40 Minimum required GWh of renewable source electricity: 2010

The minimum required GWh of renewable source electricity for the calendar year 2010 shall be that number of GWh which represents 5% of the total number of GWh of electricity acquired from all sources under relevant acquisitions during the previous calendar year.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that opposition amendment (2) on sheet 2797 be agreed to. I think the ayes have it.

Senator Ian Macdonald—I am sorry, Mr Temporary Chairman, you—

The TEMPORARY CHAIRMAN—It is 3.20 a.m., as you have said.

Senator Ian Macdonald—I know you want to go to bed and so do we all—

The TEMPORARY CHAIRMAN—I have already put that question.

Senator Ian Macdonald—This is a very important—

The TEMPORARY CHAIRMAN—I am sorry, Senator Macdonald.

Senator Ian Macdonald—I was on my feet; you did not look over this way. It is appropriate that we, as a government, are entitled—

The TEMPORARY CHAIRMAN—I call you, Senator Ian Macdonald.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.19 a.m.)—The government is entitled to put its view on an amendment that has been moved. That is the way amendments are dealt with in this chamber. Chairmen go around every party to see what their views are before a vote is called.

The TEMPORARY CHAIRMAN (Senator Bolkus)—You have got the call, Senator Ian Macdonald.

Senator IAN MACDONALD—Thank you, Chair. I only make that point to again urge Senator O'Brien to adopt my proposal that he seek instructions from Mr Kelvin Thomson. I am not trying to put you in a difficult position, Senator O'Brien. I know

you understand these issues and understand the importance of forestry to Tasmania.

Senator O'Brien—It's not forestry.

Senator IAN MACDONALD—It is not a forestry issue; I agree with that. But you understand these issues very well. Four days ago Mr Thomson said this was clearly a matter that had to go to review, and today his Senate colleagues are ignoring him. Four days ago Mr Thomson understood the question. He understood the problem; he knew what it was about. That is why he said that this is a matter that should be reviewed. I cannot believe that Mr Thomson's Senate colleagues would go against the shadow minister's clear expression that this was to be referred to the review. There cannot be anything clearer. It is there in black and white. I have the transcript of Mr Thomson's speech here. Not only does he say that he and the Labor Party will be supporting the government's bill; he says that he clearly understands why there is a need to refer this to the review, that it is not something that should be legislated for.

One would almost think that the Labor senators here are overturning Mr Thomson's view for some reason that cannot be explained. If this view prevails then come 14 February we are not going to have any effective legislation at all to deal with renewable energy. Is that what this chamber wants? Senator Brown, is that what you want? It might not be perfect—

The TEMPORARY CHAIRMAN—Senator Macdonald, could you please go through the chair.

Senator IAN MACDONALD—Mr Temporary Chairman, I say to Senator Brown that this may not be perfect, but does Senator Brown want nothing—

Senator Brown interjecting—

Senator IAN MACDONALD—Are you saying you are supporting it?

The TEMPORARY CHAIRMAN—Senator Macdonald, do not take interjections. Go through the chair and concentrate on what you want to say.

Senator IAN MACDONALD—That is why it is so important that we follow Mr Kelvin Thomson's approach, that we do actually refer this to the committee. This five per cent issue should go to the review. It is important. Mr Thomson understood it. The consequence of ignoring Mr Thomson's express words is that we will not have any effective legislation to deal with renewable energy. I know that the Labor senators do not intend that. I know that Senator Allison and the Democrat senators do not intend that. But that is what is going to happen.

Senator Mackay—That's your problem.

Senator IAN MACDONALD—Oh, that's my problem, is it?

The TEMPORARY CHAIRMAN—Senator Macdonald, do not take interjections. Senator Mackay!

Senator IAN MACDONALD—Mr Temporary Chairman, it is not my call. The call is—

The TEMPORARY CHAIRMAN—Senator Macdonald, I have asked you not to take interjections. Please concentrate on what you want to talk about. We are about to move to another amendment.

Senator IAN MACDONALD—Thank you for your considerable help, Mr Chair. It is very important that we do understand that this is the call of the Senate. Does the chamber follow what Mr Thomson asked for, understood and argued for not four days ago, or do we ignore Mr Thomson and do something different, without explanation? I again plead with the Democrats and the Labor Party to do what Mr Thomson knew had to be done. He knew it was right. He said it not four days ago. He has had no change of mind. He has not explained it to us. The consequence of proceeding with this or any other amendment is such that we are not going to have any legislation.

Question agreed to.

Senator ALLISON (Victoria) (3.24 a.m.)—It is clear that the ALP is not going to support our amendment (4), and amendment (5) was really a fall-back situation. We now have a five per cent target. I am happy for those two amendments not to be put. I seek leave to withdraw Democrat amendments (4) and (5).

Leave granted.

Senator ALLISON—The Democrats oppose item 152 in schedule 1 in the following terms:

Schedule 1, item 152, page 34 (lines 15 and 16), **TO BE OPPOSED**.

The TEMPORARY CHAIRMAN (Senator Bolkus)—The question is that item 152 in schedule 1 stand as printed.

Senator ALLISON—This reflects the fact that we are opposing the government's desire to get rid of the requirement that draft regulations be made available for public comment for a period of not less than 30 days before the regulations are made. These are very complex issues that we are dealing with tonight and I am sure the regulations would benefit from public comment. It is a minor amendment.

While I am on my feet I want to respond to the minister's suggestion that, if this bill does not pass, the whole measure is put in some doubt. That is clearly a nonsense. We are dealing with worthwhile amendments; there is no question of that, but I do not think it is make or break, Senator Macdonald. In fact, your second reading speech says they are minor amendments. They are fixing up and tidying up but we know that the regulator has fairly wide powers and much of this could be done. I understand the need to improve those technicalities but to suggest that this whole measure will fall over and be a complete failure is really a bit of an exaggeration, to say the least.

Senator O'BRIEN (Tasmania) (3.27 a.m.)—The opposition will not be supporting this amendment. I take this opportunity to draw the attention of the Senate to Mr Thomson's speech on 9 December where he says, on *Hansard* page 9683:

Labor will not scrap MRET, which the government report recommends …

He is talking about the Parer report.

... we will increase the renewable energy target to five per cent by 2010.

There may be an ambiguity in the passage that Senator Macdonald refers to but it is pretty clear there. In addition, of course, on the same day Mr Thomson issued a media release where he called for an increase in the mandatory renewable energy target to five per cent. I seek leave to table that.

Leave granted.

The TEMPORARY CHAIRMAN (Senator Bolkus)—Senator Macdonald.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.28 a.m.)—Could you please look this way, this time?

The TEMPORARY CHAIRMAN—I just called you, Senator Macdonald.

Senator IAN MACDONALD—Thank you; it is nice to be called some time. The government will be opposing Senator Allison's amendment for the reasons I have indicated previously. In relation to Senator O'Brien's comment: Mr Thomson cannot be that silly or that stupid that in one speech he says two different things. I cannot pick up the page or the quote that Senator O'Brien is referring me to but I can very easily see the quote that I have mentioned in relation to the previous amendment, the question on which I will shortly be calling on Temporary Chairman Bolkus to put again, seeing he declared it before he called all speakers—but we will deal with that after this. The passage is so very clear there: Mr Thomson says that this is a matter that should be subject to this review. I do not accept that Mr Thomson is that stupid, that base or that unintelligent that he could clearly say two different things in one speech.

It is absolutely amazing to me that the Labor Party has a shadow minister who, four days ago, said one thing and somewhere along the line he has gotten rolled. I do not know. Is he from the left? Obviously the left of the party has done a palace coup. If the amendment is agreed to we will be left with an act whereby the whole system starts to crumble away. That is not what you want but that is what will happen. It is easy for me to say, 'It is early in the morning, let us do it and you will be proved wrong.' But I do not want you to be proved wrong because then the greenhouse energy approach of all the senators goes crumbling away.

Senator Brown—Tell us again what Mr Thomson said.

The TEMPORARY CHAIRMAN (Senator Bolkus)—Senator Macdonald, do not be tempted by Senator Brown at this time of the morning.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.31 a.m.)—I would not be tempted by Senator Brown for anything—absolutely nothing. How can the Labor Party have a shadow minister who is so uncertain with his policy approach that in the space of four days he changes his mind? Senator O'Brien is trying to tell me that in the space of one speech he has changed his mind. I just cannot believe that. We oppose the amendment.

Senator BROWN (Tasmania) (3.31 a.m.)—I support the amendment. It is exactly the same as the Greens amendment. It is about maintaining public input because the amendment prevents the government from being able to remove clause 161 subsection (ii) of the bill which simply says:

Draft regulations must be made available for public comment for a period of not less than 30 days before the regulations are made.

I hope that the Labor Party is going to support the amendment because otherwise you are knocking out public input.

Question agreed to.

Senator Ian Macdonald—I ask you to call the previous amendment, opposition amendment (2), again.

The TEMPORARY CHAIRMAN (Senator Bolkus)—I clearly called it the first time, Senator Macdonald.

Senator Ian Macdonald—My advice from the Clerk is that the process to have that incorrect call rectified is to ask you to reput the vote.

The TEMPORARY CHAIRMAN—No-one has called it incorrect but, for the sake of convenience at this time of the morning, I will put again opposition amendment (2), moved by Senator O'Brien: the question is that opposition amendment (2) be agreed to.

Question agreed to.

Senator ALLISON (Victoria) (3.33 a.m.)—by leave—I move Democrat amendments (7) and (8) on sheet 2660 revised:

(7) Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152A At the end of paragraph 162(1)(a)

Add:

(iii) stimulated the development of an internationally competitive renewable energy industry; and

(iv) resulted in the optional use of renewable energy resources in Australia; and

(8) Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152B At the end of paragraph 162(1)(h)

Add "and continuing to increase the targets beyond 2010; and

(i) the degree to which the operation of the Act impacts on the effectiveness of other measures that support renewable energy development;".

These amendments require the review of the act to look at a couple of additional matters, namely: whether it has stimulated the development of an internationally competitive renewable energy industry, which the government is arguing that it wants; whether it has resulted in the optimal use of renewable energy resources in Australia; the overall level of the target; and the degree to which the operation of the act impacts on the effectiveness of other measures that support renewable energy development.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.33 a.m.)—The government will be opposing these amendments. I am not quite sure what the Labor Party's view of them is, but I certainly hope that they will also oppose them. We do not support any changes to the legislative terms of reference for the statutory review. As Dr Kemp has indicated, all interested parties have been invited to contribute to the scope of the review. It is the stated intention of parliament, through the legislation, that the statutory review will be independent. Given the minister's undertaking to consider the submissions on the scope and the independent nature of the review, it is unnecessary and counterproductive to amend the legislation. Senator

Eggleston has indicated to me that, in fact, the committee is already dealing with this issue and, again, I urge the Senate to vote against this amendment.

Senator O'BRIEN (Tasmania) (3.34 a.m.)—The opposition will not be supporting these amendments. We expect that the review will be as thoroughgoing as Minister Macdonald suggests. It is therefore our view that these amendments are unnecessary.

Question negatived.

Senator O'BRIEN (Tasmania) (3.35 a.m.)—I move opposition amendment (3) on sheet 2797:

(3) Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152A Paragraph 162(1)(f)

After "utilised", insert "as an eligible renewable energy source, with particular reference to:

(i) net greenhouse emissions; and

(ii) biodiversity; and

(iii) the level of biomass extraction under the Regional Forest Agreements; and

(iv) the plantation industry;".

This is the amendment to mandate the particular term of the review that we flagged very early in this debate. I do not propose to go over the basis for that position. It is already in *Hansard*, and there is an amount of business to be dealt with this morning. I urge senators to support our position.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.35 a.m.)—Senator O'Brien indicated earlier that, if there were a clear statement from the government on this issue, the Labor Party would not be pursuing their amendments. I want to very clearly state that the Minister for the Environment and Heritage, Dr Kemp, has authorised me to say that he will consider the suggestions raised by the opposition when deciding the terms of reference for the review. Two of the matters, in relation to greenhouse gas emissions and biodiversity, are already encompassed in the terms of reference for the review contained in the legislation. The minister confirms that the place of wood waste in Australia's renewable energy arrangements will be considered as part of the review. I ask Senator O'Brien to accept that as an indication of the government's good faith, so that this amendment need not be pursued by the Labor Party, and I ask that he withdraw it.

I again point out the danger of doing these things at this time of night. If you cut through the wording of the amendment, Senator O'Brien, and follow this in the act as you are suggesting it should be amended, this is how it would read:

The Minister must cause an independent review of the operation of this Act, including consideration of:

… … …

(f) other environmental impacts that have resulted from the implementation of the provisions of this Act, including the extent to which non-plantation forestry waste—

for the purpose of clarity, and accepting that this is not exclusive, I will read 'native forest waste' there instead of 'non-plantation forestry waste', just for this example—

has been utilised as an eligible renewable energy source, with particular reference to:

(i) net greenhouse emissions; and

(ii) biodiversity; and

(iii) the level of biomass extraction under the Regional Forest Agreements; and

(iv) the plantation industry;

It just does not make sense. I am not being critical of anyone's drafting. I am simply pointing out the danger of doing these sorts of amendments at this time of night, on the run. I can hand this piece of paper to you if would like to read it through. It just does not make sense.

Whilst we oppose the amendment—and I have given you a clear statement which I had hoped you would accept in lieu of the amendment—even if you did proceed with it, it is just silly. It does not make sense. That is the danger. That is how we got to this position before, Senator Allison, if I can emphasise it to you. It is silly. It does not make sense. It is not properly done, because it has been done on the run; it has been done since four o'clock this afternoon. We get into the situation where we were two years ago—making these amendments on the run—and we end up with legislation that then desper-

ately needs attention. We all make mistakes—I am not being critical—but if we pass this we will have a piece of legislation that does not mean anything. I ask again that you accept the undertaking I have given on behalf of Dr Kemp and withdraw it. In support of that, I suggest not only that we have done what you have asked us to do, but, more importantly, we can save the legislation books from being cluttered up with amendments that do not mean anything.

Senator O'BRIEN (Tasmania) (3.40 a.m.)—Very briefly, the opposition cannot accept the undertaking that was given, that the minister will consider the suggestions. I did indicate that we were seeking something a bit more concrete than that. I accept that the minister is doing his job in trying to get the best outcome that the government sees fit. But the reality is that this is not an undertaking to do anything; it is an undertaking to consider doing things. That is not quite good enough.

In relation to the amendment, I could respect the position of the government more if they were to say, 'This is what we can live with,' but the government are saying that they cannot live with anything. So we would rather have the amendment that we have moved than nothing.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (3.42 a.m.)—I move:

That this bill be now read a third time.

I again indicate to the Senate the government's disappointment that, as a result of these amendments to the Renewable Energy (Electricity) Amendment Bill 2002, which will not be accepted in the House of Representatives, we will be left with legislation that will cause our regime to start to crumble. It is not, I am sure, what the Democrats wanted. I know it is not what certain members of the Labor Party wanted. I can only suggest that Mr Thomson is having internal problems with different factions of the party or that Mr Crean is scrambling to try and find some alternative approach. It is disappointing that this legislation will not happen.

Question agreed to.

Bill read a third time.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives acquainting the Senate that the House has agreed to amendments (3), (11), (14), (15), (29), (31), (38), (39), (48) to (50), (52), (53), (57) and (58) made by the Senate, disagreed to amendments (1), (2), (8) to (10), (12), (16) to (28), (30), (32) to (37), (42), (44) to (47), (51) and (54) to (56), and made amendments in place of amendments (4) to (7), (13), (40), (41) and (43); and requesting the reconsideration of the bill in respect of the amendments disagreed to and the concurrence of the Senate in the amendments made by the House.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

Schedule of the amendments made by the House of Representatives in place of Senate amendments disagreed:

(1) Schedule 1, item 24, page 6 (after line 28), after the definition of ***Federal Magistrate***, insert:

> ***former judge*** means a person who has been (but is no longer):
>
> (a) a Judge; or
>
> (b) a judge of a Supreme Court of a State.

(2) Schedule 1, item 24, page 7 (after line 2), after the definition of ***issuing authority***, insert:

> ***listed former judge*** means a former judge included in a list kept under section 34AC.

(3) Schedule 1, item 24, page 7 (line 26), omit "Judge.", substitute "Judge; or".

(4) Schedule 1, item 24, page 7 (after line 26), at the end of subsection 34AB(1), add:

(c) a listed former judge.

(5) Schedule 1, item 24, page 8 (after line 3), after section 34AB, insert:

34AC List of former judges consenting to appointments

(1) The Minister must cause to be kept a list of names of former judges who have consented to being appointed as issuing authorities, prescribed authorities or both.

(2) The Minister may invite a former judge to consent:

(a) to being appointed as an issuing authority, a prescribed authority or both; and

(b) to having the former judge's name included in the list.

(3) If the former judge consents, the Minister must cause the former judge's name to be included in the list, together with an indication of whether the former judge consents to being appointed as an issuing authority, a prescribed authority or both.

(4) If a former judge whose name is included in the list requests the Minister:

(a) to have the former judge's name removed from the list; or

(b) to have the list indicate that:

(i) the former judge no longer consents to being appointed as an issuing authority; or

(ii) the former judge no longer consents to being appointed as a prescribed authority;

the Minister must cause the list to be amended to give effect to the request.

(5) The Minister may, on his or her own initiative, cause the name of a former judge to be removed from the list.

(6) Schedule 1, item 24, page 8 (line 6), after "who", insert "either is a listed former judge listed as consenting to the appointment or".

(7) Schedule 1, item 24, page 8 (line 11), after "a person", insert "who holds an appointment to the Administrative Appeals Tribunal described in subsection (1)".

(8) Schedule 1, item 24, page 9 (after line 31), after subsection (3), insert:

(3AA) The procedural statement is to deal with at least the following matters:

(a) informing the following persons about the issue of a warrant under section 34D:

(i) the prescribed authority before whom a person is to appear for questioning under the warrant;

(ii) the Inspector-General of Intelligence and Security;

(iii) police officers;

(b) transporting a person taken into custody, or detained, under this Division in connection with such a warrant;

(c) facilities to be used for questioning of a person under such a warrant;

(d) a prescribed authority's obligation under section 34E to inform a person appearing before the prescribed authority for questioning under such a warrant of the matters mentioned in that section;

(e) arrangements under sections 34H and 34HAA for the presence of an interpreter during questioning of a person under such a warrant;

(f) making recordings under section 34K;

(g) the periods for which a person may be questioned continuously under such a warrant;

(h) the periods for breaks between periods of questioning of a person under such a warrant;

(i) facilities to be used for detaining a person in connection with such a warrant;

(j) arrangements for the person to whom such a warrant relates to contact other persons in accordance with the warrant (including provision of facilities under paragraph 34F(9)(c) for the person to make a complaint orally to the Inspector-General of Intelligence and Security or the Ombudsman);

(k) conducting searches under section 34L;

(l) the periods for allowing a person to whom such a warrant relates an opportunity to sleep;

(m) providing a person to whom such a warrant relates with:

(i) adequate food and drink (taking account of any specific dietary requirements the person may have); and

(ii) adequate medical care.

(9) Schedule 1, item 24, page 11 (line 9), after "Judge", insert ", a listed former judge".

(10) Schedule 1, item 24, page 14 (line 31), omit "before the", substitute "before a".

(11) Schedule 1, item 24, page 19, after proposed section 34HAA, insert:

34HAB Inspector-General of Intelligence and Security may be present at questioning, taking into custody or detention

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning, taking into custody, or detention, of a person under this Division.

(12) Schedule 1, item 24, page 19 (after line 9), at the end of subsection 34HA(1), add:

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34HAB, or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b).

(13) Schedule 1, item 24, page 20 (after line 9), after section 34J, insert:

34JA Entering premises to take person into custody

(1) If:

(a) either a warrant issued under section 34D or subsection 34F(6) authorises a person to be taken into custody; and

(b) a police officer believes on reasonable grounds that the person is on any premises;

the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) However, if subsection 34F(6) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

(a) commencing at 9 pm on a day; and

(b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34F(6), either at the dwelling house or elsewhere, at another time.

(3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

(14) Schedule 1, item 24, page 20 (after line 9), after proposed section 34JA, insert:

34JB Use of force in taking person into custody and detaining person

(1) A police officer may use such force as is necessary and reasonable in:

(a) taking a person into custody under:

(i) a warrant issued under section 34D; or

(ii) subsection 34F(6); or

(b) preventing the escape of a person from such custody; or

(c) bringing a person before a prescribed authority for questioning under such a warrant; or

(d) detaining a person in connection with such a warrant.

(2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.

(3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or

(b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:

(i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and

(ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (3.45 a.m.)—I move:

That the committee does not insist on its amendments (1), (2), (8) to (10), (12), (16) to (28), (30), (32) to (37), (42), (44) to (47), (51) and (54) to (56) to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of amendments (4) to (7), (13), (40), (41) and (43).

In speaking to the motion I would like make some points, which I will make as briefly as possible, because I think they have been made earlier this day in this place, and there has been a debate in the other place in the meantime. At the outset, let me say that my colleague Senator Ellison has had to return to Western Australia and he has asked me to handle this bill on his behalf. I know he would have preferred to have been here, so I apologise on his behalf and will handle the bill for now.

The government's position on the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 has always been emphatically clear. We need this legislation to give our intelligence agencies what we regard—and I think it is so regarded across the chamber—as vital tools to deter and prevent terrorism. The bill has been returned from the House of Representatives in a form that the government believes will ensure that it is both workable and, very importantly, constitutional.

For the reasons that have already been given in this chamber by Senator Ellison, the Minister for Justice and Customs, the opposition's amendments passed in the Senate rendered the bill unworkable and unconstitutional. I would like to reiterate that the government is very serious about protecting the Australian community at a time when there is no doubt—and this is agreed across the chamber—that serious risks do exist. The government—and I speak here particularly of the Attorney-General and his team—has bent over backwards to accommodate many of the suggestions that have come from the committee processes of this parliament, from both the joint and Senate committees, that we believe will strengthen and enhance the operation of the bill. All senators know that the government has already significantly amended the bill following those committee reports and the many constructive suggestions within those reports.

The government has repeated—and I say it again now—that it cannot and will not accept amendments that render the bill impotent or unworkable. This does nothing to help protect the community from terrorism. The opposition has made some extraordinary statements in the House of Representatives about the government's position on this bill. Our position has been quite clear—it has not changed, it has not wavered and we do not intend to waver now.

The bill deals with those circumstances where coercive questioning and detention, subject to very strict controls, is necessary in the interests of public safety. For example, it may be necessary to detain a person to prevent them from informing others about ASIO's investigations or to allow urgent intelligence investigations to continue unimpeded. In some situations the capacity to detain will in fact be critical. It would be absurd to not have a power to detain a person for a limited period in a situation where that might put public safety at risk. Those at the front line of meeting this threat tell us that in order to protect the community from this kind of threat they need the power to hold a person incommunicado, subject to strict safeguards, while questioning the person for the purpose of intelligence gathering. We accept this need but the opposition clearly does not.

The government has rejected the opposition's amendments that would limit ques-

tioning under a warrant to four hours, with limited capacity to extend beyond that period. The first extension could be for eight hours. A second extension of eight hours is only available where there is a threat of an imminent terrorist act. This, we believe, is an absurd proposition that does not allow sufficient flexibility to enable our intelligence agency to do its job. This is but one example of the differences between the opposition's position and that of the government. The government's amendments reinstate the important provisions that allow coercive questioning and detention—subject, I reiterate, to strict controls. We believe that this is necessary in the interests of public safety.

We will not accept amendments that go to matters of fundamental principle. The Attorney-General has outlined those matters repeatedly and emphatically, as has the Minister for Justice and Customs, Senator Chris Ellison, who has made the government's position quite clear. In particular the government have stressed that we cannot and will not accept amendments that make the bill at best unworkable and at worst unconstitutional. We are taking a stand because we believe it is very much in the interests of protecting Australian citizens at a time when there is a clear recognition across all political parties of a significantly increased risk from terrorism. We want to deliver to the Australian people a bill that will operate effectively in this new terrorist environment with which we are all faced. The government will not pretend to the community that what the opposition proposed will provide another layer of protection against terrorism when we know the opposition's package of amendments effectively renders it useless and quite seriously open to challenge.

There was some debate in the other place about advice about the constitutionality of provisions, particularly relating to the constitutionality of appointing sitting judges to the role of a prescribed authority under the act. There seemed to be some confusion, at the very least, as to that advice. I believe that it is appropriate that the advice that was provided to Senator Faulkner earlier today—or earlier this evening is probably more accurate, or tonight—should be—

Senator Faulkner—Earlier today is actually right.

Senator IAN CAMPBELL—Okay. That's fine. But I think it is probably in the interests of an informed debate and it would get rid of any confusion—

Senator Robert Ray—Don't say it arrived yesterday when it didn't.

Senator IAN CAMPBELL—No, I am trying to get my words right as I watch the clock and look at the date. Regardless of that, it should be on the record. I seek leave to incorporate the advice from the Attorney-General to Senator Faulkner.

Leave granted.

The document read as follows—

ATTORNEY-GENERAL

THE HON. DARYL WILLIAMS AM QC MP

02/11508

PRIVATE AND CONFIDENTIAL

Senator the Hon John Faulkner

Leader of the Opposition in the Senate Parliament House

CANBERRA ACT 2600

Dear Senator Faulkner

I refer to your letter about the Opposition's amendment to the prescribed authority provisions in the ASIO Bill.

Our advice from the Deputy Chief General Counsel, Mr Robert Orr QC, is that the High Court is likely to find your proposal to use current State judges as prescribed authorities unconstitutional for the following reasons.

The prescribed authorities play a role in the supervision of the questioning of the person the subject of a warrant. If this function were given to a current federal judge there would be a very significant risk that this function would be found to be incompatible with the judge's performance of judicial office.

This is because the role proposed for a prescribed authority heavily involves them in the interrogation process. We are advised that there would be a very strong argument that the role of overseeing an interrogation of a person on security matters was incompatible with judicial office, in particular the role of determining the guilt of such a person on security offences. Mr Orr QC has stated that to give the role of 'prescribed authority' to current federal judges would give rise to a very significant risk of unconstitutionality.

Mr Orr QC makes a distinction between the role of issuing authority and prescribed authority on the basis of the High Court decision in Grollo v Palmer (1995)184 CLR 348. In that case the High Court held 5-1 that the issuing of a telecommunications interception warrant by a federal fudge was not unconstitutional. One of the reasons for this was that their exercise of this function was not incompatible with their performance of judicial office. But the role of prescribed authorities is very different from simply issuing a Warrant. In Mr Orr QC's view while the High Court is likely to maintain the position in Grollo, there is very little chance that the Court would expand the range of activities which Judges can properly undertake; rather the trend in cases like Wilson v Minister for Immigration (1997)189 CLR 1 is to contract the range of activities which are compatible with judicial office. To give the role of 'prescribed authority' to current federal judges would give rise to a very significant risk of unconstitutionality.

Mr Orr QC has also expressly stated that the risk in relation to current federal judges also exists in relation to current State judges. State courts exercise federal judicial functions. In

Kable v DPP (1996)189 CLR 51 the High Court held provisions of the NSW Community Protection Act 1994 invalid because they gave a function to the NSW Supreme Court (a Sate Court which exercises federal judicial power) which was incompatible with judicial power principles under the Australian Constitution. In particular the functions were incompatible with the integrity, independence and impartiality of the Court, and sought to 'borrow' the status of the Court to undertake non-judicial functions. The NSW Act considered in Kable also provided for detention.

Given that the Opposition's proposed s.34B(2) will be Commonwealth legislation which will give federal executive functions to State judges who will also be exercising federal judicial power, Mr Orr QC's advice is that there is a very significant risk that the High Court would find this proposal in relation to State judges in breach of the Constitution. This is particularly so because of the nature of the function which, as I have mentioned, is likely to be held to be incompatible with that of a judicial office.

Mr Orr QC's unqualified advice is that there would be a very significant risk that the High Court would find that appointing current State judges as prescribed authorities was unconstitutional. This is not a risk the Government is willing to run.

Yours sincerely

DARYL WILLIAMS

Senator IAN CAMPBELL—I will quote the letter in relation to this issue because I think it is an important policy difference. I do not think it should be an insurmountable one, because I am sure that the opposition would want to ensure that, if you put this regime in place, it is not challenged at the first hurdle by a challenge to the authority of the issuing authority or to the authority of the prescribed authority. Daryl Williams, the Attorney-General, quoted the advice of Robert Orr QC in the letter to Senator Faulkner. He said:

Mr Orr QC makes a distinction between the role of issuing authority and prescribed authority on the basis of the High Court decision in Grollo v Palmer (1995)184 CLR 348. In that case the High Court held 5-1 that the issuing of a telecommunications interception warrant by a federal fudge was not unconstitutional. One of the reasons for this was that their exercise of this function was not incompatible with their performance of judicial office. But the role of prescribed authorities is very different from simply issuing a Warrant. In Mr Orr QC's view while the High Court is likely to maintain the position in Grollo, there is very little chance that the Court would expand the range of activities which Judges can properly undertake; rather the trend in cases like Wilson v Minister for Immigration (1997)189 CLR 1 is to contract the range of activities which are compatible with judicial office.

In this intervention in the debate I make the point: why would you at this time, when we have all agreed—and I listened to a most eloquent speech by Mr Kim Beazley in the other place earlier this evening when he talked about the importance of getting this regime in place now—put in place a regime that walked you into a ground of legal vagueness? Why would you do that? The Australian Labor Party in the other place tabled advice from a former Solicitor-General saying that he thought it was okay. We have unequivocal, unqualified advice from Robert Orr QC, the Deputy General Counsel, saying—

Senator Robert Ray—Table it then. Put it down.

Senator IAN CAMPBELL—I have just incorporated the letter which says that there is significant doubt. The point I make is that

you can have one QC saying one thing and one QC saying another thing, but why would you walk into this area of vagueness? It is an absurdity. It is silly to do it. I think it is crazy to have this argument where you have this vagueness and I implore the opposition to consider their position, to heed Mr Beazley's warning and to say, 'Let's put in place this regime here tonight so it is in place for Australia and for the benefit of the Australian community as we go into the Christmas season; let's not play political games over these sorts of disagreements when we can have this legislation in place before the night is out.'

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.58 a.m.)—The opposition will be opposing the government's motion that the Senate not insist on its amendments. The government's unamended bill is unacceptable. The Senate amendments are sensible, they are workable and they are essential. They give the government a strong compulsory questioning regime for ASIO with appropriate safeguards. This regime and the safeguards are consistent with well-established standards which apply to police investigations and questioning by bodies such as royal commissions, ASIC, ICAC and other state crime commissions. The bill as amended provides extra security in the community by giving ASIO further powers and it also provides sensible safeguards for those who are subject to the new questioning regime.

In moving our amendments, the opposition have sought to achieve four key objectives. Firstly, we should not create a detention regime for nonsuspects; it should be a questioning regime similar to those used by other investigatory bodies. Secondly, the regime should not apply to children under 18. Thirdly, people being questioned should have access to a lawyer of their choice. Fourthly, there should be a sunset clause.

The Attorney-General said yesterday morning that the opposition's amendments were nothing more than pedantry and bureaucratic blockages. Today he is claiming that those same amendments have made this bill unworkable and unconstitutional. You actually cannot have it both ways. Let me repeat: This is a workable model. It has the support of three parliamentary committees, including government members of those committees. It has the support of hundreds of witnesses and dozens of eminent legal authorities.

I want to examine this claim of unconstitutionality. The opposition has proposed that the prescribed authority comprise in the first instance retired judges and, in the second instance, if there are insufficient retired judges, serving state and territory judges and finally, if there are insufficient numbers in those two categories, senior members of the AAT. We understand that there are approximately 160 retired judges who meet the criteria for acting as a prescribed authority and that there are approximately 20 presidential members of the AAT. There is clearly no constitutional impediment in either of these categories. The government's claim of unconstitutionality therefore now relates, we hear, to the appointment of judges in the second of those three categories; that is, serving state judges.

If there is a valid claim about constitutionality, the government should release the legal advice on which they base this claim. The parliamentary secretary has tabled a letter sent by Mr Williams to me a little earlier today. The Attorney-General has in fact provided me with his interpretation of advice from Mr Robert Orr QC, but he has not actually released Mr Orr's advice. We say that it is appropriate that that advice be laid on the table because the opposition has consulted Australia's leading constitutional experts, including Gavan Griffith QC, on this issue. They are unanimous, strong and unequivocal in their view that the prescribed authority model that we have proposed is both constitutionally sound and workable. I have publicly released Mr Griffith's opinion and I challenge the government to publicly release Mr Orr's contrary advice.

We have a situation where the government claims that this particular provision of the bill is unconstitutional and that the bill as amended is unworkable because of this alleged constitutional defect. I say quite clearly to the Senate that I believe that claim is non-

sense. If there were a scintilla of truth in the suggestion that there may be a constitutional vulnerability with the amended bill, there would be a simple mechanism for avoiding it. The states could refer the relevant power to the Commonwealth, as they are in the process of doing in relation to a whole range of counterterrorism matters. In this case, the government has argued that the referral of powers is not in fact essential but is for abundant caution.

It is not unusual or uncommon for powers to be referred in this way. But again, even if referral is considered impractical by the government, and in the exceptionally unlikely event that a constitutional challenge were successful, let us be clear: only one small element of this bill would be struck out, and that would be the appointment of serving state judges as the prescribed authority. This, of course, would leave the government with the option of appointing judges from the remaining two categories: retired judges or senior AAT members. As I have said, there are at least 180 people in these categories—surely ample for the government's purposes. There is no way at all that a constitutional problem with state judges would stop this bill working.

The government, on this issue, is clutching at straws. But I believe that this parliament would take seriously any serious suggestion about a constitutional defect. I say: put the advice on the table and let us have a close look at the advice. I am sure that, if there were a weakness, this parliament would act appropriately. But let us see the government do what the opposition has done: put clear advice on the table. I challenge the government to table Mr Orr's advice. I say that the Senate has got the balance right and that we should not be changing this legislation now.

This afternoon we witnessed, I thought, an appalling performance by the Attorney-General, attempting to justify the government's decision to reject the Senate amendments. I do not think anyone present at the Attorney-General's doorstop was persuaded by the incoherent and disjointed arguments that he put forward. I feel sorry for the Attorney-General. I believe that the reason for his abysmal performance is that he himself is not persuaded of the legal or political merit of the government's decision to play hard ball on this bill. He knows that the decision to reject the amendments and to use this bill as a potential double dissolution trigger is purely a political one. It is purely a political decision. At the best of times, the Attorney-General appears incapable of running an argument, but when he is running purely political arguments, particularly political arguments that he does not believe in, people cringe with embarrassment at the sort of performances that he puts in.

The only substantive argument the government has attempted to make in defence of its claim that the bill is unworkable is the weak constitutional argument that I have addressed. It is clear that the government has made a political decision to reject the amended bill. It cannot then be serious about providing ASIO with the necessary tools to track down terrorists. It is just not serious about that. It is not serious enhancing the security of Australians.

The Attorney-General said on the radio this morning that, if the opposition's amendments were to succeed, it would be a Labor bill, not a government bill, and therefore the government was not interested in it. All I can say is that it is just as well that the opposition takes a more responsible approach to legislation, otherwise we would be rejecting all government bills that come before us, simply on the basis that they are government bills. That is the same logic that the Attorney-General applies to this legislation. I say this: legislation about national security should not be about political point scoring; it should be above political point scoring. This bill falls squarely into the category that should be above petty political point scoring by anyone—government, opposition or anybody else.

On 20 November the government put Australia on high alert against terrorist threats. The government said, 'This danger will extend over the Christmas holidays and into the new year.' The opposition supported the issuing of those warnings, and we have been determined to play a positive role in revising and improving this legislation. This

bill is about securing Australia from terrorists and terrorist activity. This bill is about giving ASIO the power under a questioning warrant to collect information from people who may know something about terrorists. It will enable ASIO to compel people to answer questions about terrorist activity. This is a power that ASIO does not currently have and it will be a very significant addition to ASIO's intelligence collection powers. Importantly, the Director-General of ASIO has said on a number of occasions that the bill must instil community confidence. Introducing powers modelled on a secret police state, as the government has tried to do, will not instil broad community confidence in the government of this nation.

It is time Mr Williams got serious on this issue. It is time he accepted that the government's model is unacceptable to the Senate and, I believe, unacceptable to the Australian people. It was unacceptable to every parliamentary committee that examined the legislation. It is unacceptable to the legal profession in this country. As I have said, I believe it is unacceptable to the Australian community. What is broadly acceptable is the model that we have before us. With appropriate safeguards it will enhance ASIO's ability to investigate, and counter, terrorist threats. It will also save the government from the ignominy of being responsible for the harshest set of detention laws in the Western world.

If the government spurns this compromise, it will be denying ASIO significant new powers to investigate, and counter, terrorist threats. If the government votes against this amended bill, it will abrogate its responsibilities to the Australian people. I believe it will be a reprehensible dereliction of duty if the government does not support this amended bill. But it will show Australians again that this government is not interested in community security and that it is not interested in giving ASIO the powers it needs. Unfortunately, if the government does not accept the Senate amendments, it will show that the Howard government is only interested in playing politics. *(Time expired)*

Senator ROBERT RAY (Victoria) (4.13 a.m.)—Tonight the government has a choice between the national interest and political opportunism. Having listened to that dirge read into the record by Senator Campbell tonight, it is clear that they have chosen the latter. Why do I suspect that the key calls on this legislation are being made not out of the Attorney-General's office but out of the Prime Minister's office? This legislation should not be about a macho competition. It is not about who can be the most draconian; it is not about who can impress people by being the most severe. What we want is a balanced piece of legislation because of which the community can look up to ASIO, admire it, respect it and not regard it as some sleazy secret police outfit that they have to fear because their own rights will have been destroyed by an instrument given out by this parliament.

I cannot understand how a national institution like the Australian Broadcasting Commission can have a lead story tonight that talks about this legislation being to do with suspects. This legislation, as the government would acknowledge, is about suspects and non-suspects. It is about an intelligence gathering exercise, not an evidence gathering exercise, but it appears that the lead story on the ABC tonight is about a bill dealing with suspects. How pathetic can you get!

I have heard the government say that they would not contemplate any further amendments. I heard Senator Campbell say, 'We won't accept any amendments that go to matters of principle.' Why don't we examine the original principles that the Attorney-General put in the legislation and introduced in this parliament that are no longer principles, to show that this government are willing to compromise and ditch stupid suggestions, but that for political reasons they will no longer contemplate doing that? The original legislation said, 'No legal representation at any time for any one who is detained.' That was their principle just six months ago, but it is no longer extant. Now they say, 'We'll keep you for 48 hours, but then you can have a lawyer.' Their second great principle was unlimited detention. In the original legislation, there was no seven-day limit—that was a suggestion of the joint committee. They would have been able to detain some-

body by way of warrant forever and not have it disclosed—akin to the South African apartheid regime.

In the original legislation, you could take a 10-year-old child off the street, not tell its parents and question it without legal representation. That was your original principle. Do you stand by that today? Do you stand by your original intention that you could strip-search a 10-year-old girl? No; you have dumped that. So we now call on you to dump the other ridiculous things that you have in this legislation. The original legislation was a joke because it did not preclude selfincrimination. You had this joke proposition that, if you got called in for questioning, you had a choice: you could admit to being a terrorist and get 25 years, or you could stay silent and get only five years. How would that assist an intelligence-gathering operation? That was one of the principles of this government. The government stand by principles today that they say are immutable; yet six months ago other immutable principles were changed. You have said that you do not want a sunset clause. We want a sunset clause because we want to see how this operates. If it operates well, people on this side of the chamber and the opposition will renew your mandate on the legislation. If it does not work, it will not exist any further. The opposition are very reluctant to use sunset clauses. We rarely use them. We did not use them on any of the terrorist bills, but on this particular one we think a sunset clause is absolutely essential.

In the original bill, there was no provision for publishing the number of warrants sought or executed by ASIO. That was in the original bill. Neither the public nor this parliament nor anyone else would have known how many people had been detained for questioning. Now the government has agreed to it. So, what was once a principle—immutable—has been changed. We heard Senator Campbell go on at length tonight about what he regards as the dubiousness of our proposed prescribed authority—because we use state judges, not federal judges. In the original legislation, federal magistrates were to do this role—chapter III appointments. The very legal advice that you referred to tonight, which may—and only may—preclude state judges, certainly precludes federal magistrates. Why did you make that mistake? Why did you have that principle? Why have you abrogated that now? Why didn't you think of it at the time? And what have you forgotten at the moment to think about?

The worst aspect of this legislation as it was originally conceived was that there were no protocols whatsoever as to questioning. In other words, you could detain someone in an unlimited way, provided you could get the warrants extended, and you could question them for 48 hours on end. You had no protocols on questioning at all. You had no protocols as to where they could be detained. We did not know whether you were going to reopen Boggo Road or whether you were going to take them to the Hyatt Hotel to question them. We knew nothing. There had been no thought given to it until the various parliamentary committees pointed this out, and then the legislation got changed again. Not least of the problems with the legislation was the appalling drafting in the bill. I will give you one example. Part of the drafting said that, if you were to be detained, if there were a warrant for your detention, it had to be executed immediately. But there was no follow-on provision that you had to be questioned immediately. You could have been held for 20 days, for all we knew. The clock would start for the 48 hours the moment the questioning started.

The minister at the table comes in here and assures us that there should be no more changes because the government have got the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 perfectly right. They did not have it perfectly right six months ago, so why should we believe them tonight? Why should we think that the regime that they are proposing is correct and absolutely perfect tonight, when they have made so many errors in the drafting and principles of this bill in the past?

One of the problems is that the government have not responded to the Parliamentary Joint Committee on ASIO, ASIS and DSD. We made 15 recommendations to change the bill. The government have picked up 10, modified two others and rejected

three, but we do not know why. Even though the report was introduced five or six months ago, there is no formal government response on the table. We do not know their reasons. They often point to the joint committee and say, 'We've picked up this recommendation and we've put it in the legislation.' Why didn't they pick up the sunset clause? What is their explanation for that? We do not know, because they have not responded to that parliamentary report. The government constantly refer in a defensive way to the fact that there have been three parliamentary inquiries. In reality, there have been two. I do not think anyone would argue that the Senate Legal and Constitutional Legislation Committee had an intensive inquiry into this bill, because they ceded that to the joint committee.

Minister Ellison claimed earlier today in his speech in the third reading debate that the opposition is divided on this legislation. I am blowed if I know what evidence he has for that. I suppose it is pretty rare for Daryl Melham, John Faulkner, Robert Ray and Kim Beazley to put in a joint submission, but we are of a unanimous view. If you like, we are the ideological extremes—the Berlin-Moscow alliance has come together and has a unanimous view on this legislation. Can senators opposite make the same claim? Of course they cannot. We know that there is great disquiet about this legislation on the government side. That is why every time a parliamentary committee reports courageous coalition members have agreed to further modifications of the bill. There is no evidence to back up Senator Ellison's claim.

I will address the argument that this bill is unworkable or unconstitutional. As Senator Faulkner has said tonight, if it can be shown to us in a demonstrable way that there is constitutional doubt about this legislation by way of our amendments, of course we will consider that. We do not want to sink this legislation through some High Court challenge. If it is at all in doubt, we will meet the government and negotiate on this and amend where necessary our proposal on a prescribed authority to ensure that it is constitutionally sound. But we have at least tabled our legal advice from Mr Gavan Griffith QC, who states:

> State judges are commonly vested with nonjudicial power and there is no difficulty about this even though they may also exercise federal judicial power.

Where is the response from the government? It was tabled tonight in a letter making claims about the views of Mr Orr QC. Frankly, I do not want to go to the monkey; I want to go to the organ grinder. I want to see the original advice. I do not want to see someone else's interpretation of the advice. Let us see Mr Orr's advice. If it is compelling we will give in on that aspect, because we do not want any doubt whatsoever.

Part of the confusion that surrounds this bill—and again it was repeated today by inference by Senator Ellison—is that that somehow the opposition do not understand the difference between a regime that questions for intelligence and a regime that questions for evidence. I think we have thoroughly understood that from the start. We have always been conscious of the difference. That is one of the reasons why the questioning regime in this bill could be more strenuous and more onerous than a questioning regime for a murder suspect. We understand that, though not all critics have understood that all the way through.

Senator Faulkner referred to the press conference held today by the Attorney-General. The Attorney-General got so confused that he accused the opposition of taking the sunset clause out of the legislation—talk about a carcass swinging in the breeze. I was embarrassed. I always thought Senator Kemp's performance on the *7.30 Report* was the worst interview ever. That is the one we run at our training seminars for senators to show them how not to do it. I invite everyone to watch the Attorney-General's lamentable performance. As a professional politician, I did not take much joy from it. In the end, we said to Senator Faulkner, who was showing us: 'Turn it off. We can't stand it any longer'.

Labor's support for this legislation will bring us vilification. Elements in Australian society will call us 'sell-out merchants' for supporting the legislation. There is no doubt about that. We are big enough; that is the sort

of role that we have to have. We have to approach these issues and act in a way that we would have in government—not with an oppositionist mentality, not as people who just want to needle the government on all these issues. We do not want to do that.

On issues to do with combating terrorism we endorse a bipartisan policy. We have come part of the way. The government has come no way at all to try to meet us on these issues. We have tried to put in a balanced regime: one that says that you have to give up the right to silence—that is a big step; one that says that non-suspects can be detained. These are difficult issues for us on this side of the chamber. I suspect they are difficult issues for a lot of people on the other side of the chamber. But we have come that far. Having come that far, do not take all their rights away. Do not take away their right to legal representation. We have even constrained that in terms of several let-out clauses that protect ASIO from disclosure of what they are up to.

What we are facing here today is whether the government will come to the opposition and have meaningful negotiations on these matters. There have been dilatory attempts over the last few weeks, and even tonight. I acknowledge that. There are five or six fundamental issues on which we are apart. I know the view in the government ranks is that when they put the blowtorch to us we will fold on this and we will pass the legislation. We will not. We are not going to pass the legislation as the government want it, because the government are wrong. What we do offer them is a piece of legislation that ASIO will find workable and useful and which will lapse in three years time. If the government do not believe the legislation is strong enough at that time, they can bring a different bill into this chamber. But I am sure that, if you ask the people at ASIO whether the bill as amended by the Senate is sufficient for their purposes, you will get an unequivocal yes.

Senator GREIG (Western Australia) (4.27 a.m.)—The Australian Democrats express real disappointment, not surprise, that the government has refused to accept what I think are reasonable amendments—the majority of amendments which the chamber made to this legislation. Notwithstanding the Democrats' continued opposition to the bill as a whole, we concede that making a bad bill better was a good thing to do. Although we ultimately oppose the bill, there is no doubt that the amendments moved and supported by Labor and the Democrats substantially improve the bill and remove most, not all, of its draconian features.

The model proposed by the government, as Senator Ray has reiterated, was particularly harsh. Senator Nettle earlier today described it as an ambit claim. I believe it was. The government's proposal displays a complete disregard for the central tenets of our democratic system and represents a radically disproportionate response to the threat of terrorism. Let us be clear about this: if enacted the government's model would enable the detention of non-suspects—let us be clear that we are talking about non-suspects—incommunicado for a period of 48 hours, which could be extended to a maximum of seven days. The right to legal advice would be abrogated for up to two days in certain circumstances, and even then it would be limited to those who could afford to pay for their own lawyer. Foreign nationals would have no right to contact their embassy.

The right to an interpreter could be negated by the prescribed authority. There would be no right to silence. The person being questioned would bear the burden of proof to demonstrate that they do not have the information requested by ASIO, effectively reversing the presumption of innocence, with an offence proposing a maximum penalty of five years imprisonment. Perhaps worse of all is that these provisions would apply to children over the age of 14. The entire draconian regime would continue indefinitely, with no sunset clause and, as we have said repeatedly, in the context of a political and social environment in which we have no bill of rights; I cannot think of a piece of legislation that I have dealt with in the last four years which more strongly points to the need for one.

In its strong opposition to a variety of amendments, the government has argued

principally that it is opposed to the Senate's commendation for a time regime of four hours and then eight hours, as opposed to its proposal. I think that was one of the strongest and most reasonable of all of the amendments supported by the committee. I strongly endorse the proposition for a sunset clause. A sunset clause, if nothing else, offers the opportunity for the next parliament—whatever its political make-up and whatever the Senate dynamic—to review, to reconsider, to reflect. That is something which we should have done here. It is absurd that we should be discussing this important legislation at this ridiculous hour on the last sitting day of the year.

On the question of constitutionality, I would argue that ultimately every piece of legislation that goes through here is open to constitutional challenge. That is the nature of things. But it is about taking a reasonable punt. We have heard legal opinion on both sides. I confess I do not know which is the more correct, but I believe that ultimately that is a decision for the High Court.

Finally, Senator Ian Campbell argued that the government are fervently pursuing this legislation because they want to do what is right in terms of protecting the Australian people and giving the Australian people what they want. I would argue that, given the deluge of phone calls, emails and letters and the overwhelming response from the Australian people to the public committee hearings around the country, the Australian people are deeply concerned about this legislation. Far from being condemned by the Australian community, insisting on the amendments that the Senate proposed would see a chorus of support. We would join in that. The amendments must be insisted upon.

Senator NETTLE (New South Wales) (4.32 a.m.)—The Australian Greens believe that the Senate must insist on the amendments to this horrendous legislation. We must do this because the original bill put up by the government and the bill with the amendments passed by the Senate are both fatally flawed pieces of legislation. They are fatally flawed in the central issue that they allow for the detention of ordinary citizens going about their daily lives—innocent civilians, not suspected of being involved in any terrorist activity—who are suspected of having some information that could lead to results in investigating a terrorist act. The bill, as originally put up by the government, allowed for indefinite detention of these people incommunicado and with no right to silence.

We have gone through a process that put forward a range of amendments. Those amendments dramatically improved a fundamentally flawed piece of legislation. But it did not matter how many bandaids were put onto this piece of legislation; it was broken and it would remain broken. We have heard the Australian Labor Party talk about how they believed their amended bill brought balance to a perspective of personal security and civil liberties. The Australian Greens do not believe that it did that. We believe that it went much further than any other comparable piece of legislation in Western democracies around the globe in seeking to throw the net wide open to catch as many people as possible—as many nonsuspects as possible—as part of the government's law and order agenda.

I found the contribution to the debate in the other place this evening by the member for Brand to be particularly insightful. In his contribution to the debate he was saying: 'The model that the opposition are putting forward is so close to the government's model. Come on and support our model.' He quite clearly stated that there continue to be arguments about whether what the opposition are proposing is a questioning regime or a detention regime. He went quite clearly to the point that, although the Labor Party put forward their model as providing only 20 hours—only 20 hours!—of a questioning regime, it is eight hours beyond anything that currently exists in the Criminal Code.

It is not comparable to the Australian Crime Commission model, where people are issued with a summons and, if they do not appear, a warrant brings them before a questioning authority. He quite clearly said that the model being put forward by the opposition, which they claim is a questioning regime, would involve the detention of people for two to three days. That takes us straight

back into the detention model proposed by the government. We recognise that these changes were an improvement, but it is inaccurate to say that they are not a mixture of a questioning and a detention regime.

In debating this matter this morning, we have come dangerously close to taking a sinister step down the road to establishing an Australian secret police force. Ultimately, the bickering of the opposition and the government over detention regime details has resulted in a reprieve for the civil rights of Australians. The government should take this opportunity to focus on making our current security capabilities effective and to forgo the desire to enact hysterical legislation which will have a grievous impact on the very tenet of Australian society.

This bill's failure will have absolutely no impact on the ability of our security and police forces to protect Australians from terrorism. It does, however, uphold a fundamental respect for personal rights, about which Australians can be proud. The Greens have consistently called for the scrapping of this dangerous and unnecessary bill. The detention of innocent people, forced to talk under threat of imprisonment, can never be an appropriate response to terrorism. Instead, the opportunity is there for the government to truly address the root causes of terrorism, rather than trying to condone the symptoms of terrorism and continuing with a draconian law and order agenda that we are seeing reflected in the responses from state governments around the country, certainly from my own state of New South Wales.

Should the government seek to reintroduce this bill in the new year, the Australian Labor Party ought to take the time to reflect on the need to oppose any measures which run contrary to international law and long-held conceptions of civil and political rights. Civil rights of Australians have had a win tonight, because the exhaustive Senate committee system has laid bare the many fatal flaws in this legislation in its original form and in its amended form. As a result, the bill has ultimately failed.

Question negatived.

Resolution reported; report adopted.

TRADE PRACTICES AMENDMENT (LIABILITY FOR RECREATIONAL SERVICES) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Trade Practices Amendment (Liability for Recreational Services) Bill 2002, acquainting the Senate that the House has disagreed to the amendments made by the Senate in the bill, and requesting the reconsideration of those amendments.

Ordered that the message be considered in Committee of the Whole immediately.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (4.40 a.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator LUDWIG (Queensland) (4.40 a.m.)—The opposition will not insist on the proposed amendments. It takes this course of action with extraordinary disappointment that the government has been unable to understand the intent and purpose of the legislation. It appears that the government is driven to ensure that the provisions of the legislation will proceed in the current form without the benefit of having Labor's amendment. Labor's amendment would have, in our view, ensured that the operation of the Trade Practices Act in relation to liability for recreational services would have performed a better task and ensured that the liability for persons would be clearer than that which is contained within the bill.

Given the time, Labor will not go into the detail other than to say briefly that the Trade Practices Amendment (Liability for Recreational Services) Bill 2002 would have benefited from Labor's amendment. Labor still believe that the amendment would ensure that there was more certainty. However, given that there is a broad need to ensure that there is legislation in place for this industry for the tort reform that has been progressed within the states, we find that, at this point in time, not insisting on the amendments would be the best course of action. I assure the Sen-

ate that we will be watching this space intently to ensure that the legislation works and that it works effectively. If there are areas where the legislation fails then we expect the government to bring it back here for another look.

Senator MURRAY (Western Australia) (4.42 a.m.)—The Democrats are disappointed that the government cannot see fit to accept amendments which, by agreeing to their amendment, we obviously felt had merit. I am always surprised that governments in these circumstances do not recognise the validity of an argument and will insist on presenting a view, which I am quite certain, in subsequent months and years, will be found to be flawed and will be in need of correction. There are five amendments there. Frankly, I would have preferred to insist on at least the middle three. However, the one amendment I will confess the greatest disappointment to not being insisted upon would be the amendment which said:

(4) A term of a contract for the supply by a corporation of recreational services is void if it limits its liability in relation to:

(a) persons under the age of 18 years; or

(b) intellectually disabled persons.

That is a mistake. It is wrong, it is poor morality; and I regret it. However, we accept the circumstances and, at this hour, we should just move on.

Question agreed to.

Resolution reported; report adopted.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.45 a.m.)—I move:

That intervening business be postponed till after consideration of government business notice of motion No. 5 (Taxation Laws Amendment (Structured Settlements and Structured Orders) Bill 2002).

Question agreed to.

TAXATION LAWS AMENDMENT (STRUCTURED SETTLEMENTS AND STRUCTURED ORDERS) BILL 2002

Consideration of House of Representatives Message

Consideration resumed from 11 December.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (4.46 a.m.)—I move:

That the committee does not insist on its amendments nos 9 and 13 to which the House of Representatives has disagreed.

Senator LUDWIG (Queensland) (4.46 a.m.)—It is disappointing to find ourselves at this hour in a position where the opposition will not be insisting on the amendments. The opposition does believe that the amendments were worthy of consideration by the government, but clearly the government has not found favour with the amendments that were put forward by the opposition. Given the time, I will not go into the detail in any significant way other than to indicate that the opposition will be continuing to watch this area with interest and, should the area start to unravel, as we think it will, then we will certainly be seeking to have these matters reaired in this chamber.

Question agreed to.

Resolution reported; report adopted.

INSPECTOR-GENERAL OF TAXATION BILL 2002

Second Reading

Debate resumed from 17 October, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (4.48 a.m.)—I seek leave to have my speech on the second reading of the Inspector-General of Taxation Bill 2002 incorporated in *Hansard*.

Leave granted.

Senator LUDWIG—I rise to speak on the Inspector-General of Taxation Bill 2002.

The DEPUTY PRESIDENT—I just gave you leave to incorporate your speech, Senator Ludwig. I went to a lot of trouble to do that!

Senator LUDWIG—May I withdraw that and take the opportunity to read my speech?

The DEPUTY PRESIDENT—At this hour of the morning I am feeling inclined to let you do that.

Honourable senator—Of course, you are not allowed to read. You can speak from your notes.

Senator LUDWIG—I should say quite clearly that I will read the title of the bill and speak to the notes that I have in relation to it.

The DEPUTY PRESIDENT—That sounds infinitely better.

Senator LUDWIG—The Inspector-General of Taxation Bill 2002, as everybody in this chamber clearly knows, embodies the essence of the Howard government. It is a populist piece of window-dressing aimed at assuaging the anger of investors in mass marketed tax schemes and of small businesses over the ATO's handling of the BAS. There is a problem with tax administration in this country, and it is a tragedy that this bill is not going to fix it. The problems in tax administration have been in the spotlight since at least August and have continued through the remainder of this year.

In August, tax agents staged a minor revolt against the government. They demanded that their concerns be addressed and they threatened to end electronic lodgment of tax returns and to flood the ATO with paperwork if tax administration was not improved. In October, the e-tax system crashed as it was unable to cope with the number of users choosing to lodge their returns electronically, and the deadline for lodgment was extended from 31 October to midnight on 3 November.

In November, tax agents and various professional bodies wrote a joint submission to the Minister for Revenue about the taxpayer's burden, raising issues relating to activity statements, capital allowances and the family tax benefit. Their letter states that 300,000 of the 400,000 claims made through the tax system last year are alleged to be incorrect. That means 75 per cent of FTB claims were incorrect. But this is not an election year, so do not expect the government to write off the debt as they did last year. Instead, families have paid the price for the government's administrative failure.

In December, the problems in tax administration reached a crescendo with the release of the Auditor-General's report. The report investigated the ATO's relationship with tax agents. The Auditor-General spelt out a myriad issues and said:

> ... the demands of tax reform have stretched the capacity of many tax agents ... to breaking point. Problems with the ATO's systems exacerbate these workload strains for both parties to the relationship.

It is hard to imagine how the system could get much worse. The tragedy of this bill is that the Inspector-General of Taxation will not have the legislative capacity to fix these problems. As the legislation is currently drafted, the inspector-general would not have the capacity to review the problems in relation to the family tax benefit. This is one of the major stuff-ups in tax administration in 2002, and yet the inspector-general would be able to do absolutely nothing about it. As the inspector-general's role is currently drafted, the problems in tax administration would not even see the light of day.

This bill has been fundamentally flawed from its inception, as the minister has discretion as to whether to release the Inspector-General of Taxation's reports. In the words of the Institute of Chartered Accountants, this means:

> ... the Minister could decide not to make public a report by the Inspector-General, to avoid embarrassment to the Government or the ATO.

Let me pose three questions. Firstly, what is the point of having an Inspector-General of Taxation if they cannot make their reports public? Secondly, how can the inspector-general be an advocate for taxpayers if taxpayers do not know what the inspector-general recommends? Thirdly, how useful would the Auditor-General be if his reports could be vetoed by the government? The answer, of course, to that last question is: no use at all. As long as the minister has the power to veto the Inspector-General of Taxation's reports, the inspector-general will be nothing more than a bureaucrat with a title, no matter how fancy that title might be.

Submissions to the Senate Economics Legislation Committee inquiry on this bill were adamant that the inspector-general's reports be publicly available. Amongst others, the Corporate Tax Association, the Business Coalition for Tax Reform, the International Banks and Securities Association of Australia, the Australian Institute of Company Directors, Taxpayers Australia, the Institute of Chartered Accountants and the National Institute of Accountants all recommended that the inspector-general's reports be made publicly available. According to the Business Coalition for Tax Reform:

> Taxpayer confidence in and the overall effectiveness of the IGOT will depend critically on the ability of the public to examine its reports.

During the Senate inquiry and in the submissions themselves, it was clear that industry is of the unswerving belief that the power of the minister to withhold the inspector-general's reports renders the office of the inspector-general ineffective.

The other fundamental flaw in the role is that the minister can monopolise the inspector-general's work program. Currently, the minister has the power to direct the inspector-general to conduct a review. The power of the minister compromises the independence of that role. The Australian Institute of Company Directors told the Senate inquiry that this meant that the minister:

> ... has the potential to overload limited resources and compromise other independent work that the Inspector-General wishes to undertake.

The independence of the inspector-general is fundamentally compromised, as the minister can monopolise the resources of the inspector-general. Instead of the inspector-general consulting with the community and prioritising the most pressing tax administration issues, the inspector-general would have to investigate any frolic that takes the minister's fancy. A submission to the Senate inquiry from Resolution Holdings suggested:

> The Office would be nothing more than a puppet to the Minister.

This is exactly the problem which Labor has raised since the bill was first introduced. As a puppet to the minister, the role of the inspector-general is futile.

This role is intended as an advocate for taxpayers. However, it does not fulfil this objective. The hypocrisy of this bill is that this role is supposed to be an advocate for taxpayers, yet there is no mechanism for the inspector-general to consult with taxpayers. As the bill is currently drafted, there is no formal consultation process to provide taxpayers with an opportunity to access the inspector-general. This is in contrast to arrangements in place to enable access to the Auditor-General. Following the Senate committee's investigations, it became clear that access to the inspector-general had not been thoroughly considered. The problem which arises is that big business has the resources to advise the inspector-general of its concerns whereas small investors, with fewer resources, are at a significant disadvantage.

The Senate committee's recommendation that the government consider including a statement that the inspector-general's role is to 'promote the advocacy of taxpayer concerns' is a superficial response to a structural problem. The inspector-general is not an advocate for taxpayers, as the inspector-general is directed by the minister and reports back to the minister without consulting a single taxpayer. As the Labor minority report states:

> ... the lack of independence and transparency afforded to the Inspector-General renders the office ineffectual in advocating the needs of all taxpayers.

The Senate inquiry proposed seven recommendations for the government to consider to improve the role of the inspector-general. In spite of the recommendations of the committee to improve the role, the capacity of the office of the inspector-general to improve tax administration remains fundamentally compromised by the following issues. Firstly, it is compromised by the lack of independence. The minister has a power of veto over the inspector-general's reports and the minister has the power to direct the inspector-general's work program. Secondly, there is the failure of the inspector-general to be an advocate for all taxpayers. Thirdly, the office is compromised by the lack of a mechanism to provide for formal consultation with the general public. Finally, it is compromised by a lack of funding. Labor

welcomes the proposal put forward by the Democrats that the Auditor-General review the appropriation provided to this role and certify that the object of the act can be met within the current appropriation prior to commencement of this act.

To conclude, I would like to comment on the arrogance displayed by the Howard government towards this bill. Prior to passing this bill, the Howard government had advertised the position in national newspapers. Without even a thought towards the role of parliament, without a concern for the democratic processes and without any shame, the Howard government advertised this position—a position set out in legislation which had not even been passed by parliament. This exemplifies how little respect the Howard government has for this parliament and for the role of the elected representatives of the people. The Howard government has become so used to being in power that it has forgotten or has just ignored the fact that legislation must be passed by both houses of parliament before it is law. The Howard government needs to be reminded that support for its legislation is not an automatic right but a privilege extended by the elected representatives. Labor supports all the Democrat amendments, aside from those amendments relating to merit selection in clause 28, clause 29 and proposed clause 28A. Should the bill be passed, Labor believes that these amendments will greatly enhance the role of the inspector-general. Labor is opposed to the bill.

Senator WATSON (Tasmania) (5.01 a.m.)—The Inspector-General of Taxation Bill 2002 provides an opportunity to set up an independent statutory office for a fixed term of five years to review and report to the government on recommendations for bettering the tax system for all taxpayers, both businesses and individuals alike. This bill has received widespread support from taxation professionals, businesses and the wider community. For example, the Institute of Chartered Accountants in Australia gives its full approval to the new office of the inspector-general and believes it is an initiative that will deliver real improvements to tax administration.

The bill provides for the inspector-general to undertake reviews of tax administration on his own initiative and not solely at ministerial direction. The inspector-general would also act as an advocate for taxpayers, with the aim of improving the administration of the taxation system from the taxpayer perspective. It is intended that the inspector-general would also be clearly separated from both the Ombudsman and the Auditor-General.

Although we always see the need to be cautious about inserting another layer of bureaucracy, the mandate of the inspector-general has clear differences to that of the Ombudsman. For example, the Institute of Chartered Accountants believes that a properly resourced inspector-general could be empowered to investigate systemic tax administration problems before they reach crisis point and suggest both short- and long-term solutions.

Although warming to the initiative, I think it is disappointing that the ALP and the minor parties are not more supportive of the inspector-general bill. The accountability arrangements of the inspector-general will ensure the public's confidence in the office. For example, as I said earlier, the inspector-general needs to remain independent of the Australian Taxation Office. The focus of the inspector-general will be on identifying and recommending solutions to systemic problems in tax administration. The bill also provides statutory powers to the inspector-general to be utilised to obtain information about tax administration from taxation officials. This is so that the office of the inspector-general is not solely reliant on cooperation from tax officials in conducting such reviews.

The Commissioner of Taxation has until now been the only source of formal advice available to the government and Treasury on tax administration issues. In more recent times drafting issues have been central to Treasury. In contrast, the office of the inspector-general will give the government the opportunity to source important alternatives and independent advice. This will enable an improved response of the tax administration system to meet the requirements of taxpay-

ers, although the taxation system already has various avenues by which decisions relating to taxation administration can be reviewed—for example, appeals to the courts, external reviews by tribunals, internal reviews by the Australian Taxation Office and complaints to the Commonwealth Ombudsman.

The inspector-general's role will not overlap with or overtake the functions of the Ombudsman, the Auditor-General or the Board of Taxation, but will complement their roles. The inspector-general will bridge the gap in the current review arrangements of tax administration. The inspector-general's main focus will be on broad systemic tax administration issues, as opposed to individual taxpayer queries. The Ombudsman will continue to handle individual taxpayer concerns and investigate tax administration matters under their own initiative. Both the Auditor-General and the Ombudsman will maintain various responsibilities in relation to a range of public administration functions. The inspector-general, however, will target systemic tax administration matters and will develop specialist expertise as well as consultation networks, with the aim of improving tax administration systems. This will also create a formal avenue for taxpayers to provide their views on tax administration policy, knowing that on vital issues the inspector-general advocates on behalf of taxpayers to the Treasury ministers. There is no effect on the Auditor-General's role in reporting to the parliament on administrative actions.

The bill does require the inspector-general to consult with the Ombudsman and the Auditor-General to set work priorities at least annually, yet the independence of the three agencies is not affected in any way. The role of the Board of Taxation is such that the role of the inspector-general should not encompass providing advice to the government on the construction of laws to implement policy initiatives, and should avoid repeating taxpayers' perspectives in policy.

This bill provides that the inspector-general will not review tax policy, only issues of taxation administration. Were the inspector-general an ex-officio member of the Board of Taxation participating in policy development, it would obstruct the independent review of that same policy down the track. It is therefore anticipated that the board and the inspector-general will only liaise informally. The inspector-general will be able to conduct reviews by their own initiative, as well as by a direct result of communications with taxpayers and their advisers. A Treasury minister may also request that the inspector-general undertake reviews at their direction, as may either house or both houses of parliament, a resolution of a committee of either house or both houses of parliament, or the Commissioner of Taxation. If the minister issues a formal direction, then the inspector-general must comply with that direction, yet the inspector-general retains discretion as to the resources allocated to the relevant review.

To enhance the transparency of the office of the inspector-general, the annual report to the parliament must include a schedule of directions given by the minister. Where the minister requests the inspector-general to undertake reviews, the inspector-general has the discretion to include a review undertaken in the work program. Of course, in considering the ministers' requests, the inspector-general will also have to consider other requests from either the parliament or the commissioner.

This bill gives strong protection to any taxpayer information that the inspector-general may obtain, and the inspector-general may not report any information that would enable identification of an individual taxpayer. Naturally, the inspector-general and the staff of the inspector-general's office would be under strict confidentiality arrangements regarding information about individual taxpayers. The bill also provides statutory information-gathering powers to secure the independence of the inspector-general and to ensure that the office of the inspector-general is not reliant solely on the cooperation of tax officials. The inspector-general cannot compel the provision of information by taxpayers. The inspector-general will not be investigating the affairs of individual or business taxpayers but systemic tax administration issues overall. However, the inspector-general will maintain an 'open door' policy in relation to the par-

ticipation of taxpayers and their advisers in consultation on taxation administration matters.

To preserve the autonomy of the Commissioner of Taxation in administering the law, the inspector-general will not be able to direct the commissioner, other than to require the commissioner to disclose information for a review. There are notable differences between the roles of the inspector-general and the commissioner. The inspector-general can only review, as I said earlier, systemic tax administration issues, not other issues such as individual decisions, amended assessments, particular rulings or waivers, or charges as determined by the Commissioner of Taxation. The inspector-general can only deal with the broader based administration issues such as the self-assessment system as a whole, or the operation of the rulings system. I believe this is a great bill, and I commend it to the Senate.

Senator MURRAY (Western Australia) (5.11 a.m.)—The Inspector-General of Taxation Bill 2002 is designed to set up a new office called the 'Inspector-General of Taxation'. This office is to sit somewhere between the taxation ombudsman, the Board of Taxation, the Auditor-General and Treasury. This office has been announced as an independent advocate for taxpayers. The Australian Democrats recognise that the proposed new office of the inspector-general fulfils a coalition promise made in the 2001 election. The parliament has traditionally taken the view that the government of the day is entitled to put into place those institutions which it feels will achieve a better outcome. By and large, without putting any expectation on the debate, I would expect that to carry through in the normal course of things. But, if the parliament ends up thinking the bill fails on the necessary criteria, the parliament will say that the government should not have its way. Although we have serious reservations about the potential effectiveness of this new agency, the Democrats are unlikely to oppose its creation unless, of course, our amendments fail. However, we cannot support it in its current format, and the concerns that I will express during the debate are generally reflected in the informed community at large.

Let me set out from the start that, frankly, I believe that this whole venture could end in tears—I do not mean today but in the whole expectation of the matter—because if the inspector-general does not meet realistic aspirations and needs the angst will just continue. The government has the opportunity to set up an independent body and, in this setting up, ensure that it is also perceived to be independent. You must remember, as I do, the great faith and hope put in the Board of Taxation. Now people are saying, 'Let's have another institution; they're not very good.' Personally I think that in some respects the creation of this proposed new institution is a vote of no-confidence in Treasury, because the function of reviewing tax administration, as with policy and consultation, was traditionally Treasury's. If a body is created arising from an assessment of problems which may be the creation of the government of the day—or at least those agencies operating under the government of the day—which could be politically embarrassing, I cannot see that an inspector-general who is appointed by the Treasurer, who is reporting to the Treasurer and whose reports could be kept secret by the Treasurer will produce the kind of outcome that is being sought.

It is quite proper for a minister of the Crown to ask an independent body for something to happen and for it to then happen, but the ability to dictate to the independent body is another matter altogether. This is a major flaw in the bill, especially when we have good examples of independence operating, as for instance with the Auditor-General. The expectations of tax professionals and other tax activists concerning the new office seem extravagant and bound for disappointment. I say this with the acknowledgment that those within the industry do not all see the inspector-general as the panacea. Funding is low, competition and even confusion as to roles is apparent and, unless amended, the design of the legislation will result in the inspector-general's independence being compromised. There is also a danger that this position will be used as yet another opportunity for business to exercise special influence, as is the case in the heavily business-oriented Board of Taxation.

A submission to the Senate Economics Legislation Committee inquiry into the Inspector-General of Taxation Bill 2002 from the Australian Institute of Company Directors saw the Inspector-General of Taxation having the 'potential to secure significant and lasting improvements in the administration of taxation in Australia'. Yet, at the same time, the institute put forward the view that the powers of the IGT are too narrow. The difficulty for the government is in avoiding a conflict with existing oversight and other taxation bodies but leaving enough scope to make a real contribution to better tax governance. The IGT needs to have a clear direction and sufficient powers to be effective from the start. Submissions to the inquiry have quite clearly demonstrated that the proposed IG has substantial support. While witnesses to the hearings held common concerns about some of the provisions, they were prepared to see the bill proceed rather than to jettison the legislation altogether. Mr Sheppard captured this general attitude when he told the committee:

> We think it has the potential to make a difference, and we are happy to give it the benefit of the doubt at this stage and, hopefully, make the position work.

I do not know how they are hoping to make the position work; it depends on the way it is structured and how much money it has to do it. The Australian Democrats agree that the proposed legislation should be allowed every opportunity to succeed but provisions need to be strengthened or changed to safeguard the independence of the IGT. In my view, the committee was too timid in merely seeking government undertakings or assurances—I think there were seven—that measures would be taken to protect the independence of the IGT. That was done through the majority report of the inquiry.

The Australian Democrats will seek to put statutory safeguards in place that will ensure that the IG is indeed an advocate for all taxpayers, that this advocacy role will not be compromised in any way and that the IG's independent status will not be eroded. This will be done through amendments in the committee stage. Independence must actually be independence if it is going to meet expectations, even if only halfway. While I appreciate that there is strong support for the establishment of the IGT as a response to systemic problems in taxation administration, it is essential that the office has the capacity and independence to enable it to deliver the results taxpayers expect.

I think we have to be mindful that in the last couple of years we have had so much tax reform that we have seen a self-assessment system that has been creaking at the edges and a number of gaps have arisen in terms of the needs of taxpayers. There is a real disquiet out there as to the integrity of the administration of tax in a number of areas. Can an inspector-general fill this need? To do so, the new office must be able to attend properly to issues across the Australian Taxation Office—that means all the major ATO avenues of revenue generation, of prudential control and supervision, and across the ATO business lines. My concerns with the proposal as it stands centre around three aspects: the independence of the office and its work program, the breadth of its remit and the adequacy of its funding.

Clause 8(2) of the bill requires that the IG may be directed by the minister to conduct a review. The conduct of a review may also be formally requested by the Commissioner of Taxation, by a resolution of one or both houses of the parliament or by a resolution of a parliamentary committee. However, these parties may not direct that a review be carried out. I agree with a request mechanism. In contrast, the IGT must comply with directions given to the office by the minister, yet it is supposed to be an independent body. This issue was raised by almost all of those who put submissions into the Senate Economics Legislation Committee inquiry.

During the committee hearing on this bill, I raised a comparison with the Australian Federal Police in that they have a body of resources and a list of tasks to do. Those tasks are done on priority. Imagine a much smaller body with a very large task with a funding level of only $2 million. I remain concerned that action and activities will be done on those things that have the loudest supporters or on those things that are directed by the Treasurer. The strength of ad-

vocacy will be greatest and most articulate within the business community and this will have to have some effect, even if this is only a perception, on what activities are pursued. Safeguards are necessary to ensure that a broad range of systemic issues may be addressed, and I feel that the current arrangements are not strong enough in this regard.

The capacity of the minister to direct a review has the potential to undermine the independence of the office. It also poses the risk that the resources of the IG will be absorbed by ministerially directed work to the extent that other issues cannot be adequately addressed. It is important for the IG to consult widely. Currently the bill includes only the requirement that the IG consult with the Commonwealth Auditor-General and the Commonwealth Ombudsman in setting his or her work program. I will put amendments to clause 9 of the bill to include a requirement that the IG must consult much more widely with tax professionals, taxpayer groups, the Board of Taxation and relevant parliamentary committees as the IG sees fit. I also strongly endorse the committee's report that the bill should include merit based selection criteria for the office of the IG. I have moved amendments to that effect.

A further issue in relation to the independence of the inspector-general arises in relation to the reporting framework included in the bill. The Australian Democrats believe that if the role of the IG is to carry conviction in the minds of taxpayers and is to be an effective means of identifying and remedying systemic problems in the administration of the tax system, the reporting process must be open and transparent. How can you have an independent person whose reports are secret?

Clause 11 of the bill enables the minister to cause a review report to be tabled in each house of the parliament but does not require that this be done. It is essential for the credibility and independence of the office that review reports are publicly released in a timely manner. The only exceptions to this principle should be in matters of public interest or for the protection of individuals. Such exemptions are already more than adequately provided for in the bill in clauses 22 to 27. For example, clause 23 is clearly intended to protect the privacy of any taxpayer. Also, clause 26 stipulates:

> If a person who makes a submission under section 13 has told the Inspector-General or a member of the Inspector-General's staff that their submission is to be kept confidential then information contained in the submission must not be included in the report under section 10 or 41.

Amendments to clause 11 of the bill will be proposed so as to require the minister to cause a copy of each review report to be tabled in each house of the parliament within 15 sitting days of that house after the day on which the minister receives the report. The minister should provide a copy of all review reports to the Commonwealth Auditor-General.

The office of IG should enhance the advocacy of taxpayer concerns but this role is not adequately expressed in the bill as drafted. The office should also be able to examine the legislative or policy issues which underlie systemic administrative problems and consider the administrative systems of other government agencies where these result in problems for taxation administration. The object of the act should contain a clear statement that the purpose of the IGT is to improve the administration of taxation for the benefit of all taxpayers, provide independent advice to government on taxation administration and enhance the advocacy of broad—but not individual—taxpayer concerns with regard to systemic taxation administration matters.

The office should also be a useful source of advice in the consideration by government of new proposals, bringing to selected issues a special expertise in administrative issues. In reviewing the bill in detail, the Australian Democrats have serious concern as to the narrowness of the inspector-general's powers detailed in clause 7 because the inspector-general is currently only dealing with the administration of tax laws. I think the IGT should be included to take into account tax policy and the tax design of systems, like the integrated tax design project that the ATO originally initiated.

The functions of the inspector-general should include the ability to review taxation

policy and legislation to the extent that it has been identified as the source of systemic taxation administration problems. The office should also be able to advise the government concerning potential administrative problems which may arise from the implementation of new proposals or which have arisen as a consequence of administrative systems utilised by other government agencies. Clause 7 is to be amended.

The Ombudsman made the important point that the investigations that are proposed to be undertaken by the office of IG are heavily resource intensive. This further reinforces the concern that this may very well end in tears as a consequence of there not being sufficient resources to get any real level of effectiveness out of the IG. This is especially the case considering the level of expectation that has been placed upon this office by the stakeholders who have been involved to date. I share the concerns expressed in a number of submissions to the inquiry that the level of funding proposed for the office of $2 million per annum is likely to be inadequate to enable its functions to be effectively discharged. Should the capacity of the minister to direct the IG be deleted, I would be a little more reassured in this regard but it still seems to be too little money.

In closing, I want to reiterate what I started out with. There are such high expectations within the industry, and I know they do not see this as the panacea to the ills within the tax system, but nonetheless they put an enormous emphasis on what will hopefully be the outcome of creating this institution. A half-baked effort, which is what we have in front of us at present, will just frustrate the sector even more and see scepticism and nervousness about any further or future changes to the sector.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.25 a.m.)—I wish to make a few comments by way of summing up on the Inspector-General of Taxation Bill 2002. I thank honourable senators for their contributions, however disparaging, to the debate on this bill. I particularly want to comment on some issues that have been raised also in the Senate Economics Legislation Committee report and during the debate on the measure.

As had been discovered in the extensive consultation process conducted by the Board of Taxation earlier this year, overwhelming community support for the appointment of an Inspector-General of Taxation was revealed by the economics committee. Whilst I acknowledge that some concerns have been expressed about certain aspects of the bill that I am about to address, we should not lose sight of the community's desire to see the office of inspector-general up and running as a matter of urgency. Some concerns that have surfaced in the two consultation processes are the product of uncertainty about how the office will operate in practice within the broad legislative framework set out in the bill. In that regard, I do believe that most concerns will dissipate once the office is operational.

In relation to the role of the inspector-general, the government's commitment was to establish an inspector-general who would act as an advocate for all taxpayers. The bill delivers on this commitment. Clause 3 of the bill states that the object is to improve tax administration for the benefit of all taxpayers. The explanatory memorandum recognises this will involve protecting the integrity of the revenue system, which in turn funds government programs for the benefit of all Australians. The inspector-general will advocate the broad interests of taxpayers in improving tax administration systems and will advocate taxpayers' views direct to the government, independent of the Treasury and the tax office, thus enabling rapid policy responses to the concerns of taxpayers. The inspector-general will not be acting as an advocate for individual taxpayers who are in dispute with the Commissioner of Taxation. Existing avenues of appeal against the commissioner's decisions will continue to operate, and the Ombudsman will continue to handle individual complaints about administrative action taken by the commissioner.

All Australians would be welcome to suggest matters of tax administration that the inspector-general could review. The legislation provides for the inspector-general to initiate reviews on his or her own motion,

including in response to issues raised by taxpayers or the tax advising professions. The bill is designed to encourage and protect those who may suggest improvements to tax administration or provide information to the inspector-general in the following ways. The bill does not impose obligations on taxpayers or tax professionals. There are no compliance costs. The compulsory investigative powers do not extend to taxpayers. The inspector-general could not review the tax affairs of individuals or businesses. The inspector-general cannot report information that would allow the identification of individual taxpayers. Members of the public have the same protection under clause 17 where they participate in reviews in good faith. Finally, members of the public can claim confidentiality for voluntary submissions, with that confidentiality protected in clause 26. All of the above provisions promote participation in the work of the Inspector-General of Taxation and promote the role of the inspector-general as an advocate to government of the concerns of taxpayers.

The inspector-general will have discretion to act on suggestions made by members of the public and to allocate resources amongst the various proposals put forward, including those whereby the minister directs or requests that a review be undertaken. The inspector-general would ultimately determine the best value reviews for taxpayers. There has been a suggestion that the bill should require the inspector-general to consult with stakeholders in setting his or her work program. In fact, the extended definition of 'review' in clause 12 makes it clear that the inspector-general can consult with members of the public for the purpose of deciding whether a review should be conducted in the first place.

The issue has been raised as to whether the inspector-general's office should report to the government, publish its own reports or report to the parliament. It is an important point. The government is keen that the operations of the inspector-general be open and transparent. Nonetheless, it has been clear in all the government's public statements on the inspector-general proposal, including the consultation paper released in May this year, that the inspector-general is being established for the purpose of providing independent advice to the government on tax administration. The inspector-general is not being established to duplicate the roles of the Auditor-General and the Ombudsman, who report directly to the parliament on reviews of administrative actions and procedures of the Australian tax office.

The Commonwealth does not require enhanced public reporting about tax administration. In 1997, the government founded a robust public accountability regime when it re-established the Auditor-General as an officer of the parliament. Parliament can now request the Auditor-General to conduct performance audits into areas within the Australian Taxation Office. Through the Joint Committee of Public Accounts and Audit, parliament itself is responsible for ensuring that the Auditor-General is properly resourced to undertake all audit functions. The parliament also receives, and will continue to receive, independent advice from the Ombudsman on tax administration issues of concern to individual taxpayers or groups of taxpayers.

The Inspector-General of Taxation would not be duplicating the roles of the Auditor-General and the Ombudsman, who assist the parliament to hold the government to account for public administration. Indeed, the office of the Inspector-General of Taxation is not exempt from review by the Auditor-General and the Ombudsman, nor from parliamentary scrutiny. In particular, the Inspector-General of Taxation Bill 2002 does not seek to override the strong information-gathering powers in the Auditor-General Act and the Ombudsman Act. The Inspector-General of Taxation would have a discrete and specialised role to provide independent advice to the government regarding taxpayers' views so that the government can take action to remedy any problem quickly.

The Inspector-General of Taxation is required to make an annual report to the parliament. Clause 41 of the bill requires the Minister for Revenue to table the inspector-general's report within 15 days of receipt. The inspector-general would be subject to the same annual reporting requirements and

conventions as those that apply to other Commonwealth agencies. These include statutory requirements in the Financial Management and Accountability Act 1997 and annual reporting guidelines approved by the Joint Committee of Public Accounts and Audit under sections 63(2) and 70(2) of the Public Service Act 1999. In addition, there is an explicit provision in clause 4 of the bill requiring the inspector-general to report to the parliament on any directions given by the minister to conduct a review into a particular matter.

The bill has been drafted on the basis that reports by the inspector-general, including reports on particular reviews, would be released. For example, clause 10 requires the inspector-general to provide a written report, and the explanatory memorandum makes it clear that this is to facilitate publication of findings and recommendations. Division 4 in part 2 of the bill comprises provisions ensuring the protection of taxpayers' information and other sensitive information in the context of the government's policy position that reports by the inspector-general be released. In the government's response to the Board of Taxation report on the inspector-general, which I released on 16 September, the government agreed that it was important for the inspector-general's reports on reviews into systemic tax administration issues to be released publicly in order to maintain the respect and cooperation of taxpayers and their advisers. So public release of reports is not at issue here. The real issue is whether the report should be released immediately or, to avoid speculation and uncertainty in the tax system, simultaneously with any government response.

As a rule, changes to the tax system, including administrative changes to the timing of tax collections or the way in which tax is collected, have revenue implications and may change taxpayer behaviour. For the same sorts of reasons that budget initiatives are confidential until budget night, so also it is important to ensure that possible changes to the tax system do not become a matter for speculation. Accordingly, it is intended that the minister would have the role of releasing reports of reviews by the inspector-general along with the government's response to any recommendations. The economics committee proposes that there be a time limit of 15 days for the government to table reports of the inspector-general. I make the point that it would not be practicable to determine a policy response to recommended changes to the tax system to fit within this time frame. The government will most likely be required to seek costings from Treasury and the tax office, and there may well be complex legal and administrative matters that need to be resolved before the government response could be announced. It is conceivable that consultation with other departments and agencies may also be necessary—indeed, even consultation with stakeholders and externals. I want to make the point that the government is committed to acting quickly on recommendations of the inspector-general. However, it would not be appropriate to mandate a time frame for release of reports.

One other matter I want to touch on briefly is the independence of the inspector-general. There is universal agreement that the inspector-general must be independent; this was a strong theme in both public consultation processes. The bill does guarantee the independence of the inspector-general. The inspector-general would be appointed by the Governor-General, with strict limits on the circumstances in which the inspector-general may be dismissed from office by the Governor-General. Furthermore, the inspector-general would be empowered to conduct reviews on an 'own motion' basis. The office of inspector-general will have its own appropriation through the budget process and would have autonomy in allocating resources to competing priorities. The inspector-general will report to the parliament on how resources have been expended in a particular financial year. The inspector-general may bid for increased resources in response to changing demands and workloads. The minister may direct the inspector-general to conduct a review into a particular matter under clause 8; nonetheless, the inspector-general does retain discretion as to how the review would be conducted and the resources allocated in the review.

In conclusion, I would observe that the proposals in the Inspector-General of Taxation Bill 2002 have been the subject of two intense community consultation processes. The bill has been designed to respond to stakeholder views and the recommendations made by the Board of Taxation and the economics committee while maintaining the government's original commitment to establish an Inspector-General of Taxation that would strengthen advice to government on tax administration and advocate the concerns of taxpayers. Tax administration has an impact on virtually every Australian household and business. Two consecutive consultation processes undertaken this year that have involved the community have shown that Australian taxpayers strongly support the establishment of an independent office of Inspector-General of Taxation to review tax administration. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (5.39 a.m.)—Mr Chairman, I would like, if I may, to seek some guidance from the committee. I am one of those who do not find tax matters boring, but I am really bored now and I am tired.

The CHAIRMAN—I advise you, Senator Murray, not to press that point too much because you might find a fair degree of agreement around the chamber.

Senator MURRAY—The reason I am pursuing some guidance from the chamber is that the opposition have indicated their position on my amendments already. The issues are well known to all the senators here. We have all been to the committee, read the submissions and heard the arguments. I could put them in a batch without arguments, except for those the opposition have indicated they are going to oppose. I could put them separately, and then we could wrap it up. However, we might want to talk a little on that, pending the House of Representatives; that is why I need the guidance.

The CHAIRMAN—Senator Murray, I am not wanting to go too fast but could I suggest that you put those amendments together where there is an agreement between the Democrats and the opposition, which I believe will provide the numbers for them to succeed in the chamber, and you put separately those amendments where there will be opposition. That way none of us will be confused.

Senator MURRAY—Thank you for your guidance, Mr Chairman. If I have correctly chosen the ones that Senator Ludwig wants me to put separately, I would propose to put, by leave, all the amendments on sheet 2783, with the exception of amendments (10) and (11), which I would put separately.

The CHAIRMAN—So you would seek leave to put amendments (1) to (8). You did say (1) to (9) but you meant (1) to (8).

Senator MURRAY—by leave—I move Democrat amendments (1) to (8) and (12):

(1) Clause 2, page 2 (lines 1 and 2), omit the clause, substitute:

2 Commencement

This Act commences on the day after the day on which the Auditor-General provides a report to both Houses of the Parliament containing the results of an investigation into whether the objectives of the Act can be reasonably met by the appropriation provided for that purpose, together with a certification by the Auditor-General that the objectives can be so met.

(2) Clause 3, page 2 (lines 3 to 5), omit the clause, substitute:

3 Objects of this Act

The objects of this Act are to:

(a) improve the administration of taxation law for the benefit of all taxpayers; and

(b) provide independent advice to government on taxation administration; and

(c) identify systemic issues in taxation administration.

(3) Clause 7, page 5 (lines 11 and 12), omit subparagraph (ii), substitute:

(ii) systems established by laws including tax laws, but only to the

extent that the systems deal with tax administration.

(4) Clause 8, page 5 (lines 30 to 32), omit subclause (2).

(5) Clause 9, page 6 (lines 12 and 13), omit "subsection 8(2) and".

(6) Clause 9, page 6 (after line 17), at the end of the clause, add:

(3) The Inspector-General must consult at least once a year with persons whom the Inspector-General considers necessary for the discharge of his or her duties, including but not limited to:

(a) taxation professionals;

(b) groups or associations representing taxpayer interests;

(c) the Board of Taxation;

(d) relevant parliamentary committees;

to assist the Inspector-General in setting his or her work program.

(7) Clause 10, page 6 (after line 1), at the end of the clause, add:

(2) After completing a review, the Inspector-General must submit a copy of a report of the review prepared in subsection (1) to the Auditor-General who is authorised by this section to audit any matter he or she considers appropriate arising from the report.

(8) Clause 11, page 7 (lines 2 to 5), omit the clause, substitute:

11 Public release of reports

The Minister must:

(a) cause a report under section 10 to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report; and

(b) make the report publicly available.

(12) Page 32, (after line 18), at the end of Part 4, add:

45 Review of operation of Act

(1) The Minister must cause a review of the operation, effectiveness and implications of this Act to be conducted, together with an assessment of the sufficiency or otherwise of the budgetary allocation for the office and functions of the Inspector-General of Taxation.

(2) The review must be undertaken as soon as practicable after the fifth anniversary of the commencement of the Act.

(3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within six months of the commencement of the review.

Amendment (1) is a particularly important amendment; it is also an unusual amendment. There is a great contest between the government and those who are a bit sceptical of the Inspector-General of Taxation Bill 2002 as to whether the amount of resources committed for this purpose is going to be sufficient. Frankly, neither the Senate committee nor the senators are equipped to make that appraisal. The Auditor-General, who is steeped in tax ability and understands these things, can certainly provide that advice and, in our view, would be able to provide that advice quickly, based on the nature of the bill.

The remainder of the amendments deal with matters of consultation, removing ministerial direction, but of course they retain the moral suasion and the status of that office. I am sure the inspector-general will react very favourably to all requests. The amendments deal with the tabling of reports and the manner in which that must be done. Amendment (12) deals with a review to occur on the fifth anniversary of the act. A five-year span is perfectly reasonable.

Senator LUDWIG (Queensland) (5.43 a.m.)—I indicate that the opposition supports amendments (1) to (8) and (12). In relation to amendment (1), Labor supports the requirement that the Auditor-General investigate and certify that the objects of the act can be met by the appropriation provided prior to the commencement of the act. In relation to amendment (2), Labor supports the revised objects clause as it, in our view, better reflects the purpose of the role the inspector-general, and clearly that is the Democrats' view as well.

In relation to amendment (3), Labor supports the extension of the inspector-general's functions to include reviewing any laws to the extent that they deal with systemic issues with tax administration. In relation to

amendment (4), Labor supports the removal of clause 8, subclause (2), on the basis that this clause gives the minister the power to direct the inspector-general to conduct the review. Amendment (5) is a consequential amendment to clause 8(2). In respect of amendment (6), Labor supports this new clause as it provides a formal mechanism for the inspector-general to consult with a variety of relevant parties, including tax professionals and groups representing taxpayers' interests.

In respect of amendment (7), Labor supports the requirement that the inspector-general's report is provided to the Auditor-General and that the Auditor-General may act on matters arising from the report. Amendment (8) to clause 11 is of fundamental importance to the bill and Labor supports the requirement that the inspector-general's reports be made publicly available. Finally, where we can find support, Labor supports amendment (12), which requires review of the operation, effectiveness and budget of the inspector-general after five years.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.45 a.m.)—I note the agreement between the Labor Party and the Democrats in respect of amendments (1) to (8) and (12). I wish to make a few comments about that before the matter is put to the vote. Firstly, in respect of amendment (1), the government does not support this amendment, because the commencement provision in an act of course must be both clear and unambiguous so that it can be determined legally whether an act has commenced. The amended clause does not meet this fundamental requirement. In particular, since the appropriation to the inspector-general is through the budget process and part of the Treasury portfolio appropriation and, since it would be open to the inspector-general to seek additional funding, the term 'appropriation' provided for that purpose does not have sufficient legal certainty, in the government's view. In our view, the proposed commencement provision is not workable and there is no precedent to assist interpretation of how it would work.

Although amendment (2) does not materially alter the bill, the way in which the amendment is drafted is not supported. The amended provision suggests that the act and the Inspector-General of Taxation will have three objects. In fact there is only one object: to improve the administration of the tax laws for the benefit of all taxpayers, as I have mentioned. Conducting systemic reviews and providing independent advice to the government on tax administration are means of achieving this end.

The government does not support amendment (3), which introduces, in our view, elements of confusion and a degree of uncertainty about the scope of the inspector-general's functions. Under clause 7 of the bill as it stands, the inspector-general has a very broad remit to review all the administrative systems of the Australian Taxation Office, including where the tax office administers schemes that are not technically tax administration. For example, as the bill is currently drafted, with the extended definition of tax law in clause 4, the inspector-general can examine matters such as the tax office administration of family tax benefit payments, the administration of diesel fuel rebates and the issue of Australian business numbers. The term 'tax administration' is not defined in the bill. Giving the term 'tax administration' its natural meaning, it is not at all clear that the inspector-general would be able to examine some of the non-tax administrative schemes currently included within the scope of the inspector-general's functions. Clause 7(ii) is also left hanging by the proposed amendment. It would need to be amended or deleted. If it is deleted, the element of uncertainty about the scope of the inspector-general's functions is exacerbated.

Amendments (4) and (5) seek to remove the discretion of Treasury ministers to give the inspector-general a direction to conduct a review. It is not clear what happens to the provision in clause 41 requiring the inspector-general to report any directions in the annual report. These amendments undermine the object and functions of the inspector-general. The inspector-general will strengthen independent advice to Treasury ministers on tax administration. Under the

bill as it stands, the inspector-general of tax would have the power to initiate reviews on his or her own motion and has a discretion in allocating resources amongst competing priorities. In view of the way in which the vote is going to go, I do not propose to continue my remarks in respect of the amendments that have been agreed to.

Question agreed to.

Senator MURRAY (Western Australia) (5.50 a.m.)—by leave—I move amendments (9), (10) and (11) together:

(9) Clause 28, page 22 (line 8), after "instrument", insert "on receipt of a recommendation based on merit received from the Minister in accordance with section 28A".

(10) Clause 29, page 23 (after line 7), at the end of the clause, add:

(3) An acting appointment must be made on the basis of merit.

(11) Page 22 (after line 19), after clause 28, insert:

28A Procedures for merit selection of Inspector-General

(1) The Minister must by writing determine a code of practice for selecting the Inspector-General of Taxation that sets out general principles on which the selection is to be made, including but not limited to:

(a) merit; and

(b) independent scrutiny of appointments; and

(c) probity; and

(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The issues are well understood.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.51 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COMMITTEES

Australian Crime Commission Committee

Establishment

Message received from the House of Representatives acquainting the Senate that the House has agreed to the Senate's resolution relating to the powers and proceedings of the Parliamentary Joint Committee on the Australian Crime Commission.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:

Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002

Message received from the House of Representatives returning the following bill without amendment:

Plant Breeder's Rights Amendment Bill 2002

COMMITTEES

Treaties Committee

Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.53 a.m.)—by leave—I move:

That Senator Bartlett be appointed to the Joint Standing Committee on Treaties.

Question agreed to.

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, acquainting the Senate that the House has agreed to amendments (1), (6), (66) to (68) made by the Senate, disagreed to amendments (4), (18), (21) to (27), (33), (35), (37) to (55), (57), (58), (60), (61), (63) to (65) and (74) to (77), and has made amendments in place of amendments (2), (3), (5), (7) to (17), (19), (20), (28) to (32), (34), (36), (56), (59), (62), (69) to (73) and (78) to (94), and requesting the reconsideration of the bill in respect of the amendments disagreed to and the concurrence of the Senate in the amendments made by the House.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

Schedule of the amendments made by the House of Representatives in place of Senate amendments disagreed:

(2) Opp (1) [Sheet 2791 Revised]

Page 2 (after line 11), after clause 3, insert:

4 Evaluation

(1) The Minister must conduct an evaluation of the measures contained in Schedules 1 and 5 of this Act.

(2) Without limiting the generality of subsection (1), the evaluation must include the following:

(a) the numbers of parenting payment (single) recipients and parenting payment (partnered) recipients required to enter into participation agreements and the number of such recipients granted an exemption;

(b) details of expenditure on ancillary assistance provided to those affected by the measures such as expenditure on job network and training;

(c) employment outcomes of parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients targeted by the measures compared to the employment outcomes of these groups prior to the implementation of the measures;

(d) details of average earnings of the target population affected by the measures compared to earnings of the target population prior to the implementation of the measures;

(e) details of compliance with the activity agreements for parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients, including the numbers for each group in situations where a breach penalty was applied, and the reasons for applying a breach penalty;

(f) details of total savings resulting from breach penalties applied to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients required to enter into activity agreements;

(g) an assessment of the impact of the measures in Schedule 1 on children of parenting payment recipients;

(h) a cost benefit analysis of the new participation measures applying to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients.

(3) The evaluation must be completed and tabled in each House of the Parliament by 30 June 2005.

(3) Govt (2) [Sheet EX249]

Schedule 1, page 3 (before line 4), before Part 1, insert:

Part 1A—Amendment of the A New Tax System (Family Assistance) Act 1999

A New Tax System (Family Assistance) Act 1999

1A Subsection 3(1) (definition of *receiving*)

Repeal the definition, substitute:

receiving:

(a) in relation to a social security payment—has the same meaning as in

subsections 23(2) and (4) of the *Social Security Act 1991*; and

(b) for the purpose of construing references to a person receiving a social security pension or a social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act—is taken to include the meaning provided in subsection 23(4A) of the *Social Security Act 1991* as if those clauses were specified in provisions of that Act referred to in subsection 23(4AA) of that Act; and

(c) for the purpose of construing references to a person receiving a social security pension or social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act where those references relate to a person:

(i) to whom parenting payment would be payable if not for a determination that a participation agreement breach non-payment period applies in relation to the person; or

(ii) to whom parenting payment would be payable if not for a determination that a participation agreement breach rate reduction period applies in relation to the person;

has effect as if that determination had not been made.

(5) Opp (2) [Sheet 2791 Revised]

Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

(3) Subject to subsection (4), the participation agreement breach non-payment period starts on the 14th day after the day on which the notice is given to the person.

(7) Opp (3) [Sheet 2791 Revised]

Schedule 1, item 12, page 9 (lines 23 to 33), omit subsection (4), substitute:

(4) In having regard to a person's capacity to comply with the terms of a participation agreement and the person's needs, the Secretary is to take into account, but is not limited to, the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and

(e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and

(f) the length of travel time required for compliance with the agreement; and

(g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(h) any other matters that the Secretary or the person considers relevant in the circumstances.

(8) Opp (4) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (lines 6 to 10), omit paragraphs (a) and (b), substitute:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(9) Opp (5) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (line 18), after "subsection (2)", insert "or (2A)".

(10) Opp (R6) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (after line 34), after subsection (2), insert:

Exempt persons—periodic exemptions

(2A) For the purposes of subsection (1), a person is an exempt person for a particular period determined by the Secretary under this subsection if:

(a) the person has one or more PP children:

(i) who suffer from a physical, intellectual or psychiatric disability; and

(ii) whose care needs are such that the person could not be reasonably expected at that time to comply with the terms of a participation agreement; or

(b) a critical event occurs that was not within the person's control (eg. family or personal crisis, the Secretary is satisfied the person has separated from his or her partner on a permanent or indefinite basis in the past 26 weeks, person's house burning down, evidence of domestic violence, serious illness of PP children) and, as a result, the person is temporarily unable to comply with the terms of a participation agreement.

(2B) At any one time the maximum period for which the Secretary may determine that a person is an exempt person under subsection (2A) is:

(a) if paragraph (2A)(a) applies to the person—12 months;

(b) if paragraph (2A)(b) applies to the person—26 weeks.

(2C) The Secretary may make more than one determination under subsection (2A) in respect of a person.

(11) Opp (7) [Sheet 2791 Revised] (Incorporating Govt (4) [EX249])

Schedule 1, item 12, page 11 (line 29) to page 12 (line 2), omit subsection (1), substitute:

(1) A participation agreement is a written agreement between the Secretary and another person, in a form approved by the Secretary, under which the person agrees to undertake, during each period of 26 weeks that the agreement is in force, approved activities anticipated to take 150 hours or such lesser number of hours as are agreed between them. Participation agreements will set out the support that the Secretary undertakes to provide to assist the person to meet his or her participation requirements in the negotiated agreement.

(12) Opp (8) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (line 17), after "program", insert "as defined in section 23 of the *Social Security Act 1991*".

(13) Opp (9) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (lines 19 to 21), omit paragraph (k), substitute:

(k) another activity that the Secretary regards as suitable for the person, including voluntary work, and that is agreed to between the person and the Secretary.

(14) Opp (10) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (line 28) to page 13 (line 4), omit subsection (4), substitute:

(4) In having regard to a person's capacity to comply with the terms of a participation agreement and to the person's needs, the Secretary is to take into account, but is not limited to, the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and

(e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and

(f) the length of travel time required for compliance with the agreement; and

(g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(h) any other matters that the Secretary or the person considers relevant in the circumstances.

(15) Opp (11) [Sheet 2791 Revised]

Schedule 1, item 12, page 13 (line 7), after "varied", insert "(in negotiation with the person)".

(16) Opp (12) [Sheet 2791 Revised]

Schedule 1, item 12, page 13 (after line 13), after subsection (5), insert:

Cooling-off period

(5A) Within 14 days of the terms of the participation agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

(5B) The Secretary must advise the person of the effect of subsection (5A).

Avoidance of doubt

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(17) Opp (13) [Sheet 2791 Revised]

Schedule 1, item 12, page 14 (line 23), after "agree to", insert "the reasonable".

(19) Opp (14) [Sheet 2791 Revised]

Schedule 1, item 13, page 17 (after line 25), after subsection (1), insert:

Notice to contain reasons

(1A) A notice under subsection (1) must contain reasons why the participation agreement breach rate reduction period applies to the person.

(20) Opp (15) [Sheet 2791 Revised]

Schedule 1, item 13, page 17 (lines 27 to 29), omit subsection (2), substitute:

(2) Subject to subsection (3), the participation agreement breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(28) Opp (16) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 10), after item 20, insert:

20A At the end of section 544

Add:

Secretary must contact person before determining failure to comply with terms

(3) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a youth allowance activity agreement unless the Secretary:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(29) Opp (17) [Sheet 2791 Revised] (*As amended*)

Schedule 1, page 20 (after line 13), after item 21, insert:

21A Subsection 544B(4)

Repeal the subsection, substitute:

(4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the

purposes of paragraph 541D(1)(g); and

(f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

(30) Opp (18) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 13), after item 21, insert:

21B Paragraph 544B(5)(a)

After "varied", insert "(in negotiation with the person)".

(31) Opp (19) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 13), after item 21, insert:

21C After subsection 544B(5)

Insert:

Cooling-off period

(5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

(5B) The Secretary must advise the person in writing of the effect of subsection (5A).

Avoidance of doubt

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(32) Opp (20) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subparagraph 544C(1)(b)(iii)

After "agree to", insert "the reasonable".

(34) Opp (21) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 25), after item 24, insert:

24C Subsection 550C(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3) and to sections 550D and 550E, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(36) Opp (22) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26A Subsection 557B(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3) and to section 557C, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

26B Subsection 558B(2)

Repeal the subsection, substitute:

General rule

(2) Subject to subsection (3), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(56) Opp (23) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26X After subsection 593(2A)

Insert:

(2B) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a Newstart Activity Agreement unless the Secretary:

(a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and

(b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and

(c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

(d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(59) Opp (24) [Sheet 2791 Revised]

Schedule 1, page 21 (after line 11), after item 30, insert:

30C Subsection 630B(2)

Repeal the subsection, substitute:

(2) Subject to subsections (3) and (6) and to sections 630BA and 630BB, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(62) Opp (25) [Sheet 2791 Revised]

Schedule 1, page 21 (after line 28), after item 34, insert:

34B Subsection 644AB(2)

Repeal the subsection, substitute:

(2) Subject to section 644AC, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

34C Subsection 644C(2)

Repeal the subsection, substitute:

(2) Subject to subsections (3) and (6), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(69) Opp (26) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11A After subsection 606(1)

Insert:

(1A) If the person is at least 50 years of age but less than 60 years of age, the particular number of job vacancies shall not exceed 24 per 12 weeks in the period specified in the notice.

(1AB) If the person is at least 60 years of age, the particular number of job vacancies shall not exceed 12 per 12 weeks in the period specified in the notice.

(1AC) Subsection (1A) does not apply unless the person has been receiving an income support payment for a continuous period of at least 9 months and the person satisfies the Secretary that the person has no recent workforce experience.

(70) Opp (27) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11B Subsection 606(4)

Repeal the subsection, substitute:

(4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:

(a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

(b) the state of the local labour market and the transport options available to the person in accessing that market; and

(c) the participation opportunities available to the person; and

(d) the family and caring responsibilities of the person; and

(e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and

(f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(g) any other matters that the Secretary or the person considers relevant in the circumstances.

(71) Opp (28) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11C Paragraph 606(5)(a)

After "varied", insert "(in negotiation with the person)".

(72) Opp (29) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11D After subsection 606(5)

Insert:

(5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

(5B) The Secretary must advise the person in writing of the effect of subsection (5A).

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(73) Opp (30) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11E Subparagraph 607(1)(iii)

After "agree to", insert "the reasonable".

(78) Govt (8) [Sheet EX249]

Schedule 6, item 7, page 53 (lines 1 and 2), omit paragraph (g), substitute:

(g) the person:

(i) in the case of a woman who would, but for this subsection, cease to be receiving wife pension because of the employment income, or the combined income, referred to in subparagraph (e)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension on and from the cessation day; and

(ii) in any other case—continues to be qualified for the pension or benefit on and from the cessation day;

(79) Govt (9) [Sheet EX249]

Schedule 6, page 55 (after line 20), after item 8, insert:

8A Subsection 1061ZB(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

(d) if the person is qualified for such a card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and

(e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(80) Govt (10) [Sheet EX249]

Schedule 6, item 9, page 55 (lines 32 to 36), omit paragraph (c) and all the words following that paragraph, substitute:

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(81) Govt (11) [Sheet EX249]

Schedule 6, item 9, page 56 (lines 14 to 18), omit paragraph (c) and all the words following that paragraph, substitute:

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(82) Govt (12) [Sheet EX249]

Schedule 6, page 56 (after line 24), after item 11, insert:

11A Subsection 1061ZC(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

(d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and

(e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(83) Govt (13) [Sheet EX249]

Schedule 6, item 12, page 57 (lines 4 to 8), omit paragraph (c) and all the words following that paragraph, substitute:

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day

on which the balance is reduced to nil.

(84) Govt (14) [Sheet EX249]

Schedule 6, item 12, page 57 (lines 22 to 26), omit paragraph (c) and all the words following that paragraph, substitute:

(c) the balance is subsequently reduced to nil because of the commencement or increase; and

(d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1C) If the person:

(a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and

(b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

(85) Govt (15) [Sheet EX249]

Schedule 6, item 13, page 57 (lines 27 to 29), omit the item, substitute:

13 Subsection 1061ZC(2)

After "subsection (1)", insert "(including that subsection as modified by subsection (1A), (1B) or (1C))".

13A Subsection 1061ZC(3)

After "subsection (1)", insert "(including that subsection as modified by subsection (1A) or (1B))".

13B Subsection 1061ZC(4)

After "subsection (1)", insert "(including that subsection as modified by subsection (1A), (1B) or (1C))".

(86) Govt (16) [Sheet EX249]

Schedule 6, item 18, page 58 (line 26), omit "1061ZB, 1061ZC,".

(87) Govt (17) [Sheet EX249]

Schedule 6, item 18, page 59 (line 32), after paragraph (g), insert:

and (ga) the person:

(i) in the case of a woman to whom wife pension ceases to be payable because of the employment income, or the combined income, referred to in subparagraph (f)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension; and

(ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and

(iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

(88) Govt (18) [Sheet EX249]

Schedule 6, item 18, page 60 (line 2), after paragraph (j), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(89) Govt (19) [Sheet EX249]

Schedule 6, page 60 (after line 26), after item 19, insert:

19A After subsection 1061ZM(1)

Insert:

(1A) If the person is qualified for a health care card under section 1061ZMA until a day (the ***particular day***), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to 26 weeks starting on the particular day.

(1B) If the person:

(a) was an employment-affected person because of receiving pension PP (single); and

(b) is qualified for a pensioner concession card under section 1061ZEA until a day (the ***particular day***);

subsection (1) has effect as if the reference to the period of 26 weeks

starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

(1C) If the person:

(a) is qualified for a health care card under section 1061ZMA until a particular day; and

(b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient because of receiving newstart allowance, sickness allowance, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study, for a continuous period of less than 52 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the allowance until the particular day.

19B Subsection 1061ZM(2)

After "referred to in subsection (1)", insert "(including that subsection as modified by subsection (1A)) or the period provided by subsection (1B)".

(90) Govt (20) [Sheet EX249]

Schedule 6, item 20, page 60 (lines 31 and 32), omit subsection (1).

(91) Govt (21) [Sheet EX249]

Schedule 6, item 20, page 61 (line 33), after paragraph (g), insert:

and (ga) the person:

(i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and

(ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

(92) Govt (22) [Sheet EX249]

Schedule 6, item 20, page 62 (line 2), after paragraph (j), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(93) Govt (23) [Sheet EX249]

Schedule 6, page 62 (after line 13), after item 20, insert:

20A Subsection 1061ZN(1)

Omit "and 1061ZM", substitute ", 1061ZM and 1061ZMA".

(94) Govt (24) [Sheet EX249]

Schedule 6, item 26, page 76 (after line 7), at the end of section 1073J, add:

(2) If:

(a) a woman receiving wife pension is a working credit participant; and

(b) the partner of the participant ceases to receive age pension or disability support pension on and from a day (the ***cessation day***); and

(c) the partner ceases to receive that pension:

(i) because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and

(ii) after any working credit balance of the partner is reduced to nil; and

(d) as a result of the partner's so ceasing to receive that pension, the participant ceases to be qualified for wife pension on and from the cessation day; and

(e) the participant has a working credit balance greater than nil at the start of the instalment period of the participant in which the cessation day occurs; and

(f) but for the employment income, or combined income, referred to in paragraph (c), the participant would have continued to be qualified for wife pension until the earlier of:

(i) a day determined under Division 8 or 9 of Part 3 of the Administration Act; or

(ii) the day on which the participant's working credit balance is reduced to nil;

the participant is to be treated as if she had continued to be so qualified until the earlier of the days referred to in subparagraphs (f)(i) and (ii).

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.55 a.m.)—I move:

That the committee does not insist on Senate amendments (4), (18), (21) to (27), (33), (35), (37) to (55), (57), (58), (60), (61), (63) to (65), (74) to (77) to which the House of Representatives has disagreed and agrees to the amendments made by the House in duplication of amendments (2), (3), (5), (7) to (17), (19), (20), (28) to (32), (34), (36), (56), (59), (62), (69) to (73) and (78) to (94).

I wish to make it very clear that, when the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 first came to the Senate, we were negotiating with the Labor Party on amendments to matters that related to the client groups being dealt with by this bill. We were under the impression at the time that a second reading amendment would be moved as an expression of the Labor Party's concern with broader questions of breaching. On the day and a half before, or even on the day, of the second reading amendment, it became clear that Labor not only intended to move a second reading amendment to express its concern, which it clearly has, with the breaching arrangements as they now stand but also intended to pursue amendments in the chamber on that basis. We indicated that those amendments would not be acceptable, and so Labor and the Democrats split the bill.

The bill then came back to this place and, again, we have been negotiating with the Labor Party and have in good faith accepted amendments that they sought to put. There has been some toing and froing and rewording on those, and together we have worked quite effectively on them. By various means, we were of the view that, if we accepted those amendments—while Labor would continue to press their case, as they clearly did here last night—and if the bill came back again, we could hope to have the bill passed. That leads us to the position we are in now. I am a little bit uncertain on the basis of what Mr Swan said in the chamber, but subsequent conversations have led me to believe that Labor may not be able to see their way to supporting this bill and may want to insist on still putting amendments which, on the basis of past voting patterns in this place, we would expect to be passed with the support of the Democrats and the Greens.

All along we have made it as clear as we possibly can, both in private discussions with the Labor Party and in this chamber, that we cannot accept further changes to the broader breaching arrangements. There are a number of reasons for this, and at this hour I will not go into them and re-rehearse them at length; but for the convenience of having them in the same place on the record it is important to say that we have already made quite dramatic changes to the breaching arrangements. The breaching arrangements are now much softer than they were before. In fact, they are far softer than they were under Working Nation.

The dramatic changes we have made—not all of the changes, but the dramatic ones—only started to come into play in July this year. All the evidence is that they are going to be very successful in addressing the mutual concern that we have—we might have a different way of addressing it, but we nonetheless have the mutual concern—with those vulnerable groups that I mentioned before, who might not want to admit to a Centrelink counter person that they did not make it to an appointment because they had overdosed on drugs or had passed out because they were an alcoholic or were homeless and therefore did not get the letter. We believe that the changes we made in July will be very successful, and they already are proving to be successful in protecting those groups. That is the primary reason for not accepting any further change at this point.

The secondary reason is that the changes are expensive. I made the point before that we have a difficult macroeconomic climate. The budget is finely balanced; we are uncertain as to whether there will be very significant defence expenditures required; we are uncertain as to the degree that the current

drought we are experiencing around Australia may require more and more funds; and, therefore, we simply do not have hundreds of millions of dollars to soften the compliance on welfare yet again.

Coupled with that, as a third reason, we believe that no-one need be breached. If they simply keep up with the requirements, they will not be breached. For those reasons, I hope it is crystal clear—I have made it clear before—that the government cannot accept further amendments to breaching at this point and, if they are insisted on, then that has very drastic consequences for what I think are tremendous proposals contained in this bill. The bill is in fact a spending bill—and this is a government wanting to invest in people in welfare—and we now have a situation where, if these amendments are pursued, what the opposition is joining with the Greens and Democrats in saying is, 'We will not let you spend this money on welfare recipients unless you spend even more again.' That is not a realistic proposition. The money is not there. The breaching has already been attended to. The current arrangements have not been given sufficient time.

I very much want the working credit to come into place in April. If this bill is not passed tonight, that is certainly not going to happen. I certainly want sole parents to get what I see as help in preparing them to look for work. I do accept that some people look at that in a different fashion. I respect Labor, the Democrats and the Greens for pressing their case when this bill came back a second time earlier in the sitting that we are now in, but I cannot say that I will respect a decision that presses those amendments again, because the consequences of that have been made very clear. I desperately want the bill to pass so that we can spend the money, give the working credit to the people who will benefit from it, and give the assistance that is required to sole parents and others. I think it is worth repeating that message; I thought it was clear the first time. I tried to make it clear in the second debate and I can make it no plainer and no clearer than I have just done.

Senator MARK BISHOP (Western Australia) (6.03 a.m.)—This has been a protracted and somewhat difficult debate for all parties who have been involved in these discussions for many months, if not years. The Labor Party acknowledged at the outset, has continued to acknowledge during the discussions both privately and publicly, and continues to acknowledge that the government's total package had a range of measures which it is fair to describe as very consistent with longstanding Labor Party philosophy and practice in this area. Put briefly, it had a range of beneficial measures that would have assisted a lot of welfare-dependent people and working people, into the future. We have also made the point quite clearly that in our view a range of the amendments that were rooted in the Pearce report, and then later reviewed by the Senate Community Affairs Legislation Committee, went to matters of the heart and of critical importance as far as the Australian Labor Party is concerned. We have continued to monitor developments as we have participated in the debates, and have reviewed our attitudes. But at this stage we have not been persuaded of the merits of departing from our original position.

Labor has been and is mindful of the need for progress on this bill. We certainly do not want to see a situation where the bill is stalled for any more time than is absolutely necessary, and we certainly do not want to be in a situation where there is a gridlock or deadlock on this critical bill. In that respect, we say to the government that the amendments that were moved and passed in this chamber some hours ago—arising out of the Pearce report in terms of the breach rate for parents and Newstart, the breach duration applying to parents and Newstart-Youth Allowance and the restitution amendments arising out of the Pearce report which apply already to parents, Newstart and Youth Allowance—are critical. We are not minded at all to depart from those and we will continue to insist that those amendments that I identified will progress. However, we do acknowledge that progress can only occur when all parties engage in meaningful dialogue and make some contribution to that process.

Accordingly, the Labor Party is not minded to insist on early amendments relating to the accumulation period in respect of

parents and Newstart and also in respect of housing affordability relating to Newstart and Youth Allowance.

The CHAIRMAN—Senator Bishop, could you identify the numbers of those amendments?

Senator MARK BISHOP—I will. Thank you for that advice. Labor will not pursue amendments relating to the accumulation period and housing affordability. Those are the amendments on the Senate schedule which are numbered: (4), (21), (23), (25), (26), (27), (33), (35), (38), (41), (57), (58) and (60). Labor will also not be a party to insisting upon the Democrat amendments relating to Austudy, numbered (44) to (46), (48), (51) to (53) and (55), as these amendments are not consistent with the package which Labor is pursuing. This, as I said, leaves the remainder of the amendments, which we insist upon in the Senate. Those amendments seek to have a reduction in the breach period from 26 weeks to eight weeks, coupled with an increase in the breach rates from 16 per cent to 20 per cent, 18 per cent to 20 cent, and 24 per cent to 25 per cent. The other key group of amendments relates to the waiver of the remaining portion of the breach period when a job seeker remedies their error. I ask that the question be divided in respect of amendment numbers (18), (22), (24), (37), (39), (40), (42), (43), (61), (63), (64), (65), (74), (75), (76) and (77).

Senator CHERRY (Queensland) (6.10 a.m.)—I rise to state that the Democrats are very disappointed indeed with the government's attitude to this bill. The minister in her comments this morning let the cat out of the bag as to what this is about, when she said that the government could not afford the budgetary costs of the amendments moved by the Senate. That disappointed me because breaching and penalties should not be a budgetary savings item. Breaches and penalties are supposed to be about behaviour, not about making money for this government. For the minister to come in here and say that the budget cannot afford the notion of getting a bit of fairness into a breaching and penalty system is, I find, an appalling attitude to come from the minister of the Crown responsible for the social security system.

Essentially, the minister is saying that she wants to use unemployed people in a revenue raising device to prop up the rest of her portfolio or the rest of this government's spending priorities. It would appear that fairness and equity and the notion of fixing some of the policy issues with the breaching regime identified by the Ombudsman, the Pearce committee, the National Welfare Rights Network and others will go by the by because of the fact that the minister wants to save a bit of money. It comes back to the whole notion that the Ombudsman talked about, that there appeared to be almost targets—to have a certain number of breaches to raise a certain amount of money to deliver a certain amount of savings into the budget. The Democrats reject this attitude completely and utterly.

The Democrats are prepared to go along with the Pearce recommendations, which in our view provide a reasonable balance between ensuring that unemployed people fulfil their mutual obligations and ensuring that that is done on a fair and equitable basis. The Democrats believe that the amendments which the Senate moved, whilst they were not perfect amendments from our point of view, were reasonable. As a package they were supported by the Australian Council of Social Service and the National Welfare Rights Network. They are the people working out in the field, trying to deal with Centrelink on a day by day basis, and they felt that the package moved by the Labor Party was a good package. I think the Labor Party's package fell short in some respects. I thought the rate of reduction that Labor was proposing for breaches was too high; but, as a fall-back, we were prepared to go along with it.

I am disappointed also that Senator Bishop has indicated that Labor is dropping their amendments dealing with the accumulation period. I cannot for the life of me see what the strategy in that could possibly be at this time of the morning and at this stage of the show. The accumulation period, which the Pearce committee had recommended, is a very important equity measure to try to prevent the accumulation of breaches, one breach on top of another, and the accelera-

tion of the accumulation of debt, which puts so many unemployed people into terrible situations of debt—potential homelessness and a whole range of other difficulties—as identified by ACOSS and in other reports. I cannot understand why Labor is now dropping these proposals from their own amendments. I do not understand it, because I do not think there is an agreement with the government on it. I could understand it in that case, but we are not being faced with an agreement—at least we are not being told that we are being faced with an agreement. It is mystifying.

From the point of view of the Democrats, we will be insisting on all of the Senate's amendments and ask the minister to reconsider. I do not want to see this bill lost, Minister; I do not want to see the benefits in this bill fall over; but I do want to see the government meet its responsibilities to deliver a breaching and penalty system which is fair, sound and equitable. I do not accept that the budget cannot afford it, because I do not accept that penalties and breaches are a fair and reasonable way of raising revenue. That is the core of my objection to your comments here this morning. I am happy to sit down and talk with the minister and the government about the best way of dealing with the Pearce recommendations, the accumulation period, the appropriate rate reductions, the notice periods for breaches and so forth, but I am not prepared to sit down and talk about how much money the government is going to raise out of unemployed people.

Senator NETTLE (New South Wales) (6.14 a.m.)—The Australian Greens believe that we should continue to insist on the Senate amendments that we passed earlier this morning. The government have indicated in the other place that they are adopting some safeguards with regard to this regime, but they are not agreeing to the reductions in the breaching period or the changes in the rate of breaching. The net effect of this is that they are continuing with the status quo, not allowing for reduced fines and not allowing for fines to be recovered.

We do not support mutual obligation or its extension to the groups covered in this legislation. We supported the amendments at the committee stage as an improvement on what we perceive to be a harsh and punitive regime and we continue to believe that we should insist on those amendments so as not to continue to take away the rights of some of the most vulnerable people in the community.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.16 a.m.)—I think I should respond briefly and try to make this crystal clear. I have heard some of the debate and it does appear as though some speakers believe that they can just pursue this line and they will be successful in getting changes to the broader breaching arrangements. They have not understood the consequence of pursuing things outside the client group that we are talking about. I have tried to make that crystal clear. I do not know whether the early hour of the morning has made it unclear to people what you are in fact doing. You may come back in February and say that you have had a rethink but what you are doing, if not actually postponing, is casting away forever a working credit and the other changes. I hope you understand that. Anyone who looks at the *Hansard* record will not be able to say that it was not made clear to you.

I hope you understand that we have before us a bill that is very positive for welfare recipients. You are, in effect, saying that you are going to refuse to pass it in order to have some other changes in another area, a related area. You will refuse to pass a bill that will spend hundreds of millions of dollars on welfare recipients—investing in them, giving them greater opportunities and more incentive—and you will again refuse to pass that bill because you would like some other matters dealt with. That is the position you are taking.

Without seeking to inflame the debate, Senator Cherry, let me say to you as nicely as possible, that pomposity does not actually suit you—it does suit some people, but it does not wear well on you; you are not known for it. To simply assert that your view is the right view and not give any credence to people simply having a different view about

achieving the same goal, I personally find terribly unattractive and unbecoming for someone of your reputation. And there is your assertion that the government's desire to continue with the breaching regime as it is is a revenue raising procedure.

Senator Cherry—That is what you said!

Senator VANSTONE—I notice that Senator Cherry interjects and says, 'That is what you said.' Again, I invite anyone who bothers to read the *Hansard* to go and look at it. I said that we could not afford to make the change. Quite the opposite from breaching being a revenue raising exercise, it is a compliance activity, and when you go soft on compliance it does cost you more. We are not talking about wanting to raise more money; we are talking about the cost of going softer. That is what I said—that we could not afford these changes. I stand by that—we cannot. That is not to say that breaching is some revenue raising exercise.

Senator Cherry, it might have done your reputation a bit more good if, when you referred to the Ombudsman's report and other reports, you had indicated that you were referring to a time period now long past and that significant changes have been made since then. But it is not my job to assist you in that; my job is simply to make it very clear to you what is going to happen if you proceed. You are looking at a bill whereby a government in a tight budgetary situation is wanting to spend hundreds of millions of dollars on people on welfare. We want to spend hundreds of millions, and all we are saying to you is that we do not have a few more hundred million to spend. You can put it at risk if you wish—that will be your choice—but the *Hansard* record will make it very clear that we are happy to pass this bill tonight, spend the money, introduce the working credit in April and proceed with the other changes; but that will not happen if you insist on these other changes.

We have already agreed to changes recommended by the Labor Party. I note, Senator Cherry, that you said you were willing to discuss that. That has not been my experience with you. Discussion with you is usually a case of: 'We want this, and if you won't give it to us it is not worth talking.' It is quite the opposite with the Labor Party. Even though I fundamentally disagree with the proposition that they are putting, they have at least been prepared to listen and accept variations and we are grateful for that. That, at least, has been welcome—albeit that it appears that the bill is going nowhere anyway. Senator Cherry, I make it abundantly clear to you what you are doing.

The CHAIRMAN—Senator Bishop has asked for the question to be divided and he has listed the amendments in two groups. In checking through the amendments listed, we cannot place amendments (47), (49), (50) and (54) into either of those groups. We have flagged this with Senator Bishop, and I hope we will be able to sort it out.

Senator MARK BISHOP (Western Australia) (6.21 a.m.)—I think we will be able to give you some assistance, Chair. I respond in passing to the minister's comments. Firstly, if the motion to divide that I moved earlier is passed in this chamber, the bill will still be alive. It will go back to the other place and the government will have the opportunity to continue to consider its position. Secondly, if that motion is not passed and the government decides to pull the bill, that will mean there is an opportunity for both the government and the opposition to consider their position over the forthcoming summer break. Thirdly, the working credit is a most valuable initiative. It is most worth while, and the opposition do not want to see it postponed either temporarily or, at worst, indefinitely.

Senator Vanstone—It may have to be if you don't sort this out tonight.

Senator MARK BISHOP—There is opportunity to sort things out in the next couple of hours, Senator Vanstone. Turning to the point raised by the chair, amendments (47), (49), (50) and (54) are to be included.

The CHAIRMAN—Included where—in the 'do not insist'?

Senator MARK BISHOP—We put it that the committee insist on those amendments. I ask that the question be divided and that the committee insist on amendments (18), (22), (24), (37), (39), (40), (42), (43), (61), (63), (64), (65), (74), (75), (76), (77) and (47), (49), (50) and (54).

The CHAIRMAN—Is everyone now clear? That includes the four amendments that got lost, so it is proper for the chair to divide the question and put—

Senator Cherry—I seek guidance, Mr Chairman. I would like to insist on all of the amendments. Does the division of the question means that it is put in two parts?

The CHAIRMAN—It will be put in two parts. Firstly, the question is that the committee not insist on its amendments (4), (21), (23), (25), (26), (27), (33), (35), (38), (41), (44) to (46), (48), (51) to (53), (55), (57), (58) and (60).

Senator Brown—Senator Nettle and I do not support the motion which does not insist on those amendments and would like our opposition to be recorded.

Question agreed to.

The CHAIRMAN—Now I will put the second part of the minister's motion. The question is that the committee not insist on its amendments (18), (22), (24), (37), (39), (40), (42), (43), (47), (49), (50), (54), (61), (63), (64), (65), (74), (75), (76) and (77).

Question negatived.

The CHAIRMAN—The question now is that the committee agree to the duplicated amendments.

Question agreed to.

Resolution reported; report adopted.

FUEL: ETHANOL

CHRISTMAS ISLAND: PHOSPHATE MINING

TRADE: LIVE ANIMAL EXPORTS

ENVIRONMENT: WALLA WEIR IRRIGATION PROJECT

MINISTERIAL CONDUCT: SENATOR COONAN

ENVIRONMENT: TOWNSVILLE TROUGH

Returns to Order

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.29 a.m.)—by leave—I have a series of short statements in response to a series of Senate orders to produce documents. Firstly, on 16 October this year, the Senate ordered that the government table documents relating to an ethanol excise and production subsidy. The government—in fact, it was me—made an interim response to the order on 21 October indicating that, owing to the number of agencies involved in the coordination of the request, it was not possible to comply by the due date. At that time I indicated that we expected to be in a position to respond shortly. It is fair to say that I was overly optimistic. The response to the order has, as I stated back in October, involved an extensive search of documents held in six portfolios. As you would imagine, Mr Deputy President, this has been lengthy and time consuming. While consideration of the documents is close to conclusion, the government has not been able to provide its final response by the close of business for this, the final sitting day—which is something that I had certainly hoped to achieve since I had given an undertaking to the Senate. I have spoken to the minister tonight about it, and I have actually also spoken to Senator Kerry O'Brien and have given him an undertaking on behalf of the Minister for Industries, Tourism and Resources, Mr Macfarlane, who is actually the coordinating minister. There are six other portfolios to deal with. The minister is happy for me to commit to tabling those documents out of session by next Tuesday. I am confident, dare I say—the *Hansard* might be quoted back to me next year!—that we will achieve that, and I have said that to Senator O'Brien privately and now on the record.

Secondly, an order of the Senate made on 19 June asked the government to table documents relating to mining leases on Christmas Island held by Phosphate Resource Limited. The government made an interim response to this order on 25 June of this year and indicated that the request was complex and involved a large number of documents held by a number of Commonwealth agencies. I indicated then that the government anticipated making a final response to the order as soon as possible in the Spring sittings. While consideration of the large number of documents is close to conclusion, the government cannot provide its final response to the order before the Senate

rises tonight, but the government will present its response as soon as possible.

Thirdly, an order made on 11 November this year related to the Independent Reference Group report titled *A way forward on animal welfare: a report on the livestock export industry*. I have a wad of documents here—which indicates to me that there is a substantial compliance with the order but there is a two-page, tightly written note which accompanies the tabling statement. I think it might be less tiresome to in fact seek leave to incorporate the tabling statement.

Leave granted.

The statement read as follows—

This return to order was made on 11 November 2002 and relates to the Independent Reference Group Report A Way Forward on Animal Welfare; A Report on the Livestock Export Industry.

Following a spate of livestock export incidents involving unacceptably high rates of mortalities, the Minister reconvened the IRG to provide Government and industry with advice on ways to improve the trade's animal welfare record.

The IRG is chaired by Dr Gardner Murray, Australia's Chief Veterinary Officer. The other members of the Group are Professor Ivan Caple, Chairman of the National Consultative Committee on Animal Welfare (NCCAW), Dr Hugh Wirth, President of RSPCA Australia and Mr Malcolm Foster, the former Chairman of the Red Meat Advisory Council.

The Minister for Agriculture, Fisheries and Forestry is happy to table the IRG Report for the information of Senators as the Government shares the community's view that live exports must consistently meet acceptable animal welfare standards.

The Minister is aware that live animal exports are especially important to rural communities, providing an alternative market to the domestic slaughter market for farmers for their livestock. In addition, some overseas buyers are unable or unwilling to accept meat slaughtered in Australia and are only prepared to purchase live animals. However, this significant trade can only be continued if the reasonable animal welfare concerns of the community are assured.

As evidence of the government's commitment AQIS recently cancelled the licence of an exporter whose unacceptable actions had the potential to jeopardise this valuable trade.

AQIS provided the IRG with a summary of the findings and recommendations of the MV Norvantes voyage 83 investigation and key findings from other investigations into recent shipments involving high sheep mortalities. The reports into the MV Norvantes and five recent shipments with high sheep mortalities have been finalised and are being tabled at this time. The reports have been amended so that references to individual AQIS officers are replaced with references to "an AQIS officer".

The AQIS report on the first voyage of the MV Becrux was not completed when the IRG met at the beginning of October, but a verbal report was provided to the IRG by AQIS. This AQIS report has now been completed and is also being tabled at this time.

A key recommendation of the IRG report was to agree to the immediate establishment of a dedicated joint government and industry Working Group to develop an Action Plan for the livestock export industry that provides a comprehensive framework for delivery of a sustainable live animal export industry into the future that meets the expectations of the community and livestock producers on animal welfare outcomes.

The Minister immediately accepted that recommendation and established the joint government and industry Working Group. Its membership comprised officials from Agriculture, Fisheries and Forestry—Australia (AFFA), the Australian Quarantine and Inspection Service (AQIS) and the Australian Maritime Safety Authority (AMSA) and representatives from the Australian Livestock Exporters Council, Livecorp and Meat and Livestock Australia (MLA).

The industry and government Working Group produced a draft Action Plan which was reviewed by the IRG and the final document incorporates the IRG's comments.

The final Action Plan, An Action Plan for the Livestock Export Industry, produced by the industry and government Working Group is also being tabled. The Minister has accepted the recommendations and findings of the IRG report and the IRG's recommendations are being implemented by the Action Plan.

The Action Plan identifies three priority areas of concern:

- Export preparation of eastern Australian Sheep;
- The impact of heat stress on animals, especially cattle and sheep exported from southern Australia into the northern summer; and
- Export of goats.

Specific new measures have been developed to ensure improved performance in each of these areas.

The Action Plan requires the adoption of risk analysis principles. Exporters must develop a detached risk assessment plan for each shipment.

The Government commends the working group and the IRG for their advice on developing solutions to manage problems in the live export trade. It is now up to industry to get behind the plan and make sure its recommendations are followed through.

An Industry Consultative Committee (ICC) comprising industry, government and animal welfare representatives is being established to drive the Action Plan's reform agenda.

The community rightly expects that live exports must consistently meet acceptable animal welfare standards. The Government shares that view and is determined to do what it can to improve the performance of the live animal trade. The Action Plan has been developed by the best expert advice available and offers a sound way forward for the industry to address concerns and to protect this vital trade.

Fourthly, on 10 December this year the Senate sought documents relating to the Walla Weir irrigation project funded by the Sugar Industry Infrastructure Program. Funding for the Sugar Industry Infrastructure Program is provided under a Commonwealth-state ministerial agreement which has been extended until 30 June 2004. I table that agreement. The Queensland Department of Natural Resources and Mines is responsible for administering and delivering the program in Queensland on behalf of the Commonwealth and Queensland governments. The project proponents, the grantees, are required to enter into separate funding implementation agreements or administration agreements, which are signed by the project proponents and the Queensland government and which outline the conditions of funding and the compliance requirements of the project proponents.

Under the terms of these agreements, the project proponents report regularly to the Department of Natural Resources and Mines. With regard to the Walla Weir project, the Queensland Department of Natural Resources and Mines, SunWater, which manages the weir under licence, and the Queensland Environment Protection Agency oversee compliance with the terms and conditions of the administration arrangement. Relevant documentation is held by the Queensland Department of Natural Resources and Mines. I table the agreement.

Penultimately, on 10 December the Senate had requested the production of all documents arising from inquiries by the Department of Prime Minister and Cabinet into a possible conflict of interest involving the Minister for Revenue and Assistant Treasurer, Senator Helen Coonan. I am advised that there has been insufficient time to assemble the documents, examine them and decide which, if any, are captured by the Senate's request. The government will respond to the Senate's order in due course.

Finally, on 10 December the Senate had sought to have tabled all materials prepared by Geoscience Australia in response to the proposal by TGS-NOPEC to conduct seismic testing in the Townsville Trough. Geoscience Australia has advised that it has not formally considered or responded to the proposal by TGS-NOPEC to conduct seismic testing in the Townsville Trough. Consideration of the seismic survey application, a special prospecting authority, is a matter for the Queensland government. In addition, the survey proposal has not led to any consideration of the area by Geoscience Australia with respect to the release of exploration acreage. There are therefore no documents from Geoscience Australia which are relevant to this order.

Senator LUDWIG (Queensland) (6.37 a.m.)—I seek leave to move a motion relating to the return to order requesting the provision of all documents relating to the inquiries undertaken by the Department of Prime Minister and Cabinet into the possible conflict of interest between the ministerial responsibilities of the Minister for Revenue and Assistant Treasurer and the commercial activities of Endispute Pty Ltd.

Leave granted.

Senator LUDWIG—I move:

That the Senate take note of the statement.

On Tuesday the Senate moved that by Thursday the government should provide all

such documents. As we understand the matter, in answer to the return to order, Senator Ian Campbell indicated that there was insufficient time to draw all the documents together. As I understand it—but I am happy to be corrected—he went on to say that the government was going to comply with the order at a later date. However, the documents that we have sought include 'all documents' relating to the inquiries undertaken by the Department of the Prime Minister and Cabinet into the possible conflict of interest between the ministerial responsibilities of the Minister for Revenue and Assistant Treasurer, Senator Coonan, and the commercial activities of Endispute Pty Ltd. This included, but was not limited to, a copy of the report of those inquiries furnished to Mr Howard. He referred to this report during question time in the House of Representatives last Tuesday, 3 December.

There has been sufficient time for that report to be provided by the government. They may find it bothersome or tiresome to retrieve all the other documents but, in particular, they could have and should have returned that one document for the Senate today. Therefore, the government is absolutely remiss in not complying with this order from the Senate. They did have, and still have today, sufficient time to at least provide that report. We are talking about a report on ministerial standards, which should not be kept locked in a safe somewhere in a back room of the Prime Minister's office. It should see the light of day—as we have done this morning!

The provision of this report into Senator Coonan's divestments produced by the Department of the Prime Minister and Cabinet, presumably by Mr Max Moore-Wilton himself, is appropriate. Even if the government were unable to provide all the documents by today, they were able to provide that report. There has certainly been sufficient time for that. Senator Coonan says that she resigned from Endispute last year and that on 3 January she held a meeting—possibly in the leaky conservatory—with Endispute company secretary and husband, Mr Andrew Rogers. Her resignation from Endispute was allegedly accepted, but there is no ASIC record of her resignation on paper until 15 November, when the company secretary informed ASIC. The question is: did Senator Coonan tell the Prime Minister of her changed circumstances before 15 November?

This and other key questions should have been canvassed in this report. In the time available, the answers should have been produced here. This is a matter of ministerial conduct, and the public have a right to be assured that Senator Coonan gave the Prime Minister assurances that her connections with mediation company Endispute are proper and correct. Mr Howard may well huff and puff about meeting ministerial standards but it seems he will not release any proof that these standards have been met. We are not able to see if Senator Coonan has met them. We are not able to see what she told the Prime Minister. Is her account an accurate reflection of what has transpired over the past month? We cannot know. Did PM&C do its job properly or did it give Senator Coonan the benefit of the doubt? These are key questions that should be answered. There has been time for the report to be provided. There has been time for the government to answer these critical questions. The government have denied us this report. We can only conclude, given that they have not produced the report in the time available, that the government are, in effect, covering Senator Coonan's tracks by refusing to release this important document.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (6.42 a.m.)—The cold, hard reality of the debate surrounding my colleague the Assistant Treasurer and Minister for Revenue is that the attack Labor tried to build against Senator Coonan and her husband, former Justice Andrew Rogers, is a scurrilous and disgraceful one. This has become obvious to the public and all but the *Sydney Morning Herald* newspaper. The attack on former Justice Andrew Rogers is particularly disgraceful. He is not a member of this place; he is one of the most respected former judicial officers and legal identities in Australia. Labor have made this scurrilous attack at a time when their own leadership is

under serious question and their poll ratings are very bad. They are resorting to the lowest form of politics: the politics of personal attack.

I have watched this attack take place—as I have the great privilege, honour and delight of sitting next to Senator Helen Coonan—and I have watched it ebb and flow over the last couple of weeks. The thing about political attacks—and I myself ran a few in opposition—is that you have got to have some oxygen to keep the fire burning. If you start the attack at the beginning of a sitting fortnight, you have got to have enough new material to keep that political fire burning for eight sitting days and eight question times.

I said to Senator Coonan on about Wednesday of last week—when Labor stopped asking questions after making a pathetic attempt at a nasty character assassination by terrible slurs against former Justice Rogers—that they had run out of firepower. They moved this return to order to try to keep the issue bubbling along. Senator Ludwig is honour bound to thump the table and act a little bit indignant. He had to go through the motions, and that is what Labor has been doing.

Yesterday we had a scurrilous attempt by the member for Werriwa in the other place to, effectively, pass off to the House of Representatives some shoddily photocopied extracts of a landscaping plan as a development application. That was reminiscent of Senator Stephen Conroy's behaviour in this place last week when he was waving around what he would have had us believe was an electoral enrolment form and alleging that it was a document that had been falsely signed by former Justice Rogers and falsely witnessed by Senator Coonan. Of course, we found out the facts the next day. It was no such document. The only thing false about the document was Senator Conroy waving it around. It was a forgery. It was a facsimile. Senator Conroy did not know what was on Justice Rogers' enrolment form, and the document that he was waving around was not that form. He was at least playing charades, but it was a pathetic and puerile attempt. Mr Latham's attempts in the other place do him no credit either.

This attack is a reflection on the Australian Labor Party's paucity of ideas, paucity of policies and paucity of leadership at the moment. It is a sad reflection on some of the Labor figures for whom I have had the most respect. I was saddened to see yesterday that Senator Mark Bishop tried to string along the attack in the most pathetic and puerile attempt at a question I have seen for a long time. I have enormous respect for Senator Bishop; I think he has a great contribution to make in trying to rebuild the Labor Party. Senator Bishop should not and does not need to get down into the gutter with people like the Member for Werriwa, because he is far more intelligent and has a far stronger contribution to make to the fortunes of the Australian Labor Party than the Member for Werriwa will ever have.

This scurrilous and disgraceful attack is also a reflection on the Fairfax media and in particular the *Sydney Morning Herald*, which has worked closely with the Australian Labor party—almost in a coalition, dare I say it—to run this attack. It is a reflection on the *Sydney Morning Herald*, and the people who own it—I do not particularly know who is in control of it—need to have a look at their own game. They run a major metropolitan paper in one of the most important cities of the world. Sydney is a very important city that should have a newspaper that people respect. I looked at the *Sydney Morning Herald*'s circulation figures this morning, and what do they show? In a city that has grown by seven per cent in the last five years and enormously in the last two decades, what has happened to the *Sydney Morning Herald*'s circulation? In September 1996, 255,000-odd copies were sold in a city of millions. The population has grown by seven percent since then, and what has happened to the circulation of the *Sydney Morning Herald*? It has gone down to 251,000.

If they want to run a paper in that way and employ journalists who are prepared to pick up muck from the Australian Labor Party on respected figures in that great city of Sydney—respected figures like Senator Helen Coonan and former Justice Andrew Rogers—that is where the *Sydney Morning Herald* will continue to go. Its circulation

will continue to go down as that city gets bigger, and it will head towards the gutter, where Labor politicians have wallowed for the last few sitting days.

Senator Helen Coonan and Andrew Rogers can hold their heads high as great Australians and great members of the Sydney community. Those people who seek to attack them, particularly those like the member for Werriwa and some senators opposite, have been proved wrong. They have been making allegations of false witnessing of declarations. If the Leader of the Opposition, Mr Crean, wants to try to improve the Labor Party's standing in the community, and his own standards, he should require those frontbenchers who ran this attack to either resign their positions or at the very least make an apology—just as Senator Heffernan did on this side.

Question agreed to.

VALEDICTORY

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (6.51 a.m.)—I seek leave for valedictory statements, and for those statements that would have been made in the adjournment debate, to be made at this time.

Leave granted.

Senator IAN CAMPBELL—I thank colleagues for granting that leave. I want to say a few thank yous at the end of what has been a very busy and historic session. Mr Deputy President, I firstly want to thank you for the role you have played in your first session in that position. I think the President and you have already created a strong team in the presidency and deputy presidency and are working well. I also thank the number of people who made this very important democratic chamber work in an effective, efficient and generally very collegiate and convivial manner over, as I have said, a very busy, historic and in many ways productive session.

There are many people who work behind the scenes in this place who get very little recognition. I know that most people who work in this place get incredible personal satisfaction out of serving their nation and serving this, one of the great democratic institutions of the planet, and I do know they do not necessarily feel that they need recognition for it. But they do deserve recognition.

Firstly, I thank my own team within the Manager of Government Business office and circle. I thank Scott Faragher, who is my adviser. He does a great job in his role. Myra Croke, the Parliamentary Liaison Officer, is the significant cog in this machine. There are lots of cogs that can be replaced, but the PLO is the one cog that cannot be replaced. Myra has done an extraordinary job, as usual, and I thank her for her fantastic support of me, the government and the Senate.

I would like to thank our great team in the Senate Table Office—Rosemary, Angie and Alison—who continue to do a superb job in supporting very urgent calls for paperwork, providing rapid responses and advice at short notice. Most importantly, they ensure that the Senate continues to operate like a well-oiled machine, ensuring that we get through enormous amounts of government business, of opposition business, of minor party business and that, basically, everyone gets a go and the place does operate.

I thank my leader, Robert Hill. We have had the pleasure of working together for just over six years now, and the government has racked up some significant achievements in that time. The close relationship between his office and my office is crucial to that, and I pay particular thanks to Senator Hill's staff and to Matt Brown and Warwick Bracken, who are a continual source of sound advice and a conduit to a minister who is very busy in a very important portfolio.

I give particular thanks to the Manager of Opposition Business, who has just come into that role post the election, Senator Joseph Ludwig, and his staff. Senator Ludwig has made a tremendously rapid move into a very important role, and can I say it is a pleasure working with him. He is a true professional who makes a strong contribution to the workings of the Senate. While I am talking about members from other parties, I thank all the leaders and whips, who have to seek to find consensus and compromise to ensure that the incredibly heavy program that the Senate has to deal with is managed in an effective and successful manner. It is a place

where there is always a lot of stress, because everyone has an agenda that they need to get up and issues that they want to raise. I think that just about all of the 76 senators in this place have different agendas, different things they believe are incredibly important to them and to the nation.

The great thing about the Senate as a political clearing house and a clearing house for ideas is that in this place, which is a wee bit smaller than the other place, there is significant tolerance even though there is stress and creative tension. We were able to have very enlightened debate in this session in relation to human cloning and research involving human embryos. These are issues on which people in this chamber held incredibly strong personal views, and this was the debate during which the most stress was put on the relationships in this place, but we still came through; we still got a result. It was a result that some people—I look at Senator Boswell—were not happy with, but ultimately we got through it. It was a well-informed debate of far higher quality than the debate in the other place—though I would say that—and I think the Senate shone through that. We have had a few times like that.

I extend my thanks to the whips as well. I have mentioned the leaders and whips, but Senator Ferris, my colleague Senator Eggleston from WA and Senator Sue Mackay and her team in the Australian Labor Party have to do a very important job.

Senator Mackay—We run it.

Senator IAN CAMPBELL—That is right. If the whips were not successful then the place would not work. I thank all of the clerks and the Senate staff. I would also like to thank the attendants in particular, including Lorna and Kathy, for the work they do for us. I have said to Lorna on occasions that it would be nice if the stuff they put in our glasses was something stronger. So, Lorna, we might share one of those later. I also thank all of the other hidden staff around the place. I think we are all very lucky to work here. I thank all of the staff who make Parliament House tick, including the car drivers, who do a great job. The other people who hardly ever get mentioned are the gardeners. I came here when Parliament House was only two years old and all of the trees were pretty small. They have all got pretty big now, which is making me feel older as well. The gardeners have really done wonderfully in and around Parliament House. The gardeners should accept our gratitude and be very proud of the work they have done in nurturing and improving the environs of this place.

I thank all of my colleagues from both sides of the house. On behalf of all senators, and on my own behalf, I also thank all of the families who have to put up with the stupid lifestyles that we lead, being away for them so long. They make the ultimate sacrifice. I am sure that all of us here enjoy our jobs and get enormous personal satisfaction out of them, but the people who make the true sacrifices are those who are left many miles behind. Can I wish all of you who have made this place tick and helped me in my job as Manager of Government Business a very merry, safe and healthy Christmas. I genuinely look forward to seeing you back here, but not before February next year.

The DEPUTY PRESIDENT (7.02 a.m.)—On behalf of the President, who at this stage would normally make valedictory remarks—as the Senate is aware, the President has had to return to his home state for family reasons early this morning—I seek leave to incorporate the President's valedictory speech.

Leave granted.

The speech read as follows—

As we end the Parliamentary sittings for 2002, I place on record my appreciation for the work of the Clerk of the Senate, Mr Evans, the other Clerks at the Table, Black Rod, and all the other officers of the Senate for their assistance and support throughout the year.

I particularly thank the Chamber attendants, and the staff of the Table Office during sitting days for always being ready to respond to the needs of Senators as they arise.

Thanks are due to the hard-working staff of the Senate Committee Office, Black Rod's office, the Parliamentary Education Office and the Procedure Office.

I thank Mr John Templeton and the staff of the Department of the Parliamentary Reporting Staff for producing accurate records of debate in this

Chamber, both in the printed and electronic Hansard, and on film.

I thank the staff of the Australian Broadcasting Corporation under the Supervisor, Mr Terry Malcolm, for their work in broadcasting the proceedings of the Senate this year.

Mr Mike Bolton and his staff in the Joint House Department also deserve our thanks. They ensure that this enormous building, which is a village populated by several thousand people on the average sitting day, functions effectively.

During this year we have regrettably been faced with new realities about security, and a consequence is that new procedures must be adopted at Parliament House and the Parliamentary precincts.

This has been done efficiently, and I am grateful for the forbearance of all occupants of, and visitors to, Parliament House. I know that everyone understands the need for enhanced security systems.

It is a steep learning curve to take up the presidency but since being elected in August I have appreciated the support I have received from all honourable senators. Every day I think is a privilege to serve the Australian people as a senator in this place and I know that none of us takes those responsibilities lightly.

I like to think that our chamber is—usually—a more civil place than some other places are, and that there is more genuine respect across the chamber among all senators.

This evening I want to pay special tribute to the Deputy President and Chairman of Committees, Senator John Hogg. He is a pleasure to work with, and he is the most reliable colleague. On a personal note, I have particularly appreciated his assistance to me this week.

I wish all senators, and their families, a very happy and safe Christmas and a restful vacation.

Senator MACKAY (Tasmania) (7.02 a.m.)—On behalf of Senator Buckland and Senator Forshaw, I seek leave to incorporate the speeches they would have made on the adjournment debate.

Leave granted.

The speeches read as follows—

Senator Buckland

Tonight I rise to speak on an issue that is causing myself and many in the community a fair degree of unease.

The issue is teenage binge drinking and sadly this becomes more pronounced during Schoolies Week.

Schoolies week of course is that time of year when scores of teenagers make that frantic changeover from regimented school life to a more adult way of doing things and they undertake an annual trek to holiday resort areas to celebrate leaving school.

What many of us fail to realise is that schoolies week, followed by the summer holidays is a period of time where teenagers are prone to alcohol abuse and drugs.

It is this period of time when many young people are introduced to drugs and are susceptible to binge drinking which has reached epidemic proportions, not only in many communities in Australia but also in many other parts of the world.

As one 17-year-old schoolie from Brisbane was reported saying in "The Australian" in November of this year "it would probably be a bit boring if you weren't drunk." It is sad to think that a 17 year old, a young person entering the most exciting period of life could have such a negative attitude.

I think I should at this point make it very clear that I am not characterising all young people nor am I characterising all those who attend Schoolies Week. Indeed I can see many benefits arising out of this time.

But in May of this year fifty professionals from 22 different countries made four wide-ranging recommendations for their report to the World Health Organisation (WHO), on the many countries where there has been an increase in binge drinking and the age of binge drinking has been getting lower.

The first advised WHO to 'assist countries in taking all legislative or regulatory steps necessary to ensure that young people are not exposed to promotional messages about alcohol'. In July of this year Victorian Health Minister John Thwaites said it was clear some alcohol companies were breaking the advertising code. He cited examples where women under 25 years of age were used to advertise an alcoholic soda, a drawing of a scantily clad woman holding a beer was erected in a school bus stop while another alcohol promotion had a seven-day party on the Gold Coast with the catch-cry "schools out, it's time to party."

In the hype of schoolies week, aided by various methods of advertising alcohol, alcohol is depicted as exuding a positive effect in social environments and links alcohol and sex and associates alcohol with extreme sports or driving.

A recommendation from WHO was that a total ban on the advertising of alcohol was necessary because it would be almost unachievable to prevent teenagers from seeing the advertisements.

A second recommendation urged WHO to raise the awareness of sophisticated advertising techniques through media advocacy and counter-advertising programs. It was suggested that powerful anti-tobacco commercials in the US were very successful with teenagers and could be used for alcohol.

In October 2001, it was reported that students at the traditional Schoolies Week on the Gold Coast of that year would be the targets of a new health education program aimed at reducing binge drinking.

Health Minister, Craig Knowles told Parliament, that the program would focus on reducing the secondary sale of alcohol to minors and reducing unsafe sex practices associated with the misuse of alcohol.

This project is an acknowledgment that Schoolies Week goes hand in hand with binge drinking and other related consequences along with other alcohol fuelled parties to celebrate the end of high school.

Alcohol abuse, in particular binge drinking, and boredom which seem to go hand in hand were also noted as concerns in most areas.

Rural communities in particular need to recognise that there is really not much else for young people to do in small towns and those communities with the aid of governments should therefore look at other recreational activities.

More than one third of teenage boys claim to have drunk more than 10 drinks in one session in July of this year according to a study conducted by Roy Morgan Research for the Salvation Army.

The report warns the "massive change" in drinking habits in recent years is a greater worry than illegal drug-taking because it affects so many more people.

"This generation of drinkers starts younger, drinks more, and indulges in binge drinking to a greater extent than any previous generation," the report says.

"The younger a person is when they start to drink the more likely they are to drink more than 30 drinks a week," the report goes on to say.

Overall, 63 per cent of teenagers have had their first drink by the age of 14. For the 14-24 age group, the prevalence of binge drinking had grown dramatically in the past 5 years, 45 per cent said they had drunk 10 or more drinks on one day the previous month while in 1997 only 18 per cent had gone on such a binge."

According to the study 22% of teenage girls had gone on a drinking binge in July, having consumed more than nine drinks in a single four-hour session.

The report—based on a sample of 614 Australians aged 14 and over—says community acceptance of alcohol, and recent publicity about its positive health effects, has hidden "the dreadful effects of excessive drinking."

Young people surveyed said the main reason they drank was to "fit in at social activities."

In September of this year 200 drunken youths wreaked havoc at Sydney's Bondi beach in school muck-up day celebrations. They damaged vehicles, buildings, signposts and garbage bins as they celebrated the end of school. This brought the problem home to many because of the fear and damage it perpetrated in the community.

Mr Dillon, from the National Drug and Alcohol Research Centre said Australia was on of the few countries where binge drinking is acceptable. In Australia concern about illicit drugs had sidelined alcohol as an issue.

"Parents see alcohol use as a protective factor against other drug use," Mr Dillon said, "but in reality the only drug problem most will experience with their child will be alcohol."

Dr Paul Harben, the head of drug and health services at the Royal Prince Alfred Hospital, said binge drinkers were at increased risk of injury and death, pregnancy, sexual abuse, fights and accidents. They were also prone to drowning, falls, alcohol poisoning and choking on their own vomit. The latest official figures from the Australian Institute of Health and Welfare show 680 people aged 15 to 34 died in 1998 due to alcohol-related causes, compared with 547 due to all illegal drugs. That's not to mention that 3 700 people overall who die in Australia each year of alcohol-related disease and illness.

Illicit drug use is also a serious problem but it is much less common.

In the Sunday Age on 24th December 2000 it was reported that there is an alarming rise in drink spiking. It is believed that several schoolgirls had been given the morning-after pill after being drugged at a schoolies week outing in Queensland.

It is time to pay the binge-drinking epidemic the attention it needs. We cannot be complacent on this tragedy facing our young in society.

Senator Forshaw

This morning as this parliament draws to a close we will travel back home hoping to enjoy a happy, healthy and safe Christmas and New Year. Our expectation is likely to be fulfilled because we live in a relatively peaceful and safe part of the world.

Of course for a number of Australian families it will not be happy or peaceful. I refer particularly to those who lost relatives and friends in the terrible tragedy of Bali.

I said relatively peaceful and safe because unfortunately our part of the world is no longer as safe as we once thought. Bali taught us that. It taught us that Australia is no longer isolated from the reach of terrorists and extremists.

It is therefore appropriate at this time that we reflect on those who live in the Middle East, in Israel and Palestine, the birthplace of Christianity—the historical basis of our celebrations at Christmas time.

In that tortured part of the world there will be very little celebration, happiness or safety. Rather as we wait for the opening of Christmas presents people in Israel will wait for the next suicide bomber to strike. And the people of Palestine wait and dream of their own democratic country.

Amidst all this violence and despair one thing stands out. It is the enduring nature of Israel's democracy. On 28 January 2003 the people of Israel will once again vote in their general elections. They will vote just as they have continued to do for over 50 years despite the invasions, the wars and the terrorist attacks by those who would seek to destroy their country.

The enduring nature of Israel's democracy stands in marked contrast to all those other countries of the middle east region where human rights, political freedom and equality are but things to dream of. Countries that have in the past tried to destroy the state of Israel. Some of them still pursue that aim today

Democracy is of course something that we in Australia take for granted. We cherish our right and our opportunity to debate issues, to express our opinions particularly in this Parliament.

It was therefore with some surprise that I read a speech by the Member for Fowler in the House of Representatives last Tuesday 9 December 2002. The Member for Fowler has strong views on the Israeli-Palestinian conflict. They are not necessarily views that I share but I acknowledge her right to express them.

However, during her speech the Member for Fowler made some rather astounding claims which simply are not based on fact. Let me refer to the honourable member's speech.

In referring to a Notice of Motion which the Member for Fowler had previously moved, and which had been debated in the House on 11 November, Ms Irwin said,

> My motion was an invitation to this House to debate an issue which has not been debated here in living memory.

She went on further to say:

> ... there is a code of silence in this parliament which forbids the discussion of what is by any description a major issue in world affairs. I would have thought an open discussion of this issue free from party pressure may have been a valuable exercise. Even considering the fact that Australia is not a major player in Middle East affairs, for our national parliament the issue was certainly worthy of debate.

It is simply not true that this issue has not been debated before in the Parliament in living memory as the Member for Fowler claims. It is not true that there is a "code of silence" that prevents discussion or debate on this issue. Rather the opposite is the case. The Middle East conflict has been the subject of much debate and discussion in this Parliament particularly in recent years as the situation in the Middle East worsened.

Parliamentary records show that issues relating to the Middle East and Israel have been raised in this Parliament on 457 occasions in the last four years. Indeed there have been 137 specific references to Israel by way of speeches, statements, etc., just in this past year alone.

Moreover a number of speakers in the debate on Iraq in September this year took the opportunity to express their views about the Israeli-Palestinian conflict. Most of them involved an attack upon Israel whilst ignoring the real issue namely the appalling record of Saddam Hussein.

The Member for Fowler went on in her speech on 9 December to say:

> In a country which prides itself on its traditions of democracy and free speech you would not think courage was needed to speak on a motion in this parliament. But, later in his article, Alan Ramsey relates the experience of former ABC Middle East correspondent Tim Palmer. In this and other incidents brought to my attention, anyone speaking or writing publicly on the Middle East can expect to be subjected to personal attacks and to have assumptions made about their reasons for raising the issue.

Frankly, this is an exaggeration. You do not need courage to express your views in Australia about the Middle East crisis. Hardly a week goes by without some commentator, academic or journalist providing their views or analysis on the conflict. The letters to the Editor columns and opinion pages in our newspapers and TV current affairs programs constantly contain articles or provide coverage of the dispute.

I am not aware of anyone in the Australian Labor Party or in any other political party being prevented from expressing their views on the Middle East conflict.

No doubt there are occasional personal attacks. If you are involved in this emotional debate you have to expect them even if you don't like them. I regularly receive emails and letters from people claiming that I and anyone who supports Israel is an apologist for Zionism or part of some worldwide Jewish conspiracy. Indeed some of the venom and language is so vile and warped that it is clear anti-semitism is still very much alive.

One disturbing event was the attempt earlier this year by some academics both locally and overseas to organise a petition calling for a boycott of Israeli academics and Israeli academic institutions.

It was not very successful but it did demonstrate just how far some opponents of Israel are prepared to go to pursue their one-sided prejudices. In July this year in the United Kingdom Professor Mona Baker at the University of Manchester sacked two Israeli academics simply because they were Jewish. Professor Baker was a signatory to the petition to boycott that I referred to previously. In a letter to her two colleagues, Professor Gideon Toury and Lecturer Miriam Schlesinger, Professor Baker wrote:

> Dear Gideon. I have been agonising for weeks over an important decision: to ask you and Miriam, respectively, to resign from the board of the Translator and Translation Studies Abstracts. I have already asked Miriam and she refused. I have 'unappointed' her as she puts it, and if you decide to do the same I will have to officially unappoint you too.
>
> I do not expect you to feel happy about this, and I very much regret hurting your feelings and Miriam's. My decision is political, not personal.
>
> As far as I am concerned, I will always regard and treat you both as friends, on a personal level, but I do not wish to continue an official association with any Israeli under the present circumstances.

What next—burning their books?

As we approach the end of 2002 there maybe some flicker of hope for the Middle East. There are people of courage in Palestine. People who have been prepared to stand up and call for an end to the violence. People who have recognised that the rejection of the Clinton-Barak peace proposals in 2000 and the subsequent Intifada and the past two years of violence were major mistakes that have harmed the cause of Palestinian statehood.

On 19 June 2002, 55 prominent Palestinians including Hanan Ashrawi issued a communique which stated, inter alia:

> ... we the undersigned, wish to hope that those behind the military actions aimed at harming citizens in Israel will reconsider their acts and cease pushing our youth to carry out these operations, because we do not see them as leading to any results except for increased hatred, enmity, and hostility between the two peoples, deepening the chasm between them and destroying the possibility of both peoples living alongside each other in peace in two neighbouring states.

More significantly however was the recent call by Mahmoud Abbas (also known as Abu Mazen), the second highest-ranking Palestinian leader, for a pause in the Intifada, and a similar acknowledgment by a former Palestinian Authority Minister, Nabil Amr, that the rejection of the Clinton plan and the Intifada had been a costly mistake.

These public challenges indicate that maybe, just maybe, there are people in Palestine who understand that their future lies in negotiation rather than terrorism and violence. That is what democracy is all about. It is the only way forward for the Middle East.

Senator SANTORO (Queensland) (7.03 a.m.)—I seek leave to incorporate the speech I would have made in the adjournment debate.

Leave granted.

The speech read as follows—

Queensland is a very go-ahead place. Throughout the state communities look to the future with pride in their ability to make a Living—and better—in the new world of the twenty-first century.

No more so is this spirit obvious—so obvious that it is palpable—than in the cases of the Gold Coast and the Sunshine Coast.

These two regions, proudly independent communities in the best traditions of the Australian way of life, have taken to heart the lesson that there is strength in unity.

They have a message. That message demands to be listened to. It is a compelling message—and not just because it is a very good message indeed, but also because of the vibrant people who are selling that message.

It is often said that Queensland is the home of small business. That is doubly so in the case of the Gold boast and the Sunshine Coast. Roth regions are the home of the entrepreneur and the innovator. Both profit from this. And both are determined to continue to profit from this—and to build on those profits.

It seems to me very appropriate that on the last occasion the Senate—the States' House—sits in 2002, it should hear the inspiring story of how the Gold Coast and the Sunshine Coast are building an even brighter future for themselves and for their state and country.

The Gold Coast has put to put together a great team of people who are selling the message that Gold Coast City is transforming through innovation. The statistics prove the point: All age groups are moving to the city and its hinterland in search not only of the lifestyle choices that climate and geography make possible, but of booming employment in business—particularly small business—and industry, in education, in IT, in tourism and hospitality.

The numbers are impressive. At any one time—and this excludes the peak holiday period into which we are now passing—there are more than half a million people resident on the Gold Coast.

The city itself has a population of 450,000—it's Australia's biggest city outside of the mainland capitals—and on any given day, around 100,000 visitors.

It is a young city: No longer—if it ever really was—a retirement community alone.

Developments valued at $10B are under way. it is in every sense a place of increasingly locally coordinated planning and tremendous forward vision.

It is a place that believes in the maxim: carpe diem. It is determined to seize the day. It is doing so by confronting the natural challenges that growth bring head on.

To transform through innovation means in the context of the Gold Coast that you must recognise the realities of the day. As the Gold Coast City Council itself suggests—in an exciting audio-visual presentation I have recently seen and which is the product of author Bernard Salt, who wrote 'The Big Shift'—it is dealing directly with the implications of demographic and cultural change.

Its assertion is that the Gold Coast region is ideally placed to build on the benefits of the push from the bush. In 1901, 52 per cent of Australians lived in rural areas and only 8 per cent in coastal communities. In 2001, the rural population had fallen to 18 per cent and the coastal communities to 19 per cent.

In the case of the Gold Coast, a modern city in its own right, this demographic is further bolstered by another—the growth of suburbia. In 1901, nationally, 15 per cent of Australians lived in the suburbs. In 2001 that percentage had grown to 58. The Gold Coast magically combines the coast and the suburb in a way that truly shines a light on the modern Australian way of life.

I recently met a delegation of Gold Coast business people who were proudly boosting their city.

Let me say that there is nothing wrong with boosterism, in spite of the bad press it once got—still gets—from its genesis in the amazing American expansion of the nineteenth century.

The delegation was led by Gold Coast councillors Alan Rickard and Max Christmas: and their message was, frankly, exciting.

Let me say too that there is nothing wrong with excitement, either.

It is true that the Gold Coast, like all developing and growing communities, has some problems—or if not problems, then some issues that need to be addressed.

I'll come to those in a minute, but first I want to say a word or two about my Liberal colleagues in the other place who represent Gold Coast-based seats.

Stephen Ciobo, Margaret May, Kay Elson and David Jull are tireless representatives of their constituencies and their constituents. The Liberal Party is the party of freedom—freedom to work, to build, to have families, to create a great life. The Cold Coast is I believe classic Liberal territory, and we are working to make it so at the state level as well as federally.

With innovators such as the people I've just mentioned, and a strong community focused development ethic such as that demonstrated by the "innovation city" branding that underpins the new push to—as the promotional literature puts it—"have it all", the Gold Coast is going places.

It will be assisted in going places—literally—by greater governmental focus on public transport and the road system; on a much needed emphasis on facilitating eastwest movement within the city, which is too much aimed at north-south movement along the beaches at present; on develop-

ment of the Gold Coast airport; and in better attention to environmental issues.

It's true that some of these things are negatives in the present picture. I believe that the Gold Coast community, properly facilitated by government at all levels, can beat all of those challenges.

It is already—has been for a long time—the country's leader in domestic family holidays: the destination of choice of mums and dads—and kids—from across the nation.

It is now also an education centre of excellence that dies everyone proud, with the Griffith University Gold Coast campus, Bond University, and a strong TAFE presence.

Mr President—

The Sunshine Coast is also an astonishing success story. I heard the latest chapter in this tale just last week, here in Parliament House, when a delegation from the three council SunROC organisation came to see me and also my colleagues Senators Brandis and Mason.

They gave us a stirring presentation too, as you would expect from such a forward-looking and lateral-thinking organisation.

SunROC, which is the Sunshine Coast Regional Organisation of Councils, links the three local governments in the area and gives the entire region a strongly coordinated focus.

The Sunshine Coast grew up in a rather different way from the Gold Coast. It is one of the fastest growing regions in Australia—a rate of 4.4 per cent a year over the 10 years 1991 to 2001. Nearly a quarter of a million Australians now call the Sunshine Coast home.

Forecasts are that the population will double within 20 years.

Now that might be seen in some circles as a planner's nightmare,

Not in SunROC. Don Aldous, the mayor of Caloundra City; Trevor Thompson, deputy mayor of Maroochy Shire; and Frank Pardon, deputy mayor of Noosa Shire, believe in thinking positively.

So too do the other members of the delegation to Canberra last week: Tony Long, the independent chair of the SunROC Transport Infrastructure Project Committee; Graeme Pearce, SunROCs 'Executive Director; Tony Nioa, Chair of the Sunshine Coast Area Consultative Committee; and David Hopper, the CEO.

SunROC's mission statement says this:

SunROC will be recognised as the pre-eminent lobbying organisation for the regional interests of the City of Caloundra and the Shires of Maroochy and Noosa, and through effective lobbying and council cooperation, the Sunshine Coast will have the best physical infrastructure of any region in Australia ... This in turn will achieve the highest standards of economic, environmental and social infrastructure for the region, and the quality of life of the citizens of the Sunshine Coast.

Now that, in my opinion, is genuine nation-building material. That's what we should be doing, across the country. Our country—any country—is primarily its people. Let us never lose sight of that.

I want to pay tribute to the three federal Liberal representatives of the region—Peter Slipper, Alex Somlyay and Mal Brough. Like their counterparts on the Gold Coast, they are always there when the Sunshine Coast needs to put its point of view across.

The Sunshine Coast, again like the Gold Coast—but in a subtly different way, of course—is a region in which small business drives the economy. It has a strong tourism industry—one incidentally that has been given a great fillip by new air services direct from southern states provided by Virgin Blue and Qantas.

It has a rich hinterland—the mountain communities of Maleny, Mapleton and Montville, like Tamborine and the others in the Gold Coast hinterland, would see off the best competition from anywhere around the world in their tourist experiences and facilities.

SunROC has adopted eight Action Plans—

Transport Infrastructure: Suntrain—a public transport system; and road infrastructure.

Recreation and Culture: Quad Park—a regional sports complex; a Regional Arts and Multi Purpose Exhibition Centre; and Regional Tracks and Trails.

Sugar industry: Future of the industry after the Nambour mill closure.

Telecommunications: Provision of broadband facilities.

Government Relations: State infrastructure Plan.

There are major shortfalls in the region's infrastructure, particularly with transport systems—public transport and roads—and telecommunications. The region represented by this go-ahead cooperative effort needs an extra helping hand, and it is looking towards State and Federal governments to provide a helping hand.

We should look upon the representations and the presentations of the leaders of the Sunshine Coast with great sympathy.

For their representations are based on the principle of self help and this sort of initiative wants to be recognised by State and Federal governments.

It has been my very great pleasure to have been able to engage so constructively with the worthy representatives and leaders of both the Gold Coast and Sunshine Coast region of Queensland.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.03 a.m.)—I seek leave to incorporate the speech I would have made in the adjournment debate.

Leave granted.

The speech read as follows—

The Democrats share the view of many people in the Darwin community that building an LNG plant at Wickham Point on Darwin Harbour would be unnecessary and irresponsible.

The refinery is designed to handle the natural gas from the Bayu-Undan fields, requiring a 3 million tonne per annum capacity.

After the approval had been given, the plan for the proposed refinery was upgraded to a ten million tonne per annum facility in order to process the gas from future fields, specifically those covered by the faltering Timor Sea Treaty.

Despite considerable public opposition to this development, including—

- 6,500 signatures on a 2001 petition,
- 5000 letters of protest to the Chief Minister,

and over 1600 negative submissions to the (Northern Territory's) Development Consent Authority, and only one in favour.

This plant will increase the Northern Territory's Greenhouse Gas emissions **by more than 60%,** and Australia's overall emissions will rise by 1.3%.

What are the residents of Darwin going to get for the 2 tonnes per day of Sulphur Dioxide that will come from this plant?

A cleaner fuel source?

No, at the moment, all the gas from this development has been slated for sale to Japan. ***None*** is to be used in Australia.

How many jobs does the Northern Territory stand to gain for the 5 tonnes of Carbon Monoxide coming from this plant each day?

One hundred and twenty.

Sure there will be more during the construction phase, but this plant will only provide **120** permanent jobs on site. The initial boom in the construction phase is by far outweighed by the ongoing costs and risks of this plant.

For the 1.5 tonnes per day of Particulate Matter to be released into the air, residents will get a floodlit refinery blighting their near-pristine harbour, and a 13 metre chimney flaring gas, spoiling the Darwin nightscape, the least light-polluted of Australia's capital cities, with a plume of flame that will operate for a **minimum** of 624 hours per year.

This plant will be producing an *estimated* 17 ½ tonnes per day of Nitrous Oxides. Although, upon deciding that their estimates needed verification, the Northern Territory Government's Assessment Report (AR 39) recommended that Phillips should monitor *their own* nitrous oxides emissions (and determine whether they exceeded the National Environmental Protection Measures for Ambient Air Quality)

And what will the residents of the NT stand to gain for their *eighteen thousand* tonnes per day of Carbon Dioxide? Tourism is the Northern Territory's largest industry (employing 14,000 people), and Darwin Harbour is an icon for that industry. I've just recently returned from Darwin and I can tell you that the Harbour is a scene of incredible natural beauty. And it should not be degraded by this wholly avoidable development.

Both the dredging of the channel and the disruption caused by the noise from the engines of these largest tankers in the World will cause permanent damage to dugong breeding grounds. On *The 7.30 Report* in August, one of the world's leading experts on dugongs, Helene Marsh stated that she believes the increased shipping will drive the dugongs from the area.

Large amounts of treated process water would be released into the delicate ecology of the monsoonal vine forest around the plant, and into the mangroves beyond them. The Assessment Report requires that Phillips warn nearby aquaculture industries to take precautionary measures to protect their livestock. The local, established industries rather than the owners of the new plant will have to safeguard themselves from the risks posed by this development.

There is still no definite plan for the large amounts of heavy metals produced by the refinery, other than that they are to be buried in landfill. Somewhere.

In the case of a cyclone (up to 300kph winds, with as little as a few hours warning), tankers with a draft of 11 ½ metres will be unable to leave the harbour until the tide is right.

These super-tankers will be carrying 145,000 cubic metres of gas, compressed to over 600

times it's natural volume. The real danger from these vessels is not so much an explosion, but a cloud of colourless, odourless, tasteless asphyxiating gas being released in the vicinity of the city of Darwin, the local port and our defence force sites: the tankers will pass within a kilometre of NORCOM Command, the Larrakeyah naval base and the Stokes Hill Wharf on their way to the plant.

Plans for a similar plant in Carteret County in the USA were terminated, after much public outcry, general safety concerns about terrorist attacks, and objections by the US Defence Forces were made over plans to build such a hazardous industry so close to its strategic assets in the port.

There are fears of a USS Cole-type incident of bombing a ship in port. These fears cannot be totally dismissed, given that Darwin falls within Jemaah Islamiah's operational zone Mantiqi 4.

There will be 50 metre high storage towers. Only two other buildings in Darwin are of this height or higher. In conjunction with the floodlighting required for this industrial site, this would seriously alter the aesthetically pleasing nature of the harbour.

If this project must go forward, then Glyde Point, a more respectable 45km from Darwin, is a site specifically set aside for industrial development in oil and gas (by the NT Development Corp).

Jobs will remain the same, the revenue will remain the same, but the health and safety (security) concerns will be greatly diminished.

Senator HILL (South Australia—Minister for Defence) (7.03 a.m.)—I want to in effect second the expressions of goodwill and happy Christmas of my colleague Ian Campbell. I thought he comprehensively covered the field of all of those very deserving individuals. Let me just mention in particular the President and officials of the Senate—the clerks, the staff of the Senate, the staff of the parliament—our personal staff and colleagues from all sides. It has been a long and at times somewhat difficult year, but I agree with Senator Ian Campbell that, for the most part, it has been carried out in reasonable cheer. For that I express my thanks to my colleagues. In doing so, I wish everyone a very happy Christmas.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (7.04 a.m.)—I join Senator Hill in those best wishes and valedictories. I take this opportunity to thank all of the support staff. I will not nominate them all. There are many here who serve the parliament that quite often we do not even see—from the gardeners to the people in the printing section. All of them serve this parliament extremely well. I do not know whether Senator Margaret Reid will be back when we return after our Christmas break—

Senator Lundy—I think she will be.

Senator BOSWELL—If Senator Reid is to be replaced by then, I take the opportunity now to wish her all the best in a very long and happy retirement with her husband. She has served this parliament for a considerable time. I think that she was elected in 1980, which makes her length of services well over 20 years. I wish her the best. We will probably see her around from time to time.

We are about to have six weeks off, and I hope that we feel a lot less stressed on our six weeks holiday than we have felt today. I think that this has to be something of a record for me. It is seven o'clock, and I think that we still have about an hour to go. I thank my colleagues Senator Nigel Scullion—he has fitted in very well here—Sandy Macdonald and Julian McGauran. They are a great mob of guys and I think everyone always really enjoys their company. I take this opportunity to wish all the staff and senators a very happy Christmas.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (7.06 a.m.)—I would like to also add, on behalf of the Australian Democrats, our best wishes for all here to have a pleasant Christmas—including the support staff around the entire parliament, who, as Senator Boswell said, do a magnificent and often unheralded job. Their role, of course, is crucial to the functioning of this place and therefore crucial to the effective operation of our entire system of government. I therefore think that their work needs to be acknowledged, particularly after a night like this one. It is bad enough that we force ourselves to sit through the night, but it is even worse when we force everybody else—the clerks, the attendants, our own staff and the like—to also work through the night.

In terms of specific thanks, I thank the many staff who work for Democrat parliamentarians around the country. They have had a year that, in parts, they would probably prefer not to have had, and they have continued to work effectively throughout all that. The fact that the Democrats have continued to be effective in the Senate, effecting change, effecting legislation and raising the issues, is a big tribute to all of those staff. I know that they very much need a break, and I hope that they have a good one. I am sure that similar things apply to other staffers. I thank all my Democrat colleagues. We have all had an interesting year as well, and I am sure next year will be a better one. But, again, they have all continued to work effectively on their main job, which is to represent the people of Australia and get better outcomes for them.

I think it was at the start of this day that we had a short debate about having more parliamentary sitting days and a few extra sitting weeks. One of the arguments against that was that, if we needed to extend, rather than having extra weeks we could extend the hours a little bit. After a night like this I would like to put my argument again that we not extend the hours a little bit, or a lot, through the night and into the next morning but that we just try and have a few more days, spread over more civilised hours.

It has been a difficult year for all Australians in many ways. Probably a lot of Australians finished the year feeling a little bit more apprehensive than they did at the start because of events such as the tragedy in Bali. I reiterate our and indeed the Senate's condolences to those who have been affected by that, and our and everybody's determination to ensure that the safety of Australians is maximised and that we do continue to maintain our way of life and not become too cowed by apprehension and fear. This is a fabulous country in many ways, as we would all agree, and we need to work to protect what is so good about it.

We are finishing up here and are due to come back in February. I hope our return is not before February, because there is some apprehension around the country that in the intervening time our country may find itself considering whether to engage in or be supportive of a war or a conflict in Iraq. That is obviously a serious issue, and I note the Prime Minister's general comments that in such an eventuality he would have a parliamentary debate. In that sense we hope very much that we are not back here earlier in January considering issues like that. I am sure that we would all hope that such an eventuality does not arise.

Despite the fact we are finishing up here, work continues and the commitment of many Australians who continue to work to make Australia a better place will continue. We will see the enormous amount of charitable work that people do over the Christmas period to assist people who are less well off. Many other people continue to work to address issues they believe are important. Whilst all of us do that work, it is appropriate to note and pay tribute to the work and efforts of many millions of Australians who in their own way—often just in a voluntary capacity—work to do what they can to assist in improving the nation that we live in.

Partly on that note, I seek leave to table a petition that is not in the appropriate form, which I waved in front of Senator Ferris a little while ago. It is from Amnesty International.

Leave granted.

Senator BARTLETT—Many hundreds of Australians are interested in ensuring that Australia upholds and maintains its human rights standards. People like that will continue to pursue those goals, and the Democrats, and I amongst them, will also do the same. I again wish everybody a pleasant break away from here. I am sure it will not be all restful. Many of us will continue to work in various ways. During the Christmas and new year period, especially, all of us will welcome time with families or catching up with people we have not seen for a while. Hopefully, we will come back here regenerated, reinvigorated and ready to engage constructively with each other for the common good that we are all here for.

Senator MACKAY (Tasmania) (7.13 a.m.)—I want to very briefly add my comments in thanking some people from the

other parties that comprise the Senate. I make particular mention of the whips. We have Senator Ferris from the coalition and Senator Allison from the Democrats, and the staff representative from the Greens is also a woman.

Senator Brown—Katrina.

Senator MACKAY—Yes, I did not know whether she wanted to be named. There are other staff from other parties—One Nation and so on. The joint whips meetings are quite different, although I did have a lot of time for Senator Calvert; I think he was very good. I enjoy them very much. It is a refreshing change that the people who are running the Senate—and I do not count the managers in that; I am sorry—are women. All the whips positions are elected, unlike the managers positions, so we do have the moral authority over that group. Having said that, I do recognise the role that managers play from time to time in organising the business of the Senate.

I would also like to thank my whip's team: the token male, Senator Geoff Buckland, who holds his own, and Senator Trish Crossin as well. Both of them have been very helpful and useful, and we are just a part of a team, as is the rest of the Labor Party in the Senate. The Labor Party is a pretty tight group here in the Senate. I would also like to recognise the cooperation from the government—both the National Party and the Liberal Party—and the Democrats, the Greens and One Nation. I genuinely think we all get on pretty well here. Most of the people are extremely decent and are here for very good motives. I would like to thank the clerks, who have been terrific as always. From the opposition's perspective, I would particularly like to thank Cleaver Elliott, who is the clerk that assists us. As others have done, I would also like to thank the ushers as well. Basically, I would like to thank everybody. I suppose I am bound to miss somebody out.

Senator Ian Campbell—Sue, I forgot to mention the Hansard staff. They need thanking, too.

Senator MACKAY—Yes, absolutely. On behalf of all of us, I would like to thank Hansard very much indeed for extraordinarily producing speeches which bear very little resemblance to the ones that we actually give—once they have gone through them, edited them, made the corrections and so on. I think they do a fantastic job.

On behalf of the Labor Party—I will not restate what everyone else has said—I wish everybody a good break. I think we all need one, especially after tonight. I hope it is a peaceful break, and I echo the sentiments of Senator Bartlett about the worrying developments with respect to the US and Iraq. I really would urge people to take a Bex and have a good lie down, as they say—to 'chill out', as is the vernacular these days—and look after themselves and get reacquainted with their families and friends. I think there is an issue up here in terms of isolation from normality. So, on behalf of the Labor Party, good luck, have a good break and we will see you all next year, fresh and reinvigorated.

Senator HARRIS (Queensland) (7.17 a.m.)—I also rise to add my comments to those of the Deputy President and the President. Despite the risk of falling into the trap of forgetting somebody, I would like to express my thanks to the following: the Clerk of the Senate, the Deputy Clerk of the Senate and all of their staff; the Usher of the Black Rod and her staff, because sometimes we tend to forget the wonderful job that they do in assisting us in our offices; the Table Office; Broadcasting; Hansard; and security, who do an absolutely marvellous job without intruding into anyone's space. I would also like to recognise both of the whips and, equally as important, the whips' clerks, because they play a very important part in the process of this place. I would like to thank my staff for the wonderful job that they do. I also thank each and every one of my colleagues for the cordial way in which they have carried out their duties here in this chamber this year.

In closing, I would like to quote two passages from the Bible. One passage is from Deuteronomy, chapter xviii, verse 15:

> The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy brethren, like unto me; unto him ye shall hearken …

That is the Old Testament prophet of the coming of Christ. That is what we are about

to celebrate at this time of the year. The second passage is from Luke, chapter ii, verses 1 to 11:

> And it came to pass in those days, that there went out a decree from Caesar Augustus, that all the world should be taxed.
>
> (And this taxing was first made when Cyrenius was governor of Syria.)
>
> And all went to be taxed, every one into his own city.
>
> And Joseph also went up from Galilee, out of the city of Nazareth, into Judaea, unto the city of David, which is called Bethlehem; (because he was of the house and lineage of David:)
>
> To be taxed with Mary his espoused wife, being great with child.
>
> And so it was, that, while they were there, the days were accomplished that she should be delivered.
>
> And she brought forth her firstborn son, and wrapped him in swaddling clothes, and laid him in a manger; because there was no room for them in the inn.
>
> And there were in the same country shepherds abiding in the field, keeping watch over their flock by night.
>
> And, lo, the angel of the Lord came upon them, and the glory of the Lord shone round about them; and they were sorely afraid.
>
> And the angel said unto them, Fear not: for, behold, I bring you good tidings of great joy, which shall be to all people.
>
> For unto you is born this day in the city of David a Saviour, which is Christ the Lord.

To my colleagues and friends, I wish you all a blessed Christmas and a safe and happy new year.

Senator BROWN (Tasmania) (7.22 a.m.)—I thank Senator Harris and preceding speakers for their Christmas wishes. I want to reflect on the past 24 hours we have all contributed to, because it has been a very big work day for the representatives of Australia in both houses of parliament. In the other place at the moment, the ASIO bill is still being debated. A lot of people will read or hear about that today and think, 'What were they doing all that time?' But those of us who were here know that there have been very complex legal, social and ethical issues involved in this debate which will affect real lives. There is a big clash between the need to protect our country from terrorists and terrorism, while recognising the need to protect freedoms and liberties from the measures that need to be taken in that pursuit. So the debate still goes on. I think we should stop and reflect on that and on this remarkable democracy of ours. Without exception, there has been a willingness and the ability of people in both houses of this place to contribute to the debate and to keep going to try and find solutions when there is such a clash of different needs built into an important piece of legislation like that. I congratulate all my colleagues in this place.

I also want to say a short word about my two new colleagues—Michael Organ, the member for Cunningham in the House of Representatives and Kerry Nettle, the new Greens senator in this place. At this time last year there was just me; now there are three of us. It is an interesting minor change but it is a big change for the Greens. In terms of politics, we have had a great year. I thank all the people out there in voter land who have given the support that has made that change.

But I have a particular word here for the 20 million Australians who we represent. A lot is said against politics and politicians, but, when you dig a little deeper, they are intensely defensive of the democracy and the freedoms that this house—this great bubble on the hill—represents. Politicians are very proud of the Australian institutions which represent democracy and freedom, and we are lucky enough to be present in one of the greatest of them at the moment.

That said, I wish everybody a great break, a wonderful summer, a happy Christmas, a bountiful New Year, and safety and security. I hope that we will not be at war in the next couple of months. I hope that the impending cataclysm in Iraq will be avoided. I hope that those who have the impulse for war will be able to restrain that impulse for the sake of all humanity, not just the people of Iraq and those who might be engaged in conflict there.

There are some dozens of other conflicts going on around the world at the moment—in the Ivory Coast, Tibet, West Papua and Colombia, to name just a few. I hope the coming year finds peace and some resolution

of the fear and utter hopelessness that so many people on the planet are faced with, which many of us in Australia do not comprehend and do not come close to in our daily lives. I hope that we as a great nation will be able to extend a little bit more of our bounty to the hapless elsewhere on the planet in the coming year so that in the future they can enjoy some of the hope that is in big measure in this country. I reiterate the season's wishes of those who have preceded me to everybody who works in this wonderful place and gives us the support that we need and get, so willingly and always with a smile, to enable us to represent the people of Australia.

Senator HARRADINE (Tasmania) (7.27 a.m.)—This is the time when we are accustomed to thanking those who have contributed so much to the operation of this parliament and to how we operate individually as well. I think the best way that I can thank them is to keep my remarks very short. It has been a long enough night as it is; they must be feeling very weary. My night was brightened when I got news of the birth of my 24th grandchild overnight, Liam Oliver.

Senator Boswell—Congratulations!

Senator HARRADINE—That renewed us. The fact is that those people on the staff of the Senate and my staff have contributed marvellously to the work of the Senate. I have nothing but admiration for them and wish to thank them from the bottom of my heart for what they have done. It is no good to nominate particular people because they have all helped—and have all done so very efficiently and effectively. So I take this opportunity of wishing them and all of you blessings for Christmas and a happy New Year.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (7.29 a.m.)—I seek to make a statement in lieu of the adjournment debate. I see Senator Patterson looking puzzled there—

Senator Patterson—No, I'm very interested in what you are going to say, Bos.

Senator BOSWELL—I made a speech in the Senate on 12 November regarding stem cells. There were a number of people who responded to that speech, and I have looked closely at their letters. I do intend to do some further research on two of those responses. I will research further what Dr Vaughan and Dr Jonson have had to say. I want to take this opportunity to say that Professor Anderson was correctly named on the ABC web site that we consulted when doing research for the speech. The mistake arose from the ARC's own government web site describing Professor Anderson as President of the Academy of Science, which he is apparently no longer. I regret the implications of the error. I withdraw the offending statement, which was as follows:

> Another prominent Trounson supporter, also on the ARC board, is Professor Brian Anderson, from the Academy of Science—and a great believer in cloning.

I would also say that, in that speech, I did not accuse anyone of dishonesty, lack of integrity or impropriety. If the people named in the speech have interpreted what I said in that way, that was not my intention. I intend to make further remarks at a later date.

Senator LUNDY (Australian Capital Territory) (7.31 a.m.)—I had hoped to have delivered this adjournment speech yesterday evening, but for some reason it did not happen. I found it interesting that Senator Boswell mentioned Senator Margaret Reid. My comments are in fact not about Senator Reid, and I hope I will get an opportunity to present an appropriate valedictory when Senator Reid chooses the time of her resignation from this place. I did want to spend a little bit of time reflecting on the fact that she seems to have been not only pushed out of the presidency but given a little shove out of her own party room.

The focus is now on the political shenanigans of local Liberal Party members as they clamber over each other for nomination as Senator Reid's replacement. The line-up of prospective candidates reads a bit like the current English cricket team: very little form—just a lot of bench warmers. There are eight candidates in all, including some you have never heard of and some you wish you

had not. For the record, the line-up is: Martin Dunn, Belinda Barnier, Gerry Wheeler, David Kibbey, Kate Carnell, Bill Stefaniak, Steve Pratt and Gary Humphries. Like the struggling English cricket team, the local Libs are looking for a replacement player to help their sagging fortunes. But there is no Colin Cowdrey in the Liberal ranks, so they have wheeled out a disgraced former Chief Minister, Kate Carnell. Kate Carnell was once considered the next big thing in the Liberal's batting line-up. She was well and truly caught out when she came up against the twin attacks of accountability and probity. I guess it is a bit like facing Warne and McGrath. In the first innings she produced the Feel the Power of Canberra campaign, in which large amounts of taxpayers' money were expended on an old plane that was tarted up with the slogan painted on the side. This was the level of tackiness of the campaign to promote Canberra. I think the plane flew once or maybe twice. I believe Ms Carnell was well and truly run out during a drive home from a Canberra winery but the third umpire replays were inconclusive, and she was given a dubious 'not out'.

In the next innings, Ms Carnell should have retired hurt over the debacle that was the Kinlyside development, where she had one set of rules for mates and another for the rest of the population. Realising she could not get a legitimate run on the board, Ms Carnell then decided to have a go at other sports. First up, Ms Carnell went for the futsal slab, an edifice that appeared virtually overnight with no community consultation, parliamentary scrutiny or assessment of return to the taxpayer. Next she tried motor racing. This time public money was poured into the V8 Supercar race without proper accounting and with massive overestimations of the return to the ACT taxpayers, problems which the Labor government has now had to fix. Back on the field, Ms Carnell was unable to cope on a turning electoral wicket and, facing accountability at one end and probity at the other, she decided to go for a big innings. Sadly, this ended in the tragic disaster of the Canberra Hospital implosion. Here, Ms Carnell, I believe, was exposed as being unfit to handle responsibility and show leadership.

I should mention the Fujitsu debacle when 900 promised jobs, in exchange for millions of dollars of ACT taxpayers' money, were subsidised. The 900 jobs were never produced; in fact, 100 jobs were produced.

And then it was Bruce Stadium, the fiasco that resulted in Ms Carnell being unceremoniously kicked out of the ACT team. The upgrade of Bruce Stadium was to have cost $12 million, yet the former Liberal Chief Minister expended almost $45 million, at least $24 million of which was unlawfully spent without the approval of the ACT assembly. The Auditor-General's report into Bruce Stadium revealed that investigations were severely hampered by an absence of documentation on most of the important decisions relating to the stadium upgrade. The Auditor-General stated, in effect, that a documentary and accountability trail was almost entirely absent; that is what the Auditor-General said. Ms Carnell's political career came to an end in October 2000 when her assembly peers and voters lost confidence. No-one in the ACT should forget that Ms Carnell did resign in disgrace with a litany of failures, bungles, fiascos and financially irresponsible deals trailing behind. Her preselection for the ACT Senate vacancy would be seen as rewarding failure, incompetence, maladministration, obfuscation and avoidance of public scrutiny. But she does have competition: ACT Liberal assembly member Bill Stefaniak also wants to be a senator. In fact, he said he wants to be Minister for Defence. It is like wanting to be made vice-captain on your first Test.

Next at the crease is Steve Pratt, another Liberal in the ACT assembly who does not want to serve out his full term. Pratt has also failed to inspire selectors. No doubt they will be telling him to go off to the nets to get some much-needed practice before he tries again. And perpetual candidates Belinda Barnier and Martin Dunn of lower house losing fame have also donned their whites but, like Pratt, they are seen as bench warmers to flesh out the late order—and David Kibbey has surprised selectors by actually showing up!

Another to put up his hand to open the batting is Gary Humphries. He used to be

captain of the ACT Liberals but his form disappeared when playing for the Territory. His bid for the federal team had been met with a lot of eye rolling, given a very poor batting average for the season, and Humphries' resignation from the leadership of the ACT Liberal opposition can only be viewed as a rat deserting the sinking Liberal ship. Voter concern will grow as people recall his commitment at the last ACT election to remain in the ACT assembly even if the Liberals were defeated. This is another Liberal non-core promise and heralds the end of Mr Humphries' political career, so in the federal stakes we can put him down as being out for a duck.

Then there is the PM's man Gerald Wheeler. A John Howard staffer, Mr Wheeler likes a very dry pitch. The favourite son of the old drys ensconced on Capital Hill, Mr Wheeler is both a monarchist and a social conservative. With crikey.com airing all sorts of ultradry baggage, the most enlightening perhaps is his alleged opposition to economic sanctions against apartheid South Africa at the 1990 Hobart conference of Liberal students. So this Liberal preselection for ACT senator is a battle of the dry and driers. It is also a test of the Howard-Costello leadership battle. Will Costello get another vote in the party room via Ms Carnell or will Mr Howard boost his numbers by having any one of the others? Clearly, the PM does not want to take any chances, so his weight has been thrown behind one of his own staffers, Mr Wheeler.

The scene in the ACT Legislative Assembly is this: three of the six players in the ACT Liberals want out. They are all putting their hand up. They cannot handle the competition from the Stanhope Labor government and they do not like being beaten by an innings each time, so they are desperately clambering to take Senator Reid's spot. I have got some news for them: the Senate is no holiday. It is quite offensive that these people are treating this place as some sort of retirement village. I am sure the voters of the ACT will let MLAs Humphries, Pratt and Stefaniak know how they feel about their attitudes and actions at the next ACT assembly election. I know that voters will express their disgust at the way the Liberals have treated Margaret Reid. Notwithstanding the anger at her leaving before her term is completed, the Liberals seem to have dumped her from the presidency and, insultingly, have said their goodbyes very publicly before she has announced the date of her leaving. We will see what happens later this month—I think it is the 20th. I do not know if there is anyone out there big enough to fill Margaret Reid's shoes.

I look forward to the opportunity to say my appropriate valedictory remarks when the time comes. In the meantime, I would like to add my thanks to all of the people in this place—the attendants, the security guards, Hansard and everybody else—because it is a pretty tough job. I have just spent the last 10 minutes being yelled at across the chamber, and that is all part of it. But I have to say it is a pleasure working in Parliament House. The staff here are quite extraordinary. They do a marvellous job and I wish them a merry Christmas. *(Time expired)*

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.41 a.m.)—I want to make a few brief comments in the valedictories that we are conducting at this unusual time of 17 minutes to 8 a.m., just in case anyone reads *Hansard*—it is unlikely, I know—and thinks I meant p.m. On behalf of the opposition I thank, as I always do, the President, the Deputy President and those others that preside in the chamber. On behalf of the opposition I would also like to thank the Clerk, the Deputy Clerk and all the other clerks, the Clerks Assistant, and those in the clerks' offices who do assist all of us in this chamber. We ought to note that the demands on the clerks in this chamber are very heavy at times. Today is an excellent example of that. We do appreciate their assistance. We also appreciate the assistance of so many others in this parliament.

More generally, I want to thank the staff of the Department of the Senate, the Table Office, Hansard and the Parliamentary Library as well as the attendants, Comcar drivers, cleaners, gardeners, transport officers, those in the dining room, the security staff, the Synergy Travel staff and so many others

in this building who assist us throughout the year and contribute in such important ways to the successful operation of the parliament. As we know, in the parliament there is always very much a focus on the parliamentarians—the politicians themselves. But I want to say on behalf of my colleagues how much we appreciate our staff and the staff of others in this building. We do appreciate all their efforts. I also want to say that we do not forget the staff of Senate committees, who have an onerous task as well. We do appreciate the efforts of all those around the building who do assist us and make life more livable in this building. As far as the opposition is concerned, I look behind me and, even though it is a tired team, I think to myself, 'What a terrific team it is!'

Senator Mackay—We came in to listen to you!

Senator FAULKNER—Thank you very much, Senator Mackay, I have no idea why you are not out having breakfast, to be honest, but I am sure there is a good explanation for the fact that you are here. I did want to thank particularly the Deputy Leader of the Opposition in the Senate, Senator Conroy—

Senator Mackay—He is not here.

Senator FAULKNER—He is not here, but I am sure he would appreciate being mentioned.

Senator Patterson—He is glued to the TV waiting to hear his name!

Senator FAULKNER—If he has got any sense, he will be asleep. I want to thank those who are responsible for the chamber management, which is always a difficult task in the Senate—Senator Ludwig, the Manager of Opposition Business in the Senate, Senator Mackay, the Opposition Whip, and her two very efficient deputy whips. They do a great job and I think you would acknowledge, Mr Acting Deputy President Brandis, how important the chamber managers are on both sides of the parliament. Without their efforts, this place does not work effectively. Although things do happen on the floor of the chamber from time to time, so much happens outside the chamber or away from the microphones and I think that we ought to acknowledge that. I want to say very briefly that in this year of course the opposition farewelled six of our colleagues, former senators Crowley, Cooney, McKiernan, Schacht, West, and Gibbs. We wish them well in their future careers. I am also delighted to have welcomed six new Labor senators to our team. They are already making a very significant and important contribution in this place.

I also want to pay a personal tribute to my own staff, who have an enormous amount to put up with. I always say in opposition that we have a very small staff, but we have an extraordinarily effective staff and so much of what we are able to achieve is dependent upon them. I sincerely appreciate the efforts of my own staff, and I know that my colleagues genuinely appreciate the efforts of their staff. It has been so important to us over the past year. On behalf of the opposition I want to say formally that we wish colleagues well for the Christmas season and wish them all the best for the new year. On a day like today I can say to all those people, particularly those who work in the building, that I hope they have an enjoyable festive season and a happy new year. I particularly hope that they enjoy a very well-deserved rest.

Senator PATTERSON (Victoria—Minister for Health and Ageing) (7.49 a.m.)—I move:

That the sitting of the Senate be suspended until the ringing of the bells.

Question agreed to.

Sitting suspended from 7.49 a.m. to 9.00 a.m.

DOCUMENTS

Productivity Commission

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.00 a.m.)—I present the 25th report of the Productivity Commission on the review of automotive assistance.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, acquainting the Senate that the House has agreed to amendments Nos (1), (5) and (7) insisted on by the Senate, has insisted on disagreeing to amendments Nos (2), (4), (6), (8) to (10), (12), (13), (16) to (28), (30), (32) to (37), (40) to (47), (51) and (54) to (56) made and insisted on by the Senate, has insisted on amendments Nos (8) and (11) to (14) and not insisting on amendments Nos (1) to (7), (9) and (10) made by the House in place of Senate amendments, and requesting the consideration of the bill in respect of the amendments insisted on by the Senate to which the House insists on disagreeing and concurrence of the Senate in the amendments made and insisted on by the House in place of the Senate amendments disagreed to.

Ordered that the message be considered in Committee of the Whole immediately.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.02 a.m.)—I move:

That the committee does not further insist on its amendments nos 2, 4, 6, 8 to 10, 12, 13, 16 to 28, 30, 32 to 37, 40 to 47, 51 and 54 to 56 to which the House has disagreed, and agrees to amendments nos 8 and 11 to 14 made by the House in place of Senate amendments.

I will try not to delay the Senate a minute longer than I need to but I want to make a few points. When this bill was last in the Senate, Senator Ray made a couple of very important points but there were a couple of points that he made that I think were unfair. Senator Ray spent the first 10 minutes of his speech last time the bill was before the Senate talking in quite precise detail about what he called the government's principles—I do not want to use his words—and basically making the point that the government had changed its mind. I think in his own way, he gave us credit for showing flexibility in the passage of this legislation over the past six months to where we are now.

At the end of the speech I think he contradicted himself somewhat. No doubt he will want to further explain, even though I do not encourage that. He said that the opposition had moved some way towards accepting our legislation—I think that is an accurate reflection—but the government had not moved very far at all. I saw a contradiction; I may be wrong and I may be unfair to Senator Ray, but I think it is important to note that Senator Ray was quite correct in the respect that the government had made a number of significant compromises in relation to this legislation.

We have always said that we are willing to consider amendments that improve the bill, and our form is very good in that respect. The amendments that we had already made prior to the bill coming to the Senate a couple of hours ago in its last drive through this place included, just for example: first, providing for a maximum period of detention of seven days; second, providing for a split regime whereby judges issue the warrants and AAT members preside over them; third, significant additional safeguards to ensure that the warrants are warrants of last resort; fourth, significant additional safeguards to ensure that the people detained under the bill are treated appropriately; fifth, access to security cleared lawyers paid for by the government, except in extraordinary circumstances where access could be delayed for 48 hours; sixth, penalties for the actions of officials who breach the safeguards; seventh, protection against self-incrimination; and, eighth, protocols to govern the questioning process. These are all amendments that the government has made along this path, and I think Senator Ray and I would agree on that point.

We arrive at the legislation now, and only a few minutes ago the government in the House of Representatives further showed its willingness to compromise. The government, as I said earlier, has been focusing throughout this year on getting this bill passed. But, while the government has consistently pressed the importance and urgency of this bill, the opposition has shifted and changed

its position, apparently unable to make up its mind on where it stands on the important issue of national security. In contrast to the opposition, the government's position on this bill has always been clear and it has been consistent. We introduced the legislation because we believe that we need it to give our intelligence agencies vital tools to deter and prevent terrorism.

Despite the difficult passage of this legislation, we have never wavered from this position and we do not intend to do so now. By contrast, the opposition has had as many positions on the bill as you could possibly imagine. First, they would not support the powers in the bill, despite the extensive amendments made by the government at the behest of the parliamentary joint committee, which included senior members from the opposition's own ranks. Then they decided that the power should be given to the police, despite the fact that the bill has nothing to do with law enforcement. As if that was not enough, they finally saw sense and decided that the power should go to ASIO, but they amended the form of the bill so as to make it unworkable. Their indecision has not only put the community at risk by delaying the passage of the bill but also ultimately turned the bill into something which could no longer deliver the protection it was designed to achieve.

Members opposite have preached long and hard about the things the Labor Party will not wear, but apparently they will not wear a system that would permit intelligence agencies to hold and question a person believed to have information about potential terrorist acts. They will not wear such intelligence gathering under a warrant issued by the Attorney-General, who is accountable to the people and the parliament and whose actions may be challenged in the courts. They will not wear a system where that warrant is approved by a federal judge or a retired judge and where the person is questioned in the presence of a senior member of the Administrative Appeals Tribunal or a retired judge. They will not wear a system where the person being questioned has a right to a security cleared lawyer paid for by the Commonwealth. They will not wear a system where the person can complain to the Inspector-General of Intelligence and Security, who can sit in on the questioning. And they will not wear a special regime for questioning persons who are at least 14, but under 18, in the presence of a lawyer and a parent or a guardian. Yet the Labor Party's New South Wales counterparts have given the New South Wales Police the power, without a warrant, to strip search children between the ages of 10 and 18 where there is a threat of a terrorist act. The New South Wales Police will also be able to search persons, premises and vehicles without a warrant. I repeat: no warrant, no judicial oversight, as exists in the government's legislation; just the authorisation of the police minister. Federal Labor has been willing to wear this without a single word of complaint and not a single, solitary peep.

We believe that the opposition's amendments go to matters of fundamental principle that we cannot accept. We have accepted all the amendments that we felt that we could in good faith. The government will not pretend to the community that the opposition's version of this bill will provide the kind of protection against terrorism that we know Australia needs. We will not do that when we know the opposition's package of amendments effectively renders the bill useless in the emergency situations that it is actually designed to address and leaves it open to challenge. The opposition has exposed itself as being hopelessly divided on this bill, while the government has demonstrated time and time again its commitment to community safety. We will not accept amendments that fundamentally change the nature of the bill. However, this government wants this legislation passed before Christmas, and in the interests of getting the legislation through and giving the community the benefit of this protection we are now prepared to accept two of the opposition's amendments.

The opposition has made much of the need for inclusion of state judges as prescribed authorities. As we discussed in the Senate only a few hours ago, legal advice on this point differs. However, on the basis of the opposition's advice—that in the event that the provision with regard to state judges

is found to be unconstitutional it would be excisable and thus would not render the entire bill unconstitutional—we are prepared to accept that provision. In addition, while we are firmly of the belief that the security environment we are living in is unlikely to change in the foreseeable future and these powers will be needed for some time to come, we are also prepared to accept the opposition's sunset clause on the bill. This will enable this parliament to give the community the protection it needs in the current heightened security environment, secure in the knowledge that these extraordinary powers will necessarily be revisited by parliament in three years time. These are concessions that we are prepared to make because we are committed to getting this legislation passed today. We have demonstrated that commitment since the legislation was introduced and we have never wavered from that commitment. There is now an opportunity for the opposition to display a commitment to the security of the Australian people by accepting the government's offer and supporting the bill.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.11 a.m.)—The opposition opposes the motion. There have been four key principles that have driven the opposition's approach in relation to this legislation. The first of those principles is that we believe that we should not create a detention regime for non-suspects. We believe that it is appropriate, however, to create a questioning regime similar to those that are used in a range of other investigatory bodies. The second principle that we have made absolutely clear is that we do not believe that this regime should apply to children under the age of 18. The third principle that we believe is important is that people being questioned should have access to a lawyer of their own choice. The fourth principle that we believe is crucial is that there should be a sunset clause, and that is now a principle that the government have accepted. I am pleased that they have.

I heard from the Manager of Government Business in the Senate, as he moved this motion, that we are dealing with matters of fundamental principle. Last week, according to Australia's Attorney-General, Labor's amendments were nitpicking. That is how he described them. They have evolved from nitpicking to questions of fundamental principle. I actually do think these things are matters of significant principle but I do not believe that the Attorney-General of Australia can have it both ways. But there is now a last chance for the government to decide whether it will support the Senate amendments when the bill returns to the House of Representatives. We should make it absolutely clear that the opposition is offering the government a tough compulsory questioning regime for ASIO. That is what is on offer for the government and it appears that that is what the government does not want to accept.

Under the Senate's proposals, ASIO will be able to question people who may have information which would assist in the investigation of terrorism offences. ASIO will be able to demand information and documents. There will be no right to silence for those people being questioned, and questioning can continue for 12 hours and, in certain circumstances, for up to 20 hours. But, as well as that, the opposition has said that if you are going to have these coercive powers in the hands of an intelligence agency like ASIO then you have to ensure that those people who are being questioned have the full protection necessary—that they have all the necessary protections of the law and all the necessary safeguards for such a coercive regime. We have ensured that they will have a right to a lawyer of their own choice. We have tried to ensure that the questioning will be supervised by a senior person—that is, by a retired judge, who would be someone of standing in the community and someone the community would have confidence in.

It is very important to realise that this regime is very similar to that which has been in place for years in royal commissions, state crime commissions, the Australian Securities and Investments Commission, ICAC and other similar agencies. The opposition has taken the view that if we need such powers to prevent corporate crime or shenanigans going on in local government then we cer-

tainly need them to prevent terrorist attacks. The government's original bill would have allowed people to be detained, strip searched and held by ASIO indefinitely, incommunicado and without access to a lawyer. We said that that regime was simply not on. We would not accept it. No reasonable person in our community would accept it. How can you possibly justify treating like that a person who is not suspected of any offence but is simply thought to be able to assist with information relevant to the investigation of a terrorism offence? How could you treat such a person, who is not a suspect, worse than a murder suspect? How could you accept a regime where you treat a person who is not suspected of a terrorist offence worse than someone who is suspected of a terrorist offence?

So what we did and what the Senate offers the government, through its amendments, is a tough, practical and workable regime for ASIO. It is a regime that can be implemented now. It is a regime that can be implemented right now and will be in place right now—not on Christmas Day—if the government, in the House of Representatives, passes this bill. This is the same bill that a couple of hours ago, earlier this morning, was unconstitutional. But now, a couple of hours later, it is constitutional. It is a miracle! All your Christmases have come at once!

We heard from the Manager of Government Business, in presenting the government's case, that we made much of state judges. We put a legal opinion on the table. We made it public. It was confirmed by legal opinions from other eminent constitutional lawyers. They were all strong, they were all clear, they were all consistent—and of course our proposal was constitutional. Because of concerns expressed by the government, we had worked hard to ensure that that was the case.

This bill gives ASIO all the tools to question nonsuspects—people who might know something about terrorist activities—but it also properly ensures that adequate safeguards and protections are in place. We know that a level of terrorist alert is now operating. We say that the government should put this into operation right now. It is a strong regime. It is an unprecedented regime in terms of the powers it offers ASIO. The government should step up to the plate, accept its responsibilities and put it in place today. But we also said that, with these laws, we have insisted on safeguards and will continue to insist on safeguards. Basic rights, such as legal representation, should be protected, and we have worked to do that—rightly so. It has always been done in this parliament, and we are going to do it for this legislation. We did not want these powers to go where no other Western democracy has gone before, in denying citizens legal protection and creating a rolling, secret detention regime. We did not want it, and we would not accept it. We still do not accept it, and we are not ashamed of that.

The ASIO director, Dennis Richardson, wanted ASIO officers to be able to question nonsuspects. Under this regime, he has got it. The Senate has allowed that to occur. Amendments passed by the Senate ensure that we have a questioning regime, not a detention regime. I am absolutely confident that ASIO will be able to work, and work effectively, with the bill that has been amended by the Senate. People can be confident that questioning will be properly overseen, that there will be adequate protections and safeguards in place and that democratic freedoms and liberties will be protected. I want to see this bill passed. I know that what is said about the threat to our community is real. I want to see it passed, and all my colleagues want to see it passed. I can say that with absolute confidence. Although we hear the slurs from the Liberal Party, including from the Prime Minister this morning on radio, that the Australian Labor Party is divided on this legislation, I can say to this Senate and the parliament that every single decision that the federal parliamentary Labor Party has made about this bill—every decision that the caucus committee has made about this bill—has been unanimous. Every single one has been unanimous; and that is pretty bloody unusual for the Labor Party.

Let us nail that canard. Our party have worked very hard to come to a position that we believe is defensible and principled and is right for Australia in these circumstances.

We believe that we have the balance right, and we know that the government can now accept this regime. The government can now hand unprecedented coercive powers to ASIO. ASIO has always been able to question people, but now it can question people who may have information about terrorist activity, and there is no right to silence. These are unprecedented coercive powers, but when you give unprecedented coercive powers to an intelligence agency you have an obligation in a parliament to ensure that proper protections and safeguards are in place. You have to get that balance right. I believe that the Labor Party have worked extraordinarily hard to get that balance right. After listening to technical criticisms from the government, we have acted upon them every step of the way. We have negotiated with the government. We have heard what they have said, even though there are myriad conflicting messages. I believe this balance is right. I believe that the right thing for Australia is to see this legislation passed, because it does enhance our security environment, it does protect Australians and it is the right thing to do. *(Time expired)*

Senator HILL (South Australia—Minister for Defence) (9.26 a.m.)—We have just heard, in effect, the de facto government, the Labor Party, dictating to the elected government what should be its laws. You have heard it in the language of Senator Faulkner. This model, the Labor model, is what the government can have—nothing more, nothing less: take the Labor model whether you like it or not. That is what we have heard from Senator Faulkner. That is what he has put to the parliament today. When I was brought up, I was led to believe that it was the job of the government to govern.

Senator Mackay—Here we go: 'Senate obstruction!'

Senator HILL—No; you are wrong. The government is responsible to the parliament, but it is the responsibility of the government to govern. This government accepts the responsibility in relation to the safety and security of the Australian people. Therefore, it brings to the parliament a piece of proposed legislation which it believes is necessary to protect that security. It is legislation that it believes would be effective to achieve the goal of helping safeguard the Australian people. What does the Labor Party say when the government does that? It says to the government: 'We will not have your model; instead we will put up our model, which is adequate.' But we know that it is inadequate. Senator Faulkner said that it works in relation to corporate law—but we are talking here about terrorists, not breaches of corporate law. What works in relation to corporate law does not necessarily work in relation to terrorists. I have to say to the Labor Party that terrorists do not play according to the rules, and that is why it is necessary for the first time in our history to introduce legislation of this type. This is not the normal thing for a government of our colour. We would prefer not to have to do this.

Honourable senators interjecting—

Senator HILL—You might laugh at that, but we accept the responsibility in government to do our best to safeguard the Australian people. We bring a model that, we believe, after a great deal of care and thought, to be effective but not unduly intrusive. It is not modelled on the corporate affairs power but one designed to address the issue of terrorism and the threats and uncertainty that are attached to the issue of terrorism. That is what this has been designed for. It is a modest scheme that, we believe, can nevertheless be effective. What the Labor Party demands instead is a scheme that we believe will be ineffective. How can the government, with the responsibility to govern, accept the Labor Party's dictates and sign on to a scheme that it believes would be ineffective? What an abdication of responsibility that would be for any government! But that is what is being demanded by the Labor Party here today.

Senator Brown, with the way in which he approaches these things, thinks that is legitimate, because he believes that the parliament is the government. The parliament is not the government; the government is responsible to the parliament. That is why we bring our legislation here. If the parliament wishes to vote it down, it does. But we ask it to vote it down honestly, not with the sort of hypocrisy we have heard in here this morning. What happened in New South Wales in relation to

Premier Carr's legislation? What happened in relation to children, for example? What happened in that legislation was the sort of thing that Senator Faulkner in this place condemns the Howard government for. What did he do in relation to Mr Carr? Nothing. Was there a murmur from the Labor Party in relation to New South Wales? Not a murmur. When it came to electricity privatisation, you wanted to hold a state conference to protest. Did you protest against Mr Carr's laws aimed at addressing the issue of terrorism? Of course not, because that would be too awkward to do. Where is the inconsistency? The inconsistency exists because in this parliament we have a weak and divided opposition that can only get through a debate like this by taking the lowest common denominator.

The weakest alternative is all that the Labor Party can get its caucus to sign on to. It would not dare come out with anything with a bit of stomach, because of course there would be those within the Labor Party who would revolt. Instead, we get the weak alternative, the ineffective alternative, that all can sign on to and about which Senator Faulkner can get up here and boast, 'We all signed on to it, with not one dissenter.' It is not surprising that there is not one dissenter, because it just serves the purpose of holding the family together. But that is not what this legislation is supposed to be about. It is not about holding the Labor family together, but about protecting Australians and Australian kids. That is what this legislation is all about. When the government makes a special effort to get it through by compromise, what does Senator Faulkner do? He laughs at it. He says, 'Obviously, you weren't serious about it in the first place.' If Mr Williams made a mistake in tactical terms, it was that he was prepared to make so many compromises before the bill came in. He listened to the committee and, where possible, consistent with an effective scheme, he was prepared to compromise.

Opposition senators interjecting—

Senator HILL—And so, Senator Carr, it was the compromises that were brought to this place. We, in our naivety, believed that Labor would pick that up, recognise the efforts that the government and Mr Williams, in particular, have made to meet the requirements of the parliament and respect that effort, Senator Brown. Instead, all you did was laugh at Mr Williams for what you perceive as weakness. The government today made the extra effort in two areas where the Labor Party had made demands. The first was to put a sunset clause in, so that the legislation would come to a close. That is the strongest safeguard of all, I would have thought. When we did that and when we made the compromise in relation to judges, to suit the Labor Party—in an effort to get this legislation through, because we believe this legislation is important in the interests of the safety of the Australian people—what did the Labor Party do? They just laughed at it. They dismissed it. They said: 'Unless we, the Labor Party, get 100 per cent, every matter that we have raised'—in other words, unless it is the Labor Party's scheme—'we will vote it down, and damn the Australian people and damn the safety of Australian kids. We do not care, because the interests of the Australian Labor Party are paramount.'

Opposition senators interjecting—

Senator Conroy—This is a cheap stunt to put Australians' lives at risk.

Senator HILL—Then vote for a reasonable and moderate scheme. Stop playing politics. Vote for a reasonable and moderate scheme. It is not too late.

Opposition senators interjecting—

Senator HILL—I heard Senator Carr. What did he say in relation to the two compromises that Mr Williams made today? What did he scream out across the chamber? He said, 'He capitulated.' This legislation is not about capitulating; this legislation is about getting a scheme that is fair and effective, and that is all we ask of this parliament.

The last point I want to make is that, if we were to accept Senator Faulkner's demand that we sign onto the Labor scheme, when we believe that it would be ineffective, it would be to lull the Australian people into a false sense of security. We will not do that. We have compromised as far as we are able to go. We have demonstrated good faith throughout this debate. We have put in a

scheme that is full of safeguards, yet which we believe can be effective. We urge the Australian Labor Party, for once, to put its internal divisions to one side and take a decision in the interests of the nation as a whole, and support this legislation.

Senator BROWN (Tasmania) (9.37 a.m.)—When the Leader of the Government in the Senate, Senator Hill, said that the Labor Party's amendments—and by imputation the crossbench support for the amendments—would damn the safety of Australians, he reached a new low in the debate. What it uncovered coming from the Prime Minister's office was the new political correctness which says, 'If you do not agree with the Prime Minister of this country, you are in some way on the side of those who are anti-Australian or who would create terror in this country.' That is no way to facilitate a debate in a great parliament like this. There is no doubt that this is a very complex and difficult piece of legislation, which demands resolution today. Therefore, it demands that both sides listen to each other and seek the best outcome in this debate that is possible.

We have had the leader saying that he has been horrified by the de facto government that the Labor Party presents itself to be. In fact, what he has been saying is that this parliament does not have a role as a check on the government, or in improving legislation coming from the executive of Prime Minister Howard. There is this idea that anything the Prime Minister puts forward, in these increasingly tense and dangerous days, cannot be countermanded even by the elected parliament of Australia. The Prime Minister stands aside and above that in his mind. That is a very dangerous mistake in thinking. This is a collectively represented parliament elected by the people of this country. The office of Prime Minister was elected by his party, not by the people of this country, and it is the parliament which is supreme.

When legislation is brought into the parliament by the executive—by a minister—and the parliament determines that there should be amendments to it, the government should listen. If the point of view of the government and the Prime Minister is that they will not brook improvement through the workings of the Senate and the parliament, it is democracy itself which is being questioned. The Greens have said that we oppose this draconian legislation. We and the Democrats have nevertheless supported the amendments that the Labor Party has put forward and supported the passage of the legislation so that it can go back to the House of Representatives for consideration. That is proper process.

The Labor Party say they have come up with a 'tough, compulsory, coercive questioning regime' for ASIO to deal with terrorism. Whatever else the government might say, that regime gives ASIO unprecedented powers to take people off the streets and question them in the first instance without a legal representative and without other people knowing where they are, effectively in secret and with their usual rights taken away. These are not people suspected of terrorism, knowledge of terrorism or potential involvement in terrorism; these are innocents who ASIO suspects may have some information. This is indeed, as Senator Faulkner has said, a 'tough, compulsory, coercive questioning regime'.

The government say that this legislation is needed; nevertheless, because the Prime Minister wants to appear to be above the parliament in these dangerous days, the government and the Prime Minister will reject it. They would leave ASIO with nothing rather than accept the Labor 'moderate' proposition, as I heard the leader describe. Be that on Prime Minister Howard's head if the result of this is nothing. It is incumbent on the Prime Minister, if he believes that greater powers must be given to the surveillance agency—ASIO—to accept what the negotiations between the Labor Party and the government have produced.

I am talking about bringing this out from the Prime Minister's realm of ownership of democracy in this country and having him accept that this parliament is working in the national interest. How dare he or his ministers say that the workings of this chamber would damn the safety of Australians! How dare he or his ministers say that about representatives in this place! That is the new political correctness: trying to silence critics

and constructive debate. The Prime Minister is now in the dock for that.

I have watched in this chamber for 18 months as the Labor Party has sided with the government on the *Tampa* incident, on legislation to bring in the Army against peaceful protesters before the Olympics, and on a series of laws which have eaten into traditional civil liberties and political rights in this country. But we are seeing something different here today. The Labor Party has said: 'We are going to stand for something different. We recognise that there is a difficult decision to make between our political rights and our democracy on the one hand and the threat of terrorism on the other.'

The Prime Minister and the government feel that they cannot accept this situation where, for once, the opposition is acting as an opposition. They will not accept it. Well, they are going to have to accept that this is a democracy where the parliament ultimately makes the decision. If the Prime Minister walks away from that, be it on his head. It is his responsibility if, where he believes there must be strong laws, he opts instead for no laws. That is the Prime Minister's responsibility, and he has to recognise that. If this legislation fails today—I am talking about the democratic process here—there will be a void of new legislation for months to come. The Prime Minister will be out there, today and tomorrow, saying it is the fault of the Labor Party, the Democrats and the Greens. But he cannot maintain that. It will be on the Prime Minister's shoulders; and the test is on here. Does he want the stronger laws which the Labor party are now offering to him for ASIO to handle this situation—which, by the way, is a situation much closer to that which the Greens maintain is the better outcome—or will he opt for none at all?

My submission is that the Prime Minister has had a little too long being dictatorial from the executive, because the Labor Party have let him. Today, they have become an opposition again. The Prime Minister and the government have to understand that. From where I sit, if there is a zero outcome here today, it is not on Mr Crean's head. It is not on the opposition's head. It is because of an intransigent Prime Minister who has lost sight of the democratic process.

Senator ROBERT RAY (Victoria) (9.47 a.m.)—Senator Ian Campbell read into the record what are basically the views of the Attorney-General's office in regard to these matters. He did not actually address the specific clauses or issues under discussion here. He talked in generalities, as did Senator Hill. Rather than getting an analysis of where the differences lie and where the solutions may lie, we simply got polemics. Senator Campbell used my argument to say that the government had in fact adopted changes. You would have to be silly to say that the bill in its current form, whether it is adopted or rejected, has not changed since the original bill. My point was that the government argued for that original bill, with all its faults, with the same passion that they have argued with tonight—except that, on the way through, they have dumped 10 or 12 of those principles with no passion at all.

Those principles do not exist any more. There is no guilt for coming up with such cryptofacist nonsense as appeared in the first bill. That is just a blank in history. That is just thrown overboard. What of your proposal to strip-search 10-year-old girls? 'Oh, that doesn't exist anymore. We'll move the argument on.' The same passion with which they defend some of the more extreme measures in this bill will equally be dropped off at some stage in the future. The fact is that this government has shown that what is an immutable principle one moment can be jettisoned the next. It is true to say that commitment to civil liberties is not the preserve of any one person or any side in this chamber; it is shared across the chamber. There is no question about that. There might be differences of opinion as to how civil liberties apply and when they should be suspended in specific circumstances, but there is a commitment to civil liberties generally across this chamber. That has to be conceded.

But the Liberal Party will never concede that there is also a shared view of patriotism across this chamber. The Liberal Party seek to position themselves as the only patriots in this chamber. It is a despicable attitude that belittles anyone else in this chamber who is

critical or who does not agree with them, as being unpatriotic, as putting the country at risk, as being soft on terrorism. These are the sorts of words of war used by Liberals in trying to establish their way on this particular legislation. It is a despicable tactic. I reject it; I know all my colleagues reject it, and I get infuriated when I hear, time and time again, these people opposite assuming for themselves a patriotism that no-one else can share. It is simply not the fact.

The fact is that I do not believe we have got to the specifics. One indication is Senator Ian Campbell's statement from earlier. He says the ALP has rejected security-cleared lawyers. Why don't you actually read the bill? In certain circumstances, we approve of the use of security-cleared lawyers. In an urgent situation, which would prevent a person from using their own lawyer of choice, or if their own lawyer of choice is rejected by ASIO, then the security-cleared lawyers come in. So the statement Senator Campbell made tonight is simply not true. We would prefer a regime where you could have a lawyer of your own choice, but we put two provisos on that. Firstly, if that person is a security risk, they cannot have them. Secondly, we put in a very tight provision to say that, if a lawyer representing one of these people who is detained for a questioning regime in fact discloses that, there are very heavy secrecy penalties that apply. That covers that off. It covers off the original objection of trying to isolate these people so that the message does not get back to any terrorist groups, or any people that might have knowledge of such, that they are under suspicion.

Senator Ian Campbell says—and so does Senator Hill—that, by not agreeing with the government, in some way we strange individuals, we isolates on this side, are putting the community at risk. This is a massive criticism of President George W. Bush, Prime Minister Chrétien, Prime Minister Clark and Prime Minister Blair. Guess what? I have named the four like-minded countries with which we share a very common democratic heritage and a security relationship in the intelligence field that goes back to the end of the Second World War. The club has been in existence and has operated profitably to all our advantage for the past 57 years. Not one of these other four countries has adopted a regime identical to this. There are some similarities, yes. But with regard to the more extreme parts of the bill in terms of being able to detain people—if it went through in its original, unmodified form according to the government's wish—none of these other four countries have adopted legislation so draconian.

Are we missing something here? Has Mr Blair suddenly gone soft on terrorism? Has President Bush gone soft on terrorism? Has Prime Minister Chrétien in Canada suddenly gone soft on terrorism? I think not. They look for alternative ways of dealing with it. President Bush has brought in legislation that deals with aliens, those who are not US citizens. Even that is not as tough as parts of this particular regime. So we have a situation where we are accused of being unpatriotic, of being soft on terrorism, of not backing up the government in times of crisis, but where none of these four other comparable countries has gone as far as this particular government has. You have to ask yourself why. The answer to why they have not is that each of these countries has sought a balance between combating terrorism and maintaining a fundamental dedication to civil liberties in their own country—something that those opposite seem willing to sacrifice at the drop of a hat.

The government claims that it has moved on two issues. Exactly six hours ago these two issues, again, were immutable principles. We were told that the sunset clause was absolutely abhorrent to this type of legislation. Now, at 9 o'clock, Senator Ian Campbell comes and tells us, 'Yes, well, we didn't really mean that. You can have a sunset clause.' Oh, really? What has changed in that six hours?

But even more amazing is the government's change of attitude in one of the silliest arguments we have ever had, and that is, over who constitutes a prescribed authority. I do not think it is any secret that we indicated that, if we thought for a moment that the notion of a prescribed authority was in danger constitutionally of voiding the bill, we would

jettison it. We said that, and people in this chamber know that we have said it. Yet in fact this is where the government have moved in our direction and said, 'Well, after all, maybe the Labor Party proposition is not so bad.' They have read our legal opinion from Gavin Griffith QC and they know others exist. They argued then that they had a counter-opinion from Mr Orr QC. Where is it? We are still waiting. By all means let us have a letter from the Attorney-General purporting to say what Mr Orr said, but where is the legal opinion so we can clear this up once and for all?

Senator Ian Campbell—You don't need to now.

Senator ROBERT RAY—Oh, we don't need to now! Then in that case you can come in here, Senator Campbell, and table that before we finish this debate—if it exists. Does it exist? Does Mr Orr's opinion exist as a legal opinion signed off by him? I would like to see it because so far we have seen absolutely nothing. Of what was true six hours ago for the government—of what was an entrenched principle, like some of these other matters that they say are entrenched principles—they now say: 'Oh, no, it didn't really matter. We can certainly cede ground on those particular points.' Then they come in and say, 'The Labor Party are totally divided on this issue.' I have attended all the caucus committees and meetings and most of the discussions on this and I have not in fact found much or any dissent on these particular issues.

We do know that every time there is a parliamentary committee inquiry into these things some government members on some issues have taken a different position to the government. If you are talking about disunity and those sorts of things, look to your own ranks—not that, of course, anyone on your side participated in the debate in the committee stage. This place saw only two Liberals or two coalition members present for the entire committee stage: the whip, who had to be here, and the minister, who is not here at the moment. He is off on other duties. They were the only two to front, the only two to engage in argument—and then not particularly any specific argument. On offer here today are two possibilities apparently: the government adopting the modified bill—something they have rejected—or no bill at all. Why don't they go back and ask ASIO what they want? Go back and consult with ASIO to see whether the bill as amended would give them sufficient powers to carry things out. The reason they will not is that politics will always prevail here.

The Prime Minister has just given a press conference in which he said that any terrorist incident from now on will be on the heads of the Labor Party because we have not passed their legislation. We have never ever tried to say that any acts of terrorism that have occurred or that are likely to occur in Australia are the responsibility of Australian governments. We know it is a far more sophisticated argument than that. We know how difficult it is to track down intelligence on terrorist matters. We know that the government are reconfiguring the apparatus of the intelligence community to concentrate in these areas. We support them in that. We support them in their endeavours to expand both Sigint and its human resources so that they can attempt to detect future terrorist acts.

For the record, there are no guarantees that you can anticipate and abort any future terrorist activity either in this country or in the region. There are no guarantees because for every action there is a reaction; every terrorist group that understands what array of powers will be put against them will adopt policies so they cannot be detected and thwarted. We must understand that. We cannot have an expectation that a government can necessarily prevent a future terrorist act. That is not possible. If the government are going to say of any terrorist act, 'Oh, well, that's the Labor Party's fault because they did not give us this piece of legislation,' what errant nonsense that is. It is political positioning at its absolute worst. It is putting the national interest behind political interest, and that does not advance the cause of this nation's fight against terrorism one iota.

It is not as though we are suggesting to those on the other side that the culmination of this is that the bill as now amended is some inept pathetic piece of legislation. It is still stronger than any legislation carried in a

comparable country. Have a look at the UK security legislation, with their history of the IRA, and compare that with the Labor Party amended legislation and you will find this is tougher.

There were big asks here. It is not easy to come into the parliament and say, after 101 years of federation, 'We want you to give up the right of silence, especially when you are not a suspect'—because, let us face it, most of this legislation will be directed against nonsuspects rather than suspects. There is a whole range of legislation that can be brought in to deal with potential suspects and terrorists. This legislation will concentrate mostly on nonsuspects who have relevant information which, if they are forced to divulge it, will protect Australian lives.

You can go to the legislation of Canada, New Zealand, the UK and the US and you will not find a more stringent set of requirements than those that appear in this legislation. The reasons why the government will not come to accommodate our position on this are purely political, purely exploitative and purely a matter of positioning. There is no question that up until about 10 days ago negotiations were under way. Then the old orders come out of YAG central around the corner—the Prime Minister's office—and what do we get? The end of negotiations; the positioning; the backgrounding of the *Age* newspaper for that article that says, 'This is nitpicking. We will go no further.' In fact, we have come to the party and we have offered reasonable, well argued and well thought through amendments. For political reasons, this government has decided to reject those and has decided to create an atmosphere such that if anything goes wrong, at any time, in the intelligence community or with terrorism, it will be the Labor Party's fault. What a despicable attitude!

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.02 a.m.)—The Democrats oppose the motion put forward by the government. Indeed, the Democrats remain opposed to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, even as amended—partly for reasons that Senator Ray just mentioned. Whilst we all need to balance the issue of security versus people's freedoms, as Senator Ray said, even the amended version of this bill is still more extreme than the law in any other comparable country. For that reason, the Democrats remain opposed to the legislation. Nonetheless, there is no doubt that the Labor Party amendments and the couple of Democrat amendments that have been passed by the Senate significantly improve the legislation. We certainly will not support any motions by a government to remove those improvements.

It is worth noting that we have heard frequent interjections during this debate on the New South Wales legislation put forward by Bob Carr. There have been lots of critical comments from the government senators—and quite rightly, I believe. The New South Wales parliament's legislation is far more extreme and is completely unacceptable. It is an example of people using a climate of fear in the community to push through extreme legislation that dramatically removes people's rights and that dramatically undermines the basic rule of law. The key point that needs to be made to all those from the Liberals who criticise Mr Carr's legislation is that it only passed into law because it was supported by the Liberals in New South Wales. I think there were seven in the New South Wales upper house who opposed the legislation, including the Democrats and the Greens—I am not sure who the others were; probably Peter Breen and a few others. The law was passed with the combined support of the Labor and Liberal parties in the New South Wales parliament, and that should be acknowledged.

It is true that the law that New South Wales has passed is extreme and is unacceptable in the Democrats' view. But, again, not only did the New South Wales Liberals pass that law but, when the Democrats moved an amendment to this legislation at the third reading stage, seeking to have a Senate committee inquiry specifically into the New South Wales law and whether it was constitutional or appropriate in terms of its privative and ouster clauses, the Liberal Party opposed that. So any complaint from the Liberals that somehow or other Labor is culpable

for Mr Carr's legislation is true, but the Liberals are equally culpable.

It is a very worrying trend that needs to be acknowledged not only in terms of this legislation and the New South Wales legislation but also, as we saw last year, in terms of the so-called border protection package, where there was a massive removal of people's rights, including Australian citizens' rights, to have access to the law. There were massive areas where Commonwealth officers were basically put above the law so that the power of governments was dramatically increased and the power and rights of the average citizen were dramatically decreased. The power of people like us, who want to assist people in the community, was also dramatically decreased. Again, that legislation was pushed through using a facile argument about the need for security.

As we have now seen throughout this year, the threat to our security is not from asylum seekers and it is not from refugees. Yet this government, which this morning made lots of loud statements about how important it is that we maximise the opportunity to protect Australian citizens, is still this very day wasting hundreds of millions of dollars of intelligence, defence and bureaucratic resources with this ridiculous so-called border protection policy. We always knew but it is now blatantly clear that there is no threat to Australia's security from asylum seekers. If this government were genuine about maximising its protection of Australians, it would scrap its Pacific solution today. It would save hundreds of millions of dollars and it would be able to redirect bureaucratic and intelligence resources, defence spending and intelligence coordination back into the region to where the real risk is. Tragically, we know now that the real risk, after Bali, is from terrorist and extremist groups in our region. If the government were genuinely serious about maximising the security of Australians, it would drop the ridiculous and expensive facade that is the Pacific solution.

Another $200 million is being spent as we speak to build a detention centre on Christmas Island that we do not need. All of those resources could be put towards protecting Australia's security against the real threat, but that is not happening. I think that, until it does happen, one has to assume that the arguments put forward by Senator Ray are true: that the motivation is more about politics than it is about so-called security. I think it is also worth making the point, as was made yesterday by the Democrats, that to suggest that it is appropriate for us to be considering such important legislation on the back of what has now been basically 24 hours straight of sitting is simply ridiculous. We all acknowledge, whatever our position, that this legislation is very significant and fairly complex. This is true even of the message that we are considering at the moment, as moved by Senator Campbell, which deals with a large number of amendments that have been disagreed to and other amendments that have been made by the House in place of Senate amendments.

From the Democrats' point of view, to suggest that we are best able to talk about how important this issue is and how much we value getting the best possible outcome for the people of Australia after 24 hours straight with various amounts of sleep deprivation along the way and other end of year activities that do not necessarily enhance one's critical faculties sends a bad signal. We are undoubtedly not in the best place to make proper, informed and considered decisions when we have basically worked for 24 hours straight. In this we need to particularly note those who have engaged in the debate such as Senator Greig from the Democrats, Senator Faulkner, Senator Ray from the opposition and others from the government and other parties. Those people have been engaging directly with the legislation hour after hour. To suggest that this is the best way of dealing with what is historic and significant legislation is farcical and is an insult to the Australian people and to the parliament.

Again I repeat the Democrats' call that we need to acknowledge that we have to spend more days sitting here. We cannot just keep extending sittings every time the government decides that it wants to push a lot of legislation through. It is simply not acceptable and from the Democrats' point of view we have

to acknowledge that the Senate has that major role as a legislative body.

Senator Brandis—The government's got to make the calls about national security, Andrew.

Senator BARTLETT—The Senate has always had this role. I am surprised that upstanding conservatives from the Liberals, who are normally strong defenders of the Constitution and the way our system of government is established, would suggest that somehow or other you can just magically label an issue and then say, 'Okay, the parliament does not matter anymore; we're the government and we have to deal with this issue.'

The parliament has not only the right but the responsibility to consider legislation. This Senate is the only protection against a government doing whatever it wants. A time like this, when there is insecurity and apprehension in the community and when there are obvious real threats and dangers, is precisely the time you need a body that can double-check, reassess and look at it from different angles. Whether it is the current Prime Minister or anyone else, nobody—no party or person—should ever be in the position where they are able to just act without adequate scrutiny and without the opportunity for another body to examine what is being proposed. Those checks and balances are one of the fabulous things about our system.

One of the reasons legislation like this is so dangerous is that it removes one of those checks in many places. It removes the courts and the legal system from oversight of the actions of particular bodies or people. That is what has happened with the border protection legislation, putting a whole lot of people outside the reach of the law. That is what has happened with the New South Wales legislation put forward by Mr Carr. Police are basically able to act outside the rule of law and outside the scrutiny of the law. It is removing one of those crucial protections in terms of the judiciary, the parliament and the executive. They are meant to work in balance and we are seeing more and more attempts to remove the judiciary or curtail its powers. At the same time, we have seen a long trend of attempts to weaken the power of the parliament as well. It puts the executive—and therefore the Prime Minister—in an incredibly powerful position. We all the know the cliche—it is nonetheless a true cliche—that absolute power corrupts absolutely. It is very dangerous to give anybody absolute power, and that is why we have balances in our system. That is why the Senate is so crucial.

Senator Murray—That is why the Australian people elected it like they did.

Senator BARTLETT—As Senator Murray says, that is why the Australian people specifically elected it the way it is—to ensure that the Senate can play that role. We have seen plenty of occasions at the state level around the country where we have not had properly functioning upper houses or, to speak about my own state of Queensland, have had no upper house at all and where there has been no adequate scrutiny of governments. We have seen the terrible outcomes that have occurred as a consequence of that. I think the statements that were made, particularly by Senator Hill, which suggest that at the end of the day the government should get what it wants because it is the government are fundamentally a trashing of our entire system of parliament and political democracy and fundamentally a trashing of the Constitution. I am sure that while he needs to make the point as a rhetorical one he does not actually believe it. I am sure that if he were in opposition, as he has been in the past, he would be fervently arguing against such an outrageous proposition.

The fundamental point remains that this legislation, as it has been amended by the Senate after a lot of consideration, is in the Democrats' view significantly improved. It still does not get the balance right, in our view, but it is far and away an improvement on what was originally put forward and far and away an improvement on what the government is insisting on through the motion that Senator Campbell has moved. We will certainly stand firm in opposing that motion and at least ensure that if we are going to get some form of legislation passed the amended version works. We certainly urge all others in the Senate to do the same thing.

Question put:

That the motion (**Senator Ian Campbell's**) be agreed to.

The committee divided. [10.18 a.m.]

(The Temporary Chairman—Senator A.B. Ferguson)

Ayes……	28
Noes……	31
Majority……	3

AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Campbell, I.G.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Ferguson, A.B.
Ferris, J.M. *	Heffernan, W.
Hill, R.M.	Johnston, D.
Knowles, S.C.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Patterson, K.C.	Payne, M.A.
Reid, M.E.	Santoro, S.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

NOES

Allison, L.F.	Bartlett, A.J.J.
Brown, B.J.	Buckland, G.
Campbell, G.	Carr, K.J.
Collins, J.M.A.	Conroy, S.M.
Cook, P.F.S.	Crossin, P.M. *
Evans, C.V.	Faulkner, J.P.
Forshaw, M.G.	Greig, B.
Harradine, B.	Hogg, J.J.
Kirk, L.	Lees, M.H.
Ludwig, J.W.	Lundy, K.A.
Mackay, S.M.	Marshall, G.
McLucas, J.E.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Stephens, U.	Webber, R.
Wong, P.	

PAIRS

Calvert, P.H.	Hutchins, S.P.
Chapman, H.G.P.	Denman, K.J.
Ellison, C.M.	Cherry, J.C.
Kemp, C.R.	Sherry, N.J.
Minchin, N.H.	Bishop, T.M.
Scullion, N.G.	Bolkus, N.
Tchen, T.	Ridgeway, A.D.

* denotes teller

Question negatived.

Resolution reported; report adopted.

LEAVE OF ABSENCE

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.22 a.m.)—I move:

That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

Question agreed to.

Senate adjourned at 10.23 a.m.

DOCUMENTS

Tabling

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following documents:

Parliamentarians' travel paid by the Department of Finance and Administration—January to June 2002, dated December 2002.

Former parliamentarians' travel paid by the Department of Finance and Administration—January to June 2002, dated December 2002.

Former Governors-General travel paid by the Department of the Prime Minister and Cabinet—1 January to 30 June 2002, dated December 2002.

Department of Defence—Special purpose flights—Schedule for the period 1 January to 30 June 2002.

Tabling

The following documents were tabled by the Clerk:

Census and Statistics Act—Australian Bureau of Statistics—Statement No. 2 of 2002.

Defence Act—Determinations under section—

58B—Defence Determination 2002/27.

58H—Defence Force Remuneration Tribunal—Determination No. 26 of 2002.

Export Control Act—Export Control (Orders) Regulations—Export Control (Fees) Amendment Orders 2002 (No. 2).

Fisheries Management Act—Heard Island and McDonald Islands Fishery Management Plan 2002—

Determination 2002/2003 HIMI TAC D1.

Directions Nos HIMIFD 1-HIMIFD 4.

Higher Education Funding Act—Determination under section 15—T26-2002.

Textile, Clothing and Footwear Strategic Investment Program Act—Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2002 (No. 2).

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Veterans' Affairs: Grants

(Question No. 631)

Senator Mark Bishop asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 13 September 2002:

During each of the past 5 years: (a) what grants have been made under each of the department's grants programs, by postcode; (b) what was the value of each grant; and (c) what was the purpose of each grant.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

The information sought in the honourable senator's question is not readily available. To provide a complete response would require considerable time and resources and, in the interest of efficient utilisation of departmental resources, the Minister is not prepared to authorise the expenditure of resources and effort to provide the information requested.

The Minister has advised that she would be prepared to discuss with the honourable senator the preparation of a response to a more focused question that could be more easily accommodated by departmental resources.

Veterans' Affairs: Outreach Programs

(Question No. 674)

Senator Mark Bishop asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 23 September 2002:

(1) With reference to the answer to question on notice no. 569, part (1) (House of Representatives *Hansard*, 20 August 2002, p. 5291): What are the same details for each electorate in all other states.

(2) In all states, which government and non-government members and senators have been advised of such visits, and on how many occasions, in each of the past 3 years.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

(1) The number of site visits or information seminars conducted under the Department of Veterans' Affairs outreach program in all federal electorates are provided in the tables below, by state. It is to be noted that reporting periods vary between the Department of Veterans' Affairs State Offices depending on the data collection methodology used.

New South Wales (figures provided from 1 January 2001 to 30 September 2002)

Electorate	Number of site visits/information seminars
Banks	0*
Barton	0*
Bennelong	0*
Berowra	0*
Blaxland	0*
Bradfield	0*
Calare	37
Charlton	4
Chifley	0*
Cook	0*
Cowper	0**
Dobell	7
Eden-Monaro	25
Farrer	38****
Fowler	0*
Gilmore	26

Electorate	Number of site visits/information seminars
Grayndler	0*
Greenway	0*
Gwydir	86
Hughes	0*
Hume	27
Hunter	16
Kingsford-Smith	0*
Lindsay	4
Lowe	0*
Lyne	11
Macarthur	0*
Mackellar	0*
Macquarie	7
Mitchell	0*
New England	52
Newcastle	8
North Sydney	0*
Page	29
Parkes	63***
Parramatta	0*
Paterson	14
Prospect	0*
Reid	0*
Richmond	20
Riverina	39
Robertson	27
Shortland	13
Sydney	0*
Throsby	0*
Warringah	0*
Watson	0*
Wentworth	0*
Werriwa	0*

* Outreach occurs within the metropolitan electorates but it predominantly relates to visits to individual homes and veterans in hospital or institutions, as such it falls outside the definition of the Department of Veterans' Affairs (DVA) "Outreach Program" used to compile information for the response. Other outreach visits to organisations, including ex-service organisations (ESOs), occur but they are generally informal approaches and not specifically programmed as are the outreach to rural areas. The availability of DVA offices in the Sydney metropolitan area, better transport, and the operation of the DVA trained Pension and Welfare Officers from ESOs meet the demand for information from the veteran community effectively in Sydney metro areas.

** The opening of the DVA Agency arrangements at Coffs Harbour Centrelink in 1999, provided improved access to information and advice on DVA services and entitlements for veterans in the Cowper electorate. Access to the Veterans' Affairs Network (VAN) services at Coffs Harbour Centrelink became available 5 days a week all year round. Outreach from Lismore VAN to Coffs Harbour continued for a short time after the opening of the Coffs Harbour Centrelink Office to assist with promoting the new service. Home and Hospital visits from Centrelink Coffs Harbour do occur on a needs basis in the immediate area.

*** 59 outreach visits undertaken by NSW, 4 outreach visits undertaken by SA.

**** 11 outreach visits conducted by NSW, 27 outreach visits conducted by VIC.

The figures shown in the table above represent forward scheduled visits only. Occasionally, ad-hoc visits targeting a needs-specific audience (for example, a dementia, retirement or resettlement seminar, or to address specific groups such as the War Widows' Guild, Legacy or an ex-service organisation) are conducted. The figures provided do not include these ad-hoc visits.

Australian Capital Territory (figures provided from 1 January 2001 to 30 September 2002)

Electorate	Number of site visits/information seminars
Canberra	0*
Fraser	0*

*The Australian Capital Territory is serviced by the Canberra Veterans Affairs Network (VAN) Office. Under the outreach program, site visits and information sessions are undertaken in NSW by Canberra VAN. However information seminars that do not come under the Department's "Outreach Program" are regularly organised and presented within the federal electorates of Canberra and Fraser. The above table does not reflect these information seminars.

Victoria (figures provided from January 2001 to June 2002)

Electorate	Number of site visits/information seminars
Aston	1
Ballarat	12
Batman	4
Bendigo	4
Bruce	5
Burke	9
Calwell	1
Casey	8
Chisholm	6
Corangamite	11
Corio	6
Deakin	2
Dunkley	1
Flinders	16
Gellibrand	8
Gippsland	46
Goldstein	2
Higgins	3
Holt	0*
Hotham	1
Indi	38
Isaacs	0*
Jagajaga	28
Kooyong	6
La Trobe	1
Lalor	4
Mallee	70
Maribyrnong	3
McEwen	35
McMillan	14
Melbourne	9
Melbourne Ports	0**
Menzies	2
Murray	22
Scullin	1
Wannon	47
Wills	0***

* These federal electorates are serviced by the Frankston VAN. Numerous ad-hoc visits are not included in these figures.

** This federal electorate is serviced by the Frankston VAN and State Office.

*** This federal electorate is serviced by the Community Advisers from the State Office.

The figures shown in the above table represent forward scheduled and some ad-hoc visits.

South Australia (figures provided from January 2001 to October 2002)

Electorate	Number of site visits/information seminars
Adelaide	7
Barker	44
Bonython	3
Boothby	4
Grey	14
Hindmarsh	3
Kingston	4
Makin	1
Mayo	4
Port Adelaide	3
Sturt	2
Wakefield	25

Northern Territory (figures provided from January 2001 to October 2002)

Electorate	Number of site visits/information seminars
Lingiari	9
Solomon	3

The figures shown in the above table represent forward scheduled visits only. Ad-hoc visits are not included.

Western Australia (figures provided from January 2001 to June 2002)

Electorate	Number of site visits/information seminars
Brand	25
Canning	32
Cowan	7
Curtin	19
Forrest	38
Fremantle	8
Hasluck	9
Kalgoorlie	28
Moore	17
O'Connor	31
Pearce	31
Perth	16
Stirling	11
Swan	10
Tangney	12

The figures shown in the above table represent visits to sites in these electorates to present information to the veteran community in seminars, information sessions, Country Visits Program or meetings with ex-service organisations and service providers. The Western Australian State Office also operates a dedicated Home Visiting Service for veterans and their families in the Perth Metropolitan area south to Mandurah.

In addition to these visits, there are other ad-hoc visits arranged through Veterans Home Care (VHC), Vietnam Veterans Counselling Service (VVCS) and other sections of the Department of Veterans' Affairs. The table above does not include the figures for ad-hoc visits. These activities are designed to meet both specific requests by, and the needs of, local communities.

Tasmania (figures provided from 1 January 2001 to 30 September 2002)

Electorate	Number of site visits/information seminars
Bass	44
Braddon	121
Denison	2
Franklin	33
Lyons	144

The figures shown above represent Tasmanian Country Visits program, Seminars, Information sessions and Expos conducted. In addition there are many ad hoc visits arranged by the Community Support Adviser, VVCS and various other sections of the DVA Tasmanian State Office. These

visits are the result of specific requests for information and to address identified needs in the community. The table above does not include figures from ad-hoc visits.

(2) The number of outreach visits advised to government and non-government members and senators for the past 3 years is shown in the tables below. It is to be noted that the organisation of outreach is coordinated at a State level and tailored to the needs of the community.

New South Wales

Electorate	Member	2000	2001	2002	Party
Banks	Melham, Mr Daryl	0*	0*	0*	Labor
Barton	McClelland, Mr Robert	0*	0*	0*	Labor
Bennelong	Howard, The Hon John	0*	0*	0*	Liberal
Berowra	Ruddock, The Hon Philip	0*	0*	0*	Liberal
Blaxland	Hatton, Mr Michael	0*	0*	0*	Labor
Bradfield	Nelson, The Hon Dr Brendan	0*	0*	0*	Liberal
Calare	Andren, Mr Peter	17	17	20	Independent
Charlton	Hoare, Ms Kelly	0	2	2	Labor
Chifley	Price, The Hon Roger	0*	0*	0*	Labor
Cook	Baird, The Hon Bruce	0*	0*	0*	Liberal
Cowper	Hartsuyker, Mr Luke	0*	0*	0*	National
Dobell	Ticehurst, Mr Ken	0	4	0	Liberal
Eden-Monaro	Nairn, Mr Gary	17	17	8	Liberal
Farrer	Fischer, The Hon Timothy	6**	7***	0	National
Farrer	Ley, Mrs Sussan	0	0	6****	Liberal
Fowler	Irwin, Mrs Julia	0*	0*	0*	Labor
Gilmore	Gash, Mrs Joanna	18	13	13	Liberal
Grayndler	Albanese, Mr Anthony	0*	0*	0*	Labor
Greenway	Mossfield, Mr Frank	0*	0*	0*	Labor
Gwydir	Anderson, The Hon John	41	45	41	National
Hughes	Vale, The Hon Danna	0*	0*	0*	Liberal
Hume	Schultz, Mr Alby	17	19	8	Liberal
Hunter	Fitzgibbon, Mr Joel	4	10	6	Labor
Kingsford-Smith	Brereton, The Hon Laurie	0*	0*	0*	Labor
Lindsay	Kelly, The Hon Jackie	2	2	2	Liberal
Lowe	Murphy, Mr John	0*	0*	0*	Labor
Lyne	Vaile, The Hon Mark	7	5	6	National
Macarthur	Farmer, Mr Pat	0*	0*	0*	Liberal
Mackellar	Bishop, The Hon Bronwyn	0*	0*	0*	Liberal
Macquarie	Bartlett, Mr Kerry	6	2	5	Liberal
Mitchell	Cadman, The Hon Alan	0*	0*	0*	Liberal
New England	Windsor, Mr Tony	0	0	26	Independent
New England	St Clair, Mr Stuart	26	26	0	National
Newcastle	Grierson, Ms Sharon	0	0	3	Labor
Newcastle	Morris, Mr Allan	0	5	0	Labor
North Sydney	Hockey, The Hon Joe	0*	0*	0*	Liberal
Page	Causley, The Hon Ian	18	18	11	National
Parkes	Cobb, Mr John	0	0	25	National
Parkes	Lawler, Mr Tony	32	34	0	National
Parramatta	Cameron, The Hon Ross	0*	0*	0*	Liberal
Paterson	Baldwin, Mr Bob	0	0	7	Liberal
Paterson	Horne, Mr Bob	4	7	0	Labor
Prospect	Crosio, The Hon Janice	0*	0*	0*	Labor
Reid	Ferguson, Mr Laurie	0*	0*	0*	Labor
Richmond	Anthony, The Hon Larry	10	12	8	National
Riverina	Hull, Mrs Kay	17	25	14	National
Robertson	Lloyd, Mr Jim	0	15	12	Liberal
Shortland	Hall, Ms Jill	0	8	5	Labor
Sydney	Plibersek, Ms Tanya	0*	0*	0*	Labor

Electorate	Member	2000	2001	2002	Party
Throsby	George, Ms Jennie	0*	0*	0*	Labor
Warringah	Abbott, The Hon Tony	0*	0*	0*	Liberal
Watson	McLeay, The Hon Leo	0*	0*	0*	Labor
Wentworth	King, Mr Peter	0*	0*	0*	Liberal
Werriwa	Latham, Mr Mark	0*	0*	0*	Labor

* No outreach undertaken (see part (1) above under New South Wales).

** Informed by NSW 5 times, once informed by VIC.

*** Informed by NSW 6 times, once informed by VIC.

**** Informed by NSW 5 times, once informed by VIC.

It is the practice of the New South Wales State Office to inform members of scheduled visits by letter several weeks before the event. On the occasion when ad-hoc visits are conducted for a needs-specific audience (for example, a dementia, retirement or resettlement seminar, or to address specific groups such as the War Widows' Guild, Legacy or an ex-service organisation), members are not advised.

It is not the practice of the New South Wales State Office to advise senators of scheduled outreach visits in their base region.

Australian Capital Territory

The Australian Capital Territory is serviced by the Canberra Veterans Affairs Network (VAN) Office. Under the outreach program, site visits and information sessions are undertaken in NSW by Canberra VAN. However information seminars that do not come under the Department's "Outreach Program" are regularly organised and presented within the federal electorates of Canberra and Fraser. Members and senators are usually not advised of these ad-hoc information seminars.

Victoria

Electorate	Member	2000	2001	2002	Party
Aston	Pearce, Mr Chris	0**	0**	0**	Liberal
Ballarat	King, Ms Catherine	0	0	1*	Labor
Ballarat	Ronaldson, The Hon Michael	1*	1*	0	Liberal
Batman	Ferguson, Mr Martin	1*	1*	1*	Labor
Bendigo	Gibbons, Mr Steve	1*	0	0	Labor
Bruce	Griffin, Mr Alan	0**	0**	0**	Labor
Burke	O'Connor, Mr Brendan	0	0	1*	Labor
Burke	O'Keefe, The Hon Neil	1*	1*	0	Labor
Calwell	Vamvakinou, Ms Maria	0**	0**	0**	Labor
Casey	Smith, Mr Tony	0	0	1*	Liberal
Casey	Woolbridge, Mr Michael	1*	1*	0	Liberal
Chisholm	Burke, Ms Anna	1*	1*	1*	Labor
Corangamite	McArthur, Mr Stewart	1*	1*	1*	Liberal
Corio	O'Connor, Mr Gavan	0**	0**	0**	Labor
Deakin	Barresi, Mr Phillip	1*	1*	1*	Liberal
Dunkley	Billson, Mr Bruce	0**	0**	0**	Liberal
Flinders	Hunt, Mr Greg	0	0	1*	Liberal
Flinders	Reith, The Hon Peter	1*	1*	0	Liberal
Gellibrand	Roxon, Ms Nicola	1*	1*	1*	Labor
Gippsland	McGauran, The Hon Peter	1*	1*	1*	National
Goldstein	Kemp, The Hon Dr David	1*	1*	1*	Liberal
Higgins	Costello, The Hon Peter	0**	0**	0**	Liberal
Holt	Byrne, Mr Anthony	0***	0***	0***	Labor
Hotham	Crean, The Hon Simon	1*	1*	1*	Labor
Indi	Lieberman, the Hon Lou	1*	1*	0	Liberal
Indi	Panopoulos, Ms Sophie	0	0	1*	Liberal
Isaacs	Corcoran, Ms Ann	0***	0***	0***	Labor
Jagajaga	Macklin, Ms Jenny	1*	1*	1*	Labor
Kooyong	Georgiou, Mr Petro	1*	1*	1*	Liberal
La Trobe	Charles, Mr Bob	1*	1*	1*	Liberal

Electorate	Member	2000	2001	2002	Party
Lalor	Gillard, Ms Julia	1*	1*	1*	Labor
Mallee	Forrest, Mr John	1*	1*	1*	National
Maribyrnong	Sercombe, Mr Bob	1*	1*	1*	Labor
McEwen	Bailey, The Hon Fran	1*	1*	1*	Liberal
McMillan	Zahra, Mr Christian	1*	1*	1*	Labor
Melbourne	Tanner, Mr Lindsay	0**	0**	0**	Labor
Melbourne Ports	Danby, Mr Michael	0***	0***	0***	Labor
Menzies	Andrews, The Hon Kevin	0**	0**	0**	Liberal
Murray	Stone, The Hon Dr Sharman	1*	1*	1*	Liberal
Scullin	Jenkins, Mr Harry	0**	0**	0**	Labor
Wannon	Hawker, Mr David	1*	1*	1*	Liberal
Wills	Thomson, Mr Kelvin	0***	0***	0***	Labor

* It is the practice of the Victorian State Office to inform members of scheduled visits by forwarding the program once per year. On the occasion when ad-hoc visits are conducted members are not usually advised.

** Ad-hoc visits were undertaken, but members were not informed of ad-hoc visits.

*** See part (1) above under Victoria.

It is not the practice of the Victorian State Office to advise senators of scheduled outreach visits in their base region.

Queensland

It is now the practice of the Queensland State Office to inform members and senators of scheduled visits by forwarding the program at the beginning of each month. The number of times members and senators were advised of outreach visits has only been recorded from February 2001 and therefore detailed records before February 2001 are not available.

Electorate	Member	Feb 2001-Dec 2001	Jan 2002-Oct 2002	Party
Blair	Thompson, Mr Cameron	23	11	Liberal
Bowman	Sciacca, The Hon Con	0	1 (from Oct)	Labor
Brisbane	Bevis, The Hon Arch	0	2 (from Sep)	Labor
Capricornia	Livermore, Ms Kirsten	0	2 (from Sep)	Labor
Dawson	Kelly, Mrs De-Anne	6	4	National
Dickson	Dutton, Mr Peter	0	3 (from June)	Liberal
Fadden	Jull, The Hon David	3	2	Liberal
Fairfax	Somlyay, The Hon Alexander	9	10	Liberal
Fisher	Slipper, The Hon Peter	11	9	Liberal
Forde	Elson, Mrs Kay	14	10	Liberal
Griffith	Rudd, Mr Kevin	0**	0**	Labor
Groom	Macfarlane, The Hon Ian	9	8	Liberal
Herbert	Lindsay, Mr Peter	0*	0*	Liberal
Hinkler	Neville, Mr Paul	11	9	National
Kennedy	Katter, The Hon Robert	14	3 (from Sep)	National/Independent
Leichhardt	Entsch, The Hon Warren	11	6	Liberal
Lilley	Swan, Mr Wayne	0***	0***	Labor
Longman	Brough, The Hon Mal	12	14	Liberal
Maranoa	Scott, The Hon Bruce	20	10	National
McPherson	May, Mrs Margaret	11	6	Liberal
Moncrieff	Ciobo, Mr Steven	0	4 (from April)	Liberal
Moncrieff	Sullivan, The Hon Kathy	11	2	Liberal
Moreton	Hardgrave, The Hon Gary	0**	0**	Liberal
Oxley	Ripoll, Mr Bernie	0***	0***	Labor
Petrie	Gambaro, Ms Teresa	10	9	Liberal
Rankin	Emerson, Mr Craig	0	1 (from Oct)	Labor
Ryan	Johnson, Mr Michael	0**	0**	Liberal
Wide Bay	Truss, The Hon Warren	12	10	National

Senators	Feb 2001-Dec 2001	Jan 2002-Oct 2002	Party
Bartlett, Andrew	0	2 (from Sep)	Democrat
Brandis, George	11	10	Liberal
Boswell, The Hon Ronald	11	10	National
Cherry, John	0	2 (from Sep)	Democrat
Harris, Len	0	2 (from Sep)	One Nation
Herron, The Hon John	11	10	Liberal
Hogg, John	0	2 (from Sep)	Labor
Ludwig, Joe	0	2 (from Sep)	Labor
Macdonald, The Hon Ian	11	10	Liberal
McLucas, Jan	0	2 (from Sep)	Labor
Mason, Brett	11	10	Liberal
Moore, Claire	0	2 (from Sep)	Labor

* Herbert electorate is situated around Townsville and as such is within 30 minutes of the Townsville Veterans' Affairs Network (VAN) Office. The veteran community is well served through the Townsville Office. The Manager North Queensland Regional Office has advised that no requests for outreach within the electorate have been received, however, in the event of a request being received outreach would be provided.

** These electorates are serviced by Brisbane VAN Office, no outreach requests from RSL's within these electorates have been received, however, if a request for an outreach visit was received, outreach would be provided.

*** Outreach activity was conducted in these electorates prior to September 2002 but members were not advised. All members have been advised of any outreach after September 2002.

South Australia and Northern Territory

Procedures are now in place to provide all members and senators in SA and NT with the dates and locations of scheduled outreach visits. An e-mail group is being used to provide the link to the DVA South Australian State Office webpage which contains the six monthly visiting schedule. Any updates or changes will be advised using the same means of communication.

Previously, it was not the normal practice of the South Australian State Office to advise members or senators in advance of an impending visit in either SA or NT. There have been occasional times where promotional flyers have been provided to the country based member electoral Office and been displayed as part of a general promotion of the visit in the town. No figures are available on how many times this has occurred.

Western Australia

Electorate	Member	2000	2001	2002	Party
Brand	Beazley, The Hon Kim	4*	4*	4*	Labor
Canning	Gerick, Ms Jane	4*	4*	0	Labor
Canning	Randall, Mr Don	0	0	4*	Liberal
Cowan	Edwards, The Hon Graham	4*	4*	4*	Labor
Curtin	Bishop, Ms Julie	4*	4*	4*	Liberal
Forrest	Prosser, The Hon Geoffrey	4*	4*	4*	Liberal
Fremantle	Lawrence, The Hon Dr Carmen	4*	4*	4*	Labor
Hasluck	Jackson, Ms Sharryn	0**	4*	4*	Labor
Kalgoorlie	Haase, Mr Barry	4*	4*	4*	Liberal
Moore	Washer, Dr Mal	4*	4*	4*	Liberal
O'Connor	Tuckey, The Hon Wilson	4*	4*	4*	Liberal
Pearce	Moylan, The Hon Judi	4*	4*	4*	Liberal
Perth	Smith, Mr Stephen	4*	4*	4*	Labor
Stirling	McFarlane, Ms Jann	4*	4*	4*	Labor
Swan	Wilkie, Mr Kim	4*	4*	4*	Labor
Tangney	Williams, The Hon Daryl	4*	4*	4*	Liberal

Senators	2000	2001	2002	Party
Bishop, Mark	4*	4*	4*	Labor
Campbell, The Hon Ian	4*	4*	4*	Liberal
Cook, The Hon Peter	4*	4*	4*	Labor
Eggleston, Alan	4*	4*	4*	Liberal
Ellison, The Hon Christopher	4*	4*	4*	Liberal
Evans, Christopher	4*	4*	4*	Labor
Greig, Brian	4*	4*	4*	Democrat
Johnston, David	4*	4*	4*	Liberal
Knowles, Susan	4*	4*	4*	Liberal
Lightfoot, Ross	4*	4*	4*	Liberal
Murray, Andrew	4*	4*	4*	Democrat
Webber, Ruth	4*	4*	4*	Labor

* It is the practice of the Western Australian State Office to inform members and senators of scheduled visits via the Western Australian State Office magazine "The Western Veteran" which is issued quarterly per year.

** The electorate of Hasluck has only existed since 2001.

Tasmania

Electorate	Member	2000	2001	2002	Party
Bass	O'Byrne, Ms Michelle	2*	1**	1**	Labor
Braddon	Sidebottom, Mr Sid	2*	1**	1**	Labor
Denison	Kerr, The Hon Duncan	2*	1**	1**	Labor
Franklin	Quick, Mr Harry	2*	1**	1**	Labor
Lyons	Adams, The Hon Dick	2*	1**	1**	Labor

Senators	2000	2001	2002	Party
Abetz, The Hon Eric	2*	1**	1**	Liberal
Barnett, Guy	2*	1**	1**	Liberal
Brown, Bob	2*	1**	1**	Greens
Calvert, The Hon Paul	2*	1**	1**	Liberal
Colbeck, Richard	2*	1**	1**	Liberal
Denman, Kay	2*	1**	1**	Labor
Harradine, Brian	2*	1**	1**	Independent
Mackay, Sue	2*	1**	1**	Labor
Murphy, Shayne	2*	1**	1**	Independent
O'Brien, Kerry	2*	1**	1**	Labor
Sherry, The Hon Nick	2*	1**	1**	Labor
Watson, John	2*	1**	1**	Liberal

It is the practice of the Tasmanian State Office to inform senators of scheduled visits by forwarding the Country Visits Roster at the time of publication. **The Roster is only forwarded once per year since the beginning of 2001. *In 2000, the Roster was originally forwarded twice per year.

Veterans: Hospital Services

(Question No. 693)

Senator Mark Bishop asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 25 September 2002:

(1) With reference to the answer to a question asked at an estimates hearing of the Foreign Affairs, Defence and Trade Legislation Committee on 4 June 2002, concerning the monopoly of hospital services to veterans in the Perth metropolitan area: Did the President of the Repatriation Commission express the view that the contract with Ramsay Health Care did 'not provide a sole provider status to Ramsay health care'; if so, what consideration has the commission given to the extension of tier-one hospitals to additional providers in the Perth and Brisbane metropolitan areas.

(2) Are Perth and Brisbane the only cities in which exclusive coverage of veterans by tier-one health care hospitals has been effectively given to former repatriation hospitals.

(3) Have discussions with Ramsay Health Care included and suggestion that other tier-one hospitals be contracted; if so, what was its reaction.

(4) What discussion has the commission or the department had with the ex-service community in Perth and Brisbane to ascertain their views on the extension of tier-one hospitals in those cities.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

(1) At the Foreign Affairs, Defence and Trade Legislation Committee on 4 June 2002 the President of the Repatriation Commission said: "We have the view that the contract does not provide a sole provider status to Ramsay Health care in those two metropolitan areas. If veteran opinion changed and sought wider choice, for example, then we would have regard for that and then we would need to sit down and negotiate with Ramsay Health Care how such a change in view might be dealt with."

The issue has been discussed as a meeting of the National Treatment Monitoring Committee (NATMOC) and the West Australian Treatment Monitoring Committee on 11 April 2002, where the Chairman of the Commission stated on the basis of discussion at the meetings that the Commission was of the view that the majority of veteran organisations favoured continuation of current arrangements. The matter was discussed again by NATMOC at a meeting in Brisbane on 25 July 2002, in conjunction with the Queensland Treatment Monitoring Committee, with the same conclusion.

In October 2002 there have been two separate meetings involving representatives of the veteran community in Perth that discussed this issue, with one favouring continuation of the current arrangements and the other, a review of current arrangements. The Commission will continue to keep itself informed of the news of veteran organisations in Western Australia and consider a change in approach if there is a widespread change in veteran opinion.

The Commission is not aware of any substantive discussions on this issue in the veteran community in Brisbane.

(2) No former Repatriation General Hospital has been given exclusive coverage of veterans in any city. All public hospitals in all states and territories have Tier 1 status under the Repatriation Private Patient Scheme. The Tier 1 arrangements between the Commonwealth and Ramsay Health Care, with respect to private hospital services provided at Hollywood Private Hospital in Perth and Greenslopes Private Hospital in Brisbane, added to the already existing Tier 1 network of public hospitals. Further, where it is not possible to obtain treatment within a reasonable period of time, there is a 'safety-net' arrangement for veterans to access other metropolitan Perth and metropolitan Brisbane private hospitals with prior approval of the Department of Veterans' Affairs.

(3) In 2001 there were some discussions between the Repatriation Commission and Ramsay Health Care on possible ramifications of the introduction of Veteran Partnering. The outcome of those discussions was reflected in the President's statement referred to in part (1) above.

(4) The ex-service community formally meets with the Repatriation Commission at regular quarterly meetings of the respective Treatment Monitoring Committees in each state and at a national level. Ex-service representation on each of these committees ensures that veterans in all states are able to bring issues of concern to the Repatriation Commission's attention. In addition to these meetings there have been two meetings recently in Perth that is referred to in part (1) above. The Western Australian Deputy Commissioner of DVA represented the Repatriation Commission at both of these meetings.

Veterans: Entitlements

(Question No. 744)

Senator Mark Bishop asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 4 October 2002:

(1) How many Australian Defence Force personnel have now served in East Timor.

(2) How many are in payment of a disability pension from the department, by percentage and disability type, and of those how many are still serving.

(3) How many are now totally and permanently incapacitated, by accepted disability type.

(4) How many have received a lump sum payment for disability under the Military Compensation and Rehabilitation Scheme (MCRS), and of those how many have been discharged.

(5) How many are in receipt of benefits under both the Veterans' Entitlements Act 1986 and the MCRS.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

(1) The Minister has been advised that to 31 August 2002 a total of 18,403 individual Australian Defence Force (ADF) personnel have served in East Timor, including 1,215 in the Area of Operations at that time.

(2) As at 26 October 2002, a total of 486 Australian Defence Force personnel and 13 eligible civilians who have had disabilities accepted as being caused by the East Timor service are in receipt of a disability pension from the Department of Veterans' Affairs. The breakdown according to the degree of incapacity is shown in the table below.

Disability pension	Number
10%	70
20%	49
30%	70
40%	63
50%	62
60%	42
70%	14
80%	43
90%	22
100%	23
Intermediate Rate	2
Temporary Special Rate (TTI)	20
Special Rate (TPI)	19
Total	499

Each of the 499 veterans is in receipt of a pension for at least one condition which has been accepted as being due to East Timor service. The Department of Veterans' Affairs does not allocate a specific rate of pension to each disability. The Minister has advised that in most cases the total rate of pension paid does not relate to East Timor service only.

These 499 veterans have a total of 909 disabilities accepted as resulting from East Timor service. The most commonly accepted conditions are shown in the table below.

Disability Type	Acceptances
Musculo-skeletal	413
Psychiatric	175
Ear, Nose and Throat (incl hearing loss)	117
Skin	70
Fevers and viruses	58
Gastro-intestinal	34
Other	42

Of the 499 personnel in receipt of a disability pension as a result of their East Timor service:

- 330 are still serving;
- 1 is currently an Inactive Reserve;
- 155 have been discharged from the Australian Defence Forces; and
- 13 went to East Timor as civilians who were eligible to claim under the Veterans' Entitlements Act 1986.

(3) 19 former Australian Defence Force personnel are in receipt of Special Rate (Totally and Permanently Incapacitated) pensions after having at least one disability accepted as being causally related to their East Timor service.

Of these, 19 are suffering from post traumatic stress disorder. Co-morbidities include hearing loss and tinnitus, musculo-skeletal conditions, alcohol abuse and skin conditions.

An additional 20 former Defence Force personnel are in receipt of Temporary Special Rate (TTI) pensions after having at least one disability accepted as being causally related to their East Timor service.

Of these, 18 are suffering from post traumatic stress disorder, one from major depressive disorder and one from adjustment disorder. Co-morbidities include alcohol abuse, cancer of the cervix, hearing loss and musculo-skeletal conditions.

(4) 80 East Timor veterans have received a lump-sum payment under the Military Compensation and Rehabilitation Service (MCRS) as a result of East Timor service.

The Minister has been advised that of these, 26 have been discharged.

(5) 106 East Timor veterans have received benefits under both the Veterans' Entitlements Act 1986 (VEA) and the Safety, Rehabilitation and Compensation Act 1988 (SRCA).

Of these 106 veterans:

- all are currently in receipt of benefits under the VEA;
- 46 have received a lump sum payment under the SRCA;
- 27 are currently in receipt of incapacity payments under the SRCA;
- 59 have received incapacity payments under the SRCA but are not currently doing so; and
- 20 have never been in receipt of incapacity payments as a result of East Timor service.

Trade: Sugar Industry

(Question No. 790)

Senator O'Brien asked the Minister representing the Minister for Trade, upon notice, on 15 October 2002:

(1) What forms of economic protection has the European Union (EU) provided to EU sugar cane producers since 1985.

(2) What meetings has the Minister, or any of his predecessors, had since March 1996 with officials of the EU in order to lobby for the reduction of EU economic protection of EU sugar cane growers.

(3) When was each meeting held.

(4) Where was each meeting held.

(5) Who attended each meeting.

(6) What records were kept of each meeting.

(7) What meetings has the Minister, or any of his predecessors, had since March 1996 with officials of the World Trade Organization in order to lobby for the reduction of EU economic protection of EU sugar cane growers.

(8) When was each meeting held.

(9) Where was each meeting held.

(10) Who attended each meeting.

(11) What records were kept of each meeting.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator's question:

(1) The European Union supports its sugar beet growers by supporting prices. An internal support price, called the intervention price, is kept at levels that are generally well above world prices. The intervention price is maintained largely through import restrictions and subsidising exports to enable surpluses to be sold. This price support encourages domestic production, discourages consumption and creates surplus stocks which are sold onto world markets at depressed prices. For further detail on sugar trade and protection in the EU, we refer you to Sugar: International Policies Affecting Market Expansion (ABARE 1999) – Chapter 4.

(2) to (6) It is not possible to identify all meetings in the detail requested. Opportunities are taken in a range of meetings, such as bilateral, regional and multilateral and in the margins of all three types of meetings. In all meetings with the European Union, Ministers for Trade since 1996 have taken

the opportunity to register Australia's strong concern at the lack of progress in the reform of European Union agriculture. Ministers have, on frequent occasions, outlined to European counterparts the tremendous distortions that the Common Agricultural Policy imposes on international agricultural trade.

The European Union sugar regime is an integral part of its agricultural regime and as such has been a key target of Ministerial representations for many years. Failure to deal adequately with Sugar has been a key part of Australian concerns over the way the European Commission is currently approaching the mid-term review of the Common Agricultural Policy. Sugar was also a major concern during the many representations the Government made on the Agenda 2000 proposals. Our Mission in Geneva has also expressed to the European Union Australia's disappointment that while trumpeting its "Everything but Arms Package" of market opening to developing countries, the EU actually chose to phase in over a long period important products such as sugar, which remain subject to quota.

(7) Ministers have not lobbied officials of the World Trade Organisation. Article IV of the Marrakesh Agreement establishing the WTO states that members of the WTO shall not seek to influence the Secretariat. Moreover, officials of the WTO Secretariat do not have the capacity to influence reform of the EU's support to sugar producers, so any such lobbying would be superfluous.

(8) to (11) Not applicable, see answer to Question 7.

Trade: Sugar Industry

(Question No. 791)

Senator O'Brien asked the Minister representing the Minister for Trade, upon notice, on 15 October 2002:

(1) What approaches has the Minister, or any of his predecessors, had since March 1996 from the Minister of Agriculture, Fisheries and Forestry, his predecessors, or officials of his department, requesting that the Australian Minister for Trade lobby the European Union (EU) for a reduction in economic protection of EU sugar cane growers.

(2) When was each meeting held.

(3) Where was each meeting held.

(4) Who attended each meeting.

(5) What records were kept of each meeting.

(6) What approaches has the Minister, or any of his predecessors, had since March 1996 from the Minister for Agriculture, Fisheries and Forestry, his predecessors, or officials of his department, requesting that officials of the Department of Foreign Affairs and Trade lobby the EU for a reduction in economic protection of EU sugar cane growers.

(7) When was each meeting held.

(8) Where was each meeting held.

(9) Who attended each meeting.

(10) What records were kept of each meeting.

Senator Hill—The Minister for Trade has provided the following answer to the honourable senator's question:

(1) to (10) It is not possible to identify all meetings in the detail requested. The Ministers for Trade, Foreign Affairs, and Agriculture, Forestry and Fisheries meet on a regular basis and frequently discuss agriculture trade issues, which are a high priority for the Government. The Government's approach to reform of the EU's sugar regime comprises a combination of bilateral pressure on the EU and continued pressure through the WTO.

Negotiations to liberalise trade in agriculture under the WTO offer the prospect of reducing subsidised competition and creating more open markets for agricultural products, including sugar. An econometric study by ABARE in 1999 concluded that multilateral sugar trade reform would lift world raw sugar prices by over 40 per cent, resulting in savings to US, EU and Japanese consumers of $4.8 billion annually. A multilateral coalition of sugar producers has formed to advocate reform, and WTO coalitions like the Cairns Group are arguing for reform in the current Doha round

of negotiations. Given the interest of the majority of the WTO membership in agricultural trade reform, sugar trade reform is essential if global trade negotiations are to succeed.

The Australian Government approach to agricultural reform through the WTO has received the support of the domestic agricultural industry, from organisations such as Cairns Group Farm Leaders (chaired by the National Farmers Federation) and from the Global Alliance for Sugar Trade Reform and Liberalisation (chaired by Queensland Sugar Limited).

Australia is also exercising its rights under the WTO to start dispute settlement consultations with the EU over its sugar regime. The aim of taking the EU through the WTO disputes process is to force changes to the EC sugar regime to benefit Australian producers and establish additional leverage in the Doha negotiations. It is important to note that it could take up to two-three years for this dispute process to run its course and the benefits may not be readily quantifiable.

Defence Service Homes Insurance

(Question No. 930)

Senator Mark Bishop asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 15 November 2002:

(1) Can the Minister confirm that Defence Service Homes Insurance has informed policy holders that ex-service people's homes are no longer covered for terrorist attack; if so: (a) what prompted the advice of this new limitation; (b) from what source was advice received on the probability of such threats; (c) what has been the practice of other insurance companies in the market; and (d) what other events are nominated in policies for which claims will not be accepted.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

(1) Yes. This was a restatement of a long standing policy exclusion.

(a) This is not a new limitation, as "terrorist activities" has always been excluded from the Defence Service Homes Insurance (DSHI) Building Statement of Conditions and, in general, is an uninsured peril in any domestic household policy.

In wake of the 11 September 2001 terrorist attacks in New York, regulators of the global Insurance Industry (in particular Reinsurers) directed that the word "terrorism" required specific definition. The clause is intended to be read in conjunction with Part 7 (General Exclusions) in the Statement of Conditions, Home Building Policy booklet, which states:

"We do not insure you for loss or damage or legal liability caused by any war, or war like or terrorist activities".

(b) Information relevant to the probability of terrorist threats was not the catalyst for the endorsement, as damage caused by terrorist activities has always been an exclusion of the Defence Service Homes Insurance (DSHI) policy.

(c) The endorsement that Defence Service Homes Insurance (DSHI) has issued to all policyholders since May 2002, is consistent with the practices of both the national and international domestic insurance market. The intention of the endorsement is to give the policyholders a more definitive understanding of the exclusion relating to terrorism.

(d) Part 7 (General Exclusions) of the Defence Service Homes Insurance (DSHI) Statement of Conditions, cites the following:

"Defence Service Homes Insurance General Exclusions:

(DSHI) does not insure you for loss or damage that is not directly caused by an event that (DSHI) insure you for, unless (DSHI) say that (DSHI) do in this policy.

(DSHI) does not insure you for loss or damage or legal liability that is intentionally caused by you or your family or a person acting with the consent of you or your family.

(DSHI) does not insure you for loss or damage or legal liability caused by:

- failing to keep the home or site in good repair and condition;
- the home or site settling or shrinking or expanding;
- hydrostatic pressure, or the earth moving (other than from earthquake), erosion;
- roots of plants, trees or shrubs;

- defects in structure, design, work done, or materials used on the home or at the site;
- wear and tear;
- mechanical, electrical or electronic breakdown except fusion of electric motors as defined in Part 3 of this policy;
- rust, corrosion, rot, mildew, seepage, rising damp, any gradual deterioration or process;
- vermin, insects (including termites);
- atmospheric or climatic conditions (other than those we say we will insure in the events section), condensation, evaporation;
- any substance at the home or site that is dangerous to health or property (for example, explosives, or asbestos);
- any process that involves you or someone with your consent applying heat to any property insured by this policy;
- the use, existence, or escape of any nuclear fuel, nuclear material or nuclear waste;
- any war, or war like or terrorist activities;
- any person or organisation legally destroying, or taking away your ownership or control of, any property insured by this policy;
- Any consequential loss other than that specifically provided for in this policy."

Human Rights: Falun Gong

(Question No. 952)

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 19 November 2002:

(1) During the Asia Pacific Cooperation Summit, in October 2002, did the Minister raise the issue of the Chinese Government's detention, torture and human rights violations of Falun Gong practitioners; if not, why not.

(2) During discussion in the Australia-China Human Rights Dialogue, will the Minister raise the issue of the Chinese Government's detention, torture and human rights violations of Falun Gong practitioners; if not, when will the Minister raise the issue.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

(1) I could not attend the Asia Pacific Economic Co-operation meeting in October 2002 owing to other commitments related to the tragic events in Bali.

(2) In August 2002, when the last round of the Australia-China Human Rights Dialogue was held in Canberra, I met the leader of the Chinese delegation, Mr Wang Guangya. During their meeting I expressed concern about China's treatment of Falun Gong practitioners.

The Dialogue itself is held at Vice-Ministerial level. The Australian delegation is led by a Deputy-Secretary of the Department of Foreign Affairs and Trade. At the last round of the Dialogue, in Canberra in August 2002, Australia expressed concern about China's treatment of the Falun Gong and China's imprisonment of individuals for exercising internationally accepted civil rights. Australia also expressed concern over the extra-judicial nature of the practice of re-education through labour and the continued prevalence of torture. Australia urged China to ratify the International Convention on Civil and Political Rights as soon as possible, and with a minimum of reservations. The Government anticipates Australia will continue to raise concerns about the treatment of Falun Gong practitioners at the next round of the dialogue.