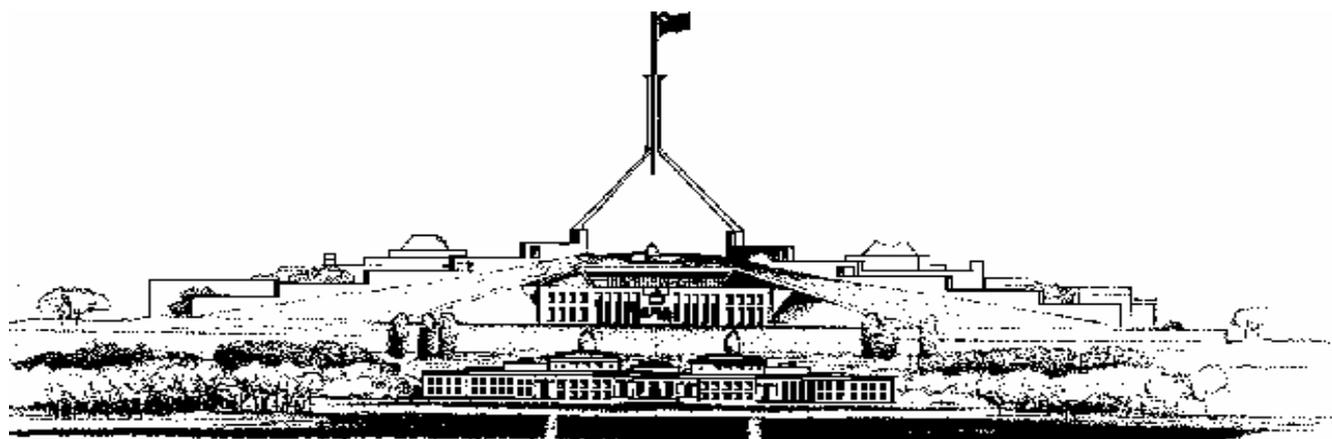




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 5, 2003**

**THURSDAY, 15 MAY 2003**

FORTIETH PARLIAMENT  
FIRST SESSION—FIFTH PERIOD

BY AUTHORITY OF THE SENATE



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### SITTING DAYS—2003

Month	Date
February	4, 5, 6
March	3, 4, 5, 6, 18, 19, 20, 24, 25, 26, 27
May	13, 14, 15
June	16, 17, 18, 19, 23, 24, 25, 26
August	11, 12, 13, 14, 18, 19, 20, 21
September	8, 9, 10, 11, 15, 16, 17, 18
October	7, 8, 9, 13, 14, 15, 16, 27, 28, 29, 30
November	3, 4, 24, 25, 26, 27
December	1, 2, 3, 4

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<i>ADELAIDE</i>	972 AM
<i>PERTH</i>	585 AM
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*Thursday, 15 May 2003*

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

### PETITIONS

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

#### Iraq

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

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill introduced by the Leader of the Australian Democrats, Senator Andrew Bartlett and the Democrats' Foreign Affairs spokesperson, Senator Natasha Stott Despoja.

Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian troops to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support.

It is time to take the decision to commit troops to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by **Senator Bartlett** (from 51 citizens).

Petition received.

### NOTICES

#### Presentation

**Senator Lees** to move on 18 June 2003:

That the following bill be introduced: A Bill for an Act to amend the Social Security Act 1991 to provide for young students' eligibility for the carer payment, and for related purposes. Social Security Amendment (Supporting Young Carers) Bill 2003.

**Senator TCHEN (Victoria) (9.31 a.m.)**—

I give notice that 15 sitting days after today I shall move:

That the Workplace Relations Amendment Regulations 2002 (No. 3), as contained in Statutory Rules 2002 No. 337 and made under the Workplace Relations Act 1996, be disallowed.

I seek leave to incorporate in *Hansard* a short summary of the committee's concerns with these regulations.

Leave granted.

*The summary read as follows—*

#### **Workplace Relations Amendment Regulations 2002 (No. 3), Statutory Rules 2002 No. 337**

The Regulations confer on the Employment Advocate the function of providing free legal representation to a party under specified circumstances.

Paragraph 8AA(b) requires the Employment Advocate to form an opinion that 'it is appropriate' to give assistance in the form of free legal representation. It was not clear what factors were to be considered in determining the appropriateness of giving this assistance and the Committee wrote to the Minister seeking advice on the criteria that would be used under paragraph 8AA(b). The Minister advised that the Employment Advocate had developed principles to assist with the determination of whether to provide free legal representation in some circumstances under paragraph 83BB(1)(g) of the Act and that he expected similar principles to those utilised under paragraph 83BB(1)(g) would govern the provision of free legal advice under the new paragraph 8AA(b). The Committee has written further to the Minister seeking an assurance that such principles would be used.

**Senator TCHEN (Victoria) (9.32 a.m.)**—

I give notice that 15 sitting days after today I shall move:

That the Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 1), made under section 52A of the Farm Household Support Act 1992, be disallowed.

I seek leave to incorporate in *Hansard* a short summary of the committee's concerns with this instrument.

Leave granted.

*The summary read as follows—*

**Farm Help Re-establishment Grant Scheme Amendment 2003 (No.1)**

The instrument provides that recipients of the Sugar Industry Reform Assistance exit grants are not also eligible to receive a Farm Help Re-establishment grant.

Item 1 in Schedule 1 introduces into the Scheme a reference to an instrument called the 'Program Protocol for the delivery of Sugar Industry Reform Assistance'. The amendments also insert a postal address where copies of this Protocol can be obtained. However, the Protocol does not appear to be available on the Internet. This comparative inaccessibility is a matter of concern for the Committee, as the content of the Protocol is unclear. The Explanatory Statement provides no further information on this matter. The Committee has written to the Minister seeking further advice about the content and accessibility of this Protocol.

**Senator Brown** to move on the next day of sitting:

That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 20 August 2003:

The burning of Australia's biggest tree, in Tasmania, having regard to:

- (a) its discovery;
- (b) what protective measures were put in place;
- (c) why these protective measures failed;
- (d) whether any rescue is possible;
- (e) how to prevent similar episodes;
- (f) any related matters; and
- (g) the role of the Commonwealth in all these issues.

**Senator Lees** to move on 12 August:

That the following bill be introduced: A Bill for an Act to enhance the protection of biodiversity on private land, and for related purposes. Protection of Biodiversity on Private Land Bill 2003.

**Senator Lees** to move on 9 September:

That the following bill be introduced: A Bill for an Act to encourage a stronger civic culture in Australia, and for related purposes. Encouraging Communities Bill 2003.

**Senator Brown** to move on the next day of sitting:

That the Senate—

- (a) supports global democracy based on the principle of 'one person, one vote, one value'; and
- (b) supports the vision of a global parliament which empowers all the world's people equally to decide on matters of international significance.

**Withdrawal**

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—Mr President, I withdraw government business notice of motion No. 1, proposing the exemption of a bill from the bills cut-off order.

**BUSINESS**

**Rearrangement**

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:

That government business order of the day No. 3 (Criminal Code Amendment (Terrorism) Bill 2002) be considered from 12.45 pm till not later than 2 pm today.

Question agreed to.

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (9.35 a.m.)—I move:

That the order of general business for consideration today be as follows:

- (a) general business order of the day no. 23 (Constitution Alteration (Right to Stand for

Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]); and

- (b) consideration of government documents.

Question agreed to.

### NOTICES

#### Postponement

Items of business were postponed as follows:

General business notice of motion No. 1, under committee reports and government responses, standing in the name of the Chair of the Standing Committee of Senators' Interests (Senator Denman) for today, proposing amendments to the resolutions on senators' interests, postponed till 19 June 2003.

#### WOMEN: BODY IMAGE

**Senator STOTT DESPOJA** (South Australia) (9.35 a.m.)—I move:

That the Senate—

- (a) notes that:
- (i) body image is a serious concern for many women, particularly young women, in Australia,
  - (ii) body image concerns can result from unrealistic portrayals of women throughout the media, and
  - (iii) concerns over body image are often connected to a number of health issues for women, including eating disorders, depression and low self esteem; and
- (b) urges the Government to initiate a review into the effects of the media on the body image of young women.

Question agreed to.

### COMMITTEES

#### Medicare Committee

##### Establishment

**Senator ALLISON** (Victoria) (9.36 a.m.)—I move:

- (1) That a Select Committee, to be known as the Select Committee on Medicare, be

appointed to inquire into and report by 12 August 2003 on the following matters:

The access to and affordability of general practice under Medicare, with particular regard to:

- (a) the impact of the current rate of the Medicare Benefits Schedule and Practice Incentive Payments on practitioner incomes and the viability of bulk-billing practices;
- (b) the impact of general practitioner shortages on patients' ability to access appropriate care in a timely manner;
- (c) the likely impact on access, affordability and quality services for individuals, in the short- and longer-term, of the following Government-announced proposals:
  - (i) incentives for free care from general practitioners limited to health care card holders or those beneath an income threshold,
  - (ii) a change to bulk-billing arrangements to allow patient co-payment at point of services coincidental with direct rebate reimbursement,
  - (iii) a new safety net for concession cardholders only and its interaction with existing safety nets, and
  - (iv) private health insurance for out-of-hospital out-of-pocket medical expenses; and
- (d) alternatives in the Australian context that could improve the Medicare principles of access and affordability, within an economically sustainable system of primary care, in particular:
  - (i) whether the extension of federal funding to allied and dental health services could provide a more cost-effective health care system,
  - (ii) the implications of reallocating expenditure from changes to the private health insurance rebate, and

- (iii) alternative remuneration models that would satisfy medical practitioners but would not compromise the principle of universality which underlies Medicare.
- (2) That the committee consist of 8 senators, 3 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of the Australian Democrats, and 1 nominated by minority groups and independent senators.
- (3) That the chair of the committee be elected by the committee from the members nominated by the Leader of the Opposition in the Senate.
- (4) In the absence of agreement on the selection of a chair, duly notified to the President, the allocation of the chair be determined by the Senate.
- (5) That the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair.
- (6) That the deputy chair act as chair when there is no chair or the chair is not present at a meeting.
- (7) That the quorum of the committee be 3 members.
- (8) Where the votes on any question before the committee are equally divided, the chairman, or the deputy chairman when acting as chairman, shall have a casting vote.
- (9) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.
- (10) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider.
- (11) That the quorum of a subcommittee be 2 members.
- (12) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.
- (13) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

Question agreed to.

**Senator NETTLE (New South Wales)** (9.36 a.m.)—by leave—The Australian Greens supported the amended terms of reference for the Medicare committee. In particular, I note the change whereby the motion now reads that we will look at the implications of changes to the private health insurance rebate. By supporting this position, in no way does that change the long held and strongly held position that the Australian Greens support the abolition of the private health insurance rebate.

#### TASMANIA: HERITAGE

**Senator BROWN (Tasmania)** (9.37 a.m.)—by leave—I move the motion as amended:

That the Senate—

- (a) recognises the north-east peninsula of Recherche Bay in Southern Tasmania as the meeting place of the D'Entrecasteaux scientific expedition and Indigenous Pallevor people in 1792-93;
- (b) notes significant scientific studies carried out and discoveries made by the French expedition in this period;

- (c) congratulates the Tasmanian Government for the action it has taken to work through the Tasmanian Heritage Council to consult the community on the future of this site;
- (d) notes that:
  - (i) the owners of the private property upon which this site is situated have postponed their proposal to contract Gunns Pty Limited to harvest the forest in order to allow the Tasmanian Heritage Council to take community comment, and
  - (ii) the Premier of Tasmania (Mr Bacon) wrote to the President of France (Mr Chirac) on 17 March 2003 advising him of the discovery of the archaeological find and expressing the desire of the Tasmanian Government to work with the Australian and French communities to protect our joint heritage represented by this site; and
- (e) calls on the Federal Government to:
  - (i) work with the Tasmanian Government in its consultation with the Government of France regarding these events and circumstances and the range of possible outcomes, and
  - (ii) notify the Government of France of these events and circumstances and the range of possible outcomes.

Question agreed to.

#### **UNITED NATIONS: HUMAN RIGHTS**

**Senator GREIG** (Western Australia)  
(9.39 a.m.)—I move:

That the Senate—

- (a) congratulates the Government on confirming its support for the resolution on human rights and sexual orientation that was recently introduced to the 59th session of the United Nations Commission on Human Rights;
- (b) notes that the resolution was introduced by Brazil and seconded by Poland; and

- (c) urges the Government to maintain its commitment to addressing the issue of persecution and violations of human rights on the grounds of sexuality at international fora.

Question agreed to.

#### **NATIONAL SORRY DAY**

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

That the Senate—

- (a) notes that:
  - (i) 26 May 2003 is National Sorry Day, and that this date commemorates the anniversary of the handing down of the *Bringing Them Home* report on 26 May 1997, and
  - (ii) National Sorry Day is an opportunity for all Australians to acknowledge and help to heal the wounds of the many Aboriginal and Torres Strait Islander people and their families who suffered as a result of the forced removal policies of successive Australian governments between 1910 and 1970;
- (b) congratulates those involved in the 'Journey of Healing' and other community-based organisations which are holding events across the country to help all Australians understand the ongoing impact of the removal policies and to rebuild relations between Indigenous and non-Indigenous Australians in the spirit of reconciliation;
- (c) notes further that 27 May to 3 June 2003 is National Reconciliation Week, the theme of which is '*Reconciliation. Together we're doing it*', and which is designed to reflect the real progress being made in communities around Australia, where partnerships between people in schools, government, private businesses and Indigenous organisations are showing what can be achieved when real effort is made in achieving reconciliation;

- (d) acknowledges that despite these efforts, the progress of reconciliation in Australia has remained extremely slow;
- (e) notes that the Legal and Constitutional References Committee inquiry into progress towards national reconciliation is in the process of conducting public hearings and is due to report by 11 August 2003; and
- (f) urges the Government to take note of this report and give careful consideration to its recommendations.

Question agreed to.

#### NATIONAL AUTISM WEEK

**Senator STOTT DESPOJA** (South Australia) (9.40 a.m.)—I move:

That the Senate—

- (a) notes that:
  - (i) 11 May to 18 May 2003 is National Autism Awareness Week,
  - (ii) Autism Spectrum Disorder has a profound impact on the individuals affected by it, their families, friends and communities,
  - (iii) there is a great deal of research being conducted into the causes of Autism Spectrum Disorder, and
  - (iv) the Autism Association of South Australia Inc. is providing valuable support and information to people affected by Autism Spectrum Disorder; and
- (b) urges the Government to increase funding to families with high support needs in relation to children and adults with autism.

Question agreed to.

#### COMMITTEES

##### Legal and Constitutional Legislation Committee

###### Report

**Senator EGGLESTON** (Western Australia) (9.40 a.m.)—On behalf of the Chair of the Legal and Constitutional Legislation

Committee, Senator Payne, I present the report of the committee on its examination of annual reports tabled by 31 October 2002.

Ordered that the report be printed.

##### Publications Committee Report

**Senator COLBECK** (Tasmania) (9.41 a.m.)—I present the eighth report of the Standing Committee on Publications.

Ordered that the report be adopted.

##### THERAPEUTIC GOODS AMENDMENT BILL (No. 1) 2003

###### First Reading

Bill received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (9.42 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

###### Second Reading

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (9.42 a.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted

*The speech read as follows—*

This bill amends the definition of 'therapeutic goods' to provide greater clarity and certainty for industry, consumers and regulators at the food-medicine interface.

It also rationalises the pre-approval process for advertisements for therapeutic goods by ensuring that the same requirements are met for advertisements for all types of media.

This bill also makes changes to transfer the advertising offences from the Therapeutic Goods Regulations to the Therapeutic Goods Act 1989 to provide a greater consistency in penalties imposed for breaches of similar severity.

In addition, the bill will clarify and tighten the responsibilities placed on sponsors and manufacturers of therapeutic goods to ensure that the products they make or supply measure up to appropriate internationally recognised quality and safety standards.

The bill will also provide the TGA with greater powers to take appropriate and timely action to remove substandard or suspect products from the marketplace.

#### **Definition of ‘therapeutic goods’**

There are occasions where it can be difficult to ascertain whether certain goods, because of the way they are presented, are ‘therapeutic goods’, that is medicines, or ‘foods’.

The definition of therapeutic goods currently excludes any goods that are covered by a prescribed food standard made under the Australia New Zealand Food Standards Code. This is the case even when the goods would otherwise, but for this exclusion, fall within the definition of ‘therapeutic goods’ under the Act.

For example, the Australia New Zealand Food Standards Code defines a “formulated supplementary sports food”, otherwise known as a sports food, as “a food or mixture of foods specifically formulated to assist sports people in achieving specific nutritional or performance goals”.

The effect of this definition is to require that any complementary medicine, presented as assisting sports people in this way, be regulated as a food.

This means the product, which may be in tablet or capsule form, with dosage instructions and indications for use, is not subject to the usual pre-market assessment, or post-market regulatory surveillance that occurs for other therapeutic goods.

Additionally, the product cannot be represented as a medicine, or carry medicinal claims, as to do so would render it an illegal food.

The amendment to the definition of ‘therapeutic goods’ will allow the use of a determination under

Section 7 of the Act in the practical manner that the legislation and all stakeholders always intended.

Without the amendment, the confusion with the regulation around the food-medicine interface would escalate. This could, in the future, pose public health and safety risks to consumers resulting from individual complementary medicine products being inappropriately regulated as foods.

#### **Advertising**

Another important aspect of this bill is to enable a transfer of the provisions for the pre-approval of therapeutic goods advertisements in the broadcast media from the Broadcasting Services Act 1992 to the therapeutic goods legislation.

Under the Broadcasting Services Act, approvals for advertisements of medicines intended for the broadcast media may be granted by the Secretary to the Department of Health and Ageing, or her delegates.

Review of the Secretary’s decisions is undertaken by the Minister for Communications, Information Technology and the Arts. At present the Minister cannot delegate this function.

On the other hand, approvals for advertising of therapeutic goods intended for the print media, cinema and outdoors are given under the Therapeutic Goods Regulations by the Secretary to the Department of Health and Ageing, or by her delegates.

The function of reviewing any decision to approve, or not to approve, an advertisement for publication is conferred upon the Minister for Health and Ageing, who is able to delegate this function to officers of the Department.

When deciding whether to approve advertisements intended for publication in the print media, cinema and outdoors, the Secretary must be satisfied that the advertisement complies with the Therapeutic Goods Advertising Code.

However, under the Broadcasting Services Act, there is no requirement that advertisements about medicines published through broadcast media comply with the Code.

The removal of provisions in the Broadcasting Services Act relating to the pre-approval of therapeutic goods advertising, will enable these func-

tions to be transferred to the therapeutic goods legislation.

This will create a level playing field for the provisions that apply to advertisements for therapeutic goods in all forms of media, as they will all be required to comply with the Therapeutic Goods Advertising Code.

The amendments will also simplify the pre-approval and appeals processes. All pre-approvals made in relation to advertisements will be made by the Secretary to the Department of Health and Ageing, or her delegate, and all related appeals made will be undertaken by the Minister for Health and Ageing or her delegates.

This bill will also transfer the advertising offence provisions from the Therapeutic Goods Regulations to the Act.

Currently, some of the offences relating to advertising still remain in the Therapeutic Goods Regulations, where the penalty for breaches of advertising requirements is set at 10 penalty units. Other comparable advertising offences have been included in the Act, where the penalty for breaches of advertising offences is 50-100 penalty units.

In order to ensure consistency of penalties applying for all breaches of the Therapeutic Goods Advertising Code, and to render any prosecution for breaches of the Code more effective, all advertising offences that are included in the Therapeutic Goods Regulations, are to be transferred to Chapter 5 of the Act, where other comparable advertising offences are located.

Based on recommendations from previous reviews of the therapeutic goods advertising provisions, a new requirement included in the bill is for advertisements published in the different media described as 'specified media' to comply with the Code. This will ensure that the principles of the Code in its entirety will be enforceable in relation to advertisements published in all major forms of media.

#### **Other Amendments**

A further critical aspect of this bill is a number of amendments to the Therapeutic Goods Act to enable the medicines regulator, the Therapeutic Goods Administration, to more effectively monitor compliance by sponsors and manufacturers

with their statutory responsibilities and obligations. These measures will better enable the TGA to more rigorously address any potential deficiencies in therapeutic goods supplied to the public.

The amendments are timely in the wake of a succession of serious safety and quality breaches by a major Australian manufacturer of therapeutic goods which necessitated unprecedented regulatory action to protect the Australian public from faulty and dangerous medicines. This unfortunate matter highlighted the importance of ensuring that the legislative provisions are adequate to prevent or deter such breaches from happening again.

The proposed amendments clarify and strengthen the responsibilities and obligations of sponsors and manufacturers of therapeutic goods. These include better record keeping about the identity of all manufacturers involved with the manufacture of their products so this information may be readily obtained by the TGA. In reality, this is information sponsors and manufacturers should already have about the products they supply, and for which they have responsibility under the Therapeutic Goods Act, however the amendments will ensure it is readily available, accurate and accessible.

The amendments will also provide new methods for addressing manufacturing deficiencies found in therapeutic goods by strengthening reporting requirements on sponsors and manufacturers. Information that becomes known to a sponsor or manufacturer about adverse events in connection with the use of their therapeutic goods, or about any deficiencies relating to the goods, must be notified to the TGA. Notifying the regulator about these matters by sponsors and manufacturers is not an unreasonable requirement.

By providing additional grounds for the TGA to refuse to include goods in the Australian Register of Therapeutic Goods, or to withhold, suspend or cancel a manufacturing licence, the amendments will assist in reducing the risk of non-compliance with required standards for goods and in ensuring proper and accepted manufacturing standards are followed. Importantly, only "fit and proper persons" will now be able to hold manufacturing licences for therapeutic goods.

The bill also includes provisions to extend the circumstances in which deficient therapeutic

goods may be recalled from the market, and when their sponsors or manufacturers will be required to notify the public about the grounds for recall. These measures will allow sub-standard or suspect products to be recalled without the need to cancel them from the Australian Register of Therapeutic Goods.

Finally, the amendments create new offences related to the failure of a sponsor or manufacturer to comply with manufacturing standards and for falsifying or destroying any document or record relating to, among other things, the manufacture, testing or evaluation of therapeutic goods. New offences are also proposed to provide additional disincentives for manufacturers who contemplate not complying with proper standards in the manufacture of therapeutic goods. These new penalty provisions are required in order to ensure that medicinal products continue to meet acceptable standards of safety, quality and effectiveness.

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

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

**SUPERANNUATION LEGISLATION  
AMENDMENT (FAMILY LAW) BILL  
2002**

**First Reading**

Bill received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (9.43 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (9.43 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—*

This bill proposes amendments to a number of Acts that deal with superannuation arrangements for members of the Commonwealth civilian schemes and members of the Australian Defence Force schemes.

These superannuation arrangements are being amended as a consequence of changes to the Family Law Act 1975 and regulations under that Act in relation to the new arrangements for splitting of superannuation on marriage breakdown. Under the new arrangements superannuation will be treated as property of a marriage and will be able to be divided as part of a property settlement. The new Family Law regime will enable separating parties or the Family Court to value a member's superannuation interest and make an agreement or order for the superannuation to split.

The bill provides for a framework within the relevant scheme for dealing with an agreement made by separating parties or a Family Court order that provides in the context of an overall property settlement for an amount of the member's superannuation to be allocated and paid to the member's former spouse.

The framework will enable a separate superannuation benefit account to be established for the member's former spouse where the scheme is advised that an amount of the member's superannuation is to be allocated to their former spouse. The bill will either amend the relevant Acts or allow Ministerial Orders to be made to provide for indexation of the former spouse's separate benefit before payment and the payment of that benefit. The benefit will either be paid as a pension or lump sum in such form and circumstances as the scheme rules permit.

The bill will also amend the relevant Acts or allow Ministerial Orders to be made to provide for a reduction in the benefit paid to or in respect of the member.

To put in place the framework, amendments are proposed to seven Acts these being the Defence Act 1903, the Defence Forces Retirement Benefits Act 1948, the Defence Force Retirement and Death Benefits Act 1973, the Military Superannuation and Benefits Act 1991, the Superannuation

Act 1922, the Superannuation Act 1976 and the Superannuation Act 1990.

As the majority of the rules for the Public Sector Superannuation Scheme established under the Superannuation Act 1990 and the Military Superannuation and Benefits Scheme established under the Military Superannuation and Benefits Act 1991 are included in Trust Deeds made under those Acts most of the proposed changes to those schemes will be made through amending Trust Deeds.

The bill proposes that the new superannuation arrangements will apply to superannuation agreements or Family Court orders received after the commencement of the relevant amendments to the legislation, as well as to those agreements or Family Court orders received before that time but after 28 December 2002 where no benefit has become payable to the member. In all other cases the default arrangements under the Family Law regime will apply.

The bill also proposes to amend the Superannuation Act 1976 and the Superannuation Act 1990 to include a regulation making power to amend those Acts from time to time in order to ensure the schemes continue to comply with the Family Law regime.

#### **Financial Impact**

The proposed amendments in relation to the Commonwealth civilian superannuation schemes will result in a minor bring forward of benefit payments in those schemes. The estimated impact on the underlying cash balance is outlined in the explanatory memorandum.

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

#### **BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives returning the following bill without amendment:

Crimes Legislation Enhancement Bill 2003

#### **GOVERNOR-GENERAL**

Debate resumed from 14 May, on motion by **Senator Faulkner**:

That the Senate—

(a) notes with concern that:

- (i) the Government has failed to respond to evidence of sexual abuse of children in our society and within our public institutions,
- (ii) the independent report of the Diocesan Board of Inquiry found that Dr Peter Hollingworth, while occupying a position of public trust as Archbishop of Brisbane, allowed a priest to remain in the ministry after an admission of sexual abuse, and the Board of Inquiry found this decision to be 'untenable',
- (iii) the Governor-General has admitted that he made a serious error in doing so,
- (iv) Dr Peter Hollingworth, through his actions while in the Office of Governor-General, in particular his interview on 'Australian Story' and his apparent 'reconstruction' of evidence before the Diocesan Board of Inquiry, has shown himself not to be a person suitable to hold the Office of Governor-General,
- (v) members of the House of Representatives, senators, and premiers and members of state parliaments have called upon the Governor-General to resign, or failing that, to be dismissed by the Prime Minister,
- (vi) the Governor-General is now no longer able to fulfil his symbolic role as a figure of unity for the Australian people,
- (vii) the Governor-General is now no longer able to exercise the constitutional powers of the Office in a manner that will be seen as impartial and non-partisan,
- (viii) the Governor-General's action in standing aside until the current Victorian Supreme Court action is resolved, does not address any of the issues surrounding his behaviour as

Archbishop of Brisbane, and is therefore inadequate,

- (ix) the Governor-General has failed to resign and the Prime Minister has failed to advise the Queen of Australia to dismiss him, and
  - (x) the Australian Constitution fails to set out any criteria for the dismissal of a Governor-General or a fair process by which this can be achieved; and
- (b) urges:
- (i) the Prime Minister to establish a Royal Commission into child sexual abuse in Australia, and
  - (ii) the Governor-General to immediately resign or, if he does not do so, the Prime Minister to advise the Queen of Australia to terminate the Commission of the Governor-General.

upon which **Senator Murphy** had moved by way of an amendment:

Omit all words after "That", substitute "the Senate—

- (a) notes with concern that:
  - (i) Dr Peter Hollingworth, while in the Office of Governor-General, gave in an interview on 'Australian Story', a version of events which have been found by the diocesan Board of Inquiry to be untrue, and
  - (ii) the same Board of Inquiry found that they could not accept Dr Hollingworth had a belief that the child sexual abuse was an isolated incident and that his handling of the matters was untenable;
- (b) finds that:
  - (i) the circumstances that have developed around the Office of Governor-General are doing irreparable damage to the Office and must be resolved,
  - (ii) the conclusions of the report of the Anglican Church clearly demon-

strates that Dr Hollingworth failed in his duty as Archbishop,

- (iii) such failing in a position of significant public trust renders Dr Hollingworth an unsuitable person to fill the Office of Governor-General,
  - (iv) the Governor-General's action in standing aside until the current Victorian Supreme Court action is resolved does not address any of the issues surrounding his behaviour as Archbishop of Brisbane, and is therefore inadequate,
  - (v) the Governor-General is now no longer able to fulfil his symbolic role as a figure of unity for the Australian people, and
  - (vi) the Governor-General is now no longer able to exercise the constitutional powers of the Office in a manner that will be seen as impartial and non-partisan; and, therefore, in light of these unacceptable circumstances
- (c) urges:
- (i) the Governor-General to immediately resign or, if he does not do so, the Prime Minister to advise the Queen of Australia to terminate the Commission of Governor-General, and
  - (ii) the Prime Minister to establish a Royal Commission into child sexual abuse in Australia.

**Senator JACINTA COLLINS (Victoria)** (9.44 a.m.)—In continuation from yesterday, it is not surprising that Dr Hollingworth maintains his false reconstruction of the events in case 5, the Elliot case, when government senators have been peddling pretty much the same reconstruction. We have seen it in the media this morning, particularly in the comments reported of Senator Brandis—an outrageous misleading of this chamber and of the public in relation to the evidence. Both Senator Hill and Senator Brandis

claimed in this debate that the expert psychiatrist had supported Dr Hollingworth's management plan—that Dr Slaughter had supported the plan that Dr Hollingworth had put in place. This is blatantly untrue. It is not the case. Senator Brandis's claim that it was the case and his going through the evidence to this point was clearly misleading. I am going to go through this in some detail because I want senators to conclude for themselves whether it was deliberately misleading. I have my own suspicions on that point but I would like each senator in this place to reach their own conclusions.

Senator Brandis in his contribution went to page 386 of the report. There is reported Dr Hollingworth's recollection of the advice he received from Dr Slaughter. Senator Brandis went to the final point there where Dr Slaughter, as recalled or reconstructed by Dr Hollingworth, advised against situations where Mr Elliot was put with young people. Senator Brandis then went on to page 388 where Dr Slaughter refers to his recollection of his advice to Dr Hollingworth. At paragraph 5.5, Dr Slaughter says that his recollection was that, whilst he did not feel he could comment one way or the other on whether Mr Elliot should be removed from the priesthood, he:

... did feel that he should not have dealings with the public and especially with young people.

The difference between the recollections of Dr Hollingworth and the expert psychiatrist Dr Slaughter is that Dr Slaughter was advising that this man should not be put with the public. There is no discussion there about supervision, as alleged by Senator Hill.

What was worse in the description of this case is that Senator Brandis then goes on to the 1993 letter from Dr Hollingworth to the respondent, where it makes this point clear. Senator Brandis referred to the section on page 390 of the report and went through the

first four paragraphs, but what he did not go to was the next paragraph. When we read the next paragraph in the context of what Senator Brandis was trying to allege you can see the misrepresentation. The next paragraph says:

This action differs from the advice given to me by Dr Slaughter ...

It could not be more clear that the path Dr Hollingworth was taking differed from the advice given to him by Dr Slaughter. Not only could it not be more clear from the recollections of Dr Slaughter, but from Dr Hollingworth's own pen we know that the path he chose was different from the advice he received from Dr Slaughter. Why didn't Senator Brandis refer to this point when he made very strong and very strident allegations about how the opposition was handling this case? He sought to defend Dr Hollingworth in maintaining some of his reconstructions in relation to this case.

Senator Brandis went further. I agree with Senator Brandis in relation to case 5 when he says that it is clear that Dr Hollingworth sought to apply good faith. I do agree that Dr Hollingworth was acting in good faith—he was poorly informed and it was poorly managed but I do not see anything which says good faith was not in place. I think the next point that Dr Hollingworth was being nothing but honest and truthful is a bit more difficult to maintain. Dr Hollingworth today, with reconstructions of the circumstances to accommodate his behaviour, may believe the story. But this is one of our problems: we cannot have a Governor-General in whom we cannot place confidence that he will not reconstruct a story to other than the truth as he tries to come to terms with the circumstances of inappropriate management of situations in the past. This is what Dr Hollingworth continues to do today, when he still claims to the inquiry that he had an extensive plan in relation to Mr Elliot. We should take

a closer look at that plan and see the multitude of errors.

Senator Brandis also says that Dr Hollingworth went through extensive consultation and established this management process. We now know that in that extensive consultation no-one else but Dr Hollingworth advised this type of management plan. It was against the expert psychiatrist's plan. Certainly other bishops did not demur from his plan, but other than his own opinion there is no evidence of advice that he should go down that path.

Further to that, Senator Brandis says that since this time, in relation to the Elliot case, 'no further child abuse occurred'. Frankly, we do not know that. We know that Dr Hollingworth did not seek to test the perpetrator's claim that he was not interfering with any other boys but we do not know that this did not occur. Anyone who has a basic understanding of child sexual abuse knows that the research tells us that these people committing sexual offences on children are likely to have committed many more sexual offences than ever become officially known.

How Senator Brandis can get up and say that no further cases have occurred, I do not know. Sure, Mr Elliot is in jail for multiple cases of sodomy at an earlier point in time, but where this confidence comes from that other cases of sexual abuse did not occur at some later point is beyond me. There is nothing in the Elliot case that leads us, having regard to the feedback Dr Hollingworth or other bishops or Elliot's wife were receiving, to have that confidence. There is nothing. It is sad that Dr Hollingworth did not look at placements earlier than 1993 that Mr Elliot had been in. What later occurred and what Mr Elliot was then successfully charged with came to the surface. It should have come when these cases came before Dr Hollingworth at that point in time.

Senator Brandis also claimed that case No. 5 was the entire case, that the Elliot case was the entire case against Dr Hollingworth. In a sense he is seeking the same respect that Dr Hollingworth applied to Mr Elliot in claiming that it was an isolated incident or an isolated error of judgment. This is not the case either. I encourage senators to have a look at case No. 3. Case No. 3 is another example of the main problem here. In case No. 3 the respondent, a retired bishop, had permission to officiate in the Brisbane diocese, and this is what people were trying to stop. The complainant asked that it be taken from the respondent. Dr Hollingworth considered that request and, for reasons that appear further on in the Aspinall report, he declined to do so.

Whether that decision was correct is a matter upon which the chairman and Professor Briggs are unable to agree. The overview of the report said that on balance and notwithstanding the powerful arguments to the contrary, the chairman considered that in all the circumstances this was a reasonable exercise of Dr Hollingworth's discretion. Professor Briggs, on the other hand, considered that once Dr Hollingworth in his capacity as archbishop was apprised of the serious misconduct of the respondent he should, in order to demonstrate proper moral leadership, have withdrawn the permission. Professor Briggs considered that in the circumstances Dr Hollingworth's failure to do so was inappropriate.

Case No. 3 is another case where Dr Hollingworth—and, it appears, the Prime Minister and members of the government in this chamber—have not got the point. The point is that when it becomes clear that a perpetrator of child abuse has done this type of abuse, they should be withdrawn from public office. Dr Slaughter recommended that but Dr Hollingworth put in place his management plan. A request to withdraw permission was sought in case No. 3 but Dr Holling-

worth allowed this respondent to officiate in the Brisbane diocese.

**Senator Ian Campbell**—Still on the main game?

**Senator JACINTA COLLINS**—Senator Campbell asks whether we are still on the main game. Yes, we are. The main game here is how we as a society or as a community deal with child sexual assault. That is why the Labor Party in this proposed resolution is seeking to set up a royal commission. Senator Brandis and others have accused us of a witch-hunt.

**Senator Ian Campbell**—Why didn't Peter Beattie set up a royal commission?

**Senator JACINTA COLLINS**—They miss the point. The point is not the pursuit of Dr Hollingworth; the point is how we as a society deal with child sexual assault.

**Senator Ian Campbell**—Because he is a spiv, that's why!

**Senator JACINTA COLLINS**—Mr Acting Deputy President, perhaps I could ask you to call Senator Campbell to order. It is getting a bit difficult to continue.

**The ACTING DEPUTY PRESIDENT (Senator Cherry)**—Senator Campbell should come to order. I do not think that is appropriate language.

**Senator Forshaw**—Mr Acting Deputy President, on a point of order: I would not have thought that calling the premier of another state or any member of parliament in another state a 'spiv' is parliamentary. Could he withdraw it?

**The ACTING DEPUTY PRESIDENT**—I do agree, Senator Forshaw. I would ask Senator Campbell to withdraw that particular description of the Premier of the state of Queensland.

**Senator Ian Campbell**—It is a term that was used by a great former Australian Labor Prime Minister, Paul Keating. Certainly the

standards in the other place may be lower but, if you regard it as unparliamentary, and if a member of the New South Wales Right faction regards the language of that former great New South Wales Labor Right figure Paul Keating as unparliamentary, then I am happy to withdraw it.

**Senator JACINTA COLLINS**—Thank you, Mr Acting Deputy President.

**Senator Ian Campbell**—Does Peter Beattie wear white shoes?

**The ACTING DEPUTY PRESIDENT**—Order, Senator Campbell! Senator Collins is speaking.

**Senator JACINTA COLLINS**—Senator Hill in his contribution to this debate claimed that there is no evidence that Dr Hollingworth condones child abuse in any way. While I agree that intentionally he does not condone it, I believe that Dr Hollingworth does not understand the point made very clearly by Senator Murray in his contribution. Senator Murray concluded his contribution with this comment:

You cannot underestimate when dealing with these issues what the consequences are of letting a paedophile priest continue in practice.

This is the message that the Prime Minister, Dr Hollingworth and many—not all—government senators have not understood. This is a message that I am sure Senator Murray understands, and I certainly do too.

Let us address some of those issues. If in identifying criminal behaviour the church does not report that behaviour to appropriate authorities, those involved may ultimately end up conspiring with that criminal behaviour. That conspiracy may not have been intentional originally. That conspiracy ultimately, though, will occur if you avoid reporting this type of criminal behaviour. This is the point of concern about the final letter in the Aspinall report that Dr Hollingworth wrote to the perpetrator, Mr Elliot. In that

final letter, dated 1999, possibly less than 18 months before the Governor-General was appointed, Dr Hollingworth suggested to Mr Elliot that he keep a low profile, that he ensured that he remained off the register of practising priests in the Anglican Church. That sort of behaviour, viewed as it is clearly laid out in this report, shows the type of perhaps unintentional conspiracy that Dr Hollingworth ended up in because he did not report this criminal behaviour. He left himself in the situation where, for quite separate reasons, Mr Elliot's behaviour was identified and placed before the courts and he was put in jail. (*Time expired*)

**Senator FORSHAW** (New South Wales) (10.00 a.m.)—This proposed resolution, unfortunately, is necessary. It is necessary for the Senate to pass this proposed resolution today because of the failure of the Governor-General to do the right thing and resign his office. It is necessary because of the failure of the Prime Minister to take action to seek or effect that resignation. It is necessary because of the failure of the Prime Minister in appointing Dr Hollingworth as Governor-General in the first place. It would not be necessary for us to spend this time today debating this issue if the Governor-General had done what the overwhelming majority of Australians believe he should do, and that is resign. Senator Ian Campbell, in interjecting a moment ago, referred to the 'main game'. This is not a game. This is a serious issue. Indeed, this is one of the most serious issues facing the Australian people today—that is, the terrible history of child abuse that has gone on in this country, particularly in institutions such as the churches.

Let us also remember that we are debating the fitness for holding the highest office in the land—an office which all Australians believe should be held by somebody whose past is unblemished and whose role as Governor-General is appropriate. This proposed

resolution should be passed because it is clear and undisputed that Dr Hollingworth failed to appropriately deal with allegations of sexual abuse in the Anglican Church during his time prior to being appointed Governor-General. The findings of the inquiry conducted by the Anglican Church have been well canvassed in this debate. They are findings that have been accepted by Dr Hollingworth, though I note that claims are being made on his behalf that he may have been denied natural justice. I will come back to that in a moment. Certainly, it is indisputable that Dr Hollingworth allowed a self-confessed paedophile to continue in the ministry despite a history of sexual abuse. He allowed that to happen despite being informed of and investigating it himself. Dr Hollingworth now admits, following the inquiry's findings, that this was a serious error of judgment.

But it was more than a serious error of judgment. As the Anglican Church's inquiry found, the way in which Dr Hollingworth handled the case of John Elliot, in particular, was untenable. It also found that Dr Hollingworth's evidence and recollections were faulty; indeed, they were subject to some reconstruction. I will quote from the report; this has already been quoted in *Hansard* but I believe that it is important to quote it once again. The report said:

The Board finds that Dr Hollingworth's recollections are faulty, and that he has apparently reconstructed what he believed he was told, rather than recalled what in fact was said. Dr Hollingworth has made a statutory declaration that he believed at the relevant time the abuse was an isolated occurrence, and whilst the Board does not doubt he genuinely believes this to be so, the Board is satisfied that in August 1993 FG told him the details of the abuse and indicated that it consisted of more than one offence. There was nothing that could have entitled Dr. Hollingworth to believe otherwise. ... The Board considers that no Bishop acting reasonably could have reached the decision

to continue a known paedophile in the ministry. There were no extenuating circumstances nor can the Board imagine any ...

Those comments demonstrate that this was more than just a serious error of judgment. The evidence also reveals that Dr Hollingworth put the interests of the church and, indeed, the perpetrator ahead of those of the victim, the law and the wider community. In September 1995, a letter was written by the brother of FG, the victim, to Dr Hollingworth. On the following day, Dr Hollingworth wrote:

At the end of the day I made the judgment that he is now getting close to retirement and the disruption and upset that would be caused to the whole parish as well as to him and his family would be in nobody's best interests.

Clearly, having been made aware of this terrible abuse that had occurred, having been made aware that it was not an isolated incident but rather had been happening for a number of years, the response of the person charged with protecting the members of the church and the community—not just the ministers but indeed all of those who come within their care, especially children—was to take the view that this should be kept under wraps. Why? It was because it might upset the parish and it might cause disruption and upset to the perpetrator and his family. To come to such a conclusion demonstrates not just an error of judgment; it demonstrates in my view a total disregard for the interests of those the church seeks to represent and to protect.

I want to deal with some of the arguments that have been put by members of the government in defending or supporting Dr Hollingworth's remaining in the position, as well as some of those which have been argued publicly. The first one of those is the argument that this all happened before Dr Hollingworth was appointed as Governor-General and that he has done nothing since

in his role as Governor-General that would warrant his resignation or dismissal. Frankly, I think that is a nonsense proposition because this issue does not just relate to what Dr Hollingworth has done in carrying out his responsibilities as Governor-General; it relates to his fitness to hold the office and it relates to his fitness to be appointed to the office. Nobody should be appointed to that office or be allowed to remain in office if serious blemishes have occurred on their character, their integrity and their responsibility either before their appointment or afterwards. Let us ask ourselves the question: if the decision were being made today by the Prime Minister to appoint a Governor-General, knowing what we know now—and indeed what was known to some extent at the time of the appointment—would Dr Hollingworth be appointed Governor-General today? I think not. Therein lies the real position.

Also, it is not true that nothing has happened since the appointment of Dr Hollingworth as Governor-General in terms of his carrying out of duties that would warrant his resignation or dismissal. It is not true. We are all aware of what was said by Dr Hollingworth in the *Australian Story* program when he took the opportunity to defend his role in these issues prior to his appointment. He said to the ABC, in referring to the case of a young girl who had alleged sexual abuse:

... this was not sex abuse. There was no suggestion of rape or anything like that. Quite the contrary, my information is that it was, rather, the other way around.

He was still seeking to shift the blame, after he was appointed Governor-General, from the perpetrator to the victim. Frankly, the reaction to that interview and that comment around the country was amazing. People were totally offended by that attitude, an attitude that was clearly one long held by Dr Hollingworth, and presumably at that point

in time he had still not come to realise that he was wrong. It was clear that he was still failing to deal with this issue seriously and appropriately.

I think it is also important to note what Senator Hill said when he spoke in the chamber. He talked about Dr Hollingworth having made an error of judgment and having acknowledged that. He then went on to say:

Why was Dr Hollingworth appointed to this job? It was not because he was an archbishop; it was because he had given a lifetime of service to the community, particularly to the poor.

It has been argued that we should look to Dr Hollingworth's period of great service to the poor, particularly in his role with the Brotherhood of St Laurence, for many years prior to his appointment and that we should judge his fitness for office on that record rather than on the record relating to the cover-up of sexual abuse within the Anglican Church. I do not question Dr Hollingworth's service in regard to the Brotherhood of St Laurence and his raising of issues regarding poverty and social deprivation. But I think it actually reinforces the case that we make. Here is a person who should have understood better than most the impact of sexual abuse upon young children, because he had worked with the community for so long in a role where he would have clearly come to understand, probably better than most people in the community, the impact of such abuse. As I understand it, he was a trained social worker or experienced in social work. Clearly his record demonstrates that. That is why he should have understood and acted differently from the way he did. His record actually reinforces the point we make that he should not continue to hold this office.

It has also been argued that the inquiry by the Anglican Church was not a judicial inquiry and that therefore we cannot take the

findings as seriously as we might take those of, say, a judicial inquiry or a royal commission. That has led to the argument about the denial of natural justice. Let us deal with that. Firstly, the reason there was no judicial inquiry was that the federal government refused to hold one. The head of the Anglican Church in Brisbane requested that the federal government establish either a royal commission or a judicial inquiry into these issues but they refused, so the Anglican Church conducted its own inquiry. Clearly, such an inquiry does not have the scope that a wider royal commission or judicial inquiry might have in relation to the rules of evidence, cross-examination and so on. So that argument does not hold up, because that request was rejected by the government.

Secondly, the argument that Dr Hollingworth was denied natural justice was advanced by Senator Brandis in particular, who tried to give us the benefit of his legal knowledge. Senator Brandis is not the only lawyer in this chamber—there are plenty of them. Those of us who understand the law, whether we practise in it, have been involved in it or not, understand that Senator Brandis's arguments were a furphy. Dr Hollingworth apparently now claims—or it is claimed on his behalf—that he has been denied natural justice, and it is said that he has a legal opinion. However, the legal opinion has not been released. Let us see it. Let us test it. It is clear from the inquiry that Dr Hollingworth had every opportunity to put his case. As I understand it, he was invited to appear but he declined; he put in a written statement. The inquiry took masses of evidence, as the inquiry says, from witnesses through written statements and other means. Importantly, Senator Brandis got it wrong when he said that Dr Hollingworth was never shown the final report before it was released. That is not true. Dr Hollingworth's solicitors were pro-

vided with a copy of the draft report before it was released.

It is also argued that this is a witch-hunt—this is allied to the argument about natural justice. Senator Brandis said that in his view it is like the trials in Salem in 1692. What a preposterous comparison. Firstly, the Salem trials, as we know, were based upon false evidence. Here the evidence is not false; here the evidence is clear and indisputable: the abuse occurred. In the famous Salem witch-hunt trials, people were convicted and executed because of false accusations—lies—and hysteria. It is a preposterous comparison. This is not an hysterical beat-up; this is a genuine response by the Australian community, the media and this parliament to an issue of vital importance.

If we are going to talk about natural justice, what about the natural justice that was denied to High Court judge Justice Kirby when Senator Heffernan stood up in this chamber and attacked his reputation based upon false evidence? No notice was given to Justice Kirby that that was about to happen—none at all. What about the natural justice that was denied to that young woman when Dr Hollingworth made his statement on *Australian Story* that I read out a moment ago—a statement made on public television, traducing her character and suggesting that she really was responsible for the abuse that occurred? There was no opportunity for her to defend herself.

I have recently read references to the need for forgiveness, and particularly that this is a trying time for Dr Hollingworth. I have no doubt that it is. But let us remember the words of Christ, as written in Matthew 18:6:

But whoso shall offend one of these little ones which believe in me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea.

We are not suggesting that sort of fate for Dr Hollingworth. What should happen is that he resign as Governor-General.

**Senator LUNDY** (Australian Capital Territory) (10.20 a.m.)—I stand in support of the motion moved by Labor, and firmly believe that Dr Hollingworth must be removed from the office of Governor-General by the Prime Minister of Australia. Dr Hollingworth failed to deal with child sex abuse, he failed to protect the victims of child sex abuse and, in turn, chose to protect a known paedophile—this while he was in a position of great trust as Archbishop of Brisbane. Dr Hollingworth would never have accepted the appointment of Governor-General if he truly realised and regretted this serious failure to act. But, true to form, he displayed an ‘error of judgment’ by agreeing to become head of state. Given that the Prime Minister refuses to take any meaningful stand on this issue, the Labor Party and the Senate can no longer wait for him to act.

Dr Hollingworth should not simply step aside from the office of Governor-General; he must be removed completely. He must be removed on the basis of his ‘untenable’ decision to do nothing when faced with a priest who had committed unspeakable crimes. The call to remove Dr Hollingworth is not in relation to the rape allegations. This is why the call by the Prime Minister asking Dr Hollingworth to step aside once the rape allegations were made public could be interpreted that he has effectively expressed a view on the Aspinall report and that he, the Prime Minister, is not concerned about the findings of that report. Labor has been saying that John Howard had missed the point, but what if it is worse than that? What if, in fact, the Prime Minister supports Dr Hollingworth in the face of his ill judgment as exposed in the Aspinall report?

The protection of children in our society must come before anything else. Our children must be placed above politics, and yet the Prime Minister continues to maintain that Dr Hollingworth is worthy of retaining the office of head of state. Australians consider child sex abuse to be the most serious of crimes. Australians demand that paedophiles be dealt with harshly and that the victims of such crimes receive justice and all possible support through the unimaginable emotional torment which ensues from such horrific crimes. The Prime Minister clearly does not have the prevention of child abuse high on his agenda. One would have thought that in Tuesday night's budget the government would at the very least have allocated some new money for the prevention of child abuse, but there was nothing. Given the attention that this issue is getting, and considering that the government has this week risen in the parliament and stood in this chamber to state the importance of the protection of children, I see nothing new in either funds or strategy to further protect Australian children from the horrors of child abuse. As a mother of three children, I cannot accept that more is not being done to protect children throughout this country. I know all parents care about this issue very deeply and reflect upon their own life experiences in their support for the strongest possible action to be taken against child abusers.

Australians refuse to simply turn a blind eye to child sex abuse and likewise will not accept that Dr Hollingworth's actions as Archbishop of Brisbane were a mere, and indeed forgivable, error of judgment. It is a disgrace that the Prime Minister will not acknowledge the seriousness of Dr Hollingworth's decision to consider the needs of the abuser before the needs of the abused and remove him from office. The decisions made by Dr Hollingworth are a serious indictment of his character and his ability to protect and

honour the dignity of the office of Governor-General. The Prime Minister's failure to remove Dr Hollingworth from the revered position of head of state is also a serious indictment of Mr Howard's ability to conduct himself properly as Prime Minister of this country. The office of Governor-General should be a symbol of unity and strength for the nation. Because the Prime Minister makes the appointment to the office, he too shares the responsibility of maintaining the standard of the position.

I look to Dr Hollingworth's own words and his explanations of the choices and judgments he has made as being a good test and a measure of his ability to uphold the standards of the office of Governor-General. I think they tell us a lot. After all, on the ABC program *Australian Story* Dr Hollingworth's wife said of him:

Peter's a person who's really very hard on himself. He really tortures himself about what he should and shouldn't do ...

Subsequently rationalising his lack of action on the complaints made to him of sexual abuse of students in an Anglican school, Dr Hollingworth said:

Dealing with the issue of Toowoomba Prep and the terrible tragedies that occurred there, I think I'd say that I wasn't up to it, for several reasons.

He went on to say:

A few years later, I think I could have handled it better.

In December 2001, the Anglican Church attempted to defend the inaction of the former archbishop by revealing that he had received legal advice urging him not to intervene in the school's abuse case and to make no public comment. Dr Hollingworth himself explained in relation to this:

The deepest moral dilemma that as a Christian, as a Christian leader, I would want to do one thing. As the leader of an institution, I'm tied into a legal contract with an insurer that determined

other things. You've got a moral dilemma here between saying, "Well, to hell with the insurance. We'll put all our energy behind the victim, and if they sue us, well, so be it, we'll pay. And if we're not insured, tough luck." I mean, I can understand that argument, of course, and I have a lot of sympathy with it, but the other side of it that has to be put, is that if you've got three or four court cases that went against you, it'll close the school.

As we now know, in this moral dilemma the archbishop chose to act on economic and legally prudent grounds rather than to show compassion to the child victims of abuse. Not only that, he chose to cover up the abuse for as long as he possibly could. He also chose, long after the abuse was admitted by the perpetrator and the church, to try to cast doubts on the veracity of the victims' evidence. He said on *Australian Story* in relation to this matter:

That's deeply regrettable and I'm very sorry about it, and we'd have to say if that's what happened, it was wrong.

I want to stress the phrase 'if that's what happened'. That is a key phrase. Dr Hollingworth, at the point of saying that, knew of the cover-up, and he knew it long before he made that statement.

Concerning his support of a priest who had a sexual relationship with a 14-year-old girl, Dr Hollingworth again resorted to blaming the child victim, saying:

My belief is that this was not sex abuse. There was no suggestion of rape or anything like that. Quite the contrary, my information is that it was, rather, the other way around.

Whilst the motion we are currently debating relates to the findings of the Aspinall report, and the rape allegations are separate and not raised as part of my argument for his removal, I cannot help but observe that Dr Hollingworth persists in making inappropriate comments and reflections about women and child victims. For example, in his recent statement concerning rape allegations, while

carefully concentrated on his mindfulness of the integrity and dignity of his own office and position, he refers each time to 'Annie' Jarmyn. Dr Hollingworth does not even afford her the dignity of her title, which is Mrs Jarmyn.

The problem with the Governor-General appears to be that he is so impressed with his own high status and his determination to defend himself that he forgets his duty of care to those who cannot act in their own defence. Did he think that high office offered some sort of shield against accountability? Did he think that high office somehow excused him from moral weakness? I think it is really interesting to reflect that the executive power of the Commonwealth vested in the Queen, which may be exercised by the Governor-General, includes the power to pardon offenders. It is an aspect of the prerogative of mercy. By convention, the prerogative is exercised by the Governor-General on advice from ministers or by ministers or other officials so authorised by the Governor-General. It crossed my mind to ask this question: is it conceivable that, should the Governor-General himself be found guilty of an offence, either formally or more informally—as I think he is being judged by the Australian people in relation to the Aspinall report—a friendly minister or official could assist him in being pardoned?

But I digress. The issue here is that the Governor-General's old-world and sexist attitudes are reminiscent of those countries or periods where the testimony of any woman or child is weighted as lesser than that of a man. Not only has he not defended, or sought justice for, victims of sexual abuse and child abuse but by his own actions and omissions and by his statements he has added immeasurably to their sufferings. He is not worthy to hold the office of Governor-General. He should not be collecting his salary. The Prime Minister of this country

should be ashamed that he did not force Dr Hollingworth's resignation upon the release of the Aspinall report. So we find ourselves debating this motion which calls on the Prime Minister to take that action. I urge all senators to do what is morally right and support this motion.

**Senator CROSSIN (Northern Territory) (10.30 a.m.)**—I rise to provide my contribution to the debate on the motion that has been moved by us and some of the minor parties in the Senate in relation to the Governor-General. At the outset I have to say that sometimes in these positions you are honoured to be part of history and history making events, but the fact that the Senate has had to deal with this matter and is debating this issue is perhaps not one of the proudest moments we will all remember. In fact, I find it quite embarrassing. It is a shame that it has come to the stage where we feel compelled in this chamber to debate the actions and the position of Governor-General and to continue to raise awareness of the inappropriateness of not only the situation we find ourselves in but also the unfortunate situation of the person currently holding that position.

As I look back at the work that Sir William Deane undertook in the role of Governor-General, I have to agree with one of my colleagues who made the comment yesterday that, during that time, that person actually value-added to the role in a way that exemplified the position in this country. There is a little bit of me that says that in some ways it was the way in which Sir William Deane undertook his responsibilities with such dignity and honour that made it very hard for us to push our point during the 1999 debate on the republic, because we had a person who was upholding the position of Governor-General so well.

I think this whole matter has refocused the agenda on the republic debate in which this

country has been embroiled over the last decade or so. It is that aspect that I want to emphasise in my comments on the record today. We know that in 1999 monarchists campaigned hard and fast that there was no reason to become a republic. They campaigned on the slogan: if it ain't broke, don't fix it. The reference to 'if it ain't broke' meant the system, and particularly the system of appointing Australia's head of state to represent the Queen in this country. You would have to say that recent occurrences clearly illustrate that this system is broken—it is severely broken. Some might even say it has got to the point where it is shattered and that it certainly does need fixing and addressing.

This is not opportunistic nor is it contrived; it is simply a recognition of the fact that our current system is undemocratic, and recent events of the last few months have highlighted that it is in crisis. I would have to say that, thank goodness, the general public are becoming aware of the issues. They are becoming much more aware of how we appoint the Governor-General and, even more so, of how difficult it is to remove a person who is no longer appropriate as holder of that office. As Peter Costello recently stated:

It's not a cabinet, it's not a parliamentary, it's a personal appointment. And similarly, the dismissal of a Governor-General is solely on the advice of the PM rendered to the Queen.

The whole situation surrounding Dr Hollingworth has shown the complete inadequacy of a system in which only two people—the Prime Minister and the Queen—are empowered to appoint and, what is more, to remove Australia's Governor-General, without any parliamentary debate and without any public explanation or discussion—or scrutiny, for that matter. This system is foreign to this country; this system is closed to scrutiny, it lacks accountability and we have seen that it certainly lacks any form of transparency. It is inadequate and

parency. It is inadequate and undemocratic and should be changed to avoid a recurrence of the current situation.

We know that criticism of the current Governor-General is widespread and includes criticism from those concerned with countering child abuse, the victims of child abuse and those supporting the separation of church and state. Republican opinion is neither more nor less critical of Dr Hollingworth as an individual than is that of other Australians. The Republican Movement has to date, in the articles I have read, deliberately chosen not to rush into the debate due to its vested and obvious interest in replacing the Governor-General, who represents Australia's head of state, the Queen, with an Australian head of state. Given the republicans' particular interest in the position of Governor-General—it has been well known now for more than a decade—and the expansion of the debate to include the wider issue, it now does seem appropriate that the ARM make a contribution to this debate.

Republicans are more concerned about the system than the individuals within it. This current system is not good enough for a modern, independent and democratic country, such as Australia. The solution to a crisis in our constitutional arrangements should not be subject to the personal and political judgments of one person alone—the Prime Minister. We currently have a situation where the general public have voiced their concern and have said that the current person holding the position of Governor-General should be removed. However, only the Prime Minister has the power to do this, and he has stated that he has no intention of carrying out the wishes of the Australian people in this respect. So there is no other avenue to be taken.

Subsequently, the Governor-General, who was hand-picked by this Prime Minister and

who was never the subject of parliamentary debate, now finds himself the subject of public attacks, accusations and protests. Such actions can do no less than severely damage the office of the Governor-General. The unfortunate circumstances surrounding the Governor-General have reduced the position of the Queen's representative to one that is subject to the personal and political imperatives of the Prime Minister. In the face of declining political and public confidence, the Governor-General is now completely reliant on the Prime Minister's support.

For the record, I want to correct some assumptions and assertions made by the government in this debate. In particular, yesterday Senator Eric Abetz made a contribution in his speech about the current rape allegations and the suppression order granted by the courts in relation to the victim. Of course, it is not unusual that victims making rape allegations are granted a suppression order—it is a normal course of action to protect the victim in every manner possible. It was alleged by this government that the suppression order was requested by the victim and that it was in fact the only suppression order around at the time. My understanding is that that is not correct and that there was in fact a second suppression order, requested by the Governor-General in collusion with the Prime Minister, which was also granted by the courts. So we have a Governor-General who is absolutely reliant on this Prime Minister to protect his position and to protect him personally. Unfortunately, I think we also have a Governor-General who, in trying to defend his current position in recent months, has clearly not understood the distinction between holding a position of power in this country and what that means when you speak publicly about an issue, and that each and every time you make a comment about that issue—in this case, child abuse and child sexual abuse—it has implications.

Many of my colleagues have commented about the inappropriateness of his comments, but I personally believe it is unfortunate that Dr Hollingworth sees no connection between his comments, the office he holds and the severe impact his actions are having on those victims in the wider community. That is one of the very sad things about this whole affair.

The motion moved by Labor acknowledges the circumstances in which the Governor-General's suitability to his position has been seriously questioned. The government's failure to even respond to the evidence of sexual abuse of children in Australian institutions continues, despite this now becoming a major national issue once again. This government does not take the issue of sexual assault as seriously as it should. It is not taking any action to address the issue. In fact, even on Tuesday in question time in the House of Representatives the Prime Minister ruled out a royal commission. He cited the reason as being that he would rather spend the \$8 million or \$10 million a royal commission would cost on assisting children who are victims of abuse or sexual assault. And yet that very night this government handed down a budget that allocated only \$4 million to preventing child abuse. That \$4 million has remained a constant amount over many years without any increase and without any new initiatives in it.

There are too many cases, substantiated or not, of child sexual abuse in Australia. It is an ongoing problem that severely affects people for the duration of their lives, and probably for the duration of the lives of the people around them. The least the Australian government can do is accept that this is a significant problem and seriously consider the proposal of a royal commission. This Governor-General has been found by the Diocesan Board of Inquiry to have handled a situation involving child sexual abuse inappropriately. The public have also been dissat-

isfied with his reaction to and handling of allegations, and with the wider issue of sexual abuse in religious institutions. Dr Hollingworth's failure to respond appropriately to the abusers and their victims casts the initial doubt—and a valid doubt, I might add—on his ability to fulfil the office of Governor-General.

The motion also acknowledges the failure of the Australian Constitution to set out any criteria for the dismissal of a Governor-General, or a fair process by which this can be achieved. This is a clear indication, illustrated by the current situation, that this system is broken. And it needs a democratic solution. Before Australia again considers becoming a republic, there is an opportunity now to democratise the process of selecting a Governor-General in the future. Many have suggested that the federal government follow the lead of the Premier of Queensland, Peter Beattie. The Labor Premier has announced that the process employed to appoint Queensland's new Governor would involve the general public being asked to nominate people for him to consider, with the Premier's choice then being put to the Queensland parliament to debate. In the event that the current Governor-General either resigns or is asked to resign, perhaps that is a path that could be considered by this government in looking at his replacement. While Peter Beattie is a republican, I believe his reforms are of no consequence to that issue. The Premier is about putting in place a democratic process to appoint the Queen's representative of his state, and is reasoning that should be favourable to most people. It is certainly an improvement on the current system, where a single person gets to choose that representative without any scrutiny or accountability.

There is no reason to wait for a republic to change the system. The Queen is bound to follow the advice of the Prime Minister, and

whether that advice is based on the Prime Minister's own decision or one reached by a more democratic process does not matter. Not only would the process be more democratic; the position of the head of state would be much stronger. That person would then be in a position which would or should enjoy the confidence of the Australian public.

We need to deal with the fact that under the current system there is a real chance that a similar situation may well occur again. Although the Governor-General has indicated that he may step aside, if he chooses not to resign and the Prime Minister continues to stand by him, there is no mechanism for this remedy. The office of the Governor-General will remain in the media and will continue to be severely damaged.

In an article in the *Canberra Times* on 9 May this year, the current convenor of the Australian Republican Movement, Professor John Warhurst, had this to say:

Such a system is plainly not good enough for a modern, independent and democratic country such as Australia. The solution to a crisis in our constitutional arrangements should not be subject to the personal and political judgments of the Prime Minister alone. The system for appointing and removing a Governor-General is undemocratic and inadequate. The system is broken and it is time to fix it.

Let us hope that this government realises that this is an opportune time to do that, and that this is a time to actually listen to the voice of the people in this country and to elevate to the position of Governor-General a person who holds the respect of everybody in this country and who unites everybody in this country.

**Senator McLUCAS (Queensland) (10.46 a.m.)**—At the outset in this discussion I need to make it plain that the motion we are debating relates to the actions of Peter Hollingworth in his capacity as the Archbishop of Brisbane and more recently in his role as

Governor-General. This motion in no way relates to the allegations raised last week. Those matters will be dealt with appropriately in the Victorian Supreme Court and they have no bearing on the substance of this motion. In that matter, Peter Hollingworth deserves what all Australians in a similar position would deserve, and that is the presumption of innocence.

The motion we are debating today relates to the actions, and lack of action, of Peter Hollingworth during the 1990s when he was the Archbishop of the diocese of Brisbane, which have been reported in the *Report of the board of inquiry into past handling of complaints of sexual abuse in the Anglican Church diocese of Brisbane*. At this point, I commend Archbishop Aspinall on his handling of these issues in first setting up the inquiry, I think with the intent of finding some measure of justice that the victims of sexual abuse could receive. I also commend Mr Peter O'Callaghan QC and Professor Freda Briggs on their report. It is extensive and thorough and it contains tragic stories of abuse of an ongoing nature of families and children who will take many years to recover, if ever, from the hurt that has been perpetrated upon them. The report will assist in some way in the healing that those victims need to undertake.

I also take this opportunity to commend Peter Beattie on his handling of the request from Archbishop Aspinall for the tabling of the report. As we know, the same request was made of the Prime Minister, but it was the Premier of Queensland who showed his consideration for the church and, more importantly, for the victims of abuse and who allowed that report to be tabled. He encouraged people to read the report and I do too. It is not nice reading but, as I said, it will help those victims to recover.

Two matters in the report deal with Peter Hollingworth. Complaint No. 3 relates to a now retired bishop, Mr Donald Shearman, and his relationship over many years with a parishioner. Without going into the detail of the matter, the board identified that Peter Hollingworth should have found a way in which he could have conveyed his disapproval of the conduct of Mr Shearman to the complainant. Peter Hollingworth's behaviour read to me as being dismissive of the woman's legitimate concerns and hurt. He was protecting the interests of his colleague over the interests of the parishioner. In any analysis, he supported the powerful over the powerless.

Complaint No. 5 details the matters relating to John Elliot, formerly the bursar of an Anglican grammar school and later a priest. John Elliot is currently in jail for his criminal abuse of children. When Peter Hollingworth was advised of the abuse, by the parents of a child who was abused by Elliot, he took the view that Elliot could continue in the ministry with a set of extraordinary conditions. These conditions were that he avoided situations involving children and young people and that he be supervised by his wife. I find that the most astonishing thing in the report, that Peter Hollingworth could have told a minister and his wife that it was her job to ensure that this did not happen again. That is not an acceptable form of management of an abuser.

Peter Hollingworth told the board through his solicitors that his understanding was that the event was an isolated incident. There is no support from the board for this position. The board politely said that his recollections were faulty and that he had reconstructed rather than recalled what was told to him. The board took the view that he was aware that there was repeated and ongoing abuse and the board took the view that Peter Hollingworth knew that. That being said, an iso-

lated criminal act remains just that—a criminal act. In my mind, it is no defence to suggest that only one event allows for a pardon of the crime. I do not understand why at this point Peter Hollingworth did not refer the matter to the police. He was aware of an abuse of a child. Why did he not take the action to refer the matter at that point to the police? He was in a position of power with knowledge of allegations and he did not act. This is more than an error of judgment; this is maladministration. This is an abrogation of responsibility. It was the protection of the church over the need for the protection of children. Once again it was the defence of the powerful over the defence of the powerless. The board rightly concluded that Peter Hollingworth's decision in this matter was untenable.

It is also untenable that a person who has acted in this way should hold the highest office in our country. What message does it send to the community if the person who holds that office has acted in that way: that a person who has not responded to a call from the families of children who were victims of sexual abuse should remain in a position of trust, leadership and respect? Australians expect that the person who holds the position of Governor-General should be above challenge, should be dignified and should be in a position to show leadership on all matters.

Peter Hollingworth through his actions, which have been laid out in the report, has left himself and, more importantly in my mind, the office of Governor-General open to criticism. It is not tenable to allow that criticism to continue. It is not tenable for Peter Hollingworth to remain in that position. What message is sent to the victims of the abuse detailed in the report when they know that the person whom they looked to for support, and who did not provide it, can continue in that position of trust without any reprimand and with no consequence? The

Prime Minister's actions in defending the Governor-General confirm support for Peter Hollingworth's actions in the 1990s in Brisbane. Also, what does it say to those in the community who are victims of child sexual abuse but who have not had the courage to speak out—those whom we try to support and want to encourage? What does it say to those people when child support agencies ask them to speak out and yet the person who holds the highest office in the land has not responded to people in a similar position?

A sexually abused child goes through an incredibly traumatic experience with the secrecy and the silence that follows the abuse. This adds to the emotional trauma of the child. The greatest fear that victims of sexual abuse have is that, if they tell someone about what has happened to them, it will not be taken seriously or the information that is provided to that trusted one will not be acted on. It takes a great deal of courage for victims to speak out. As a community we have a responsibility to encourage those victims of abuse to come forward and to feel secure that what they say will be treated with respect and that their allegations will be investigated.

The Prime Minister's action in not dismissing the Governor-General—implicitly condoning Peter Hollingworth's actions—directly discourages those abused children from speaking out because it reinforces their fear that they will not be believed. This raises the issue of why the Prime Minister left it until last Sunday to act to protect the office of the Governor-General. In my view, it was not as a result of the airing of the allegations of rape that have surfaced. The Prime Minister has acknowledged that he had been aware of these allegations for over six months. People will have to make up their own minds as to why it took the Prime Minister so long to react to the community outrage that Peter Hollingworth was not re-

moved from the position of Governor-General.

The Labor Party has continued to raise these issues for over a year. People will ask why—and there have been lots of assertions from the other side of the chamber about why—we have continued to raise these concerns. The reason is twofold. Firstly, it is out of respect for the office of Governor-General. Even though most of us on this side are republicans, we acknowledge that the office of Governor-General needs to be a respected and a dignified position. Secondly, it is the need for a consistent message around the issues of child sexual abuse. If Peter Hollingworth does not stand down, it is incumbent upon the Prime Minister to remove him.

As Senator Crossin said earlier, this is not a debate about republicanism or whether Australia should remain a monarchy, but it does raise the need for scrutiny of the appointment of the Governor-General. I believe that the appointment should not be left to the Prime Minister alone. The appointment should not be a surprise. I commend Peter Beattie, the Premier of Queensland, for starting the debate in his state. On 11 March 2003, at the appointment of the new Governor of Queensland, Ms Quentin Bryce AO, Peter Beattie took the opportunity to bring the appointment to the chamber for debate. In his speech on the motion relating to the appointment he said that what he was proposing to do was:

... a tentative step to involve the people in the selection of the Governor ...

He said:

The first stage in this process is to place this appointment before the people's forum—that is, the parliament—so that elected members have the opportunity of giving the decision parliamentary recognition.

In his words it is tentative. Yes, it is at the first stage, but it does provide an opportunity for there to be scrutiny of the appointments of governors-general and governors. Peter Beattie also said that in the future he would invite Queenslanders to recommend suitable individuals to become the Governor of Queensland. He said that he would seek the views of the community. He said:

... but I hope that when the people want to nominate they will be able to indicate to the Premier of the day that they are interested in the position.

This provides community involvement and participation in the appointment of a governor. Finally, I acknowledge that Peter Hollingworth will be suffering and I acknowledge that his wife is ill. But I ask this chamber to think first of the children who have been hurt through this matter.

**Senator BUCKLAND (South Australia)** (10.59 a.m.)—I only have brief comments to make on this issue of the Governor-General. It is an issue that I believe warrants all of us making a contribution because of the gravity of what we are discussing. It gives me a degree of pleasure to support the motion moved by Senator Faulkner. The Governor-General's role is outlined on his web site, which states:

Possibly the most important role of the Governor-General, as the office has evolved over the years, is to encourage, articulate and represent those things that unite Australians as a nation.

I think we need to reflect on the words 'to encourage, articulate and represent those things that unite Australians as a nation'. During the past week and previously during Dr Hollingworth's term as Governor-General, we have witnessed controversy surrounding his handling of child sexual abuse claims, and now there are allegations of rape. That is an issue that I will not pursue beyond this point, because it is a matter that is before the courts and I do not think we are in a position to cast opinions or views on that.

The child sexual abuse claims are really serious issues that have created absolute tumult for Dr Hollingworth's position as Governor-General and, more importantly, the Australian public's perceptions of the role of Governor-General of Australia, as outlined on the Governor-General's web site, 'to encourage, articulate and represent those things that unite Australians as a nation'. This Governor-General's past has unsettled this unity and his representation of this unity among Australians as a nation. It has touched all Australians because it revolves around abuse of children. It has brought into question in a very real way the role and the relevance of the office of Governor-General.

I am a republican and I am proud of that. I would have dearly loved to see a change at the last referendum, but it did not occur. That means we still have the office of Governor-General. As an Australian, I believe that I and all others should see that as a role of great importance. We should be able to respect that role in the right way but this Governor-General, aided I have to say by the Prime Minister, has brought that role of leading the Australian people into disrepute. Last year Dr Hollingworth's comments during the *Australian Story* television interview severely compromised his public standing, and much has been said about that during this debate. During that interview Dr Hollingworth was quoted as saying on the child abuse case:

... this was not sex abuse. There was no suggestion of rape or anything like that. Quite the contrary, my information is that it was, rather, the other way around.

As a Christian, I expect my priests, my bishops and my archbishops to be above reproach when it comes to their dealings with individual human beings. I believe that as a representative of his church Dr Hollingworth, rather than being a protector of the innocent, has been a protector of the guilty—

as has been demonstrated widely during this debate and in the evidence before the Australian public—and that is offensive to those who seek to hold their pastoral leaders in high esteem.

It is clear that following *Australian Story* being aired on television many in Australia believed that Dr Hollingworth was indeed defending child sexual abuse. I do not know if that was what he was trying to convey. I do not know if he did not articulate his position clearly. But what is abundantly clear is the perception that Australia has been left with, and the results of the Anglican Church's report—the Aspinall report, as it is referred to—have tended to confirm the perception of the Australian people as to what Dr Hollingworth was seen to be articulating. That has made his position as Governor-General, his position as head of state of the Australian people, completely untenable.

The Aspinall report found that Dr Hollingworth had acted unreasonably in his handling of a sexual abuse complaint when he was the Anglican Archbishop of Brisbane. The head of the Anglican Church in Brisbane, their prime pastoral care person, had been found by his peers to unreasonably have handled sexual abuse complaints. It was said that Dr Hollingworth acted unreasonably and his recollections of the case were faulty. If a worker of any nature acts unreasonably or an employer acts unreasonably towards a worker, then the industrial commission would either terminate a person's employment or support the employer for that termination. The arbitrator in this situation has been the Prime Minister, and he has not taken reasonableness or unreasonableness into account. I do not believe that this is good for the future office of Governor-General.

Strangely, the Prime Minister has attacked the report, saying that Dr Hollingworth has

disputed some of its findings and has received legal advice that it denied him natural justice. This is a time when the Prime Minister should have refrained from comment and given wise counsel to the Governor-General to take action to remove the unwarranted and unneeded attention from this high office. Dr Hollingworth himself has not made this complaint. On the contrary, he conceded that he had made an error of judgment as archbishop—an error of judgment. That error of judgment should have been the very trigger for the Governor-General to step aside or resign his position to save the office of Governor-General from falling to a low position in the perception of the Australian people and indeed the international community.

Dr Phillip Aspinall from the independent inquiry had admitted to encountering difficulties setting up an inquiry into the Brisbane diocese's handling of sexual abuse complaints in the past. He also stated a personal belief that a royal commission into these matters would provide the best outcome. Indeed, the motion before the Senate at the moment is asking for the Prime Minister to establish such a royal commission into child sexual abuse in Australia. It is my belief that that royal commission would indeed uncover the real gravity of the problem in Australia. I believe it goes far beyond church involvement, but it would take a royal commission to flush out the full extent of sexual abuse in this country. The proposal, of course, has been rejected by the Prime Minister. It is my belief that, if the Prime Minister last year had either urged the Governor-General to resign or advised the Queen to dismiss him, the harm that has now been done would not have had this detrimental effect on our highest office. Even as a republican I say that the Governor-General is head of state and deserves the ultimate respect of all Australians.

Also during the interview with *Australian Story*, Dr Hollingworth described himself as

a Christian and as a Christian leader. The real issue is that, as a man of the cloth, Dr Hollingworth should be exercising humility in order to preserve the reputation of the highest office in Australia. He should have been stepping aside—of course he has now—but he should have resigned his position for the sake of upholding and preserving the reputation of this high office. He should have shown humility. He should have shown a modest sense of one's own significance by taking action to relieve pressure on the office of Governor-General. It is the quality of being humble—to have a modest sense of one's own significance—that we need to take heed of. Not only as a man of the cloth but as an eminent Australian, Dr Hollingworth should show a modest sense of his own significance in the scheme of things when the abuse of children is at the heart of the matter and when the reputation of our highest office is suffering as a consequence. There could be no denying that the Governor-General would inwardly be suffering immense self-doubt and turmoil; it would be affecting his wife, who herself is not well. My prayers go to both of them that they can work through this but show humility and good grace. Sadly, we are not seeing humility being displayed but a display of arrogance by not only Dr Hollingworth but also the Prime Minister, who supports him. I quote B.J. Gupta:

God, give me courage to do what I can, humility to admit what I can't, and wisdom to know the difference.

There is a great deal of wisdom missing in this whole episode that has sadly brought into disrepute the person we should be referring to as Australia's No. 1 citizen. There is no humility being shown; there is an absolute lack of wisdom and there is not courage on the part of the Prime Minister or Dr Hollingworth, and that concerns me greatly.

What concerns me above all—and this is my closing point—is that it is not adults, who have the full facility to defend themselves mentally and physically against abuses, who have been abused in this case; it is children. Those in this chamber who are parents would know that we have great feeling to protect our children and protect those children that we come in contact with at all times. This is a case that goes to the very heart of our society—the protection of our young.

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (11.16 a.m.)—I rise to speak on this motion, which I do not support. If listeners wanted to understand the poverty of the thinking that has gone into this by the Labor Party they could do no better than read the speech that Senator Buckland has just delivered. Let me make a couple of points. It is not lacking in courage to defend your reputation. Any man, no matter how low or how powerful, is entitled to defend his good name. A person is clearly entitled to do that. The crocodile tears that you shed, Senator Buckland, for the Governor-General were, to me, an exercise in hypocrisy. The Labor Party has attempted through this motion and through various actions to continue not only to besmirch the office of the Governor-General but also to put enormous pressure on this person during a period which is personally a very difficult time for him. It is not arrogance to defend yourself. It is cowardly, I believe, to use this chamber, as it is so often used, to besmirch and traduce the reputation of an individual.

I believe that one of the motivating forces behind this is an attempt by the Labor Party to divert public attention from their own massive internal divisions. This is a bitterly divided party. This is a party which is in desperate search of a leader that they hope will lead them out of the wilderness that they have propelled themselves into through their

own incompetence and lack of ability to develop policies that can connect with the Australian people. This is in many ways a stunt which is poorly thought out by the Labor Party. The consequences have not been thought out carefully. If you go to this motion you find that the Labor Party itself is bitterly divided on whether there should be a royal commission into child sexual abuse. Premier Beattie is out there stomping the platform saying that there should be, and Premier Carr is out there saying that there should not be. State governments have the prime responsibility in the area of child protection. The divisions that have so racked the Labor Party can be seen even in this motion that they bring before us.

All of us deplore the crime of child sexual abuse. It is a repellent crime. The perpetrators of child sexual abuse should be severely punished and it is a very serious issue. It is an issue which I think the community for too many years has swept under the carpet and pretended did not exist. In recent years there has been a very important change in community culture regarding child sexual abuse. It is an issue which now is, quite appropriately I think, more freely discussed. On that basis one can always hope that continuing action will be taken in this area. But I do agree with my colleague Senator Alston when he stated that a royal commission into child sexual abuse in Australia is not necessary. An enormous amount of evidence indicating the nature and extent of the problem already exists. The real issue before us is to develop solutions to tackle this problem. The solution to controlling child sexual abuse does not lie in petty partisan politics, the type we have seen so often during this debate; it lies in governments taking real actions. In particular, one will look very closely at what state governments are doing in this area. My colleagues have outlined the sorts of programs that the federal government is doing. The state gov-

ernments, I regret to say, too often talk about these issues, attempt to pass responsibility to others and are too loath to take action.

I want to make three or four points about the debate on the Governor-General. Firstly, I am appalled by the vicious nature of so many of the attacks on Dr Hollingworth. The Governor-General is entitled to a presumption of innocence. I thought that *Time* magazine summed up rather well the public debate that has so often surrounded this issue when it said:

Millions of words, petitions, a crescendo of vile accusations. Decades of service to the poor and underprivileged submerged beneath the vulgar speculation of strangers. It is difficult to imagine what misery Australia's Governor-General has suffered in recent months ...

Even a Governor-General can make mistakes. Governor-Generals do make mistakes. Dr Hollingworth has admitted serious error. But that does not, I believe, automatically lead to a Prime Minister withdrawing his commission. We see little compassion or charity in this debate, despite the fact that these words were used by the previous Labor speaker.

Secondly, I think it is worth while to look at the career and achievements of Dr Hollingworth. Over his career I believe he has made a very significant contribution to many of the most disadvantaged people in this country through his work at the Brotherhood of St Laurence. In all of this debate there is no recognition at all from Labor speakers of the contribution that Dr Hollingworth has made over so many years to highlight the issue of poverty in this country and to highlight the needs of the disadvantaged in this community. To traduce a reputation in the way in which it has been done by so many Labor speakers without the recognition of what this man has achieved is most unfortunate. It certainly lacks the charity that Sena-

tor Buckland urged the Senate to look at and to apply to Dr Hollingworth.

Dr Hollingworth, I might say, was never a particular friend of mine over the years. In some of his debates he was very critical of a group of people that he referred to as the 'New Right'. Sometimes I was included in that group and, I might say, I was very pleased to be included in that group. I do not speak from a basis of being immune from these debates which Dr Hollingworth led. Nonetheless, Dr Hollingworth reflected his passion and concern for, and his commitment to, the disadvantaged in this country and I think that we should all be prepared to give credit for that work.

Thirdly, Dr Hollingworth and his family have had to endure some of the most vicious attacks on an individual over a sustained period of time that I have seen. Public life does produce this. But I think that if one surveyed the press and the electronic media over recent months—and, indeed, stretching even further back than that—one can see the sorts of press attacks that Dr Hollingworth and his family have had to endure. We are speaking about courage, Senator Buckland. Let me put it this way: in the face of these attacks I admire the courage of Dr Hollingworth, his wife Ann, and his children Deborah, Fiona and Sarah, for the courage they have shown in the face of what are some of the nastiest attacks that I have seen in public life. I would hope that, if Dr Hollingworth reads the transcript of this debate, he would see that I speak not only for myself but for many Australians who are equally appalled by what they have read. There has been a lack of charity, compassion and understanding shown for a man who has had to deal with difficult problems and who, himself, has admitted error. I am afraid that this whole debate in many ways reflects this continuing attack on an individual.

Fourthly—and this brings me to my final point—I think that when historians look back on this period they will look back with some amazement. They will note that Dr Hollingworth had done nothing wrong as Governor-General that could have led to his resignation or sacking. They will note a church report about a very serious issue but they will note that in the preparation of that report Dr Hollingworth was not given the chance to respond, that natural justice seemed to have been denied. They will note that, rather than giving Dr Hollingworth a chance to put his views, this report was tabled in parliament under the protection of parliament and that of course has led to a further series of attacks and to this motion today.

No-one in this chamber doubts the problems of sexual abuse. No-one doubts that these matters were not handled well in the past. No-one doubts that the community as a whole, and individuals, must do what they can to take action to deal with this serious issue. But that does not lead to a motion of the nature that we have before us in this chamber. It does not lead to the sorts of vicious attacks on Dr Hollingworth and his family—the sorts of attacks that the Labor Party is so good at. I will not be supporting the motion that the Labor Party has proposed.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (11.29 a.m.)—When I introduced this motion, I stated that it was unprecedented for the Senate to call for the removal of a Governor-General. Of course, it should never have come to this. There should be no need for this motion. Well before now, Dr Hollingworth should have resigned or had his commission withdrawn. We must be absolutely clear that the issue of the appointment and removal of a Governor-General is a matter for the Prime Minister and the executive government. It is the Prime Minister and the

executive government that have to take responsibility in a crisis like this. The Senate should never have needed to debate the suitability of someone in such high office—an office that should be above controversy and reproach.

But the facts speak for themselves, and they are starkly outlined in the motion before the Senate. It is untenable for Dr Hollingworth to remain as Governor-General of Australia. His actions as Archbishop of Brisbane and as Governor-General have brought the high office of Governor-General into disrepute. There is a way forward. It is time to deal with the injustices of the past. It is time for the Prime Minister to establish a royal commission into child sexual abuse. It is also time to protect the dignity of the office of Governor-General. The Governor-General should act; he should resign. If he does not, the Prime Minister has no alternative but to remove him. The Governor-General has to go. I urge the Senate to support this motion.

**The ACTING DEPUTY PRESIDENT (Senator Watson)**—The question is that the amendment moved by Senator Murphy be agreed to.

Question negatived.

**The ACTING DEPUTY PRESIDENT**—The question is that the motion moved by Senator Faulkner be agreed to.

Original question agreed to.

**Senator Ian Campbell**—I would like to ensure that it is recorded in *Hansard* that government senators voted ‘no’ when the question on that motion was put.

**Senator Harris**—I would like it recorded that One Nation supports paragraph (a)(ii) of the motion moved by Senator Faulkner, relating to the Governor-General, but does not support the remainder of the motion.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.33 a.m.)**—I note that the government did not even call for a division on a motion about which they allegedly hold such strong views. Mr Acting Deputy President, pursuant to standing order—

**Senator Ian Campbell**—I am happy to have a division on the motion if the opposition wants one. They have wasted three days of the Senate’s time on this.

**Senator FAULKNER**—Pursuant to standing order 154, I move—

**Senator Ian Campbell**—Mr Acting Deputy President, I raise a point of order. In moving this motion, the Leader of the Opposition in the Senate made a throwaway remark, obviously, that the government had not called for a division. The government is quite happy to have a division if opposition senators want to waste more of the Senate’s time on this political game that they have played all week. They have taken up the entire week in the Senate. It is nearly lunchtime on Thursday. During the whole time we have spent on this matter, the opposition in this place has joined their mate in Queensland in running a cheap political attack. We do not want to waste another minute by having a division on this cheap political stunt, but if they want to have a division, we will have one.

**The ACTING DEPUTY PRESIDENT**—Senator Campbell, the issue has already been determined by resolution of the Senate.

**Senator FAULKNER**—Pursuant to standing order 154, I move:

That the resolution relating to the Governor-General be communicated by message to the House of Representatives with a request that the House concur in the resolution.

Question agreed to.

**BUSINESS****Rearrangement**

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (11.35 a.m.)—I move:

That government business order of the day No. 1 (Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No.2]) be postponed to the next day of sitting.

Question agreed to.

**TERRORISM INSURANCE BILL 2003****Second Reading**

Debate resumed from 13 May, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator LUDWIG** (Queensland) (11.35 a.m.)—I rise to speak in the debate on the **Terrorism Insurance Bill 2003**. The purpose of the bill is to address the consequences of the withdrawal of terrorism cover in the aftermath of the attacks on the World Trade Centre and the Pentagon on September 11 2001. Soon after those shocking events, financial institutions and commercial property owners in Australia began making representations to the government and the opposition, saying that the market was failing to provide the cover they required. The banks warned that the provision of credit for major projects was in jeopardy. Such financing usually involves the taking of security over the property. Such financing needs to be addressed. The banks stated that, if that property were destroyed and there was no terrorism cover, they would experience substantial losses. Owners of commercial properties, including superannuation funds, also cautioned that they would suffer massive losses in the event of an attack. The lack of appropriate cover has also caused concern for the owners and operators of essential public infrastructure, such as power stations.

The bill implements the legislative elements of the government's scheme to address these problems that was announced in October last year. The bill involves two substantive elements. Firstly, it establishes a mechanism to ensure that insurance companies provide terrorism cover in specified circumstances. Clause 8 of the bill overrides clauses in eligible insurance contracts which exclude liability arising from terrorist incidents which are declared by the Treasurer. Eligible insurance contracts are essentially contracts to provide insurance cover for loss or damage to building and other tangible property located in Australia. It also includes cover for losses arising from business interruption caused by property damage and cover for public liability that arises from being the owner or occupier of property. The definition of 'eligible insurance contract' will be refined by regulation but is essentially intended to capture commercial property and privately owned infrastructure.

The second key element of the bill is that it establishes the Australian Reinsurance Pool Corporation, the ARPC. Under the government's scheme, insurance companies will have the ability but not the obligation to reinsure their liability to provide cover for terrorism losses with the new ARPC. Many of the details governing the operation of this scheme will be set out in the direction that will be made by the Treasurer. The ARPC, under direction from the Treasurer, would set premiums payable by insurers for reinsurance contracts. The government has indicated that reinsurance premiums payable by insurers would vary between two per cent and 12 per cent of the underlying commercial property premium based on risk and location. CBD property will be subject to higher rates.

Premium income will be used to build the reinsurance pool to something in the order of \$300 million. This element of the scheme is

known as pre-funding. It is estimated premiums will need to be levied for three years to capitalise the pool. In the event of an incident, the insurance industry would be required to bear the first \$10 million in losses, with a maximum exposure of \$1 million per company or four per cent of the gross fire/industrial special risk premium before having recourse to the reinsurance pool. In the event that losses from an incident exceed the resources of the pool, up to \$10 billion is available through a commercial loan and government indemnity. These amounts can be recovered through increased premiums after a terrorist attack. The scheme is expressed to be temporary and is subject to review every three years.

Labor was concerned about a number of elements of the government's scheme and therefore asked the Senate to refer the bill for inquiry by the Economics Legislation Committee. The committee heard evidence of widespread market failure. While no witness was able to provide an example of a project that had been delayed or abandoned as a result of a lack of terrorism cover, there was evidence that financial institutions and property owners are faced with uncomfortably large exposures. It is clear that there is the potential for losses that could have a devastating impact on investment, employment and economic growth.

There is currently some terrorism cover available in the marketplace. It is, however, very expensive and narrow in scope. In the case of one CBD building, the Australian Bankers Association reported that the inclusion of terrorism cover increased the premium by 450 per cent. Even then the policy only covered a third of the property's value. The Property Council described the cover that is available as 'Clayton's cover'. It reported that exclusions meant that policyholders could not obtain cover for chemical or biological attacks and that policies typically

covered only 25 per cent of asset value. Labor accepts that there has been market failure. The key issue for us and for several organisations that gave evidence to the committee inquiry is whether this scheme is the right solution to the problem.

It is important to note that the government did not start the process of developing this scheme with a blank sheet of paper. In May 2002 the Treasurer laid down conditions for government intervention. Most significantly, these included that any scheme must, firstly, maintain private sector involvement in the provision of terrorism cover and, secondly, allow for the re-emergence of a commercial market for terrorism cover. These considerations have fundamentally restricted the range of options that could have been considered in developing the scheme.

Unlike the government, Labor is not overly optimistic that a commercial market for terrorism cover will return. It is true that insurers did provide terrorism cover prior to September 11 2001. However, at that time terrorism risk was widely regarded as negligible in Australia. Indeed, it is likely that some insurers may not have explicitly priced for it, as the probability of an event and its impact was in fact too difficult to estimate. In their submission to the Senate Economics Committee, IAG, Australia's largest general insurer, argued:

... the probability and severity of losses from a terrorism event/s are not calculable in advance and therefore unsuitable for insurance or, indeed, pre-funding ...

The Insurance Council of Australia also agreed that the difficulty in pricing exposure meant that a commercial market for terrorism cover was in fact unlikely to re-emerge. Labor believes that such considerations do lend support to a post-funded model where a levy would be imposed on insurance premiums after a terrorist event. A post-funded

scheme does have a number of attractions. Firstly, the community, which is already suffering under the weight of high premiums following the collapse of HIH and the current hard insurance market, does not incur any cost if, as we all hope, there is not a terrorist incident in this country. Secondly, it also avoids the administrative costs of establishing a pre-funded scheme for both the insurance industry and the Commonwealth. Thirdly, in the event that an incident occurs, the amount of money that needs to be allocated is certain and ascertainable.

Submissions from the Insurance Australia Group and the Western Australian Department of the Premier and Cabinet both endorsed a post-funded model. A post-funded model is already employed or proposed in a number of similar contexts. For example, under superannuation legislation a levy may be imposed on superannuation funds where a fund suffers substantial losses as a result of fraudulent conduct or theft. Support for post-funding can also be found in the report of the HIH royal commission. Commissioner Owen recommended the establishment of a policyholder protection scheme in the event of insurance company failure. His Honour stated that funding for this scheme should be provided through a post-event levy on all licensed insurers. This is a recommendation that the Treasurer has in fact already endorsed. Why should a different model be pursued for terrorism cover?

Supporters of the government's scheme argue that it provides business with greater certainty and ensures that funds can quickly be paid out in the event of a terrorist incident. It is clear, however, that after nearly 20 months of uncertainty a major factor for the banks and commercial property owners is a desire to see a solution in place as soon as possible. They know that the government has done very little work on a post-funded scheme and that the rejection of this bill

would involve a lengthy delay in the development of a new proposal. Labor understands their frustration with the slow pace at which the government has moved on this issue. Labor is extremely disappointed that the government did not explore a post-funded option more fully. Nevertheless, given the exposure being faced by entities that need terrorism cover, Labor is reluctantly prepared to support the government's scheme in order to bring certainty to the business community. However, I would like to make it clear that, in government, Labor will review the operation of the scheme and give detailed consideration to putting in place a post-funded model.

I will now turn to the issues which underpin the amendments that I will shortly move to the bill in the committee stage. A particular concern that Labor has with the pre-funding element of the government's scheme is the cost that policyholders will be forced to bear. While the Treasurer will give directions to set reinsurance premiums, the bill contains no mechanism to control the premiums that insurers will charge policyholders. Insurers indicated that they intend to charge premiums in excess of the cost of reinsurance in order to recover 'administrative and other costs'.

The government has no idea what premiums policyholders will be charged following the introduction of compulsory terrorism cover. Its initial explanatory memorandum was quite misleading on the subject, suggesting that policyholders would be charged no more than the cost of reinsurance for the insurance. Submissions by Royal and Sun Alliance and the Insurance Council to the economics committee make it clear that this will not be the case. On behalf of the opposition, I intend to move amendments to ensure that the ACCC has a role in preventing insurance companies from exploiting the fact that terrorism insurance is compulsory to boost their

profits at the expense of policyholders. In seeking some protection for policyholders against price exploitation we are doing no more than upholding a commitment the government made in its explanatory memorandum. In that document the government pledged:

... to explore possible acceptable cost recovery arrangements for insurers in regard to reinsurance premiums charged by the Scheme.

Treasury officers informed the committee that no such work had been undertaken. Instead of doing what it promised, the government wants policyholders to have faith in competitive forces to act as a brake on premiums. Labor does not share this government's faith in the operation of competition in the insurance industry. We believe that there is a real danger that companies will use the fact that policyholders will be required to take out terrorism cover to dramatically increase premiums.

Labor notes that in the recent Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 the government included a provision which requires insurers to offer medical indemnity premiums that are 'reasonable'. If it is good enough for doctors to have this protection, Labor believes that it ought to be available to hundreds of thousands of small businesses who will be required to pay for terrorism cover. Recent experience leads us to be sceptical of the competitiveness of the industry. We are, for example, yet to see the benefits of competition in action in relation to public liability. Despite a range of tort law reforms being enacted by state and territory governments, public liability premiums continue to rise, as do insurance company profits. We are yet to see any of the promised savings being passed on to consumers.

The recent experience in the United States does not provide any basis for optimism

either. Following the introduction of the Terrorism Risk Insurance Act 2002, which requires companies to offer terrorism cover backed by government indemnity, it has been reported that some premiums have risen by over 100 per cent. Many people would suggest that the United States is a more competitive insurance market than Australia.

Labor is also not persuaded by the argument made by the majority committee report that the 'appropriate cost-recovery arrangements' can be considered under the arrangements for the review of the scheme. We do not believe that policyholders should be required to wait three years in order to gain protection against potential rip-offs.

Another issue that was raised during the inquiry concerned the requirement of compulsion. The Council of Small Business Organisations and the Association of Risk and Insurance Managers of Australasia said that their membership strongly opposed the fact that policyholders are required to take out cover. They argued that it effectively required those at low risk or those who were prepared to accept the risk to subsidise those who wanted terrorism cover. In our view the pre-funded scheme requires compulsion to operate effectively. Labor will seek to address the concerns of small business by empowering the ACCC to prevent price exploitation in relation to terrorism cover.

Clause 41 of the bill provides that the minister is to review the need for the operation of the scheme every three years. Labor is concerned that the bill does not presently contain any requirement that the report resulting from the review be tabled in the parliament or otherwise made publicly available. I foreshadow that in the committee stage I will move amendments to the bill to ensure that reviews of the scheme are subject to public scrutiny.

In conclusion, Labor accepts that the withdrawal of terrorism cover constitutes a market failure which could have a substantial adverse impact on the Australian economy. There is clearly a need for government intervention in this case. Labor does have concerns about the government's scheme and believes that the option of a pure post-funded model should have been more rigorously explored before this. Nevertheless, in the interests of giving business certainty, the opposition will support the bill, with appropriate amendments to protect policyholders from price exploitation. (*Quorum formed*)

**Senator RIDGEWAY** (New South Wales) (11.55 a.m.)—I wish to comment on the passage of the **Terrorism Insurance Bill 2003** as it now stands, following the amendments that were passed in the House of Representatives on 27 March. The bill was originally introduced in the House on 12 December last year and was passed with amendments on 27 March of this year. On 19 March, however, the Senate referred the bill to the Economics Legislation Committee, whose report was tabled during the current sitting period. It would appear that the government has decided to respond to some of the concerns that have been raised following the bill's introduction. While the amendments go some way to addressing the inadequacies of the bill—in particular, the desires of the insurance industry—it is still somewhat disappointing that the bill lacks more detail. I understand that the particulars of the scheme are to be left to the regulations. However, I want to record my concern and the concern of the Australian Democrats about what seems to be an increasing trend to leave the details of such important legislation to the regulations.

The explanatory memorandum provides details about three options available to the government in running the scheme and accumulating the pool of funds. In particular,

and without stating for certain its adoption, it highlights the benefits of option 3—that is, 'Universal participation through compulsory provision of insurance and optional reinsurance with the Australian Reinsurance Pool Corporation', which is yet to be established. The bill would establish a scheme whereby the government provides insurance cover against terrorism. The bill deems all eligible insurance contracts to include terrorism risk cover, effectively rendering inoperative exclusion clauses for terrorism cover. Eligible insurance contracts are those that provide insurance cover for the loss of, or damage to, eligible property located in Australia.

The bill also establishes a statutory authority, to be known as the Australian Reinsurance Pool Corporation, which will provide reinsurance cover to insurers for losses arising from a declared terrorist incident. It is intended that insurers seeking reinsurance will retain part of the risk. The retention, as set by the Treasurer, will be \$1 million per insurer per annum and \$10 million across the industry per event. Through the compulsory nature of the levy imposed, it is estimated that the reinsurance pool will total some \$300 million. Since terrorism insurance cover will be deemed to exist in the contract, this would prompt insurers to increase premiums. As the inquiry highlighted, that has been a major criticism of the bill and is of great concern, especially to members of the small business community. The reason is that the insurance company would then be compelled to take out reinsurance with ARPC to fund the added risk that they are assuming. While the level of reinsurance to be paid by the insurance industry is capped, the charges payable by insurance increases are not. I note that the ALP are going to move a set of amendments to deal with that issue. I will come to that shortly.

I think we need to keep in mind the whole question of why and how this bill came

about. In my view, the introduction of the bill and the impending scheme are essentially to correct market failure in the area of terrorism insurance arising from the events of September 11, 2001. Since that time, the availability of insurance cover for terrorism has been virtually non-existent. It is thought that this might lead to less financing and investment in the Australian property sector, primarily in commercial property, and of course it would have wider economic impacts.

According to the Australian Bankers Association, there is a risk that financiers will be unprepared to provide finance to some large projects or large-scale infrastructure if terrorism cover is withdrawn and the new assets are exposed to an uninsurable risk. Not only this, but also large financial and other losses are a threat where projects go ahead without this type of insurance. As a result of these risks, countries such as France, Germany and the United States have also implemented similar schemes to the one contained in this bill.

In his second reading speech, the Treasurer claims that the scheme will be wound down when terrorism insurance becomes available in the insurance market in the general sense. Accordingly, reviews of the scheme must be conducted and a report prepared every two to three years as provided in part 4 of the bill. This begs the question: if the scheme is designed to be a temporary measure, what will become of the funds at the end of the scheme if a terrorist event is never declared? Three hundred million dollars is not an insignificant figure.

There has been criticism of the bill by some who will be captured by it and who view their risk of terrorist attack to be quite low. As the inquiry has highlighted, many in the small business community, especially those who are located in areas outside what

might be seen as high-risk areas, feel that they will be subsidising the cost of insurance for damage from a terrorist attack for those in the higher-risk areas. Providing insurance is about taking a gamble; for the insurance industry, this gamble pays off enormously. And, while all of us are continually pumping money into the industry so that they assume our risks, if we do not make a claim we will never see those funds again.

I am sure that many here are aware, either personally or professionally, of the instances where getting a claim paid from an insurance company has been a completely draining process. While it is desirable for this government scheme to ensure legitimate claims are paid, governments are not corporations and, if no claims are made, I think that those in the community who have been affected by this scheme would expect that the funds be put to good use. I also hope the term 'declared terrorist event' is not used by the government as a tool to reject otherwise legitimate claims.

Only premiums for reinsurance will be set by the body to be known as the ARPC, while the premiums set by the insurers will not be under ARPC control. Given the uncertainty of premium increases for affected contract holders, it makes it even more important that some good come of these funds if no claim is made. And there is no doubt that all who are present here today would be hoping and praying that this is the case and that we do not experience a terrorist event during the life of this scheme, or at any time, for that matter.

In the event that there are no declared terrorist events, a pool of funds valued at \$300 million would be well spent if earmarked towards such things as the maintenance and improvement of heritage listed buildings; funding improvements to public buildings which house public galleries, museums and

places of interest; funding to establish sites to be used to house a variety of worthwhile research projects; and investment in projects aimed at designing buildings that are more efficient and environmentally sound. At the very least, these funds could be used to increase practical security measures for our most vulnerable and to reduce the risk of terrorist attacks on public buildings.

As the Treasurer himself has acknowledged, this bill does not contain much detail about how the scheme will operate. While the Treasurer claims that much of the detail lies in the regulations so as to keep the scheme flexible, another interpretation is that the scheme itself lacks transparency. In relation to uncapped premiums, it is thought that the reinsurance paid by the insurance industry into the pool would vary, depending on the level of risk. Supposedly, between two and 12 per cent will be added to the premium price. As I mentioned earlier, some concern has been raised that insurance companies will engage in profiteering with the introduction of the scheme, given that the premiums that can be charged to policyholders will be uncapped. In light of this, the government must ensure that the ACCC is empowered to adequately monitor premiums to alleviate these concerns. I note the opposition's amendments on this matter and flag the Australian Democrats' support for those provisions. However, on the whole, the Australian Democrats support the passage of the Terrorism Insurance Bill 2003 and we await the regulations that are to come forward, wherein we expect the government to keep to the spirit of the explanatory memorandum when working out the detail of the scheme.

**Senator WEBBER** (Western Australia) (12.05 p.m.)—I rise to make a brief contribution to the debate on the **Terrorism Insurance Bill 2003** and to outline a number of concerns that I have with it. Whilst I accept that it is the view of the opposition that this bill

should be supported—and we have had a very strong case put to us about why that is the case—I would like to give it qualified support. I see some real problems with the overall concept of it. The first problem I see—being from Western Australia—is that we are now looking at having a framework that makes insurance for dealing with terrorism liability compulsory across the board, when it could be an added impost to the cost of the operation of key assets within the WA community that have already negotiated their own arrangements.

As I outlined to witnesses during the committee process, one of the key places in Western Australia that is identified as a potential target for terrorism is not the CBD of Perth, it is not any of the multistorey buildings on St. George's Terrace; it is the township of Karratha and the infrastructure that goes with the oil and gas industry that is based in that town. For those of you who know anything about the operations of the oil and gas industry, the need for terrorism insurance or coverage for exposure to a terrorism type risk is something that that industry has taken into account for many a long year, particularly when you look at the key players in the oil and gas field, most of whom are multinational companies and therefore have exposure in the Middle East and elsewhere. We all know that terrorism has been a potential risk for a very long time for anyone operating in the Middle East.

When I outlined some of my concerns that this would be an added impost to businesses that already have their own arrangements, I was assured by some of the witnesses during the committee inquiry that, if the businesses have their own insurance, this will not be extra insurance cover they are forced to take out. My concern is that, within their internal costing processes, these businesses could have priced in to their operations the replacement cost for any exposed facilities

rather than taken out commercial insurance—so it is part of their internal operations and there is no actual insurance. This could actually be an increased cost to their operations. It is an increased cost, I might say, at a time of potential decrease in oil prices. For the government to impose an extra cost component on the operations of those businesses when it is a highly volatile market anyway—we are constantly told about the oversupply of refinery capacity throughout the world—I think is a real concern for the future of that industry.

Another concern I have about the way the government has brought about this scheme is the cross-subsidisation that there will be because of this flat charge for all entities. Again, it goes to the compulsory nature of it. Because the property council and large property owners in CBDs have said they feel the need for the government to come up with a scheme because of the market failure—and I have absolutely no doubt about the market failure argument—this is going to be imposed across the board on small businesses and on everyone operating. If you operate a small business, say, in a place like Mukinbudin in Western Australia, you have to take out terrorism insurance whether you like it or not. It beggars belief that a small business operating in Mukinbudin could ever be at risk of any form of terrorism attack. It is a concern to me to have this added impost on small businesses, again brought to us by the government, without those small businesses actually having any discretion in deciding whether it is necessary or not.

My third concern with this proposal is that we seem to have come up with just one model to address this market failure. As I have said before, I accept there has indeed been market failure. I remain to be convinced, given the nature of the reinsurance industry worldwide at the moment, that the market will ever recover to the level it needs

to. Therefore, I accept that, if we are to have some kind of insurance coverage like this, it does need government intervention. In their haste—business and other commercial entities have been given an assurance about a start-up date—it seems to me that the government has only considered one possible model for the way this insurance coverage could be constructed. That has become what is known as a pre-event funded model where there is a levy right across the sector no matter what. In other cases and in other industries where there has been the need for market intervention for risk or what have you, there has been consideration given to a post-event funded model where, once the cost of the event to be covered by the insurance claim is established, the levy goes out throughout the sector. It is a model used in superannuation and in other areas.

It seems that in our haste to meet the 1 July start-up date, there has not been sufficient work done on looking at the different models of operation and what would be most successful in meeting the needs of our community. I think a post-event funded model is a much more attractive alternative. Obviously, with that goes some form of compulsion, but there is only compulsion after an event, and that compulsion is to address the cost of repairing the damage of that event. There are no up-front costs for an event that may never ever happen. In our haste to meet the deadline, I am really concerned that there has not been a wide enough examination of the different options. In fact, post-event funded models have actually been recommended by the HIH royal commission, which is a well-known royal commission in this place. It has also been strongly supported by some of the state governments.

Having placed on the record my concerns about what I think are the shortcomings of this legislation, I am happy to offer qualified support for this legislation. I accept that there

has been market failure, and I accept that there are sectors of the business community that have identified a real need for immediate coverage for their own operational security and for their sector of the business community to prosper. I accept that. But I believe there need to be further safeguards placed within the legislation to try and address some of the concerns I have outlined. If we are going to have an added cost impost, particularly on small business or the like, it is incredibly important that we have sufficient pricing and competition controls within it to ensure that this impost is not just the subject of profiteering by different insurance companies now that they would have the capacity for government intervention and government subsidy. As that is a real concern, I am very happy to urge the support of Senator Conroy's move to devise a role for the ACCC to ensure that this is a robust scheme, that there is no profiteering by insurance companies and that, in fact, there is adequate protection for the small business sector. I think that is incredibly important.

I agree with Senator Ridgeway about the importance for all concerned to see the regulations attached to this legislation as soon as possible. That was a recommendation in the report of the inquiry into this legislation. It is also important that the government be required to table the reports that review the operation of the scheme so we can be sure that this is not a cost deterrent to the operation of the business sector in our community, that it is the best model and that it is operating efficiently. That would allow us the scope to review whether we should change the operations of terrorism insurance. (*Quorum formed*)

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (12.19 p.m.)—The government is very keen to finish this bill before a quarter to one, so I will address during the commit-

tee stage the substantive points raised by honourable senators. I thank all honourable senators, including Senators Ludwig, Webber and Ridgeway, for their support of the bill and I look forward to moving quickly into committee.

Question agreed to.

Bill read a second time.

### In Committee

Bill—by leave—taken as a whole.

**Senator LUDWIG** (Queensland) (12.20 p.m.)—I move opposition amendment (1) on sheet 2929:

- (1) Clause 41, page 23 (after line 7), at the end of the clause, add:
- (2) A review conducted in accordance with this section must be tabled by the Minister in both Houses of the Parliament within 10 sitting days after the day on which the review was presented to the Minister.

Amendment (1) is designed to ensure that the operation of this terrorism insurance scheme is subject to public scrutiny. As I said in my speech in the second reading debate, and as is articulated in the amendment, a review conducted in accordance with this section must be tabled by the minister in both houses of parliament within 10 sitting days after the day on which the review was presented to the minister.

While the bill does require the scheme to be reviewed at least once every three years, there is presently no requirement that the report be tabled. This is just a neat amendment that I am sure the government could see its way clear to accept. It would ensure not only that there is a commitment to a review but also that the review is made public by being tabled here. It would allow that review to perhaps highlight some of the issues I raised during the second reading debate and it would give the government the opportunity to deal adequately with those issues.

Labor does not want the report reviewing the operation of the scheme to sit in the Treasurer's bottom drawer—although I suspect that would not be the case. I am sure the government will agree, therefore, that this is a better way forward. The amendment imposes a requirement on the Treasurer to table the report of the review within 10 sitting days. I commend the amendment to the Senate.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (12.22 p.m.)—The government will not be accepting the amendment, but we are not strongly opposed to it. We are very happy to make an undertaking, which I solemnly make before the Senate now, that we will table the review. We have no objection to tabling the review, but we think it is not necessary to put it in the legislation. I am happy to say that, if the bill has to be amended by the Senate in this way, the government will look at the bill when it goes back to the House of Representatives. For the record, I make a clear commitment that the government will table the review, but we are opposed to making that a legislative requirement.

**Senator LUDWIG** (Queensland) (12.23 p.m.)—I want to respond briefly to that. The opposition thanks the government for that commitment. However, it is one of those issues that we feel quite strongly about. We think it is necessary to put in the legislation that the review should be more formal, given the nature of the bill that is being proposed. It will provide an opportunity for that matter to be reviewed and tabled, because it is one of those issues that requires notice beforehand—if we can use that expression—that there is an end point and that a review will be done and will become public. We think that provides an incentive—perhaps incentive is not the right word in the insurance industry—or some encouragement that an

appropriate and full review will be undertaken and that a debate will be allowed to occur within three years of that matter being tabled.

Question agreed to.

**Senator LUDWIG** (Queensland) (12.25 p.m.)—I move opposition amendment (2) on sheet 2929:

- (2) Page 24 (after line 3), at the end of the bill, add:

***Schedule 1—Amendment of the Trade Practices Act 1974***

**1 After paragraph 2B(1)(aa)**

Insert:

- (ab) Part VBA;

**2 Subsection 5(1)**

After “Part VB”, insert “, Part VBA”.

Note: The heading to section 5 is altered by inserting “, VBA” after “VB”.

**3 Paragraph 6(2)(b)**

After “75AY”, insert “, 75AZAB, 75AZAC, 75AZAD, 75AZAE and 75AZAF”.

Note: The heading to section 6 is altered by inserting “, VBA” after “VB”.

**4 After Part VB**

Insert:

***PART VBA—PRICE EXPLOITATION IN RELATION TO TERRORISM INSURANCE***

***75AZAA Definitions***

In this Part, unless the contrary intention appears:

***terrorism insurance cover*** means insurance cover produced as a result of the *Terrorism Insurance Act 2003* and regulations made under that Act. It does not include insurance or reinsurance provided by the Australian Reinsurance Pool Corporation.

***price***, in relation to a supply, includes:

- (a) a charge of any description for the supply; and
- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

**supply** means a supply of a contract for terrorism insurance cover.

**transition period** means the period ending 3 years after the commencement of this Act.

**75AZAB Price exploitation in relation to terrorism insurance**

- (1) A corporation contravenes this section if it engages in price exploitation in relation to terrorism insurance cover.
- (2) For the purposes of this section, a corporation engages in price exploitation in relation to terrorism insurance cover if:
  - (a) it makes a supply during the terrorism insurance cover transition period; and
  - (b) the price for the supply is unreasonably high, having regard alone to terrorism insurance cover (in so far as the price has taken effect); and
  - (c) the price for the supply is unreasonably high even if the following other matters are also taken into account:
    - (i) the supplier's costs; and
    - (ii) supply and demand conditions; and
    - (iii) any other relevant matter.

**75AZAC Price exploitation—guidelines about when prices contravene section 75AZAB**

- (1) The Commission may, by written instrument, formulate guidelines about when prices for supplies may be regarded as being in contravention of section 75AZAB.
- (2) The Commission may, by written instrument, vary the guidelines.

- (3) The Commission must have regard to the guidelines in making decisions under section 75AZAD or 75AZAE in relation to the issue, variation and revocation of notices under that section.
- (4) The Court may have regard to the guidelines in any proceedings:
  - (a) under section 76 relating to section 75AZAB; or
  - (b) under section 80 for an injunction relating to section 75AZAB.
- (5) As soon as practicable after making or varying the guidelines, the Commission must cause a copy of the guidelines, or of the variation, to be published in the *Gazette*. However, failure to do so does not affect the validity of the guidelines or of the variation.

**75AZAD Commission may issue notice to corporation it considers has contravened section 75AZAB**

- (1) If the Commission considers that a corporation has made a supply in contravention of section 75AZAB, the Commission may give the corporation a notice in writing under this section.
- (2) The notice must:
  - (a) be expressed to be given under this section; and
  - (b) identify:
    - (i) the corporation that made the supply; and
    - (ii) the kind of supply made; and
    - (iii) the circumstances in which the supply was made; and
  - (c) state that, in the Commission's opinion:
    - (i) the price for the supply was unreasonably high as mentioned in paragraph 75AZAB(2)(b); and
    - (ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AZAB(2)(c).
- (3) In any proceedings:

- (a) under section 76 relating to section 75AZAB; or
  - (b) under section 80 for an injunction relating to section 75AZAB; the notice is taken to be prima facie evidence that:
  - (c) the price for the supply was unreasonably high as mentioned in paragraph 75AZAB(2)(b); and
  - (d) that unreasonably high price was not attributable to matters referred to in paragraph 75AZAB(2)(c).
- (4) The Commission may vary or revoke the notice on its own initiative or on application made by the corporation. The Commission must give the corporation notice in writing of the variation or revocation.

***75AZAE Commission may issue notice to aid prevention of price exploitation***

- (1) The Commission may give a corporation a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AZAB).
- (2) The notice must:
- (a) be expressed to be given under this section; and
  - (b) be expressed to relate to any supply that the corporation makes that is:
    - (i) of a kind specified in the notice; and
    - (ii) made in circumstances specified in the notice; and
    - (iii) made during the period specified in the notice (which must not be a period ending after the end of the law reform transition period); and
  - (c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.

- (3) The Commission may, on its own initiative or on application made by the corporation:

- (a) vary the notice to:
  - (i) change the period specified as required by subparagraph (2)(b)(iii); or
  - (ii) change the price specified in the notice as required by paragraph (2)(c); or
- (b) revoke the notice.

The Commission must give the corporation notice in writing of the variation or revocation.

- (4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

***75AZAF Commission may monitor prices***

- (1) The Commission may monitor prices for either or both of the following purposes:
- (a) to assess the general effect of terrorism insurance cover prices charged by corporations for supplies during the terrorism insurance cover transition period;
  - (b) to assist its consideration of whether section 75AZAB has been, is being, or may in the future be, contravened.
- (2) A member of the Commission may, by notice in writing served on a person, require the person:
- (a) to give the Commission specified information in writing signed by:
    - (i) the person; or
    - (ii) if the person is a body corporate—a competent officer of the body corporate; or
  - (b) to produce to the Commission specified documents;
 

being information, or documents containing information, relating to

prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AZAB.

- (3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:
- (a) before or after all or any terrorism insurance cover changes have taken effect; and
  - (b) before or after the start of the terrorism insurance cover transition period; and
  - (c) in a situation, or during a period, specified in the notice.
- (4) A person must not:
- (a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or
  - (b) in purported compliance with such a notice, intentionally or recklessly provide information or a document that is false or misleading.
- (a) all notices given under section 75AZAE during the quarter; and
- (b) all variations or revocations during the quarter of notices given under section 75AZAE.
- (3) For this purpose, a *quarter* is a period of 3 months:
- (a) that occurs wholly or partly during the terrorism insurance cover transition period; and
  - (b) that starts on any of the following days in a year:
    - (i) 1 January;
    - (ii) 1 April;
    - (iii) 1 July;
    - (iv) 1 October.
- (4) Within 10 sitting days of receipt of a report under subsection (1), the Minister must table that report in Parliament.
- (5) If this section commences during a quarter (but not on the first day of a quarter):
- (a) no report is to be made at the end of the quarter; but
  - (b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

#### **5 Subsection 75B(1)**

Omit “or 75AYA”, substitute “, 75AYA or 75AZAB”.

#### **6 Subparagraph 76(1)(a)(ii)**

Omit “or 75AYA”, substitute “, 75AYA or 75AZAB”.

#### **7 Subparagraph 78(a)(ii)**

Omit “or 75AYA”, substitute “, 75AYA or 75AZAB”.

Note: The heading to section 78 is altered by omitting “or 75AYA” and substituting “, 75AYA or 75AZAB”.

#### **Penalty: 20 penalty units.** **75AZAG Reporting**

- (1) The Commission must, within 28 days after the end of each quarter, give the Minister a written report about the operations of the Commission under this Part during the quarter.
- (2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:

**8 Subparagraph 80(1)(a)(ii)**

Omit “or 75AYA”, substitute “, 75AYA or 75AZAB”.

**9 At the end of subsection 80(1A)**

Omit “or 75AYA”, substitute “, 75AYA or 75AZAB”.

**10 After section 80B**

Insert:

***80C Section 75AZAB contraventions—orders limiting prices or requiring refunds of money***

Without limiting the generality of section 80, where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of section 75AZAB, the Court may make either or both of the following orders:

- (a) an order requiring that person, or a person involved in the contravention, not to make a supply of a kind specified in the order for a price in excess of the price specified in the order while the order remains in force;
- (b) an order requiring that person, or a person involved in the contravention, to refund money to a person specified in the order.

**11 Subsections 84(1) and (3)**

After “VB” (twice occurring or wherever occurring), insert “, VBA”.

**12 Subsections 155AA(1) and (2)**

Omit “or protected Part VB information ” (twice occurring or wherever occurring), substitute “, protected Part VB information or protected Part VBA information”.

Note: The heading to section 155AA is altered by omitting “or VB” and substituting “, VB or VBA”.

**13 Subsection 155AA(3)**

Insert:

*protected Part VBA information* means:

- (a) information that:
  - (i) was obtained by the Commission under section 155; and
  - (ii) relates to a matter arising under Part VBA; or
- (b) information that was obtained by the Commission under section 75AZAF.

**14 After subparagraph 163A(1)(a)(ia)**

Insert:

- (ib) Part VBA;

This amendment seeks to insert a new part into the Trade Practices Act to give the ACCC the power to ensure that insurers do not engage in price exploitation. As I mentioned in the second reading debate, it is a matter that should be addressed. Acknowledgement in a second reading speech that insurers should not engage in price exploitation is not enough of a commitment. It requires, in our view, an amendment to the current bill to ensure that price exploitation in relation to the supply of terrorism insurance is avoided.

The amendment is based on the existing part VB of the Trade Practices Act, which was introduced by the government to prevent consumers being ripped off in the transition to the GST. Given that it is a mechanism that the government is familiar with and that it was designed to prevent consumers from being ripped off in the transition to a new tax—as it then was—in this instance it will serve a like purpose in protecting consumers’ interests from those of insurers. It will also keep insurers honest.

Proposed section 75AZAB creates the offence of price exploitation in relation to terrorism insurance. Price exploitation occurs where the price of supply of terrorism cover is unreasonably high with respect to the suppliers’ costs, supply and demand conditions and any other relevant matter. The maximum

penalty for a breach of these provisions will be \$10 million. The commission will also have the ability to seek injunctions stopping price exploitation, and it is hoped that fines of this magnitude will not be required. To assist insurance companies to comply with their obligations, the ACCC will issue guidelines about when the price of terrorism cover is unreasonably high. These guidelines may be taken into account by the court in assessing whether an insurance company has engaged in price exploitation. To further assist in compliance, the ACCC may issue a notice to a company indicating that the commission considers that it has engaged in price exploitation. Such a notice will be prima facie evidence of a contravention. Those provisions are, of course, not unfamiliar to the government.

Proposed section 75AZAF gives the ACCC explicit powers to monitor the impact of the introduction of compulsory terrorism cover. The amendments give the ACCC explicit information gathering powers in order to achieve this objective. The ACCC is required under these amendments to prepare written reports on the exercise of its powers under this new part and, of course, these reports must be tabled in parliament. The amendments are comprehensive but, as I have indicated, the government should be familiar with the format and the type of issue that they seek to combat. The provision of part VBA on price exploitation in relation to terrorism insurance is comprehensive. However, the government should be familiar with the provisions themselves—they deal with what we say the government has only been able to promise, not deliver, in relation to the Terrorism Insurance Bill. This amendment will provide a mechanism to allow the ACCC the appropriate powers to ensure that consumers in the industry will not be ripped off. I urge the Senate to support these

amendments in order to protect policyholders.

**Senator BROWN (Tasmania) (12.29 p.m.)**—I am very reluctant to enter the debate from a different trajectory but I just want to ask the government if it has a definition of ‘ecoterrorism’. That is quite important, as we have had the Deputy Premier of Tasmania using the word, for example, to refer to a multimillion dollar act of destruction of logging equipment in Tasmania in the last 12 months with implications that environmentalists might be involved—and they were not—and there is a lot of conjecture about internecine fighting amongst logging corporations for tenders to carry out logging activities and difficulties with insurance. The word comes from the definition of ‘terrorism’ and my concern is that, whereas it is currently a word that is widely used, it may be in the interests of some parties to define such activities where there is insurance applying as terrorism and to utilise the provisions of this legislation to seek recompense.

To me the term ‘ecoterrorism’ means creating a destructive impact on the environment, but that is not how it is used by the logging industry in Tasmania, for example, and other entities. There are large amounts of money involved, and I would be interested to know where the government’s definition of ‘terrorism’ excludes, for example, acts of vandalism—by loggers to other loggers’ equipment or by unknown persons to loggers’ equipment. Is there an exclusion in this legislation for that sort of touted terrorism, an exclusion which I have not seen appropriately used in any recent time?

**Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.32 p.m.)**—I am advised that under the definitions in this bill it would be up to the Treasurer to declare an act a terrorist act. But I think the issues you have raised,

although clearly the Deputy Premier of Tasmania—and I am not familiar with who it is, and you do not need to get on your feet to remind me as I do not particularly care—

**The TEMPORARY CHAIRMAN (Senator Hutchins)**—He speaks highly of you.

**Senator IAN CAMPBELL**—I am sure he would—a charming gentleman. There is obviously a political debate going on in relation to this. In the current debate about terrorism I would probably share Senator Bob Brown's view, even though I have not discussed it with him, that the word 'terrorism' is being used too flippantly in our community. I think some people, in the debate on the war, were accusing the US government of being terrorists. I think that, when you have organisations like al-Qaeda doing what they did on September 11 and destroying the lives of 3,000 people—including 600 Muslims, as I was reminded by President Clinton when I met with him in New York a few weeks ago; I think people from 113 countries around the world were killed on the morning of September 11—and when so many people were killed on October 12 in Bali by people that Senator Brown and I—all of us—could agree are terrorists, it is absurd to then apply that term to people who might, probably illegally, damage equipment of any company. It reduces the important potency of the word 'terrorist'. So I think it is probably a silly thing for a political leader—and I will call the Deputy Premier of Tasmania a leader because he is in a leadership position—to associate that word, which should have a potent force in people's minds, with that sort of activity, which I do not think Senator Brown or I would condone: neither of us would condone illegal acts of vandalism. So I would share his view on the use of that term but I would like, if Senator Brown would agree to this course of action, to give him a letter, which I am happy to share with

everyone, on how the definition in this bill would work in practice. I think he would be comforted by the fact that the term he has repeated on behalf of the Deputy Premier of Tasmania would not come into this sort of legislation, which is obviously designed to fix a serious problem in the community of Australia—that some people with buildings just cannot get insurance cover because of the risk of serious terrorist acts such as occurred in Bali and in the financial district of New York nearly two years ago.

I should respond to Senator Ludwig's points. The government will not support the measures. I think the opposition is very well intentioned. The opposition senators on the Senate Economics Legislation Committee noted what had happened to insurance premiums in the United States when their government brought in a scheme. It is important that the Senate know that that scheme is very different from what we are proposing. We are effectively proposing a reinsurance scheme, through the establishment of the Australian Reinsurance Pool Corporation, which is linked to a percentage of the underlying property insurance premium. It differs from the United States scheme in that they made it mandatory for insurers to cover the terrorist risk. The reason we have had problems with terrorism insurance is that insurers have withdrawn from the market because they cannot price the risk, and I think all of us can understand why that is. If we could price that risk it would be a sad world in many respects because you would know pretty accurately what the risk of a terrorist attack was. Luckily, we are not quite sure of that. We know there are high risks in some places and lower risks in others but it is still very hard to judge. In America the price of insurance has reflected the fact that the insurance companies have to price that risk. What we are doing here is effectively taking the pricing of that risk out of the premium,

with the ARPC effectively covering that portion of the risk in the insurance.

The ARPC, the Australian Reinsurance Pool Corporation, will charge insurers two, four or 12 per cent of the existing underlying property insurance premium, depending on the location of the property. Insurers can then simply pass this cost on to the policyholder. Why this is different from the American situation is that, as I have mentioned, the American government just told insurance companies that they have to cover the risk; we are effectively saying to the insurance companies that they do not. In Australia, because the ARPC percentage premium will be linked to the underlying insurance premium and the policyholder will have to pay it, there will be an effective price tension. If an insurer seeks to put their premiums up, that will be reflected not only in the underlying premium but also in the premium that ARPC charges. So the overall price will go up and the policyholder—say, in a property trust which owns a major capital city building—will of course have the choice of moving to a different insurance firm and getting the best price they can. I know from personal experience that that market is one that has significant competition in it. It does not have as much as we would like, but we think that as a result of this act that competition will return to the levels that applied prior to the terrorism act in New York and later in Bali.

The opposition's amendment would in fact have a perverse effect in that it does carry significant costs—it is not a cost-free exercise—and not only to the government. Whether he referred to it specifically or by inference, Senator Ludwig alluded to what we did with the introduction of the new tax system where the government put in place, I think is fair to say, a similar regime. It was a very expensive exercise and, from the government's point of view, it cost many tens of millions of dollars. Of course there was a

cost burden on the community as well and ultimately, because there is no such thing as a free lunch, the customer pays—the policyholder pays and their customers pay.

The scheme proposed by the opposition does involve costs to the government, therefore to the taxpayer, and also to the policyholders because it will impose significant additional burdens on the insurance sector. We do believe in this situation that the costs outweigh the benefits. We believe that there is significant competition here and that this is therefore contrary to the policy intention of the government, and that is the reason we will not be supporting the amendment.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

### Third Reading

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (12.42 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

### CRIMINAL CODE AMENDMENT (TERRORISM) BILL 2002

#### Second Reading

Debate resumed from 13 May, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (12.43 p.m.)—The Criminal Code Amendment (Terrorism) Bill 2002 is not a controversial bill. In 2002, the Commonwealth parliament passed counter-terrorism laws to create a range of offences relating to terrorist activities and to the financing of terrorist groups. The Commonwealth does not have any express powers over matters

like terrorism or general criminal laws. Instead, it relies on a raft of indirect constitutional powers to enact the counter-terrorism laws such as the defence and external affairs powers. There are concerns that those powers may not provide a comprehensive base for the legislation. I can provide an example of this. The Attorney-General has stated that he is concerned that there may be gaps in the law when:

... terrorist activity was entirely state-based and did not have any Commonwealth element in it or foreign element in it ...

The leaders summit in Canberra on 5 April 2002 agreed that state constitutional references would be sought to support federal terrorism offences of national application. On 8 November last year the Standing Committee of Attorneys-General finalised the details of legislation to refer state constitutional power over terrorism to the Commonwealth in order to strengthen the Commonwealth's counter-terrorism laws.

The bill that we have before us this afternoon will implement the agreement from the leaders summit and it will, in effect, re-enact the terrorism offences as Commonwealth provisions capable of operating nationally. However, now the offences will operate on a more secure legal basis following the referrals from the states. I do not expect that this will be a controversial bill. It is certainly a bill which has the support of the opposition.

**Senator GREIG (Western Australia)** (12.46 p.m.)—I rise to again record the Australian Democrats opposition to the **Criminal Code Amendment (Terrorism) Bill 2002**. The bill re-enacts the various terrorism offences introduced last year as part of the government's package and suite of antiterrorism legislation. The purpose of this re-enactment is to provide for the referral of state powers to the Commonwealth to deal with these offences. In the absence of such a referral, this

legislation would rely on a mixed bag of Commonwealth powers, and there is some concern that potential loopholes in these powers may prevent the Commonwealth from responding to a terrorist attack in some circumstances. For this reason, the summit of Commonwealth, state and territory leaders, convened on 5 April 2002, agreed to work towards a national referral of state powers on specific antiterrorism legislation. The majority of Australian states have now passed legislation to bring this referral into effect. If any state does not enact referral legislation, the Commonwealth will continue to rely on its constitutional heads of power when acting within that state. In the territories, the Commonwealth will rely on the territories power in section 122 of the Constitution and outside of Australia it will rely on its external affairs power.

We Democrats note that the states have referred to the Commonwealth both the text of this legislation and the power to amend it. We are pleased to see that such amendments can be made only with the agreement of a majority of states and territories, including at least four of the states. We Democrats also note that the bill will enable the concurrent operation of state laws relating to terrorist offences provided there is no direct inconsistency. We welcome the provision which prevents a situation of double jeopardy arising under these arrangements.

The Democrats opposed the introduction of the terrorism offences when this chamber considered the package of antiterrorism legislation last year. The original suite of bills was draconian in the extreme and represented, I believe, an ambit claim on the part of the government. The bills were, of course, substantially amended during their passage through this chamber and, as a result, radical improvements were made. However, even after these improvements, the Democrats were unable to support the bills. Our funda-

mental concern was related to the definition of a terrorist act and the Attorney-General's proscription power. The Democrats believe that the definition of a terrorist act was too broad and could potentially capture forms of political activism that were far removed from terrorism despite the exemption for lawful advocacy.

With respect to the proscription power, the Democrats argued strongly that criminal behaviour should be punished but belief or association should not. We took the view that a more appropriate way to deal with this issue would be through prosecuting on the basis of conspiracy to commit a terrorist act. We Democrats did, however, welcome the new requirement for the organisation to be identified by the Security Council in a decision relating to terrorism. The requirement placed some limitation on what would otherwise have been an arbitrary and a potentially very dangerous power.

We take the opportunity this time to record our deep concern at the Attorney-General's recent announcement in the media that he intends to seek amendments to the Criminal Code which would remove this requirement, effectively reverting to the government's original model. This announcement confirmed the Democrats' concerns that once these new powers were introduced the government could potentially increase their scope. This was a possibility that greatly influenced our decision to oppose the original bills. Time and time again the government has sought to assure us that it will exercise these powers responsibly and will not abuse them or misapply them. Here we are a year later and the government is already signalling its intention to shed some of the safeguards that secured the passage of this legislation in the first place. I want to put clearly on the record now that, if legislation is introduced to remove the requirement for a Security Council listing in relation to terror-

ist organisations, we Democrats will oppose it.

On the issue of the referral of state powers, Democrats in state parliaments have voted against referral legislation. The reason for this opposition is best summarised by my South Australian colleague the Hon. Ian Gillfillan, who said:

In addressing the bill we must answer two questions: first, is the issue of fighting terrorism properly dealt with at a national level; and, secondly, do we have confidence in the commonwealth to deal appropriately with the challenges that terrorism presents? The first question is easily dealt with. Terrorism as we face it today is an international issue and, hence, the commonwealth is the most appropriate body to address the matter. The second question is more problematic. It is difficult, when the measures that are employed in an attempt to combat terrorism erode those values of our society that we are trying to defend against terrorists.

Having considered the substance of the Commonwealth legislation, he then lacked the confidence in the Commonwealth to deal with the threat of terrorism appropriately. Right from the beginning we Democrats have opposed the offences contained in this bill. We believe that they represent a fundamentally flawed and disproportionate response to the threat of terrorism. We have voted against them at a federal level and we have voted against them at a state level. Again today we express our opposition to these measures.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.52 p.m.)—I would like to thank the Labor Party for its consideration of and support for the **Criminal Code Amendment (Terrorism) Bill 2002**. As the government has indicated—

**Senator Faulkner**—Rare praise.

**Senator TROETH**—Rare praise indeed, Senator Faulkner—the bill is the central element of the Commonwealth and state leg-

islative package to implement the April 2002 leaders summit agreement. The enactment of this bill will ensure comprehensive national application of the federal counter-terrorism offences enacted last year. I would like to take this opportunity to mention once again that last year's attacks in Bali have strengthened the government's resolve to complete this exercise as soon as possible. The Commonwealth appreciates the states' efforts in responding to the national need and referring the power necessary to support the enactment of the bill. The bill is part of the counter-terrorism package that delivers on the government's commitment to protect Australians against terrorism. 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.

## BUSINESS

### Rearrangement

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (12.54 p.m.)—I move:

That the government business order of the day relating to the Therapeutic Goods Amendment Bill (No. 1) 2003 be called on immediately and be considered till not later than 2 pm.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (12.54 p.m.)—This procedural motion is not unexpected. I did come into the chamber just a little before consideration of noncontroversial legislation was due to commence. At the time I did ask the Manager of Government Business in the Senate a pertinent question as to whether Senator Harradine had been informed that this bill was coming on for debate. The Minister for Health and Ageing would appreciate the significance of

this because there are amendments standing in Senator Harradine's name. I have made attempts to contact Senator Harradine's office and I was concerned that his office, and perhaps the senator himself, were not informed of this. I think that when we change these procedures—which is a perfectly reasonable thing to do as long as all senators are aware of the change—we need to be satisfied that we are not disadvantaging senators in this place who intend to move amendments.

We also need to take account of the fact that there may well not be agreement on amendments moved in the committee stage of this bill. The motion before the chair, the procedural device, does not limit consideration of this bill just to the second reading debate. I would appreciate it if the minister could satisfy me as to the situation in relation to this reasonable point I have raised.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (12.56 p.m.)—I have just been advised that Senator Harradine was in a meeting and I have also been advised that Senator Harradine is happy for the bill to proceed. An officer of the Senate has checked that, not just our office.

Question agreed to.

## THERAPEUTIC GOODS AMENDMENT BILL (No. 1) 2003

### Second Reading

Debate resumed.

**Senator FORSHAW** (New South Wales) (12.57 p.m.)—I note that the Minister for Health and Ageing indicated, when discussing the procedural motion relating to the Therapeutic Goods Amendment Bill (No. 1) 2003, that Senator Harradine is unable to be here at the moment—he is in a meeting—but that he is happy for the bill to proceed. I am not in a position to ask Senator Harradine whether he is intending to proceed with his proposed amendments to the bill—maybe the

minister might have some advice on that. The initial understanding was that the legislation would most likely be treated as non-controversial legislation. The opposition position has been well known to the government. It was outlined in the other place yesterday when the bill was debated there that the opposition fully supports the legislation.

We support the legislation but we note that it has been sitting on the *Notice Paper* for quite some time. Indeed, the bill that we are debating now, the Therapeutic Goods Amendment Bill (No. 1) 2003, originated as the [Therapeutic Goods Amendment Bill \(No. 2\) 2002](#). It was introduced on 27 June last year and it has languished for all of that time. It has now been brought back into the parliament with amendments by the government essentially in response to a crisis that has just recently occurred with the Pan Pharmaceuticals matter. Everyone is aware that a major recall has occurred—I would venture to say the biggest single recall of pharmaceutical products, and probably of any products, in the history of this country.

When I picked up a newspaper a couple of weeks ago and opened it up, I saw three full pages of an advertisement by the Therapeutic Goods Administration listing all the various drugs and products that were the subject of the recall. The advertisement was not in the *Daily Telegraph* either; it was in the *Sydney Morning Herald* and the *Australian*, the larger broadsheets. Not only did the advertisement take up at least three pages but also it indicated that there were probably still more products that may need to be recalled because the TGA did not have a complete list of those products on the shelves of pharmacies, health food stores and supermarkets which might be affected by what had occurred with Pan Pharmaceuticals.

We are now in a serious situation, and it has become very clear by the minister having

to move a procedural motion to deal urgently with the Therapeutic Goods Amendment Bill (No. 1) 2003 in response to this crisis. The particular details of the legislation have been well outlined in the debate in the other place and in the explanatory memorandum and the second reading speech. I do not need to go through those. We welcome the changes that have been proposed as a means to provide greater clarity and certainty for the industry, consumers and regulators. The bill amends the definition of 'therapeutic goods'. It also rationalises various processes regarding pre-approval and makes a range of changes to the penalty regime applying in respect of advertising offences under the Therapeutic Goods Act. I do not wish to take the time of the Senate at this point because our position is very clearly on the record—that is, we support the legislation.

I turn to Senator Harradine's proposed amendments. I questioned earlier, before Senator Harradine came into the chamber, whether or not those proposed amendments are still going to be proceeded with. No doubt Senator Harradine will inform us shortly. Our position is that the Labor Party, firstly, supports the bill. Secondly, the party does not support the amendments moved by Senator Harradine.

**Senator Harradine**—I haven't moved anything yet.

**Senator FORSHAW**—The amendments which you intend to move—I apologise, Senator Harradine. I am using the opportunity, while on my feet in the second reading debate, to deal with your proposed amendments as well. There are reasons why the Labor Party does not agree to those amendments: one, they raise practical problems; two, while we are sympathetic to the intent of the amendments—namely, to give consumers information on whether the products they are considering purchasing have been

developed with the use of human embryos or human embryonic stem cells—we believe at this point that compliance with them would be extremely hard or impossible in some cases. We understand—and again the minister can confirm this—that the government is prepared to give an undertaking to oblige the TGA to report back within a month on options to address the issues raised in Senator Harradine's amendments relating to consumer and reporting concerns. These are concerns which the Labor Party shares and we look forward to receiving the government's options and proposals in that regard. The position of the Labor opposition is that we do not support the amendments. However, we also wish to indicate that we will allow our members a conscience vote on the amendments proposed by Senator Harradine. With that, I conclude my remarks.

**Senator ALLISON (Victoria)** (1.04 p.m.)—I indicate Democrat support for the Therapeutic Goods Amendment Bill (No. 1) 2003. We note that it will broaden the scope of advertising and the regulatory power over foods and other products claiming to have therapeutic value, and will enhance existing regulation to increase quality control and the recall of products and will impose penalties on manufacturers and suppliers of goods. We do have some concerns, which we have raised with the minister. We understand the urgency of this legislation, given the amendments which deal with the Pan Pharmaceuticals issue, but we would like to have seen some reassurances from the government about the question of how appropriate it is for the Parliamentary Secretary to the Minister for Health and Ageing to indicate who is a fit and proper person. We seek assurances from the government that, in the implementation of this act, that question will be given some consideration. We are also surprised that this bill is coming on right now. We

would have liked to have had a little more time in which to consider those concerns.

**Senator NETTLE (New South Wales)** (1.06 p.m.)—In the process of trying to discuss how we are in this situation and debating this bill right now, when I left my office five minutes ago we were in conversation with Trish Worth's office saying that we were not consenting to the Therapeutic Goods Amendment Bill (No. 1) 2003 being discussed in 'non contro', that we had concerns about the legislation, that we have been working on this issue with community groups who are awaiting legal advice so that we can continue to address their concerns about this legislation. This is an extremely important issue. We recognise the seriousness of the situation we are in at the moment with Pan Pharmaceuticals, the need to address that quickly and the need to make changes to the Therapeutic Goods Act. But given the seriousness of this legislation and the impact on the broad sector of the complementary health care industry—an industry that has been growing rapidly in Australia—we need to have the opportunity to discuss the changes and the amendments that the government has put forward. We received these amendments yesterday afternoon and are expected to be in a position to finalise decisions at this stage. We understand that other senators in this chamber were offered briefings on this issue as long ago as last week. No such briefings or opportunity to discuss these issues were made available to the Australian Greens. So we are not in a position to proceed with the government's amendments to this piece of legislation at this stage.

**Senator HARRADINE (Tasmania)** (1.08 p.m.)—I am not sure precisely where we are at this point. There had been negotiations over certain amendments I put forward. The reason the Therapeutic Goods Amendment Bill (No. 1) 2003 is before us today is the

failure of drug companies to uphold standards we all expect and rely upon. I support the tougher stand and the tougher regulatory system for therapeutic goods. I agree with the ministers that we must protect public health and safety in relation to all therapeutic goods.

There has been a question that these types of complementary medicines are indeed less harmful than some of the prescription medicines that are around the place—but that is an aside. I agree with the Parliamentary Secretary for Health, Ms Worth, who said:

‘It is imperative the community is able to have confidence that information available from all sources is valid, trustworthy and not misleading ...’

Under the proposed changes, drug companies will be forced to reveal on packaging exactly who made the product and where the ingredients came from. That is why I have drawn up amendments that also go to the importance of the consumer’s right to know—a right significantly threatened by the Pan Pharmaceutical crisis we have witnessed these past few weeks. I am sure everyone in this chamber believes that this is a right that must be protected and upheld at all costs—that consumers must know what is in the drugs they take or are considering taking.

The amendments that I distributed cover a specific pharmaceutical category so far not covered by any consumer right to know legislation or regulations, and about which there is great community concern. They would ensure that information was available with pharmaceutical products and in advertising for pharmaceutical products so that consumers could determine whether the pharmaceuticals were tested, created or manufactured using human embryos or human embryonic stem cells. Consumers could then make a fully informed choice as to whether or not they wished to use the pharmaceutical prod-

uct. This is consistent with the TGA’s interest:

The TGA is interested in fostering a consumer-focused approach to the labelling of consumer medicines in Australia.

Consumers have a right to know whether pharmaceuticals they are considering using were tested, created or manufactured using human embryos or human embryonic stem cells. The only way for individuals to protect themselves from inadvertently using a product with which they have an ethical problem is for manufacturers to disclose, in a way that is accessible to all potential consumers, what was involved in making that product.

Those who conscientiously oppose destructive research on embryos want to be able to easily identify drug products created using this research through the introduction of a system of clear product identification. Many people consider some practices so deeply wrong that it would be devastating to them to discover they were consuming products involving those practices and contributing to the resultant financial benefit to the manufacturer as well as to the product’s continued production. For example, in a submission to the Senate Community Affairs Legislation Committee inquiry into the provisions of the [Research Involving Embryos and Prohibition of Human Cloning Bill 2002](#), Diabetics for Ethical Treatment argued:

It is unethical, and an insult to the integrity of persons with diabetes, to pursue research into therapies which involve harming or destroying human beings, including human embryos.

... ..

We firmly believe that an attack on the dignity and well-being of any group of human beings is an attack on human dignity itself. It is a profound insult to people with disabilities and illnesses, including diabetics, to presume that we are willing to accept therapies developed at the cost of other human lives.

We should remember that consumers who are not concerned about the use of human embryos can still use products made in this way if they want. This amendment in no way restricts anyone's ability to purchase a pharmaceutical product under the normal requirements. What it does do is enhance the rights of consumers who have ethical objections to using products that involved the destruction of human embryos—no more, no less.

Last year the parliament was given a conscience vote on the issue of embryo research. Consumers deserve the right to exercise their consciences too. They deserve the right to full information so that they can make an informed choice. Individual consumers are certainly not in a position to know what has been involved in the production of drugs and have limited capacity to find out—particularly if manufacturers refuse to disclose this information.

Currently there are no known pharmaceutical products which contain ingredients derived from embryos or embryonic stem cells. But the Research Involving Human Embryos Act passed last year allows embryos or embryonic stem cells to be used in the testing, creation or manufacturing of products. It is important to enact a consumer information provision for the protection of consumers before products come onto the market, if that is at all possible.

The amendments that I have been foreshadowing are different to those I moved in December last year, though they of course have similar provisions. I want to indicate that, during the debate on the [Research Involving Human Embryos Bill 2002](#), the minister said that people do not have to use those drugs if they do not want to. But that is the whole point. We will have that discussion. I know, Minister, that you understand that and were concerned that I was raising this in the

wrong area last time. I think Senator Evans made the point that he was not against what I was seeking to do but that it was not appropriate to the legislation we were debating at the time and should be dealt with on the basis of an amendment to the Therapeutic Goods Act. Obviously, that is what I have done on this particular occasion by taking the first opportunity to do this.

I invite honourable senators to consider—whether they agree or not with research on human embryos—that this is a matter of consumer choice. Surely it is as simple as that. There are whole lot of other areas where information is required by governments in respect of products. For example, in the case of genetically modified foods the manufacturers have certain requirements. And I think Dr Kemp mentioned ethanol—that people should know what is going into the fuel tanks of motor cars. But this is not about fuel tanks. If consumers have the right to know what goes into their fuel tanks, they surely have the right to know what is going into their bodies. That is what I thought the Therapeutic Goods Administration were all about. We will soon see whether they are about that.

This measure has been discussed around the traps on the basis of material that has been provided to honourable senators. I put it to honourable senators that this is clearly a consumers' rights amendment and it will be up to the parliament to deal with it on that basis. I understand that the minister will be making a statement on this. I support the measure thus far, though there are concerns. I am aware that concerns have been expressed by the alternative medicine producers and I would like to hear the minister's response to those concerns.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.21 p.m.)—I want first of all to thank the Senate

for agreeing to discuss the [Therapeutic Goods Amendment Bill \(No. 1\) 2003](#) at this time. I know it is not a normal procedure, but we have a very long break coming up and the situation that my parliamentary secretary and I were confronted with was not run-of-the-mill. It has meant that we have needed to proceed more swiftly than might otherwise have been the case. I appreciate honourable senators' cooperation in this matter.

The bill enables a greater clarity, consistency and transparency of decision making relating to the regulation of advertisements for therapeutic goods and the food-medicine interface. The amendment for the definition of 'therapeutic goods' in subsection 3(1) of the Therapeutic Goods Act will enable the Therapeutic Goods Administration to continue to regulate goods that are presented for therapeutic use but are subject to a food standard as a therapeutic good. This will provide the necessary clarity and certainty for consumers, the industry and regulators in relation to some goods at the food-medicine interface.

The changes to the two advertising provisions in the therapeutic goods legislation are divided into two categories. The first relates to the remaining advertising offences included in the Therapeutic Goods Regulations that are to be removed and inserted into part 5(1) of the act. By transferring the offences from the regulations to the act, the regulators are ensuring that a level playing field is created by having consistency in penalties imposed for breaches of the advertising offences. The second category relating to the advertising provisions concerns the removal of advertising provisions from the Broadcasting Services Act 1992 and inserting similar provisions into the therapeutic goods legislation. This will ensure consistency in the regulation of advertisements for therapeutic goods.

The changes included in the government amendments are intended to secure stronger protection of public health and safety in relation to all therapeutic goods, and they represent a balanced response by this government to the Pan Pharmaceuticals incident. The changes will clarify and tighten the responsibilities placed on sponsors and manufacturers of therapeutic goods to ensure that the products they make or supply measure up to appropriate internationally recognised quality and safety standards. The amendments will also equip the TGA with greater powers to take appropriate and timely action to remove substandard or suspect products from the marketplace.

The amendments will enable every manufacturer involved in the manufacture of each batch of a therapeutic good to be identifiable so that this information can be readily obtained by the TGA. Sponsors and manufacturers will be required to report to the TGA problems they become aware of about the products they manufacture or supply, including information about any adverse effects resulting from the use of their products, and information about other deficiencies found in their product. The government amendments to the bill will also extend the circumstances in which goods that fail to meet standards may be recalled from the market, and when their sponsors or manufacturers will be required to notify the public about the grounds for recall.

Greater incentives for companies to comply with standards designed to ensure the safety, quality and effectiveness of therapeutic goods have been added. New offences include an offence for falsifying or destroying any document or record relating to the manufacture, testing or evaluation of therapeutic goods. Furthermore, the level of penalties for a range of existing offences will be increased by these amendments. In addition, the government amendments indicate that the

person obtaining a licence needs to be a fit and proper person. There has been consultation with all sectors of the medicines industry and they are generally supportive of the measures. The two industry associations that represent the complementary medicines industry—the Australian Self-Medication Industry and the Complementary Healthcare Council of Australia—have indicated their support for the measures.

With regard to the issue that Senator Harradine has raised, I know of his commitment and concerns. The fact that we have asked for this to be considered later does not diminish my regard for his concern about this issue. I appreciate his agreeing to not put his amendments so that we can deal with the other issue, which is particularly urgent. But that does not decrease in any way my commitment to address the issues he has raised in those amendments. In relation to the proposals to amend the Therapeutic Goods Act, I acknowledge not only Senator Harradine's concern, but also that some consumers might have concerns about knowing whether pharmaceutical products contain human embryonic materials or have been tested on them. The government has referred the proposed amendment to the TGA for urgent consideration and advice. I have asked the TGA to report to me within a month. I will table the TGA's report in the Senate and include an analysis of the regulatory options available to meet Senator Harradine's proposal. I appreciate his cooperation in this issue.

**The ACTING DEPUTY PRESIDENT (Senator Hutchins)**—I remind honourable senators that, under a sessional order agreed to on 20 June 2002, after the second reading of this bill I shall call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole.

Question agreed to.

Bill read a second time.

#### In Committee

Bill—by leave—taken as a whole.

**Senator ALLISON (Victoria) (1.27 p.m.)**—I wonder whether the minister can respond to my comments about a fit and proper person being one who is judged by the secretary to be so? Are there to be criteria for what constitutes 'fit and proper' and will those criteria be made available? It is a question of accountability, of whether or not we can scrutinise the way in which that judgment will be made. Can the minister expand on her assurances that this aspect of the legislation will work?

**Senator PATTERSON (Victoria—Minister for Health and Ageing) (1.28 p.m.)**—The term 'fit and proper person' is used in other legislation to achieve similar objectives. It includes not having been convicted under the Therapeutic Goods Act and it allows other things that the secretary may take into account—that is, other convictions.

**Senator ALLISON (Victoria) (1.29 p.m.)**—My office was assured that this legislation, in its current form, had been endorsed—and the minister suggested this—by the Complementary Healthcare Council of Australia and another body which I did not take a note of. But it is our understanding that there is quite a lot of disquiet about this bill in the sector. Can the minister explain why that might be the case? Are we dealing with just a couple of individuals, or what is the level of concern—and about what?

**Senator PATTERSON (Victoria—Minister for Health and Ageing) (1.30 p.m.)**—In the second reading debate, I indicated that the complementary medicines industry had been consulted and that there had not been any objections raised to what was in the amendments. I am advised that they were generally supportive.

**Senator ALLISON (Victoria)** (1.30 p.m.)—I will ask the question another way. Remembering that with this bill we have not had time to invite comment—it has not been through any of the committee processes—we are having to take the minister’s word for the fact that there is broad support. Did the minister receive any complaints about this legislation? I see the Parliamentary Secretary to the Minister for Health and Ageing, who is sitting the advisors box, shaking her head, but we want to have on the record the minister’s assurances that there are no significant issues that have been raised with the minister or her office over this legislation.

**Senator PATTERSON (Victoria—Minister for Health and Ageing)** (1.31 p.m.)—I believe that a member of the parliamentary secretary’s staff contacted the minor parties last Wednesday to begin the discussions on these issues, and I think you all appreciate the urgency that has been placed on what was already before the House. As I said before, the amendments have been discussed with the key therapeutic goods industry organisations and there is general acceptance of the need for changes to protect consumers as well as the national and international reputation of the therapeutic goods industry. Many of the changes will have no effect on responsible companies who are already doing the right things, and even some of the new record-keeping and reporting requirements will have no noticeable impact on companies, who should already be collecting and reporting the required information. Not only the TGA but the industry department has also consulted with those industries and obtained advice that there is general acceptance of the changes.

Senator Harradine seems to feel that I did not read out paragraphs 1, 2 and 3 on the second page of my notes to my concluding remarks in the second reading debate. I think I did, so either Senator Harradine or I have

had some sort of lapse of memory and, given my state, I suppose I might have. I believe I did, but I would like Hansard to check and, to allay Senator Harradine’s concerns, I seek leave to incorporate those three paragraphs if I did not read them out.

**Senator HARRADINE (Tasmania)** (1.32 p.m.)—I accept what the minister has said, and there is no need to table anything. I apologise, and I appreciate the minister’s intent.

**Senator ALLISON (Victoria)** (1.33 p.m.)—I thank the minister for answering my question, although she did not quite answer it. I asked if there were specific complaints that had been made. I accept that the minister has consulted with the peak groups, but that does not indicate to me whether or not they objected to anything that is in this legislation or whether individuals or others outside those organisations had raised issues with the minister. That was my question. If they have, can the minister indicate what they are?

**Senator PATTERSON (Victoria—Minister for Health and Ageing)** (1.34 p.m.)—I am advised that the TGA briefed all the industry sectors last Wednesday and has received no complaints or notice of concerns subsequently.

**Senator NETTLE (New South Wales)** (1.34 p.m.)—I note the minister commented in her speech in the second reading debate that the government understood that the Complementary Healthcare Council were in agreement with the bill. I ask the minister on what basis they understood that, because our office had communication with the Complementary Healthcare Council earlier today, and we understand that they have sought written legal advice, which they have not yet received, about the impacts of this legislation. This puts us in a position where we are no longer able to pursue with the govern-

ment, on the council's behalf, the concerns that they have, because they are not in a position where they have received the legal advice that they have sought.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.35 p.m.)—I am advised that Mr Blackmore was with the parliamentary secretary yesterday for a significant period of time. He is a representative of that organisation, and he did not raise any concerns with the parliamentary secretary at that time. I would have thought that they might have contacted the parliamentary secretary had they had those concerns.

**Senator NETTLE** (New South Wales) (1.35 p.m.)—In response to the minister's comment that they would have contacted the parliamentary secretary if they had any concerns, I suppose that waiting for written legal advice on which to form the basis of the concerns that they have with the legislation, which they have not received yet, makes it difficult to raise those issues with the government.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.36 p.m.)—I would have thought that they might have advised us that they had sought legal advice and were waiting for it. We had consultations with them last week, and there have been no complaints or concerns raised subsequently. I would have thought, given the fact that they were advised the bill was coming on this week, that if they had concerns and had not received legal advice—and they are very experienced people; it is not as if the complementary medicines people are not used to dealing with the TGA and the Senate—they would have advised the parliamentary secretary. She was available yesterday. She had a significant player in complementary medicines in her office for an hour and 25 minutes. I would have thought

that that would have been ample time. The parliamentary secretary's office has been available—the TGA briefed them last Wednesday and we told them it was necessary. They want something to happen, because this event has besmirched all the good providers of complementary medicines, and I would have thought they would have contacted either my office or that of the parliamentary secretary.

**Senator ALLISON** (Victoria) (1.37 p.m.)—I do not wish to delay this debate any further, but I need to correct the record on one point: the amendments that we are dealing with to do with Pan Pharmaceuticals, which is by far the greatest substance in what we are dealing with today, were only received by my office yesterday. It is the case that the bill was available on Wednesday, but we are dealing with major changes and we have had not much more than 24 hours to look at those.

**Senator NETTLE** (New South Wales) (1.38 p.m.)—I have another question for the minister that relates to subsection 40(1) of the bill, whereby there is an indication that a licence may be granted subject to any such conditions relating to the manufacture of goods as the secretary thinks appropriate. I wonder if perhaps the minister could expand for us on whether there is any framework or guideline on which the secretary is to determine whether or not something is appropriate within that section of the bill.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.38 p.m.)—Going back to one of the other questions that was asked, I have been advised that the Complementary Health Care Council issued a press release saying they supported the amendments. I am advised that one of the parliamentary secretary's officers rang all the minor parties last Wednesday, indicated the approach that was going to be taken and of-

ferred briefings. I am also advised that the amendments were sent around yesterday morning.

The secretary must consider not only the business record of the applicant or person of influence in relation to the particular business which is the subject of the application but also the business record of any other business controlled by the applicant or person and the business record of any other business or person who controls the applicant or person. Relevant matters include any previous suspension or revocation of a manufacturing licence, any conviction for an offence against a law of the Commonwealth or of a state or territory, and any previous failure to comply with a condition of a manufacturing licence. The secretary also has the discretion to take into account any other matters considered relevant for the purpose of determining whether the applicant or person of influence is a fit and proper person.

**Senator NETTLE** (New South Wales) (1.40 p.m.)—I thank the minister for the answer to that question. Perhaps the minister could let the Senate know whether there is any opportunity for appeal or recourse for a person in terms of a determination made by the secretary under the Therapeutic Goods Act.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.40 p.m.)—I believe that there is, first of all, a section under the act that allows an AAT appeal. People can then resort to the courts if they are not successful in AAT appeal.

**Senator NETTLE** (New South Wales) (1.40 p.m.)—I thank the minister for the answer to that question. In response to what Senator Patterson has indicated to the Senate, our office, like Senator Lyn Allison's office, was aware of and contacted about the fact that this legislation was proposed last

Wednesday but was not able to access those amendments until we received them yesterday afternoon. So we were in a similar situation to Lyn Allison's office—aware the legislation was going to be proposed with changes to address the concerns that the government and others have about Pan Pharmaceuticals but not able to access those amendments, and therefore understand the thrust of the legislation, until they were received by our office yesterday afternoon.

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.41 p.m.)—I am advised that they went to the Table Office on Tuesday afternoon. That does not mean to say they were circulated, because there has to be authority to circulate. I have been advised that the authority to circulate was given on Tuesday afternoon. I am advised that the parliamentary secretary's staff member hand delivered the amendments yesterday morning. I know what offices are like. I know, particularly when you are a member of a smaller party, that stuff comes in through your office in a way that reminds me of the little man in *Fantasia* trying to get the buckets of water out. Do you remember it? You have most probably seen a revived DVD or video of it. Sometimes I feel a bit like that in my office; you must feel like that too. You do not always know exactly when something comes through. That is when I was advised it was circulated. Other things always pop up, but that is when they came. You might not have seen them until late in the afternoon, but they were hand delivered in the morning.

Bill agreed to.

Bill reported without amendment; report adopted.

### Third Reading

**Senator PATTERSON** (Victoria—Minister for Health and Ageing) (1.43 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**Sitting suspended from 1.43 p.m. to  
2.00 p.m.**

#### MINISTERIAL ARRANGEMENTS

**Senator ALSTON** (Victoria—Minister for Communications, Information Technology and the Arts) (2.00 p.m.)—by leave—Mr President, I inform the Senate that Senator Robert Hill, the Minister for Defence, the Minister representing the Prime Minister, the Minister representing the Minister for Trade, the Minister representing the Minister for Foreign Affairs, the Minister representing the Minister for the Environment and Heritage and the Minister representing the Minister for Veterans' Affairs, will be absent from question time today. Senator Hill is attending the welcome home ceremony at RAAF Base Tindal in the Northern Territory for Australian Defence Force personnel deployed to the Middle East as part of our contribution to the coalition to disarm Iraq. During Senator Hill's absence, I will be Acting Leader of the Government in the Senate and will take questions relating to the Prime Minister's portfolio. Senator Abetz will take questions relating to the Defence and Foreign Affairs and Trade portfolios, and Senator Ian Macdonald will take questions relating to the Environment and Heritage portfolio.

#### QUESTIONS WITHOUT NOTICE

##### Budget 2003-04

**Senator CROSSIN** (2.01 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Can the minister confirm that the government announced a cut in the pensioner education supplement for single mothers who are attending university and vocational education courses? Won't the minister's changes to this payment mean that struggling parents trying

to improve their chances of moving from welfare to work stand to lose up to \$350 a year?

**Senator VANSTONE**—I thank the senator for her question. There is a small saving in relation to the pensioner education supplement. It particularly relates to the payment of that supplement over the summer break, when, as you know, a lot of students get jobs in the period between finishing their exams and returning to university. Yes, there is a small saving. You mentioned that you calculate that to be a loss of some \$300. I note that you think that \$300 is an important amount of money and, of course, you are right. The tax cut will give about \$300 to struggling families earning between \$21,000 and \$25,000. I thank you for your confirmation that \$300 is an important amount for struggling families and for your confirmation, through that, that the tax cuts are of value, unlike the remarks that Mr Swan has been making that a modest tax cut—just a start, as the Treasurer describes it—is too little and not enough. I note that the senator is acknowledging that \$300 over a year is a significant amount of money and is to be welcomed. She is right; there is a small saving in this area. Most Australians will agree that stopping payment of the education supplement over the summer break is an appropriate saving.

**Senator CROSSIN**—Mr President, I ask a supplementary question. Despite the fact that perhaps the minister does not believe that students can continue their study during the Christmas period, can the minister confirm that the government's budget decision to cut the pensioner education supplement will also affect Australians who have a disability? Will she now release the government's review of the scheme which is yet to be made public?

**Senator VANSTONE**—The change is not targeted at any particular group. It is simply a change to the pensioner education supplement. It will be limited to periods of study. Students can and do get jobs at other times. The customers who I believe would be affected by this are obviously people who are on a pension. They may be parenting payment single customers, they may be disability support payment recipients and, to save you asking about a group that you did not ask about, they may also be people getting the carer payment. Again, thank you very much for acknowledging that \$300 is an amount of money worth considering and for the inference that you recognise that the tax cuts of about \$300 a year to a family earning \$21,000 to \$25,000 are of value. (*Time expired*)

#### Budget 2003-04

**Senator BRANDIS** (2.05 p.m.)—My question is to the Acting Leader of the Government in the Senate, Senator Alston. How does the 2003-04 federal budget continue the Howard government's record of responsible economic management to the benefit of the Australian people? Is the minister aware of any alternative policies?

**Senator ALSTON**—I thank Senator Brandis for his question. At least people on this side understand the fundamental importance of economic reform on an ongoing basis and delivering outcomes that are beneficial to the nation. People like Senator Cook seem to think that it is all a big joke but, in fact, these are deadly serious issues. Unless you are able to run a consistent surplus you are simply not in a position to do what we have managed to do in this budget. A cash surplus of \$2.2 billion after delivering tax cuts of some \$10 billion over the next four years has to be world's best practice. This is something that people in most Western countries dream of. It is usually one or the other.

*Senator Sherry interjecting—*

**Senator ALSTON**—Quite often it is neither, but the idea of being able to be in surplus and deliver tax cuts at the same time is something that you should dream about as well, Senator Sherry. Of course, that is after we have addressed issues relating to Australia's security, strengthening border protection, and reforming Medicare and education—two of the biggest ticket items in the game. If ever there were issues that cried out for long-term, sensible reform—

**Senator Sherry**—Cutbacks!

**Senator ALSTON**—They are not cutbacks at all, because they involve injections of funding, as you well know. These have been so-called golden opportunities for the party that likes to think that it relates to those areas, and yet it has not. So what are we facing now? We are facing a 'just say no' approach once more to all these important issues.

We are looking at a growth rate of around 3.25 per cent next year, which again will have us as one of the leaders in the OECD, with inflation well under control and well within our limit. Having paid off \$63 billion in government debt is again almost beyond comprehension. When you think that the lot opposite ran budget deficits for five consecutive years and never even thought about the consequences, the fact that we have been able to save ourselves \$5 billion in interest payments shows what they were doing with the money they took out of taxpayers' pockets. They were using it to pay the interest bill, while we have been using it for very important necessities and to tackle some of these endemic problems that Labor never even got around to thinking about. There have been 1.2 million jobs created—pretty much 50 per cent of those as full-time jobs. Interest rates are at the lowest levels in 30 years, resulting in nearly a \$4,000 per year

saving on a \$100,000 home mortgage. These are the things that people relate to. They understand how important they are.

So, rather than going on and racking up budget deficits year after year, not bothering to retire any debt and seeing our credit rating twice downgraded, the Labor Party should at least come to terms with their appalling track record. Mortgage rates were 17 per cent. Small business rates were 20 per cent. Unemployment was 10.9 per cent. It sounds like a horror movie. As I say, the real concern that I think Australians have is that we are looking at 'just say no'. The fact is that Labor has at least started on the apology process, because I saw this morning in the *Newcastle Herald*—which we all read avidly—that at least Mr Crean is apologising for Mr Beazley's performance as a chronic under-achiever. He said:

While he was in charge we could have achieved more. We should have achieved more. I have inherited the consequences of that.

It is a start. At least they are apologising. But the next step is to have sensible approaches to issues. The big test, of course, is tonight—not just internally, because I know that is what you are really focused on. The Australian public will be particularly interested to see whether we get anything more than 'just say no'.

#### **Taxation: Family Payments**

**Senator MOORE** (2.09 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Does the minister recall yesterday, when attempting to explain away her highly publicised clanger about milkshakes and sandwiches, saying that over the year a \$5 a week rise in income adds up to 'a very substantial \$250'? If \$250 is a very substantial amount for families, doesn't that make the government's tax clawbacks of an average \$800 in family payments from 600,000 families truly a

monumental backhander for Australian families?

**Senator VANSTONE**—I think I thank the senator for her question, because she actually has a bit of commonsense, Mr President, as you will know, and does generally have an in-depth understanding of the welfare area. She genuinely does, and she shows a genuine interest in welfare reform. However, it is apparent in the senator's question that she still does not get it about the family tax benefit. Here we have a senator asking a question in terms of clawing back, taking from people, money to which they are entitled.

In fact, when people have an overpayment, they have received more money than another family in the same circumstances. The family tax benefit is designed to ensure that, if a family in one set of circumstances gets X amount of money, a family in the same circumstances will also get X amount of money. We make no apology for designing a system that ensures that families are treated equally, that at the end of the year when you do your reconciliation, if you have had more than your fair share—more than your entitlement—then you will have to pay it back, generally by treating it as a down payment on next year's entitlement. I do not describe that as a clawback. I describe that as treating families equally and, where they have had more than another family in the same circumstances, saying to them, 'I'm sorry; that's not fair. You have had more than another family in the same circumstances. You'll have to pay it back.' I do not see a correlation between that and the amount of the tax cuts at all, and I simply highlight to you, as I think the point you have made is the same as the previous senator made, that a tax cut of \$300 to families earning between \$21,000 and \$25,000 is a substantial amount of money.

I do not know about other senators, but I would not throw 5c away. I would stop to pick up 20c or 50c or a \$1 coin on the pavement. Here is what I do not think will happen: I do not think taxpayers are going to send a cheque back at the end of the year, saying: 'I'm sorry; I think your tax cut wasn't big enough. We're going to give it back.' I do not think that is going to happen. Do you know why? It is because I think struggling families will welcome an extra \$300 at the end of the year in their pockets—something they would never get out of the Labor Party. It is something they know they would not get because, when Labor pass their 1-a-w law tax cuts, they undo them when they get re-elected.

**Senator MOORE**—Mr President, I ask a supplementary question. The minister said yesterday that she could not understand how the tax cut is 'unrelated to the family tax benefit recoupment'. The minister has further said today that she cannot understand the correlation between the tax cut and the family tax benefit. How can you credibly argue, Minister, if you give \$250 to a family but then take \$800 away from their pockets, that the two actions are unrelated? Aren't the 600,000 families referred to in the first question \$550 worse off in the end?

**Senator VANSTONE**—We will go through it again. The tax cut means that everybody on a certain income in the same circumstances gets that tax cut, just as with the family tax benefit everybody on the same income with the same number of kids in the same age group—because it does vary according to the age of your children—will get the same amount. In relation to what you referred to as a clawback, as I said, I simply make the point that you are treating an \$800 overpayment, a \$500 overpayment or a \$20 overpayment as money to which that family is entitled—and therein lies your mistake. You are saying that a family who has had an

overpayment is entitled to keep it and be treated differently from all other families in the same circumstances. Because they have had an overpayment, you presumably say, 'Let them keep it.' We do not say that. We say that families in the same circumstances should be treated equally, and if they have had an overpayment then it will be paid back, usually, as I say, by down payment on next year's entitlement. (*Time expired*)

#### **DISTINGUISHED VISITORS**

**The PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the public gallery of former distinguished Democrats senator Jack Evans. Welcome back to the chamber.

**Honourable senators**—Hear, hear!

#### **QUESTIONS WITHOUT NOTICE**

##### **Budget 2003-04**

**Senator PAYNE (2.15 p.m.)**—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister outline to the Senate how Australian battlers will benefit from tax cuts announced in the budget?

**Senator VANSTONE**—I thank the senator for her question. Yesterday in the chamber and on radio the point was made that small amounts of money on a weekly basis accumulate to large amounts of money and real savings for families over a longer period of time. The ALP, of course, have sought to say that the tax cut granted was too small. That is in fact what Mr Swan, the spokesperson for this area, says: the tax cut is too small. The tax cut given to battlers costs the budget \$10.7 billion over four years. Again, Mr Swan cannot go from the one-on-one basis per week up to the cost to the budget. That is why they got into so much mess last time. That is why they could not keep the books together. It is a \$10.7 billion cost. Today, of course, Mr Swan says that this

amount is too small. He only says that, we know, because he wants to attack us. If we look at the *Hansard* record we can find what Mr Swan really believes about \$4 a week. On 6 March 2001 he said:

If you are going to miss out on \$4, that means a hell of a lot if you have a tight budget.

So what Mr Swan really thinks is that a tax cut of \$4 a week means a hell of a lot. In fact, in 2001 he criticised the government for not having a clue 'what a dollar a week or \$2 a week or \$4 a week means to someone who is battling'. We do understand, and that is why we have given them the tax cut. Now it seems he does not understand, just as he did not understand then. But we do know that a few dollars a week are important to many families, because he told us the same thing the year before. Here is what he said the year before:

A few dollars here or a few dollars there is the difference between a meal on the table, a decent meal, whether the rego is paid on time, whether the rates bill gets paid on time.

There is the old saying that there's no such thing as a free lunch, but, as it turns out, \$5 will buy you a sandwich and a milkshake—a free lunch, if you like—although the smart people who get a tax cut will put the money away.

I want to return to the point that I was making yesterday about a small amount of money on a weekly basis—a modest amount of money—adding up to a large amount of money. Someone on \$21,000, as I said, will save about \$300 a year. If that person uses this money to offset their mortgage of \$153,000 with one of big banks—if that person pays just that \$4 a week more—it will save the family \$12,000 over the life of the loan and allow them to pay back the loan a year and a half earlier than they otherwise would have. So the prudent people will not be rushing out and buying a milkshake and a

sandwich; they will be reducing their mortgage quite substantially over a long period of time. There is support for this view, Senator Payne, that \$300 is quite a bit of money. I am sure you understand that. There are three people who support this, and I will refer to each of them. The member for Oxley, Mr Ripoll, said:

... \$300 in itself may not seem a lot of money but I know that to pensioners and self-funded retirees it is a substantial sum of money.

Mr Edwards, the member for Cowan, said:

... \$300 will mean a lot to ... our battlers out there.

The member for Prospect, Mrs Crosio, said:

... \$300 is not going to change these people's worlds entirely, but it sure would be a great help towards paying a few bills or a month's rent ...

I am pleased to see that other members of the Labor Party support our tax cuts.

#### **Health: Hospital Funding**

**Senator HUTCHINS** (2.19 p.m.)—My question is to Senator Patterson, the Minister for Health and Ageing. Is the minister aware that this week's budget revealed a cut in public hospital funding through the Australian Health Care Agreements of \$918 million over four years? Is it also the case that the government's Medicare package will cost \$917 million? Is this just a coincidence or is the government deliberately funding its Medicare package through slashing public hospital funding? Why is the Howard government intent on running down our public hospitals with a billion dollar hospital pass to the states to pay for its package to destroy Medicare and effectively end bulk-billing for Australian families?

**Senator PATTERSON**—If Senator Hutchins really believed in the public hospitals he would go back to the state health ministers, state treasurers and state premiers and say that instead of withdrawing their money from public hospitals, as they have been doing over the past five years, they should in-

crease their spending. What the Commonwealth is asking the states to do is no more or no less than we are being asked to do—put on the table what we are going to spend and what they are going to spend and match our growth.

Over the life of the last agreements, the contributions of the states to public hospitals decreased while the Commonwealth contribution to public hospitals increased. At the same time, we had an increase in the membership of private health insurance. We saw over the last year for which we have full figures 250,000 more patients treated in private hospitals and 15,000 fewer public patients treated in public hospitals. The states were withdrawing money from the public hospitals. They reduced the number of beds by 3,000 over the life of the last agreement. Our aged care places have gone up by 23,000 during that period of time. They reduced spending on public hospitals.

It would do Senator Hutchins and senators on the other side a great deal of good and it would help their constituents if they went go back to their states and said, 'You should keep and continue to grow your funding to public hospitals and not withdraw it, as has been the case.' In an attempt to keep the states honest, what we have said to them is: 'We will give you a 17 per cent real increase—just over 29 per cent nominally—over and above inflation if you are prepared to match that growth. Put it on the table and tell us what you are going to spend for the next five years, which you are requiring us to do. It is only fair, if you require us to say what we are going to spend for the next five years, that you tell us what you are going to spend for the next five years and increase the growth by the same amount—nothing more, nothing less. But you cannot get away with the Commonwealth putting more in and you pulling money out, spending it elsewhere and

saying that it is all the Commonwealth's fault.'

At the same time that we are bearing an incredible growth in the Pharmaceutical Benefits Scheme of almost 10 per cent a year—in one year it was 20 per cent and in another 14—and in other areas of health, the states are withdrawing their spending on public hospitals. The public need to be reminded that, while the Commonwealth makes a contribution to public hospitals, the states are also required to make a contribution, but the states run the public hospitals. It is their responsibility to fund them properly. If I were a state health minister I would be thinking that the agreements that we have put forward are a very good idea because they make the treasurers commit to a level of growth that they have not been committing to before. They also give the public hospital system in the states the opportunity to plan and to know what their budgets are going to be. I need to confirm this, but I was advised by member of a board that a hospital in my state does not have its budget for this financial year. When they rang and asked the CEO: 'How do I run the hospital?' they said, 'Just spend what you spent last year and we will let you know later.' How can you run a public hospital system like that? It is about time the states got organised and did the right thing. I would love a supplementary question, because I will add some more to that. If I get a supplementary question I will talk about some of the cost shifting that goes on, on behalf of the states, in trying to shift costs to the Commonwealth.

**Senator HUTCHINS**—Mr President, I ask a supplementary question. Maybe the minister will answer the question. Can the minister confirm that the total amount that the government has stripped from public hospitals over the full five-year period of the new Australian health care agreements is of the order of \$1.5 billion? In reaching this

decision, what consideration has the government given to the fact that Australian families who cannot afford a visit to their GP are turning up in public hospital emergency departments in far greater numbers because the Howard government has run down bulk-billing by more than 11 per cent in the seven years since it has been in office?

**Senator PATTERSON**—The data does not show that category 4 and 5 people are increasing at a disproportionate rate in emergency departments. With regard to whether we have cut funding to public hospitals, we are increasing funding by \$10 billion, from \$32 billion to \$42 billion, which is a 17 per cent increase over and above inflation. The states have not matched the growth that we had under the last agreement. They need to come up to the stumps, put down on the table what they are going to spend, make a commitment to growth, make a commitment to public hospitals and not keep pulling money out as the Commonwealth keeps putting money back in.

#### **Immigration: People-Trafficking**

**Senator GREIG (2.25 p.m.)**—My question is to the Minister for Justice and Customs, Senator Ellison, and continues my questions on trafficked women. Is the minister aware of the story in today's *Australian* newspaper which claims that the Howard government has covered up evidence from its own officials about the widespread trafficking of women for prostitution? Can the minister confirm that the details in this article are correct? In light of these allegations, will the minister reconsider the appropriateness of an interdepartmental committee to scrutinise these matters, as opposed to a Senate or parliamentary inquiry?

**Senator ELLISON**—I can say that the Minister for Immigration and Multicultural and Indigenous Affairs is aware of that article, and I am too. In relation to that article,

there are a number of points that the government would make. The article contains a number of factual errors that should be corrected. The department's sex industry task force was established to collect information on a range of issues relating to illegal workers and organisers in the sex industry, not only in relation to people-trafficking. Information collated by the task force was not shelved but used as a basis for further investigation and follow-up action on all activities associated with the sex industry. The quotes from the *Australian* have been taken out of context to imply that the department did not act on information received. This is incorrect. However, information collated is subject to analysis before it is acted upon. Unsubstantiated allegations and hearsay information are not a sound basis on which to act and can result in resources being diverted from more robust leads.

I am advised that the Department of Immigration and Multicultural and Indigenous Affairs continues to brief the *Australian* on sex industry issues and that that paper continues to ignore factual information which is provided. The department has never denied that the issue of trafficking of persons to Australia exists. It has, however, questioned the magnitude of the problem, and that is a very important point in relation to this whole issue. I think the handling of the matter by an interdepartmental committee is appropriate for a whole-of-government approach to a matter which cuts across a number of portfolios, be they Justice, Immigration, Community Services and, to some extent, Foreign Affairs. But I would remind the Senate that it is not only an issue for the federal government; it is an issue for the states and territories, who have the prime responsibility for the regulation of the sex industry. So far, I have heard no-one raising this issue with the state and territory governments. We are saying that this is an issue which we are ad-

dressing, but let us also see the territory and state governments address this and do their bit. When raids take place, it is the state police who accompany the department of immigration. I said the other day that if someone is the victim of sexual servitude, be they an Australian national or a foreign national, that is a matter which relates to the regulation of the sex industry.

**Senator Sherry**—That is passing the buck.

**Senator ELLISON**—That is not passing the buck. We are addressing it, but show me where the state and territory governments are. They talk about it. In my home state of Western Australia there is a lot of talk about regulating the sex industry. I have not yet heard them say anything about this issue, whereas the federal government have been addressing it for some time now and we are doing it with a whole-of-government approach.

**Senator GREIG**—Mr President, I ask a supplementary question. I thank the minister for his answer. Given that the minister has again referred to the interdepartmental review, sometimes referred to as the committee, can the minister acquaint the Senate with what the terms of reference for this committee are and what the reporting date is? Will he name which departments are involved in such a committee? If it does not involve the states, why not?

**Senator ELLISON**—I have been making it very clear that we are looking at primarily a response from the federal government in a whole-of-government approach. I have also indicated that I am taking this up with police ministers around the country and I think the police ministers' forum is the appropriate place to do that, at the council that we will be holding early in July. I met with the Chief Executive Officer from the Australian Crime Commission and discussed this very issue

with him. The Australian Crime Commission discussed this issue at its board meeting the other day and it is embarking on a scoping exercise in relation to intelligence gathering for this issue. I am more than willing to discuss this issue with the states and territories; I intend to do so. But let us see them come forward with some constructive measures in relation to addressing this issue, which is something that has to be addressed by not only the federal government but also state and territory governments.

#### **Budget 2003-04**

**Senator LUDWIG** (2.30 p.m.)—My question without notice is to Senator Patterson, Minister for Health and Ageing. Isn't it true that for an average family earning between \$35,000 and \$50,000 per year, the value of their tax cut of \$4 a week will be more than swallowed up by the cost of just one script, with the government's proposed increase of \$5.50 for the cost of the medicine that they will need when one of their children falls ill? Does the minister honestly believe that this \$5.50 slug in prescription costs ought to be acceptable to Australian families, because, in the words of her colleague Minister Vanstone: 'Five dollars—hell, what will it buy you? A sandwich and a milkshake, if you're lucky.'

**Senator PATTERSON**—Those families will be more able to pay for their medication with our tax cuts than they ever would have been able to with the l-a-w tax cuts they were promised, which were zero. There was nothing in those tax cuts for them to pay for their pharmaceuticals. I do not know what the honourable senator is talking about when he talks about the PBS when Australians are now becoming more aware of the costs. In a significant number of cases now, though not all, but by, I think, 1 August all scripts will have the price of the medication on them, so Australians will come to understand even

more than the most commonly prescribed medication in this country costs \$80 per person per script per month. Those people who have paid \$3.70 until they have had 50 scripts, and then do not pay anything for their scripts, get the most commonly prescribed medication that costs \$80.

We have just put one on the PBS that costs \$6,600 per month per person. Not all that many people have it, but for those that do it is very important. Those who are on a health care card pay \$3.70 and those not on a health care card pay \$23.10. With the money that will come in the tax cuts, people will be more able to purchase those medications which are enormously subsidised. In fact, for every dollar a person pays for a medication, the federal government—the taxpayer—subsidises it to an additional \$5. Every dollar means an additional \$5 that is contributed by the government—by the taxpayer. Basically, the taxpayer pays \$5 for every dollar that a person spends on medication.

The tax cut of \$300 will easily cover a significant number of scripts. Once people reach 52 scripts if they are on a health care card, and 31 scripts if they are not, they receive their medication at a new rate: those on a concession card, for nothing; those not on a concession card, for \$3.70. It is the most generous system in the world. If the Labor Party, the Greens and the Democrats would come to their senses and understand that people realise they need to make a contribution to that medication and if they pass the legislation that would enable us to increase it by \$1, we would be able to ensure that we have a system that is sustainable into the future.

As we tell people about the PBS and advise them about the generous benefits that all of us get from the PBS when we have prescription drugs, people will understand that the people on the other side have been fis-

cally irresponsible in not accepting that it is unfair that in five years time or so, when the chickens come home to roost and we are looking at \$7 billion for the Pharmaceutical Benefits Scheme, people will have to make a larger contribution. I have gone through this in detail, particularly with Senator Allison. People with young families now are paying a smaller proportion of their benefits on PBS, whereas in four or five years time, the next group of people who come through with small children aged two to five—a time when you use the most medication in your life, other than at the other end of your life when you are older—will be paying a significantly higher proportion of their income on the PBS. And that is not fair in terms of intergenerational fairness. You can sit there on the other side and think it is a very smart thing to oppose that, but it will put at risk a system which is of great benefit to all Australians—(*Time expired*)

**Senator LUDWIG**—Mr President, I ask a supplementary question. Can the minister confirm that, as a result of the government's proposed increase in the cost of essential medicines, the government's own analysis is that 5.5 million prescriptions for pensioners, concession card holders and Australian families will go unfilled because Australians under financial pressure cannot afford to pay the higher price? Won't many of these people end up in the public hospitals if they do not take the medication they need?

**Senator PATTERSON**—It is pretty useful to stick to something you know about. When you get questions from the questions committee, and you do not understand them, it is better not to ask the question. The Pharmaceutical Benefits Scheme means that people now pay \$3.70 for a prescription drug. I think the honourable senator might be referring to the fact that generic drugs attract that and non-generic drugs do not, and that we take the lowest price of a drug that is thera-

apeutically equivalent. If the honourable senator on the other side goes around making people believe that it is not, it is dangerous, unfair and irresponsible. We have the PBAC that recommends medications on the PBS, and any medication that we use as the base price which is a generic medication has been demonstrated to be the therapeutic equivalent of the brand name medication. We have a system that subsidises people: for every dollar they spend, they get \$5 to get a medication which is the equivalent of any other that is—(*Time expired*)

#### **Education: HECS Contributions**

**Senator NETTLE** (2.37 p.m.)—My question is to the Minister representing the Minister for Education, Science and Training, Senator Alston. Is the minister aware that it would cost the Commonwealth approximately \$1.7 billion per annum to abolish HECS and to forgive existing HECS debts so as to return us to a situation of free public tertiary education? Can the minister explain why the government made the decision to prioritise delivering a tax cut that has been described in today's media as 'the piddling \$4' rather than investing in the future of this country and supporting the building of a clever country that this government has been so keen to promote in the past?

**Senator ALSTON**—I think Senator Nettles demonstrates the fundamental misunderstanding of why the Labor Party introduced the HECS scheme in the first place. Things are not free; there are always more demands on the system than governments can afford to meet. We take the view that there is a fundamental unfairness in the fact that 70 per cent of students do not go to university and that the overwhelming bulk of them are taxpayers and are therefore effectively required to cross-subsidise those who are, in all probability, going to earn a lot more money in their lifetimes than those who did not go to

university. We think that is very unfair. I am sure that is why the Labor Party took the view that it was only reasonable to expect people to make a contribution to their education.

To be paying about a quarter of the total cost still means the Commonwealth is up for very substantial sums of money. Of course, we are putting another \$1.5 billion into the system over the next four years and \$10 billion over the next 10 years. These are very substantial and ongoing increases in real terms from the Commonwealth. The notion that, somehow, it should all be free just ignores the very importance of price signals for many people. On what basis do you decide? If anything is available and you do not have to pay for it, you regard it as free. You do not understand that the taxpayer is actually having to pay very substantial sums of money.

The universities do not think that is a sensible system. Why do you think they have been asking us for flexibility? It is in order to increase their fees in certain areas to allow a sensible market response. We have put caps on those. We have limited the ability of fees to increase, just as we have put limits on the amount that HECS payments can increase. But unless you go down that path—unless you are committed to excellence, as we are and as the vice-chancellors are—you end up with a recipe for mediocrity. I think you should read some of the articles in today's press if you want to get a sensible assessment of it rather than just an ideological one. For example, the chairman of the Vice-Chancellors Committee, Professor Schreuder, says of the four principles they have committed to, 'Australia should be ranked in the top five nations for higher education excellence'. He says there should be 'at least one world-class research centre in each significant academic field' and that higher education services should be one of the top three value adding Australian exports. And he says

more than '60 per cent of Australians should be completing higher education' over their lifetimes. Before we introduced the fee help scheme—

**Senator Carr**—None of those things will be measured in this package! Not one of them will be reached!

**Senator ALSTON**—If you have a question, ask it. You have been around for a long time; you have not gone anywhere. This is your chance. Just ask a question. The fact is that for the first time we are allowing full fee paying students to actually take out a significant loan—up to \$50,000. That will not break the bank, because they will make their own judgments about whether or not it makes sense for them to go to university. As we know, many families will scrimp and save to send their children to high-quality education institutions. Students themselves can make those choices about which universities they go to and which courses they value. The universities will have to be very conscious of not simply catering for people who have substantial sums of money and who are prepared to buy their way into courses irrespective of quality. If you are really interested in outcomes, Senator Nettle, you will be interested in a system that frees it up, that removes the dead hand of bureaucracy and that does not have all those workplace relations schemes that put premiums on grades rather than performance, and you will make sure students get a much better opportunity in the future than they are getting now.

**Senator NETTLE**—Mr President, I have a supplementary question. Is the minister aware that approximately 30 per cent of high school age students in this country attend private schools, and yet this government spends half a billion dollars on handouts to the richest private schools in this country? Does the minister endorse a user-pays system

for those school students who choose to stay on for their HSC or equivalent? This follows from the argument you have just given me in response to my question, Minister Alston. Do you support a user-pays system for those 70 per cent of students who attend our public school system?

**Senator ALSTON**—I got a bit lost there. You talked about 30 per cent going to private schools; you ended up with 70 per cent for government schools. The fact is that a lot of people and families vote with their feet and send their children to private schools, where the parents do make a very substantial contribution. They get Commonwealth assistance but, fundamentally, those parents are prepared to reflect value for money. The reason people often do not want government schools is that they are concerned about the quality levels. If you had someone like Senator Carr teaching you, you would be very concerned, wouldn't you.

**Senator Carr**—You might have learned something!

**Senator ALSTON**—Not everyone has that sort of a parachute to be able to go to a place where you probably get three times the salary you were looking at previously, and come up here and spend 10 years doing nothing. Most of those students at secondary level are very conscious of the opportunities available to them once they leave secondary school. They are interested in picking and choosing between courses. They do not want a one-size-fits-all approach. They are prepared to pay a bit extra—that is why a lot more students work part time. (*Time expired*)

#### **Science: Funding**

**Senator CARR (2.44 p.m.)**—Mr President, my question without notice is to Senator Alston, the Minister representing the Minister for Education, Science and Training. Minister, can you confirm that the cabinet has decided to establish a high-level task

force to establish models for greater integration between universities and public research agencies such as CSIRO? Has this task force been directed to report back to cabinet by December? Will this report include recommendations on alternative funding models for CSIRO? Will these funding models involve making CSIRO compete with universities for its research funding? Has the cabinet agreed to the appointment of Mr Don McGauchie, former head of the National Farmers Federation, to chair this review?

**Senator ALSTON**—You would have thought that after 10 years in this place no senator on the other side—

**Senator Faulkner**—How long have you been in here taking it easy?

**Senator ALSTON**—A bit longer, but I have made a lot more progress in the time. I got better as I went along. Unfortunately, it has been quite the reverse here but that is the tragedy. Senator Carr specialises in scaremongering. He goes around telling CSIRO that they are about to be chopped off at the knees. We do not normally announce what cabinet is doing so I am afraid you will have to wait a lot longer if you want to be the beneficiary of official announcements, but what we announced in the budget was that there would be the mapping of Australia's science and innovation activities, and that is already under way; there would be an evaluation of the 1999 reforms to the funding of research and research training; and there would be the establishment of a task force to develop a nationally integrated research infrastructure strategy.

**Senator Faulkner**—He won't have a dip; it's straight back to the brief.

**Senator ALSTON**—I will not actually stick to the brief at all because there is a much more interesting piece in today's *Canberra Times*. All senators should be interested in this because it is an article by Sena-

tor Carr which talks about 'the package', 'the package', 'the package' as though he had actually read the package. In the article, he says that the government's package will render all Commonwealth research funds subject to competitive tendering. That is complete nonsense; it doesn't. This was an idea that has been floating around in the ether but the package does not do it. Senator Carr continues:

Especially sinister for university research is the proposal to abolish the block grants to institutions for research infrastructure and general research activities with a 'pure' contestable scheme.

That is pure fiction. It is not in the package. He says Dr Nelson:

... plans merely to increase available funded research training places to keep pace with demographic change in the relevant age group.

That is complete nonsense; the package says nothing about it. He also says:

But the Howard Government's policy radicalism does not stop with universities. The research community expressed horror at the idea, floated in one of the discussion papers that appeared during Nelson's Crossroads review, that R and D funding might be made contestable across all Commonwealth research and scientific agencies. Undeterred, Nelson has included this proposal in his package.

He hasn't. So what is the only possible conclusion you can come to? It is that this piece was knocked up by a few staffers who ran it past Senator Carr and he said, 'Well, you might as well bung it off to the *Canberra Times*,' as though it represented some assessment of the budget. This is the height of laziness. For 10 years in this place he sat around doing nothing and when he finally gets on the front bench he blows it comprehensively. What can you possibly expect as a contribution to policy formulation if someone is going to write a piece based on scaremongering tittle-tattle and rumours that he picks up around the traps and he cannot even

be bothered to read the document? It is a travesty. It is a damning indictment of the opposition's capacity to come up with sensible policy assessments let alone policy ideas. I think, Senator Faulkner, you ought to go and have a big, hard think about getting someone else to step up to the plate because you simply cannot get away with people who will not do their homework.

**Senator CARR**—Mr President, I ask a supplementary question. My question went to the announcement by the government of a review of the public research agencies. I would seek that the minister actually address that question. Is it the case that Mr Don McGauchie has been approached to head up this review into the CSIRO and the other public research agencies? I would further ask: why has the government pre-empted this review by merging the Australian Institute of Marine Science with James Cook University? Is the minister aware of the member for Herbert's press release of two days ago announcing that the amalgamated body will have shared governance arrangements, finance, staff and strategic plans? Doesn't this give the lie to the government's claim that this is nothing more than a joint venture?

**Senator ALSTON**—You really don't know where to start, do you? The first question was: has Don McGauchie been appointed? And the follow-up was: has he been approached? What is the question here? You have no idea what is going on. You are substituting policy decisions for scaremongering.

**The PRESIDENT**—Order! Senator Alston, your answers should be addressed through the chair.

**Senator ALSTON**—You are quite right, Mr President.

**Senator Faulkner**—Just take it on notice if you don't know.

**Senator ALSTON**—Even if people had been approached for a whole range of jobs, I do not see why we would be telling you about them at this point. However, what I can tell you is: a review process will be undertaken—

**Senator Carr**—Through the chair!

**Senator ALSTON**—Mr President, the review process will be undertaken. We will respond after there has been input from all interested stakeholders. However, I do not think we could include Senator Carr in that category because he shows not the slightest glimmer of understanding. He is much more interested in running around, using the usual thuggery tactics—

*Senator Conroy interjecting—*

**Senator ALSTON**—No wonder Senator Conroy thinks he is a complete disaster—and I am on his side with this one. The sooner you can clear him out of Victoria, the better. In relation to James Cook University and the Australian Institute of Marine Science, this is not an amalgamation or merger. A new world-class centre will be created as the result of a formal affiliation. (*Time expired*)

#### **Defence: Bunker Buster Bombs**

**Senator BARTLETT** (2.50 p.m.)—My question is to the Minister representing the Minister for Foreign Affairs, which I believe is Senator Abetz—just for today.

**Senator Faulkner**—Oh my God!

**Senator Abetz**—No, 'Senator Abetz' will do, thank you.

**Senator BARTLETT**—Does the Australian government support the United States' plans announced by the US Defense Secretary, Donald Rumsfeld, to begin research on nuclear bunker buster bombs? Is the Australian government expressing its view to the United States about whether this expansion into a new area of nuclear weaponry is supported by the Australian government?

**Senator ABETZ**—I did not quite hear all of the question because of the compliment provided to me by the Leader of the Opposition in the Senate, but for Senator Bartlett and the Australian Democrats I will take that question on notice and ensure that a detailed response is provided by the minister.

**Senator BARTLETT**—Mr President, I ask a supplementary question. I think the normal practice when not hearing a question is to ask for it to be repeated rather than to take it on notice. It is a serious issue that the United States has announced that it is planning, for the first time since the end of the Cold War, to build a new nuclear weapon. Surely the government has been informed of this, given its close relationship—described by one US official as ‘joined at the hip’—with the United States. If we have this strong and close relationship, surely the government has been made aware that the United States is planning to build nuclear bunker buster bombs—so-called ‘mini nukes’. Surely the Australian government has an opinion about that and has expressed it to the United States. Will it also express it to the Senate?

**Senator ABETZ**—I have now been given the assistance of the brief. No decision has been taken by the United States either to modify existing nuclear weapons or to develop new nuclear weapons. Consideration by congress of an administration proposal to repeal the ban on R&D into low-yield nuclear weapons does not change this. The United States is exploring a range of options for deterring and dealing with the proliferation of weapons of mass destruction and rogue state threats, including feasibility studies into modifying existing nuclear weapons and consideration of possible R&D into low-yield nuclear weapons. The government does not intend to speculate about a hypothetical US decision. Australia will determine its position based on the circumstances prevailing at the time. We note that the United States

has an unrivalled and an expanding range of non-nuclear capabilities and is reducing its reliance on nuclear weapons through deep cuts to its nuclear arsenal. Australia maintains its commitment to nuclear disarmament. (*Time expired*)

#### **Budget 2003-04**

**Senator CONROY** (2.53 p.m.)—My question is to Senator Alston, representing the Prime Minister. Can the Acting Leader of the Government in the Senate advise whether the paltry tax cuts in this week’s budget—so low that Minister Vanstone derides them as not enough to buy a sandwich and a milkshake—are actually the handiwork of the Prime Minister or solely that of the Treasurer, as Mr Costello has boasted? Can the minister confirm that a worker earning \$40,000, who enjoys the average wage increase of four per cent forecast in the budget, will after 12 months pay \$480 more in income tax but will receive only a \$208 tax cut? How can the government claim that they have delivered a tax cut when such a person will pay \$272 more in tax next year than they did in the previous year?

**Senator ALSTON**—I think the starting point in all this is that, if you have a budget surplus and if you have met all your other commitments and those issues that require additional funding, you should do your very best—consistent with maintaining a respectable buffer—to give that money back to the taxpayers. So, if your starting point is a certain amount of money, you have to distribute it and you can choose to give it to whomever you like. You can give it all to your mates—as you probably would—you can give it back in union grants or you can give it back to low-income earners. We have actually been able, by raising the threshold, to pass on a benefit to virtually all taxpayers. That is a pretty good outcome, I would have thought.

As to the genesis of this grand scheme, I am not sure that anyone would be able to assist you, other than those involved in the process. It sounds to me like a joint venture. As we all know, success has a thousand fathers and, I would have thought, a scheme as good as this one deserves to be claimed by a lot of people.

*Opposition senators interjecting—*

**Senator ALSTON**—What really flows from this criticism is that the cuts should have been a lot higher. This is from the mob who were chronically addicted to deficits. How you could ever have contemplated passing on tax cuts—other than those illusory and fictional ones, like l-a-w law—is beyond me. I do not see any sign of any change of heart. Tonight will be a very interesting litmus test, won't it? Tonight presents an opportunity for you to spell out not only how you are going to address issues like competition, excellence and quality in health and in education but also some really whambam huge tax cuts—the ones that would really make people sit up and take a huge amount of notice, as you would see it.

So that is your opportunity. Tell us how you could do that consistent with a \$2.4 billion surplus after you have maintained a decent budget surplus. That is what you are talking about: how do you best distribute it? We think we have distributed it in such a way as to demonstrate to taxpayers that they should be entitled to the benefit of what is left over. If that money has to be distributed fairly thinly, so be it. But I am sure they would take the view that they would much rather have it from us than see you spend it on your pet projects, which of course usually run into the sand very quickly indeed. So tonight is the night—big opportunity, last chance probably. You can tell us all how you would fund those much bigger tax cuts that

you obviously think should have been delivered.

**Senator CONROY**—Mr President, I ask a supplementary question. Is the minister aware that the budget papers confirm that taxpayers will on average have suffered a 90 per cent increase in total income tax between the time the Howard government took office and the end of the forward estimates period?

**Senator ALSTON**—Senator Conroy would probably benefit from reading a piece by Tim Colebatch this morning about the extent to which we have been able to refund bracket creep. What you will find is that there is very little by way of a shortfall after you take this week's tax cuts into account. That is a very good outcome. There is no suggestion you would have even thought of doing that; you would have found pet projects to splash it on, wouldn't you? That is what you would have done. We, however, take the view that some dollars in the hand are much better than a few dollars in the hands of the Labor Party.

#### **Foreign Affairs: Democratic People's Republic of Korea**

**Senator HARRADINE (2.58 p.m.)**—My question is directed to the Minister representing the Minister for Foreign Affairs, Senator Abetz. Is it not a fact that North Korea has one of the worst human rights records in the world—if not the worst? What priority is given to raising these violations of human rights in bilateral discussions between our government and the government of North Korea and in multilateral discussions?

**Senator ABETZ**—I thank Senator Harradine for his question and note that, over his and long and distinguished career in this place, he has taken a very strong interest in the issue of human rights. I also recall that, prior to his entry into this place, those on the other side in fact expelled him from the Australian Labor Party because of his strong

stance against communist regimes who had outrageous human rights records, so it is not inconsistent at all that Senator Harradine should be asking that—

*Opposition senators interjecting—*

**Senator ABETZ**—Isn't it amazing, Mr President, how the Labor Party start interjecting when you remind them that they expelled somebody like Senator Harradine because of his opposition to communism and its outrageous record on human rights. Senator Harradine has an unparalleled reputation and he was very courageous. Senator Harradine was very courageous to take the stand that he did at that time, and of course he continues that very real interest in human rights and his opposition to communist regimes that have no regard for human rights. Senator Harradine has raised a very proper point, a very interesting point.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Senators on my left will come to order.

**Senator ABETZ**—Those opposite continue to interject when you highlight the evils of regimes, be it the North Korean Communist Party or indeed, in the past, the Baath Socialist Party. They would not join us in dealing with that party in relation to human rights issues. Senator Harradine has raised a very important issue. I am sure it is an issue on which the Minister for Foreign Affairs would be delighted to provide him with a detailed answer, and as a result I will refer it to Mr Downer for a detailed answer.

**Senator HARRADINE**—Mr President, I ask a supplementary question. Would the minister also raise with the Minister for Foreign Affairs whether the discussions that are taking place on the issue of nuclear weapons supersede any discussions on human rights violations? In other words, are the human rights violations raised by the Australian

government at the highest level with the government of North Korea?

**Senator ABETZ**—Similarly I will refer the supplementary question to Minister Downer.

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

#### ANSWERS TO QUESTIONS ON NOTICE

##### Question No. 1218

**Senator GREIG** (Western Australia) (3.04 p.m.)—Pursuant to standing order 74(5), I would like to ask Senator Chris Ellison, the Minister for Justice and Customs and the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, for an explanation as to why an answer has not been provided to question on notice No. 1218, which was asked on 26 February.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (3.04 p.m.)—This was a question which was directed to the Minister for Immigration and Multicultural and Indigenous Affairs. I have referred that question to the minister. I received a note from Senator Greig's office during question time that this would be raised. I have made urgent inquiries as to why this question has not been answered, and as soon as I have that answer to hand I will provide it.

**Senator GREIG** (Western Australia) (3.05 p.m.)—I move:

That the Senate take note of the explanation.

Minister, this is a very serious issue, as you know, in terms of media and Senate scrutiny and interest. It is also an area in which there is strong community concern about questions as to the sincerity and enthusiasm with which the government is approaching this issue. Given that this question is more than 70 days

overdue, I think it would be helpful if such questions could be more speedily answered. It was taken on notice by Senator Ellison more than 70 days ago. It goes very much to the heart of the issue of trafficking in women. It might be helpful in fact if the inquiry or committee which Senator Ellison has proposed could perhaps also address some of the issues which have been lodged in that question

Question agreed to.

**QUESTIONS WITHOUT NOTICE:  
TAKE NOTE OF ANSWERS**

**Budget 2003-04**

**Senator CONROY** (Victoria) (3.05 p.m.)—I move:

That the Senate take note of the answers given by ministers to questions without notice asked today relating to the 2003-04 Budget.

What we have seen again today is another pathetic attempt to rewrite history. Forty-eight hours after the budget, it is an orphan. You have already had the Treasurer stand up and say, 'We know this one's not much cop, but there will be more tax cuts next year.' It has taken less than 48 hours for them to roll over and acknowledge that Senator Vanstone was dead right. We have had Senator Alston stand in this chamber today and mislead the Australian public. He talked about giving back all of the bracket creep. Let me quote Mr Peter McDonald of the Taxpayers Association of Australia. He has said that the latest tax cuts would be eroded again as soon as inflation pushed wages higher. Until then, he said, 'any claim bracket creep has been paid back is a lie'. It is 'a lie'—that is from Peter McDonald from the Taxpayers Association of Australia. He says that the Treasurer, Peter Costello, was forced to lift the tax rate thresholds because of the coalition's 1996 election promises. He says:

When Mr Costello introduced the New Tax System, he said the average Australian would never pay more than 30 cents in the dollar in tax.

What have we got? The big claim that 80 per cent of Australians would be in that 30 cents in the dollar category. What has happened? On the Treasurer's own admission, it is down to 75 per cent now and it is going lower. That is what the Treasurer knows, that is what Senator Minchin acknowledged yesterday and that is what Senator Alston is trying to cover up.

This is a budget that is designed to try and distract the Australian public, by waving a measly \$4 in front of them, from what the government are trying to do with Medicare and education. They are describing them as reforms. These changes that are being put forward by the government represent John Howard's ideological obsession with transferring the cost of health and education from the government to families. The government's Medicare package will destroy Medicare and put an end to bulk-billing for families. Under the changes, doctors will be allowed to bulk-bill concession card holders, but they will be given the green light to impose a copayment for everyone else and charge what they like. That is the hidden agenda; that is what is really going on here. Two out of every three Australians who do not have a concession card can say goodbye to bulk-billing. That is what is going on here; that is what the government are trying to distract you from. These changes mean just one thing: Australian families will pay more for a visit to the doctor. The \$4 a week tax cut will be swallowed over a year by just five visits to a doctor who does not bulk-bill—just five visits.

Australians will also pay more for their children's education. Families will face a difficult choice—pay more in HECS or take out loans to pay for their children's education. Families face up to a \$32 per week in-

crease in HECS debt or up to \$125 a week in loan repayments. Australians already owe more than they earn. Household debt to household income has risen to 130 per cent under this government as families struggle to make ends meet. Higher loan repayments will add to the debt burden on Australian families. The government wants to slug these same Australian families an extra \$5.50 each every time they buy essential medicines. These same families will on average get \$400 less in family benefits this financial year due to the government's benefit claw-back—one of those other little horrors this government keeps trying to hide. These higher costs for families, imposed by any one of these changes, will far outweigh benefits from the tax cuts, even before they were described as the milkshake and sandwich tax cuts.

This budget is also remarkable for the supposed reform priorities that have been ignored. The Treasurer previously has said, 'Superannuation needs to be reformed.' Yet, after eight budgets, he has done nothing about it. Back in 2000 he said that the system was too complicated—too many rules, too many different taxation regimes. Three years later, there is no reform package. The government has also offered talk instead of reform in the area of water. Just recently, Mr Howard claimed there are few more important issues to our nation than water reform. What was in the budget? Nothing on water reform. (*Time expired*)

**Senator KNOWLES (Western Australia)** (3.10 p.m.)—I find that the hypocrisy coming from the Labor Party this week is nothing short of breathtaking. The Labor Party have been saying that they want this government to provide tax cuts. I can understand that because when in government they never gave any. What they dished out budget after budget was an increase in the hidden taxes. The wholesale sales tax continued to go up

and up and people did not know about it. It is interesting to think that the Australian Labor Party—the party that professes to be the friends of the battlers, could not care less about the battlers getting some money back. It is interesting because battlers generally battle to pay the bills. The Australian Labor Party does not believe it is important to give a battler \$300 a year to pay for whatever they might want to pay for. Whether, as Senator Vanstone said, \$300 a year might pay off the average mortgage a year and a half earlier at a saving of around \$12,500, whether \$300 a year might pay for a few months of electricity, whether \$300 a year might pay for the insurance on their motor vehicle or whether \$300 a year might pay for their home contents insurance, the Australian Labor Party do not care. They prefer to see them go without, and they prefer to have a Labor government that just continues to tax, tax, tax, tax. They know that they continue to tax. It is interesting because, as Senator Vanstone said in question time today, Mr Swan—one of the lesser lights in the Labor Party in the other House—said in March last year:

If you are going to miss out on \$4, that means a hell of a lot if you have a tight budget.

Isn't that interesting that Mr Swan from the Labor Party said that last year. Yet, this year, Mr Crean and the rest of the Labor Party say that it does not matter. I find that quite amazing; it is quite contradictory. In 2001, he criticised the government for not having:

... a clue what a dollar a week or \$2 a week or \$4 a week means to someone who is battling.

That is what he accused this government of in 2001. Here we are in 2003 and the whole of the Labor opposition have changed their tune. Now they do care, but they do not think it is enough. They are never going to be happy, are they? They are never ever going to be happy. They keep on saying, 'We want

tax cuts. We want tax cuts.' They get tax cuts and they do not like them.

Seven years into opposition and the Labor Party do not have one single, solitary policy. If they did, we would be able to compare this budget with their tax policy. We would be able to compare this budget with their health policy. We would be able to compare this budget with their education policy, with their defence policy and the list goes on and on. Seven years into opposition and there is not one single policy with which this budget, brought down last Tuesday, can be compared with that of Her Majesty's opposition. I think that is pretty disgraceful, but it just goes to show what a brain drain there has been in the Labor Party since the likes of Barry Jones left. No wonder there are people who are contesting the leadership all over the place. There are more contestants for the leadership than people who know what they are doing over in the Labor Party. This is just remarkable—seven years into opposition and we cannot look at a Labor Party policy. Yet all they can do is come in here and complain about the battlers being given a tax cut—complain about nine million Australians being given a tax cut. That is pretty appalling. They should be applauding a tax cut for nine million Australians, instead of whingeing, whining, carping and criticising, which is all they do—oppose, oppose, oppose. (*Time expired*)

**Senator COOK (Western Australia)** (3.15 p.m.)—We are not complaining about a tax cut for nine million Australians; we are complaining about the duplicity of the government in taking with one hand and giving with the other so that Australians are worse off. This is the smallest tax cut in history from the highest taxing government in history. Taxes have gone up by more than this government is giving back and therefore Australians are worse off. The sums are easy to work out. The budget papers say that

wages over the next 12 months will rise by four per cent. A worker on \$40,000 a year—and here is the example that proves the lie to what has just been said by the Liberal Party in this chamber—facing a wage hike of four per cent over the next 12 months will pay \$480 more in tax and the tax give-back by this government will be \$208. At the end of the year that worker in the average wage bracket in Australia will be \$272 worse off. That is why this budget is a fraud. That is why this budget has vanished without trace in the media.

Oops! Sorry! Except for the sandwich and the milkshake analogy that Senator Vanstone has introduced into the lexicon and, by the way, except for the outrage that Australian university students and parents who want their children to go to university in Australia in the future express because, under this government, the cost of getting to university in this country in the future will mean it will only be for the rich. It will not be for the average Australian. University costs have been hiked. The only other thing on the budget screen which is not the positive bounce that the government wants is that Australians see through the fraud of destroying Medicare under the so-called reforms that the government has proposed on health. Medicare is an Australian icon. Medicare offers universal health protection. This government wants to remove that as a right of ordinary Australians. We see through that and so do the voters. That is the reason why this budget has got the thumbs down.

Under this budget, bracket creep—the increase of wages due to inflation pushing workers into higher tax brackets—means that higher taxation continues and the clawback by this government of wage and salary earners' dollars into the tax pool is greater. Under this budget, the cost of health and visiting the doctor will be greater, quite apart from wrecking Medicare. Under this budget, uni-

versity education will become more expensive. There is nothing in this budget for the millions and millions of Australians who do not go to university but who go to technical colleges and aspire to be tradespeople or to acquire a technical skill. There is nothing in this budget at all for them. Further, there are cuts to expenditure on research and development. This country was once proudly a clever country. This country now is destroying its intellectual capital by reducing funding for research and development, removing that clever country tag, dumbing down R&D in this nation, sending our scientists offshore and making sure that we are not building a pool of intellectual and smart capital for the future and for our development.

This budget will see pharmaceutical costs rise. The worrying thing is not just that in this budget pharmaceutical costs will eat into the household budget, where families increasingly under health treatment require better and more expensive drugs, but that what this government is negotiating with the United States in their free trade agreement is nothing short of the destruction of the Pharmaceutical Benefits Scheme per se. That means that the prices of pharmaceuticals will rise to the market level that the multinational pharmaceutical companies wish to charge rather than to an affordable level under the PBS. Under this budget there are cuts to the family tax benefits as well.

In regional Australia the mining industry is in uproar because there are higher costs for diesel fuel for mining companies and explorers. There is nothing in here for roads, nothing in here for rail. There is insufficient drought funding in this package. (*Time expired*)

**Senator BARNETT (Tasmania)** (3.20 p.m.)—I stand to commend the government with respect to the budget that has been handed down. It is probably one of the most

remarkable efforts in recent political history to, at the end of the day, come up with a \$2.2 billion surplus and a \$2.4 billion tax cut on the back of a very severe drought and a war costing about three-quarters of a billion dollars each. The Treasurer, Peter Costello, should be commended and congratulated on an outstanding performance.

We still have strong economic growth at 3.25 per cent. The good news for the Australian people is that we have now paid \$63 billion of the \$90-odd billion of the Labor debt that we inherited in 1996. That frees up money to spend on health, education and welfare instead of going in interest payments into this big black hole.

**Senator Ian Campbell**—Whose black hole was it?

**Senator BARNETT**—Good question. Whose black hole was it? It was the ALP's black hole or Mr Beazley's black hole. The debt as a proportion of GDP is four per cent compared to the US where it is 40 per cent and Japan where it is 80 per cent. It really is quite remarkable. If Mr Beazley were still the Treasurer we would probably still have that black hole and no doubt it would be far bigger than what it is.

**Senator Ian Campbell**—He is coming back.

**Senator BARNETT**—He is coming back. That is the big question in the quiz going on in the Labor Party at the moment. Who is going to win the prize? We do not know. We have had the lowest interest rates in 30 years. We have drought assistance and one million jobs have been created since 1996.

There has been a reference to the PBS by Senator Cook. I congratulate Senator Kay Patterson for the work that she is doing to make the PBS more sustainable. We want a sustainable Pharmaceutical Benefits Scheme. At the moment the concession card holders pay only \$3.70 and the general patient pays

\$23.10, or no more than that. As Senator Patterson has said—and it is on the public record—the cost to the taxpayer on average is \$80 per prescription. That is why I am absolutely thrilled that from 1 August the full cost, the real cost, will be on the packet and on the bottle along with the government subsidy—or, putting it another way, the taxpayer subsidy. That is why we are looking for a sustainable PBS. Each month costs are going up by \$50 million, an enormous amount of money, and it is blowing out to nearly \$5 billion each year. We are saying that we want a modest increase in copayments, and these are being blocked in the Senate by the opposition parties.

In Tasmania, for example, we use 9.4 prescriptions per year per head of population compared to the national average of 7.9. Last year 4.43 million prescriptions were bought in Tasmania, costing \$135 million. But the users paid only \$20.3 million of the cost and taxpayers had to pick up the remaining \$114.3 million. For every dollar that the consumer put in, the taxpayer came up with \$5. As a wealthy nation we need to be caring and generous but we also need to be responsible with taxpayers' funds. That is exactly what we have done in this budget. That is why I am proud to stand in support of our health initiatives in particular—Medicare and our public hospitals.

I want to bring to the notice of the Senate that the Treasurer in Tasmania is Dr David Crean, the brother of Simon Crean. He is doing the smoke and mirrors trick with regard to the Australian health care agreement, saying that there is a \$40 million shortfall under the proposal put forward by the Prime Minister and Senator Kay Patterson. He is wrong. He has his facts wrong. There will be a \$220 million increase under our proposal over that five-year agreement. That is over a 30 per cent increase on the status quo and it is a 17 per cent real increase on the status

quo. That will decrease waiting lists in Tasmania. Those on waiting lists can be assured that under this proposal—(*Time expired*)

**Senator CARR (Victoria) (3.25 p.m.)**—The higher education reform package which was announced on Tuesday will cut a swathe of destruction through Australia's universities and their national research capacity. If you look at the statement on science and innovation put out by Minister Nelson and Minister McGauran, for instance, table 2 indicates that the total expenditure increase for the major Commonwealth research agencies is \$69 million. This is in a budget of \$1.372 billion. Sixty-nine million dollars does not even cover the cost of inflation. If we were to examine the total Commonwealth support as a percentage of GDP, we see that in 1996 it was 0.76 per cent of GDP and, according to this government statement, it is now 0.68 per cent. That is a decline in research investment by this government as a percentage of GDP.

Not content with that, the government also now wants to move on our internationally renowned public research agencies such as the CSIRO. It has decided to establish a task force to examine 'greater integration' between public research agencies like CSIRO and the universities. This is a fait accompli. We now know that Dr Nelson has preempted this task force review by announcing the merger of the Australian Institute of Marine Science in Townsville with James Cook University. On top of that, we find out that Minister McGauran has made it very clear that Mr Don McGauchie will head up this new review—Mr Don McGauchie of the National Farmers Federation fame. Mr Don McGauchie of the waterside workers dispute fame—of Patrick fame. Mr Don McGauchie has a long history of involvement with this government, and I think his views on these issues are quite clear. As I say, this is a fait accompli. An agenda has been established by

the cabinet to establish a rationale for the integration of our research agencies and our universities to establish alternative funding models for the CSIRO and to force the amalgamation of various units of the CSIRO with sections of universities at a regional level. We know the reason for this. We know that there is a real danger that the CSIRO will be smashed in this process.

This is the price of the so-called reforms, but it is not the only price. We see in the university sector that there are devices being pursued by this government which will divide this society into clear winners and clear losers. We see there are obvious winners and losers in the policies that the government has been pursuing until this point. If you look at the statistics, the four top universities, the four big ones, already account for over half the annual operating surplus of the sector as a whole. The other 34 universities make do with the rest. If you look at research expenditure alone, the same four universities account for 40 per cent of all the research funds. The top eight universities get nearly 75 per cent of all the research grants handed out by the Australian Research Council. The 30 or so also-rans have to share 25 per cent of these funds amongst themselves. If you look at the top eight universities in this country, they have 35 per cent of all the enrolments and 50 per cent of the revenue and almost 75 per cent of the cash and investments. This is a government that says there is no diversity. There is huge diversity. There is diversity between the winners and the losers. The 13 regional universities will have to share 25 per cent of the enrolments but they receive 20 per cent of the total revenue and 13 per cent of the operating results. They have only 11 per cent of cash and investment. These same 13 regional universities have over one-third of the whole sector's debt, and these are the ones that are now being told that they have to opt out of research.

We see here a policy where competition has gone mad. It is quite clear that the government wishes to establish a whole new regime of contestability of funding for universities and research agencies. That is what the establishment of these reviews, mapping exercises and various other inquiries are about. I say that those decisions have already been made. The inquiries are being established to justify those decisions. The government says that the dead hand of bureaucracy will be removed from the universities. We are noticing, though, that new contracts will be imposed on the universities, which go to the issues of staffing, industrial relations, control of students, control of research and control of teaching. This is the most interventionist government we have ever seen with regard to universities. (*Time expired*)

Question agreed to.

**AUSTRALIAN GRAND PRIX:  
TOBACCO ADVERTISING  
HEALTH: IMMUNISATION  
DEFENCE: PROPERTY  
TRANSPORT: BASSLINK**

**Returns to Order**

**Senator IAN CAMPBELL** (*Western Australia—Parliamentary Secretary to the Treasurer*) (3.30 p.m.)—I seek leave to make a short statement in response to a Senate order to produce documents.

Leave granted.

**Senator IAN CAMPBELL**—The first statement is on behalf of Senator the Hon. Kay Patterson, the Minister for Health and Ageing. This order arose from a motion moved by Senator Allison which was agreed to by the Senate on 14 May this year. It relates to the most recent application documents from the Australian Grand Prix Corporation to the federal government for exemption from the Tobacco Advertising Prohibition Act 1992 on the grounds of economic

hardship and the documents detailing the government's reasons for being satisfied that the case for economic hardship has been met.

I wish to inform the Senate, on behalf of Senator Patterson, that the government is unable to respond in full to the order at this stage. Documents relating to the order are still being examined. I would like to request an extension of time until 16 June 2003, which I believe is the next sitting day. This will give the Australian Grand Prix Corporation time to consult with contractual third parties to identify those sections of the documents which may contain sensitive commercial-in-confidence information.

However, on behalf of Senator Patterson, I am able to lay before the Senate today the following documents, which I hope will be of assistance to Senator Allison in her pursuit of this issue: minute no. M02005650, seeking agreement to exempt the 2003 Grand Prix as an event of international significance under section 18(2) of the Tobacco Advertising Prohibition Act 1992; a letter to the chief executive officer of the AGPC advising him of the outcome of the application; and a gazette notice dated 17 July 2002 specifying the 2003 Australian Grand Prix as an event of international significance that would likely be lost to Australia without this specification.

The second statement is once again on behalf of Senator Patterson, the Minister for Health and Ageing. The Australian Technical Advisory Group on Immunisation's October 2002 report requested by Senator Allison is the draft eighth edition of the *Australian Immunisation Handbook* that was released for public consultation in accordance with the National Health and Medical Research Council Act 1992. I table a copy of the draft handbook. It should be noted that this version of the handbook has been modified in light of the comments received during the

public consultation process and following the National Health and Medical Research Council's independent review of the handbook. The draft handbook has been revised in accordance with the review comments and was reviewed by the Health Advisory Committee in May. The handbook is scheduled for presentation to the council in June for endorsement and subsequent release. In response to the second part of Senator Allison's notice of motion, there is no National Health and Medical Research Council report on the new Australian Technical Advisory Group on Immunisation's recommended vaccines of March 2003.

The third statement relates to an order following a motion moved by Senator Allison and supported by the Senate on 14 May. It related to expressions of interest in Defence land for sale at Point Nepean. I wish to inform the Senate that the government is unable to respond to the order at this stage. Documents relating to the order are still being examined. I am advised that the government will respond to the order as soon as possible.

Finally, I will now make a statement on behalf of Senator Minchin, in his capacity as Minister representing the Minister for Industry, Tourism and Resources. Once again, it is in response to an order from Senator Allison which was agreed to on 14 May, relating to the Basslink project. I inform the Senate that the government is not able to respond to the order at the moment. The documents relating to that order are still being examined and I am advised that the government will respond. However, that will not take place today. On behalf of Senator Minchin, I undertake that that will take place as soon as possible.

## COMMITTEES

### Legal and Constitutional References Committee

### Environment, Communications, Information Technology and the Arts References Committee

#### Reports: Government Responses

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (3.35 p.m.)—I present two government responses to committee reports as listed on today's *Order of Business*. In accordance with the usual practice, I seek leave to incorporate the documents in *Hansard*.

Leave granted.

*The documents read as follows—*

Mr Peter Hallahan

Secretary

Senate Legal and Constitutional References Committee

Parliament House

CANBERRA ACT 2600

Dear Mr Hallahan

#### **Government Response to the Inquiry into the Commonwealth's actions in relation to *Ryker (Faulkner) v The Commonwealth and Flint***

I refer to the Committee's report dated April 1996 in relation to this litigation. I regret the delay in responding to the Report.

The recommendations made by the Committee were that:

1. in cases involving a claim against the Commonwealth, the Attorney-General review arrangements relating to the provision of advice on funding under section 305 of the Bankruptcy Act 1966 (the Act) in order to ensure that any perception of a conflict of interest on the part of the Commonwealth does not arise; and
2. based on the evidence presented during the inquiry, an independent inquiry into the Commonwealth's actions in relation to *Ryker (Faulkner) v the Commonwealth and Flint* is not justified.

The Government welcomes and accepts the second recommendation that a further inquiry is not justified.

In relation to the first recommendation, I am satisfied that the existing arrangements continue to be appropriate.

Those arrangements operate in this way:

- In practice, the powers to approve funding are delegated to the Inspector-General in Bankruptcy, and the Assistant Secretary and the Director, Legal and Practice Support Section, of the Secretariat Branch of the Insolvency and Trustee Service Australia (ITSA).
- The delegates make decisions on applications for funding in accordance with guidelines approved by the Attorney-General. A summary of those guidelines is published in the Annual Report on the operation of the Act.
- The delegates are bound by the APS Code of Conduct set out in the Public Service Act 1999. That Code requires, amongst other things, that they behave honestly and with integrity in the course of their employment.
- Decisions made under section 305 of the Bankruptcy Act are subject to review under the Administrative Decisions (Judicial Review) Act 1977.
- In cases where the delegate requires an opinion from counsel on some aspect of a particular application, the delegate will ordinarily have access to counsel retained by solicitors acting for the trustee in bankruptcy. Even in those cases run by the Official Trustee, counsel usually are private practitioners, not officers of the Australian Government Solicitor (AGS). Thus the delegate ordinarily has independent legal advice available to him or her and decides whether to authorise funding on the basis of the material presented by the trustee.
- In rare cases, the delegate may seek legal advice from an officer from the AGS on the merits of the trustee's proposed action. In those circumstances, there could be a perception of a conflict of interest if the Commonwealth or a Commonwealth agency is a de-

pendant to the proposed action, and the AGS was already acting for the defendant. In that case the AGS would decline to give advice to the delegate.

- In this context the Solicitor-General's role is quite separate from that of the AGS. As noted by the Committee, one of the functions of the Solicitor-General under the Law Officers Act 1964 is to give his opinion on questions of law referred by the Attorney-General. The Solicitor-General is not only entitled, but is bound, to act in accordance with relevant legislation. This is the situation whether or not some person has a perception, however misconceived, that a 'conflict of interest' is involved. Indeed, the Solicitor-General is a primary source of independent, expert and objective legal advice to the Attorney-General.

The Prime Minister has agreed that this letter should be treated as the Government's response to the Committee's report and, if the Committee wishes, that it be tabled.

Yours sincerely

DARYL WILLIAMS

**Report of the Senate Environment,  
Communications, Information Technology and  
the Arts Reference Committee on  
Commonwealth Environment Powers**

May 1999

**Response to Recommendations**

**Recommendation 1**

**The Commonwealth should not hesitate to creatively employ the wide powers it possesses in order to protect and conserve the environment and should vigorously defend its power when challenged.**

The Commonwealth has employed, as appropriate, the powers available to it under the Constitution to institute the most fundamental reform of Australian environment legislation since the first Commonwealth environment legislation in the early 1970s. The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) draws on the Commonwealth's Constitutional powers in relation to external affairs, corpora-

tions, territories and trade and commerce to ensure, in cooperation with the States, a truly national scheme of environmental protection and biodiversity conservation.

**Recommendation 2**

**The Commonwealth Government should establish an independent statutory Environmental and Constitutional Law Experts Commission to advise the government on: (i) when national environmental legislation is necessary, (ii) the government's ability to pass environmental legislation under existing powers, and (iii) the form such legislation should take. The Commission should also be empowered to monitor, review and advise the Government on its performance in relation to its responsibilities for environmental protection and ecologically sustainable development.**

**Recommendation 26**

**The Commonwealth should enact comprehensive and binding national standards for the protection of the Australian environment. In preparation for this undertaking the independent statutory Commission of Environmental and Constitutional law experts should be consulted.**

The Government has undertaken a major reform of Commonwealth environment law. The reform process culminated in the development of the EPBC Act which for the first time provides a truly national scheme of environment protection and biodiversity conservation.

The spirit of recommendations 2 and 26 is, to an extent, reflected in the various mechanisms in the EPBC Act for monitoring and review, including a requirement that Commonwealth Departments and agencies report on their performance with respect to ecologically sustainable development and impact on the environment. A State of the Environment report is required to be prepared every 5 years. The matters of national environmental significance are to be reviewed every 5 years, and the operation of the Act must be subjected to an independent review within 10 years of its commencement.

In addition, the EPBC Act is, through the bilateral agreements mechanism, promote the adoption of 'national standards'.

### **Recommendation 3**

**The Commonwealth should exercise a leadership role in the protection and improvement of the Australian environment. This role should be supported by the unsparing use of all Constitutional power available to the Commonwealth to act in the field of the environment.**

### **Recommendation 30**

**The Government should propose an amendment to section 51 of the Constitution to provide an express head of Commonwealth Parliamentary power to legislate with respect to the environment if and when a republican system of government is introduced by referendum and subsequent Constitutional Convention is convened.**

The Government has exercised a leadership role in the protection and improvement of the Australian environment through the implementation of a wide range of policies and programs. In terms of the legislative framework the EPBC Act provides for Commonwealth leadership on the environment, while also recognising and respecting the responsibility of the States and Territories for delivering on-ground natural resource management. The EPBC Act draws, as appropriate, on the Commonwealth's existing Constitutional powers in relation to external affairs, corporations, territories and trade and commerce to ensure protection for the environment. The Government believes these powers provide a sound basis for the EPBC Act and that amendments to the Constitution are not required.

### **Recommendation 4**

**The use of the concept of "national environmental significance" should be abandoned as a means of delineating the appropriate role of the Commonwealth in the regulation of environmental matters.**

### **Recommendation 21**

**The Commonwealth should be responsible for environmental impact assessment process whenever it is involved in making a decision**

**about an activity or matter (its own or that of a third party) that may have a significant effect on the environment.**

Not accepted.

The Government has reviewed and fundamentally reformed Australian environment legislation with Commonwealth interests focused on the matters of national environmental significance. The concept is articulated in the COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment which has been signed by all Governments. Under the EPBC Act, Commonwealth involvement in the environmental assessment and approval process is triggered by projects or activities which are likely to have a significant impact on matters of national environmental significance. The States and Territories are responsible for assessing impacts on other aspects of the environment.

The Government notes that adoption of recommendations 4 and 21 would result in some projects or actions that affect a matter of national environmental significance not being assessed by the Commonwealth.

### **Recommendation 5**

**The Commonwealth must fully and effectively exercise its powers in negotiating, implementing and enforcing its international environmental obligations. National obligations require national administration.**

Accepted in part.

The implementation of commitments made under international environment agreements often requires a cooperative approach involving all relevant jurisdictions. The EPBC Act provides a legislative basis for implementing Australia's commitments under a number of these agreements while recognising the role of the States and Territories.

### **Recommendation 6**

**The Government should conduct an inquiry into the possible use of its obligations under the Convention of Biological Diversity to establish a comprehensive framework for environmental legislation in Australia.**

Not necessary.

The EPBC Act ensures that the Commonwealth plays a leadership role to fulfil relevant treaty obligations including those of the Convention on Biological Diversity. The EPBC Act strengthens Australia's capacity to conserve its biodiversity through a substantially improved and integrated framework. In addition to the environment protection measures related to threatened and migratory species, Ramsar wetlands, World Heritage properties, and the Commonwealth marine area, the EPBC Act provides for world's best practice management of Commonwealth reserves and other protected areas. The EPBC Act also enables the identification and monitoring of biodiversity, the making of bioregional plans, and the protection of critical habitat, cetaceans and other marine species.

#### **Recommendation 7**

**The Commonwealth should acknowledge that it has ultimate responsibility for the safekeeping of World Heritage areas. The Commonwealth should exercise primary legal control over the protection, preservation and management of these areas.**

#### **Recommendation 8**

**The Commonwealth should strengthen its statutory framework for the identification and protection of World Heritage. The legislation should provide a comprehensive national regime.**

#### **Recommendation 9**

**The Commonwealth should continue to consult with States in order to obtain their agreement on nominations to the World Heritage List. In the event of disagreement, the Commonwealth should retain its power to make unilateral nominations. The Commonwealth should provide the ability for interested members of the public to nominate a property for listing to be considered by Commonwealth and relevant State Governments.**

The Commonwealth, as a State Party to the World Heritage Convention, recognises its duty of identifying, protecting, conserving, preserving and transmitting to future generations Australia's World Heritage properties. The EPBC Act provides up-front protection for World Heritage properties, a stronger and more efficient assess-

ment and approvals process, and improved management for all World Heritage properties through the application of consistent World Heritage management principles. There are significant penalties for actions taken affecting World Heritage properties in contravention of the Act. State agencies are responsible for the day-to-day management of the majority of Australian World Heritage properties.

The Commonwealth will continue to consult with the States, Territories and major stakeholders before nominating properties to the World Heritage List. The EPBC Act requires the Commonwealth to use its best endeavours to reach agreement with States and Territories and owners and occupiers on the submission of the property for World Heritage listing and the management arrangements prior to the property being nominated. A cooperative approach to nomination and management clearly facilitates the best protection for a World Heritage property. However, the Commonwealth will always retain the legal capacity to nominate a property to the World Heritage List in the absence of consent from the relevant State. In addition, in the case of a property not on the World Heritage list where some or all the World Heritage values are under threat, the Commonwealth is able to protect the values by declaring the property to be a declared World Heritage property under the EPBC Act.

#### **Recommendation 10**

**The Commonwealth should not devolve responsibility for management of World Heritage areas to the States without ongoing supervision and reporting requirements.**

#### **Recommendation 11**

**The Commonwealth should establish binding national management principles to effectively protect and preserve World Heritage areas. These principles should provide the basis for mandatory management plans for all Australian World Heritage areas.**

The EPBC Act establishes World Heritage management principles. Under the EPBC Act the Minister must make management plans for World Heritage properties which are entirely in Commonwealth areas. For properties located within a State or Territory the Commonwealth must use its

best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in cooperation with the State or Territory.

**Recommendation 12**

**The Government should amend the World Heritage Properties Conservation Act 1983 to ensure that the Act applies to a defined and adequate buffer zone around World Heritage properties which takes into account the natural ecosystem to which the World Heritage area belongs.**

Not accepted.

Boundaries of World Heritage properties are determined to protect the World Heritage values of that property. The World Heritage Properties Conservation Act 1983 has now been repealed and replaced by the EPBC Act. The protection provided by the EPBC Act applies to actions both within and outside the World Heritage property which are likely to have a significant impact on the World Heritage values of the property.

**Recommendation 13**

**The Commonwealth should entrench the IUCN Guidelines for Protected Area Management Categories in national legislation. In connection with World Heritage areas the Commonwealth should ensure that exploitation and occupation of such areas is eliminated and prevented.**

Accepted.

The proclamation made under the EPBC Act declaring a Commonwealth reserve must assign the reserve to an IUCN category such as national park or wilderness area. Regulations made under the EPBC Act prescribe the Australian IUCN reserve management principles which identify the purpose for which a Commonwealth reserve assigned to a particular category IUCN category is primarily managed.

The EPBC Act provides up-front protection for World Heritage properties, and improved management for all World Heritage properties through the application of consistent World Heritage management principles.

**Recommendation 14**

**The Commonwealth should prohibit any activity that would irreparably harm potential World Heritage areas within Australia at any time prior to completion of the assessment process.**

Properties not yet on the World Heritage List but specified in a declaration under the EPBC Act have the protection of declared World Heritage properties for the period for which the declaration is in force.

**Recommendation 15**

**The Commonwealth should ensure that an assessment of World Heritage values is required in the early stages of the Regional Forests Agreement (RFA) process.**

The RFA process involved Comprehensive Regional Assessments, which included assessment of potential world heritage values in RFA areas before Agreements were developed.

**Recommendation 16**

**The Commonwealth should retain management responsibility for listed Ramsar wetlands in order to ensure that its obligations under the Convention are met.**

The EPBC Act provides strong protection for Ramsar wetlands while recognising the role of States and Territories in day to day management of sites.

**Recommendation 17**

**The Government should make regulations under section 69 of the National Parks and Wildlife Conservation Act 1975 to require Commonwealth assessment and approval of all proposed developments and uses of listed wetlands that are likely to have a significant impact on their environment.**

Subject to limited exceptions, the EPBC Act, which replaces the National Parks and Wildlife Conservation Act 1975, requires that a person must not take an action that is likely to have a significant impact on the ecological character of a declared Ramsar wetland without the approval of the Commonwealth Environment Minister.

**Recommendation 18**

**The Government should amend the EPIP Act to require that all decisions made under the legislation are consistent with the principles of ESD as defined in Section 6(2) of the New South Wales Protection of the Environment Administration Act 1991. The legislation should contain a positive duty on decision-makers and other participants in EIA processes, to carry out functions provided under the legislation to meet the objective of ecologically sustainable development.**

The EPIP Act has been superseded by the EPBC Act. The objects of the EPBC Act include the promotion of ecologically sustainable development. The EPBC Act requires the principles of ESD to be taken into account when considering project approvals. In addition the EPBC Act requires the Environment Minister to specifically take into account the precautionary principle in making a range of important decisions under the Act.

**Recommendation 19**

**The Commonwealth should use its powers to adopt national standards for environmental impact assessment of a project proposal likely to have a significant impact on biological diversity in Australia.**

The EPBC Act focuses Commonwealth interests on the matters of national environmental significance. This arrangement provides strong protection for key components of Australia's biological diversity. The EPBC Act enables the Commonwealth to accredit State and Territory environment assessment processes provided they meet stringent standards. Through this accreditation process the Commonwealth is able to ensure the standards of environmental assessment in States and Territories will meet best practice benchmarks.

**Recommendation 20**

**The Commonwealth should establish, under Article 8 of the Convention of Biological Diversity, in conjunction with the external affairs power, national regulation for approvals requirements and standards in connection with proposed projects that may adversely impact on biological resources important for the conservation of biological**

**diversity and for processes and categories of activities identified as likely to have a significant adverse effect on the conservation of biological diversity.**

The EPBC Act provides protection for key components of Australia's biodiversity by requiring approval from the Environment Minister for any action that has, will have or is likely to have a significant impact on matters of national environmental significance.

**Recommendation 22**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include public involvement in the determination of the environmental significance of proposals.**

The EPBC Act provides for extensive public input to the environmental impact assessment process. State and Territory environmental impact assessment processes can only be accredited if they satisfy best practice benchmarks, including requirements for public consultation.

**Recommendation 23**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include the right of any person to refer a proposal to the relevant authority for determination as to whether a proposal is likely to have a significant effect on the environment.**

The EPBC Act places the onus on proponents to refer actions that may require approval from the Commonwealth Environment Minister. In addition State and Territory agencies and Commonwealth agencies may refer a proposal to the Environment Minister. If the proposal to take the action is not referred, the person cannot get an approval under Part 9 to take the action. If taking the action without approval contravenes Part 3, an injunction could be sought by an interested person to prevent or stop the action.

**Recommendation 24**

**The Commonwealth should ensure that the national requirements and standards it sets for environmental impact assessment include open standing provisions to allow public access to the courts in order to test the validity of**

**governmental decision and restrain breaches of the law.**

The EPBC Act contains appropriately broad standing provisions.

**Recommendation 25**

**The Commonwealth should increase funding for the Environmental Defender's Offices and peak conservation groups. Funding for the Environmental Defender's Offices should not be restricted in its use to non-litigation activities.**

Not accepted.

The Commonwealth already provides substantial funding to the Environmental Defender's Office to provide advice, education, resource materials, promotion and law reform/research activities for the benefit of the general public. Grants are also provided to environment and heritage groups across Australia to cover administrative costs associated with their environmental work.

**Recommendation 27**

**In determining the substance of comprehensive and binding national standards for the protection of the Australian environment, the Commonwealth should engage in extended consultations with State and Territory Governments, the wider community and industry.**

The Commonwealth already engages in extensive consultation with the wider community and industry in developing the basis for any comprehensive and binding national standards for the protection of the environment.

**Recommendation 28**

**The Commonwealth should take advantage of existing State and Territory administrative arrangements and expertise with respect to the environment (including practices, procedures and processes) by establishing a method for accreditation of these existing arrangements in cases where they provide at least as much protection for the environment as the established national standards.**

Accepted.

The EPBC Act provides a mechanism for accrediting State environment assessment processes and approvals where appropriate and where such processes meet 'best practice' criteria. These requirements are set out in the EPBC Regulations and were developed in consultation with State and Territory governments and the community. The Commonwealth has entered into bilateral agreements with Tasmania, Western Australia and the Northern Territory. Following its recent release for public comment, the bilateral agreement with Queensland is expected to be completed early in 2003. The Commonwealth is working with the remaining States and Territories to advance the development of bilateral agreements.

**Recommendation 29**

**The Commonwealth Government should ensure that it retains the right to act, including through legislation, on any environmental issue over which it has power, notwithstanding anything contained in the 1992 Intergovernmental Agreement on the Environment or the 1998 Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment.**

The Government intends to act in accordance with COAG Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. It should be noted that both the Heads of Agreement and the EPBC Act enable the Commonwealth to prescribe additional matters of national environmental significance, after appropriate consultation with the States and Territories.

**BUDGET**

**Consideration by Legislation Committees**

**Additional Information**

**Senator FERRIS (South Australia) (3.36 p.m.)**—On behalf of the chair of the Finance and Public Administration Legislation Committee, Senator Mason, I present additional information received by the committee relating to hearings on the additional estimates for 2002-03.

**SUPERANNUATION INDUSTRY  
(SUPERVISION) AMENDMENT BILL  
2002**

**SUPERANNUATION (FINANCIAL  
ASSISTANCE FUNDING) LEVY  
AMENDMENT BILL 2002**

**First Reading**

Bills received from the House of Representatives.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (3.37 p.m.)—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) (3.37 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

*The speeches read as follows—*

**SUPERANNUATION INDUSTRY  
(SUPERVISION) AMENDMENT BILL 2002**

On 28 October 2002, the Government announced a package of reforms to update and modernise the prudential supervisory framework for superannuation.

The Superannuation Industry (Supervision) Amendment Bill 2002 will make minor amendments to the Superannuation Industry (Supervision) Act 1993, consequential to the changes introduced in the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002.

The Government is proposing to make regulations pursuant to the Superannuation (Financial Assistance Funding) Levy Act 1993 to recoup financial assistance provided prior to the end of the financial year. I call on all Members to ensure that the

levy can take into account these changes and reduce the administrative and cost burden, which would eventuate under the current provisions.

**SUPERANNUATION (FINANCIAL  
ASSISTANCE FUNDING) LEVY  
AMENDMENT BILL 2002**

On 28 October 2002, the Government announced a package of reforms to update and modernise the prudential supervisory framework for superannuation.

Today, I introduce the first pieces of legislation to give effect to these reforms.

The amendments in the Superannuation (Financial Assistance Levy) Amendment Bill 2002 are the first in a package of reforms that will enhance the safety of superannuation in this country. This Bill will introduce amendments that will improve the workability of the levy collection process that plays such a central role to providing of financial assistance to superannuation funds that have suffered loss due to fraudulent conduct or theft.

In particular these reforms will significantly decrease the levy burden on large funds, whilst only placing a small increase on small funds.

Since June 2002, the Government has made nearly 380 determinations under the financial assistance provisions of Part 23 of the Superannuation Industry (Supervision) Act 1993, to grant financial assistance to funds that have suffered loss. As a result, the Government has paid out over \$20 million. The Government has maintained at all times, whilst granting financial assistance, that financial assistance provided would be recouped by the Commonwealth through a levy on the industry made in accordance with the Superannuation (Financial Assistance Funding) Levy Act 1993 (the Levy Act).

As a result of this experience, the Government has identified a number of inefficiencies in the current framework for the collection of levies to fund the financial assistance.

Firstly, the Levy Act currently requires that separate levies must be collected for each grant of financial assistance—that is a separate levy for nearly 380 grants. This is clearly inefficient for both the party responsible for collection of the levies, the Australian Prudential Regulation Authority (APRA), and for the trustees of funds who

must make arrangements to pay 380 separate levies.

Secondly, the current levy amount imposed on a fund is a proportion of a fund's assets, in line with the determined applicable levy rate. However, the Levy Act does not allow for the specification of either a ceiling or floor on the total imposed on superannuation funds.

The recent circumstances have identified that large-scale collection of levies to recoup financial assistance is impractical. 380 separate levies would place a large compliance burden on all superannuation funds. The lack of ability to set a floor or ceiling for each levy would exacerbate the problem, as it would generate a large number of very small levy amounts (less than 20 cents in aggregate) from some funds and very large amounts (over \$400,000 in aggregate) from other funds.

All but one of the grants of financial assistance have been to funds that held less than approximately \$1.5 million in assets. Approximately 81 per cent of regulated funds have assets of \$1.5 million or less. Ability to set a floor and a ceiling on levy amounts imposed would more equitably share the burden of financial assistance, particularly given that currently the levy burden would fall most heavily on larger public offer funds, even though recent events have suggested funds with less than \$1.5 million present a greater regulatory burden for APRA.

To address these inefficiencies, this Bill introduces a provision to amend the Levy Act to allow for the specifying of a minimum and maximum levy payable in respect of any levies imposed.

This will not only ensure that a reasonable limit is imposed on the maximum levy amount payable, but additionally ensures that all superannuation funds, with the exception of self managed superannuation funds, contribute appropriately to the funding of financial assistance. It is imperative that all regulated superannuation funds contribute to financial assistance.

It also introduces a provision to enable aggregate amounts of financial assistance to be collected in one levy, rather than individually. Imposing only one levy to collect the aggregate of all financial assistance granted in a particular financial year

will ensure that the levy process is simplistic and would reduce compliance costs for all superannuation funds, rather than subjecting superannuation funds to levies to deal with 380 individual levies.

The Government is proposing to make regulations pursuant to the Superannuation (Financial Assistance Funding) Levy Act 1993 to recoup financial assistance prior to the end of the financial year. I call on all Members to ensure that the levy can take into account these changes and reduce the administrative and cost burden, which would eventuate under the current provisions.

Ordered that further consideration of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

## NATIONAL RADIOACTIVE WASTE REPOSITORY

### Return to Order

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (3.38 p.m.)—by leave—This statement is made on behalf of the Minister for Science and it addresses the order arising from Senator Lyn Allison's motion and Senator Natasha Stott Despoja's notice of motion. The National Store Advisory Committee, a group of technical experts advising the Commonwealth on site selection for the national store, has provided the Minister for Science with advice on sites for consideration. The advice is in the form of an internal advice or working document. Such advice has been traditionally regarded as confidential and the government has declined to release such information. This practice will be followed with respect to this advice.

**Senator CARR** (Victoria) (3.39 p.m.)—by leave—I move:

That the Senate take note of the statement.

I am quite surprised at the government's response to this issue. This is about the government's decision to establish a shortlist of sites for an intermediate waste dump for nu-

clear material. This is a decision that the government has now postponed for over a year. We are being told that the government cannot, in response to this order, provide a list of sites because it is 'ministerial advice'. In effect, that is the proposition we have been told—that this is advice to the minister and therefore we are not entitled to see it.

It has been a year since this government postponed this decision. I think we are entitled to know what action the government intends to take about the storage of about 500 cubic metres of very dangerous materials. We on this side of the chamber take the view that there ought to be a national store and we have maintained that position throughout this debate, but we will not be able to argue a case logically and coherently within the community if we do not know what the government is intending to do and, in particular, what sites it is proposing for the establishment of this store. What is really critical here is that the national regulator who deals with the nuclear industry, Dr Loy, who heads up ARPANSA, has made it perfectly clear that the licence to operate the new nuclear reactor at Lucas Heights will not be given when that project is concluded, presumably in about two years time, unless there is a clear and unequivocal coherent national strategy for the disposal of nuclear waste.

The government has committed \$500 million of capital to build a new reactor at Lucas Heights. It is the major source of the nuclear waste that is the subject of this return to order. The government is endangering that project by its failure to respond to the clear advice to the regulator and the nuclear industry in this country. The government has known for a very long period of time what its obligations are, and yet it delays and delays and delays—in just identifying a shortlist. A whole series of other processes have to go on for the establishment of a site after that

shortlist is revealed. Frankly, it is just not good enough for the government to say that it will not tell the parliament what that shortlist consists of. It is just not appropriate to argue that this is a matter of ministerial advice.

We are looking here at a matter of political expediency, where it is not interested in taking this parliament into its confidence in dealing with a difficult public policy issue. Government secrecy on matters like this does not help public debate. We know how hard it is going to be in terms of the arguments to and fro on the issue of the storage of nuclear waste. We have said all along what our commitment is in terms of a national store. We believe there should be national facilities. This is a Commonwealth responsibility. You cannot leave this sort of stuff lying around in sheds as we have at the moment. You cannot have nuclear waste being treated in the contemptuous manner in which this government is treating it.

A shipment of materials was supposed to have gone to France last year. If I recall rightly, \$11 million was allocated for that project for reprocessing of spent fuel rods. The shipment was not sent, because it appears there were serious 'operational reasons', as they call them, for that not happening. We now have a problem where the Argentinean government is clearly having difficulty in getting the contractual arrangements in place and the constitutional changes required to actually allow for reprocessing in that country. The government is running out of options when it comes to the issue of nuclear waste. It must establish its proposed shortlist for sites for this facility. It will not do to try to come in here and suggest to us that, because it is ministerial advice, we are not entitled to have a look at it. That excuse has been well worn. You have had over 12 months to do something about this, and you continue to fail. I am totally dissatisfied with

the government's response to this return to order.

Question agreed to.

**CONSTITUTION ALTERATION  
(RIGHT TO STAND FOR  
PARLIAMENT—QUALIFICATION OF  
MEMBERS AND CANDIDATES) 1998  
(No. 2) [2002]**

**Second Reading**

Debate resumed from 3 December 1998, on motion by **Senator Brown**:

That this bill be now read a second time.

**Senator BROWN** (Tasmania) (3.45 p.m.)—I am very pleased to have back here this afternoon the **Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]**, which was first brought before this chamber in 1998. At the outset, I thank all involved, including Senator Ian Campbell, opposition members, the Democrats and the Independents for facilitating the bill being brought before the Senate this afternoon. There is a general hope that the bill will be read a third time. Because it is a Constitution amendment bill, I flag the need for a rollcall under the provisions of the Constitution and our standing orders at the end of this debate. Senators might be aware that, if we have a third reading vote, there will be a rollcall of senators because, under the provisions of the Constitution, an absolute majority is required for a Constitution amendment bill to proceed at that stage.

As every election approaches, 1½ million teachers, posties and other public servants who might like to stand for parliament have to decide whether it is worth resigning their jobs in order to do so. Australian citizens who are also citizens of another country—that is, they have dual citizenship—have to go to great lengths to repudiate that second citizenship if they want to nominate for elec-

tion here. Section 44 of the Constitution is the problem. It stops anyone who holds 'an office of profit under the Crown' or who is a citizen of another country—that is, they hold dual citizenship—from nominating for this parliament. That dual citizen component prevents another five million or so Australians from standing for parliament.

There is a question mark about pensioners who arguably may be said have an office of profit under the Crown—that includes disability pensioners, old age pensioners and, indeed, unemployment benefit recipients and recipients of other benefits—as to whether they would be able to stand. There are between five and seven million Australians who, under the current constitutional provision, cannot stand for their own parliament. That is because the Constitution was written in the 1890s—and we are now in the first decade of the 21st century—and things have moved a great deal since then.

Section 44 deprives the federal parliament of a huge pool of talented potential politicians. At every recent election it has caused trouble and expense as someone unwittingly falls foul of the Constitution. Everyone agrees that section 44 should be changed. All parties supported a Greens motion in the Senate to that effect in October 1996 and called on the then government to bring forward a proposal for constitutional amendment. The Joint Standing Committee on Electoral Matters, reporting on the 1996 election, recommended:

that at an appropriate time, such as in conjunction with the next Federal election—

which would have been 1998—

a referendum be held on a) applying the 'office of profit' disqualification in section 44(iv) from the start of an MP's term, rather than from the time of nomination—

so it would not catch people up with nomination—

and b) deleting section 44(i) on 'foreign allegiance' and otherwise amending the Constitution to make Australian citizenship a necessary qualification for membership of the Parliament.

That was recommendation 39. Then the House of Representatives Standing Committee on Legal and Constitutional Affairs examined in detail sections 44(i) and 44(iv) of the Constitution and recommended that a referendum be held to amend them. The government's response to those recommendations has been supportive. It states:

Subject to the qualifications outlined below, the government would support amendments of subsections 44(i) and (iv) of the Constitution to overcome the shortcomings identified by the Committee.

It went on to say:

... it accepts that constitutional and legislative action is the only realistic way in which to overcome these shortcomings.

That quotation is from the government's response to the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs which was titled *Aspects of section 44 of the Constitution*.

However, no bill for a referendum has been forthcoming. It is now on the record that on 3 December 1998, when I first brought this bill before the Senate, there was a debate in private members' time but no conclusion was reached as a result of that debate. I have now brought the bill forward. We greatly hope that because this is such an important matter—and I have no doubt that it will have the support of the Australian populace at large—we ought to put it to the people so that the referendum can be held so that the millions of Australian citizens effectively get their full citizenship. It is an extraordinarily important component of an egalitarian country that no-one should be deprived of the ability to stand for his or her parliament and to represent her or his people. This bill is the simplest possible way of amending the

Constitution to fix the problem. No-one disputes that.

I am grateful to the opposition and to Mr McClelland in the House of Representatives and his staff for suggesting a minor amendment which I have circulated and which is in line with the aforesaid committee's recommendation to government back in 1996 and which simplifies the bill before the chamber this afternoon. I commend the bill to the chamber.

**Senator LUDWIG (Queensland)** (3.52 p.m.)—The opposition welcome this opportunity to debate the **Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]**. This bill was last debated in the Senate in December 1998. Senator Brown is to be commended for raising it. As we did on the earlier occasion, the opposition will again be supporting this bill as a constructive step forward in the campaign to reform section 44 of the Constitution. The bill would amend section 44 in two main ways. First, it would amend subsection (i) to allow an Australian citizen with dual citizenship to stand for, and be elected to, parliament. The current prohibition on a person who is 'under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power' would be repealed. Since the bill was last debated, the High Court determined in 1999 that Heather Hill could not be elected to the Senate because she was a 'citizen of a foreign power'. In that case, the foreign power was the United Kingdom.

Today, more than four million Australians hold dual citizenship, which is up from about three million in 1986. It has long been possible for Australians to acquire dual citizenship in a number of ways. It can happen

without their knowledge, such as when another country's laws automatically confer citizenship upon them. Last year, after many decades of community debate, this parliament passed laws which provided for the first time that an adult Australian citizen will not lose their Australian citizenship if they take action to acquire the citizenship of another country. Australians now recognise that dual citizenship is a way of life. They would expect the Constitution not to impose arbitrary restrictions on their capacity to participate in Australian democratic institutions. Senator Brown's amendment recognises this fact. However, Australians would also insist that all members of this parliament have a clear and undivided loyalty to the Australian nation. In Labor's view, it is essential that any change to section 44(i) be accompanied by safeguards to prevent divided loyalties. The House of Representatives Standing Committee on Legal and Constitutional Affairs recommended in 1997 that parliament enact legislation determining the grounds for the disqualification of members of parliament in relation to foreign allegiance. That or a similar recommendation must be implemented as part of any reform of section 44.

The second amendment proposed by the bill would disqualify holders of judicial office, and other public offices declared by the parliament, from standing or being elected to parliament. This would replace the current disqualification in section 44 of a person who 'holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth'. That part of section 44 is intended to ensure that the members of parliament do not hold an office that is incompatible with their legislative responsibilities to the parliament and the Australian people. However, the language of the subsection has produced nothing but un-

certainty, particularly in areas of the public sector. Senator Brown's amendment is broadly consistent with the 1997 recommendations of the House of Representatives committee, although it would, in the opposition's view, make more sense to repeal the final paragraph of section 44 altogether than to make the limited amendment to that paragraph proposed by the bill.

A recent instance—no doubt fresh in Senator Brown's mind—in which section 44(iv) attracted comment was the election of Mr Michael Organ as the member for Cunningham in October last year. On 19 December, the *Australian Financial Review* carried an article entitled 'Employment cloud over Green MP' which speculated that Mr Organ, who continued to be employed as an archivist by the University of Wollongong after he nominated and was elected, might be disqualified from parliament because he held 'an office of profit under the Crown'. In that article, constitutional lawyers discussed inconclusively the extent to which universities are controlled by the executive of government. I make no observation about Mr Organ's circumstances, but there can be no doubt that the current federal government has sought to exercise an unprecedented degree of control over the internal affairs of universities, in particular over the employment conditions of their research and teaching staff.

In this week's budget we saw the Minister for Education, Science and Training, Dr Nelson, copy his predecessor, Dr Kemp, and tie university funding to workplace reform—a euphemism used by this government for kicking unions out of the workplace, pushing employees onto individual contracts and restricting their right to bargain collectively over their conditions of employment. Even the Federal Court was moved to observe in April last year that Dr Kemp's policy 'may fairly be regarded as having little to do with

the proper functioning of universities in this country and rather more to do with the government's industrial relations agenda'. Sadly, the words of a wise judge were not enough to prick the dormant Labor conscience of the ambitious Dr Nelson. It is reasonable to suggest that as long as this government continues to try to control the employment relationship between universities and their staff, a constitutional cloud will hang over any university employee who seeks election to this parliament. We can hardly call ourselves the clever country if our Constitution forces clever Australians to avoid the risk of standing for election if it means quitting their jobs. The government's meddling in our universities simply adds to the weight of the argument for the reform of this particular section.

I should stress that the opposition strongly believes that, before these proposals are put to a referendum, further consideration should be given to the precise wording of the amendments and also to what other constitutional reforms are appropriate to go to a referendum at the same time. A referendum demands a large public investment of time and attention, not to mention money. It is an opportunity that should not be squandered on just one issue; if we were going to use a referendum, then it should also include those issues that require constitutional reform.

Once again, it is a matter of regret that this bill is being sponsored by a private member rather than by the government. History demonstrates that referenda stand little chance of success unless they are supported by all parties and the government assumes a role of responsibility and leadership on the issue. Perhaps it is the pervasive influence of the Prime Minister in the coalition parties, but it is difficult to avoid the conclusion that, since the referendum on the republic, the government has been asleep in a hammock on constitutional reform. The opportunity to debate

these issues once again in the Senate is welcome.

While Senator Brown is currently leading the push to reform section 44, proposals to amend section 44 have had a long history in our constitutional debates. As far back as the constitutional conventions of the 1890s and during the first Electoral Act debate in 1902, aspects of section 44 and the electoral laws relating to it were the subject of extremely vigorous debate. Section 44 has been the subject of Senate reports in 1981 and in 1988, and the final report of the Constitutional Commission recommended a number of changes to section 44 itself, including making Australian citizenship a necessary qualification for office, major reform to the office of profit provisions, and a wide range of other reforms such as making unsoundness of mind a ground for disqualification and removing the bankruptcy provisions as included in section 44(iii). The Joint Standing Committee on Electoral Matters, in their post-election reports, regularly remark on section 44. In 1994 the committee remarked:

The most effective means of removing the uncertainty over the office of profit disqualification would be to remove section 44(iv) of the Constitution.

It is a grave matter that I am sure the senators from the coalition are interested in. In 1996 section 44 reached national prominence following the court case that led to the removal of Miss Jackie Kelly. Following the subsequent by-election, the Senate unanimously passed a resolution initiated by Senator Brown which stated:

That the Senate—

(a) notes:

(i) the High Court ruling of 11 September 1996 that the 1996 federal election result in the House of Representatives seat of Lindsay was invalid, and

(iii) that section 44 of the Constitution impedes many Australian citizens from standing for Par-

liament, including citizens holding dual citizenship, public servants and certain others who may be holding an office of profit under the Crown; and

(b) calls on the Federal Government to respond with a proposal for amendment.

The report by the Joint Standing Committee on Electoral Matters following the 1996 election recommended:

that at an appropriate time, such as in conjunction with the next Federal election, a referendum be held on a) applying the “office of profit” disqualification in section 44(iv) from the start of an MP’s term, rather than from the time of nomination, and b) deleting section 44(i) on “foreign allegiance” and otherwise amending the Constitution to make Australian citizenship a necessary qualification for membership of the Parliament.

In July 1997 the House of Representatives Standing Committee on Legal and Constitutional Affairs investigated aspects of section 44 of the Australian Constitution, making similar recommendations.

Section 44 clearly has had both a colourful and long career in this house and in the other place as well. Clearly, there is still a lack of necessary willingness by the government to do anything about it. Senator Brown’s bill, which is the subject of today’s motion, proposes changes to section 44 of the Constitution which describes disqualifications from holding federal parliamentary office. It is time that this government took note and used it rather than allowing this debate to be had again. This debate was also held in 1998. I did not have the opportunity to participate in it then but I am certainly pleased to have the opportunity to participate in it now. It is an important section that does need amendment. It is a significant issue that should be addressed and one that this government has had ample time and opportunity to address, but it has failed to act.

**Senator MASON (Queensland)** (4.05 p.m.)—I would like to congratulate Senator

Brown for raising these very important constitutional issues. The issues that are raised by Senator Brown in the *Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]* reflect some of the constitutional and historical tensions that still have not been played out in this nation, in particular the growth of the influence of the state and government on the lives of citizens. Also, and perhaps even more importantly, there is the influence on those people who can be elected to federal parliament—it affects the pool of people who are eligible for federal parliament. So these are important issues, and it is a very important thing that Senator Brown has done. Certainly these issues are worthy of debate in the Australian Senate.

There is no doubt that the provisions of the Constitution dealing with the qualifications or, indeed, the disqualification of members of parliament, particularly subsections 44(i) and 44(iv), have their shortcomings. There is no doubt about that all. Much has changed, as my friend Senator Ludwig said, since the 1890s, and our constitutional founders could not have been expected to understand the rise of citizenship rights and the influence of government on the lives of every Australian. In essence, this bill seeks to clarify the position in relation to dual citizenship under section 44(i) of the Constitution and those who hold offices of profit under the Crown in relation to section 44(iv) of the Constitution.

Let me commence with section 44(i). Even though it may be in archaic language, I think the principle still holds true. Section 44(i) is based on the principle that members of parliament must have a clear and undivided loyalty to the Australian community. It attempts to avoid both actual and perceived conflicts of interest that may flow from any allegiance or loyalty owed to another nation-

state. It does embody the particular considerations that prevailed at the end of the 19th century in Australia. At the time our Constitution was drawn up in the late 1890s, there was no concept of Australian citizenship; we were simply British subjects and aliens. Despite the different social and political context of the late 1890s, the policy on which section 44(i) was based remains valid—that is, that parliamentarians must not be subject to undue external influence that could prejudice the performance of their duties on behalf of members of the Australian public.

A person having allegiance to a foreign power could be unduly influenced by that power. That, again, is the principle behind section 44(i). As Senator Ludwig said in his eloquent address, section 44(i) has been interpreted on several occasions by the High Court sitting as the Court of Disputed Returns. The court has held that the election of a person who was not an Australian citizen at any material time during the election is void. Of course, we will remember the case of Senator Wood in 1998. Odgers throws some light on the critical legal question here. At page 154, Odgers states:

Paragraph (i.) of section 44, relating to adherence to a foreign power, has been construed by the Court—

that is, the High Court—

as relating only to a person who has formally or informally acknowledged allegiance, obedience or adherence to a foreign power and who has not revoked that acknowledgement. In relation to persons who have dual nationality—

that is a big issue in this country; we will get to that—

the question is to be determined by whether the person has taken reasonable steps to renounce a foreign nationality, and what amounts to the taking of reasonable steps depends on the circumstances of a particular case.

We all remember the cases of Sykes v. Cleary and, of course, the would-be senator

Heather Hill, elected at the 1998 federal election.

That is what the court has said. Senator Brown is right: there are real problems with section 44(i). Why? It is because section 44(i) does not make clear what actions or omissions will result in disqualification in circumstances involving dual citizenship. What is the test? It is open, it is vague and it is uncertain. Reasonable steps at least must be taken to avoid foreign associations of the kind covered by that subsection. However, the reasonableness of any particular course will depend on the circumstances of the case and cannot always be predicted in advance. Before I go on, I will relate this to an aspiring politician. People are uncertain when they run for political office as to whether they will in fact qualify. Because of that uncertainty and the number of people holding dual citizenship in this country, the pool of people that can run for political office is smaller and diluted. That is a problem for our democracy. The issue of dual citizenship and the way a prospective member of parliament deals with that issue will be very important. Moreover, the country of dual citizenship might also be very important. Some countries make it impossible or virtually impossible to renounce citizenship. It is often unclear to prospective members of parliament what they need to do.

This is particularly important given this parliament's recent passage of legislation that in effect encourages dual citizenship. In that context, this is a big issue. Allow me to be specific. For example, what do the words in section 44(i) 'under any acknowledgement of allegiance, obedience, or adherence to a foreign power' mean? I will give a clear example: my brother served in the French Foreign Legion.

**Senator Murray**—What was he running away from?

**Senator MASON**—Probably from me, Senator Murray. Is my brother's service in the French Foreign Legion a direct form of allegiance to a foreign power? Perhaps it was. Perhaps it is clear that when he was serving it was a form of allegiance. I understand that. When my brother left the French Foreign Legion, did he have any residual allegiances to another nation-state? That is the question. Is there, in effect, a retired list for the French Foreign Legion? If there is, what did his oath of allegiance mean, and what did his contract of employment say? My point is that it is unclear.

**Senator Kemp**—Once you are a member of the legion, you can become entitled to become a French citizen.

**Senator MASON**—I take Senator Kemp's interjection because it is a good one. My brother's entry to the French Foreign Legion gave him, in effect, residual rights to become a French citizen and therefore a citizen of the European Union. Does that mean he was under an acknowledgement of allegiance, obedience or adherence to a foreign power? You can see the point, Mr Acting Deputy President. It would be uncertain and therefore difficult if my brother wanted to join me here in federal parliament.

Secondly, what do the words 'entitled to the rights and privileges of a subject or a citizen of a foreign power' mean? Even if someone has renounced their citizenship of a particular country—for example, of the United Kingdom or the United States—in many cases residual rights might remain. What happens if you have a right to a British pension or a United States pension or a pension from the French Foreign Legion? Is that a residual right? Under the words of the Constitution, is that a 'right or privilege of a subject or a citizen of a foreign power'? I do not know the answer to that and that is why it is a very interesting question.

Importantly, what about Australian citizens who are not dual citizens but, because of the laws of other nations, may have a right to apply for dual citizenship which would ordinarily exclude them under section 44(i) of the Constitution? For example, many millions of Australians have a right to apply for British citizenship because they have a parent who is a British subject, or they may be able to apply for Irish citizenship. As I stand here now I wonder whether I might even qualify for Irish citizenship. But you see the point, Mr Acting Deputy President Lightfoot, and it is a serious point. Is that a right and a privilege of a subject or a citizen of a foreign power? Is that a residual right? I am just asking the question and I think it is a fair question. No doubt some of my republican friends sitting on the other side of the chamber do not like the word 'subject' and would prefer 'citizen' but I think that is perhaps one of the less important aspects of the debate so I will not enter that debate.

I will move on now to the second part of Senator Brown's bill, which relates to section 44(iv) and which embodies the principles that the executive and the legislature should be separated and that the executive should not be in a position to unduly influence the legislature. Who would ever believe that the executive tries to unduly influence the legislature? Who would ever think that the executive tries to unduly influence parliament? What an outrageous thing.

Section 44(iv) also seeks to prevent citizens from simultaneously holding two offices which could lead to a conflict of duties. Again, section 44(iv) has a very respectable constitutional history. In the 18th century, the British parliament was concerned that the Crown would use its powers of patronage to suborn members of the House of Commons and thereby undermine the independence of the House of Commons. That principle is fair enough. We may not agree with the lan-

guage, and the fact that problems have been raised is right, but the principle is fair.

Section 44(iv) is intended to prevent the gaining of control of the legislature if a large number of members of parliament, of office holders, appointed by the executive had a disproportionate control over members of parliament. That is the problem. In a sense, we do not want members of parliament under the patronage of the executive, given jobs by the executive, and therefore subject to undue influence of the executive. That is a fair principle.

As the House of Representatives Standing Committee on Legal and Constitutional Affairs stated in its report of July 1997:

The provision is concerned with the ability of the parliament to hold the executive to account and therefore it is necessary to ensure that enough members of parliament are free from the influence of the Crown to achieve this.

All honourable senators would agree with this principle.

The second principle fundamental to section 44(iv) is that some offices are incompatible with membership of the parliament. The House of Representatives committee report of July 1997 stated that incompatibility can arise in two ways: the first was a risk of conflict of duties involved in attempting to satisfy the demand of both offices and the second was that some offices, for example judicial offices, are considered to be so sensitive that if the holders of such offices became embroiled in political controversy the offices themselves may be damaged.

Section 44(iv) is highly problematic. I want to tell a little story about how it operated in my case. I was a full-time academic in Queensland working for a university. I remember that the question was raised, 'Brett, do you hold an office of profit under the Crown?' The principle here is this: it was perhaps okay in my case because the particu-

larities of my preselection and order on the Senate ticket meant I was very likely to be elected. However, let us say I had a slim chance or a fifty-fifty chance; I would have had to resign from a tenured position at university to run for parliament. Even then you might say that that is fine. However, I could not get legal advice one way or another as to whether a tenured academic at a university holds an office of profit under the Crown. The advice I was given was absolutely equivocal. I sought advice from law firms and friends who were barristers and no-one could tell me with certainty whether or not I held an office of profit under the Crown. In my particular case, I resigned and was fairly confident of being elected given the particularities of my case. However, if I had been running for a marginal seat, I could not have resigned. You cannot just leave a tenured position, whether in the Public Service, at a university or whatever, and run for a seat, lose and then try to get back in. That would not be very easy.

The point is—and, again, I have to emphasise it—that section 44(iv) reduces the pool of people eligible to run for parliament. That is problem. In a sense, it inhibits our democracy and makes it much more difficult to attract people from the public sector and more broadly, and that is the problem with it. I have plenty of other points to make about section 44(iv), but I want to conclude with perhaps some problems with the process—not with the principles you have raised, Senator Brown, because I have to say that I largely agree with you.

There are, of course, problems with a referendum. All of us know—we are all politicians here—the problems with referendums. We know we have to have bipartisan support otherwise it simply will not get through. Even with bipartisan support, it still might not get through. I think we all accept that. Not only are section 44(i) and section 44(iv)

highly problematic; so is section 44(v). Again, it is very difficult to know exactly what it means.

In short, the matters of principle raised by Senator Brown are valid. I think, however, that when the Constitution was first drafted the principles were correct. But somewhere in the last 100 years the state has become much bigger. The corporate state developed by our friends in the Labor Party—where you have big unions, big government and big business all intertwined like some sort of large octopus—makes it impossible to have the classic liberal distinction between public and private. That is why ‘office of profit under the Crown’ these days is nearly a meaningless expression. There are contracts with government. There are people who work in universities, schools and elsewhere. And the fact is that they should be able to run for public office or, at least, there should be some device that enables them to come back to their former jobs in any case.

In conclusion, I would like to congratulate Senator Brown for raising these issues. I think they are valid. But I do think that the issue of constitutional change is broader than this; there are problems indeed in implementing these changes. I thank Senator Brown for raising these issues.

**Senator MURRAY** (Western Australia) (4.24 p.m.)—I rise to speak on behalf of the Australian Democrats on the [Constitution Alteration \(Right to Stand for Parliament—Qualification of Members and Candidates\) 1998 \(No. 2\) \[2002\]](#)—and even I cannot invent an acronym for that long title. This bill has three elements that intend to alter the application of section 44 of the Constitution with regard to the disqualification provisions affecting those who stand for public office. I must say before I get into the body of my remarks that I thought Senator Mason’s analysis was both apposite and entertaining.

Firstly, the bill would delete the prohibition enshrined in section 44(i) of the Australian Constitution that a person could not seek election to the parliament if that person were a citizen of another country or owed an allegiance of some kind to another nation. The bill proposes to replace this with a simple requirement that all candidates for political office be Australian citizens—an eminently sensible view. Most senators know that section 44(i) of the Constitution has long provoked litigation—the leading case is still *Sykes v. Cleary* No. 2 of 1992.

The section was drawn up at a time when there was no concept of Australian citizenship, when Australian residents were either British subjects or aliens. I have always liked the word ‘aliens’—it has that out of world approach. I once came across the bureaucratic use of the word. A friend of mine was born in South Africa, resided in southern Rhodesia, as it was at the time, and had taken up citizenship there. He came to the notice of the South African government, who thought him undesirable. So they took away his South African citizenship based on birth, then proclaimed him an alien and deported him, which I always thought was a very cunning ploy. Anyway, he survived the tale.

Back to the section: it was designed to ensure that the parliament was devoid of aliens, as so defined at that time. The Democrats accept, however, that the sentiment of that section—that only Australians should be eligible to stand as representatives for the federal parliament—is a valid and a continuing one. That is not to say that section 44(i) of the Constitution as it currently stands is the most appropriate and adapted to achieving that end; rather it contains notions such as ‘any acknowledgement of allegiance, obedience, or adherence to a foreign power’.

Again, as an aside, I had cause to ask the Clerk for his opinion on the oath that we all

swear to the Queen of England, who is also the Queen of Australia. As usual his advice was intriguing, but his conclusion was that we were not breaching the Constitution. These concepts are obviously subject to disparate and perhaps dangerous interpretation by judges. Is it to be the case that some future member will lose their seat because while in office they have been made an honorary citizen of another country, purely as part of the diplomatic process? Then there was the case of the Foreign Legion, which I must say was interesting. Such a result would, of course, be an absurdity.

Further, in the context of the current debate over the eventual move to a republic, such reference to a foreign power does bring the oath that each member and senator takes upon assuming his or her seat into apparent contradiction with the existing constitutional provision. Senators will recall that the oath requires members to swear that they will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and her successors according to law. On a strict reading you would think that that was an unequivocal declaration of 'allegiance, obedience, or adherence to a foreign power', as prohibited by section 44(i).

As it currently stands, section 44(i) is wholly unsuited to achieving its aims for the reasons I have outlined above and for those that other speakers have outlined. Like many sections of our Constitution, it has lost its workability a century after its drafting. The proposed replacement in the bill for this section—that the qualification simply be that a person must be an Australian citizen—is sound. However, we should take account of the valuable work that has been done in this area by various parliamentary bodies in assessing whether the present bill is sufficient.

In July 1997, the House of Representatives Standing Committee on Legal and Con-

stitutional Affairs produced a report recommending that section 44(i) be replaced by a provision requiring that all candidates be Australian citizens. It went further to suggest that the new provision empower the parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance—that is, the committee acknowledged that there are some situations, such as where a Prime Minister holds dual citizenship, that may cause concern to the Australian people. A provision leaving the door open to parliament to put in place some better expressed requirements with respect to dual citizenship would seem a sensible recommendation.

I further note that the Constitutional Commission in its final report in 1988 recommended that subsection 44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the parliament being empowered to make laws as to residency requirements. Going further back, the Senate Standing Committee on Constitutional and Legal Affairs in its 1981 report entitled *The constitutional qualifications of Members of Parliament* recommended that Australian citizenship be the constitutional qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere. I think that, too, is an eminently sensible view.

It is therefore clear to us, especially in view of the multicultural nature of Australian society and especially in view of the recent changes to citizenship and dual citizenship—which all parties welcomed—that contemporary standards demand that Australian citizenship be the sole requirement for being chosen for parliament under a new subsection 44(i), with a residual legislative power being given to the parliament to deal with unique cases that may arise from time to time.

The second element of the bill deals with the office of profit under the Crown—that is the issue of subsection 44(iv). Again, this section featured in the *Sykes v. Cleary* litigation. The bill proposes to delete subsection 44(iv) and substitute a requirement that only judicial officers must resign their positions prior to election, as well as empowering the parliament to legislate for other specified offices to be vacated. Quite frankly, I have long believed that the office of profit under the Crown provision is more offensive than the Australian citizenship provision, simply because it excludes so many people.

Subsection 44(iv) has its origins in the Succession to the Crown Act 1707 in the United Kingdom. Its purpose there was essentially to do with the separation of powers, the idea being to prevent undue control of the House of Commons by members employed by the Crown. Obviously, times have changed, even though the ancient struggle between the executive and the parliament continues to this day. Whilst this provision may have been appropriate 300 years ago, the growth of the machinery of government has meant that its contemporary effect is to prevent the many hundreds of thousands of citizens employed over the years in the public sector from standing for election without resigning their office and therefore without any real justification. My own party and my own state of Western Australia at the 1998 election is an example: there were 14 lower house seats there, yet seven potential Democrat candidates were unable to stand due to their unwillingness to resign from their public sector positions. There are of course now 15 seats.

The Australian Democrats have a long history of trying to rectify this part of the Constitution; in fact, it is a 23-year history. In February 1980—23 years ago—former Democrat senator Colin Mason moved a motion in this chamber which resulted in the inquiry

I referred to earlier by the Standing Committee on Constitutional and Legal Affairs into the government's order that public servants resign before nomination for election. We have sought to alter section 44(iv) four times through the Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1985, the Constitutional Alteration (Qualifications and Disqualifications of Members of the Parliament) Bill 1989, the Constitutional Alteration (Qualifications and Disqualification of Members of the Parliament) Bill 1992 and the Constitutional Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) Bill 2000. We have also covered the issue extensively in both our 1996 and 1998 federal election minority reports of the Joint Standing Committee on Electoral Matters. None of our very practical bills have yet been allowed to go to the vote or to be debated to the stage where they could go to the other house. I am hopeful that at least this bill will make it that far. I am even more hopeful—perhaps it is a vain hope—that the government might consider dealing with it on its merits.

I further note that the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 recommended that subsection 44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the parliament to specify other offices which would be declared vacant should the office holder be elected to parliament. Subsection 2(2) of the bill in its current form will not achieve this. While some offices, such as those of a judicial nature, must be resigned prior to candidacy, no provision is made for other offices to be declared vacant upon a candidate being successfully elected. It would be absurd, of course, if public servants could retain their

positions after having been elected to parliament. It is essential that a mechanism be put in place declaring vacant certain specified offices upon their holders being elected.

The third element of the bill seeks to delete entirely the last subsection of section 44. I am pleased that this section has been amended to be aligned with the recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997. It must be noted though that the changes proposed in this bill incorporate only a selection of the recommendations made in that report. In my opinion—and our opinion—it would be ideal if the bill incorporated all or most of the committee's recommendations.

These issues under section 44 have been debated for decades. I think there is general consensus among all political parties and probably among all the Independents that this situation needs to be rectified. The government should take a position of leadership and deal with this issue in time for the next federal election. At some time and in some place, governments of the day need to attend to this one and I really cannot see the Australian people resisting these sorts of changes. Maybe I am ignorant of the likely arguments to be thrown up opposing it, but I cannot see that this sort of change would be that difficult these days. In conclusion, I indicate that the Democrats will support the bill and the Labor amendments to the bill.

**Senator ROBERT RAY** (Victoria) (4.36 p.m.)—Achieving constitutional change in Australia is particularly difficult as it requires not only a majority vote but a majority of states to vote in favour of it. It is fairly clear to me that it is very easy to distort any proposal for constitutional change. It is very easy to run scare tactics. It is very easy to demonise any prospective change.

My first involvement in support of a constitutional change was only as a very minor functionary in 1967 when the then coalition government proposed two constitutional amendments. The first was on recognising Aboriginals as properly constituted Australian citizens, and that romped in. The second was to break the nexus between the Senate and the House of Representatives. We had got into a situation where it was quite obvious that the House of Representatives would benefit from enlargement, but a lot of people did not want to see the Senate enlarged at the same time. This was as a result of the 1957 inquiry which a lot of notable liberal jurists and also Gough Whitlam were on. In effect, I watched that campaign being destroyed by the DLP, who had a very simple message: don't vote for more politicians. It appealed to all the lowest, basest instincts that they could muster. And they won. A small political party was able to knock over what was a very rational political change. The lesson we have learnt is that it is exceptionally hard to get constitutional change through in Australia, no matter how logical your case is.

What has really evolved in the last 25 years? The only chance of constitutional change is if a coalition of the Liberal and National parties in government puts that change forward and is supported by the Labor Party. It never happens in reverse because we find that the opportunists opposite always oppose any Labor proposal for constitutional change, no matter what it is. They think that is what their job is because they are in opposition. They do not think in broad national terms.

**Senator Kemp**—Oh!

**Senator ROBERT RAY**—'Oh!', says the minister at the table. In 1974 you opposed a certain constitutional change. You then put up a similar change in 1977 to be supported, and when we put it up in 1988 you opposed

it. Well I remember that debate here because Senator Chaney took a full hour to try to explain why they had double-flipped so often. When I got up and pointed that out to the chamber I got a very vicious message from the switch here from Fred Chaney's mother, criticising me for pointing out these double standards. So I remember the debate exceptionally well. But that is the reality of constitutional change: unless it is proposed by a conservative government and supported by Labor it has no chance whatsoever of going through.

Should this piece of legislation moved by Senator Brown come to pass, the reality is that we are not going to have a referendum costing \$50 million to resolve problems of section 44 of the Constitution. It is just not going to happen and, if we did, it would get defeated. It would get defeated because the public would say, 'Why are you spending \$50 million and dragging us out on a Saturday afternoon on these technical matters?' I am afraid that that is the reality of it. But, at some stage in the future, when a government puts a package of reasonable constitutional amendments—not ones that do not attract a massive partisanship—and attaches a further referendum on this subject it may well go through. Therefore, these debates today and debates in the future around these issues are quite essential.

But I suspect that what will happen with this legislation is that it may well pass today. It will go to over to the House of Representatives and—guess what!—it will never be heard of again. But that is more a condemnation of the undemocratic nature of the other house these days—that is not a partisan comment; it has been made as irrelevant by the Labor Party when in government as it has by the Liberal-National parties. It is not a parliamentary chamber anymore. It is just a show trial; it is just a place where executive dominates and there is no independence of

thought whatsoever. I think we are a bit better than that. I do not want to put too big a gloss on the Senate—let us not get too Senate chauvinistic in these things—but at least you get a little more in this chamber.

These matters have been looked at over the years. They were best looked at by the Senate Standing Committee on Legal and Constitutional Affairs, which reported back in 1981. In fact, it was the first Senate report I ever read, because I arrived here in July 1981 when it was tabled. People like Senator Durack and Senator Gareth Evans and others—it was a very high-powered committee—wrote quite a brilliant report. Interestingly enough, they wrote it themselves. These days, we do not often see a Senate report written by senators. It is usually drafted by the committee and amended and polished by senators, but this one was virtually written word for word by the senators themselves. It did deal with this vexatious question of office of profit. This has plagued this parliament in its interpretation for many years.

We are not allowed, of course, to criticise High Court judgments, so let me congratulate the High Court on the unique cleverness it has had in interpreting this particular section of the Constitution! It takes a great mind to come up with such an obtuse interpretation of these particular matters as they have over the years. You have to be particularly devious to interpret section 44 in the way that they have. Of course, the first big test case, to my knowledge, was the Webster case in 1975. This was when Senator Webster basically outed himself, I think, and said that a company he was involved in had contracts with the Commonwealth. This was referred to the Court of Disputed Returns, constituted in the High Court.

There are some remarkable aspects of that case. Firstly, Chief Justice Garfield Barwick

monopolised the whole proceedings. Instead of having a sitting of two or three judges, he did the whole case himself—he allocated it to himself. So you have a former Liberal Attorney-General judging a National Party member—I would have thought that that would have worried the National Party more than anything else! Nevertheless, he did it all by himself and came up with one of the most convoluted and disgraceful judgments that has ever been handed down in the High Court. It is one which we should take no account of in terms of precedence. Nevertheless, he found that Senator Webster had not breached the office of profit under the Crown provision. Looking back in modern day terms, I think I might also make the judgment that Senator Webster had not breached the office of profit section. But I would not ever do so on the bases that Justice Barwick proffered in his judgment, which were highly technical and, in fact, probably wrong at law and a total misrepresentation and misinterpretation of the intention of the founding fathers as revealed in the convention debates.

One of the next cases we had was that of Mr Phil Cleary. He won the seat of Wills in a by-election and, some months after, was challenged—I think it was by Sykes, but I am not sure; I think it was by a losing candidate that got about one per cent of the vote—and deemed to hold an office of profit. He had basically not taught in a secondary school for years; he was on leave. Yet the High Court said, ‘No, you are disqualified from office because you still held an office of profit under the Crown.’ The main intention of this office of profit thing was not whether he could influence events but whether a government could have a hold over him. So he was dismissed, but it did not interrupt his political career for a particularly long time, because an election was coming up in 1983.

Then we had the classic case of Senator Ferris. Senator Ferris was elected to this place in March 1996, I think, and was due to take her place here on 1 July 1996. She was then employed under the members of staff act as a ministerial adviser to Senator Minchin and had not only a salary but a travel allowance and a number of other emoluments associated with that office. A very perceptive person in the Ministerial and Parliamentary Services Division picked this up and had to warn the minister that Senator Ferris had probably breached section 44 of the Constitution.

These matters came to my attention and were raised in this parliament. I do not think any particular blame should be placed on Senator Ferris, who probably was inexperienced in these matters. How the government and Senator Minchin managed to miss these matters remains a mystery to me today, because it shows a degree of ineptness not normally associated with that minister. Nevertheless, he was in a position to have known better. The end result of all that was that this chamber eventually had to determine at some stage to refer this to the High Court. But, generous souls that we are, we did suggest a solution—indeed I did it from sitting about here—that Senator Ferris should resign and be reappointed under a casual vacancy. That all occurred and the net result was that the taxpayers got back about \$25,000 of salary and business class travel expenses from Senator Ferris, and got a couple of months free work from her. This should not have been necessary. There is no doubt that Senator Ferris—Senator-designate Ferris, at the time—was not being employed to influence her in the future. It was so she could have a job until she took her seat here.

It is very unfair to say to someone, ‘You do not have a living.’ I do not know about others, but I was elected in November or October 1980, when I was a schoolteacher,

and I had to spend eight months finding other employment because I could not go back and teach at school as it would be an office of profit under the Crown. Doug McClelland, who was a shorthand court reporter in New South Wales—I think Senator Forshaw might know this—went and sold ice-creams for six months, I think, to support himself and his family before he took his place in this chamber. Then we had the Ferris matter, and there was absolutely no intention there of suborning a future senator by an office of profit. Then we had Miss Jackie Kelly, the member for Lindsay, who I think took leave from her Air Force job rather than resign. Again, it was a clear case of not intending to pervert the Constitution or anything else. She was disqualified from her seat.

Finally, we have a case before us again outed by the senator concerned—this time Senator Scullion. He was involved in a degree of commercial activity with his boat with a number of government agencies—the quarantine service, the Australian Broadcasting Commission. That case still has not been resolved. The government has been stonewalling immensely in the last few months. The Labor Party attitude to this is: we do not think Senator Scullion was in any way trying to profit from his position. We know that it was stupidity and not malice that brought about his current position. We do not have any stake in seeing him leave this place, because another grubby dalek would just come from the CLP to replace him—probably far worse, far less generous and far less avuncular than we know Senator Scullion is—so why should we do it? The only reason we would like to see it resolved is that, if we do not resolve it, some day a private citizen could take the case and that could be far more expensive to Senator Scullion than if we resolve it ourselves. I know the government have had other priorities and I do not particularly blame them, but we are still

waiting, months later, to get a response to the last piece of correspondence we did on this issue.

None of those cases are Labor Party members—I feel pleased about that. But, certainly, over the years, there have obviously been some people who have been luckier—who have, in fact, offended the office of profit provision and have not been caught. I do not know of any personally, but I am sure it would have happened. One area that is still not particularly clear to us is municipal councillors, aldermen and whatever. There have been candidates for federal elections, both unsuccessful and successful, that have stayed on local councils. Is that an office of profit? They have never been taken to the High Court on it, but we would like that to be resolved. If Senator Brown's resolution is carried, we can resolve it.

**Senator Kemp**—Eddie Ward was one.

**Senator ROBERT RAY**—I think there are probably lots of later examples of people who have been on local councils, too. We, of course—Senator Kemp and I—have much better taste than to run for local government, because we are statesmen!

The second area that is covered here is allegiance to a foreign power. I must say that the way the High Court has interpreted this particular matter irritates me a lot more than the first one. I would have thought that, if you are an Australian citizen and you are willing to take the oath in this chamber of loyalty to Australia, you should be able to serve here. But that is not taken in that way and it is not the way the Constitution is interpreted.

The first person to offend on this—or the first case I had something to do with—was Senator Robert Woods. He was elected as a Nuclear Disarmament Party member and it was discovered that he was not an Australian citizen. This chamber had to do the appropri-

ate thing and refer it to the High Court. The test I put on him that day was, 'If the English cricket side comes out, do you barrack for them or for Australia?' He said he would barrack for Australia. I said, 'That's good enough for me—I think you're an Australian and you should be here.' Nevertheless, the matter was sent off to the High Court and, in fact, he lost his Senate position. He did say to me at the time, 'It doesn't matter if that happens; my replacement'—that is, Senator Irina Dunn—'will resign and I will be appointed under a casual vacancy.' That suspended my belief in human nature. But, I must say, five minutes after the court case, Irina Dunn rang me, as the relevant minister, to ask where she could set up her office. I thought, 'My faith in human nature is restored.' That was the last we saw of Robert Woods.

The other person who offended on this was, of course, Heather Hill, who was elected in Queensland. She fell foul of it, but she should have been warned—we had had the Woods case and both the Liberal and Labor parties spent a lot of time making sure that all of their candidates were properly qualified. The way to do that is to make sure not only that you have Australian citizenship but, if you are regarded as having dual citizenship, whether you have sought it or not, you renounce it. You can renounce it at the local high commission or embassy, pay your necessary fee and then the High Court will say, 'You've taken all the necessary steps.' But not Heather Hill—they were too busy campaigning on wedge issues to worry about these minor difficulties. The old One Nation does not worry about public funding and how that is spent or about keeping records on political donations. That is for the major political parties to worry about. They are too important—they would not even bother to examine the Electoral Act. They paid the price. Again, it was suggested at that time

that the No. 2 on the ticket, Senator Harris, who now graces this chamber, would resign in favour of Senator Heather Hill. Two out of two—he is still here. That is not surprising at all.

I must say that I do not like the concept of dual citizenship on any occasion. I know the modern trend is that you should allow dual citizenship. It is anathema to me that you would vote in more than one country in an election. I do not believe in it. I also believe that it causes enormous problems. If you are taken by a terrorist group overseas and you are a dual citizen, which country represents you? Which country goes to try and free you? You just do not know. And it is just to go through an airport line a bit quicker. I think it shows a bit of a lack of commitment to a particular country to want to be a dual citizen. I understand that, in some circumstances, it is imposed upon you. Some countries never let you, in their terms, 'relinquish citizenship'. But I do think it is particularly difficult in these cases.

Senator Brown's constitutional amendment will clear these two areas up. I have looked at it carefully—I am not sure that it solves everything and that I agree with every technical term. But, then again, that is why we have the Attorney-General's Department—to polish up these or other outside things. I think, on the whole, Senator Brown has done a pretty good job with his legislation. I think the only chance of it ever going through will be with a package of other legislative matters.

I can say this with some certainty: of all those that have fallen foul of section 44, none was in fact guilty; it was always a technical breach. None was in a position in which they owed actual allegiance to another country; none was in a position where they could have been suborned on economic grounds—and that is absolutely clear. We

have moved on a long way since 1901. What was an office of profit and a problem then has completely metamorphosed into other matters today. To clean up that aspect of the Constitution would be most welcome. It would also save political parties a lot of time in checking. But of course it is an advantage that the major political parties have: both the Liberal Party and the Labor Party have been able to check all their candidates. Minor parties find that a lot more difficult. We used to use Senator Cooney as our watchdog to make sure all our candidates were clean. No doubt whoever is given the task next time will know they are on the way out of here.

**Senator MOORE (Queensland)** (4.56 p.m.)—I rise to speak in the 2003 debate on the *Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]*. We all know that this bill has been before the Senate previously and the key issue, a review of section 44 of the Constitution, has been subject to a great deal of debate and consideration on many occasions. One commentator on constitutional law has stated:

The disqualifications under sections 44 and 45 [of the Constitution] are of little practical importance, are riddled with difficulty and do not warrant extended discussion.

As a new senator and a previous Commonwealth public servant, I agree with the description concerning difficulty but, as this debate reflects, it is important and the discussion is warranted. Section 44 of the Constitution provides that persons who fail to meet set criteria for election are incapable of being chosen or of sitting as a member of either house of Commonwealth parliament. Section 44(i)—which I am not going to cover—provides for the disqualification of persons with a foreign citizenship or who have various other allegiances to a foreign power. Section 44(iv) disqualifies those who hold any office of profit under the Crown—

an interesting term—or any pension payable under the pleasure of the Crown—another interesting term. Section 44(iv) has been determined to apply to Commonwealth and state public sector workers who wish to nominate for parliament. I am particularly interested in the impact on Public Service workers and the potential disincentive for people in this industry to consider nominating for election in our democracy. There are just more hoops to jump through.

As an ex-public servant, when I was involved in the interesting and educative process of selection as a candidate I sought advice, just as Senator Mason described earlier, from the Australian Electoral Commission and people in the ALP about qualification. I was familiar with selection criteria and I was fairly comfortable about the concept of meeting requirements for any position—that was my Public Service background. I was fortunate in my search because there was strong search and knowledge of the system and, as a result of the *Sykes v. Cleary* case, there was a definition of the status for state public servants, the impact of leave without pay and what it really means, and the critical importance in any process in this case of the actual date of nomination. The message that I received from a range of sources was, ‘Get advice and get it right, because the alternative could be embarrassment, loss and, very possibly, unemployment.’ Why is it so damned difficult and why is the impact on public servants so exceptional?

The Constitution is not an easy read and, with respect to a number of comrades who are constitutional lawyers, the language reflects a different environment and requires considerable help in interpretation. The volume of constitutional scholarship reinforces these difficulties. Our Constitution must be a vibrant document and, while making changes to the referendum process is not an easy path to take, nevertheless changes must and can

be made. Simply because a situation was real and critical to effective government in 1902 does not mean that effective arguments for amendment to reflect real changes cannot be made at any time with support.

This does not mean that key principles should be dismissed; rather that current operations and needs can be reflected in a Constitution with the support of Australian voters. The principle of exclusion for persons who hold any office of profit under the Crown is based on the need for the absolute independence of government. Any member of parliament must be free from undue influence in doing their job. If your employment is somehow dependent on the Crown—and in 2003 I would interpret that as being our executive government—there could well be a conflict or seen to be a conflict.

There is also the need to maintain the principle of ministerial responsibility. Public servants who implement decisions on public policy and for whom the relevant minister is ultimately responsible cannot themselves be members of parliament. As the Legal and Constitutional Affairs Committee stated in 1997:

Ministerial responsibility requires that the minister should be accountable to the parliament for the actions of public servants within his or her department. It would be inappropriate if those same public servants were members of parliament.

That committee, among other groups who have reviewed that section of the Constitution over the years, agreed that the policy base for subsection 44(iv) remains sound but the operation of the provision must change. There must not be or be seen to be any double-dipping, nor should there be any perception of divided loyalty or possible confusion or division of activity.

There is no argument about the issues of conflict for any person elected to parliament.

However, when must the public servant lose the 'payment of the Crown'? This provision causes real stress for potential candidates and requires a strong personal commitment on their part. Over the years, processes at the federal and state levels for a possible return to the public service for those unsuccessful at an election have been put in place. A Commonwealth public servant has the right to be re-engaged in the service, and so do people across the other states. But, in all cases, public sector workers who desire to nominate for parliament must resign from the service. In the current Public Service, as positions have been reduced and career options limited, particularly in regional areas, this remains a truly significant issue.

While the case of *Sykes v. Cleary* has clarified the situation for some public sector workers—as described by Senator Ludwig—there remains real confusion regarding the status of workers in local government, universities, statutory authorities and the ever-changing environment of public-private partnerships. The test of office of profit under the Crown seems to be dependent on the establishment of a relevant case. Perhaps we need some more appropriate electoral martyrs from various forms of public employment to determine our future operations. Senator Brown stated that everyone agrees that there needs to be a change—the problem seems to be exactly what change. Certainly, it has been agreed that a change must be made to the Constitution itself through a referendum. The challenges of this process have been described by other senators in this debate today, in particular Senator Ray, and in previous debates on this issue.

Again we seem to be in violent agreement but at a loss over the next step. Maybe there is no perfect form of words, but we need to work it out as a duly elected parliament to ensure that the large numbers of people who are now either confused or ill-informed

about their rights to stand for parliament are given the opportunity to be involved in our system. I commend Senator Brown's legislation, and I hope that this time there will be more than rhetoric and there can be some effective action.

**Senator BROWN (Tasmania)** (5.05 p.m.)—in reply—I commend Senator Moore for that excellent contribution to this important debate on the *Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]*. Before Senator Moore's contribution, Senator Robert Ray spoke. I am a mite more optimistic than Senator Ray about the prospect for the bill, if it were to pass through this place and the House of Representatives and get into the public domain. One of the things that might assist it, of course, is the recognition that there are some five million voters out there who cannot stand for parliament. It might very much tip the scales when they recognise that supporting this amendment would give them a right that they as citizens have but in the main do not know is taken away by section 44 of the Constitution, either because they hold dual citizenship or because they hold a so-called office of profit under the Crown simply through being on a pension or being in the Public Service.

I note that both Senator Ludwig and Senator Mason referred to the possible difficulty of people who work in universities being caught by section 44. However, I can put their minds at rest. In the particular case of Michael Organ, who is the member for Cunningham in the House of Representatives, I know that story was in the *Financial Review*. Maybe today's debate has given me some bead on the source of information going to a whole range of media before it finally got published in the *Financial Review*. It was a speculative story that there was something untoward in Michael Organ's holding of the office. There is not. Senator Mason had diffi-

culty getting an opinion about that, but let me refer to the opinion of the very learned and esteemed John Basten QC, from Sydney, which, at the end, says:

... there are sound reasons of principle not to extend the concept of an office under the Crown beyond those who form part of the broad structure of Executive government by which the affairs of the State are administered. The University of Wollongong does not fall within that classification.

15. There is authority to support the conclusion reached above, although it arose in a different context. In *Clark v University of Melbourne (No. 2)*<sup>18</sup> the Full Court of the Supreme Court of Victoria considered whether the University Council could make a regulation imposing a fee on students, without specific statutory authority in that respect. The principle sought to be applied to the University was that no tax could be imposed for the use of the Crown without such authority. The Full Court unanimously held, in response to that argument—

and it is cited as No. 19—

"There appears to be no reason for identifying the University with the Crown, or as a governmental agency of any kind ..."

Although the conclusion was not the subject of detailed reasons, it accords with the approach and conclusion set out above.

Mr Basten concluded:

16. For these reasons—

and he had earlier reasons in his argument—

I do not think that a member of the staff of the University of Wollongong is the holder of an office of profit under the Crown. Accordingly, Mr Organ is not disqualified by operation of s.44(iv) of the Constitution.

I think Senator Ludwig referred to Michael Organ as a former University of Wollongong activist. He was actually an archivist. There is some difference between those two things, although I think that both are in some ways trying to make sure that the future is the better through their activities.

While we have not got from Senator Mason an indication of where the government's vote will lie on this matter, previously—in 1998—Senator Ellison said that the government did not support the legislation, remarkably enough, but he did say:

I can advise the Senate that the government is currently considering these issues and developing amendment proposals.

Here we are five years later and neither I nor the public have seen any sign of those amendments. There are none on the public record. But there was a commitment from the government five years ago—and I think the government is in the box seat in these matters. It is not good enough for the government not to have come forward with the legislation that I am bringing forward and to have expanded it, if necessary, to meet the recommendations of various parliamentary committees going back to 1981, as Senator Ray has just told us, ensuring that we do have a living and vibrant constitution of the sort that Senator Moore was talking about. That needs a bipartisan approach. We have it in this chamber. We have it with the government, because the government supports the recommendations of the committees upon which this legislation is built. I would find it extraordinary if the government were not to support this legislation. In fact, it would simply be doing a backflip on a commitment it made in 1998 and previous to that in response to the joint committee and other committees that recommended just these amendments. It is extraordinarily important legislation. I am looking forward to the Senate supporting the second reading so that we can make the minor amendments in committee I have foreshadowed and move on to a final vote.

Question agreed to.

Bill read a second time.

### In Committee

Bill—by leave—taken as a whole.

**Senator BROWN (Tasmania) (5.12 p.m.)**—by leave—I move:

- (1) Clause 2, page 2 (lines 14 to 18), omit subclause (3), substitute:
  - (3) The constitution is altered by omitting the following words from section 44:
 

“But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.”.
- (2) Clause 2, page 2 (lines 6 to 13), subclauses (1) and (2), omit “paragraph” (wherever occurring), substitute “subsection” (wherever occurring).

I have before the committee two amendments to the **Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002]**. I want to acknowledge that these are in response to the views of the opposition. I think they are good amendments. The speakers have in the main said the same. They simplify the bill. Without going back over the argument, the substantial amendment, No. 1, is to effectively delete the last paragraph of section 44, which is somewhat redundant once and if the amendments to subsection (i) and (iv) are carried.

**Senator LUDWIG (Queensland) (5.13 p.m.)**—The opposition are in a position to support the amendments put forward by Senator Brown. Both of the amendments clarify the proposal that Senator Brown has brought before the parliament today. In addi-

tion, it is also worth while perhaps not so much correcting the record but putting on the record what I think was the context in which Mr Organ was raised. It was not so much to have a debate about him—that was not an issue that I wanted to go to—but merely to highlight the way Dr Nelson addresses the education system in Australia.

The problem is the constitutional debates the lawyers get into when they look at disqualifications in relation to that particular clause under the Constitution. It is not easy for laypersons to find their way through it. That should not be the case for people who want to run for elected positions in this place or in the other place. It should be clear and unambiguous. The government could play—but have not played—a constructive role in that. In fact, the government have not been helpful in pursuing the debate, in the broad. They have certainly allowed the debate to come on today, and I am sure Senator Brown has thanked them for that. But when you look at the number of committees in the past that have considered section 44, you see that the government have not taken any of their recommendations seriously. They have not been able to put them into action. They have had an opportunity to use a referendum to have a broader look at section 44 and have not done so.

We, the opposition, have said that if there are amendments such as this they should not go up alone. As we have said, a referendum is an expensive outing. Senator Brown brought an opportunity to this parliament for the issues to be dealt with more broadly. Should the government decide in the future that this is necessary and be moved to adopt Senator Brown's position then that whole area should be looked at more holistically as well. It would be better if a referendum were used in a more holistic sense rather than just on one particular issue. I think it would be not only logical but more readily acceptable

to the Australian public if the issue were dealt with, reviewed and looked at broadly.

It is especially interesting to look at the Liberals' experience with this particular section, which deals with office of profit under the Crown. As we have heard today, Senator Ferris had a difficulty with the section in 1996 when she was a Liberal Senate candidate. And, as I mentioned, Liberal member Miss Jackie Kelly in 1996—1996 was obviously an interesting year—similarly had a problem with the issue of office of profit under the Crown. At the time I was elected in 1998, One Nation Senate candidate Mrs Heather Hill had a problem with another part of the debate, the dual citizenship issue.

You can see that this problem is not going to go away in the short term. It is a matter that seems to crop up quite regularly. It even goes back to as early as—as I think we heard—the case of Nuclear Disarmament Party Senate candidate Mr Robert Wood in 1987. That was a citizenship issue. Then in 1992 there was the more talked about case of Mr Phil Cleary. This has been happening since 1987—through the eighties and the nineties. Now we are in 2003, and I suspect there will be other cases unless this section is fixed.

The government's contribution to this debate has been disappointing and short, in the sense of not progressing the matter further. They do have the ability to look at this in a more holistic way, as I have said, but have chosen not to. The matter has been left for the opposition to debate. The amendments proposed by Senator Brown will, I think, make the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002] clearer. In fact, they will make it into quite a short bill and quite a simple one to understand, although it is one with great import.

This matter was also raised following the 1997 recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs. Although the bill does not pick up all of the recommendations—and that is a matter that perhaps should be looked at more broadly—it does, in any event, reflect the spirit of the 1997 recommendations. These matters were also substantively debated by Senator Faulkner, Senator Robert Ray and Senator Cooney during debate on the bill back in 1998. The position that the opposition has taken is that we support both the amendments and the substantive bill. It is recommended that the government should also support reform, as they so often say they do.

**Senator BROWN (Tasmania) (5.20 p.m.)**—I have just one question: should a narrowly focused but extremely important amendment to the Constitution, such as this one, be put forward in a referendum, or should we wait for an omnibus bill that is a massive repair to the Constitution and an upgrading to go ahead? I am not in that second camp. Changes to the Constitution should be pure and simple, so that the public can understand them and so that, if there is going to be a debate, the arguments are readily available to the voters and they can make up their minds. We had four amendments at the end of the eighties where innocuous and important proposals—with previous bipartisan support—such as having local government recognised in the Constitution, went down. The fault there—besides the opposition of the time changing tack and becoming opponents—was that there were four questions instead of one question.

It is a mistake to say that the cost is prohibitive. This is a major change to the Constitution. It is an extraordinarily important improvement. It has bipartisan support. No matter how the vote goes in the Senate today, the argument against it will be techni-

cal and not on the merits of the need for change, because that has been agreed to already. It should be going to the people at the next election as a referendum question.

**Senator LUDWIG (Queensland) (5.22 p.m.)**—I have been listening closely to Senator Brown's contribution and still I am not persuaded by the force of his argument. The problem I have is that when you look at the proposals to be put to a referendum you see that they require in total further public consideration to be given to the precise wording of the amendment to section 44. It is not only that. I think you also have to take into consideration the fact that, before any proposed amendments to section 44 are put to the Australian people, public consideration should be given to which other constitutional reforms ought also to be put at a referendum at that time. I understand the point Senator Brown makes is that referenda are very difficult in this country, unless you get bipartisan support. But if you have bipartisan support on an issue, I do not think it is that much of a hurdle to ask the Australian public to understand that there are a number of distinct issues in relation to section 44 or other relevant reform proposals that could be included in referenda and the Australian public would be able to deal with those.

The issue is important. We only really differentiate on the process or the mechanics of it. I think we agree in total that the section should not be a difficulty that obscures rather than enlightens the ability of people to sit in a seat either in the House of Representatives or here in the Senate. It should not prevent people who might be perceived to be caught by these provisions from participating in our democracy. In the end, the germane issue is the participatory part of it. In some instances, people have to resign—for instance, if they are a public servant. People have families and lives and all sorts of things that they have to fund. If you are proposing to nomi-

nate for the Senate, the way the elections are structured, you may be a senator-elect for a period of time; in my case it was for nine months or so. If you were a public servant or had an executive job perhaps—and I do not want to get into that constitutional argument, so we will assume that it is one of those jobs that might be struck down—you would have to look at how to support yourself or your family through the election period until such time as you could take up your seat.

I think that the government has failed to assist in recognising some of those difficulties. If it had so assisted, it would have helped the process a lot more and allowed us to work through them and would have informed us as to how the process would work. If the government were bona fide and wanted a referendum, it could review section 44 and ensure that the broader issues about section 44 were put forward in a referendum. Then the public—with bipartisan support—could look at the issues and discern a way forward.

**Senator MOORE (Queensland) (5.26 p.m.)**—One of the things that we can achieve in this kind of process is to come to an agreement about how best to take this issue to the Australian public—and Senator Ludwig has begun that discussion. I agree with Senator Brown that it is important that the opportunity for the question to go to the public be taken as quickly as possible and that we do not linger too long. I also agree with Senator Ray that there is no way you can take it by itself, because people object to having that degree of money spent on what they see as frivolous technical aspects. However, once again speaking from my perspective as someone who was in the public sector, it would be really damaging to this process if this particular referendum question went forward and was defeated. That would be yet another attack on public sector workers and a form of betrayal of the quality of their employment. It is way too easy to

knock public sector workers, and we all know the processes. It is probably only politicians who share the same degree of animosity from the community—and at times from the media—as public sector workers.

But should there be agreement—and I am still hopeful that there can be; maybe that is because I am a new senator—it must be across all parties. There is no way that there can even be a lingering element of dispute on this, because it can be picked up and run with so viciously in knocking off a referendum question. However, if a process is to be put to the popular vote, it must be presented in such a way that the real guts of the issue are maintained. It must not be portrayed as a mere technicality or, worse, as was mentioned in one of the previous constitutional reviews, as yet another way to advantage people who are distant and different from the community. If it is seen as a way to advantage public servants and politicians and make their road easier, it is guaranteed to fail.

That would be the worst result, because we all know that the longer the argument that you cannot win a referendum is retained in our community—the longer people think it is impossible to put something up and frame it in such a way that Australian voters will support it—and the more often referendum questions are defeated, the more entrenched that argument will be. So, if this particular question, which Senator Brown has championed now on a couple of occasions in the Senate, were to go down, that would reinforce that general negativity—the view that constitutional change is too hard, we cannot do it and there is some kind of conspiracy against it; the kind of educated difficulties that we heard from Senator Ray—and would further feed that frenzy that we cannot do anything at all.

As someone who is very involved in and concerned with educating the community

about our processes, I do not want to see any discussion or concern about the Constitution being further marginalised. I would hope that this form of process would be exactly the stimulating process that would get people engaged in the debate. As long as people can self-select and self-distance from their own system of government, we will not be able to engage people in seeing that politics is not only something valuable, something worthy and something that can be difficult but also something that all of us have the right and perhaps the opportunity to achieve. I would hope that, through this process and through the kind of contribution that Senator Ludwig is putting forward to try to progress the process—and it would be useful to hear something from the government as well—we would be able to proceed. As I said in my earlier statement, we have had the talk; now it would be nice if we had some action.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.30 p.m.)—The government will not be supporting the amendments.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

**Senator BROWN** (Tasmania) (5.32 p.m.)—by leave—I move:

That standing order 110 be suspended to enable the third reading of the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No.2) 2002 to be passed without a roll call.

Question agreed to.

**Senator BROWN** (Tasmania) (5.32 p.m.)—I move:

That this bill be now read a third time.

**The ACTING DEPUTY PRESIDENT (Senator Collins)**—I remind senators that section 128 of the Constitution requires that the proposed law be passed by an absolute majority. Therefore, the bells will be rung for four minutes and the Senate will vote to enable the names of senators voting to be recorded.

Question put.

The Senate divided. [5.37 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	36
Noes.....	26
Majority.....	10

### AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.
Brown, B.J.	Campbell, G.
Carr, K.J.	Cherry, J.C.
Collins, J.M.A.	Conroy, S.M.
Crossin, P.M. *	Denman, K.J.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Harradine, B.
Hogg, J.J.	Hutchins, S.P.
Kirk, L.	Lees, M.H.
Ludwig, J.W.	Lundy, K.A.
Mackay, S.M.	Marshall, G.
McLucas, J.E.	Moore, C.
Murphy, S.M.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Ray, R.F.	Ridgeway, A.D.
Stephens, U.	Stott Despoja, N.
Webber, R.	Wong, P.

### NOES

Abetz, E.	Barnett, G.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Chapman, H.G.P.
Colbeck, R.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M. *
Heffernan, W.	Johnston, D.
Kemp, C.R.	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.	Santoro, S.

Tchen, T.  
Troeth, J.M.  
\* denotes teller

Tierney, J.W.  
Watson, J.O.W.

**The PRESIDENT**—Order! The result of the vote being 36 ayes and 26 noes, I declare that the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) 1998 (No. 2) [2002] has not been carried by an absolute majority. The bill is therefore laid aside pursuant to standing order 135.

**COMMITTEES**

**Membership**

**The PRESIDENT**—I have received letters from party leaders seeking variations to the membership of certain committees.

**Senator TROETH** (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.42 p.m.)—by leave—I move:

That senators be discharged from and appointed to various committees as follows:

**Employment, Workplace Relations and Education Legislation Committee—**

Appointed, as a substitute member: Senator Mason to replace Senator Johnston for the consideration of the 2003-2004 Budget estimates from 2 June 2003 to 4 June 2003, inclusive

**Foreign Affairs, Defence and Trade Legislation Committee—**

Appointed, as a substitute member: Senator McGauran to replace Senator Payne for the consideration of the 2003-2004 Budget estimates on 6 June 2003

**Medicare—Select Committee—**

Appointed: Senators Allison, Barnett, Forshaw, Humphries, Knowles, McLucas and Stephens.

Question agreed to.

**Medicare Committee**

**Membership**

**The PRESIDENT**—There being two nominations for the one position on the Select Committee on Medicare, in accordance with standing orders a ballot will be held. Before proceeding to a ballot, the bells will be rung for four minutes.

*The bells having been rung—*

**The PRESIDENT**—Order! The Senate will now proceed to ballot. Ballot papers will be distributed to honourable senators, who are requested to write upon the paper the name of the candidate for whom they wish to vote. The candidates are Senator Lees and Senator Nettle. I invite Senator Ferris and Senator Mackay to act as scrutineers.

*A ballot having been taken—*

**The PRESIDENT**—The result of the ballot is as follows: Senator Lees, 35 votes; and Senator Nettle, 28 votes. I declare Senator Lees elected as the member of the Select Committee on Medicare nominated by minority groups and Independent senators.

**Senator NETTLE** (New South Wales) (5.57 p.m.)—by leave—I move:

That Senator Nettle replace Senator Lees on the Select Committee on Medicare in the event of her being unable to attend any committee hearing or meeting.

Question put:

That the motion (**Senator Nettle's**) be agreed to.

The Senate divided. [6.02 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	11
Noes.....	48
Majority.....	37

**AYES**

Allison, L.F. \*                      Bartlett, A.J.J.  
Brown, B.J.                              Cherry, J.C.

Greig, B.  
Lees, M.H.  
Nettle, K.  
Stott Despoja, N.

## NOES

Abetz, E.  
Bishop, T.M.  
Buckland, G.  
Campbell, G.  
Chapman, H.G.P.  
Collins, J.M.A.  
Crossin, P.M.  
Eggleston, A.  
Ferguson, A.B.  
Forshaw, M.G.  
Hogg, J.J.  
Johnston, D.  
Kirk, L.  
Lightfoot, P.R.  
Lundy, K.A.  
Mackay, S.M.  
Mason, B.J.  
McLucas, J.E.  
O'Brien, K.W.K.  
Payne, M.A.  
Santoro, S.  
Tchen, T.  
Troeth, J.M.  
Webber, R.

\* denotes teller

Question negatived.

## PERSONAL EXPLANATIONS

**Senator HARRADINE (Tasmania)** (6.06 p.m.)—I wish to make a brief personal explanation to put the record right.

**The PRESIDENT**—The honourable senator may proceed.

**Senator HARRADINE**—In his comments today, Senator Abetz indicated that I was expelled from the Labor Party. My recollection is that I was not expelled. I was refused admittance to the federal executive as a representative of Tasmania after having been duly elected as a federal executive member. The position became untenable but that was by a close vote. Some voted for me and some did not.

Harradine, B.  
Murray, A.J.M.  
Ridgeway, A.D.

Barnett, G.  
Boswell, R.L.D.  
Calvert, P.H.  
Carr, K.J.  
Colbeck, R.  
Conroy, S.M.  
Denman, K.J.  
Faulkner, J.P.  
Ferris, J.M. \*  
Heffernan, W.  
Hutchins, S.P.  
Kemp, C.R.  
Knowles, S.C.  
Ludwig, J.W.  
Macdonald, J.A.L.  
Marshall, G.  
McGauran, J.J.J.  
Moore, C.  
Patterson, K.C.  
Ray, R.F.  
Stephens, U.  
Tierney, J.W.  
Watson, J.O.W.  
Wong, P.

**Sitting suspended from 6.06 p.m. to 7.30 p.m.**

## BUDGET

## Statement and Documents

Debate resumed from 13 May, on motion by **Senator Minchin**:

That the Senate take note of the statement and documents.

**Senator CONROY (Victoria)** (7.30 p.m.)—Tuesday's budget should have improved life for Australian families. That is the test any government budget should meet. Australian families are under growing pressure. They are working longer hours and paying record taxes. The last thing Australian families need is to pay more for vital services like health and education. But that is what Tuesday's budget was all about. A civilised society demands health care based on medical need and education for all based on ability. We believe that health and education are not just about providing services to individuals. They are public goods, for all Australians. We must invest in these vital services. But under the Howard government we are heading in the opposite direction. Instead of improving life for families, this budget is making things worse. It is giving Australian families a miserly \$4 tax cut, while destroying Medicare and charging them more for education. The Howard government failed the test on Tuesday night. It is time for something new.

Tonight we want to announce a new deal for Australia and Australian families.

- A new deal to save Medicare and bulk-billing.
- A pledge to keep higher education affordable and accessible.
- A plan to save the Murray River from a slow, tragic death.
- A retirement tax cut for every Australian.

- A new deal to protect the savings of Australians.
- An end to public subsidies of executive golden handshakes.
- A better deal for small business.
- And a better way to protect Australia and our children.

Most of all we want to give Australians a sense of hope that Australia can remain a fair and decent country that provides opportunities for all.

#### **Saving Medicare and bulk-billing**

We believe that every Australian must have the right to access a doctor who bulk-bills and they must have the right to attend a well-funded public hospital without charge. I will not say for free, because it is not free. Australians know that. They have already paid for Medicare through their Medicare levy and their taxes. They have earned it. They should not have to pay again when they visit a doctor. Quality health care must only ever be available on the basis of medical need. It should never be rationed according to ability to pay. It should not be a two-tiered system. It should not be a second-rate system. Look at the United States. Forty-five million people do not have any health cover. They live in fear of serious illness. It destroys family finances, sometimes for generations. That is not the sort of health system I want for Australia.

Mr President, there is a profound difference between the Labor Party and our opponents. We are the builders. They are the wreckers. Labor built Medibank under Gough Whitlam and then Medicare under Bob Hawke because we believe everyone should have access to affordable health care. The Liberals have never believed in affordable health care. They want you to pay more. That is why they wrecked Medibank and that is why the Prime Minister is wrecking Medi-

care now. That is why tonight we are announcing that a Labor government will act to save Medicare and bulk-billing. We will not allow Medicare to be replaced by an Americanised, privatised system where instead of your Medicare card, doctors ask for your credit card and refuse to treat you unless you pay up-front. Saving Medicare starts with restoring your patient rebate.

So tonight I am announcing a Crean Labor government will lift the patient rebate for bulk-billing for all Australians, no matter where they live, or how much they earn. We will lift your patient rebate immediately upon coming to office to 95 per cent of the scheduled fee, and then take it to 100 per cent—an average rise of \$5 for every consultation that is bulk-billed. This is not just for concession card holders. It is for everyone. As we know, access to bulk-billing is declining faster in some parts of Australia than in others. To remedy this, under Labor, doctors who meet bulk-billing targets will receive additional incentive payments. Doctors in metropolitan areas who bulk-bill 80 per cent of services will receive an additional \$7,500 a year. Doctors in outer metropolitan areas who bulk-bill 75 per cent of services will receive an additional \$15,000. And doctors in rural and regional areas who bulk-bill 70 per cent of services will receive an additional \$22,500. This is the equivalent of increasing your patient rebate by as much as \$6.30 for a doctor in a metropolitan area, \$7.80 in an outer metropolitan area and \$9.60 for a doctor in a rural area. This is a significant down payment towards restoring bulk-billing and saving Medicare. Without bulk-billing there is no Medicare. Our objective is to get bulk-billing to a national average target of 80 per cent. It will not happen overnight, but tonight's measures represent a significant down payment. Labor will also increase the number of doctors in rural areas and make more nurses available to doctors who meet

Labor's bulk-billing targets. These measures will help take the pressure off our public hospitals because that is where people go if they cannot find a bulk-billing doctor. And Labor will also provide additional funds to ensure that veterans with gold and white repatriation health cards continue to have the access to the bulk-billing they deserve.

There is another important aspect of Medicare that Labor will protect—affordable access to pharmaceuticals. Labor will not support the Howard government's 30 per cent hike in the cost of essential medicines. Last year when I announced Labor's response to this price hike I announced a raft of proposals that will cut the overall cost of the Pharmaceutical Benefits Scheme but which will not impose charges on you. Medicare is not only the most equitable health system we can have but also the most efficient. Medicare is prudent economics. It is the envy of the world. Why would you want to destroy it? Especially when we know we can afford to save it. Budgets are about values, priorities and choices. Labor's priority has been clear—save Medicare. Labor's plan to save Medicare is responsible and fully funded. In the budget two days ago the Treasurer announced a further \$300 million in tax cuts for multinational businesses. Now you know where cuts to your family's health services are going. To help pay for Labor's new deal to save Medicare, I will redirect some of the government's business tax changes from Tuesday night. I will also redirect the savings from scrapping the destructive changes to Medicare that were in the budget. This is not a tax and spend proposal. It is a cut and fix proposal. And it is a question of priorities. Corporate tax cuts do not have the same priority as saving Medicare for Australian families. Let us be clear about this. We have a very different view of Australian society to that of our opponents, and I

will be happy to have an argument about these priorities anywhere, any time.

#### **A new deal for lifelong learning**

Education is a bridge to the future. It does not just give individuals opportunity, it advances and strengthens us as a society. It should not be treated as a tradeable commodity.

The world is changing so rapidly that our children will be working in jobs that have not been imagined yet and will have to update their skills throughout their lives, not just when they are young. This bridge to the future has many paths leading to it. We must invest in putting down those paths and we must not put up financial barriers. Our goal must be the creation of a world-leading system of lifelong learning. It must start with the early years—the crucial years for developing our learning skills. Too many of our children are slipping through the net because they are not getting the help they need. Opportunities are being lost because not enough money is being invested in our schools. While we encourage everyone to get a year-12 qualification, we do not provide enough apprenticeships or enough places at university or TAFE for them. Our vice chancellors advise us that 20,000 qualified young Australians are turned away every year. The cost to them and our country is enormous. Finding those places must be our objective. And we must have a new agreement with the states to create more TAFE places. We also need to give adults more assistance in upgrading their skills throughout their working lives. We must destroy the blight on our society of middle-age long-term unemployment. That is why my new deal for Australian families is a comprehensive plan for lifelong learning—a bridge to the future for all of us. Just as we have done with Medicare tonight, we will outline in the coming months our plans to build a better education system for all Aus-

tralian. As a result of the changes outlined in Tuesday's budget, students and their families will be forced into massive debt to obtain a university degree. Fees will increase by up to 30 per cent, leaving students with HECS debts of up to \$40,000 or more. Many more degrees will cost over \$100,000. And students paying those fees will be hit with a six per cent interest charge.

Mr President, how can we expect our young people to ever be able to buy a home and start a family with debts like these? In the interest of keeping student and family debt down, we will support lifting the HECS threshold to \$30,000, but will not support the unfair elements of this government's unfair university package. Tonight we make this pledge to Australian families: we will not allow this government to slug you and your children with a 30 per cent increase in your university fees. We will not allow this government to saddle you and your children with \$800 million of new debt. And we will not allow the wealthy to jump the queue and take the university places that rightly belong to the hardest-working and the most able young Australians. The Treasurer said last night that Labor's refusal to pass these measures means we are blocking his big, bold reforms. Charging students tens of thousands of dollars for a degree is not a big, bold reform, Treasurer. Opening up our universities to all Australians—like the Whitlam and Hawke governments did—is a big, bold reform. And we will do it again. The Liberals only ever see education as a cost and something they can slug you for. Labor knows—as every parent knows—that education is the greatest investment we can make in our shared future.

#### **Water**

Our shared future must involve a commitment to save our natural environment. We all love Australia's rugged environment. As a

keen bushwalker, I have seen first-hand how beautiful, but also how fragile, our country is. I recently visited the mouth of the Murray River in South Australia. What I saw distressed me. It also angered me. It will do the same for all Australians who see it. The once mighty river's mouth has all but closed. It has shrunk to the length of a cricket pitch. The water is only knee-deep. Barely a trickle flows to the sea. In some places it is flowing backwards!

The Murray is dying. Native fish are facing extinction, exotic species are choking the river and salinity is spreading. If we do not restore the health of the Murray, there will no longer be a river system capable of supporting our farmers into the future. This is a great national challenge and it will require a significant long-term investment. My new deal for Australia will save the Murray. I announce tonight that Labor will restore enough environmental flows to keep the mouth of the Murray open and to restore the health of the river. We will stop large-scale and indiscriminate land clearing to prevent salinity. And we will ratify the Kyoto protocol to prevent more severe droughts in the future. Restoring the flows of our rivers will take serious levels of investment. A Labor government will therefore create the Murray-Darling Riverbank—a special new government corporation to secure long-term funding for much needed investment in Australia's water resources. We will make an initial capital injection of \$150 million as the first down payment to save our rivers and attract matching funds from the states and the private sector. Riverbank will invest in innovative projects that will set a new direction for water use in Australia, will help farmers achieve on-farm efficiency improvements and encourage increased water reuse and recycling. It will finance projects in its own right and participate in joint ventures with state and territory governments and the pri-

vate sector. This will greatly increase the funds available for this urgent national priority. Just as Bob Hawke saved the Franklin River 20 years ago, Labor's pledge is to save the Murray River—the lifeblood of our nation.

### **Tax and the budget**

[My father] was fond of quoting the American jurist Oliver Wendell Holmes, who famously said, 'When you pay taxes you buy civilisation.' If you ask me what a civilised society means today, my answer is this: a country where anyone, regardless of where they live or how much they earn, can get the same standard of medical care when they get sick; a country where education is available on the basis of ability, not your ability to pay; and a country that protects its natural environment for future generations to enjoy. That is the sort of civilised society I want Australia to be. This is the vision that should have been Tuesday night's budget. Sadly, it was not. We all know why. This government thinks that by giving you \$4 a week you will not notice its real agenda—you pay more. You pay more to see a doctor. You pay more for an education. And you go further and further into debt. It is John Howard's message to all Australians: 'Sorry about Medicare, sorry about your kids' education, sorry about your credit card debt, but here's four dollars instead.' The highest taxing government in our history has given you the smallest tax cut in our history. The Prime Minister and the Treasurer think that Australians earning between \$30,000 and \$50,000 a year are so affluent that you only need another \$4 a week. But while they give with one hand they slug you with the other—up to \$50 to go to the doctor; \$32 per week in extra HECS debt; and \$125 per week to pay for your new student loan.

Australians have earned the tax cut in the budget. Labor will pass it on, but Australians

deserve more from this government. Four dollars on its own, set against the massive cost increases for health and education outlined in this budget, is miserly and a sleight of hand. A Crean Labor government will return bracket creep through both tax cuts and better services. Tonight I am demonstrating how a combination of those things can make a family better off.

### **A new deal on superannuation**

A key test of your values, choices and priorities is whether you believe in rewarding the many or the few. Tuesday night's budget contains another tax cut—one Peter Costello was too embarrassed to talk about: his superannuation tax cut for the top few per cent of income earners. Especially at a time when superannuation returns are going backwards, Australians need a retirement tax cut to reward the many, not the few. Labor will redirect Peter Costello's unfair superannuation tax cut to pay for a superannuation tax cut for all Australians, cutting your superannuation contribution tax from 15 per cent to 13 per cent. This means thousands of dollars more for your retirement. Labor has always been the party for pensioners, but we are the party for superannuants as well. Only Labor extended superannuation to all; only Labor will improve it for all.

### **A new deal to protect your savings**

But, Mr President, there is no use investing in superannuation if your savings are not safe. More than 50 per cent of Australians now directly own shares and 90 per cent of Australian workers have an interest in the share market through their superannuation. The retirement savings of the whole nation depend on a well-regulated corporate sector. In the last two years there have been a number of huge corporate collapses, including Ansett, HIH and One.Tel. When this happens, the executives in charge invariably refuse to take responsibility for what they have

done. We have all heard of overpaid executives awarding themselves massive bonuses and golden handshakes just as their companies go belly-up. But, rather than punish them, the Howard government rewards these executives with a 30 per cent tax subsidy paid with your taxes. Why should a family struggling to cope with financial pressures caused by bracket creep, the GST, bank charges and other hidden taxes have to foot the bill for golden handshakes as well—handshakes they do not get when they are retrenched. Enough is enough.

Labor will double current penalties when executives break corporate law. We will force top executives to further disclose their pay packages in full, including their share options. We will strengthen Australian shareholders' rights by giving them a vote on these packages when they are unfair and unreasonable. And tonight I announce that Labor will stop your taxes being used to subsidise by 30 per cent the million dollar golden handshakes being given to some executives. This means that under Labor all redundancy payments over the value of \$1 million will no longer be eligible business deductions for companies. Labor values Medicare, not corporate greed.

#### **A new deal for small business**

Mr President, there were two words missing from the Treasurer's budget speech on Tuesday night—'small business'. While the budget may not allow us to cut taxes for small business, only Labor will cut their paperwork. Peter Costello is spending \$150 million of your money to employ 1,230 new tax officials to make your BAS nightmare even worse. Labor will cut that red tape. Under Labor's plan, small business owners will only have to make one simple calculation for each BAS statement based on a percentage of your turnover. The time-consuming and complicated reconciliation process will be

eliminated. By substantially reducing your BAS compliance costs, Labor will put more money back into your pocket and give many of Australia's small businesses more time to spend on their business or with their families.

#### **Protecting our national security**

Mr President, the government's budget contains many worthwhile initiatives to make our nation safer. But more needs to be done. Labor will coordinate our security in Australia through a new department of homeland security. Labor will ensure our intelligence agencies talk to each other through an office of national security, headed by a national security adviser. Labor will establish a coast-guard—a maritime cop on the beat, 24 hours a day, seven days a week to stop drug runners and gun-runners and people smugglers. And Labor will establish community safety zones to work with your local community to help fight crime. Labor will protect your security, and our national security.

#### **Protecting our children**

Recent events highlight the need to protect our children. Something positive must come out of those events. Labor will establish a national commissioner for children, who will develop a national code for the protection of children and oversee checks on people who work with children to ensure that potential child sex abusers do not get access to them. Under Labor's government, all organisations in receipt of Commonwealth funds will have to comply with this code and these checks. We must resolve, as a nation, to ensure that allegations of child sexual abuse are never ignored in the future and that the truth is never again swept under the carpet. Labor will give parents more confidence that their children are safe.

#### **Conclusion**

Tuesday night's budget failed Australian families. We have the smallest tax cut from

the highest taxing government in our history. We have more debt for our students and their families. And we have the destruction of Medicare.

Mr President, we face serious challenges in rebuilding Medicare, improving access to affordable education and repairing our environment. These must be our nation's long-term national priorities. They cannot be solved overnight. But governments can make a difference. Tonight I have laid out Labor's new deal in each of these areas—significant steps towards our long-term goals. Budgets are about choices. Now the choice is yours. Tonight Labor is offering an alternative—to make education affordable and accessible to all, based on ability; to save the Murray River from its tragic death; to help you save for the future and to make your savings more secure; and to make Australians more secure and better protect our children. Tonight we have a new deal to save Medicare, not destroy it. That is what Labor wants for Australia and that is what Labor will fight for—a new deal for Australians and Australia.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (8.00 p.m.)—Tonight, on behalf of the Australian Democrats, I respond to the government's federal budget proposals for 2003-04. I say 'proposals' because budgets are always works in progress. It has already been indicated that the Democrats and Labor will not support the health and higher education proposals as they stand. Under no circumstances will the Democrats support higher fees for Australian undergraduate students or allow this government to attack the fundamentals of Medicare. The fact is that budgets have rarely been passed in the version they were originally presented in. Yesterday, we heard the Treasurer on ABC radio saying:

... back in the old days, budgets used to be enacted by the Senate. That was the theory of democratic government.

That statement is completely untrue and farcical. I ask Mr Costello: when were these supposed good old days? 1975? The only political party that has ever blocked supply is the Liberal Party, currently in government. The only political party that has used the budget to bring down a democratically elected government is the Liberal Party. How dare this Liberal government accuse the Senate of obstructionism! The government will not be successful in using the threat of an early election or false public rhetoric to bully the Democrats into passing any retrograde, ideologically driven legislation. One of the founding principles of the Democrats in 1977 was that we would not block supply. We would not do what the Liberal Party did—hold the government to ransom or hold the country to ransom. That is the only occasion of a Senate not doing its job properly. Since we were formed, the Democrats have held to our vow not to block supply, and we will not blackmail the government or hold the budget or the country to ransom.

The Democrats will do what we have always done for more than a quarter of a century: examine the budget proposals in detail with an aim to make them as fair and environmentally responsible as possible. The reality is—and Mr Costello knows it—the vast bulk of this budget is going to pass through this Senate untouched. But there is still plenty of room for improving the contents of the budget. It is clear that the big battlegrounds in the Senate will be on the health and education packages. The Democrats record on Medicare and on HECS and student fees are clear, longstanding and consistent. Under my leadership, the Democrats will continue our approach of sticking to our party's policies, promises and principles. Changes to the health and education packages will not affect the economic underpinnings of this budget. Any suggestion that, by examining these crucial packages, the Senate

is somehow holding the surplus to ransom or is intent on gutting the budget is just false.

The government has whinged continually over the last 12 months about not getting some of their proposals through from last year's budget to make medicines dearer and life more difficult for those on disability support. The fact is that the stopping of those measures by the Democrats only cost the government a quarter of a billion dollars. And yet they could still afford nearly a billion dollars for a war and still have a \$4 billion surplus on top of that at the end of 2002-03. All that talk of the disability support pension changes and the Pharmaceutical Benefits Scheme changes being absolutely necessary for the budget bottom line simply was not true. I believe the Democrats' stance on those issues has been vindicated by this year's budget figures. As we know, this government is often loose with the truth whenever it is convenient, and its silly statements about the Senate and the budget are just another example.

I note in papers such as the *Australian* and the *Canberra Times* that the education minister, Brendan Nelson, is saying, effectively, that he is taking an all or nothing approach with this package. If he is seriously saying that he will not negotiate any change, then the higher education package is dead. If Dr Nelson pursues an all or nothing approach, he will get nothing. The sooner they give up the ridiculous rhetoric, the sooner the Senate will be able to do its job of finding better solutions, as the Democrats have successfully done in so many areas in the past—in recent times on welfare reform measures, on business tax, on the sugar industry package, on environment laws, on antipiracy protection, on health care cards for foster children and many other measures.

That brings us to this year's budget. There are some good measures in this budget,

many of which have already been publicly acknowledged by the Democrats and many other colleagues through various statements and media releases. As the federal budget figures show, the Australian economy—and let us not forget that the economy is not this disembodied thing out in the ether—is in effect Australian workers, businesses, industries and communities. Those Australians have produced an Australian economy that has some good economic fundamentals. The economy has continued to grow despite a weaker global economy, and we continue to enjoy—at least by Australian standards—relatively low interest rates and low inflation. However, a few economic indicators are not enough to measure quality of life or to guarantee sustainable environmental practices, individual freedoms or community cohesion. This budget has forecast a surplus for next financial year of \$2.2 billion. Despite \$2.4 billion in tax cuts in the next financial year, the government will in that same year still collect \$4 billion more in individual taxation than it did this year.

Some of the other factors that contributed to the surplus must be noted. The Treasurer received a special dividend as part of his budget of almost \$1 billion, paid by Telstra just last month. Of course, if Telstra had not been half sold by the coalition and Independent senators, the dividend would have been \$2 billion—

**Senator Eggleston**—That was the Democrats!

**Senator BARTLETT**—It was not the Democrats, thank you. Correct the record, please, Senator. I welcome the government's announcement that it will not be selling Telstra in this term, clearly because it has finally recognised that the Democrats will continue to ensure that Telstra cannot be sold. Mr Costello also received a funding injection from the Iraq war. The temporary spike in oil

prices caused by the conflict in Iraq and the build-up to it increased revenue from resource and petrol taxes by about \$400 million—a down payment on the war paid for by individual Australians at the petrol pump.

But despite having a relatively strong economy and a record tax intake, the government is not delivering to Australians the standards of health, education services and income support measures that they deserve and that they need. In the area of housing it must be recognised that Australia's growth and budget surplus have in part been created by the housing price boom and increased debt. This cannot continue forever. We need to ensure the housing boom has a soft landing and we need to recognise that there is a social cost to the boom. The March quarter Housing Industry Association report showed that housing affordability has dropped by a huge 16.6 per cent over the past year. Small income tax cuts are not going to compensate for the growing cost of the fundamental need for housing.

In the area of unemployment we see the continuation of a level of over six per cent and no new initiatives in this budget to promote job creation. Eight years of Peter Costello as Treasurer have failed to break the back of unemployment. It is worth noting, as set out in the *Australian Financial Review* on budget day, the performance ratings of the major treasurers since 1950. Peter Costello was second last in performance on employment growth—second last. Guess who was last? John Howard. Youth unemployment is at 22 per cent, and advertised vacancies are at their lowest level in nine years.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—It is Mr Howard or the Prime Minister, Senator Bartlett.

**Senator BARTLETT**—Thank you, Mr Acting Deputy President. I shall note that. Crucially, only eight per cent of the new jobs

created in the last two years are full time; the rest—a massive 92 per cent—are part time. But there are no initiatives to promote job creation. One of the disappointments in the lead-up to this budget is that the government dismissed options that would reduce the high effective tax rates, sometimes up to 87 per cent, for people moving from welfare to work.

The best measure in the welfare area in the budget—about the only positive measure in the welfare area—is in fact the Democrats' achievement, which will put \$50 million back into the pockets of the unemployed through reduced penalties. The Democrats' successful negotiations on welfare reform also ensured that unemployed people at least will have working credits that were initially taken away by this government restored to them—working credits of up to \$1,000 a year. This goes a small way to increasing incentives for people to get off social security. However, more measures are needed to reduce the poverty trap still faced by thousands of Australians. If Mr Costello really wants to reduce unemployment this should be his priority. The budget predicts that the government will save \$378 million over the four years by more targeting of people on benefits, but it fails to allocate a cent of those savings back into helping Australia's 600,000 unemployed find jobs.

With regard to the income tax cuts, undoubtedly the public will welcome some income tax relief. But those individual savings will clearly be swamped by increased costs in education, health and housing. The tax measures will increase the gap between high- and low-income earners. The Democrats' preference is for an equal tax cut for all Australians, and we outlined alternative tax options in the week prior to the budget. For example, the option of increasing the tax-free threshold from \$6,000 to \$7,500 would give a \$255 tax saving to all taxpayers equally.

Maintaining the increase to the low-income tax offset would also provide added assistance for those who earn under \$30,000 a year. Under the government's plan, those on \$20,000 or less receive just \$85 a year in tax cuts while those on \$62,500 receive \$573. Under the Democrats' proposal, everyone would receive at least \$240, with slightly more for those earning under \$30,000—fairer tax cuts for all, not just the rich. I seek leave to incorporate in *Hansard* a table com-

paring Mr Costello's measures and the Democrats' tax proposals.

Leave granted.

*The document read as follow—*

Income tax cuts can be alternatively be spent as follows:

Low income rebate increase (as proposed by Govt) 258m

Increase bottom threshold to approx \$7,400 2142m

**Table 1—Comparison of impact of Costello and Democrat tax proposals**

Taxable income	Costello tax cut	Democrat tax cut	Difference
10000	\$85	\$323	\$238
15000	\$85	\$323	\$238
20000	\$85	\$323	\$238
25000	\$307	\$337	\$30
30000	\$208	\$238	\$30
40000	\$208	\$238	\$30
55000	\$448	\$238	-\$210
Over \$62,500	\$573	\$238	-\$335

**Table 2—Comparison of the impact of Costello and Democrat tax proposals on disposable income**

Taxable Income	Tax 02-03	Disp Income	Costello Proposal			AD Proposal		
			Tax 03-04	Diff	% Change	Tax 03-04	Diff	% Change
10,000	530	9,470	445	85	0.90%	207	323	3.41%
12,500	955	11,545	870	85	0.74%	632	323	2.80%
15,000	1,380	13,620	1,295	85	0.62%	1,057	323	2.37%
17,500	1,805	15,695	1,720	85	0.54%	1,482	323	2.06%
20,000	2,230	17,770	2,145	85	0.48%	1,907	323	1.82%
25,000	3,880	21,120	3,573	307	1.45%	3,543	337	1.60%
30,000	5,380	24,620	5,172	208	0.84%	5,142	238	0.97%
40,000	8,380	31,620	8,172	208	0.66%	8,142	238	0.75%
50,000	11,380	38,620	11,172	208	0.54%	11,142	238	0.62%
60,000	15,580	44,420	15,132	448	1.01%	15,342	238	0.54%
70,000	20,280	49,720	19,707	573	1.15%	20,042	238	0.48%
100,000	34,380	65,620	33,807	573	0.87%	34,142	238	0.36%

**Senator BARTLETT**—I thank the Senate. In short, the same amount of money on tax cuts could have been spent in a far fairer way. One of the advantages of the Democrats' proposals is that it is more likely that

the additional money given to lower income earners would be spent and reinvested directly into the Australian economy.

We should remember also that the well off have already had their tax cuts. Capital gains

tax was halved just a few years ago with ALP support, against the Democrats' opposition, despite the fact that it clearly mainly benefited those wealthy Australians with investment portfolios and share portfolios. Of course, the 30 per cent rebate on private health insurance, costing the taxpayer over \$2 billion a year, favours higher income earners as well. The government has also decided against acting on the advice of its own Ralph review on taxation to crack down on trust tax avoidance, despite the fact that taxing trusts as companies would earn \$450 million a year. That is breaking the promise that was given to the Labor Party to enable those capital gains tax cuts to get Labor support. So the use of trusts to avoid tax continues, while the massive tax cuts to high-income earners through capital gains tax changes are also continuing.

On top of these tax benefits that help higher income earners we still have fringe benefits tax rules that encourage salary packaging for motor vehicles and encourage car use. This tax concession is bad for the environment and bad for government revenue, costing \$900 million a year, but the government allows it to continue. The budget's industry measures will favour large corporations at the expense of small business. The government has ignored its commitment to the manufacturing sector to remove the tariff concession system. Leaving this in place will affect small and medium sized businesses.

The budget also contains some international tax proposals which need further scrutiny. The Democrats will examine these carefully when the legislation does appear, to ensure that the tax paid by corporations operating internationally is fair and there is no return to the days when clever international tax planning allowed multinationals to avoid their Australian tax responsibilities. So we will send this legislation to a committee to see if the proposed tax changes improve the

simplicity and efficiency of the Australian tax system. But the Democrats do recognise the benefits if Australian businesses are more easily able to invest overseas. If the legislation simply eliminates double taxation and simplifies tax compliance, the Democrats' attitude will generally be supportive. The Democrats will also revise and reintroduce our [Corporate Code of Conduct Bill 2000 \[2002\]](#) to regulate the activities of Australian companies in the areas of human rights, the environment and labour.

Of course, the Democrats are here not just to analyse government policy but also to provide and promote viable alternatives. Last week the Democrats' alternative budget proposals contained our equal tax cut initiative and other revenue measures that would allow us as a nation to invest in freedom, the future and a fair go for all Australians. Disappointingly, the government's budget is marked by missed opportunities, misdirected priorities and a continuation of social insecurity. The bottom line is that, if this budget were passed as it is, Australians would have to pay more to go to the doctor and to go to university. The Democrats are not going to let that happen. The Democrats have always taken a responsible approach to budgets, but we will oppose measures that impact harshly on everyday Australians. The higher education and health proposals would clearly dramatically increase inequality not just of wealth but of opportunity in Australia.

One of the other big problems with this budget is what is missing, and obviously the Senate does not have the legislative ability to remedy those flaws beyond public pressure and ongoing debate to get action. As I have said, there is nothing in this budget about job creation and, apart from the Democrat-negotiated cuts in fines to the unemployed, the only initiative regarding the unemployed is punitive. The government has clearly given up on its own welfare reform agenda,

something that it said a few years ago was absolutely essential. The government has given up on decent levels of overseas aid and on adequate funding for the ABC. It is persisting with the poorly targeted baby bonus yet has failed once again to help families with paid maternity leave. As usual, the only substantial environmental initiatives tend to be ones that the Democrats negotiated, this time in the areas of the Great Barrier Reef, the Sydney Harbour foreshores and Sustainable Cities.

There is little for Indigenous Australians, for women or for important industries like tourism, or science and research. There is little in the budget to offer comfort to people with disabilities or to their families and carers. Amazingly, in this year with so much talk and chest-beating about supporting our troops—which continued again today—our veterans have been forgotten. The government could not even find a simple \$50 million for basic measures such as improving the treatment of veterans' disability compensation payments or increasing the funeral allowance up to a reasonable level. But it has managed to scrape together billions of dollars to improve interoperability, which is a code word for 'more easily able to participate in more wars with the USA'. The government has the money. Why not spend it on health, education and our natural environment? Why not invest in a fairer system, more freedom for Australians and a more hopeful future?

The proposed higher education package is not equitable or sustainable, and there is no way the Democrats will change our long-standing position and support measures to increase the financial burden on university students. You just have to look at our record on HECS to see that the Democrats were the only ones back in the 1980s who opposed the reintroduction of student fees by the Labor government, and the Democrats have op-

posed all the increases to student fees which have been passed by Labor and by coalition governments since that time. This higher education proposal is a comprehensive plan to destroy HECS by 2008 and replace it with something even worse—interest-bearing loans for increasing numbers of students. The cost-shifting to students is exacerbated by the government's harsh means test of parental income for student income support which means only a tiny minority of teenage students at university can get access to payments such as youth allowance.

The prospect of significantly higher debt levels and increasing financial reliance on parents is a major disincentive for a huge number of students from low- and middle-income Australia to undertake study at university. Yes, there is some new money for universities, but this is heavily back-ended, put off into the future and still does not come close to replacing the huge amounts of money pulled out of universities by this governments since 1996. In addition, the Democrats totally reject any attempt by the government to blackmail universities into implementing its draconian industrial relations agenda as a condition for accessing new money. Tragically, schools have also been largely ignored in this budget. There is nothing on offer to begin to bridge the growing gap between the resources available to students in the public and private sectors. The government's SES funding model has been responsible for huge increases in private school funding.

Research and science have also fared badly in the budget. The CSIRO received a paltry \$20 million for its new flagship initiative, but that lasts for just one year, whilst it faces a review that threatens to dismantle this once great research institution.

The health package of measures is all about the government trying to get out of

Medicare. This government is supporting private health insurance instead of supporting and retaining Medicare. Medicare needs commitment to the principles of free hospital care, affordable pharmaceuticals and universal public access to GPs. The Democrats are very pleased that the Senate today supported our proposal to establish a Senate committee inquiry into Medicare to examine a better way to reform the health system. The government has pressed ahead with a destructive budget that would erode the foundations of Medicare, despite its plans to limit bulk-billing and expand private health insurance being decisively rejected by most health and policy experts.

It is worth emphasising the Democrats' record over many years on Medicare, because again that record is clear and consistent. As far back as 1979, our health policy called for emphasis on prevention, health education, healthier lifestyles and a cooperative national health scheme. Once Medicare was introduced by the Labor government in the 1980s, the Democrats pledged that Medicare would not be dismantled whilst ever we held the balance of power in the Senate. The public can be assured that retaining the Democrats in the balance of power will continue to ensure the protection of Medicare, just as it has for the last 20 years. We note Labor's announcements tonight on Medicare. At first glance they appear to go some way to address some of the short-term problems, but they will not address some of the long-term structural difficulties. We will certainly examine them in greater detail before the Senate committee inquiry.

This budget in the area of environment revealed cutbacks in crucial environment programs, including a decrease in promised expenditure under the National Action Plan for Salinity and Water Quality. The Department of the Environment and Heritage has suffered cuts, including to staff, as have other

Commonwealth environment agencies, including the Greenhouse Office and the Director of National Parks. The few high points in the environment budget were Democrat negotiated measures: at least \$8 million in new money directed towards improving water quality into the Great Barrier Reef Marine Park; \$29 million more to protect some valuable parts of the foreshores of Sydney Harbour, foreshores that would not be protected if it were not for the Democrats; \$40 million going on improving our urban environment in areas such as air, water and fuel quality. The Democrats are also proud of the achievements with our long-term work on national fuel and emission standards and the extension of the environmental friendly Photovoltaic Rebate Scheme.

The new Sustainable Cities program, developed through negotiations with the Democrats and announced by the government, will enhance the Commonwealth's role in the management of toxic substances, water and waste and will substantially improve air quality and liveability in our cities. There is a whole range of measures in that package. They are not massive funding measures, but they are good ideas that have a significant, positive impact—and good ideas are not always expensive.

Attention must be drawn to the Prime Minister's broken commitment that he made to Australian families at the last election to make balancing work and family life a key priority of his third term. The inclusion of paid maternity leave in the budget would have been a very good start. The Democrats, along with the federal Sex Discrimination Commissioner, Pru Goward, have clearly demonstrated that a national, government funded, paid maternity scheme is affordable and both economically and socially desirable. A Democrat private member's bill is before the Senate that would provide this without increasing cost to business. The De-

mocrats have led debate on this issue, as has been acknowledged by Ms Goward herself.

There have been ongoing cuts to funding for women's services in crucial areas such as domestic violence. Funding for two important initiatives—the Partnerships against Domestic Violence strategy and the National Initiative to Combat Sexual Assault program—are winding down; again, flying in the face of this government's protestations that it cares about child sexual assault and abuse. This budget should have had money for a royal commission to clean up that tragic stain on our nation.

The government's increasing disregard for human rights is also reflected in its funding for the Human Rights and Equal Opportunity Commission, which, despite a minimal increase, is still 40 per cent less than when the coalition came to power. Of course this is consistent with the government's aim to undermine the independence of HREOC through legislation currently before the Senate. This year's budget contains little to improve Australians' access to justice. With only a very small increase to legal aid funding, more Australians will be denied legal representation in the courts. This is a false economy. More Australians are being forced to represent themselves and the result is that litigation is taking longer and costing more.

In immigration the government has not hesitated to continue to budget enormous amounts of money on detention and detection, turning away asylum seekers at sea and endangering lives. There is the continual wastage of defence funds and misuse of defence personnel, with another \$18 million being put towards more Tampa and 'children overboard' debacles following on the \$41 million that has already been thrown overboard in the last few years. Temporary protection visas—that leftover One Nation policy—have had enormous impacts, not just on

genuine refugees but on charities and non-government organisations. If we abolished temporary protection visas there would be significant savings on reprocessing of claims, court challenges, forced deportations and voluntary reintegration. Yet the cost in terms of giving refugees access to adequate support services would only be \$26 million.

As I have noted, there was very little in the budget for our troops of yesterday or of today. The government has ignored the long-standing recommendations of both the RSL and the independent Clarke review of veterans' entitlements. There has been a bit of extra money for monuments and public relations—an extra \$1 million for memorials and over \$1½ million to help the Governor-General's office give awards. It seems to me to just provide a chance for coalition politicians to stand next to people who really have achieved something. On the eve of troops returning from Iraq, the best the government could do was announce that a draft of the new Military Compensation Scheme would be released shortly, seven years after it was promised.

The government is wrong when it claims that the cost of the Iraq war can be given as a figure in this year's budget. The cost of any war is not known until the last veteran dies. The defence budget confirms the government's priorities and plans of moving more towards acting with the United States in going to war against other countries. This funding does not assist in defending Australia or ensuring a stable region. Australia's commitment to overseas aid remains pathetic—less than half the level recommended by the United Nations—and leaves us lagging well behind the vast majority of OECD countries. So much for this government's professed interests in global security and stability!

This budget has missed the bus in relation to tourism, which is our fourth biggest indus-

try nationally—one of the largest employers in regional Australia—and is now dealing with the cumulative effects of terrorism, the Ansett collapse, the war in Iraq and now the SARS virus. This year alone has seen a dramatic downturn in the inbound tourism market, which could result in losses of up to \$2 billion. The Democrats have welcomed continued support for regional air services, but we remain concerned that the Ansett levy stays in place.

Regional Australia will continue to be denied access to the full range of ABC radio networks—nothing for the millions of Australians who cannot get Triple J or Classic FM, NewsRadio and parliamentary broadcasts. I am sure there would be millions of people in regional Australia listening tonight to the Democrats' response if they had that opportunity. The ABC cannot continue to offer digital multichannelling options without additional funding. Given the ABC's multichannelling has been one of the main incentives for people buying digital televisions, this could easily destroy one of the government's key broadcasting initiatives.

In the area of visual arts, the Democrats welcome the announcement in last night's budget of dedicated funding for the visual arts and crafts sector but say it falls well short of the recommended additional funding in the recent Myer report which resulted from the inquiry into contemporary visual arts and crafts. However, this extra funding is an important first step in the process of broader arts reform that will deliver real outcomes for Australia's artists.

In this year's Indigenous affairs budget the Democrats have welcomed some initiatives. We have been consistently asking for yearly reporting into Indigenous disadvantage, but there is still a major lack of involvement of Indigenous people. The costs of transitional arrangements for ATSIC and

ATSIS have not been spelled out. The delivery of services and programs to Indigenous people must not be affected by this bureaucratic reshuffling. With the extra places in the CDEP Work for the Dole program, once again we see Indigenous people expected to deliver services to their own communities at cut price—services which the government would normally fund to the wider community.

In this budget, as with all budgets, there is a lot more to it than just balancing the books. Budgets express the priorities and plans, even the aspirations, of a nation into the future. (*Extension of time granted*) The Prime Minister, Mr Howard, admitted just last month that our country is not as egalitarian as it used to be and the gap between rich and poor in this country has widened and continues to widen. The Democrats will do all we can in the Senate and the general community to reverse that growing inequality and to protect our future as well as the environment. The Democrats' record in the Senate shows that we do not support changes that will widen inequality in Australia. We will maintain that fundamental approach in examining every single measure of this budget.

**Senator BROWN (Tasmania)** (8.30 p.m.)—I congratulate Senator Bartlett on that speech on behalf of the Democrats. I also congratulate the Leader of the Opposition, Mr Crean, on his contribution tonight, which stands in great and beneficial contrast to that of the government. Treasurer Costello's eighth budget, which the Greens hope will be his last, is the half-pack-of-cigarettes budget. His \$4 tax cut is all the vision his budget has. Mr Costello's budget is strong on economic rationality, but weak on heart and vision.

The Greens' vision is much bigger. We remind the electorate that there is another way. Governmental priorities can and should be refocused on the things that really matter

to ordinary Australians. In the Senate, we will attempt to redirect the Treasurer's \$2.4 billion tax cut to the health of our community, the education of the nation, the care of the environment that sustains us and our ability to live safely as peaceful citizens of our region and the wider world.

The Greens' vision is for free education at all levels, including higher education, and the abolition of HECS, instead of the government's attempts to Americanise our university system—that would be at a cost of less than \$1.7 billion per annum. It is for the use of \$6 billion a year estimated by the government's own scientific advisers to repair the environment instead of losing it to the most recent corporate tax cuts, which reduce the rate from 36 per cent when this government came to office to the current 30 per cent. It is for money for the ABC instead of the \$270 million corporate tax cut for the multinationals, which we opposed at the outset and which, I understand, the opposition may have followed suit in opposing tonight.

The Greens' vision is for the diversion of \$2.3 billion private health insurance rebate to public hospitals, doctors and health promotion and the extension of Medicare to dentistry and mental health services, instead of the government's attempt to dismantle Medicare. It is for giving an extra \$3 billion a year, now given to the logging, mining, road transport industries and fuel subsidies in the GST deal, to environmental repair and protection instead. It is for increasing the overseas aid budget by \$515 million as a first step toward meeting the United Nations target of 0.7 per cent of GDP, instead of the paltry one-quarter of a per cent we give now. It is for a parental leave scheme of 18 weeks, funded up to the average weekly earnings.

After 20 years, the emperor's new clothes of economic rationalism have worn very thin for most Australians, the majority of whom

are losers in this so-called new economy. After decades of this formulaic approach, the credibility of the good news of economic management is in tatters, as many Australians struggle with the bad news experience of a growing divide between rich and poor and a deep sense of insecurity.

It is not just those at the bottom of the economic ladder who are no longer buying the budget night self-congratulation of governments. Those on middle incomes—the majority of Australians—are beginning to doubt the wisdom of the economic rationalist approach altogether. The recent publication of Clive Hamilton's *Growth Fetish*, Michael Pusey's *The Experience of Middle Australia* and, indeed, Fred Argy's *Where to from Here?* provide timely documentation of this groundswell of dissatisfaction. The Greens have long recognised the kinds of trends that led Pusey to say:

The ugly reality of economic reform has taught middle Australia that the level playing field is a moral fiction. In the food chain of the new capitalism they see egoistic and predatory corporate moguls ... at the top and themselves at the bottom.

Pusey reports that middle Australia feels that the benefits of growth have gone to the rich and to big business. This feeling is not due to an inability to understand or an envy for those better off. It is demonstrably true. These matters are demonstrably true. For example, the government's budget this week offers personal income tax cuts of around \$4 a week for middle income earners; yet since 1998 business tax rates have fallen from 49 per cent to 30 per cent, as CEOs reap multi-million dollar packages. The proportion of this country's income that goes to our wage and salary earners has fallen by seven per cent in the last 25 years. And, most disturbingly, our political leaders now seem to have accepted that this country will permanently have six per cent of people without a job, many of them living in the same house-

holds—in the same families—trapped on the wrong side of the great economic divide. Commenting on this groundswell of unrest, Alex Millmow, an economist from Charles Sturt University, notes:

That stock of altruism—something Adam Smith felt kept capitalism from degenerating into a dog-eat-dog society—is fast wearing down.

Robert Manne, from La Trobe University, writing in the *Age* last week, echoed that concern. He said:

What many people seem to yearn for is a world in which they are treated not as consumers or as dispensable cogs in an indifferent machine but as citizens and as human beings.

Even the Prime Minister appears to have sniffed the winds of change, saying:

There are still far too many people in Australia who are not getting a share of the bounty of this country, through no fault of their own, to which they are entitled.

But it is hard to see any evidence in this budget that the Prime Minister has taken this concern at all seriously. The Greens say that resolute action is needed to treat the wounds inflicted by economic rationalism, action that we Greens see as both desirable and—note this—affordable.

One of the primary responsibilities of government is to redistribute power and wealth, to benefit the least powerful and the least wealthy. In large measure, this is achieved through investment in public goods, like a strong public health care system, a robust accessible education sector and a social security system that provides adequate support for all of those in need. However, the Howard government prefers to give tax cuts to high-income earners, like last year's proposed reductions in the superannuation surcharge, the corporate tax cuts I have spoken about and the tax cuts announced for multinationals in this budget—all that while it imposes a regressive flat tax, the GST.

The Howard government prefers to impose a punitive breaching regime on people unable to earn income, fining them \$1 billion since 1996. It is stealing money from people who struggle to meet their basic living expenses when it should be working to abolish poverty by providing an adequate social safety net and active job creation policies.

The Howard government prefers to run down the public health system by robbing it of \$2.3 billion every year to subsidise private health insurance and claim it is offering choice—even though this is not the choice of the Australian people. Redirecting this money would go a long way towards restoring bulk-billing of medical services, reducing waiting lists for elective surgery in our public hospitals and extending Medicare to areas of need, like dental and medical health services.

We can also afford a national paid parental leave scheme for new parents who want to stay in the work force. The Australian Greens have developed a model that provides 18 weeks of leave, paid up to the average wage, which could be largely funded from redirecting the poorly directed baby bonus and savings on family tax payments. We can afford this right now.

As the ACTU reminded us all last week, most of the jobs created during the 1990s paid less than \$26,000 a year, and indeed half of them less than \$15,500 a year. This stands in stark contrast to the total earnings of the top five per cent of income earners of \$62 billion a year which, put together, is more than the nation spends on all its social security and family payments. Clearly we are seeing an exacerbation of the divide that is opening up between rich and poor Australians out of the formulaic, economic rationalist direction of governments over the last 20 years. What we Greens are presenting, and will continue to present, is an option that will

close that gap and end that increasing poverty, particularly on the wrong side of the gap, which is built into this year's budget.

On education, the Greens see the guarantee of universal access to a quality public education system as a core responsibility of government. From preschool to university and TAFE, investing in the education of our society makes sense economically and socially. The deregulation of fees is perhaps the most significant change announced by the Treasurer on Tuesday night. It is a change that sets our universities firmly on a course back to an era of elitism where a good degree was available only to those who could afford it. Introducing a financial selection criterion has no place in the Australian university environment. This, together with the expansion of full fee-paying places for domestic students, is a hammer blow to the egalitarian idea of a comprehensive university system. It will ultimately degrade academic standards and the reputations of our universities.

Aggressively competitive research funding will stratify the sector to the disadvantage of regional and newer universities. These institutions will then be pressurised further by competition from private outfits now able to access government research dollars in what is a creeping privatisation of the tertiary sector, and it will be underwritten by public money.

It is, of course, the students and their parents who will bear the cost changes. Many will decide that it is simply not worth it. The loss of human capital from such short-sighted penny pinching is hard to quantify, but for every bright student who turns their back on the chance of a higher education—and currently universities are turning away 20,000 such students every year—as a result of these reforms that is a loss to Australia's future as well as a loss to them. Meanwhile, the long-suffering academic staff, whose

morale is already battered from year after year of underfunding and competitive pressure, are losing their right to bargain collectively in this government package. This measure is pure union bashing. It is an example of government coming between worker and employer, uninvited and unwanted, to make political mischief.

The Greens reject this restructure and look to commit significant ongoing funds directly from government to achieve the world-class education system that Australia deserves. The Greens will oppose these measures that stratify education and health to give the advantage to the rich and the disadvantage to the poor. We will oppose those measures here in this Senate. We challenge the government, and the opposition for that matter, to explain why we cannot afford the \$1.7 billion per annum that it would cost to totally abolish HECS and return to free tertiary education, the right of all Australians. In our view, we can, and we would, do that. It would be a far better investment than most of the \$6.8 billion given annually to the corporations through corporate welfare.

On the environment, one of the great disasters of the Howard government has been the handling of this nation's, and indeed the planet's, ecosystems. This budget continues the serial cuts to the environment through underspending year after year. This is financial dishonesty. Every year you see the budget allocations put there, and every year you see that the previous budget allocations were underspent. That is at ministerial direction; that is government policy.

It is a financial dishonesty from Messrs Howard and Costello which is masked by regular changes to the format of the budget statements—designed to confuse and obscure. That of course runs right through the budget presentation each year. However, what is clear is that spending on climate

change has been slashed by over half a billion dollars through systematic underspending. Less than half of the nearly \$1 billion which the government regularly boasts of having committed to reducing greenhouse gas emissions will have been spent by the due date of June next year.

Another \$11.6 billion has been added to the government's Rio Tinto energy policy for a so-called 'cooperative research centre for carbon dioxide sequestration'—that is, promoting the burning of coal over other options. Since this largesse appears nowhere except in the environment statement, it could indeed be a stuff-up. But if it is not, it is not a financial mistake; it is an environmental one—another hand-out to the coal industry, which is our nation's worst polluter. Fuel taxes are being actively used by this government to promote greenhouse gas emissions, with the loss of automatic indexation of fuel excise but now its application to LPG.

The Prime Minister's own national action plan on salinity this year has been slashed from the planned \$150 million to much less than half, at \$62 million. The Prime Minister's Science, Engineering and Innovation Council costed the repair bill for fixing our natural systems at about \$6 billion annually, or \$60 billion over 10 years. If we do not do the repair now, that bill will get much greater in the future.

The Greens have a big-ticket vision of what the Commonwealth could do for the environment. We would pour the necessary water back into the Murray now. And I congratulate Mr Crean and the opposition for tackling the issue of repair, reinvigoration and refreshment of the Murray-Darling system—something totally left out of the account from Mr Costello and Mr Howard just two nights ago.

We would use Commonwealth power to stop broadscale land clearing now. And I

note Mr Crean has indicated, while not stating explicitly, the same. We would ratify Kyoto now. And I note that Labor is also promising that. We would move to increase Australia's mandatory renewable energy target to 10 per cent from the current two per cent.

But some of the most important decisions this government could make on the environment would have negligible or positive impacts on the budget bottom line. For example, protecting Tasmania's forests now—the grandest, tallest, greatest hardwood forests in the world—would protect their biodiversity. It would protect their water. It would protect the soil and safeguard—note this—the biggest carbon banks, the biggest hedges against global warming, in the Southern Hemisphere.

Stopping the tax breaks for plantation investors would save money for the government and stop most of the clear-felling of native forests in Tasmania and elsewhere. Without those tax breaks, the costs would not be there. They effectively subsidise the environmental degradation. Introducing vigorous measures to save energy by making buildings, appliances and industrial processes more efficient would be the most cost-effective climate change action the government could take. It would invigorate ecotechnology in this country. It would get behind small business and innovative brain power, which this country has an enormous repository of—and get it going. It would create the jobs and make Australia a powerhouse for environmental technology—not just for our nation but for our region, and indeed the whole world.

Talking of the whole world brings me to the subject of aid. At the heart of the Greens' opposition to the war on Iraq was the knowledge that ultimately peace and security can only be achieved through addressing global

injustice. While the Howard government was at the forefront of the war on Iraq—a global leader on the issue, albeit at the behest of President Bush—the opposite is true when it comes to helping to address worldwide poverty and inequality. Why are we not a global leader in promoting the alleviation of poverty and human misery? Instead, this Costello budget has seen overseas aid, our cheque to humanity, slashed again. Australia's overseas aid has slipped to a paltry one-quarter of one per cent of GDP, when the accepted target is 0.7 per cent. It is one third of what it should be. Simply to start the government on the path to meet the global millennium development goals to which it signed up through the United Nations would require \$515 million in this year's budget. This is what the Greens would deliver as a very small first step. Instead, the government has a budget allocation of almost \$750 million for the war on Iraq.

For this government to lecture anyone on fiscal responsibility is laughable when we consider the haemorrhaging of public funds currently going to finance the ill-conceived pork barrels and corporate welfare that the government has funded.

**Senator McGauran**—It's cheaper than East Timor.

**Senator BROWN**—The member opposite says that the ill-conceived pork barrels in corporate welfare are cheaper than East Timor. I do not think it is a good analogy. I simply think it shows how short on ability to relate to different values those on the government benches are.

Besides those I have mentioned already, these ill-conceived misdirections of funds include the \$60 million crusade to crush the construction union through the Cole royal commission. We had here today members of the government benches arguing that \$40 million or \$50 million would be too much to

allow Australians to decide at referendum whether five million adult Australians should not have the right to stand for parliament—a right denied by a slip-up in the Constitution under section 44. They voted it down on that argument. The government cannot get \$40 million or \$50 million to give people the option of changing an unintended but really regressive part of the Constitution, but it can find \$60 million for this union-chasing Cole royal commission.

Hundreds of millions of dollars went to the so-called Pacific solution of diverting asylum seekers to the prison camps on Nauru and elsewhere. There was \$1.7 billion, which should have been means tested, in grants to those wealthy enough to buy a house under the First Home Owners Scheme. The government is spending more money on private schools than the total spent on higher education. Did you know that, Acting Deputy President—that this government actually spends more on private schools than it spends on higher education in this country?

**Senator Crossin**—Of course we did.

**Senator BROWN**—Senator Crossin did. I have not heard anybody on the government bench recognise that. There is a tax concession for four-wheel drive tariffs valued at \$190 million per annum. That is promotion of pollution. The most polluting vehicles are being promoted at the expense of less polluting vehicles by this government at taxpayers' expense, with \$190 million basically going to the wealthy, once again. Then there is the \$500 million baby bonus, which I mentioned earlier.

Australians understand the importance of a fair, progressive and redistributive tax system that ensures people pay their share of the nation's bills. Company tax rates, however, have fallen 19 per cent in the last 15 years, while the GST and a still terribly low tax-free threshold and bracket creep see the low-

est paid facing an intolerably high tax burden. Australians also have a sense of fair play which is offended by the completely unequal treatment of people on unemployment benefits or disability pensions compared with corporate welfare cheats. Thousands of people have lost their savings or income in the collapse of companies like HIH and One.Tel and the corporate vandalism of mutual companies like AMP and the NRMA. However, to recover billions for the community from these corporate shonks, the government has only allocated an extra \$11 million per annum to regulatory bodies. Compare that with the fact that, to recover \$25 million a year—not billions but \$25 million—from people on disability pensions, the government has allocated an extra \$5 million a year for compliance. That is punitive on the poor and ridiculously easy on the rich. It is a total warping of the priorities and responsibilities of government.

The government should not be relied upon to provide all the answers or deliver the kind of happiness that Clive Hamilton talks about as being so lacking for large swathes of the population. But government does have a crucial role in maintaining an environment in which these goals are realistic for all Australians. Much of this speech, which tonight was to be given by Senator Nettle, was penned by her. In putting this alternative vision, I am enormously pleased and feel empowered by having with me in this parliament Senator Nettle and Michael Organ, the honourable member for Cunningham in the House of Representatives. As we grow, we put to the people of Australia a vision with real alternatives; compared with the economic rationalism which, unfortunately, infests and is ineradicable from both the government and the opposition of the day. Australians are waking up to the fact that the government has lost sight of its basic priori-

ties and the things we as Australians pay it to fairly achieve.

The rise of the Greens and our alternative proposals for a fairer Australia, with a more secure future based in humanitarian and ecological strategy, gives many Australians a real option in what are pretty daunting times. The Greens will continue to champion a fairer society rather than simply the economy and to champion the parliament rather than simply the stock exchange. The Greens do this in the interests of all Australia's people, through this wonderful democracy of ours, for Australia's land, its culture and our future.

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

#### ADJOURNMENT

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—Order! It being 8.57 p.m., I propose the question:

That the Senate do now adjourn.

#### **Hillary, Sir Edmund**

**Senator MASON (Queensland)** (8.57 p.m.)—I first saw him moving quickly toward the front of the hall. He was much taller and more well built than I had expected. While he was in his 80s, he walked with a surety and steadfastness born of having to watch every step. He certainly matched the legend. Come to think of it, he was a much larger figure in every way than the entertainers who fill today's tabloids and assault our senses. Sir Edmund Hillary, the conqueror of Mount Everest, one of the great explorers and adventurers of last century, had come to launch his autobiography in Brisbane. Let me put it very simply: he captivated his audience. But of course, I am biased, for I have admired him since I was a child, although not, it must be admitted, without a touch of envy.

We admire heroes because they show us what we are capable of. They stand for us and represent our capacity to prevail. They defend us against our own tendency to be sucked down into despair, depression or perhaps even boredom. They raise our hopes and our spirits, they open up new frontiers, even if only within our imagination, and they inspire us. This is particularly so of Sir Edmund Hillary. Mind you, he would likely disagree. At his own insistence, he is no hero. He, too, suffered from doubt. He frequently had a fear of dying. He fell down crevasses, barely escaped avalanches and often suffered severe altitude sickness. He claims no secrets to overcoming fear or failure; only that none of us should be afraid of a long climb to reach our dreams, nor should we let fear of failure stop us from taking that first step. Sir Edmund simply says that he was an enthusiastic climber, was highly motivated and had a deep desire to achieve.

With the 1953 British expedition to Everest, he happened to be in the right place at the right time. The Swiss had nearly reached the summit the year before and then, just days prior to Hillary's and Tenzing's successful ascent, two colleagues had just failed to reach the top of Mount Everest. Mount Everest's mercurial challenges, its 'roar of a thousand tigers', had saved her summit for Hillary and Tenzing. Later, Sir Edmund was to engage in many other adventures, including reaching the South Pole with a New Zealand expeditionary party in 1958 as part of the Commonwealth trans-Antarctic expedition led by Sir Vivian Fuchs. I well remember as a teenager watching a documentary on television in the late 1970s about Sir Edmund and a team aboard jet boats attempting to trace the Ganges River from the coast to its source in the Himalayas. In a life full of adventure, honours, writing, fundraising and lecturing, he has achieved so very much. But it is with Everest that Hillary will forever be

joined. His ascent with Tenzing Norgay on 29 May 1953, 50 years ago this month, will always rank as one of the greatest examples of human endurance, skill and courage.

Yet despite all the fame and glory that Sir Edmund attracted for this magnificent achievement, it is not why I am addressing the Senate tonight. No, others can better talk about mountaineering and adventuring than I can. I admire Sir Edmund Hillary because even if, as he modestly says, he was just lucky to catch the right time, the expedition, the climbers and the weather to scale Mount Everest, he has done so very much for our world since that first ascent 50 years ago. I admire him because he has purchased so much with serendipity's bequest. With his fame he has bought not riches for himself but a better life for the people of the Himalayas. In the past 40 years, since he established the Himalayan Trust, Sir Edmund has raised funds and helped build 27 schools—'schools,' Sir Edmund says, 'among the clouds'—two hospitals and 13 village health clinics for the Sherpa people, as well as many bridges, mountain airfields and freshwater pipelines. It is for his work for the trust and for the people of Nepal that Sir Edmund Hillary truly becomes a great figure. He used nature's gifts of energy, courage and motivation and God's gift of timing to give back to the people of Nepal. It is this contribution to society, this great civic achievement, that is to me the essence of the man and his claim to a special place in our collective admiration. This is his true heroism.

Life has not always been easy for Sir Edmund. The loss of his wife and daughter in a tragic accident in the Himalayas was a blow that he says he still feels guilty about. As those in politics know, even those who climb the highest can never insure against sorrow. But, just as he taught us all to believe in challenges that are so great that they will stretch us and then stretch us some more, so

he himself never shirked from living his own advice. Sir Edmund Hillary recently wrote:

I have had much good fortune, a fair amount of success and a share of sorrow too ... Achievements are important and I have revelled in a good number of adventures, but far more worthwhile are the tasks I have been able to carry out for my friends in the Himalayas. They too have been great challenges in a different way—building mountain airfields and schools, hospitals and clinics, and renewing remote Buddhist monasteries. These are the projects that I will always remember.

We cannot all climb Mount Everest. Thank goodness for that, you might say. It is certainly good for Mount Everest. But we should all be thankful for people like Sir Edmund Hillary who show us what we ordinary people of 'modest abilities', as he says, are all capable of with just a 'goodly share of imagination and plenty of energy', and that we do not have to be famous adventurers and great explorers to strive to climb our own Everests and seek a view from the summit or at least a peek from the Hillary Step.

#### **Agriculture: Sugar Industry**

**Senator CHERRY (Queensland)** (9.06 p.m.)—I rise tonight to speak about the sugar industry. The Senate has heard on many occasions over the past few months about the economic and social crisis in the sugar industry. The collapse in world sugar prices has caused a crisis in the industry of monumental proportions. Sugar producers have had negative incomes in many cases. Whole communities have been on the edge of social and economic catastrophe. The federal and Queensland governments have been very slow to react to this crisis, and when help arrived it was in a form that was of little benefit to many producers on the ground. Funding was provided for exiting the industry, but little was provided for those who wished to stay. Money was provided for regional industry initiatives but there was nothing

to ease the immediate financial crisis in sugar communities. Since last year the world sugar price has recovered a little, but no-one expects full price recovery any time soon. So the crisis continues.

The Queensland government has adopted an extraordinary response to this crisis. At a time when the industry is facing financial upheaval, the Queensland government last month introduced laws into the parliament to exacerbate the crisis. It has produced a radical deregulation process that will dramatically reduce the bargaining power of cane farmers at a time when the price being paid to cane farmers is so low. This is particularly surprising, because the leader of the Queensland government, Premier Peter Beattie, has been one of the most trenchant critics of national competition policy. Yet this same Peter Beattie's government has commissioned one of the most virulent, economic rationalist think tanks in the country—the Centre for International Economics—to advise it what to do about the sugar industry.

Not surprisingly, the CIE recommended radical industry deregulation. More surprisingly, the Beattie government has endorsed their recommendations. This is despite the analysis by prominent Queensland economists like Professor Ted Kolsen, Professor Rod Jensen and Dr Mark McGovern. Dr McGovern noted that the reform proposals focused solely on productivity, ignoring important challenges of industry development and cooperation. A broader analysis, he said, would include the current decline and volatility of income from sugar, implications for investment and a climate of uncertainty arising from the reform proposals. Professor Kolsen describes the report as a valiant effort but concludes, 'So far there is no clear set of changes which will ensure the industry will do better. Hopeful assumptions will not do.' The Boston Consulting Group report to the Canegrowers organisation states:

Given the nature of these industry constraints, simple deregulation is unlikely to ensure that industry is able to exploit these opportunities. Even if deregulation were effective in removing constraints on industry performance, it is likely to result in a significant redistribution of industry returns from growers to millers.

Even the Queensland parliament's own Scrutiny of Legislation Committee has criticised the legislation, arguing in a report earlier this week that the financial penalties for illegal trading are too high, that there are inappropriate reversals of the onus of proof and that the transitional arrangements are problematic.

On 31 January this year I wrote to Premier Beattie regarding my concerns about the CIE report, which in a nutshell are that the CIE is an ideologically driven think tank that represents the pro-competition policy end of the spectrum and would be expected to support blanket deregulation of the industry; that dairy deregulation was supposed to have benefited everyone but resulted in higher costs of milk for consumers, lower returns for farmers and a decline in milk sales—why would we expect to see the same thing happen to sugar?—and that the CIE fails to make a convincing case for the reforms that it advocates. I urge the Queensland government to adopt a cautious approach to the deregulation of sugar and to ensure that any reforms should clearly be in Queensland's best interests, having regard to the full economic, social and environmental costs.

What disappoints me has been the Queensland government's inflexibility in dealing with this legislation. The two cane growers organisations—the Cane Farmers Association and Canegrowers—were briefed but not consulted on the terms of the legislation, and only days before it was introduced. The very valid criticisms of the CIE report, by Kolsen, Jensen and McGovern, and by CS First Boston, have been ignored without proper analy-

sis. But, amazingly, it has not just been the economic experts and the cane growers who were not properly consulted; the Queensland government failed to consult the federal government, which is providing \$120 million of the \$150 million in financial assistance.

**Senator Boswell**—Exactly right.

**Senator CHERRY**—Exactly right, Senator Boswell. This concerns me, and I expect the federal government not to let this slight pass by. The sugar industry assistance package was approved by this parliament because the Democrats provided support for the sugar levy funding mechanism underpinning it. The Democrats negotiated a reform package that delivered better environmental outcomes. The Democrats expect the government to honour its agreements to us and we expect it to insist that agreements made with it by the states are also honoured. The 25 September memorandum of understanding between the federal and Queensland governments could not have been more clear. It states that, while the governments recognise that regulation is a state matter, both governments share an interest in it. It states:

The Governments agree that the following areas appear to impede increased competitiveness and efficiency, and are detrimental to cultural change and innovation:

- the cane production area system;
- the statutory bargaining system; and
- the compulsory acquisition of raw sugar for marketing and selling within the domestic market.

10. The Governments agree that there should be a joint approach to identify what legislative changes are required to remove these impediments.

12. The Governments agree that once all necessary changes are identified, a communique will be signed between the Commonwealth and Queensland reflecting a joint position on this issue.

Where is that signed communique? National Party Leader John Anderson and Agriculture

Minister Truss have been strident in saying that they were not consulted and that Queensland is, as a result, in breach of the agreement. Mr Anderson last week said:

We've always said reforms are needed ...

... ..

I'm not convinced that the legislation has it 100 per cent right in that regard. I think it's incumbent on the Queensland government that—

federal—

cabinet has a right to see it and to tick it off.

Premier Beattie responded by saying he is happy to withdraw the laws if the Commonwealth requests. But the laws have not been withdrawn. Why? Because the Commonwealth has not made the request. I am calling on the Commonwealth to make that call and to insist that these laws be withdrawn for further consideration. The mad ideological assumptions underpinning the Queensland reforms in the CIE report need to be properly scrutinised. At the very least, the Queensland government needs to be forced to consult cane growers properly, listen to their concerns and make the appropriate adjustments to the harshest aspects of the scheme.

The Canegrowers organisation, for example, has pointed out that contracts have already been let for the next growing season which do not take into account these laws. It is staggering that the Queensland government has not even properly been advised on current industry arrangements and procedures before introducing its legislation. As I have said, I expect the agreements to be honoured. The Democrats supported the federal government's sugar package because we expected then to abide by their agreements and to see their agreements honoured. Buck-passing and point-scoring off the Queensland government by federal ministers is not good enough. Mr Anderson should get on the phone and ask Mr Beattie to withdraw his legislation and consult more widely on it.

The sugar industry in Queensland is in pain and crisis, and deregulation pursuant to an ideologically driven economic rationalist agenda can only make that crisis worse. In the interests of the long-term viability of the sugar industry, I urge the federal minister for agriculture to put aside the politics of state-federal negotiations and critically analyse this state's legislation. The sugar industry and the Queensland and Australian economies cannot afford to fall victim to the vagaries of ideology or petty politics. What we need is a sustainable plan for the future of this industry that is built on sound social, economic and environmental considerations.

#### **Forestry: Gunns Ltd**

**Senator COLBECK (Tasmania)** (9.14 p.m.)—It gives me no pleasure to rise this evening to talk of the disgraceful attempts by a member of this place to discredit Australian and Tasmanian businesses and destroy and shut down a Tasmanian industry. I speak of periodic harassment of Gunns Ltd, through their customers in Japan, by the Greens. Senator Bob Brown continues, from time to time, to write to Gunns customers in Japan attacking Tasmanian forest codes and forest companies and urging Japanese buyers to cease purchasing product from Tasmania.

This is Senator Bob Brown and the Greens attacking one of Tasmania's largest export industries. By doing so he is not only attacking Tasmanian companies but also forest workers and the multitude of small businesses in Tasmania who rely on forest industries for a living. By doing so he is attacking the Tasmanian economy. In a letter to Mitsubishi International Corporation, Senator Bob Brown said:

It is therefore difficult to understand why Mitsubishi Corporation is continuing to source native woodchips from Tasmania where Gunns Proprietary Limited has a monopoly on the clear-felling of native forests, including old-growth forests

which have been recognised by the World Conservation Union as having World Heritage values. This is not true, by the way. We have all heard Senator Brown's lies and innuendos made under parliamentary privilege.

**The DEPUTY PRESIDENT**—I think you need to withdraw that. It is an imputation on the senator. I ask you to withdraw.

**Senator COLBECK**—I withdraw. We have all heard Senator Brown's innuendos made under parliamentary privilege. We have seen him rant and rave and misrepresent—never updating his information and always playing loosely with the facts. Once outside the parliament, he starts sabotaging Australian exports, Tasmanian exports, Australian earnings, Tasmanian earnings, Australian jobs and Tasmanian jobs. Once he starts denigrating Tasmania's established and substantial forest industry he is playing with shareholders' funds, private plantation foresters and the livelihoods of the many good people involved in the forest industries in Tasmania. Interestingly, just a few moments ago he was talking about the ills of companies who have failed recently, yet here he is trying to destroy companies himself. I will continue reading from Senator Brown's letter to Mitsubishi International Corporation. It says:

I request that Mitsubishi immediately review and cease the sourcing of native forest woodchips from Tasmania.

Who does he think he is? Does he tell Japanese companies about the scientific regional forest agreement in Tasmania? No. Does he tell the Japanese companies that Australian forest industries now have national standards to assess and certify sustainable forest management? No. Does he tell them about the Australian forest standard? No.

Benchmarked against international certification schemes, the Australian forest standard has been rated as excellent for its forest

management approach. The AFS has been recognised by the Standards Development Board as an interim Australian standard and was published as AS 4708 (Int) in February 2003. It was developed with input from industry, state and Commonwealth governments and other forest stakeholders at a national level. Since November 2002, Australia, through AFS Ltd, has been represented on the PEFC Council, which includes 26 member countries. The PEFC is the Pan-European Forest Certification scheme. It is the largest forest certification umbrella organisation in the world and had 46.5 million hectares of forest under certification worldwide at the end of January 2003. Gunns does not have Forest Stewardship Council certification, Senator Brown tells Mitsubishi in his letter to them. He also says:

Because of the failure of Australian logging companies like Gunns to achieve FSC certification the Australian government has been attempting to develop and promote its own forest standard internationally as an alternative to FSC certification.

His letter continues:

As you would be aware, this has little credibility internationally.

This is an absolute load of bunkum. Australia's national sustainable forest management standard, the Australian forestry standard, has been confirmed as compatible with the major international sustainable forest management schemes.

**Senator Brown**—By whom?

**Senator COLBECK**—I will tell you as I go through, Senator Brown. To assess compatibility with overseas systems, Australia's Forest and Wood Products Research and Development Corporation commissioned an independent study of the AFS. The comparative study by Finnish company Indufor Oy, who are experts in sustainability certification, examined how the standard setting and

technical criteria of the AFS compared to those of the Pan European Forest Certification covering most of Europe and of the FSC network which is prominent in Scandinavia. The study concluded that the AFS is compatible with both the major groups of overseas sustainability standards and, importantly, the study confirmed that the AFS was compatible with the FSC on environmental performance standards. The compatibility of the AFS with the FSC environmental impact principle is at a high level regarding the conduct of environmental impact statements, protection of species and their habitats, maintenance of ecological functions and values of forests, and conversion of natural forest cover to plantations.

Did Senator Brown tell the Japanese companies that the Commonwealth and the state have, through the RFA process, set aside 40 per cent of Tasmania in comprehensive, adequate and representative CAR reserves? No. Did Senator Brown tell the Japanese companies that 68 per cent of Tasmanian old-growth forest is protected in formal reserves? No. Did Senator Brown tell the Japanese companies that Tasmania has a forest practices system in place outside the reserve areas with proscriptions in place to protect fauna and flora which results in 86 per cent of the state's public old-growth forests being protected either in formal reserves or through these proscriptions? No. Did Senator Brown tell the Japanese companies that around 95 per cent of the high quality wilderness areas are also protected in reserves? Of course not. Did Senator Brown tell the Japanese that FSC certification does not exist in Australia? Of course not. Quite frankly, the use of misinformation to undermine Australian firms, including Tasmanian firms, and Australian jobs, including Tasmanian jobs, is indefensible. It is an absolute disgrace that a member of this parliament would peddle mistruths on parliamentary letterhead in his attempts to

destroy and close down the Tasmanian forest industry.

#### **Budget: Australian Capital Territory**

**Senator HUMPHRIES** (Australian Capital Territory) (9.22 p.m.)—I rise to speak tonight about the effect on the Australian Capital Territory of the federal budget brought down this week. Let me start by saying that in different roles to my present role I have been critical in the past of federal budgets in terms of this territory, including federal budgets of the coalition government. So I believe I am able to distinguish between a good budget for the ACT and a bad one. The budget that was brought down on Tuesday of this week is a very good budget for the ACT. It is a budget which creates jobs, a budget which strengthens the ACT's health and education systems, a budget which provides for important benefits to our city that has been badly affected by natural disaster in the last six months and a budget which will allow the ACT government as the party responsible for basic services in this city to build the quality of those services in the future. I appreciate that many things get said around budget time which are best described as hyperbole. At the moment there is much of that occurring in this place. I include particularly in that description a media release from Senator Kate Lundy in which she says:

The Howard government budget last night stripped Canberra of jobs and funding.

She then goes on to list a number of agencies and departments where funding has been cut and, as a result, jobs have been lost—according to Senator Lundy, at least. I concede that this budget does contain some job losses. There are certain areas where funding has been reduced and where, as a result, some jobs in particular areas will be lost. But to imagine that any government of any description in any part of Australia can take a government service provision and make

changes to the way in which that service is provided without seeing some job losses occur in some areas and some job gains occur in others is simply ridiculous. Indeed, in this year's budget the federal government has provided for some job reductions but, most particularly, it has provided for job increases.

The total picture from this year's budget for the ACT is extremely positive. Unlike Senator Lundy, I have done the homework on the job gains provided for in the federal Public Service in this budget. Those gains include 1,230 jobs in the Australian Taxation Office; 383 jobs in the Department of Family and Community Services; 251 new jobs in the Australian Federal Police; 68 jobs in ASIO; 84 jobs in the Department of Health and Ageing; 49 jobs in the Department of Finance and Administration; 100 jobs in Immigration; 23 at the Australian Trade Commission; 30 in ATSI; 10 in the Department of Industry, Tourism and Resources; 55 in Communications; 198 in the Department of Education, Science and Training; 25 in ANSTO; one in ANTA; 26 in Agriculture; and 98 in ASIC. That leads to a grand figure in job creation of 2,631 jobs.

Senator Lundy drew attention to 614 jobs that she can count as disappearing—good luck to her. But anybody would need to do only a small amount of calculation to realise that that adds up to a net gain to Public Service numbers of well over 2,000 jobs. Of the 2,000 jobs created in this budget, a substantial proportion of those are in the Australian Capital Territory. By all means get out there and get stuck into the budget and find its flaws and look for the weaknesses, but do not make things up. To suggest that this budget strips Canberra of jobs and funding is simply not true. Although, of course, some of those jobs are outside the ACT, in comparing apples with apples you have to assume that a substantial number of the job gains, and there are many more of them, will be in the

ACT, just as some of those job losses will be in the ACT.

On top of that net job creation position in this budget, we see many other benefits of direct value to the Australian Capital Territory community. We see tax cuts. It is clear that residents of the ACT, on average, enjoy higher levels of income and, therefore, pay higher levels of tax on average than other Australians. The result of that, of course, is that higher tax cuts could be expected by ACT residents. The federal government has provided for \$113 million to promote education in overseas markets and to do other things. It may be surprising to members of this place to know that the ACT has one of the lowest, if not the lowest, levels of overseas student numbers in the country. It is surprising because we have a large number of tertiary institutions in this city—four universities alone. We have a high degree of international presence, with embassies and high commissions. It is hard to understand why there should be such small numbers of overseas students. It follows that spending \$113 million or so on promoting education overseas must be of substantial benefit to the ACT community because of its present low level of overseas students.

Similarly, to spend so much money on defence across the board must be of substantial benefit to the ACT. Quite apart from the projects for capital spending in defence in the ACT, including at places such as HMAS *Harman*, there is of course the very important project in the Defence portfolio, Headquarters Australian Theatre. Although built in New South Wales just outside the border of the ACT, its economic benefits in a range of areas, including public and private sector employment, will be very substantial indeed for the ACT.

I look forward to seeing the half a billion or so dollars spent on ACT hospitals that this

budget foreshadowed, if the ACT government picks up the opportunity which this presents. Over the next five years, I look forward to a 17 per cent increase in funding on other health matters in the ACT under the Australian health care agreements, if the ACT government picks up that opportunity. The ACT stands to benefit very substantially from those arrangements because we in this territory have among the lowest rates, if not the lowest rate, of bulk-billing in the country. Incentives to get doctors to bulk-bill in this territory will therefore be of greater benefit proportionately to us than to other places.

I could go on for some time, but I simply remind senators in this place that, if we are expected to deal truthfully and effectively with information that comes across our desks, we have the duty to tell it as it is. It is impossible to pick up this budget and look at it in any way other than that it benefits job creation for the residents of the Australian Capital Territory. Across the board, it is a

bonanza for citizens of the ACT and I will be making sure that my constituents understand that fact very well in coming days.

**The DEPUTY PRESIDENT**—As the Senate will be involved in the consideration of estimates at Senate legislation committees for two weeks from Monday, 25 May 2003, the Senate stands adjourned until Monday, 16 June at 12.30 p.m.

**Senate adjourned at 9.31 p.m.**

## **DOCUMENTS**

### **Tabling**

The following documents were tabled by the Clerk:

Parliamentary Entitlements Act—  
Parliamentary Entitlements Regulations—  
Advice under paragraph 18(a), dated 13  
May 2003.

Trade Practices Act—Monitoring and  
Reporting on Competition in the  
Telecommunications Industry Determination 2003 (No. 1).

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**QUESTIONS ON NOTICE**

The following answers to questions were circulated:

**Gippsland Electorate: Programs and Grants  
(Question No. 1115)**

**Senator O'Brien** asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 17 January 2003:

- (1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Gippsland.
- (2) When did the delivery of these programs and/or grants commence.
- (3) What funding was provided through these programs and/or grants for the people of Gippsland in each of the following financial years: (a) 1999-2000; (b) 2000-01; and (c) 2001-02.
- (4) What funding has been appropriated for these programs and/or grants in the 2002-03 financial year.
- (5) What funding has been appropriated and/or approved under these programs and/or grants to assist organisations and individuals in the electorate of Gippsland in the 2002-03 financial year.

**Senator Hill**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

- (1) The programs and grants are as follows:

PROGRAMS

- Department of Veterans' Affairs Outreach Program – The country outreach program is managed by each State Office and involves country visits by DVA staff who provide information and assistance to veterans and their dependants in regional areas about pensions and other benefits.
- Veterans' Affairs Network (VAN) – VAN offices have both face-to-face and telephone contact with veterans. VAN offices assist veterans and their families to obtain information about DVA's benefits. They also provide assistance in the location of local financial, health and community services.
- Within the Gippsland electorate, there is a VAN office in Bairnsdale, which is staffed by a DVA Community Adviser for four days per week.
- Veterans' Home Care (VHC) program – This program provides home support services to help eligible veterans and war widows/widowers with low level care needs remain living independently in their homes longer.
- Saluting Their Service honours the contribution of Australia's men and women in wars, conflicts and peace operations since Federation and supports commemorative activities and education and community awareness programs to acknowledge this service.
- Apart from those programs mentioned above, the following initiatives are also available to veterans living in the Gippsland electorate:
  - Veterans' Vocational Rehabilitation Scheme;
  - Veterans' Children Education Scheme;
  - Men's Health Peer Education Program;
  - Alcohol Management Project;
  - Long Tan Bursary;
  - Crisis Assistance Program;

- Veteran Anxiety and Depression;
- Cardiovascular Fitness Programs – Heart Health;
- Partners Psychiatric Assessment and Vietnam Veterans' Counselling Service Support;
- Child Psychiatric Assessment and extended Vietnam Veterans' Counselling Service Access;
- Veterans' and Partners Psycho Educational Programs; and
- Child Psycho Educational Programs.

#### GRANTS

- Building Excellence in Support and Training (BEST) program – The aim of this program is to provide support and resources to ex-service organisation practitioners for pension and welfare work to assist veterans and widow(er)s.
  - Veteran and Community Grants – These grants aim to maintain and improve the independence and quality of life of members of the veteran community. The grants provide funding for projects which promote healthier lifestyles and enhance health, support carers, reduce social isolation and assist veterans and war widow(er)s to remain in their own homes as long as possible. Projects may also generate benefits for the wider community.
  - Saluting Their Service grants are provided for projects and activities directly commemorative of Australia's involvement in wars, conflicts and peace operations. These include the restoration, preservation and upgrading of community war memorials or, where no memorial exists in the town or suburb, the construction of a new memorial; the restoration, preservation and interpretation of Australian wartime memorabilia for public display; commemoration of significant anniversaries of battles and other military operations; significant reunions of units and school initiatives, eg research projects involving local veterans. Community and ex-service organisations, local government authorities and other bodies such as museums and schools may apply for grants. The maximum generally available for a project or event is \$4,000.
- (2) The commencement date of the programs and grants mentioned above are as follows:

#### PROGRAMS

- Department of Veterans' Affairs Outreach Program – Scheduled outreach visits to the Gippsland electorate from the Bairnsdale VAN office commenced when the office opened in 1990. Prior to this, State Office staff had made regular visits to Gippsland as part of a scheduled 'country visit' program to all areas outside of metropolitan Melbourne.
- Veterans' Affairs Network (VAN) – The Bairnsdale VAN office opened in April 1990.
- Veterans' Home Care (VHC) program – January 2001.
- Saluting Their Service – 20 August 2002. It replaced the Their Service – Our Heritage commemorations program which commenced in March 1997.
- Other programs:
  - Veterans' Vocational Rehabilitation Scheme – May 1997;
  - Veterans' Children Education Scheme – December 2000;
  - Men's Health Peer Education Program – September 2000;
  - Alcohol Management Project – December 2000;
  - Long Tan Bursary – August 2000;
  - Crisis Assistance Program – June 2002;

- Veteran Anxiety and Depression – October 2000;
- Cardiovascular Fitness Programs – Heart Health – June 2000;
- Partners Psychiatric Assessment and Vietnam Veterans' Counselling Service Support – December 2000;
- Child Psychiatric Assessment and extended Vietnam Veterans' Counselling Service Access – December 2000;
- Veterans' and Partners Psycho Educational Programs – June 2000; and
- Child Psycho Educational Programs – December 2000.

GRANTS

- Building Excellence in Support and Training (BEST) program – 1999. It replaced the Claims Assistance Grants Scheme which commenced in 1996.
  - Veteran and Community Grants – The Joint Ventures Program was introduced in October 1985. The former Residential Care Development Scheme commenced on 1 January 1996. The Community Care Seeding Grants Program was announced as a 1995/96 Budget measure.
  - Saluting Their Service – 20 August 2002. It replaced the Their Service – Our Heritage commemorations program which commenced in March 1997.
- (3) (a), (b) and (c) The details of funding that have been provided to Gippsland residents are as follows:

**1999 – 2000**

Amount	Description
<b>BEST</b>	
\$16,109	To fund an administrative officer and provide computer equipment to support the Pension and Welfare Officers at the Gippsland Veterans' Welfare Centre.
<b>Veteran and Community Grants</b>	
\$25,000	To assist the Woorayl Lodge Inc, Leongatha, to convert 25 of its 40 beds to meet the needs of its residents with dementia.
<b>Their Service – Our Heritage</b>	
\$1,000	Framing a pictorial history of the Sale and district war fallen.
\$450	Installation of a flagpole and commemorative plaque at the memorial wall in Mallacoota West Cemetery.
\$2,000	Upgrade the surrounds of the sole remaining tree stump from the 13 trees planted in memory of those from Paynesville killed in World War I and provide plaques.
\$3,000	Restoration of the Sale Cenotaph.
\$2,170	A memorial wall in the town centre of Loch Sport.
\$600	Regilding two cenotaphs and one memorial in the communities of Ensay and Swifts Creek.
\$1,000	Refurbish and replace two worn plaques on the Tarwin Lower memorial cairn.
\$750	Construction of a cenotaph with plaque recording names of the fallen from Yarram.

**2000 – 2001**

Amount	Description
<b>Building Excellence in Support and Training</b>	
\$34,882	To fund an administrative officer and provide computer equipment to support the Pension and Welfare Officers at the Gippsland Veterans' Welfare Centre.
Their Service – Our Heritage	
\$2,000	Restoration of the Jarrahmond Avenue of Honour, Orbost and construction of an information board about its history.
\$4,000	Construction of a memorial in Dargo.
\$4,000	Construction of a World War II memorial dedicated to servicemen and women from the Loch district.
\$6,000	Restoration and display of wartime memorabilia at Mallacoota.
Veterans' Home Care*	
\$330,860	For the assessment, coordination and provision of services in the Gippsland VHC region from January to June 2001.

**2001 – 2002**

Amount	Description
<b>Building Excellence in Support and Training</b>	
\$33,982	To fund an administrative officer and provide computer equipment to support the Pension and Welfare Officers at the Gippsland Veterans' Welfare Centre.
Veteran and Community Grants	
\$2,453	To purchase computer equipment for the production of a Newsletter for the Orbost RSL Sub-branch members.
Their Service – Our Heritage and Saluting Their Service	
\$3,000	A special war heritage issue of the Gippsland Heritage Journal devoted to biographies of Gippsland servicemen and women.
\$1,780	Restoration of the Bairnsdale Anglo Boer War Memorial.
\$2,930	Relocation of the Nowa Nowa Memorial to a more accessible site.
\$1,000	Construction of a memorial at Metung.
\$2,210	Preservation and replacement of plaques honouring two World War I Port Welshpool veterans were killed at Gallipoli.
\$2,400	Construction of a memorial at Bemm River.
Veterans' Home Care*	
\$661,720	For assessment, coordination and provision of services in the Gippsland VHC region for 2001-2002 financial year.

\***Note:** The Veterans' Home Care (VHC) region for the Gippsland electorate also includes a significant portion of the McMillan electorate and smaller portions of the McEwen and Flinders electorates. The figures provided for the 2000-01 and 2001-02 financial years are for the total Gippsland VHC region as it is not possible to provide figures for funding specific to the Gippsland electorate.

- (4) The amount of funding appropriated for the programs and grants mentioned above for 2002-03 financial year is as follows:

**PROGRAMS**

- Department of Veterans' Affairs Outreach Program – Not applicable.
- Veterans' Affairs Network – Not applicable.

- Veterans' Home Care (VHC) program – \$58.8m (national allocation).
- Saluting Their Service – \$5.06m (national allocation).
- Other programs (all national allocations):
  - Veterans' Vocational Rehabilitation Scheme – \$1.069m;
  - Veterans' Children Education Scheme – \$0.662m;
  - Men's Health Peer Education Program – \$0.111m;
  - Alcohol Management Project – \$0.735m;
  - Long Tan Bursary – \$0.122m;
  - Crisis Assistance Program – \$0.443m;
  - Veteran Anxiety and Depression – \$0.140m;
  - Cardiovascular Fitness Programs – Heart Health – \$1.700m;
  - Partners Psychiatric Assessment and Vietnam Veterans' Counselling Service Support – \$0.269m;
  - Child Psychiatric Assessment and extended Vietnam Veterans' Counselling Service Access – \$0.153m;
  - Veterans' and Partners Psycho Educational Programs – \$0.668m; and
  - Child Psycho Educational Programs – \$0.325m.

#### GRANTS

- Building Excellence in Support and Training (BEST) program – \$1.614m (national allocation).
  - Veteran and Community Grants – \$2.59m (national allocation).
  - Saluting Their Service – No appropriation specifically for grants. The Minister has agreed a notional allocation of \$1.4 million from the program funds.
- (5) The amount of funding appropriated or approved to the electorate of Gippsland for 2002-03 financial year is as follows:

#### APPROPRIATED

- Department of Veterans' Affairs Outreach Program – Funding is not individually appropriated to this program, however, the approximate cost for outreach visits to the federal electorate of Gippsland is \$6,700 (approximate cost for 2001-2002 financial year).
- Veterans' Affairs Network – Funding is not individually appropriated to this program, however, the approximate cost for the Bairnsdale VAN office is \$76,000 (approximate cost for 2001-2002 financial year).
- Veterans' Home Care (VHC) program – There is no appropriation down to the VHC region level but the funding allocation to the Gippsland VHC region is \$1.150m.
- Saluting Their Service – Funding is not appropriated to individual electorates.
- Funding for Veterans' Vocational Rehabilitation Scheme, Veterans' Children Education Scheme, Men's Health Peer Education Program, Alcohol Management Project, Long Tan Bursary, Crisis Assistance Program, Veteran Anxiety and Depression, Cardiovascular Fitness Programs – Heart Health, Partners Psychiatric Assessment and Vietnam Veterans' Counselling Service Support, Child Psychiatric Assessment and extended Vietnam Veterans' Counselling Service Access, Veterans' and Partners Psycho Educational Program, and Child Psycho Educational Programs are allocated on a demand basis. The veterans of Gippsland will be supplied

with as many programs as necessary to meet demand. In addition, individually targeted initiatives such as the Crisis Assistance Program and the Long Tan Bursary are available to those veterans and children who satisfy the eligibility requirements.

APPROVED

Amount	Description
BEST	
\$35,315	To fund an administrative officer and provide computer equipment to support the Pension and Welfare Officers at the Gippsland Veterans' Welfare Centre.
Saluting Their Service	
\$4,000	Construction of an Avenue of Honour leading to the Bairnsdale Aerodrome, an RAAF facility during World War II.

**Paterson Electorate: Parliamentary Printing Entitlements**

**(Question No. 1153)**

**Senator Tierney** asked the Special Minister of State, upon notice, on 6 February 2003:

How much was spent in parliamentary printing entitlements in the electorate of Paterson, for the following parliamentary terms: (a) 1993-96; (b) 1996-98; (c) 1998-2001; and (d) 2001 to present.

**Senator Abetz**—The answer to the honourable senator's question is as follows:

Accounts paid by the Ministerial and Parliamentary Services Group in respect of the following periods in the electorate of Paterson were:

1993-1996	\$46,830.00*
1996-1998	\$210,635.40
1998-2001	\$658,797.58
2001-Present	\$113,895.04

Notes:

(i) The above amounts do not include printing provided by the Department of the House of Representatives.

(ii) Inter-election periods have been used rather than the period between the opening and dissolution of the House of Representatives.

\* For the inter-election period 13 March 1993 to 31 December 1994 complete data of individual usage is no longer held. The figures above refer to usage in the period 1 January 1994 to 1 March 1996.

**Defence: Reserve**

**(Question No. 1188)**

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 24 February 2003:

- (1) (a) How many Reservists have been raised to date under the new categories of service created under the Defence Personnel Regulations 2002; and (b) can a list be provided for each category in the Army, Air Force and Navy.
- (2) Have all Reservists been transferred to one of the new categories; if not, when is transfer of all Reservists expected to occur.
- (3) Have the training commitment, conditions, call-out obligations or any other aspects of Reserve service changed as a result of the introduction of new categories of service; if not: (a) why were the new categories introduced; and (b) what changes do they effect.

- (4) Can a copy be provided of the policy that sets out the training commitment, conditions and call-out obligations for each new category, or alternatively, can a description be provided of each of these aspects for each category.
- (5) Have the Service Chiefs decided to raise Reservists in each category.
- (6) If any of them have decided not to raise Reservists from a new category, have they indicated why not.
- (7) (a) What capability are Standby Reservists assessed as providing to the Australian Defence Force (ADF); and (b) can details be provided of the capability the Government calculates the Standby Reservists specifically to provide, for example, what type of operational capability or counter-terrorist capability etc.
- (8) (a) How is an individual Standby Reservist's capability calculated; and (b) is it ever re-assessed; if so, how often.
- (9) Is a Standby Reservist paid anything; if so, how much.
- (10) Can a Standby Reservist be called out.
- (11) Can an Australian who has never been a member of the ADF apply to join the Standby Reserves; if so, what conditions, if any, must they first satisfy.
- (12) With respect to the transition from old to new categories, do existing General Reservists have to undergo any tests before it is determined whether they should be in the Active or Standby Reserves.
- (13) Have any persons who, before the commencement of the new Regulations, were classified as inactive Army Reservists transferred to the new Active Reserve category; if so: (a) did they need to undergo any test or suitability procedures; and (b) how many have transferred from inactive to active.

**Senator Hill**—The answers to the honourable senator's questions are as follows:

- (1) (a) and (b) Reserve strengths by category, in the new categories of Reserve service, as at 4 March 2003, are:

Navy:

Active Reserve	920
Standby Reserve	6,330

Army:

Active Reserve	16,782
Standby Reserve	7,858

Air Force:

Active Reserve	2,282
Standby Reserve	4,194
Specialist Reserve	341

A further 858 Reserve members from these categories (but not included in the preceding data) are rendering continuous full-time service:

Navy:	364
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Army:	395
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Air Force:	99
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- (2) Yes. However, the 697 members of the Army Individual Emergency Force, who were transferred to the Active Reserve as detailed in the Defence (Personnel) Regulations 2002, have been given until

31 March 2003 to make an election to either remain in the Active Reserve or transfer to the Standby Reserve.

- (3) No. Reservists were transferred to the new categories of service with their extant training commitments and conditions of service. All Reservists are subject to the call out obligations under the Defence Act 1903.
  - (a) The changes have standardised Reserve categories across the three Services. All Services now have a Standby Reserve. The changes also provide for introduction of the new high readiness categories of Reserve service. The new categories will provide the Chiefs of Service with greater flexibility regarding Reserve availability and employment.
  - (b) When the new high readiness categories are raised, Reservists within those categories are planned to have different training commitments and conditions of service to other Reservists. These are under development.
- (4) The Standby Reserve has no annual training commitment. Each Active Reserve has a minimum annual training commitment determined by the Service Chief (Navy – 20 days; Army – 14 days, except for specialists – 7 days; Air Force – 32 days). The Air Force Specialist Reserve has a minimum annual training commitment of 7 days. All Reservists are liable for call out under section 50D of the Defence Act 1903, which allows for the Governor-General to call out all or part of the Reserves for circumstances ranging from war or warlike operations, peacekeeping or peace enforcement activities, assistance to other Government authorities and agencies, to civil aid, humanitarian assistance, civil emergency or disaster relief. After call out, under section 50E of the Defence Act 1903 a member of the Reserves must render the period of continuous full time service that is directed; this period of service may be indefinite or limited in duration.
- (5) The Chiefs of Service will be required under the Defence (Personnel) Regulations 2002 to establish a Standby Reserve and allow them to establish other Reserve categories as required to meet capability directives and requirements. The Navy is developing a policy for the development and utilisation of High Readiness and Specialist Reserves, with an expected completion date of December 2003. The Chief of Army has indicated an intention to establish a High Readiness Reserve that will better enable some Reservists to commit to contingencies at very short notice. The Air Force has not yet made a decision to raise High Readiness categories. An Air Force study to determine Wartime Establishment will identify Reserve capability requirements and the need for High Readiness Reserves.
- (6) Each Service is evaluating the need for the establishment of each category and final decisions on the form of each Reserve component are yet to be made.
- (7)
  - (a) The Standby Reserve provides a pool of trained personnel with experience and skills able to fill capability gaps in the Permanent Force, Active Reserve or Specialist Reserve and to provide rotational and surge capacities. It can also be used to meet particular skill or capability needs on operations or in support activities.
  - (b) There are no Defence capabilities that are only provided by Standby Reservists. Depending on the skill sets and experience of the members of the Standby Reserve, any Defence capability may be bolstered by the use of Standby Reservists.
- (8)
  - (a) An individual Standby Reservist's capabilities are measured in terms of the skills he or she holds that are available for employment by the ADF. Generally this assessment reflects the member's skill levels at the time of entry to the Standby Reserve, whether the member is able to maintain those skills through Reserve service or civil employment, and the length of time since the member transferred to the Standby Reserve.

- (b) Generally, re-assessment is not required unless consideration is being given to the employment of the Standby Reservist, such as on voluntary Defence service. The same considerations would apply in the event of a call-out of the Reserves.
- (9) A Standby Reservist has no annual training commitment and is not paid unless he or she undertakes a period of Defence service. For part-time service undertaken utilising Reserve training salaries, the Standby Reservist is paid standard Reserve rates of pay. For any period of full-time service, the Standby Reservist is paid Permanent Force rates of pay.
- (10) Yes.
- (11) Defence (Personnel) Regulations 2002 allow appointment or enlistment to the Standby Reserve by an Australian who has never been a member of the ADF. However, as a matter of policy, the Chiefs of Service require that a person initially be appointed or enlisted in the respective Active Reserve to undergo recruit training. After successful completion of initial Reserve training requirements, the person may then transfer to the Standby Reserve.
- (12) No. As detailed in Defence (Personnel) Regulations 2002, the new category of service for each member was determined by that member's existing category of service at that time the Regulations commenced.
- (13) (a) and (b) No. Since the commencement of the Regulations, members have been able to apply for transfer between categories. Such applications are processed in accordance with normal administrative procedures.

### **Indonesia: Terrorist Attacks**

#### **(Question No. 1242)**

**Senator Stott Despoja** asked the Minister representing the Attorney-General, upon notice, on 4 March 2003:

Given that: (a) the victims of the bombings that occurred in Bali on 12 October 2002 are victims of crime under Division 104 of the Criminal Code Act 1995; and (b) Article 12 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that, where compensation is not available from the offender, the state should endeavour to provide financial compensation to victims of crime and their families: Does the Government intend to pay compensation to the victims of the Bali bombings.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator's question:

The Government is very sympathetic to the suffering of people injured in the Bali bombing and the families of those who died. The Government has provided, and continues to provide, a substantial assistance package in response to the needs of victims and their families. This package has included assistance with airfares and accommodation for people travelling to Bali as a result of the attack. It has provided assistance for the funerals of those who died.

The Government has been meeting, and continues to meet, medical and other costs associated with injuries that are not otherwise covered by Medicare and private health insurance.

In addition, the Government donated \$1 million to the Red Cross Bali Appeal.

The Commonwealth does not have a crime compensation scheme. This is because the victim of a Commonwealth offence is usually the Commonwealth itself.

The Government is giving careful consideration to the needs of the victims of the Bali bombing and their families.

**Veterans' Affairs: London War Memorial**  
**(Question No. 1266)**

**Senator Mark Bishop** asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 14 March 2003:

- (1) Has a mediator yet been chosen to settle the dispute over the cancelled contracts for the design of the London war memorial; if so: (a) who has been selected; (b) what is the estimated cost of the mediation required; (c) have the parties agreed; and (d) when is it expected that the matter will be settled.
- (2) What sum is being sought by way of settlement by: (a) Mr Woodward; and (b) Artarch.
- (3) What payments additional to the \$227 500 already paid to Artarch, have been made beyond those outlined in the answer to question on notice no. 675 (Senate *Hansard*, 2 December 2002, p.6949).
- (4) (a) What is the total sum which has now been paid to the former designers; and (b) what is the estimate of the total cost once settlement is reached.
- (5) Have additional funds been sought to replace those lost on the cancelled contracts; if not, what changes have been made to the specifications to bring the project in on budget.
- (6) What is the total sum spent on the project so far.
- (7) Who has been awarded the new contract, and at what price.
- (8) Was the new designer chosen as the result of competitive tender; if so, how many proposals were considered.
- (9) How many other contracts have been let, and at what individual cost, for design and other services.
- (10) What is the current process for selecting a construction contractor.
- (11) (a) What is the estimated cost of construction within the existing budget; and (b) how does that differ from the original estimate that formed part of the budget proposal.
- (12) Who will be responsible for: (a) selecting the construction contractor; and (b) overseeing the work.
- (13) Can it be confirmed that the granite chosen is from Western Australia; if so, what is the cost of: (a) supply; and (b) shipment to the United Kingdom.
- (14) How many other suppliers of stone were considered, and why was the selected supplier chosen.
- (15) What charges and costs incurred by the Westminster City Council will be met from the budget.
- (16) What costs have been factored into the costs for travel by the design consultants and Office of Australian War Graves staff.
- (17) What is the contribution from the UK Government.
- (18) (a) What provision has been made for ongoing maintenance costs; and (b) what is the annual estimate and source of funds.
- (19) Will the engraving of town names be undertaken in Australia or in the UK; if Australia, what will be the process for selecting the engraver.
- (20) What is the estimated cost of engraving.
- (21) Has the New Zealand Government sought to join the project; if so, what has been the response.

**Senator Hill**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

- (1) The Commonwealth, acting through the Office of Australian War Graves, is responding to two claims in relation to the London War Memorial. In relation to the claim made by Mr Woodward, the parties have been engaged in negotiations and neither party has proposed mediation. In relation

- to the claim made by the members of Artarch, Mr Sinclair, Mr Watson and Mr Kossatz, the parties have agreed to participate in mediation. (a) Mr Peter Riordan has been selected as the mediator. (b) The cost of mediation is estimated to be \$5,025.00 not including the costs incurred by each party. (c) The Commonwealth and the members of Artarch have agreed to attend a preliminary mediation conference and for Mr Riordan to act as mediator. (d) The Commonwealth has at all times been willing to reach a reasonable settlement of both claims and has taken steps to do so, however, the Commonwealth is not in a position to say when they will be settled.
- (2) (a) Mr Woodward's claim is for \$391,728.53. (b) The members of Artarch have not put a figure on their total claim, however, to the extent that they have put a figure on their claim it is \$393,516.21.
  - (3) None.
  - (4) (a) Artarch has been paid \$227,500 and Mr Woodward has been paid \$32,500. (b) Not known till the processes of mediation and negotiation are concluded.
  - (5) No. The specifications for the new design similarly sought a \$6m project solution.
  - (6) \$1.4m.
  - (7) The design contract was awarded to Tonkin Zulaikha Greer Pty Ltd (architects), Sydney who tendered a sum of \$1.05m.
  - (8) Yes. All 12 architectural firms approached for expressions of interest responded positively. Four were chosen for an 8-week design competition and one was selected.
  - (9) To date, contracts have been let for the design team; for the stone supply (see part (13) below) and for the Construction Manager. The Construction Manager will be paid a fixed fee of 247,717 Pounds Sterling to cover the cost of providing preliminaries (including supervision and administration services) to enable completion of the Works. The Construction Manager will also be paid a fee for Head Office overheads and profit, representing 5% of the tendered value of completed construction tender packages managed by him.
  - (10) The Construction Manager is Wallis Ltd of Kent UK. They were selected for the original design on the basis of their expertise and record and have been retained. They are responsible for letting at least three tenders for each construction sub-contractor and for recommending the successful tenderer. All tenders will be vetted by the Project Manager and approved by the Director, Office of Australian War Graves.
  - (11) (a) The current budget provision is \$5.3m but the final cost is subject to tender outcomes. (b) The original estimate was \$5.1m.
  - (12) Director, Office of Australian War Graves; (b) Wallis Ltd.
  - (13) Yes. (a) \$360,000 - \$400,000 depending on final order. (b) The cost of shipment is unknown at this stage. It will depend whether the stone cutting and fixing contract is let in Australia or the United Kingdom. If the contract is let in the UK, for example, shipping costs will be higher because of 30 percent stone wastage. However, packaging costs of unfinished stone would be lower.
  - (14) Two stone suppliers (Melocco and Granites of Australia) with access to the preselected granite were considered. Granites of Australia were chosen based on competitive tender.
  - (15) None.
  - (16) \$132,000. Consultant trips will be dependent on project need for actual attendance in London.
  - (17) None, except provision of the site.
  - (18) (a) \$100,000. (b) \$100,000 included annually in the Department of Veterans' Affairs funding base.
  - (19) The location for the engraving to be undertaken will depend on the winning tender. Tenders will be called in both Australia and the UK.
  - (20) Unknown at this stage. The design is in its early stages and tenders have not been let.

- (21) No. The specification calls for an Australian War Memorial. There would be no justification in constructing an ANZAC Memorial in London.

**Attorney-General's: Marriage Celebrants  
(Question No. 1268)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 18 March 2003:

- (1) What mechanisms are in place to respond to complaints raised by the public in relation to services provided by marriage celebrants.
- (2) How many complaints have been lodged against marriage celebrants in each of the following financial years: (a) 2000-01; and (b) 2001-02.
- (3) What actions resulted from these complaints.

**Senator Ellison**—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) The mechanism presently in place for dealing with complaints raised by the public in relation to services provided by marriage celebrants is an administrative process. It is conducted by the Marriage Celebrants Section of the Attorney-General's Department. The process only applies to those marriage celebrants authorised by the Commonwealth. Complaints involving marriage celebrants from recognised denominations are the responsibility of State and Territory Registrars of Births, Deaths and Marriages.

In order for a matter to be regarded as a complaint in relation to a marriage celebrant the Department must receive correspondence in writing. The matter complained of must also relate to a marriage celebrant's role in solemnizing marriages.

The complainant must give written permission for a copy of the complaint to be forwarded to the marriage celebrant. The complaint is then forwarded to the celebrant and he or she is asked to respond in writing, usually within 21 days. The complaint and the celebrant's response are then considered by the Department in the light of the marriage celebrant's roles and responsibilities under the Marriage Act 1961 (the Act) and the Marriage Regulations 1963. A written response from the Department is then provided to both the celebrant and the complainant. In extreme circumstances a recommendation can be made to the Attorney-General's delegate to revoke the authorisation of the marriage celebrant.

As a result of amendments to the Marriage Act 1961 contained in the Marriage Amendment Act 2002, section 37K of the Act now provides that a new complaints mechanism to deal with complaints against marriage celebrants will be established. The new mechanism is currently being developed in consultation with marriage celebrant associations, and will be more open and accountable.

- (2) (a) Departmental records indicate that 19 complaints were lodged in 2000-01 and (b) 17 complaints were lodged in 2001-02.
- (3) In 2000-01 15 complaints proceeded because the complaint was in writing, related to a marriage celebrant's performance of his or her duties as a marriage celebrant, and permission was received to forward the complaint to the marriage celebrant for response. In the case of five of those complaints the Department concluded that the complaint was not justified. One complaint was referred to a State Registry of Births, Deaths and Marriages for appropriate action. In the nine instances in which the Department thought that action was warranted the marriage celebrant was advised in writing of ways that he or she should improve his or her performance as a marriage celebrant in the future.

In 2001-02 13 complaints proceeded because the complaint was in writing, related to a marriage celebrant's performance of his or her duties as a marriage celebrant, and permission was received to forward the complaint to the marriage celebrant for response. Two of the complaints that proceeded were referred to other authorities for action. In the remaining 11 instances the Department thought that action was warranted and the marriage celebrant was advised in writing of ways that he or she should improve his or her performance as a marriage celebrant in the future.

### **Customs: Passenger Movement Charge**

#### **(Question No. 1272)**

**Senator O'Brien** asked the Minister for Justice and Customs, upon notice, on 18 March 2003:

With respect to the additional \$8 per passenger increase in the Passenger Movement Charge that came into effect on 1 July 2001 to fund increased passenger processing costs as part of Australia's response to the threat of the introduction of foot and mouth disease:

- (1) What was the total additional revenue raised by this extra \$8 in each of the following financial years: (a) 2001-02; and (b) 2002-03 to date.
- (2) What is the total additional revenue estimated to be raised by this extra \$8 in each of the following financial years: (a) 2002-03; (b) 2003-04; (c) 2004-05; and (d) 2005-06.
- (3) What was the total amount of Passenger Movement Charge collected at each airport and port for each of the following financial years: (a) 2001-02; and (b) 2002-03 to date.
- (4) What is the total amount of Passenger Movement Charge estimated to be collected at each airport and port for each of the following financial years: (a) 2002-03; (b) 2003-04; (c) 2004-05; and (d) 2005-06.
- (5) How much has been spent by the Government on new quarantine screening equipment at each airport and port since 1 July 2001.
- (6) (a) How much additional money has the Government spent on other quarantine processing costs at each airport and port since 1 July 2001; and (b) what services, measures or expenses comprise that additional expenditure at each airport and port.
- (7) How much additional money is estimated to be spent on new quarantine screening equipment and other processing costs respectively at each airport and port for each of the following financial years: (a) 2002-03; (b) 2003-04; (c) 2004-05; and (d) 2005-06.
- (8) (a) Which programs are administering costs associated with increased passenger processing costs as part of Australia's response to the threat of the introduction of foot and mouth disease; (b) how much has been spent, and is it estimated will be spent, from each program in each year it has or is budgeted to operate; and (c) which department is responsible for the administration of each program.
- (9) Are there any outstanding claims by any organisation or individual for expenditure on equipment or measures as part of Australia's response to the threat of foot and mouth disease; if so: (a) who are the claimants; (b) what is each claim for; and (c) will each be paid and when.
- (10) (a) How many passengers departing Australia were exempted from paying the Passenger Movement Charge; and (b) what is the legal basis and number of passengers for each category of exempted passengers.
- (11) Will the \$8 foot and mouth response component of the Passenger Movement Charge be removed, increased or reduced commensurate with the movement in costs associated with Australia's response to the threat of the introduction of foot and mouth disease; if so, when; if not, why not.

**Senator Ellison**—The answer to the honourable senator's question is as follows:

- (1) An estimate of the additional revenue raised is: (a) for 2001-2002 \$M54.5 (b) for 2002-2003 \$M42.2 up to 28 February 2003.
- (2) Estimates of additional revenue, based on Tourism Forecasting Council outward passenger projections, are: (a) for 2002-2003 \$M61.7 (b) for 2003-2004 \$M63.9 (c) for 2004-2005 \$M65.8 (d) for 2005-2006 \$M67.8.
- (3) The vast majority of PMC is collected by airlines as part of the ticket price at the time of booking travel. Customs does not reconcile collections on a port-by-port basis and is therefore unable to provide this information.
- (4) Revenue projections prepared by Customs are based on total collections. Estimates, using TFC passenger predictions, for the periods requested are: (a) for 2002-2003 \$M293.1 (b) for 2003-2004 \$M303.7 (c) for 2004-2005 \$M312.5 (d) for 2005-2006 \$M322.2.
- (5) A total amount of \$M2.42 has been spent by Customs on screening and related equipment in response to the increased quarantine initiatives since July 2001.
- (6) The additional processing costs for passenger clearance associated with increased quarantine intervention measures for the financial year July 2001 to June 2002 is estimated to be \$M40.8.
- (7) No screening equipment associated with the increased quarantine measures has been purchased during the current financial year and there are no plans to do so in future years. The actual and projected additional costs for the financial year 2002-2003 for passenger processing are estimated to be:

NSW (\$1000s)	NT (\$1000s)	QLD (\$1000s)	SA (\$1000s)	VIC (\$1000s)	WA (\$1000s)	TOTAL (\$1000s)
18,072	1,198	8,267	943	9,405	3,162	41,049

These costs should remain relatively static for the following three years with minor adjustments to allow for slight increases in salary costs.

- (8) See 5, 6 and 7 above.
- (9) There are no outstanding claims against the Australian Customs Service associated with increased quarantine intervention.
- (10) Section 5 of the Passenger Movement Charge Collection Act 1978 (the Act) sets out the categories under which passengers can be granted exemption from payment of the charge. In the financial year 2001-2002 Customs systems identified 550,968 children, 4,085 diplomats and 41,975 sea passengers on round-trip cruises (identified as international passengers but for whom PMC is not payable). No PMC was received for approximately 290,000 other passengers (3% of total departing passengers) representing exemptions under other minor categories of exemption provided for under the Act. An estimation of the total number of exempt passengers is 887,000.
- (11) Increased quarantine intervention measures introduced during the Foot and Mouth Disease crisis involves the prevention of any and all pests and diseases entering Australia. The threat is not expected to reduce in the foreseeable future.

### Manildra Group of Companies

#### (Question No. 1284)

**Senator O'Brien** asked Minister representing the Minister for the Environment and Heritage, upon notice, on 19 March 2003:

What payments, subsidies, grants, gratuities or awards have been made to the Manildra group of companies, including but not necessarily limited to Manildra Energy Australia Pty Ltd, since March 1996.

**Senator Hill**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

Five payments were made to Manildra Energy Australia Pty Ltd from October 1999 to January 2001 totalling \$176,415 in relation to a consultancy for the completion of a detailed design, scope of work and costings, as the first stage in the construction of an integrated research and development pilot plant to demonstrate the production of fuel ethanol from a range of lignocellulosic feed-stocks.

Three payments were made to Manildra Energy Australia Pty Ltd from February 2000 to June 2001 totalling \$1,000,000 in relation to a grant to assist the development of a commercial scale advanced technology fuel ethanol plant using wheat starch as a feed-stock.

**Trade: United States**

**(Question No. 1318)**

**Senator O'Brien** asked the Minister representing the Minister for Trade, upon notice, on 24 March 2003:

- (1) Can the Minister confirm that no industry or industry sector has been excluded from negotiations with the United States of America (US) on the development of a free trade agreement.
- (2) Is the Minister aware that Mr Robert Zoellick, the US Special Trade Representative, wrote to the US Congress on 14 November 2002 outlining the Bush Administrations specific objectives for negotiations with Australia, including elimination of Australian Government export monopoly arrangements for wheat, barley, sugar and rice.
- (3) Has the Minister informed AWB Limited or AWB (International) Limited that the export monopoly right held by AWB (International) Limited is not subject to free trade negotiations with the US; if so: (a) in what form; and (b) on what date was that advice provided.
- (4) Has the Minister informed Mr Zoellick, or other representatives of the US, that the export monopoly right held by AWB (International) Limited is not subject to current free trade agreement negotiations; if so: (a) in what form; and (b) on what date was that advice provided.

**Senator Hill**—The following answer has been provided by the Minister for Trade to the honourable senator's question:

- (1) Yes.
- (2) Yes.
- (3) No.
- (4) No. The Government has made clear that it will defend Australia's position on single desk arrangements in the FTA negotiations as we do in the WTO. Australia in turn has a number of requests that may cause the US some difficulty, but would expect that such issues would not be ruled out of bounds for discussion. That would not be in the interests of Australian exporters, including farmers in particular.

**Regional Services: Hydrogen Economy Conference**

**(Question No. 1337)**

**Senator Brown** asked the Minister for Transport and Regional Services, upon notice, on 24 March 2003:

With reference to the conference on the hydrogen economy to be held in Broome, in May 2003:

- (1) Why is it being held in such an expensive and inaccessible location.
- (2) Why is tidal power singled out for special focus.
- (3) Who is paying for the conference.
- (4) What provision has been made to enable community participants to attend the conference, through scholarship, heavily discounted registration fees and assistance with travel costs.

- (5) When will the proceedings be published and made available.
- (6) (a) Who are the members of the High Level Advisory Group; (b) who are they advising; and (c) what are they advising upon.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) Broome has been chosen as the location for the conference as a means of showcasing the potential to produce hydrogen from the significant tidal energy resources of the Kimberley region and from Western Australia's natural gas reserves. The location also enables potential regional development opportunities associated with energy from hydrogen to be highlighted.
- (2) The tidal energy resources of the Kimberley region have the potential to produce renewable energy on a large scale. Development of this resource could provide energy to produce hydrogen and realise a clean, renewable and flexible fuel. The Conference and associated National Hydrogen Study will traverse a full range of production options for hydrogen.
- (3) The cost of the conference is being met by delegates' registration fees and funding provided through the Department of Industry, Tourism and Resources.
- (4) Conference registration fees, inclusive of GST, have been set at \$880 for registrations received prior to 31 March 2003; \$990 for registrations received prior to 2 May 2003; and \$1100 for registrations received after 2 May. The cost of conference registration is being part-funded by the Department of Industry, Tourism and Resources in order to encourage participation by interested parties. Single-day registration is available to encourage, in particular, participation from Broome and the Kimberley region.
- (5) Proceedings for the conference will be produced in June-July 2003 and will be accessible through the website of the Department of Industry, Tourism and Resources.
- (6) (a) The High Level Advisory Group comprises Mr Greg Bourne, Regional President, BP; Ms Lindley Edwards, CEO of VentureBank; Dr Joel Swisher, Principal Team Leader, Energy and Resource Practice, Rocky Mountain Institute, Colorado, USA; and Mr Simon Whitehouse, Director, Alternative Transport Energy, Department of Planning and Infrastructure, Western Australia.
  - (b) The High Level Advisory Group advises the consulting team, ACIL Tasman-Parsons Brinckerhoff, that is undertaking the national hydrogen study on behalf of the Government. An interim report from the study will be presented to Broome conference.
  - (c) The High Level Advisory Group provides expert advice on strategic international and domestic issues relevant to the national hydrogen study.

**Health: Hepatitis C**

**(Question No. 1352)**

**Senator Hutchins** asked the Minister for Health and Ageing, upon notice, on 26 March 2003:

- (1) How much money has been spent over the past decade on programs that trace recipients of blood or blood products contaminated by hepatitis C.
- (2) How many recipients of hepatitis C contaminated blood have been directly notified by trace-back programs so far.
- (3) Is the Minister aware that: (a) significant numbers of mothers were transfused with contaminated blood during childbirth in the past two decades and that, tragically, some of these women have infected their children; (b) money has been offered by the Australian Red Cross Blood Service in exchange for them signing confidentiality agreements; and (c) these confidentiality agreements

preclude either them or their infected child from openly discussing the circumstances surrounding their infections.

- (4) Has the Commonwealth provided funding for compensation payments which require that infected mothers sign secrecy agreements.
- (5) If the Commonwealth has provided funding for such payments: (a) how much funding has been provided; (b) how many individuals have received payments from the Commonwealth on the condition that they sign a confidentiality agreement; (c) in what years did these payments occur; and (d) how many payments were made in each year.
- (6) Has the department, or any other Commonwealth Government agency, conducted any studies into the number of mothers who were infected with hepatitis C through blood administered during childbirth.
- (7) If such studies have been conducted: (a) when did each study occur; (b) which agency conducted each study; and (c) in each study, how many mothers were found to have contracted hepatitis C through blood administered during childbirth.
- (8) (a) Is the Minister aware that: (i) American blood banks used a form of blood donor screening for hepatitis C in the 1980s known as 'surrogate testing' and that the American Food and Drug Administration recommended that this kind of testing reduced hepatitis C in blood by as much as 50 per cent, and (ii) instead of following the American lead on screening methods, the Australian Red Cross Blood Service chose instead to study the efficacy of surrogate testing in 1986 in a study which took 4 years; and (b) will the Minister make the findings of this study publicly available.
- (9) Will the department call for an independent investigation into claims that thousands of hepatitis C infections through blood transfusions could have been prevented had the Australian Red Cross Blood Service used surrogate testing for hepatitis C in the 1980s.
- (10) Has the Australian Red Cross Blood Service or the Commonwealth of Australia made compensation payments to people infected between the years 1986 and 1990; if so, is this because the Australian Red Cross Blood Service failed to use available screening methods for hepatitis C at this time.
- (11) Has Professor Barraclough completed his independent review into the possible contamination of blood products.
- (12) Has Professor Barraclough presented his findings and report to the Minister.
- (13) When did Professor Barraclough present his findings to the Minister.
- (14) When does the Minister intend to make the report public.

**Senator Patterson**—The answer to the honourable senator's question is as follows:

- (1) In October 1994, the Australian Health Ministers' Advisory Council agreed to continue these tracing programs. My Department has been advised by the Council that they are unable to provide any information on expenditure on tracing programs as they do not hold these records.
- (2) My Department does not hold this data. My Department has written to the Australian Red Cross Blood Service to seek the data.
- (3) (a) I am aware of a small number of women who received blood that contained hepatitis C before, during, and after childbirth;  
(b) I am aware that settlements are offered to some claimants in relation to hepatitis C from blood in settlement schemes in different States and Territories that require the signing of confidentiality agreements;  
(c) I am also aware of these arrangements.

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- (4) The Commonwealth indirectly makes a joint financial contribution to these settlements but is not a direct party to the settlements. The claimants are asked to sign a confidentiality agreement as part of the process of settlement.
- (5) (a) The Commonwealth has provided \$5.47m (including legal and administration costs) in funding as its contribution to settlements;
- (b) This information cannot be provided because if the number of individuals who received a payment is provided, then the average amounts for individual settlements could be derived. This information is confidential;
- (c) In the years 1997-98; 1998-99; 1999-00; 2000-01; 2001-02 and 2002-03;
- (d) This information cannot be provided because if the number of payments is provided, then the average amounts for individual settlements could be derived. This information is confidential.
- (6) My Department has checked a number of relevant sources and has not been able to identify any such studies undertaken by the Department or another Commonwealth agency.
- (7) Not applicable. Refer to the answer to (6) above.
- (8) (a) (i) Yes, I am aware of the test.
- (ii) I am aware research was undertaken on this issue in Australia.
- (b) Whether any research undertaken by the Australian Red Cross Blood Service is released is a matter for the Australian Red Cross Blood Service to consider.
- (9) There are no plans to do so.
- (10) The Commonwealth has made a financial contribution to settlements as part of its overall funding to the blood system. These payments have been made to claimants in the settlement schemes for the years 1986 to early 1990 when the first mass screening test for HCV antibodies was introduced in Australia.
- (11) Yes.
- (12) Yes.
- (13) 6 May 2003.
- (14) I am planning to table the Report in Parliament on 14 May 2003.

**Education: University Operating Surpluses**  
**(Question No. 1359)**

**Senator McLucas** asked the Minister representing the Minister for Education, Science and Training, upon notice, on 27 March 2003:

With reference to the answer to question no. E596-03 taken on notice by the department during estimates hearings of the Employment, Workplace Relations and Education Legislation Committee, can the following be provided: (a) a table of university operating surpluses in 2001 prices by institution for each of the years from 1996 to 2001 inclusive; and (b) an average figure for the 6 years.

**Senator Alston**—The Acting Minister for Education, Science and Training has provided the following answer to the honourable senator's question:

(a) and (b) The answer to the honourable senator's questions is at Attachment A.

It may be noted, however, that the operating result is but one of a number of measures and indicators used to assess the financial health and performance of institutions.

**Attachment A**  
**Operating Result in 2001 Prices**  
**For all Australian Universities**  
**For the years 1996 - 2001**

(a) Operating Result (\$ 000) in 2001 Prices						
	1996	1997	1998	1999	2000	2001
Charles Sturt University	10,995	10,051	3,628	855	3,136	3,961
Macquarie University	4,176	2,398	-1,123	17,151	24,547	14,036
Southern Cross University	1,448	12,414	3,673	-1,730	4,048	69
University of New England	8,764	2,514	-1,140	-4,499	-5,067	2,356
University of New South Wales	39,491	41,496	29,549	4,065	42,818	28,621
University of Newcastle	12,412	14,618	17,641	9,189	-8,505	-5,654
University of Sydney	49,540	47,011	22,298	23,028	27,347	88,791
University of Technology, Sydney	3,303	15,163	16,636	20,456	26,911	11,103
University of Western Sydney	19,371	19,262	9,097	4,742	15,460	3,470
University of Wollongong	3,038	671	-752	10,128	4,318	3,707
Deakin University	18,807	25,026	22,643	28,161	9,478	15,347
La Trobe University	7,294	19,796	15,621	2,440	-499	-7,813
Monash University	26,084	36,365	24,752	24,126	26,063	21,282
RMIT	11,088	15,296	20,323	32,512	13,391	4,536
Swinburne University of Technology	6,392	6,476	2,439	-798	2,141	14,120
University of Ballarat	4,282	8,119	3,961	4,551	2,674	9,909
University of Melbourne	39,026	40,051	19,157	14,784	49,475	68,208
Victoria University of Technology	7,335	5,603	2,080	2,187	-871	9,171
Central Queensland University	9,567	5,414	2,277	15,148	12,229	17,128
Griffith University	28,271	32,863	18,343	17,006	440	11,511
James Cook University	6,273	1,236	7,745	15,377	18,066	18,453
Queensland University of Technol- ogy	9,663	20,388	23,487	8,692	17,623	11,126
University of Queensland	30,231	32,325	32,771	3,265	12,896	36,754
University of Southern Queensland	9,754	7,287	3,163	-1,864	-942	304
University of the Sunshine Coast	7,675	8,720	3,535	4,959	1,134	6,114
Curtin University of Technology	19,054	16,481	6,247	-8,470	-16,416	907
Edith Cowan University	9,699	3,656	5,967	1,830	-5,304	14,882
Murdoch University	15,820	16,184	11,854	3,020	-6,529	688
University of Notre Dame	-	-	-	-	243	242
University of Western Australia	43,971	40,331	32,863	18,060	25,775	20,263
Flinders University	11,380	10,937	-1,460	2,619	6,408	7,523
University of Adelaide	18,725	16,640	5,547	3,532	1,759	-6,365
University of South Australia	636	9,828	10,237	874	1,628	5,231
Australian Maritime College	-1,195	-854	-432	-1,053	-1,997	-2,012

(a) Operating Result (\$ 000) in 2001 Prices						
	1996	1997	1998	1999	2000	2001
University of Tasmania	11,932	22,359	14,422	5,413	-1,176	-4,842
Batchelor Institute	2,186	1,429	-414	4,374	1,904	1,317
Northern Territory University	2,391	4,718	6,247	-477	5,236	10,724
Australian National University	-1,108	18,411	8,641	7,333	9,165	25,830
University of Canberra	-1,721	1,784	1,481	2,425	3,306	1,959
Australian Catholic University	3,242	3,212	3,845	5,288	5,262	1,018
Sector	509,290	595,682	406,849	298,700	327,576	463,975
(b) Average surplus per university	13,059	15,274	10,432	7,659	8,189	11,599

NOTE: \* Only higher education sector information has been included

\* The University of Notre Dame has not been included in the calculation of average surplus for the years 1996-1999.

#### Education: Higher Education Review

##### (Question No. 1360)

**Senator McLucas** asked the Minister representing the Minister for Education, Science and Training, upon notice, on 27 March 2003:

With reference to the answer to question no. E664-03 taken on notice by the department during estimates hearings of the Employment, Workplace Relations and Education Legislation Committee, and in addition to the details provided in response to that question:

- (1) How many public servants worked on the higher education review full- or part-time.
- (2) Over what period of time did each of the above people work on the review.
- (3) What was the salary for each of the above people.
- (4) What were the total travel costs for the above people.
- (5) What were the total travel costs for the reference group.
- (6) What were the total sitting costs for the reference group.
- (7) What were the postage costs of mailing out materials associated with the review.

**Senator Alston**—The Minister for Education, Science and Training has provided the following answer to the honourable senator's question:

- (1) A total of eight public servants worked on the Higher Education Review.
- (2) The Review functioned from April to October 2002.
- (3) The total salary cost for the eight public servants that worked on the Review was \$259,609.
- (4) The total travel costs for staff were \$28,937.
- (5) The total estimated travel costs for the reference group were \$24,000.
- (6) There were no sitting fees associated with the Reference Group.
- (7) The postage costs associated with the Review were \$21,000.

#### Transport: Canberra-Sydney Train Service

##### (Question No. 1377)

**Senator Nettle** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 April 2003:

- (1) On what date did the Commonwealth, with other governments, invite initial expressions of interest for the provision of a high speed Sydney - Canberra train service.
- (2) How many expressions of interest were received in response to this invitation for the provision of a high speed Sydney - Canberra train service.
- (3) On what date did the Commonwealth, with other governments, invite six detailed expressions of interest for the provision of a high speed Sydney - Canberra train service.
- (4) What were the speed ranges of each of the six initial proposals from those invited to submit tenders.
- (5) (a) Given that four out of the six initial proposals for a Sydney - Canberra high speed train were for a tilt train service, why was a decision taken to have an east coast very high speed train study as opposed to an east coast high speed train study;  
(b) Was this a decision of Parliament, Cabinet, the Minister for Transport and Regional Services, or the department (specify which one).
- (6) How many tenders were received in response to invitations issued by the department to tender for phase 1 of the East Coast very high speed train study.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) The Commonwealth with other governments invited initial expressions of interest for the provision of a Sydney-Canberra high-speed train service on 08/03/97 and 11/03/97.
- (2) There were a total of 14 expressions of interest received.
- (3) The Commonwealth with other governments invited six detailed expressions of interest in October 1997. Four were received by 14 April 1998.
- (4) The maximum speeds of the four proposals received were 200kph, 250kph, 320kph and 500kph.
- (5) (a) The Government decided to undertake a very high speed train scoping study because, on the basis of the preceding Sydney-Canberra process, it had become clear that any new high speed rail transport system along east-coast corridors would have to provide a time-competitive alternative to air transport in order to secure sufficient patronage to be cost-effective and financially viable.  
(b) This decision was taken by Cabinet.
- (6) 14 tenders were received to undertake phase 1 of the East Coast very high-speed train scoping study.

### **Iraq**

#### **(Question No. 1383)**

**Senator Allison** asked the Minister for Defence, upon notice, on 9 April 2003:

- (1) Can the Minister confirm that 'bunker busters' or nuclear earth-penetrating weapons been used in Iraq by the United States of America (US) military, as reported in the Age on 29 March 2003.
- (2) Is it the case that nuclear-tipped B61-11 bombs have been or are intended to be used by the US military in Iraq.
- (3) Is it the case that robust nuclear earth penetrators have been or are intended to be used by the US military in Iraq.
- (4) Is the Minister aware that the US Department of Energy 2003 budget specifically requests funding for robust nuclear earth penetrator weapons.
- (5) Is the use of nuclear earth-penetrating weapons or nuclear-tipped B61-11 bombs permissible under the Nuclear Non-Proliferation Treaty.

- (6) Is the Minister aware of the report on the medical consequences of the use of nuclear weapons produced by US team of experts, Victor W Sidel, MD of the Albert Einstein College of Medicine and physicist Robert W Nelson, Princeton University, which concludes that even a very low-yield nuclear earth-penetrating weapon exploded in or near an urban environment will inevitably disperse radioactive dirt and debris over several square kilometres and could result in fatal doses of radiation to tens of thousands of victims.
- (7) Has the Government assessed the implications of nuclear earth-penetrating weapons being used against underground bunkers containing biological or chemical weapons or weapons materials in terms of the dispersal of those materials.
- (8) Will the Government withdraw Australian troops if nuclear earth-penetrating weapons or nuclear tipped B61-11 bombs or robust nuclear earth penetrator weapons are deployed by the US military in Iraq.

**Senator Hill**—The answer to the honourable senator's question is as follows:

- (1) Yes, "bunker-busting" bombs were used in Iraq, however these are not nuclear weapons but precision guided weapons with delayed fusing. They are conventional hard target penetrators. No nuclear weapons were used in Iraq by coalition forces.
- (2) No.
- (3) No.
- (4) Yes. The US FY 2003 Defense Authorization Act appropriated approximately US\$15 million as the first of three instalments to conduct a feasibility study into modifying existing nuclear weapons to enhance their earth-penetrating capability. The US Administration has not made any decision to develop or deploy new nuclear weapons.
- (5) Yes.
- (6) There is no need to confirm the contents of a publicly available document. The Government does not intend to comment on its findings.
- (7) No nuclear weapons have been used by coalition forces in Iraq. As the Government has said before, we participated in US contingency planning and were not aware of any indications that the US had considered the use of nuclear weapons in military operations in Iraq.
- (8) Refer to part (7).

#### **Transport: Four-Wheel Drive Vehicles**

##### **(Question No. 1385)**

**Senator Allison** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 April 2003:

- (1) Has the department conducted and reported on crash tests involving four-wheel drive (4WD) vehicles to gauge the effects on: (a) the occupants of the 4WD vehicle; (b) the occupants of other non-4WD vehicles (standard passenger cars); and (c) pedestrians (both in collisions with bull bars and without).
- (2) If no crash tests have been conducted, does the department have other sources of data providing such information for each of the above points and is it publicly available.
- (3) (a) Does the department have data comparing the impacts on occupants inside 4WD vehicles and other passenger vehicles (people movers and mini vans) involved in collisions; and (b) can a copy of this data be provided.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) (a) Yes. During the 1990s, the Department conducted a research programme to evaluate the level of occupant protection provided by light commercial vehicles, including 4WDs. The outcome of this research was published in 1995 as report number OR 17 Review of Occupant Protection in Light Commercial, Off-road and Forward Control Passenger Vehicles.
- (b) Yes. DOTARS has in recent years conducted some limited crash testing of 4WD type vehicles in vehicle to vehicle and vehicle to barrier tests. This has included testing of 4WD vehicles of varying sizes in collisions with small, medium and large passenger cars as part of an internationally harmonised research program aimed at improving vehicle compatibility.
- (c) Yes, DOTARS has funded some testing of 4WD and passenger cars to the test requirements of the draft European test procedure to improve the pedestrian friendliness of vehicle front structures. However, DOTARS has not conducted any testing with bullbars. In addition "Vehicle Safety Standards Report (VSSR) 1 Vehicle Design and Operation for Pedestrian Protection", published in April 2003, includes analysis of ten real world pedestrian accidents and compares the outcomes with existing test methods.
- (2) Yes. ATSB Monograph 11 'Four Wheel Drive Crashes' provides statistical information from accidents involving 4WD vehicles. This document is publicly available from the ATSB website [www.atsb.gov.au](http://www.atsb.gov.au).
- (3) No. The crash test programmes undertaken by DOTARS (and other international researchers) have so far been for the purpose of developing a suitable test procedure to assess the compatibility of vehicles, rather than providing comparison between different vehicle models. To date these programs have concentrated on a small number of specific vehicles with specific design features and it is not possible to establish a trend or ratio of injuries between vehicle types.

**Defence: BrahMos Missile**  
**(Question No. 1386)**

**Senator Allison** asked the Minister for Defence, upon notice, on 11 April 2003:

- (1) Can the Minister confirm that India signed a \$US3 billion deal with Russia to lease four Tu22 M3 long-range nuclear bombers and two nuclear-capable and nuclear propelled Akula class submarines.
- (2) Can the Minister also confirm that India and Russia have embarked on a joint program to develop a long-range nuclear capable cruise missile, the BrahMos, which I expected to dramatically improve New Delhi's ability to deliver its nuclear warheads.
- (3) What representations has the Australian Government made to India and Russia on these proposals.
- (4) What in the Australian Government's assessment are the implications of these proposals for nuclear non-proliferation.

**Senator Hill**—The answer to the honourable senator's question is as follows:

- (1) I am aware of media reports that suggest this deal was to be signed in March. Current information suggests the contract has not yet been signed.
- (2) I am aware of the development of the PJ-10 anti-ship cruise missile, also referred to as the BrahMos missile, by India and Russia. Available information suggests that this missile is not nuclear capable and has a range of around 300 kilometres.
- (3) The Government has not made representations on these specific proposals but we have expressed to the Indian Government our hope that it will give up its nuclear capability.
- (4) Regrettably, India took the decision to develop and deploy nuclear weapons some time ago. It already has a range of warheads and delivery systems, so these purchases will not have a critical effect on international non-proliferation efforts. Australia is a strong supporter of the Nuclear Non-

Proliferation Treaty and the Government will continue to encourage all nations to work towards a nuclear weapon free world.

**Indigenous Affairs: Aboriginal and Torres Strait Islander Commission**  
**(Question No. 1389)**

**Senator Brown** asked the Minister representing the Minister for Immigration and Multi-cultural and Indigenous Affairs, upon notice, on 15 April 2003:

- (1) Please list the Chief Executive Officers to date and their periods of office.
- (2) To what subsequent posts have each of these Chief Executive Officers been appointed and what is their current job.

**Senator Ellison**—The Aboriginal and Torres Strait Islander Commission has provided the following information in response to the honourable senator's question:

- (1) 

W J Gray	5.3.1990-13.12.1991
P R Shergold	16.12.1991-13.6.1994
P A Turner	20.6.1994-19.6.1998
M A Sullivan	5.5.1999-17.1.2002
W J Gibbons	19.8.2002-present
- (2) Notwithstanding the fact that ATSIC does not keep records of its former employees after they have separated from the agency, we can advise that Mr Sullivan and Dr Shergold are Secretaries of the Department of Family and Community Services and Prime Minister and Cabinet respectively.

**Trade: Beef Sales to Japan**  
**(Question No. 1398)**

**Senator O'Brien** asked the Minister representing the Minister for Trade, upon notice, on 17 April 2003:

- (1) What was the cost to the Commonwealth of the meetings detailed in the answer to question on notice no. 1252, part 16.
- (2) Can copies be provided of all documents described as 'appropriate documents' in the answer to question on notice no. 1252, part 6.

**Senator Hill**—The following answer has been provided by the Minister for Trade to the honourable senator's question:

- (1) The meetings detailed in the answer to question on notice number 1252, part 16 refer to meetings held in Tokyo. Apart from salaries, the only additional cost directly attributed to almost all of those meetings was transport to the meetings and return – which is part of normal business operations.

The meeting at Quint had a number of associated travel and travel-allowance costs associated with it. But none of those could be specifically attributed to discussion of the safeguard - such costs would have been incurred regardless of whether safeguards was discussed or not.

The meeting on 3 February was a breakfast hosted in Tokyo by the Australian Ambassador at his residence. The total cost of the breakfast was \$102.08.

- (2) No.

**Agriculture: Wheat Streak Mosaic Virus**  
**(Question No. 1401)**

**Senator O'Brien** asked the Minister representing the Minister for Trade, upon notice, on 17 April 2003:

- (1) (a) When did the Minister become aware that the CSIRO plant laboratories in Canberra were suspected of being infected with wheat streak mosaic virus; (b) who advised the Minister; and (c) how was the Minister advised.
- (2) (a) When did the Minister become aware that the CSIRO plant laboratories in Canberra were confirmed as being infected with wheat streak mosaic virus; (b) who advised the Minister; and (c) how was the Minister advised.
- (3) With reference to the suspicion by CSIRO that its Canberra plant laboratories were infected with wheat streak mosaic virus (i.e. before the virus was confirmed as being present in April 2003): (a) what actions were taken by the Commonwealth to advise the appropriate government agencies within overseas trading nations of CSIRO's suspicion that wheat streak mosaic virus was present in CSIRO's Canberra or other plant laboratories; (b) which trading partner governments were advised; (c) how were they advised; (d) who advised them; and (e) what response, if any, was received from these trading partners.
- (4) With reference to the confirmation by CSIRO that its Canberra plant laboratories were infected with wheat streak mosaic virus: (a) what actions were taken by the Commonwealth to advise the appropriate government agencies within overseas trading nations of CSIRO's confirmation that wheat streak mosaic virus was present in CSIRO's Canberra or other plant laboratories; (b) which trading partner governments were advised; (c) how were they advised; (d) who advised them; and (e) what response, if any, was received from these trading partners.

**Senator Hill**—The Minister for Trade has provided the following answer to the honourable senator's question:

- (1) 12 April 2003, through media reporting.
- (2) 12 April 2003, through media reporting.
- (3) As this is a quarantine matter which falls within the portfolio responsibility of Mr Warren Truss, Minister for Agriculture, Fisheries and Forestry, I refer you to the answers provided by Mr Truss to your questions to him of 17 April 2003 (Question 1397).
- (4) As this is a quarantine matter which falls within the portfolio responsibility of Mr Warren Truss, Minister for Agriculture, Fisheries and Forestry, I refer you to the answers provided by Mr Truss to your questions to him of 17 April 2003 (Question 1397).