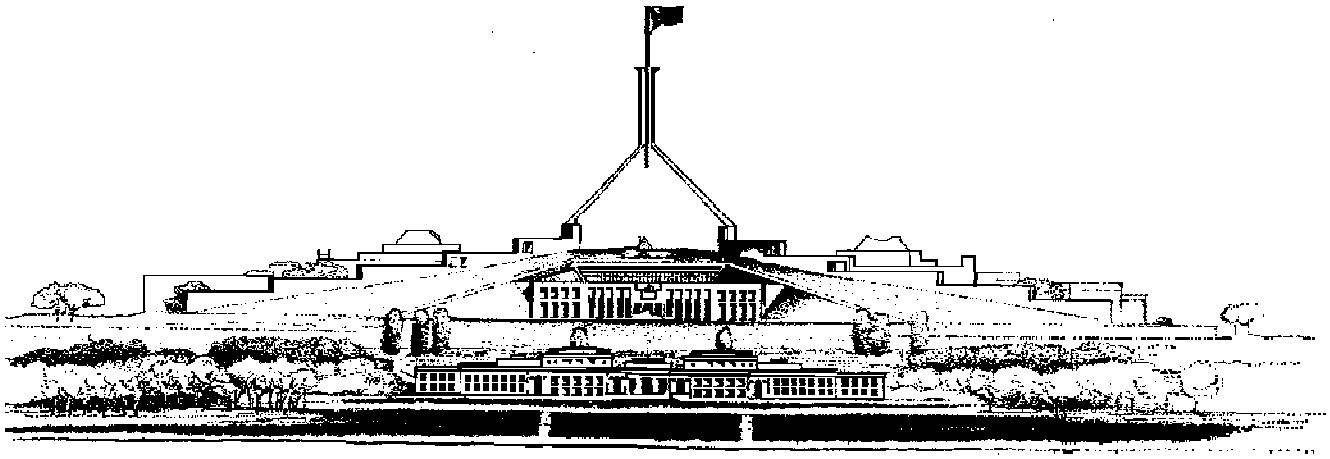
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

TUESDAY, 25 MAY 1999

THIRTY-NINTH PARLIAMENT
FIRST SESSION—SECOND PERIOD

BY AUTHORITY OF THE SENATE
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TUESDAY, 25 MAY

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Tuesday, 25 May 1999

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 10.30 a.m., and read prayers.

PERSONAL EXPLANATIONS

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (10.31 a.m.)—I seek leave to make a brief statement.

The PRESIDENT—Is leave granted?

Senator Carr—What is it?

Senator ABETZ—Your whip knows, Senator Carr.

The PRESIDENT—I call Senator Abetz.

Senator ABETZ—Thank you, Madam President. On 7 May 1999, at the hearing of the Senate committee inquiry into voluntary student unionism, I put certain allegations to a witness, Jason Wood. Those allegations were put to him in good faith on the basis of information received. In the past, this source of information has been impeccable and therefore I had no reason to doubt its veracity. Given Mr Wood's denials, I asked my source for further proof. It has not been forthcoming. It is appropriate for me to advise the Senate of this fact. When allegations are raised, we have a duty to pursue them. When the allegations are not sustainable, we also have a duty to clear the record.

Senator Carr—Can I seek leave to speak on the same matter?

The PRESIDENT—Is leave granted for Senator Carr to make a statement?

Leave not granted.

Senator Carr—There will be plenty of chance to settle up. Why don't you apologise?

The PRESIDENT—Order! Senator Carr, that behaviour is unacceptable.

BROADCASTING SERVICES AMENDMENT (ONLINE SERVICES) BILL 1999

In Committee

Consideration resumed from 24 May.

The CHAIRMAN—Order! The committee is considering the Broadcasting Services Amendment (Online Services) Bill 1999. The question is that the bill stand as printed.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.33 a.m.)—Following up on some of the questions from yesterday's committee stage consideration, could the minister explain how the government will ensure that this legislation will not lead to the blocking of unfavourable political ideas and dissent. Could the minister expand on how this legislation might be invoked in the case of materials such as the student union newspaper article called 'A guide to shoplifting' in *Rabelais*. Would this legislation prevent the Federal Court case about that particular publication being published on the Internet?

I am happy for certainly the case of *Rabelais* to be taken on notice. Given that when this debate ended yesterday we were talking about civil liberties and inadvertent or inappropriate blocking of materials, I am wondering if the government can ensure that this will not happen in cases of political dissent or unfavourable political ideas.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.34 a.m.)—The whole thrust of the legislation is to ensure that material that would otherwise be classified RC, X or R is not able to be transmitted, as far as possible, across the Internet. Therefore, I would expect material that would clearly fall within the category of promoting illegality to be refused classification in the same way that material that promotes shoplifting—in other words, promotes criminal activity—would be refused classification, and therefore not be acceptable under this regime.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.35 a.m.)—I just ask for a qualification. What if the article is not promoting shoplifting but is, as in this case, a satirical political piece? Is it possible that that can be inadvertently blocked as a consequence? Again, because the minister does not have the information of that court case in front in him, I am happy for that to be taken

on notice. I am just trying to get a general sense of whether people are aware of those distinctions.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.36 a.m.)—Where there is a fine line, presumably the potential offender would be given the benefit of the doubt. It is very easy to claim that something is satirical; it is another matter to establish that that is the case. If the material is regarded by the classification board as much more in the category of promoting illegal activity, then one would expect that they would refuse to classify it. If it was lineball then, in the scheme of things, the last thing we would want to do is err on the side of closing down sites unnecessarily, and that applies across the board.

This is a regime that is only designed to restrict access to material that has very little going for it. Genuine satire is obviously part and parcel of a democracy and, to the extent that we are all victims of it, I suppose, at various times, we are a bit more sensitive. If it is genuinely in the category of satire, then I do not think anyone would be objecting.

Senator BROWN (Tasmania) (10.37 a.m.)—I want to follow up my final line of questioning last night because I have not got clear in my mind just where the government draws the line on its censorship proposals. I understand that Senator Alston is saying that the strict censorship rules that apply to film and video will apply to the Internet, and will be applied by the Australian Broadcasting Authority. There are different rules in regard to television. For example, material that can be shown on television late at night cannot be shown during the afternoon.

In yesterday's Sydney *Daily Telegraph* we had the story of a government senator, Senator Synon, approaching the ABA with a complaint that a perfectly ordinary, healthy, lesbian relationship is being shown as part of a television program during the middle of the afternoon. Clearly she is wanting that withdrawn.

What I want to know from the government is this: will the ABA be in a position to interfere with Internet transmissions in the same way? Bearing in mind that the government's driving principle here is to protect minors, will the ABA be acceding to a time-of-the-day structured differential in censorship? And what is the government's attitude to a lesbian relationship being portrayed on television in the mid-afternoon hours?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.39 a.m.)—As I have already said twice, there are separate rules that regulate free-to-air broadcasting. There is a classification regime that is enforced by the ABA. There are time specific restrictions on material. It is not our intention that that approach be slavishly adopted for the Internet because, quite clearly, material can be downloaded and generated at any hour of the day or night. In many ways, time becomes irrelevant if the subject matter of the material is of concern. You essentially want a discussion about the rules that ought to apply to free-to-air. I do not have them before me, but I have no doubt that there are particular limitations on children's programming. I believe that the subject matter of this complaint was something that was shown during prime time children's viewing.

I also think it is fair to say that a majority of the community would not allow to go uncontested the proposition that a lesbian relationship was normal. It might be normal within the context of a lesbian relationship but, by definition of the fact that those relationships constitute a very small proportion of total relationships, it seems to me to be misusing the word 'normal' to describe a minority situation. Having said that, it is not really a debate that we need to enter into today. It is an issue that arises in the context of free-to-air and that is not the subject of this legislation.

Senator BROWN (Tasmania) (10.40 a.m.)—This is the subject that we are entering into. What the minister has just said is totally unacceptable. He is wrong in believing that he speaks for the majority of Australians. Lesbian relationships are normal; they are part of the normal spectrum of relationships in our society.

Senator Boswell—Bishop Pell does not think so!

Senator BROWN—Bishop Pell does not have a mortgage on the mores of our society. But we do have the government saying that it is in the business of censoring and restricting the community's access to a perfectly normal, natural part of the spectrum of relationships. From Senator Alston, I get a government imprimatur on the complaint made by Senator Synon. This is an unacceptable set of circumstances. I think the government needs to review the position it is taking, because it is repugnant to the majority of Australians who do accept homosexual relationships not just as an add-on but as an integral part of our society.

In this statement from Senator Alston following the complaint from Senator Synon, I hear a legacy of a repression and a discrimination which we have a right to hope is a thing of the past. We are here talking about censorship. We are trying to define where the government is at in its new push for censorship. I am hearing here that there are no defined limits. We are back in a period of censorship of decades past. The government is going back on a community that has long been left behind by the wider Australian populace. This is going to alarm many Australians who see this country as having a fresh, open and freedom seeking attitude towards all citizens.

The minister says that he is not going to bring in a time structured censorship because you can download material from the Internet. You can also tape material from the television. That has not been a means of restricting material available on the television. There are cogent arguments, in particular to do with violence, about having restrictions on what children are faced with when they are watching television. I am trying to get from the government whether or not it intends to impose just those sorts of restrictions as part of the oncoming program—because we are not seeing the end of it here today—on the Internet. I am trying to find out from the government what its real end point is in its push to put restrictions on the Internet.

Let me say that it alarms me greatly—and I am not going to be the only Australian here whom it alarms—that we are getting from the minister a clear indication that this push for censorship goes way beyond explicit sexual portrayal and violence. It is moving towards a government view of censoring the diversity of relationships and the variety of interests that Australians have.

It is incumbent on the government to say where it is headed at this stage. I recognise from what has been said by Senator Harradine that the government has the numbers on this legislation. I also recognise from Senator Harradine that he wants to take it further. I now hear from Senator Alston that he is going to take it further. If not, he can get up and say, 'No, this is it; the government has no further intentions.' But when the government says, 'We are really doing no more or less than we do for television,' it is flagging further censorship rules down the line. I say to the minister, through the chair: you cannot have it both ways. You cannot say on the one hand that we are simply extending the rules of censorship across to the Internet and then say, on the other hand, that at this stage we are only going halfway as far as television is concerned.

That is a another debate that needs to be entered into. I will come to gambling in a minute, but I would like to hear a very clear statement of intent from the government as to what its future proposals are after this legislation, with Senator Harradine's support, goes through.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.46 a.m.)—If I could clarify matters, I did not express my opinion, or the government's opinion, and I am sure that Senator Brown knows that. I simply pointed out that I would be surprised if the majority of Australians allowed to go uncontested the proposition that lesbian relationships were normal in terms of the wider context of relationships. That has got nothing at all to do with expressing a view on them; it has got nothing to do with tolerance or intolerance.

Senator Brown—It has got everything to do with intolerance.

Senator ALSTON—I know that you want to run that line. You can run it as much as you like.

Senator Brown—No, that is the line.

Senator ALSTON—I am not interested in what impression you get or this quaint term you use about what you are hearing. It has got nothing to do with any of that. I simply want to point out that this regime is analogous to narrowcasting rather than free-to-air. There are rules applying to free-to-air. The issue that you have raised falls squarely within the ambit of the ABA and the rules that apply to free-to-air. We have made it clear that we are applying the definitions of 'refuse classification', X and R, but meaning restricted to adults only, to the Internet.

Those definitions are tried and true. You ought to know precisely what they mean, because this seems to be a matter of great interest to you. Those definitions do not change. We are not halfway towards some other regime; we are simply applying the existing classification system to the Internet. But rather than, for example, completely prohibiting R, as you would do on free-to-air, we are allowing restricted access only, wherever possible, and that is more appropriate to narrowcast pay television.

In those circumstances, there is no argument about what we have in mind. We are not halfway towards anything. We are not wanting to go any further. We are simply wanting to ensure, as much as possible, that what is acceptable online is acceptable offline, and vice versa.

Senator LUNDY (Australian Capital Territory) (10.48 a.m.)—The Australian Council for Lesbian and Gay Rights, in their submission to the select committee, expressed a concern that the proposals will entrench inappropriate blocking and deletion of information of interest and assistance to the lesbian and gay community, particularly with respect to information about health and welfare. Labor made reference to this concern in our minority report, identifying that a possibility worth examining may be that the information and advice concerning filtering tools appropriate to Australian cultural values be sent to all subscribers by ISPs. Has the government considered this point? Can you provide some detail to the chamber as to how you intend to address this specific concern raised by the ACLGR?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.49 a.m.)—This concern is not unique to the online world. Indeed, it has arisen in the context of free-to-air television from time to time. Quite clearly, once again, the benefit of the doubt would be given to those who were able to argue that this was promoting health and welfare issues. We are not in the business of wanting to restrict access to information or education. We are talking about where that is merely a guise for the promotion of otherwise unacceptable material that infringes against the classification codes. I would not expect the ABA or anyone else to be accidentally closing down that type of material, because we would regard that material as valid.

Senator LUNDY (Australian Capital Territory) (10.50 a.m.)—What would the mechanism be with respect to the bill if a filtering device or application was found to be inadvertently blocking out material of the nature that I have described?

Senator Alston—It would have too wide an application. Presumably, steps would be taken to restrict it to the matters of genuine concern.

Senator LUNDY—Minister, I am looking for a greater degree of specificity: what steps are you referring to? Can you point to the section of the legislation in which those steps are defined, or is that something which is yet to be resolved by the ABA or, indeed, the industry in the development of a code?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.51 a.m.)—If the subject matter of the complaint contains material that some would argue relates merely to health and welfare education, then that would be a matter taken into account in the first instance by the Classification Board and, therefore, the ABA in determining whether there should even be a take-down notice in the first instance. You could appeal against that, so you could have a second bite of the cherry. I do not think that you get to a situation where you have gone

ahead and banned something that inadvertently banned something else, because presumably the content generators and everyone else would immediately point to the fact that this does have a harmless element to it which ought to be fully taken into account. Once again, I would expect that the ABA would err on the side of tolerance in terms of that type of material.

Senator LUNDY (Australian Capital Territory) (10.52 a.m.)—Is there capacity within the bill for someone to make a complaint about the nature of a filtering device that inadvertently blocked a greater range of content, even if there was no complaint made about access to inappropriate content?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.52 a.m.)—Yes, to the extent that the ABA issued an order that went beyond the powers. In other words, if its remit is to take action in respect of sexually explicit or other offensive material and it went beyond that, I would have thought that an action would be open in the courts to limit the ambit of any order made—so, again, as long as it is technically feasible, but that would work to the benefit of the content provider or the service provider. If it were impossible to distinguish between the two, it may well be that action would not be taken at all. But I cannot see why it would not be possible to carefully distinguish, and we would expect that to be got right in the first instance.

Senator MARGETTS (Western Australia) (10.52 a.m.)—In relation to that but also in relation to the question I asked last night about take-down notices, can the minister tell us how often these take-down notices will be actioned? Will it be daily or weekly? How often does the Classification Board meet? Will it be a permanent thing? Will that mean that people will be left with their notices taken down while waiting for a classification and will there be complaints of some sort registered? Will there be a gap while the Classification Board deals with literally thousands and thousands of potential complaints?

Added to that, I was listening to what you were saying earlier about X and R. What does that mean for chat lines? How do you then work out whether or not the notices put on chat lines are X rated or R rated and how do you then suddenly restrict access to chat lines? Do you in fact restrict access to chat lines? If not, is there something in the bill which counters that kind of issue?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.54 a.m.)—As far as the volume of work is concerned, how often take-down notices would be issued would depend entirely on the number of complaints made. Obviously, we have provided additional funds to the ABA to enable it to respond quickly to those complaints. It will be in a position to issue interim notices in respect of R, C and X and it may well be that the vast majority of those would not be contested. In other words, it would be accepted that they clearly fell within the prohibited categories and there would be no point in arguing the toss or having the matter referred to the Classification Board. As far as chat lines are concerned, they are not within the ambit of the legislation.

Senator BROWN (Tasmania) (10.55 a.m.)—I just want to make one final return to the comment that the minister made. I think he put it in these terms: most Australians would not see lesbian relations as normal. That is, Australians, he thinks, see lesbian relations as abnormal. I will ask the minister firstly: can he give the chamber his evidence for that? Then I want to tackle him by saying this: he is wrong. Lesbian relationships are normal, just the same as heterosexual relationships are normal and gay relationships are normal, and they are part of the spectrum of diversity that we have in our community.

The minister needs to know that, each time a senior parliamentarian makes such a statement, he fires a salvo at not just hundreds or thousands but tens of thousands of Australians, in particular young Australians who are trying to grow up into happy, healthy relationships against a lingering tide of ignorance, misinformation and prejudice. I do not want

the minister to leave the chamber not knowing that is what he is aiding and abetting.

We have a responsibility to ensure that we cut across the ignorance of the past and to ensure that, as opinion leaders, we give encouragement to lesbian people and gay people in the community to proceed in life to the full enjoyment of and happiness in their particular sexual orientation and the relationships which will come out of that. It is extraordinarily important that you know that, Minister, and that you take up that obligation.

Coming out of your comments, I would like to ask again if what you have said does not send a message to the ABA that, when it does come to censoring explicit material, gay and lesbian relationships are to be seen as a different category to other heterosexual material. If there is a difference in the way the government approaches these matters, the chamber should know about it.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.58 a.m.)—Putting aside his rather amateurship attempt to preach on the subject, Senator Brown clearly does not understand what is meant by the term 'normal'. It may well be that the relationships of which he speaks are acceptable in the wider community. I had always understood 'normal' to mean the norm, the average, what is regarded as commonplace. To take a sporting analogy, a lot of people kick with a left foot. But, if only 10 per cent of the population kick with a left foot, that does not make it the norm. Normal kicks are right footed. Does that make the left-foot kick somehow inferior? No, not at all.

You clearly want to confuse the issue by injecting your own value judgments and by reading a lot more into what is a separate and distinct issue, one that arises in relation to free to air, one that has been canvassed recently in that context and one which will be dealt with in that context. It does not arise here. These guidelines simply talk in terms of the same form of words that are applied to the classification regime, and if you do not know about those I am happy to send them to you.

Senator BROWN (Tasmania) (10.59 a.m.)—I ask the minister: what is the norm in relation to skin colour?

Senator Alston—It is not relevant.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (11.00 a.m.)—I would like to pick up the point on inadvertent blocking of material. I note that—in response to Senator Lundy, I think—the minister said that information would not be inadvertently blocked online, anymore so than in free to air, but that in free to air you might have comparable examples. I hope I am not misrepresenting his position. One of the examples given in the second reading debate was health information. The example of the word 'breast' was given to the Senate committee on a number of occasions, in that information to do with breast cancer may be inadvertently blocked.

I am curious about some of the decisions the government has made. For example, why was an ISP blocking regime chosen rather than the government pursuing an approach based on client-side filtering and adult responsibility? In relation to the government's preferred filtering technologies, is the minister aware of some studies—which I mentioned in my speech during the second reading debate—that confirm that content filters often block material which should be made available?

Perhaps Senator Boswell will find it of interest that an analysis of one of the government's favoured filtering technologies revealed that it would block the National Party home page and the Mick's Whips e-commerce site. The Deputy Prime Minister has referred to that particular site as one of the great successes of the Australian information economy. How confident is the government that there will not be inadvertent blocking as a consequence of this regime and use of the devices favoured by this government?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.02 a.m.)—The government does not have preferred filtering technologies. The whole purpose of this regime is to enable the industry to develop appropriate technologies and to draw on the latest technological devel-

opments. In that sense, we are not in the business of being prescriptive about any particular technological approach. We are simply specifying the principles that we want picked up by the codes of practice and adopted in ways that are both technologically feasible and commercially viable, but which do their best to address the problem that has been identified.

In that sense, one would not expect any inadvertence because the regime is specifically designed to try to solve a problem by the most appropriate method. There should not be any inadvertence in that. There may well be failures of the system and outages of all sorts that mean that perfectly harmless sites are inaccessible for periods of time, but that should not be a result of this legislation. To the extent that there was a problem in the first instance with the take-down order, presumably that matter could be contested in the courts.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (11.03 a.m.)—Could the minister expand on where he sees content control technology moving. Obviously, technology is at the basis of this legislation. It is the centre of the regulation. In what direction does the government see content control technology moving?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.03 a.m.)—The whole issue is that no-one knows. You can look at the latest developments. On several occasions, I have pointed to what groups like Clairview are hoping to achieve. Guessing engines are a quite interesting approach: you do not actually have to visit the particular site and inspect it; rather, you determine the characteristics of transmission flows to a high degree of probability and then visit the site to confirm that it is offensive.

I have no doubt that many people see commercial opportunity in this area. Many states in the US, for example, have been grappling with this issue. There is no shortage of good minds around the world who would see this as a very good opportunity, in terms of not only devices that parents might buy or have in software filtering packages, but also ones that ISPs could cheaply and painlessly apply in a selective manner to accommodate whatever regimes the courts put down.

Someone said to me recently, 'You've got to understand that this can cut both ways.' If proxy servers are required to use black lists, there might be a high level of traffic in those black lists because some people have a vested interest in seeking out the black lists, in the same way that a lot more people would probably seek them out to exclude them—in other words, having a clean universe and a closed one.

I think the government is on the right track. If we are technology specific, we will inevitably be out of date and we will then have to change the law. That means coming back to an unworkable Senate each time and having enormous difficulty in achieving what we think is the solution of the moment. It is much better to have a regime that can breathe, with principles that remain constant, and then put the onus on the industry to have codes of practice that require it to pick up the latest technologies against the caveats that we have built into the legislation.

Industry has accepted that for some years. It has just been a question of getting things moving. Not many people have quarrelled with the proposition that industry should take the lead. We have never said that parental education ought to be neglected. We simply say that it is not sufficient in itself because the great majority of parents either will not be touched by those sorts of campaigns or will feel quite uncomfortable with taking action on their own part. They expect the government to put restrictions on people's behaviour in a whole range of other areas if they think it is socially beneficial, and that is the general approach we are taking here.

Senator LUNDY (Australian Capital Territory) (11.07 a.m.)—Further to those points, what advice has the minister sought and/or received with respect to antidiscrimination legislation in Australia, and the involvement that the commissioner could have in dealing with complaints arising out of inadvertent blocking of content that could prove

to be discriminatory against groups within the community?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.08 a.m.)—It has not ever, of course, been our intention to infringe on, accidentally or deliberately, any antidiscrimination legislation. However, the ambit of most of that body of law is such that it can probably get involved here, as it can in other areas if it chooses to. If there are complaints along those lines—and professional activists like Senator Brown will no doubt spend a lot of time trying to manufacture cases—those matters can be considered by the relevant tribunals and action taken accordingly. But it is not something that we are proposing to specifically deal with because there is no intention in the first instance to contravene any of the antidiscrimination legislation.

Senator COONEY (Victoria) (11.09 a.m.)—I have a question apropos what the minister just said about Senator Brown being a professional activist. One issue that might arise from this legislation is that you will get a whole series of complaints about programs which then puts the people who have their service on the Internet to a lot of expense. In section 27, you are almost encouraging that by taking away rights that people normally would have. Section 27 states:

> Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:
>
> (a) the making of a complaint . . .

You could have a complaint made quite negligently or recklessly and yet that is to be brought, after it has gone through the ABA, against the person against whom the complaint is made. Section 27(b) goes on to say that 'the making of a statement to, or the giving of a document or information to, the ABA in connection with an investigation under this division' is not to be punished except in circumstances where it is not done in good faith. When I say 'punished', I mean civil action proceedings. I do not think there is any provision for criminal proceedings to be taken against a person who makes complaints.

Under section 37 a regime is set up for action to be taken in relation to a complaint about prohibited content hosted outside Australia. This is a separate question, but it is related in terms of the expression used. In that section a person who provides material to the Internet or who puts material across the Internet does not have to do it in good faith to enable him or her to get out of the problem. He or she has to take reasonable steps to stop it. While we are on this section, 37(2) says:

> For the purposes of paragraph (1)(c), in determining whether particular steps are reasonable, regard must be had to the matters set out in subsection 4(3).

In the copy I have, and I hope I have the right copy, there does not seem to be a subsection 4(3) for section 37. The page is headed 'Division 4—Action to be taken in relation to a complaint about prohibited content hosted outside Australia.' Then there is section 37.

Senator Alston—It is in the commencement, and not in that division. It is on page 3 of the bill. It is an objects clause.

Senator COONEY—But if you read it, it does not say that. If you look at 37(2), it says:

> For the purposes of paragraph (1)(c), in determining whether particular steps are reasonable, regard must be had to the matters set out subsection 4(3).

That seems to refer you to section 37, and not to any other section.

Senator Alston—It is paragraph (1)(c), which means it is contained in section 37, but it is subsection 4(3), which means it is in the context of the whole bill.

Senator COONEY—I do not know whether that is quite as clear as it might be. In the event, that might need a bit of clarification. But the main thrust of my question is: why is there almost an encouragement for people to make a complaint? You can understand legitimate complaints being made by parents—indeed, by anybody who is offended—but they certainly have to be reasonable complaints and not just made in good faith. I just wonder why we did not have it labelled in that way instead of just saying that it has to be done in good faith.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.13 a.m.)—As an old student of Donoghue and Stevenson, you know the endless arguments you can get into about what is reasonable. As long as a complainant acting in good faith lodges a complaint that person should not then be liable to the potential might of an international ISP saying, 'You have lodged a complaint. A take down order has been issued against me. I have been deprived of a huge volume of business. It is all your fault and I am suing.' If it were merely a test of reasonableness, the court might be asked to say, 'One little person complaining about something, even though acting in good faith, is quite unreasonable in terms of the consequences that it has for the industry or for that player in particular.'

So, if you are trying to balance the social desirability of action on the one hand and protect against discouragement on the other, it seems to us that, as long as the complainant is not frivolous, vexatious, acting with malice, et cetera, there ought to be that degree of protection afforded to them so that the matters can be properly tested without the fear of being kicked to death by litigants with very powerful pockets.

Senator BROWN (Tasmania) (11.15 a.m.)—The minister referred to people like me manufacturing complaints. That is a devious way of saying that people who are safeguarding the liberties of groups in the community that may not fit into his idea of what is normal do not have a perfectly legitimate right to defend their rights and freedoms. It is a very big concern that the minister sees this as such groups manufacturing complaints when in fact it is a legitimate activity—sadly, they have to defend themselves against the sort of prejudice which this minister is exhibiting.

I want to go back to the question I asked earlier. Will the minister in this committee debate make it clear that there will be no differentiation between homosexual and heterosexual relationships as far as this censorship regime is concerned, that there is no intention by the government to discriminate on such grounds and that, in effect, the minister will put on the record—in case anybody is in doubt about this—that the government does not intend nor condone nor allow for such a discrimination to take place?

I would not be asking this question if it were not for the complaint that came from Senator Synon yesterday which harked back to the Dark Ages. I think it was extraordinarily damaging and ignorant regarding the wisdom of the wider Australian populace in not only accepting but wanting to see all the encouragement given to lesbian relationships vis-a-vis heterosexual relationships as everybody takes their right as Australian citizens to pursue happiness. I want this to be made clear by the minister so that we do not in fact have complaints, manufactured by people who have bigotry in their saddlebags, being sent off to the ABA and quite unnecessarily adding to the work of the ABA because of this legislation.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.18 a.m.)—The legislation does not put any qualifications on the protection afforded to complainants other than that they must be acting in good faith, and I have no doubt that the ABA will not have difficulty in determining when someone crosses the boundary. Beyond that, the classification regimes and the form of words that support them are matters of long-established usage and speak for themselves.

Senator LUNDY (Australian Capital Territory) (11.18 a.m.)—I would like to take the committee stage to a different issue for the moment. It was reported in the computer section of the *Australian* this morning that the bill before us violates an arrangement that the Australian government has with the US government with respect to electronic commerce. Indeed, this reportage hinges on the fact that Senator Ron Wyden has written to the Australian government expressing the concern that in fact this bill violates that arrangement that has been put in place.

Minister, I know that this particular Australia-United States cooperation on electronic commerce statement was subject to some discussion through the committee inquiry, but I am interested in your view with respect to

the expression of violation put forward by a United States senator who obviously has some depth of knowledge not only about the censorship debate in the US but also about the agreement that you have entered into with the US in relation to electronic commerce. Obviously the concern is with respect to the impact on the online environment, the growth of electronic commerce and other issues to which you have often waxed lyrical at great length in advocacy of.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.20 a.m.)—I assumed that Senator Lundy would be across this issue this morning. I have had the opportunity to read the letter from Ron Wyden to Ambassador Peacock. He may well know something about online content regulation in the US, but he does not know much about Australia.

I would always be very suspicious of someone who dashes off about a five-paragraph letter which does not condescend to detail but just makes general assertions that 'such an approach would clearly violate the spirit and the letter of the policy statements' without actually pointing to what elements of those statements he thinks might have been infringed. Of course, he qualifies the whole expression of concern by saying:

> It is my understanding that one proposal to limit children's access to objectionable materials on the Internet would involve placing worldwide content under the control of an Australian broadcasting regime.

His proposition seems to be that Australia is taking it upon itself to be the world policeman and trying to have some extra territorial impact on the United States—in other words, telling them what to do. If that were the case, it would be a fairly brave exercise, but I suppose it would be in breach of the spirit of a bilateral agreement. No such approach is contemplated.

There is no sign at all that Ron Wyden has looked at the legislation. He has probably responded to a letter from someone in Australia saying, 'You should be outraged. If you get on the bandwagon and dash off a letter, we will make sure it hits the papers here when the debate is on in the Senate.' If that is what has happened, it is unfortunate that he has allowed himself to be put in that situation. He says that the purpose of his letter is to encourage Australia to avoid a centralised one-size-fits-all policy. These are just words.

If we were proposing to be technology specific and saying, 'All ISPs must use the following filter technology,' yes, that might be what he would be entitled to complain about. But it is entirely the opposite. It is, we think, an approach that has evolved as a result of a lot of careful consideration of the traps that have been fallen into in the US, not just by the Congress but by a number of state legislatures that have been too specific or too draconian.

We have tried to develop a mechanism which will accommodate new developments over time. The last thing we are seeking to put on the statute books is a centralised one-size-fits-all policy. All I can say is that, if Mr Wyden wants to make any further contribution to the debate, I hope he will do his homework first.

Senator LUNDY (Australian Capital Territory) (11.23 a.m.)—Minister, I draw your attention to point 4 of this Australia-United States cooperation on electronic commerce statement. Under 'Content', point 4 states:

> (a) The Internet is a medium for promoting, in a positive way, diffusion of knowledge, cultural diversity and social interaction as well as a means of facilitating commerce. Governments should not prevent their citizens from accessing information simply because it is published online in another country.

I draw your attention to that particular clause. Certainly this agreement goes on talking about the empowerment of users, including parents, in relation to how the blocking of material which may be unsuitable for children should be achieved through information in education as well as through the availability of filtering or blocking systems or other tools. That particular section of this agreement clearly identifies a path forward to which your proposals accede in the first instance. I would certainly like to put on the record my concern about your condescending comments with respect to Senator Wyden, given the fact that Australia has a lot to learn from the way the debate was conducted in relation to censor-

ship online in both the US and many other countries where this debate has occurred.

Minister, have you had any formal communication with the US government or the US regulatory authorities with respect to this bill either before it was tabled in parliament or subsequently during the course of the inquiry before debate here in the chamber? If indeed you have, what was the nature of that consultation? I ask this in the spirit of your often stated commitment to making sure that Australia is involved in some depth and in great detail in the respective international fora developing online content principles and future directions.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.25 a.m.)—There have certainly been discussions between officials, and we have made it our business to be aware of what is happening in the US and to try to learn from their experiences. They have been trying to go down this path with the CDA for what must be three years now.

I think there is a great deal on the public record about the US experience, but we have tried to supplement that by direct discussions. I had an online discussion with the United States Internet Council in Washington some weeks ago, for example, canvassing this issue at some length. Certainly we think it valuable to draw on the experience of others around the world. Probably the US and Australia would be at the forefront of most of the changes in relation to online activities. We certainly think it should continue to be the case that we draw from their experience.

The paragraph to which you refer I would have thought is entirely consistent with our approach. It simply says that 'governments should not prevent their citizens from accessing information simply because it is published online'. That is self-evident. No-one wants to do that. Our regime is simply premised on the basis that, if something is published online and is harmless, there is no reason for interference. But if it happens to offend against classification regimes, and in general terms that material is not acceptable in the physical world, then we think there is a consistency of approach.

Far from precluding what we are attempting to do here, the most you could say is that this agreement is silent on the subject; in other words, it leaves it to different regimes to adopt their own approaches. I daresay that we would have found it unacceptable if they had told us to replicate the communications decency act or some of the other pieces of legislation that have gone through recently. I think there is a protection of children online act, which is something we considered as well, which has gone through Congress. But beyond that, there is nothing in this document that is inconsistent with what we seek to do.

Empowerment of users is, as far as we are concerned, an important additional element, but it is not in substitution for government action any more than in a whole range of areas. Do we say, 'Well, we urge you to drive on the left-hand side of the road, but ultimately it is a matter for you or your parents'? We regulate these things. We do that in a whole raft of areas and it is no different here, particularly where there are some very good reasons why parents might be the last ones to appreciate what can be done.

Senator LUNDY (Australian Capital Territory) (11.28 a.m.)—Minister, have you received any expression of concern from the US government in relation to this bill? If so, can you table that correspondence in the chamber?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.28 a.m.)—Not that I am aware of; nothing has come to my attention.

Senator LUNDY (Australian Capital Territory) (11.29 a.m.)—Minister, the issue of the impact on electronic commerce again was something raised throughout the committee stage. In fact, there was a great deal of evidence collated that there would be a negative impact on the global electronic commerce framework as a result of the imposition of this bill, particularly with respect to Australia's involvement. Prior to the drafting of this bill, to what degree did you consult specifically with the stakeholders in the development of the global electronic commerce infrastructure?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and

the Arts) (11.29 p.m.)—I am not sure what you mean by the 'global electronic commerce infrastructure', but we clearly are concerned to ensure that we do not unnecessarily inhibit the growth of electronic commerce. As you would know, most of the reports suggest that we are right at the forefront of developments, both in terms of the legal and regulatory framework and the take-up rates in the industry generally. The latest e-commerce report card is further evidence of that.

One of the reasons we have built in balancing requirements, such as technologically feasible and commercially viable, is to ensure that you do not simply put people out of business at the same time as you are attempting to achieve a wider social purpose. So there has always been a balancing element contained in the legislation. That is probably why, for example, Senator Harradine says it is a weak bill. His preference would be to say, 'Irrespective of the commercial consequences, if this material is bad it ought to be banned, and I don't care what it costs to do it.'

We have not gone down that path, much and all as I understand why he would say that the social impact on particular individuals is often of much greater consequence than the commercial profitability of new ventures for particular players. But the fact remains that we have tried to strike a balance. We are conscious of not wanting to inhibit the growth of electronic commerce and indeed of wanting to be at the forefront of it. Despite the apprehensions that are very easily raised in this area—in what has been, I think, a fairly febrile atmosphere to date—we are confident that the regime is sufficiently flexible to ensure that we do not have an outcome that, in any material sense, inhibits the growth of electronic commerce.

Senator LUNDY (Australian Capital Territory) (11.31 a.m.)—It is certainly a fair comment to say that the shape of your amendments have now lent themselves to considering qualifications such as technically feasible and commercially viable. They certainly were Labor's minority report recommendations. But it is also a fair comment to say that, in the original drafting of this bill, the government had no such intention. It seemed, certainly to the industry and to many people who held a direct interest in the concept that you are putting forward in censoring the Net, that the government was not prepared in the first instance to take into account the technological constraints that existed, and were known to be in existence by the government, prior to the drafting of this bill.

This goes to a very important point in relation to the online services bill in that, in the very first instance when the minister made the announcement that he intended to legislate in this area, it was done on the back of two years of ongoing negotiations with the stakeholders in the Internet service provider industry. The bill as it was presented was then referred forthwith to a specially reconstructed committee for the purposes of a very condensed inquiry. It was only at this point that evidence relating to what was considered technically feasible and what was not actually came forth. Indeed, it was the report entitled *Blocking content on the Internet: a technical perspective*, which was prepared for the National Office of the Information Economy by Dr Phil McCrea from the CSIRO, that actually started to bring into the public domain the facts of the matter about technical feasibility.

So my concern is one of process on behalf of the government, Minister. I am giving you the benefit of the doubt that at least if you do not have the knowledge yourself you have people around you who can advise you of the facts as to what constitutes technical feasibility and, indeed, some of the broader industry and social impacts of what you are proposing. If that was the case, it does not excuse you for the shape of the bill as it was first presented in the parliament. The fact that you have now come back with a very comprehensive set of amendments to try to address some of the concerns brought forward through the inquiry demonstrates that, from the first port of call, this government was not prepared to put forward a constructive proposal in the first place. They have been prepared to rely on a very, I believe, flawed and overly condensed inquiry process to try to draw out the nuts and

bolts and flaws and to attempt to address them through an amendment process.

This is not good legislative practice and it certainly does not enhance your reputation or your credibility as managing this whole issue effectively. Now that you have come forward with a whole series of amendments which do begin to address not just concerns but matters of fact—that is, that censoring the Internet is not technically feasible, as you described in your original statement—I think we are at a point where the Australian public at least has the right to know that we are dealing with a bill and amendments that have not been prepared in accordance with what I would consider as being an acceptable process within this chamber.

The Internet is very important both in social and economic terms. I for one—and I know certainly that the Labor Party does too—believe very strongly that, when you are dealing with a medium on the brink of a converging environment, it deserves far more than barely a month for the legislative process, through both houses of parliament and a condensed inquiry. The point I referred to earlier in relation to electronic commerce highlights the inconsistencies presented by the government on this matter. Indeed, Minister, only very recently during the Senate additional supplementary estimates hearings you took the opportunity to once again remind us of your government's commitment to the development of the online environment in this country, yet the inconsistencies with respect to this bill still shine through.

I am interested in knowing exactly what level of dialogue you intend to pursue with international fora in relation to this bill, how you intend to restore Australia's reputation as a significant contributor to the growth of the online environment—less a social aspect as a result of three years of governance under the coalition—and, with respect to the electronic commerce environment, how you intend to ensure that Australia does not come out of this flawed process with a reduced reputation at the forefront of developments in the area of online activity.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.38 a.m.)—I am indebted to Senator Lundy for her concern about my credibility and the government's international reputation, but the fact remains that Senator Lundy is trying to embark upon a furious historical rewrite. As I recall it, the very first press release I put out on the subject talked about 'technologically feasible', and we have always used the term 'reasonableness'. I think I had Phil McCrea's report as far back as June last year, so we have been very much across the technical difficulties. In fact, the whole reason that the McCrea report came into existence was that I insisted on it. I wanted to know what was possible and what was not.

Having read that report very carefully several times, it became increasingly apparent to us that the very big trap to fall into would be to try to be technology specific—in other words, to try to identify a particular approach that would solve the problems. That was quite tempting in the very early stages when people would say, 'All you need to do is have proxy filters. The bandwidth speed is such these days that you could have thousands of prohibited sites on a black list and it won't slow down the speed of the Internet,' and you were therefore expected to adopt a particular approach. We did not do that. From the outset, we have made it plain that there were balancing factors.

I think I can recall, when I first thought about this, that we should draw on the experience of the way broadcasting licences were issued back in the 1980s when these sorts of competing factors were taken into account. In other words, before you simply decide whether a market can accommodate a new licensee, you should also look at the financial impact upon the incumbents, and it seemed to me that that was an appropriate basis for introducing similar considerations here.

So I do not think Australia's reputation is at risk at all. I do think that it might be helped if you and your colleagues were to send the right messages: that you are just as concerned to protect young children, and that you are committed to exploring ways of achieving that outcome consistent with not

wanting to inadvertently put the Internet out of business or anything else. But I do not ever hear much from you domestically, and I presume you do not get a run internationally on these things. Most of your comments point to what you see as technological difficulties, whereas I think we should all be trying to strike the right balance. If you can get those signals across, then I think you get a much greater degree of community support as a result. The Internet community itself has acknowledged that, and I have said it repeatedly.

The Internet Association has been conscientiously grappling with these issues now for some years. It is the pace of change that concerns us. If you simply leave it to industry, then competing forces are such that you may never make progress. We interpret coregulation as meaning that the government should define the framework, that industry should develop the codes of practice and we should all march together. I think that can be achieved, and I hope that it will have cross-party support by the end of the day because otherwise you will be sending a very unfortunate signal.

Do not pride yourselves that somehow the US is the last frontier for absolute technological freedom—it is quite the opposite. What is trying to be achieved there is to strike the right balance. Because of the first amendment, it is a lot more difficult in the US, but the Supreme Court itself has said on a number of occasions that, whilst it might strike down particular approaches, it is not in any way wanting to pour cold water on honest attempts by governments to achieve socially desirable outcomes. I simply say that we have from the outset adopted the approach that is now contained in it. There are a few amendments at the margin that have been tabled, but I can assure you that the form of the bill and the statements that we have made right from the beginning have been entirely consistent with an approach that is flexible rather than technology specific.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (11.43 a.m.)—I would like to ask the minister about the economic consequences of the Broadcasting Services Amendment (Online Services) Bill 1999. I am wondering whether the government has done any studies, for the benefit of the Senate, as to the direct and indirect economic effects of this legislation.

I will make a couple of points based on the minister's last comments. I think it is quite clear among all in the chamber—and certainly as far as the Democrats are concerned—that we do not support and we certainly do not advocate unsuitable Internet material being made available to minors. That is a statement we have made repeatedly, not only in this place but in various Senate select committee reports into online services. We also oppose the restriction of adult access to material that would generally be acceptable to reasonable adults. We oppose the restriction of adult access to Internet content where that same information or that same content is available in different media.

I have put on record a number of times not the Democrats' unwillingness to be involved in the construction of some kind of regulatory framework or regime but an analysis from the Democrats' perspective of the two primary concerns we have with the legislation before us. Yes, one of those relates to the workability—the operational and technical feasibility—of this legislation, and we have substantiated or explained why we have concerns with that aspect of the legislation before the chamber and in our committee report.

Beyond that, we have outlined some of our civil liberties concerns in relation to this legislation. I think all the concerns that we have put forward, and the concerns of various advocacy groups, representative organisations and Internet associations, are quite legitimate. I think it is very important that the minister acknowledges that there is cross-party support for that kind of regulatory regime. It is just that we have some concerns about the legislation before us. In particular, we ask the minister to outline, for the benefit of the chamber, any studies that are being conducted by government into the economic impact of the proposed regime.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and

the Arts) (11.45 a.m.)—I welcome Senator Stott Despoja's very constructive comments. I think it is something that could serve as a role model for other members of caucus. Certainly, that this is groundbreaking legislation means, by definition, that you cannot determine what the precise economic or social impact might be. That probably applies to the great raft of legislation introduced. If everyone knew in advance what the consequences would be, it would be very hard to argue against it. The whole stuff of politics is that people will argue completely different scenarios and claim they have legitimacy on their side—that, if you do not see reason and do it my way, the sky will fall in. That happens time and again, and this is no exception. The proper way to approach it is to say that these are legitimate concerns, they have to be balanced and they ought to be given a trial. That is why you have reviews. Labor would go even further and hit it on the head in three years time, which I think is far too draconian, because these problems are not going to go away in three years.

Senator Mark Bishop—They'll be different in three years. The problems will be different.

Senator ALSTON—They will, indeed, and that is why you would have a review. It is not why you would have a sunset clause to hit it on the head. The point remains that if you are committed to those principles, which I think endure beyond technology changes, the responsible approach is to give it a try, have your review and allow the legislation to work in the organic manner that we have set out, but not to basically throw your hands up in the air and say that it is all too hard. That is why I was trying to encourage Senator Lundy. If you are talking about messages that you want to send, the take-out you get from Senator Lundy's contribution is that there is really hardly anything good going for this legislation, there are a hell of a lot of deficiencies and, at the end of the day, you might as well throw in the towel and have another go or, better still, refer it to committees where Senator Lundy can entertain herself endlessly for hours on end.

I am delighted, Senator Lundy, that you have joined the IT committee at long last. You will have plenty of opportunities to explore these issues, but that is no substitute for putting legislation on the statute books and giving it a fair go. No doubt there will be people who will want to do quantitative assessments of the economic impact. If one can predict it now, you are likely to get, once again, some fairly polarised assessments, depending upon who is making them. But, at the end of the day, if we do give this legislation a fair go, we will be achieving a very desirable social outcome. I am confident that we can avoid any significant deleterious economic impacts and we may well serve as a role model for other regimes.

Senator LUNDY (Australian Capital Territory) (11.49 a.m.)—Isn't this ironic? If it was legislation that was affecting any other group of small businesses in this country, this government would be leaping to their defence. Talking about red tape and additional regulation: an environment of deregulation and market freedom is what should prevail, according to normal coalition rhetoric. Here we have the minister saying that we indeed need to regulate, to place restrictions on a group of very dynamic and growing small businesses. I have to say that the irony that this government presents is almost amusing. Certainly, many of the statements that Senator Alston has made, in the course of various industrial relations debates in this chamber, will lend themselves to how governments do not have a place in imposing restrictions, regulations and so forth on the businesses, particularly the small businesses, of this country. I draw it to the attention of the chamber that this is, again, one of the great inconsistencies and ironies in the government's approach to this particular matter.

I have a question for the minister arising from that. Have there been any other examples where the government has chosen to impose regulations upon a group of small businesses in this country where an economic impact study was not conducted prior to the bill being drafted or action taken by the government?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.50 a.m.)—I will resist the

temptation to try to think of something off the top of my head. I would simply say that, in an area such as this where it is very much a greenfield, I have not seen any attempt made by anyone to assess the economic impact. I would have thought some of the groups out there would not shy away from suggesting that it might cost Australia billions of dollars. But I have not seen anything to that effect. I think most people recognise that it is utterly unquantifiable and the proper thing to do is to put in place a regime that has that breathing capacity, that allows these matters to be taken into account each time complaints are assessed. If you do it that way, you have a pretty good chance of getting it right because you will be constantly reviewing the impact rather than setting out with a predetermined approach irrespective of its consequences.

Senator MARK BISHOP (Western Australia) (11.52 a.m.)—For almost the last hour and a half we have had a pretty useful discussion fleshing out a range of the issues. However, even at this early stage, the debate is starting to degenerate somewhat. Senator Alston has taken to provoking opposition senators. As everyone knows, opposition senators, whilst they are not the government, are here to help. I might move to the business of the day. On behalf of the ALP, I move:

(1) Page 2 (after line 2), after clause 3, insert:

4 Review of operation of Act

(1) The Minister must cause a review to be undertaken of the operation of this Act.

(2) A person who undertakes such a review must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

[review of Act]

This amendment, which was deliberately drafted quite widely, seeks to add a review function to clause 3. It provides for the minister to cause a review to be undertaken of the operation of this act, for a person undertaking such a review to give the minister a written report of the review and, finally, for the minister to cause a copy of the report to be laid before each house of the parliament within 15 sitting days of that house after its receipt by the minister.

As I said, the amendment is deliberately drafted widely. It is intended to cover all of the objects of the act as identified in the explanatory memorandum: the complaints mechanism to the ABA, the classification regime that triggers action by the ABA, the powers of the ABA in respect of service providers, the efficacy of indemnities in the act, the use of sanctions and the effectiveness or otherwise of the community advisory board.

In speaking to the amendment, I wish to raise three principal points for consideration by the chamber: firstly, that this legislation is essentially 'world first' legislation; secondly, the changing nature of technology, which has been addressed by a range of senators already in this debate; and, thirdly, the impact of the legislation on the Internet, particularly the impact on so-called e-commerce. Each of these key points essentially goes to the effectiveness of the act. It is probably trite to say that there is a strong tradition of media regulation and classification controls in Australia. TV, radio, books and magazines—nearly all forms of communication—are subject to self-regulation codes. Also, Commonwealth legislation and extensive regulation in many of the states prescribe what we may and may not do.

We are all aware that the Internet is growing rapidly in Australia. There are now, according to the EM, something in the order of 3.6 million users of the Internet. I am informed that at present something like 20 per cent of Australian homes have Internet access. I understand Australia to be the second highest user of the Internet in the world, after the United States. We appear to be moving towards the situation in this country where, in the next 12 to 18 months, the Internet is going to develop what is known as critical mass. This has not happened yet, but the trend line take-up of Internet use, both domestically and in business, indicates we are going to develop critical mass of the Internet in Australia. When that critical mass is fully developed, or becomes so large that it is just a normal feature of everyday life and com-

merce, community attitudes are going to change. They will focus and become much clearer than they are at the moment.

People say—and yesterday a range of contributors to this debate said—the Australian community does not want control, regulation or censorship of the Internet. That may well be correct. I suspect there is some truth in that argument. But we do not have any clear polling on that. We have the personal views of senators and anecdotal advice, but I am not aware of any evidence tendered to the recent committee, or any research done by government or any halfway decent polls that show the Australian community has a view one way or the other on regulation, control and censorship of the Internet.

Over the last two months we have seen the haste with which the bill was tabled. There have been 20 hours of public inquiry over a week or 10 days or whatever and a move for urgent discussion in this chamber. Although we are not able to say we are without fault in this respect, the opposition has cooperated in those inquiries. We cooperated to list the matters here. But one of the unfortunate consequences of that haste is that the only persons who are paying serious attention to this debate are those who are intimately associated and closely aligned—the aficionados, if you like. It is my observation that out there in the community most people have not yet picked up on the significance of the Internet, the significance of this bill or the significance of this debate.

Senator Alston made reference to this in passing yesterday, when he said that he had not noted letters to the paper and had not received many pieces of correspondence in his office. He drew a particular conclusion—that there was not widespread opposition to the bill. I tend to draw another conclusion—that there is not yet the necessary degree of public debate in the community on this critical issue. It is not appropriate to draw the conclusion that Senator Alston drew last evening or indeed to draw the opposite conclusion, because the debate has not yet been held. That is why the opposition is particularly critical of the haste with which this bill has come forward. There has not been a large degree of significant debate on what are really critical and fundamental issues for a very important and growing medium.

That is why we were also critical in the committee process—and I made some comments about this in my speech during the second reading debate—of the reluctance and refusal, to date, of the government to allocate extra funds for parent empowerment, community education and community awareness. The issues are linked. You cannot have a community view on important and critical matters until the community is aware of what the principles at stake and the positions for and against are.

This argument about censorship of the Internet, regulation or non-regulation, has been done in a vacuum, and that is a very unfortunate development. However, I am quite convinced that will change as the Internet develops critical mass. People are going to say, 'Hell, what is going on here? Why is this stuff coming into my home? Is it appropriate it is coming into my home? How am I going to pass on to my children the values that I hold as important? Why is the government permitting interference with the legitimate activities of business? Why are extra costs via regulation being imposed on commerce?' That debate has not been held, and it should be held so that our community can address what is, as the government implicitly acknowledges, an important issue and resolve that issue so we can move forward over the next four or five years.

Social attitudes, community views and cultural attitudes are increasingly shaped by technology. The government's refusal to allocate additional funds to participate in the community to date simply means the real decision is going to be delayed. The core of this bill is going to be discussed in this amendment and the next amendment—the review clause and the sunset clause.

The review in three years time, if this amendment is successful, allows the effectiveness of the act to be analysed and for that debate to occur in the community. None of us can foretell the future. It may well be that the community decides that it wants to have regulation and it wants to have control and

that parental values and family values are more important than the other side of the censorship debate. But we do not know until we have that issue.

The second reason I outline for seeking a review is the changing nature of technology. I just briefly want to address three issues: firstly, filtering and blocking devices, secondly, software product development and, thirdly, the delivery units and the convergence of computers and TV through the one medium in our homes.

Basically, I think it is fair to conclude that the technology is not yet sufficiently advanced. It is fair to say that there are still problems with the filtering devices and the blocking devices. They are still somewhat crude. They still have unintended consequences. They are still somewhat slow in operation. However, developments are occurring which will, over time, allow those devices to evolve into worthwhile products that consumers are going to purchase in the marketplace and use as effective software filtering and blocking devices. By itself, when those products fully come on to the market and are fully operational, it is going to raise other issues of equity, privacy and consumer concerns.

Software and filtering products are entering the market in a huge way already. They are gaining significant market share. Many adults are caught in a quandary. Adults do not want Senator Alston, the government or the opposition to tell them what they can do, what they can read, what they can write, where they can go. They do not want to be told what they can think. However, they also want children to be able to remain as children. They want children to be able to grow and to form into socially useful adults. They are both two dearly held views of adults, parents and families in our country.

In evidence to the IT committee, we had a major company advise us that they had a subscriber base of 20 million consumers. Of those 20 million around the world in 11 countries, 11 million had families. Eighty-two per cent of those families pay a fee on a monthly basis to purchase that product marketed by that company, which essentially is a filtered software product. Families are voting with their feet. That major company is quickly gathering market share, and a lot of parents are choosing to purchase that software product that allows filtered access. They are saying, 'We think it might be appropriate to have a form of regulation.' However, that applies only to those with the ability who have disposable income to expend on those products.

In summary on that second point, adults and the opposition do not want control. We do not believe censorship is appropriate. We want a responsible attitude in the home for parents to carry out. We note with interest in passing that those products that are coming on to the market in terms of software development are being picked up in large numbers, and people are paying a lot of money to use them.

There is a note I received today—it came out of the USA on email—which refers to a filtering amendment unanimously passed in the Senate. It reads:

> An amendment aimed at requiring the use of filtering software by ISPs passed 100-0 last week to seemingly unrelated S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act . . .

The act was sponsored by Orrin Hatch, who is a Republican from Utah, by a Democrat and by another Republican senator. It goes on to say:

> . . . requires all Internet service providers with more than 50,000 subscribers to offer free filtering software to their subscribers within three years, following a period of encouraged self-regulation.

So the United States Senate voted 100 to zero to require ISPs to provide filtering products.

So the debate goes on. The United States, with the most advanced set of technology in the world, has not yet resolved the issues. This bill does not resolve the issues. The review clause that we are discussing now says that in three years time we can look and see how this world's first legislation is operating, whether it is effective or not, what do parents really want, what has been the changing nature of technology and how the effect of this—*(Time expired)*

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian

Democrats) (12.06 p.m.)—I rise to speak briefly on behalf of the Australian Democrats. We will be supporting the first amendment moved by Senator Bishop on behalf of the opposition. I will not rehash too many of the arguments that have already been put to the chamber. Suffice it to say, we share the opposition's concerns in relation to the process pursued by the government in constructing this bill and, indeed, to what I consider a particularly rushed Senate select committee process.

We know that the minister announced proposals to regulate Internet content on March 19 of this year; and a month later, on April 21, a bill was introduced into the Senate. Two days after that, the government referred its own legislation—and that does not happen too often—to the relevant committee, the Senate Select Committee on Information Technologies. After what we considered a rather short period of investigation by that committee, a report was tabled on budget day. Even before that report had been tabled, I note that the government had requested that this bill be exempt from the cut-off rule and, indeed, this legislation was exempt from that cut-off rule yesterday. We are debating this bill today as a consequence of the government and opposition support to exempt the bill from the cut-off rule.

This has been a process that commenced with incredible haste. I am sure that the minister will respond by saying that over a number of years people have looked at the issue of Internet regulation, that you have had various groups in the community looking at various co-regulatory and other approaches and that there have been select committee investigations into online services. But a comparison can be made of the time period that people have had to examine the legislation.

I must acknowledge that—and Senator Harradine from a perhaps different perspective will put this very clearly before the Senate, as he has done previously—a lot of the recommendations in the online services reports have not been adopted in this legislation. Much of this legislation is different from those recommendations, although I put on the record that the Democrats have not always agreed with the recommendations that have come out of those Senate select committee reviews. Not only that, there has been completely inadequate time for various people in the relevant sector and the community as a whole to have some input into this process.

In relation to the government's rushing of this process, the government provided a single sentence justification for the introduction and passage of this legislation in the 1999 winter sittings—and I think this was supposed to suffice as their justification for exempting this bill from the cut-off rule—and that was to 'meet growing concerns about the potential exposure to children of classified material on the Internet, particularly given the increasing access to online services in the Australian community'. At this stage I believe we are still yet to have any substantiation by government as to this overwhelming and growing community concern. We certainly heard a lot of opinions from government and government members at the Senate select committee process that there was this overwhelming community concern, but I am yet to see studies or research that substantiate the government's claims.

I have made reference before to some surveys and research that demonstrate community concerns in relation to inappropriate censorship regimes. A point that I suggest Senator Bishop take on board is that we do have censorship regimes in this country. We have an Office of Film and Literature Classification. I am not quite sure whether he is arguing that we should be abandoning those regimes.

Senator Mark Bishop—No.

Senator STOTT DESPOJA—I did not think you were. That is why I think it is important that we get on record that people support a regulatory framework—we just want the right one. We want a good one, one that is developed after appropriate consultation and that takes in the needs of the industry. I believe there should be some studies put forward to the Senate of the perceived indirect and direct economic consequences of such a bill. Various service providers and other Internet organisations have had to calculate in

their minds what costs they will be incurring as a consequence of the passage of this legislation. So, yes, develop a regime, a regulatory framework, by all means, but why are we doing it in what is essentially a couple of months?

I have put on record the Democrats' concerns, again falling into two categories: the workability of this bill—the operation of this bill, the technical issues to do with this bill—and our concerns relating to civil liberties. We are concerned about the failure of this bill to address civil liberties concerns relating to privacy and freedom of speech and expression, the creation in this bill of broad discretions and uncertain law enforcement provisions, the different treatment of materials among different media, the almost certain adverse impact on the Internet industry in Australia—and we have references and we have evidence before the committee that points to the potentially deleterious impact on that industry and the likely impact on the growth of the information economy in Australia—and the failure to address concerns about the likelihood of inappropriate and inadvertent blocking of materials and related issues.

Chair, I expanded on these points in my commentary earlier, but we will be supporting the opposition's amendment in relation to a review of this process. I put on the record again that we think this bill is inadequate and that we should be looking at developing a different regulatory framework, one that is not a short-term response to various political and other circumstances.

Senator BROWN (Tasmania) (12.12 p.m.)—My question goes to Senator Bishop, who has moved this amendment. The amendment says that the minister must cause a review to be undertaken of the operation of this act, that a person who undertakes such a review must give the minister a written report of the review, and that the minister must cause a copy of that report to be laid before each house of parliament within 15 sitting days of that house after it has been received by the minister. But it does not say when the review has to be undertaken.

I might be missing something here. Is it meant to be an annual review? Is the word 'annual' missing from the first sentence? If so, I recommend that the opposition insert it. Otherwise, a date or a timetable needs to be put in here, unless there is some other reference inherent in this amendment which I am missing.

Senator MARK BISHOP (Western Australia) (12.13 p.m.)—Just to respond to Senator Brown, it is intended to be a one-off review towards the end of a three-year period essentially at the discretion of government.

Senator BROWN (Tasmania) (12.14 p.m.)—Unless it says that, there is no requirement for the government to do so. It simply says that there be a review. That could be in the year 2525. The opposition cannot know that a subsequent amendment will be accepted to insert a sunset clause which will come into force in three years time. I think this amendment is faulty in that it does not have a date. I recommend to the opposition that, if that is the intention, they should say that the minister cause a review to be undertaken within three years of the commencement of this act, or they should specify a date. Otherwise, there is no requirement for the minister to hold the review.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.15 p.m.)—I direct Senator Brown's attention to our amendment to schedule 1, item 10, page 63, on sheet ER248, and commend it to him. That requires a review to be undertaken before 1 January 2003. It has the requirement for tabling within 15 sitting days, and it also spells out some of the matters that ought to be taken into account in conducting that review. I would have thought that might have a lot more going for it than something that is simply open-ended and which, as you rightly point out, may not even commence until after the act is dead and buried, if the sunset clause gets up.

Our approach—and I am foreshadowing what I would otherwise have said later—is that it is desirable to have a review; it is desirable to have it before the expiration of an unreasonable period of time. Our review would occur within a three-year period. That

should then be the basis on which you decide whether to phase out the legislation or keep it going. In other words, if you simply have a drop-dead sunset clause, you are pre-empting the whole nature of the legislation, because you are essentially saying, 'We don't think these problems are going to be around in three years time.' All I can suggest to you—it is probably a forlorn hope—and to Senator Stott Despoja as well, is that our amendment seems to us to go a lot further down the track of a sensible approach.

Senator MARK BISHOP (Western Australia) (12.16 p.m.)—I will respond to Senator Brown more fully. Our amendment 1 is intended to be subject to amendment 2, if opposition amendment 2 should get up. That would provide the act to have a definite sunset clause of three years and the review to be given effect to and concluded prior to the three years, so that the opposition can consider the content of the review and determine whether or not it is worthwhile for the sunset clause be negated.

So opposition amendment 1 is to be read in conjunction with opposition amendment 2. It is subject to opposition amendment 2, and we would anticipate, and place formally on the record, that the review be occasioned by government prior to the sunset clause causing the negation of the act. When the review is concluded and tabled, the opposition would consider the content of that review and that would influence the opposition's thinking as to whether the act should be allowed to die, or whether life should be re-breathed into it.

Senator BROWN (Tasmania) (12.18 p.m.)—I will look at the government's amendment, but what I said earlier regarding the opposition amendment stands. We cannot have an amendment which is meant to do something. It should say what it is in effect going to do. Even taken in conjunction with amendment 2, which is that this act ceases to be in force at the end of three years, there is no requirement on the minister to cause a review to be undertaken within those three years, in this amendment that the Labor Party is putting forward. The minister still might do the review in 2525.

I put it to the opposition that if you are going to have this amendment mean anything, you have to state a required date by which the review should be undertaken. That is going to require an amendment to your amendment; otherwise it has no effect, because the minister can choose not to do a review during the three years before the sunset clause comes into operation. Even if it does, he or she could do it some time after that and further down the line when, of course, it would be irrelevant. If you are meaning for this review to give the parliament information to determine whether the sunset clause three years down the line should stand or should be overridden, then you should say that this review must be undertaken before the date on which the sunset clause will come into operation. Otherwise you leave it open to the government not to do the review until after the sunset clause comes into operation and the act is ineffective.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.20 p.m.)—I am glad that the minister has referred the chamber's attention to the government amendment which looks at a review before 1 January 2003. A couple of words leapt out at me when I saw this amendment. The amendment states that the following matters are to be taken into account in conducting a review under subsection (1)—and I quote:

> (a) the general development of Internet content filtering technologies;
>
> . . . .
>
> (c) any other relevant matters.

I am very curious about paragraph (b), which reads:

> (b) whether Internet content filtering technologies have developed to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system;

I wonder whether the minister, for the benefit of the chamber, would outline the rationale behind that specific part of the amendment—why he has sought to specifically refer to the

accessing of R-rated information hosted outside our country.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.21 p.m.)—This matter arose yesterday. I think Senator Harradine said that it was a non-sequitur to have R-rated arrangements domestically but not to have anything for foreign material; and were we simply travelling down parallel paths and intending that there should always be a different approach. The answer is no. We did not think we were in a position to impose requirements on offshore material that was R-rated, because the effect may well be that you closed down the whole site, which would not be your intention, and that material, because there is a great volume of it, potentially, could be in amongst a lot of other harmless material and you could therefore have a very unhelpful impact upon the inflow of material to this country.

In subsection (5) we have spelt out the government's policy intention. That is, if and when we get to the point where it is possible to put in place a regime that would simply allow restricted access to offshore material, we should do our best to put that into effect. That is why that review under (b) would look specifically at that issue. As you rightly point out, (c) allows the review to be as broad as you like and to cover every aspect of the legislation, but we were particularly concerned to point out that in principle there should not be any reason why you would distinguish between domestic and foreign R-rated material. It is simply that the technology is not there to deal with it offshore, whereas it is quite possible for people within our jurisdiction to deal with it domestically.

I again commend that amendment to the chamber. I will just say in passing that I thought what Senator Bishop had to say was very constructive. Clearly the intention of the opposition is to have the review take place before the expiration of a three-year period and then, if necessary, make a decision about whether or not to go ahead with the sunset clause. But again the problem is that on its face this would simply mean—if opposition amendment 2 were to be passed—that the act would drop dead. It would not matter whether you were half-way through a review, already had the review or whether the review came down overwhelmingly in favour of continuation, the act would require that it cease to be in force at the end of the three-year period. I do not think that is the intention.

What we have is a sufficiently broad form of review that picks up all the points of concern that I think we have. Unless you have a hidden agenda that you basically want this killed off, come hell or high water, there is no reason why you would want to support amendment 2, because it is premature. It prejudges in effect that the regime has run out of steam or is serving no useful purpose in three years time. Otherwise, why would you automatically close it down?

Sometimes that is a bit of a tactic with regulations, for example, because it puts the pressure on a government to review a matter fundamentally and decide whether to renew those regulations. But it is a very different circumstance when you have the numbers that we have in the Senate. You may well find that, despite the fact that a review comes down quite sympathetically to the continuation of the regime, the numbers are finely balanced and one party or another says, 'Well, we're sorry. We're not going to repeal that sunset clause,' and it all runs into the sand. Then you have to start all over again and, presumably, Senator Lundy would make sure you had a three-year hearing before you actually got any further legislation up for consideration, and that is not what any of us would have in mind. So it just seems to me that we would be much better served by going down the path that we have indicated.

If the review were to say that there was no useful purpose, of course you could always bring the legislation to an end. But I do not envisage that would be the case; I do not think anyone realistically thinks this problem is going to go away. It is likely to need refinements and maybe fundamental changes if there are paradigm shifts in technology which would require legislative amendment. But they are all matters for the future and all matters for a review and I do not think we should pre-empt the outcome by imposing any

automatic sunset clause. So could I simply say that we are all wanting to head in the same direction; it can be achieved within our amendment which would come up later in proceedings. On that basis I do not think that there should be much disagreement.

Senator BROWN (Tasmania) (12.26 p.m.)—I will be supporting the government's amendment if the opposition one does not succeed, because I think a review process of any sort on this thing is very important. However, I come back to the fault I see in the opposition's amendment and I will move an amendment, if I may, to that opposition amendment.

The TEMPORARY CHAIRMAN (Senator Hogg)—Yes, that is in order.

Senator BROWN—I move:

Before the words "The Minister" where first appearing, add the words "Before 1 March 2002".

Let me read the first sentence of the opposition amendment as it would be reconstructed. Opposition amendment 1 at subparagraph (1) would now read: 'Before 1 March 2002 the Minister must cause a review to be undertaken of the operation of this Act.' That means that you would have the review in the hands of both houses of parliament, giving the houses of parliament the time to override a sunset clause—if that is what the chamber agrees to implement today.

Senator MARK BISHOP (Western Australia) (12.27 p.m.)—I advise the chamber that the opposition has considered the argument put by Senator Brown and the opposition will accept his amendment—including the words in paragraph (1) 'Before 1 March 2002'.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.28 p.m.)—We have no objection to Senator Bishop amending his amendment along those lines but I would simply point out that it would not overcome the problem in relation to the bald nature of the sunset clause. You would need to make that conditional upon an unfavourable outcome of the review and, once again, I do not see why the chamber would want to put itself in a position where it is effectively pre-judging.

In many respects you cannot, because there may be shades of difference. It is unlikely that a review will come out and say, 'This act is an absolute disgrace and must be repealed tomorrow.' Similarly, it is unlikely to come out and give it an unqualified tick. What you will probably find is that the review will come up with a number of refinements and improvements and will reflect technology changes. On the basis of all of those matters you would then make a conscientious decision about the way ahead. If I had to have a guess, I would have thought the likely outcome would be that, after you have had your review, you would probably be seeking changes to this legislation; you would not be going down the path of simply repealing this legislation and starting again. Although it is conceivable, it is unlikely.

So, if that is the likely course of events, I do not see why you would want to commit yourself to an automatic shutdown of this legislation irrespective of the outcome. By all means, have it before the three-year period, but you would not be doing anything in relation to the automatic operation of the sunset clause. I simply commend to the chamber that, if you express it in the terms as we have done, the only difference would be nine months, really.

Senator LUNDY (Australian Capital Territory) (12.30 p.m.)—In contrast to the view expressed by the minister, I think it is incredibly important that we do not define the conditions of the review that would provoke the implementation of the sunset clause. Indeed, the issues surrounding this bill are quite profound. The minister uses terms like 'technological paradigms' to describe the scope of the issue at hand. At this point in time, it is worth making a comment about what the issue at hand is, beyond the exploration of the technological issues which—as the minister and every other contributor in this chamber have rightly pointed out—are very much at the forefront of this debate about what is possible.

However, in the context of Australian public debate, another perspective has been relatively unexplored as yet—the social implications of the Internet. It is a very sad

reflection on legislators in this country—and, indeed, in many countries—that so much of the debate surrounding the Internet is on a regulatory platform and on how to constrain it. The debate is always couched in the language of concern, threat and change. Very rarely do we, as legislators and parliamentarians, focus on the amazing and profound opportunities that exist within what is a completely new medium. It is a converged medium which brings together telecommunications, computing and media. It creates a new environment of an almost three-dimensional information source—one that we have not seen before.

At the moment, the Internet and Internet content are presented only to about 20 per cent of the Australian community. That number is growing. It is absolutely correct to assume that, as we are presented with Internet content through different outlet points—moving from personal computers to TV sets—it will be a new experience for many Australians. We will not be confronted with narrowly defined debates about censorship, content, media ownership, portal ownership and who has what advertising revenues.

If we are to be true to the people who elected us, we should ensure that this debate extends far beyond those traditional regulatory parameters and that we take the time, as parliamentarians, to find good uses for Internet content. I refer you, Minister, to some of the contributions made not just in the second reading stage of this debate but in the ongoing international dialogue on Internet content and relative access. That dialogue shows that this new medium can be used as a tool for social progression. At the electronic commerce forum in Ottawa conducted by the OECD in October last year—and I know you would have dearly loved to have attended that—

Senator Alston—We had a minor distraction on our hands.

Senator LUNDY—You did have a minor distraction—I think it was called an election. A speech was given at that conference by the South African Minister for Post, Telecommunications and Broadcasting. He spoke about the opportunities within the new medium of the Internet to leapfrog communities beyond the phase of empowerment through telecommunications straight into technologies that afforded a source of information to those communities. He said that the Internet allowed them to participate in the global environment in ways that they would perhaps never have dreamed of and in ways that would facilitate their social progression at a far more rapid rate than would otherwise be the case.

A point that is often missed in respect of the Internet is that it is not just about constraint and defining economic outcomes; it is about where we can use the Internet for social progression and for the social good. If you believe that information is power in the community—and I certainly believe that—surely it is incumbent upon governments to ensure that as many people as possible in the community have equity of access to that information so that they can avoid being passively manipulated by the incumbent media or by dictatorial governments.

I note that the minister scoffed at the issue of human rights which was raised in some contributions to the second reading debate. However, it is actually one of the best examples of how this new medium is used for social progression. It is about the global sharing of information. It is about trusting the ability of this forum to lift common knowledge amongst any given community to allow people to participate in debates. This is quite threatening to governments, which are concerned that change, social progression, cultural shifts and the embracing of new technologies will mean a different way of life for many people in terms of how they work, live and spend their recreational time.

For governments to truly govern on behalf of the people that vote for them, they have to open their minds to experiences beyond their own life experiences as individuals. I am concerned that the tendency of governments generally not to look beyond the experience of the Internet in their own lives is going to constrain forever the parliament of this and other countries to not seeing the true social potential that lies within this new medium.

There are examples of this challenge being tackled in Australia. There are a number of very worthy organisations who have endeavoured to put forth this notion of social implication as an agenda item for serious policy discussion. In fact, most of the serious contributors to the IT select inquiry on this bill took the time to highlight and mention this point. Certainly, from my involvement with the Australian Computer Society, the Internet Industry Association, Electronic Frontiers Australia and a range of groups that specifically have the interest of their membership, I know that they have all taken the time to devote a clause or two, or a paragraph or chapter within their submissions to the social implications of the Internet.

What we are seeing is more like a plea from Australians, who have some knowledge, proficiency and confidence with the Internet, for legislators and policy makers to stand up and take note, to map out a future direction, to not exploit the information haves and have-nots and to not play on the fears, concerns and insecurities of those for whom the Internet is not a part of their lives. To continue to exploit those differences in our community, I do not believe is good policy. I do not believe it is socially responsible and I do not believe it will enhance Australia's ability to have a smooth transition into the new century and to what the minister describes as new paradigms in dealing with information technologies.

My final point is one of cultural impact. The point was made earlier by my colleague about the impact of media and the converging media on the day-to-day lives of ordinary people in Australia. It is true to say that the Internet and the content that comes across it will have an increasing impact and significance on our lives. Indeed, how we manage our involvement in that will be absolutely critical to ensuring a fair, just and democratic society in the future. It is worth noting that the government's current agenda includes several other inquiries and bills that go to the heart of where converging media is heading in this country.

Minister, I have some questions on developments in the datacasting arena. What is the relationship between some of the definitions that are mapped out in this bill and the definition of datacasting, particularly with respect to OFLC ratings? Also, how do you see the impact of content delivered across the Internet falling within the proposed digital television datacasting regime that your government has outlined? I certainly attempted to explore these questions with the National Office for the Information Economy during the IT select committee inquiry and the estimates, but they were unable to respond to those questions so I put those questions to you now.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.41 p.m.)—If the question is about how you define datacasting that is something that the experts are poring over at this very moment. But the bill excludes concepts of broadcasting and it certainly does not include any conceivable definition of datacasting, so neither of those matters would be relevant here.

Senator LUNDY (Australian Capital Territory) (12.42 p.m.)—Minister, can you give some indication to the Senate as to whether you believe datacasting will fall within the definitions described in this act for the purposes of Internet content, particularly the analogous relationship you are trying to construct with narrowcast?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.42 p.m.)—It is premature to make judgments about what should be regarded as legitimate Internet content. But at this point in the technology cycle, I think we would all see clear distinctions between datacasting and online broadcasting or transmission, but the whole notion of convergence is another very good reason why the review process would help to pick that up. It may well mean that down the track there will be various amended definitions, but datacasting is not the thrust of this legislation.

Senator LUNDY (Australian Capital Territory) (12.43 p.m.)—I think, Minister, that rather than satisfying my questions your comments raise more. From what I understand, datacasting does not currently fall

within the definitions contained in this bill of Internet content, but you are saying that, depending on the outcome of that inquiry, they may well. Can I get some clarification there. You also mooted in your response the potential for modifying or amending the definitions within this bill post the outcome of that datacasting inquiry, when those definitions become clearer or are determined.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.43 p.m.)—My main point is that the whole concept of datacasting is embryonic. We have not yet fixed on a definition of it. You may have an intuitive sense of what datacasting is but those who are drafting the legislation have not yet managed to come up with an agreed definition. In those circumstances, it is hard to even know what you are talking about in a precise sense. My only point about reviewing the act is that, clearly, in an area as fast moving as this it is quite likely that legislation will be subject to further amendment down the track, maybe even ahead of a review process, but one cannot predict these sorts of things or proceed on the assumption that they will inevitably occur. All I would say is that once we have an agreed definition of datacasting, we will have a clearer sense of how it impacts on online content. But it is not included in the definition at the present time.

Senator LUNDY (Australian Capital Territory) (12.45 p.m.)—I draw to the attention of the committee the fact that there is a datacasting trial set for August in, I think, four cities in Australia, including Canberra, which I was pleased to note. I presume by then that the relative definitions will have to have been resolved. Could you just clarify the timing of the datacasting inquiry for me please, Minister? Also, what would be the current OFLC application to that datacasting content for the purpose of those trials?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.45 p.m.)—The trials are an exercise in seeing what is technically possible and what difficulties might arise in terms of satisfactory delivery to customers. It does not necessarily mean that you have reached or alighted upon a definition that would satisfy all other legislative requirements. It is much more a matter of doing the necessary trialling at a number of levels—probably commercial and technical—and making sure there is a viable product. How you then describe it for the purpose of legislation is presumably something the experts are still lying awake at night wondering.

Senator LUNDY (Australian Capital Territory) (12.46 p.m.)—Minister, the process you have just described in response to my question seems to be quite a comprehensive one—technical trials, seeing what works, what does not—all before you actually resolve the issue of the definition and where it falls with respect to a censorship regime. Why is it you can afford that lengthy deliberation for the implementation of this particular new technology but your government cannot find it within its ranks to afford the regulation and management of Internet content the same luxury of due consideration?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.47 p.m.)—If we were proposing to legislate in respect of datacasting in this bill, clearly we would need to have a precise definition. But we are not, and the context in which it is being considered at the present time is in relation to digital television broadcasting and seeking to draw a distinction that would allow not just free-to-air broadcasters but a whole range of new entrants to come into what would then be a contestable marketplace.

That has nothing to do with what restrictions we want to place on Internet content, and the current definition of Internet content in the bill does not refer to datacasting, and nor should it. But down the track it may well be that there are technology and other changes that make it appropriate to give that matter further consideration.

Senator BROWN (Tasmania) (12.48 p.m.)—I have had quite a number of communications from people who are listening to the debate and I have one particular question to put to the minister. It has been brought to my attention that the database of the Office of Film and Literature Classification is online

and that that database itself has some quite explicit material. Is this subject to censorship?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.48 p.m.)—I cannot give you an off the cuff answer to that. The bill does define service providers and content providers as those to whom first recourse ought to be had. If the OFLC were considered to be a content provider and to be displaying material that was in breach of the classification regime, I would have thought it would probably be caught by it. Beyond that, that is not the purpose of the legislation; it is really to deal essentially with those who are engaged in commercial enterprise.

Senator BROWN (Tasmania) (12.49 p.m.)—This is one of the hazards of the legislation—that there is potential trammelling of such a database so that citizens cannot see what is the outcome of the process of censorship and classification itself. The government needs to be very wary of that. To restrict that database from being accessible and online is to put a layer of censorship onto censorship itself. The government ought to be very clear that that is not going to happen and that such a position could not arise because otherwise we are moving into a system of secrecy which has no public review.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.50 p.m.)—I am not sure whether Senator Brown is using precise language here or not. But, if he is suggesting that the online database of the OFLC is essentially replaying explicit video material, I do not quite understand why it would be necessary to do that, particularly in relation to material that might offend against a classification regime. In other words, you do not have any necessary right to access material that has been proscribed simply so you can know what is proscribed. The material has been complained about, assessed and determined to be unacceptable and is therefore taken down. It would be a device if somehow you were then able to have it replayed via the OFLC database.

What I suspect is a more legitimate concern is to ensure that a description of the material does not disappear from public view. There could not be any offence taken by being able to access a site that described the material or gave details of any take-down orders or the whole circumstances in which the material had found its way onto the classified lists. So there is no intention to somehow ensure that people are unaware.

I am not quite sure why they would have such an interest in being aware of what had been banned. Obviously the stakeholders would have a direct interest and immediate knowledge from the outset. There probably is some legitimate interest in the general community in knowing the description, but I cannot see how it serves any useful public purpose to claim that you ought to be able to access material via a particular database that you cannot access through any other means because it has been banned.

Senator BROWN (Tasmania) (12.52 p.m.)—Just to be clear about this, in the opinion of some people, it is the specific titles of classified material that perhaps, by their offensiveness, could be taken as infringing. I will not outline such titles, but you know the sorts of titles to which I refer which have led to material being restricted or prohibited. It is one of these cases where the government has to be very careful, through the nature of the proscription it is putting forward, not to trammel, through censorship, access to public review and understanding and information regarding what has been classified. In the minister's last response he gave an assurance that that will not happen, and I would be glad to hear him repeat that.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.53 p.m.)—What I said was that I think it is legitimate to have a description of the material so that you can identify it. But that should not be seen as a means of promoting what would otherwise clearly be a highly offensive, sacrilegious and totally unacceptable form of words being used to describe a web site. I suppose it is unlikely and would be quite unusual, but you should not rule out the possibility that someone might be perverted enough to call a web site by the most offensive title. Just thinking about it, there is probably no restriction on the number of

words in a title, so you could have a sentence or a paragraph that was utterly offensive to every decent thinking citizen and would be perhaps criminal in its formulation.

In those circumstances, I think it would simply be condoning an illegal practice to allow that to be posted by way of a title when it would not be able to be posted in any other form. So, if it is illegal in the physical world, there is no good reason why you would allow it in the online world simply because someone chose to use it as the title for a bad web site.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.55 p.m.)—I want to pick up on the point made by the minister that, if it is illegal in the offline world, there is no reason why it should be available online. I want to know whether the government feels it has sufficiently demonstrated, both in the select committee process and in the Senate, that there are problems with current legislative provisions that deal with inappropriate content, including the relevant sections of the Crimes Act, such as section 85ZE. Why are those legislative mechanisms insufficient to deal with those kinds of issues and to ensure that if something is illicit offline it is appropriately so online and can therefore be dealt with through the relevant sections that you can use now?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.56 p.m.)—There are difficulties in determining whether something has been published; whether transmission constitutes publication; whether simply being a content generator is being a publisher, if you are otherwise making the material available privately to another person. What you seem to be saying is that, if something is illegal in the physical world, we ought to assume that that is sufficient to catch it online. I do not see why you should take that risk.

If you accept that the public purpose is to close down that sort of material, why wouldn't you, even out of an abundance of caution, want to have those same provisions extend across to online material? Otherwise you are simply deliberately creating possible loopholes and opportunities for people to argue that somehow there is a distinction. The principle I think we have all espoused is that it is a very legitimate starting point to ask, 'Why should you allow something to be published simply because it is via another mechanism when it would not otherwise be able to be published because it is in breach of the criminal law?'

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.57 p.m.)—Just briefly, I understand the minister's point about catching things online. What I am concerned about is that, under the proposed regulatory regime, the one before us, you are going in the other direction and catching too much; that you are including in that catch, if you like, inadvertent or inappropriate materials that in any other medium would not be deemed inappropriate.

Senator Alston—Like what?

Senator STOTT DESPOJA—Well, the examples we provided in relation to your promotion of certain filtering technologies. I gave the jovial example of Mick's Whips. I referred to the technology as being one of your favoured ones, and you asked me what I meant by that. In fact it was Clearview that I think Electronic Frontiers Australia did a study of recently. Using that weighting system, using that particular device, you would actually block the National Party home page; you would block Mick's Whips, using the particular filtering device to which you have referred. I think there have been numerous examples before the Senate and the select committee.

However, I am very curious about this. You have outlined some of the deficiencies, as you have seen them, in relation to the Crimes Act. Is it not more appropriate to amend that legislation in a way that solves some of those concerns? I am just putting that to you as a hypothetical. Is that something that could be considered as opposed to the regulatory regime before us?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.59 p.m.)—Section 85ZE is being clarified in any event, but your essential proposition seems to be that people might

sleep on their rights until such time as take-down orders have been made and then suddenly claim inadvertence in terms of the coverage of the legislation. That is not how it would work; it would be complaints driven. You would look at the precise effect of the proposed solution before you allowed it to be taken down, and in those circumstances I do not see why you would have a number of accidental consequences, as you suggest.

At the end of the day, everyone will have the opportunity to explore the implications, either in the first instance or on appeal, and there is no reason at all why the regulators would want to be going well beyond the normal ambit of the legislation to catch Mick's Whips. I do not know what Mick uses the whips for these days but I would be very surprised if we would want to ban that web site. There may be a stronger case for banning the National Party web site; I have not seen it recently. But it is not something that I would have thought would be regarded as a legitimate complaint in the first instance if you were to approach the ABA wanting to ban the National Party web site. If Electronic Frontiers are as vigilant as they claim, then presumably, rather than simply running a propaganda campaign, they will be able to bring these matters to the attention of the regulators at the outset, not after the event.

Senator BROWN (Tasmania) (1.01 p.m.)—The final query I have on this section, which provides for a review of the operation of this act some three years down the line, is on the matter of online gambling. Could the minister tell the committee what importance or impact the bill as it stands has for online gambling?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.02 p.m.)—I am not aware that it has any direct impact on online gambling. That is obviously a matter that the Productivity Commission is giving careful consideration to, and I think maybe other jurisdictions as well, but it is not within our area of concern in this legislation.

Senator BROWN (Tasmania) (1.02 p.m.)—I think there might be in that case unintended consequences. The Commonwealth's power vis-a-vis the states is enshrined in part 9, clauses 86 and 87, of this bill. Notwithstanding the fact that the bill has been constructed to provide the Australian Broadcasting Authority with an exclusive charter to regulate censorable material on the Internet, the rest of the bill makes it clear that the government does not want to interfere with e-commerce. That being said, the bill does have the effect of rendering ineffective unlawful gambling offences legislation of some of the states of Australia. For example, legislation in New South Wales which regulates gambling, on the face of it, would be overridden in so far as these offences will no longer apply to Internet service providers or to Internet content hosts. That is my reading of it, but I ask the minister to look at that to see whether or not that is the case.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.05 p.m.)—This matter has already been considered, and I am just getting advice on what precise section might assist Senator Brown. As I understand it, despite the fact that the Commonwealth claims exclusive jurisdiction in respect of ISPs, the minister does also have the power to allow for state laws to override in a number of areas, and that would clearly include online gambling. So, given that it is not our intention to be curtailing online gambling activities on the one hand or regulation on the other via this legislation, I would have thought that we would defer to the New South Wales government in that regard, or to any other government that sought to regulate online gambling, certainly ahead of any decision we make of our own following the Productivity Commission report.

Senator BROWN (Tasmania) (1.06 p.m.)—Let me read out part 9, section 87 of the government's legislation before the committee. The heading is, 'Liability of Internet content hosts and Internet service providers under State and Territory laws etc.' It states:

(1) A law of a State or Territory, or a rule of common law or equity, has no effect to the extent to which it:

(a) subjects, or would have the effect (whether direct or indirect) of subjecting, an Internet content host to liability (whether criminal or civil) in respect of hosting particular Internet

content in a case where the host was not aware of the nature of the Internet content; or

(b) requires, or would have the effect (whether direct or indirect) of requiring, an Internet content host to monitor, make inquiries about, or keep records of, Internet content hosted by the host; or

There are two other sections. Quite complex conceptual matter is incorporated in these provisions. The starting sentence is in quite direct language. It says that the laws of the state—for example, New South Wales, which has legislated in this matter—have no effect to the extent to which they put requirements on ISPs and ICHs. Is the minister saying that we have to have faith in a later provision for ministerial override, and that the minister will override the effect of this clause to protect the integrity of the New South Wales provision?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.08 p.m.)—What I am saying is that you would have helped yourself if you had gone a bit further and read subparagraphs (2) and (3). You will see there that the minister can give a general or a specific exemption in certain areas. So what appears to be an unqualified exemption in (1) is in fact subject to the subsequent clauses.

Senator BROWN (Tasmania) (1.08 p.m.)—This is very important because what we are establishing is that the Commonwealth intends to allow the states to legislate on the matter of Internet gambling. Is that the case?

Senator Alston—I did not say that at all.

Senator BROWN—Then what did you say, Minister? That is what I heard.

Senator Alston—I said: read (2) and (3).

Senator BROWN—I have read (2) or (3).

Senator Alston—Read them both.

Senator BROWN—The minister is not specifically mandated or required in (2) or (3) to do anything in regard to the regulations or laws of the states. I ask the minister, because this is very important: is the government intending to regulate the online gambling potential? If so, is its intention to do that as a national law? Or is it its intention to leave it to the states so that we have a disparity between the states and territories as to what is and what is not allowed with online gambling services?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.10 p.m.)—There are various ways in which the Commonwealth could override state legislation. For example, it would normally not be within the jurisdiction of the New South Wales government to pass laws affecting the ability of Telstra in relation to gambling. This is confined only to the activities of ISPs, who presumably are only one part of the total equation when it comes to online gambling.

In so far as ISPs' actions are overridden, there is a specific power under (2) and (3) to allow the minister to deal them back into the game. So if you are asking what effect it would have in terms of online gambling, I would have thought that we would probably want to preserve the status quo pending the outcome of the productivity inquiry. In other words, if and when we reach a position where we want to take some action in respect of online gambling, then we will have the capacity to do it, and we could certainly do it in respect of ISPs. If, however, we wanted to allow the states to maintain certain arrangements in respect of ISPs, then we have the capacity to do that.

Senator Brown—Chair, has the minister consulted with the states or territories about this particular provision?

Senator ALSTON—We have had discussions with New South Wales officials.

Senator Brown—Could the minister inform the committee about the feelings of the New South Wales government on this matter?

Senator ALSTON—I do not know that any formal view has been put. There was an exchange of views.

Senator Brown—You cannot have discussions with no view being put, Minister.

Senator ALSTON—I said: any formal view.

Senator Brown—What was the informal view?

Senator ALSTON—I have no idea.

Senator Brown—You have no idea of the point of view that New South Wales put in those discussions?

Senator ALSTON—No.

Senator BROWN (Tasmania) (1.12 p.m.)—Chair, as minister he should have an idea because this is a very important matter. We are going to get into a very big national debate about online gambling. That will involve the matter of who should be regulating—the states and territories or the Commonwealth and/or a mix. There is a very great concern in the public arena about the vulnerability of Australia to hosting online gambling, particularly those instigated by, for example, American operations which have been prevented from operating in the States under laws that have been developed there. I think there would be considerable alarm on top of that if the government were to say that it is going to leave it to the states to determine the matter, because that would mean that any state that wants to allow online gambling is going to become a matter of intense interest to both legal and illegal interests wanting to set up such facilities.

I am concerned that the minister says that there have been discussions with New South Wales about this but he does not know their position. He should know. This is a very critical matter. The facility of online gambling is going to have a massive impact on the Australian community. There is already enormous concern about the increasing diversion of money from Australian pockets into gambling and the consequent social fallout. The Internet offers the potential for gambling to be much more easily accessed by all Australians. The facilities will effectively be offered in the living room of those people who have their computer facilities there.

The government, I think, has given this matter far too low a priority. I am alarmed to hear that, although the minister's department has had negotiations with New South Wales, he does not know what the New South Wales point of view is. At least New South Wales has taken action in this direction. It appears the government is confused. It does not have a policy. It is waiting for reports but is yet to discuss whether it is going to be the arbiter of online gambling services. It appears to have no difficulty in taking up that responsibility as far as censorship is concerned, but it has not yet determined whether it has a role or whether it is going to be the responsible controlling authority for online gambling services. That is not good enough. I think the minister owes the committee a better description of the state of play.

I use the opportunity in this committee, in this chamber, to say to the minister that the government should get going on this matter. The government ought to have a formulated policy. It ought to at least know whether it is to assume the same responsibility for gambling that it has already undertaken for itself with pornography. What the minister has just said leaves me very alarmed that he has given no particular attention to this important matter. Discussions with the states about online gambling, even as far as the impact of this legislation is concerned, and unintended consequences have not penetrated the minister's office. At least they have not reached the minister. He knows these discussions have taken place—he has just received that advice—but he does not know what the attitude of New South Wales is. There is a lot of work to be done in this respect. I would submit that the government should be putting this matter in a place of high priority. I think the government has got its priorities wrong.

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

The TEMPORARY CHAIRMAN (Senator Chapman)—The question now before the chair is that the opposition amendment, as amended, be agreed to.

Senator BROWN (Tasmania) (1.18 p.m.)—I ask whether the minister will respond to my previous submission that he ought to make it clear to the committee at what stage the government is at in developing policy on the important matter of online gambling. Why is it that he seems so unprepared to do so in this matter when he has given such prominence and importance to censorship, which we are dealing with at the moment? Of course both matters are important. I am astonished that he seems so short on information, insight and recognition of his own responsibility as far as gambling is concerned.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.19 p.m.)—I will speak very briefly. Senator Brown can jump up and down as much as he likes, but we have a Productivity Commission inquiry under way. We want to take the issue seriously. We are not jumping on the latest bandwagon, as Senator Brown is wont to do. I apologise for calling him a professional activist: he is a very amateurish one. When it comes to Commonwealth and state responsibilities, there is a clear demarcation in terms of content and regulation being the responsibility of the states and ISPs being the responsibility of the federal government under the telecommunications power. The New South Wales government is aware of the provisions of this bill. It wants to preserve its current legislative provisions. It has sought a wide exemption. It accepts that, in its current form, it is not acceptable to the federal government and there will be ongoing discussions on the matter.

Senator BROWN (Tasmania) (1.20 p.m.)—I asked the simple question because it is quite germane as to how the chamber might vote on this clause when we reach it. It affects all the other clauses as we move towards it. Has the minister given New South Wales an assurance that its legislation on online gambling will not be affected by this legislation? In other words, is the minister going to assure New South Wales that he will give a specific exemption to New South Wales in so far as its laws may be affected?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.21 p.m.)—No, and nor has the New South Wales government sought any such agreement.

Senator BROWN (Tasmania) (1.21 p.m.)—I will push this a little further. If the New South Wales government seeks to have its legislation on online gambling exempted from the restrictions contained in part 9 of the bill, will the minister agree to that?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.21 p.m.)—I have dealt with this matter on at least four occasions. The matter is still under consideration. The Productivity Commission's review will inform future government policy.

Senator BROWN (Tasmania) (1.21 p.m.)—The answer is that the minister does not know. So I put this question to the minister. There is international speculation—there certainly has been in the American press—that Victoria, in particular Crown Casino, is being seen as a place for establishing online gambling services. The press has indicated that the Packer interests, and indeed Microsoft, might be interested in such a facility. Can the government give an assurance that, when it deals with online gambling, there will be no exemption given to Victoria or any other state as far as the application of online gambling restrictions is concerned?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.22 p.m.)—All relevant matters are under consideration.

Senator BROWN (Tasmania) (1.22 p.m.)—Here we have a minister who does not know what he is doing. We have an enormous public debate. It affects not only this country but the international community. As I understand it, we are talking here about a gambling potential of some $600 million at the moment, going to $3 billion within a couple of years. Widespread public alarm has been expressed about this matter. We know that there are a number of reviews under way—the minister has referred to them—but the minister does not have anything to give the committee as to the Australian government's thinking on this. In effect, it has no thinking. It has proceeded with all rapidity and urgency to bring up this legislation to impose censorship today, but with the enormous potential of online gambling to harm the social fabric in Australia and to create a large number of victims, including those who are not the actual gamblers—we know that there are illegal as well as legal intentions by people involved in the gambling industry and, from anecdotal evidence at least, we know that where online gambling occurs it is not regulated to protect gamblers even from unscrupulous activities—it alarms me that the minister has not been able to inform this house about the process of

dealing with it or even about the federal government's intention to take it on in the same way that it has taken on the censorship role.

If it is left to the states, I think we are going to get a very unsatisfactory outcome. It is going to take a long time. I know the minister is not going to enter into this debate any further because he has nothing to say. But I do not think that is good enough.

Question put:

That the amendment (**Senator Bishop's**)—as amended—be agreed to.

The committee divided. [1.30 p.m.]

(The Chairman—Senator S. M. West)

Ayes	30
Noes	32
Majority	2

AYES

Bartlett, A. J. J.	Bishop, T. M.
Bolkus, N.	Bourne, V.
Brown, B.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crowley, R. A.	Evans, C. V.
Forshaw, M. G.	Gibbs, B.
Hogg, J.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K. *	Quirke, J. A.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

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

PAIRS

Allison, L.	Tambling, G. E. J.
Campbell, G.	Hill, R. M.
Crossin, P. M.	Alston, R. K. R.
Denman, K. J.	MacGibbon, D. J.
Faulkner, J. P.	O'Chee, W. G.
Hutchins, S.	Knowles, S. C.
Ray, R. F.	Payne, M. A.

*** denotes teller**

Question so resolved in the negative.

Senator MARK BISHOP (Western Australia) (1.34 p.m.)—I move:

(2) Page 2 (after line 2), after clause 4, insert:

5 Expiration of Act

This Act ceases to be in force at the end of 3 years after the day on which it commences.

[sunset clause]

Opposition amendment No. 2 seeks to insert a sunset clause into the bill. Proposed clause 5, under the heading 'Expiration of Act', reads:

This Act ceases to be in force at the end of 3 years after the day on which it commences.

The opposition gave a lot of consideration to its position because, as the minister mentioned in the earlier debate, there was some degree of similarity in the issues facing us in terms of the review clause and our approach to the sunset clause. But in the final analysis we came to the view that they were separate and distinct issues and that we would box on with both regardless.

In the Senate committee minority report, in my speech yesterday and in Senator Lundy's speech during the second reading debate we made reference to a number of core principles that we had determined would guide us and assist us in our analysis of this bill as we went through the committee process and as we go through the committee stage here in the chamber today. Three of those matters that we regarded as particularly important were: firstly, the lack of full and open community debate on this issue of censorship, control, regulation and the overall effectiveness of the bill; secondly, the economic impact, the financial impact, on ISPs and more importantly on users of the Internet whether private or commercial; and, thirdly, we had much regard to, and were impressed by, the degree of the evidence given to the committee on technol-

ogy convergence in this country. So we have had regard to those three matters and those three principles, if you like, have guided us in confirming our view that this legislation should have a sunset clause.

Turning to the first issue—the lack of full and open debate—I am not going to unnecessarily repeat the comments that I made in the discussion on the review clause. It might be appropriate to simply adopt them for the purposes of discussion in this sunset clause debate. But I do think it appropriate to say that the opposition have signalled on a number of occasions that we are concerned that there has been a lack of adequate and ongoing consultation with those in the industry. More importantly, as a degree of debate has developed and has been covered in the mainstream press around the issue of censorship and regulation, we have been concerned that there has been almost zero, nil, impact in the community. The issue has not registered on the radar screens out there in the community and people are not paying attention to it.

People are interested in issues of censorship. They are interested in issues of regulation. They are interested in issues of control. They are increasingly reticent to give support to government intrusion into their private and domestic lives. We often hear the government attack the opposition for not being sufficiently pro-market or not being sufficiently in favour of economic forces resolving nearly all issues in our community. We are often attacked for seeking to have unnecessary or too much regulation.

In this debate we are concerned that there has not been sufficient debate in the wider community. In my own community in Perth, if people know me or recognise me from the press or TV they often will wander up and have a yarn about different topical issues of the day. But I have not been approached, unusually, by one ordinary person of the community on this issue of censorship, control and regulation. I conclude from that, somewhat contrary to the minister, that it is just not on the radar screens and it is not a topic of debate. But when I raise it, when I give formal talks or speeches or when I am asked to pass comment and I go into the detail of the Internet debate, of this bill and of regulation and control, people are interested and they do respond. So it is unfortunate that we have not had that debate.

That is the first reason why the opposition says this bill needs a sunset clause. This is unlike, say, Telstra or the new tax system where there has been copious amounts of information published in the press and where there is a lot of ongoing and active discussion in pubs, hotels, restaurants and social circles about the wisdom or otherwise of the new tax system, whom it is going to impact upon, whom is going to benefit, whether there should be tax cuts and whether the new business arrangements should be part of the GST debate. All of that is being actively discussed out there in the community.

Similarly, whenever Telstra—first wave, second wave or whatever wave—comes on the agenda, people have a view on that. It is not just the aficionados who write and say, 'We are opposed to the privatisation of Telstra. Keep up the good fight,' or, 'You are a pack of backward people. Get out of the way and let the government privatise Telstra.' You get both lots of correspondence. On this Broadcasting Services Amendment (Online Services) Bill 1999, apart from those who are in the industry, the aficionados and those who take a deliberate interest in the consequences and the impact of the bill, there is little discussion. We are concerned about that. That is why we hope, we are willing to participate in and we think it is appropriate there should be a full and open debate in our community over the next two or three years on the issue of regulation, on the issue of control and on the issue of what is suitable to be freely available and what is not suitable to be freely available in our homes and to our children.

I repeat my earlier comments: I have been much impressed by some of the evidence given to the Senate IT committee. Eighty per cent of families with children choose to purchase filtering technology. That surprised me when it came out. I was discussing it with one of my colleagues last night and he had not been aware of that fact. I asked him what he thought and he said, 'I am amazed that parents would pay $10, $20 or $30 per month

to access filtering technologies.' That appears to be the case.

I think there needs to be that debate in the community. It is out there. It needs to be public. Both the government and the opposition need to put their position clearly on the table. They should do so not in terms of some of the simplistic notions of pro- or anti-regulation, either for or against, or some of the juvenile comments about government intrusion in the censorship issue that are published in the press. They should address the real debates as to whether it is appropriate now and in the future to seek to regulate and control material that comes from offshore. Senator Alston says repeatedly that in the real world, government has regulated and controlled material for many years. He starts from the point that, if it is regulated in the real world, it should similarly be regulated in the online world. A lot of other people do not accept that argument. We have not had that debate. The best thing that can occur, if this bill is passed with a sunset clause of three years, is that we have that full and open debate and perhaps resolve that issue of censorship, control and regulation in a proper and open manner for some time into the future.

The second reason the opposition puts forward for seeking to have a sunset clause, for seeking that this legislation expire after three years from the date of operation, is that we have received a lot of submissions on the economic impact of the bill and the financial aspects of the bill. Government outlays are going to be in the order of $1.9 million per annum in terms of operational costs attached to establishing the framework for administration of the bill. Apart from that, the impact on government outlays is minimal.

In terms of the economic considerations, the IT committee has received a lot of submissions that identified that there could be loss of business, businesses could be relocated from Australia to offshore, parts of businesses could be relocated from Australia to offshore, and some of the professionals and the more skilled workers in this industry would choose to relocate particularly to the United States where there is huge demand for their labour because of some of the harmful and—I am prepared to say this at this stage—probably unintended consequences of this bill.

This morning a number of senators tried to pin Senator Alston down and explore the financial and economic consequences of the bill, but we were unable to get any hard information. One of the problems we have had is that the Senate IT inquiry was rushed. It was so quick that the witnesses from the three bodies that gave evidence on the first night of hearings—the Australian Computer Society, the Australian Information Industry Association and Electronic Frontiers Australia—all of whom had different views on the worth or otherwise of the bill but all of whom are in many respects expert in this industry, did not have prepared submissions. They had not been able to convene their executive. They had not been able to convene their committee of management. They had not been able to study the bill. They had not been able to analyse the bill. So we had a sitting that went for three or four hours on the Tuesday night—

Senator Patterson—We used to have the bill on the Thursday and then have the committee hearing on the Friday.

Senator MARK BISHOP—We had the sitting on the Wednesday night, and all of these people came along. The bill had been tabled for 24 hours, but no draft copies had been circulated. There had been no consultation. That is the problem. In the old days, when a bill was tabled, there had been extensive consultation with the relevant industry. In this case there had been no consultation. So they came along and said to the chair, 'These are our submissions. We think these are our views. A preliminary reading of the bill, a preliminary analysis of the bill, suggests it has these shortcomings and deficiencies, but we really need to go away and study it in more detail.' That occurred on the Tuesday night; that occurred on the Wednesday night. It occurred again on the Thursday night. We then broke for about eight or 10 days and came back on the Monday, and a range of those associations came forward. They had then had the opportunity to give the bill some consideration in detail.

Two of those associations changed their position. One of them, in particular, had been very public in supporting the bill, but after a period of 10 days, having liaised with its membership and consulted as to their viewpoints, they came along and advised us that their position had changed; that the first press release was inaccurate; that they withdrew their comments and that they were now opposed to the bill. All of that occurred because there had been insufficient time allowed for consultation. That is a funny way to do it.

In their evidence, they highlighted that there were economic consequences of the bill, that they might have to rearrange their business, relocate their business, establish new internal control mechanisms. They said to us, 'This is going to cost. We will transfer those costs to consumers. Consumers will pay a higher price, and that is something that is unfortunate and unnecessary.'

The real problem that we had in those hearings was that those organisations did not have any empirical evidence to support their point of view. They came forward and said, 'We think this is going to happen; it's going to have these untoward consequences. This is a bad thing, by definition.' But when pressed, when asked, 'Where are your sums? What do your accountants say? Let's have a look at your financial analysis statements,' they said, 'We don't have those, Senator, and we don't have those because we simply haven't had time to adequately analyse the bill and to give consideration within our own forums, within our own organisations.'

That is the second major reason why the opposition seeks to impose a sunset clause. We seek a sunset clause so that industry participants can give consideration to the financial and economic consequences. They might well come to us in six months time and say, 'The consequences are minimal. The regulatory regime that the government has imposed, whilst it is difficult and we don't like it, is not going to have any impact upon the way we run our business, for the simple reason that the number of complaints is minimal. We thought there might be thousands and thousands of complaints coming from interested members of the public'—*(Time expired)*

Senator LUNDY (Australian Capital Territory) (1.48 p.m.)—I rise to support my colleague and to commend this amendment to the chamber. A sunset clause is a fairly blunt instrument in this place, and it is designed for a specific purpose—that is, to call the government to account. We are dealing with a flawed piece of legislation which Labor is seeking to amend. The sunset clause places a distinct requirement on government to address the content and merit of that piece of legislation prior to its nominated expiration date, which we have set at three years.

The reasons for doing this are quite clear. We are amidst a time of great change with respect to information technology. I traversed an issue earlier with respect to datacasting and convergence in media technologies that is occurring currently, but for whatever reason—and I think those reasons are quite clear—this government has chosen not to time the consideration of this legislation in the context of converging media, telecommunications and telephony, but to push ahead with a classification regime affecting the point of convergence of these technologies—the Internet.

The process by which we came to this has been well traversed—the condensed inquiry, the cynicism underlying the government's motivation to push forth with their agenda. I would like to comment briefly on the history of the IT select committee, given that it has been touched on by a number of contributors to this debate. In particular, the minister made reference to earlier work of the committee. The construct of the IT select committee is such that it has been very narrow in its addressing of issues in relation to the Internet. Indeed, it has serviced the agenda, particularly, of one senator, Senator Harradine, and his concerns in relation to censorship and online pornography.

I think it is a great shame that Senate processes have been used in such a narrow way to try to perpetuate his particular agenda at the expense of far broader issues. I think it was a great shame that the government chose to re-create or re-form that IT select committee, whereas in the lead-up to the last election

and the reconstitution of this Commonwealth parliament, the purpose and relevance of that IT select committee was certainly recognised by most of the major parties. I think that its reconstitution in the time, way and place that it occurred indicated very clearly that the government's agenda was to service what had been pre-established as Senator Harradine's particular concerns.

Nonetheless, I do not want to dwell on Senator Harradine's motivation—I think everyone is quite clear on that. Rather, I want to turn to the government's motivation. Not only is there the well documented expedient and cynical approach to this particular bill that they have embarked upon, but also there is the particular moral conservatism expressed by many on their side of the chamber about how we deal with community standards in the area of censorship and how we give effect to it through bills and indeed legislation.

It is fair to say that many people are concerned about access by minors to unsuitable Internet material that they may be able to peruse. We are concerned about that. My online survey demonstrated that, yes, we are genuinely concerned about that but there is no sensible reason for that genuine concern to be manipulated into a debate that we now find ourselves in where we have a bill that is not constructed in such a way that it will actually effectively service those concerns.

I believe the most effective mechanism for dealing with that community concern is the one which we have followed right from the start. It is about empowering those in our community to deal with this new medium, in the same way that empowering those in our community to be dealing with a lot of the challenges that confronts them is essentially the first base of social security responsibility in respect of any government. I do not believe it is good enough to rely on a half-baked regulatory approach without fulfilling the public obligation a government has to ensure that a community is properly informed about an issue.

This one is quite complex. It traverses a number of layers. I have mentioned on a number of occasions the issue of equity of access to the Internet and the fact that, for people to actually inform themselves, they need to have the opportunity to actually participate in the first instance. If we are going to talk about public policy and Internet regulation, that really needs to be the first port of call. As with most legislative debates, it is never clear cut and there are always a multitude of layers.

The second port of call is actually looking at what is achievable, to try and dispense with some of the rhetoric that only serves to confuse the issue. In this case we actually have, as the minister said, a succinct report that outlines very clearly exactly what is capable in a technological sense online. That report was produced at the behest of the government, as we have heard the minister state this morning, and it goes to the very heart of what we are capable of in respect of the control of Internet content. That report, which as I mentioned earlier was produced by the CSIRO, concludes that it is not effective to try and control Internet content through technological means. I seek leave—and, Minister, this might prove a useful exercise—to incorporate in *Hansard* the section headed 'Conclusion' in the original report produced by the CSIRO. This is section 6, which describes the outcomes of that particular report.

Senator Alston—Do you want to incorporate the recommendations?

Senator LUNDY—The chapter entitled 'Conclusion' in the CSIRO report would be put in *Hansard* for the purposes of enhancing the public record.

Leave granted.

The document read as follows—

Technical Aspects of Blocking Internet Content

Prepared by CSIRO for the National Office of the Information Economy

Paul Greenfield

CSIRO

Mathematical and Information Sciences

April 1999

6 Conclusion

The issue of Content blocking is a difficult and, at times, emotional issue. It is beyond doubt that material which is classified as illegal in Australia should not be available to Australian users, whether

via the Internet or other distribution means. And most people would agree that minors should be protected, if at all possible, from accessing Content on the Internet—either accidentally or wilfully—that may harm them in some way or another.

Our study of Content blocking relates to Content which is hosted *outside* Australia, but accessed by Australians. Content that is hosted in Australia should not be handled by blocking techniques. If locally hosted material is illegal, then the hosting organisation (which can easily be identified) is required by law to remove it. If the material is offensive, then the hosting organisation can again be contacted directly.

It is technically possible to block Internet-delivered Content at two distinct levels—at the application level, and at the packet level.

Packet-level blocking, based on examining the source address on Internet packets, is technically possible and can be carried out without performance penalty using appropriately configured top-of-the-line routers, although it is believed by some that this may not be able to continue scaling. However packet-level blocking is too coarse, and if implemented will create unintended 'holes' all over the emerging global digital infrastructure. This is inconsistent with Australia's desire to become an electronic commerce hub for South East Asia.

Application-level blocking, based on the use of proxy servers, is technically possible but, as indicated in Chapter 4, it can easily be circumvented in more ways than packet blocking with the result that it would be largely ineffective. Furthermore, users do not have to be particularly experienced Internet users to bypass application-level blocking.

Our conclusion is that Content blocking implemented purely by technological means will be ineffective, and neither of the above approaches should be mandated. Work-arounds will quickly be devised for any technologically-based blocking system and distributed over the Internet itself.

Having said that, we propose two different solutions to the issue of Content blocking—one which can be implemented in the short term, and another for consideration as a development in the longer term.

ISPs could offer differentiated services

A wide range of filtering software is now available (34), accompanied by an ever-increasing set of associated URLs which are updated on a regular (sometimes daily) basis. These products fall into several broad categories:

. They can operate on an ISP's proxy server, or at the client end.

. Their filters can either pass and/or block URLs—in other words, they can work with a permitted list, or a black list.

[(34) A comprehensive analysis of commonly available filtering software is maintained at http://www.research.att.com/~lorrie/pubs/tech4kids/.]

Where there is a market demand, we suggest that ISPs be encouraged to offer differentiated services to clients, and in particular that services for minors be created, based on access to the Internet through a proxy server. Two classes of such differentiated services could be considered:

. **A 'clean' service:** the filter includes a list of *permitted URLs only;* requests to all URLs outside this list are refused. The 'real' Internet is not actually accessed, and a user cannot escape from the prescribed 'universe' that s/he finds him/herself in. Several such proxy-based filtering schemes are currently available, providing access to a universe of thousands of permitted pages.

. **A 'best effort' service:** the proxy filter blocks a set of known sites, rated according to some prescribed criteria. The result is based on a best-effort approach by an ISP, and cannot be guaranteed. Bess filtering software (35), for instance, claims to have a black list of 'hundreds of thousands of pages'.

ISPs would incur some costs in setting up services such as these. These could either be passed on to clients in increased fees, or an ISP may see some competitive advantage in providing such environment to clients (36). Alternatively the Government may consider providing some incentives to ISPs to offer such differentiated services.

To be successful, it is essential that the initial access to the ISP should be to the filtered service. This could subsequently be bypassed by parents, if necessary, with the use of a password.

In addition to the above, individual users can of course acquire and install client-based filtering software as a commodity product.

International Cooperation is needed to determine jurisdiction

Locally-hosted Content, that is either illegal or considered to be offensive, is best handled by a direct approach to the ISP or the organisation that hosts the material, requesting that the ISP or hosting organisation take appropriate action.

Most Content on the Internet, however, resides on servers *outside* Australia. Because it is outside Australia's jurisdiction, authorities in Australia have no authority to request the hosting organisation to remove illegal or offensive Content. In fact the Content in question may be entirely legal in the jurisdiction in which it is being hosted, as a result of differences in international regulation.

It is proposed that Australia participate in international fora to create the necessary infrastructure, so that organisations which host Content would be able to determine the jurisdiction of the client software making the request. Having determined the jurisdiction, the server can find out whether the requested Content is legal in the client's jurisdiction.

This proposal is expanded in Appendix 5, and is clearly a long term solution. The required infrastructure will not be driven by Content blocking, but will probably be driven by other needs such as taxation, i.e. determining the location of a purchaser so that the amount of sales tax payable in the purchaser's jurisdiction can be worked out.

[(35) See http://www.n2h2.com]

[(36) AOL and local ISP *iinet* offer filtered services.]

Senator LUNDY—The conclusion really sums up so many of the issues in the debate from a technological perspective. It is about introducing a little bit of reality and about rapid changes in technology, as we have described. So far we have heard about technological developments that actually enhance filtering technologies. But it is also certainly within the bounds of what is currently being reported that the technologies to circumvent filtering are not only currently available on the Internet but indeed are also developing at a very rapid rate. So, whilst the emphasis to date on technological change has been on the improvement in accuracy, quality and sophistication of filtering devices, the equal and opposite reaction can occur with the development of technologies that can actually bypass the filtering devices.

This is obviously an issue in the context of the debate. It undermines significantly the government's credibility and its claim that this will actually be a solution. I think it is worth placing on the public record that there are already technologies available that can effectively bypass filtering mechanisms and that as time proceeds—maybe in a year or two—we will see very clearly that any filtering technologies in place will be immediately bypassable. All of these issues point us in one direction only: there is a critical need for a mechanism to be in place to force the government of the day to tackle once again what will be quite an interesting and much changed environment in which to consider Internet regulation. For this reason we seek the support of the chamber for Labor's amendment to insert a sunset clause into the online services bill.

Progress reported.

QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Food

Senator GEORGE CAMPBELL—My question without notice is directed to the Assistant Treasurer, Senator Kemp. Does the minister recall favourably quoting the Commissioner of Taxation, Mr Michael Carmody, stating that the exclusion of food from a GST would be a recipe for disputes? Does he recall Mr Carmody's comments that such an exemption would affect 370,000 businesses and lead to costly disputation and greatly increased cost to the community? Does the minister recall citing the example of the five-year legal dispute about the tax status of frozen yoghurt and his claim that those absurdities must be avoided? Is the minister aware of any recent developments that now put his view at odds with the tax commissioner's views on the problems that would arise from the exclusion of food from the GST?

Senator KEMP—I thank Senator Campbell for that question. You will be aware what the government's initial proposal was, the initial proposal which went to this Senate and went to the Australian people. You will also be aware of the numbers in this Senate. You will also be aware that we are in the throes of discussions with other parties in relation to how we can advance tax reform in this country.

You can be absolutely assured that the government is very keen to progress tax reform to make it real tax reform—reform which can ensure that Australia has a launching pad for the 21st century. We are approaching those discussions in a very constructive manner. As to the outcome of those discussions, you will have to wait. But let me assure you, Senator Campbell, that we are determined that any tax reform in this country will be brought in in a way which is good for business, good for the taxpayers, good for the economy and, most of all, good for the Australian people.

Indigenous Australians: Employment

Senator FERRIS—My question today is to Senator Herron, the Minister for Aboriginal and Torres Strait Islander Affairs. Our government unveiled a record $2.2 billion on indigenous specific programs in the budget aimed at assisting indigenous Australians to move beyond welfare dependency. Will the minister please outline what the government is doing to create jobs for indigenous Australians?

Senator HERRON—I thank Senator Ferris for the question and also for her continued interest in the portfolio, particularly for convening the family violence seminar that was held last Friday at Mount Gambier. I am pleased to inform the Senate that I will be attending the launch of Reconciliation Week with Minister Philip Ruddock on Thursday, and I would encourage all Australians to participate in Reconciliation Week activities.

The government is committed to reconciliation and has identified it as a priority area. We committed extra funds in the budget to the Council for Aboriginal Reconciliation, which will have its funding boosted to $6½ million. One of the biggest contributions the government can make to reconciliation is to address indigenous disadvantage. We are taking a practical approach. We are spending $2.2 billion on indigenous specific funding, and that is a record amount of funding. We are focusing on making improvements in the key areas of health, housing, education, economic development and employment.

I am pleased to inform the Senate that part of that significant commitment is a $115 million indigenous employment strategy unveiled today by the Minister for Employment, Workplace Relations and Small Business, the Hon. Peter Reith. It is a key strategy that will assist indigenous Australians to move beyond welfare and towards a better future. Indigenous unemployment is at least three times that of other Australians, and the package announced today will greatly assist in finding lasting jobs for Aboriginal and Torres Strait Islander people.

The comprehensive package, which will be progressively implemented from 1 July, involves a new $50 million Indigenous Employment Program that will focus on generating job opportunities in the private sector. This is an extra $25 million a year in funding. It includes initiatives such as wage subsidies to encourage employers to provide worthwhile job opportunities for indigenous job seekers and to encourage major national companies, and particularly chief executive officers, to develop strategies to employ more indigenous people. The package also includes incentive payments of $2,000 to CDEP, or Community Development Employment Project, sponsors to encourage them to place their workers into permanent jobs; support to projects that focus on employment outcomes and structured training with private and community sector employers at the regional level; and a National Indigenous Cadetship Program that will assist potentially hundreds of indigenous job seekers to gain professional positions in the public and private sectors. These are major new initiatives.

But there are other initiatives announced today. These include an Indigenous Small Business Fund which will be established with ATSIC to provide business preparation, support, mentoring, financial and business advice, outreach and Internet based services as well. A voluntary service foundation will respond to the needs expressed by indigenous communities for skilled volunteers. I am frequently approached by people in the wider community who wish to assist the indigenous communities with expertise, and this will be a vehicle where that can be achieved.

I would also like to take this opportunity to acknowledge a number of the indigenous people who have been involved in consultation with Ministers Reith and Abbott during the formation of the policy. I thank them for being here today. The initiatives outlined today will provide practical employment outcomes for indigenous people so that individuals can improve their own circumstances as well as make a significant contribution to Australian society. I know we all look forward to the day when all indigenous Australians share the full equality of opportunity that our nation offers. I commend this initiative to the Senate.

Goods and Services Tax: Food

Senator COOK—My question is to the Assistant Treasurer, Senator Kemp. Does the government stand by evidence given by the Department of the Treasury to the Senate GST committee in December that exempting food and other essentials from the GST would make the government's tax reforms unsustainable? In particular, does the government support Treasury's analysis that the removal of food and other essentials 'would mean that the package is unsustainable as a whole, with likely higher adverse economic effects on the fiscal balance, monetary policy settings, growth and employment'? At the time the Prime Minister and the Treasurer trumpeted these same views. My question is: does the government still support Treasury's analysis?

Senator KEMP—To Senator Cook I would say the government will not be supporting any final tax package which is unsustainable. We will not be supporting any package which is not in the interests of the Australian economy and the Australian people. But as to the final shape of that package, you will be aware—and I have said this a couple of times, but I guess I will be saying it a few more times today—that negotiations are under way with non-government parties. As to the final shape of the tax package, you will have to await the announcement of the outcome of those negotiations. But let me absolutely assure you that the government will not be supporting any unsustainable tax package. The government will be supporting a tax package which we believe will be in the interests of the Australian people and the Australian economy.

Senator COOK—Madam President, I ask a supplementary question. I note, Minister, you did not actually answer the question I put, but I ask a supplementary question. Does the government stand by the Treasurer's statement in the House on 30 March of this year when he said:

> If you exclude food from the GST, you are going to have tax inspectors running around trying to see whether the chocolate on a gingerbread man is bigger than the eyes, trying to determine whether it is food or a snack.

Will these be the same tax inspectors who will be sticking thermometers into chickens? How many tax inspectors will there be employed to undertake this important job of thermometer insertion and gingerbread eye measurement?

Senator KEMP—We heard the joke yesterday. I guess we will hear it today, and we will hear it tomorrow. I guess that this will continue on. But let me make it absolutely clear to you that we are very conscious of the need to develop a tax package which has very effective compliance arrangements. The government will only support a package which—I have said it once, I have said it twice, and I will say it again—is in the interests of the Australian people and the Australian economy.

Illegal Immigrants: People Trafficking

Senator EGGLESTON—My question is to the Minister for Justice and Customs, Senator Vanstone. In the last two months we have seen a large increase in the number of illegal immigrants being detected attempting to enter Australia by boat. My question is: what is the government's assessment of the current situation and future trends in terms of people smuggling into Australia?

Senator VANSTONE—I thank Senator Eggleston for his question. Trafficking in persons is a growing global problem. Officials that I met overseas recently confirmed that people trafficking is increasingly being run by organised criminal networks. That is certainly the view that was expressed in Thailand, in Vietnam, in Beijing, in Quang Zhou and in Hong Kong. These problems that we experience are not only being experienced by us. It is a global problem. They are having difficulties in the United Kingdom, in the United States and in Canada. The proceeds of people trafficking have been estimated at some $7 billion per annum. It is estimated that four million people are simply trafficked around the globe on an annual basis. People trafficking is lucrative and, compared to other criminal activity, relatively low risk in terms of penalties.

No-one denies that the recent arrivals by boat are a serious problem, but it does need

to be kept in context. Ten times the number of illegal immigrants attempted to enter Australia via scheduled airline flights than by unauthorised boats in 1997-98. In contrast to that, overstays on legitimate visas are also a problem, and there are estimated to be some 51,000 overstayers in December 1997. There were 348 people who arrived by boat between 1 July 1998 and 30 April of this year. That is already double the number who arrived in the previous year. So we do need to understand what is driving the increase in attempts at coming into Australia.

Intra-Asian illegal immigration is much less attractive now. The impact of the Asian financial crisis, repatriation of immigrants from Malaysia and Korea, increased political instability in the region and, of course, decreased economic opportunity all make intra-Asian immigration less attractive. Changing economic markets in China mean that displaced rural workers are seeking opportunities for themselves and their families elsewhere.

We are a very attractive destination—geographically, socially and economically. Our appeal as a tourist destination makes Australia even more appealing, as does, of course, the presence of networks of friends and families that are already here. The Olympics has increased the perception that Australia is a land of great opportunity. While these factors operate, organised crime will look to the vulnerable to make profit.

The scale of individual desperation that people feel cannot be overestimated. Reports of the recent Somali trafficking racket show that people were prepared to pay fares around four times their annual average earnings to come to Australia. In 1997-98 some 1,555 people were turned around at airports. More than 75 per cent of these are believed to have had their travel arrangements facilitated by criminal traffickers.

The increasing size and sophistication of the vessels attempting to land indicate the involvement of organised crime. We are not talking about people washing ashore in wooden boats, hoping to find a land of opportunity. There is quite a bit that the government is doing about this. We, of course, have the task force set up by the Prime Minister taking a holistic approach to the coastal surveillance question to ensure that our arrangements are adequate to meet this changing demand. Of course, we have other efforts to stop organised trafficking, including in the last budget an extra $10.84 million provided. *(Time expired)*

Senator EGGLESTON—I ask a supplementary question. I would ask the minister to provide further details to the Senate of the problem of boats which may have come on to the north-west and other northern coasts of Australia?

Senator VANSTONE—I thank Senator Eggleston for that question. In the last budget, we provided an extra $10.84 million to strengthen the Federal Police liaison network overseas, which, of course, increases the capacity for intelligence gathering. We are working closely with countries such as the United Kingdom, Canada and the United States. The Minister for Immigration and Multicultural Affairs has also been meeting with overseas ministers to achieve greater cooperation. And we are removing people who have no right to stay as speedily as possible.

That leads me to one more thing that can be done. The Migration Legislation Amendment (Judicial Review) Bill is designed to provide a comprehensive determination process for all unlawful arrivals. Unfortunately, the Labor Party and the Democrats are refusing to allow key components of that bill through. Currently, some unlawful arrivals pursue endless court action in order to delay their departure, and organised people smugglers are using this as a marketing point to encourage customers to come to Australia. *(Time expired)*

Goods and Services Tax: Food

Senator FAULKNER—My question is directed to the Assistant Treasurer. Is the minister aware that the Prime Minister was asked by 3AW's Neil Mitchell whether the government would consider the welfare lobby's suggestion that they would trade off some of the tax breaks if the government would lift the GST on food? He specifically asked the Prime Minister, 'Is that worth negotiating?' to which the Prime Minister

responded no. Minister, does the government stand by the Prime Minister's statement that it is not worth negotiating? Doesn't this highlight the fact that the Prime Minister's word is worth nothing at all? No matter how assertively he puts a case, no matter how much passion he puts into selling a plan for a tax, within days everything is negotiable.

Senator Robert Ray—Have a dip, Rod.

Senator KEMP—Thank you for the helpful suggestion from Senator Ray. This government stands by its promise of tax reform. We went to the election on tax reform; we sought a mandate on tax reform; we got a mandate on tax reform. It is clear that we are facing some sort of blockage in the Senate, and the question is, 'How can we work our way through that in a constructive manner?' We recognise the numbers and we recognise that, if we are going to achieve tax reform in this country, we have to take part in negotiations with other parties. That is precisely what is happening at present. But as I have said in relation to Senator Cook and as I have said in relation to Senator George Campbell, as to the outcome of those negotiations, Senator Faulkner and his colleagues decided they did not want a place at the table; they decided to set their face against tax reform. So Senator Faulkner and his colleagues will have to just await the outcome of the discussions that we are having with the Democrats.

This government went to the election with clear promises, and of course it is the Senate that is making it difficult for the government to fulfil its promises. That is in contrast, I might say, to the general performance of the Senate when the Labor Party was in government for 13 years. Senator Faulkner's comments are useful because they remind us of the major broken promises of the Labor Party, not the least of which was after the 1993 election when Labor broke its commitments on the famous l-a-w law tax cuts.

This government has been seeking to keep its promises, not break its promises. We are seeking to continue the tax reform process. We have entered discussions in a constructive fashion. Senator Faulkner will just have to await the outcome of those discussions before any announcement is made.

Senator FAULKNER—I ask a supplementary question of the Assistant Treasurer. Is it not true that Mr Howard's assurances on Neil Mitchell's program are really in the same category as his claims that there would be no losers and that there would never ever be a GST, and his redefinition of core and non-core promises? Is it not the case that the Australian people again have crystal clear evidence of the Prime Minister's chronic inability to honour promises and commitments?

Senator KEMP—Senator Faulkner is really a dope, I have to say, really a dope—

The PRESIDENT—Senator, I ask you to withdraw that comment.

Senator KEMP—I withdraw it. Senator Faulkner is truly a hypocrite—

The PRESIDENT—Senator, that is not acceptable.

Senator KEMP—I withdraw that. The government is trying to keep its election promises. It is the Labor Party which is trying to make the government break its election promises. That is the game that Senator Faulkner and his colleagues are playing. Senator Faulkner stands up here and complains about the government not keeping its promises, when the sole objective of the Labor Party from day one has been to prevent the government from keeping its election promise. That has been Senator Faulkner's sole aim. What you are worried about, Senator Faulkner, is that you may well fail in that.

Drugs: New South Wales Drug Summit

Senator STOTT DESPOJA—My question is addressed to the Minister for Justice and Customs. I would like the minister to outline how her government intends to respond to the resolutions of the New South Wales drug summit, particularly in light of the Premier's willingness to entertain reforms. I am also wondering what the minister's response is to comments at the drugs summit by the Police Commissioner of New South Wales when he referred to the quantity of drugs which had been seized in New South Wales and his claim that, despite the seizures, there had been no effect whatsoever on the purity or

street value of heroin. Could the minister respond to his comments?

Senator VANSTONE—I thank Senator Stott Despoja for her question. I will deal with the second part of her question first. She asked me to respond to remarks made by Commissioner Ryan with respect to his allegation of the lack of effect on the price and purity of heroin as a consequence of seizures. I have already responded to that, Senator, in other places. You have no doubt seen that, but if you have not I will send you copies.

The bottom line of the response is this: there are a number of factors that must be taken into account in considering whether a price will go up or down. Supply is, of course, one of them. The obvious point the commissioner misses is that if more heroin is coming in over the shores—that is, if we do not stop it; we let it simply flow in—there will be an oversupply, and you might expect therefore a reduction in price. So for him to say, 'Oh, well, the price hasn't gone up' is only one part of the story.

The other response I made was to invite him to focus his attention on his force's appalling record of arresting heroin dealers. I am separating them out from users and referring quite specifically to dealers. With a population 1½ times that of Victoria, I do not think it is good enough to have an arrest rate for dealers that is only just over one-third of that achieved by Victoria. I would hope there would be agreement on that in this chamber.

As to a broad response to propositions that may involve the Commonwealth, I am not going to give that off the cuff now, but I can tell you that there are a number of factors that would of course be considered. The laws at the moment regarding street use and supply of drugs are largely a state matter. The Commonwealth attempts in its law enforcement to deal with the larger end of town—that is, with the importers and traffickers who are bringing drugs in from overseas. You will know that COAG met only a few weeks ago—that is, on 9 April—did not support injecting rooms and indicated that priority should be given to other measures such as improving treatment options available to those people who have fallen prey to the problem of drugs. That of course fits in with the strategy that we are running, which, as you well know, is a three-part strategy covering law enforcement, education and health and harm minimisation measures.

We do need to have national cooperation on this problem. It will not help if we approach this in a piecemeal way. It is inefficient for state and federal law enforcement agencies to cover the same area of responsibility and it makes the task harder if we do not have a joint national approach. So I would hope, Senator, that the New South Wales government would not choose to act unilaterally and allow injecting rooms without reference to other jurisdictions. In the end this is a national problem and it should be addressed nationally. We have a very strong interest in this area, and serious consideration needs to be given to a number of matters at the Commonwealth level. The first is international obligations, which the senator has been very keen to support in the past. The type of injecting rooms established recently in Sydney is unlikely to allow us to comply with the medical and scientific obligations in international drug conventions. The Commonwealth does have a constitutional power to enact legislation to ensure those obligations are complied with. *(Time expired)*

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. I am glad to hear that the minister recognises there is more to an effective drug strategy than simply the number of arrests, and I just want the minister to confirm that is only one way of assessing an effective strategy.

Opposition senators interjecting—

The PRESIDENT—Order! There are far too many injections. It is Senator Stott Despoja who wishes to ask a supplementary question and she is entitled to do so. Would you start again, Senator?

Senator STOTT DESPOJA—I would like the minister to confirm for the Senate that she does not simply measure the effectiveness of a drug strategy in terms of the number of arrests. Secondly, in relation to harm minimisation strategies, which the minister

has indicated is one prong of the government's approach—

Opposition senators interjecting—

The PRESIDENT—Senators will cease shouting. I need to hear the question.

Senator STOTT DESPOJA—Does the minister acknowledge that safe injecting rooms and heroin trials are actually considered harm minimisation strategies? How will the government respond, how will the Commonwealth respond, when those two issues of harm minimisation are referred to the Commonwealth from, say, a state like New South Wales? What will be the Commonwealth's response in that instance?

Senator VANSTONE—I thank the senator for her question.

Opposition senators interjecting—

The PRESIDENT—Order! There are far too many interjections. Senators know that they are behaving in breach of the standing orders, and I would ask them to have in mind what standing order 203 actually says.

Senator VANSTONE—Just for a second I thought Senator Stott Despoja was being a touch condescending in saying how glad she was to hear that we had a three-part strategy. But then I realised she could not possibly be condescending because she is not a silly little girl; she knows that has been our policy for years. She read the budget papers when they first came out, she read the first Tough on Drugs strategy release and she knows we are committed to a three-part strategy. I thank her from the bottom of my heart for giving me the opportunity to confirm again that this government is committed to a three-part strategy in the war on drugs: law enforcement—we will not give it away—harm minimisation and education. They are all there.

As for safe injecting rooms and heroin trials, Senator, I have already answered that for you. I have indicated there are Commonwealth laws that the state of New South Wales cannot unilaterally dispose of. Those laws are in place and I expect they will stay there. *(Time expired)*

Goods and Services Tax: Food

Senator MURPHY—My question is to the Assistant Treasurer, Senator Kemp. Is the minister aware of an answer given by the Prime Minister in the House where he said:

> I would also remind the Leader of the Opposition that the burden of what McDonald's has had to say about the GST and food is that the last thing you should ever do is have an approach to the GST whereby some food is exempted and some food is included.

Did he not also say:

> The message coming from McDonald's on the GST is: don't go down the Democrat path and exempt food and try to include takeaway meals.

Does the government still support the McDonald's assessment on differential taxation treatment of food items which was so heartily endorsed by the Prime Minister?

Senator KEMP—The government supports a tax package which will advance the course of tax reform, will assist growth of the Australian economy and position Australia for the 21st century to the benefit of the Australian people. Do I have to say this again? We are in the process of seeing whether tax reform can be advanced through this Senate. We are having discussions with a non-government party to see whether this great cause, which is so important to the Australian economy, can be advanced. We are approaching these negotiations in a constructive fashion. We stay committed to the great cause of tax reform because it is important for jobs, families, business and employment, and it is important for Australia to be a competitive economy in the 21st century. That is the challenge which is before the Prime Minister and the government. Any package which emerges from the negotiations will have to fit into the criterion of advancing the great cause of tax reform in this country.

Senator MURPHY—Madam President, I ask a supplementary question. Minister, does the government still agree with the Prime Minister's statement that:

> It is a ridiculous situation where you have food inspectors testing whether pies are hot, cold or warm and you have all sorts of additional GST or VAT police going around carrying out these inspections.

Given that the government estimated it would need somewhere between 3,000 and 4,000 GST police to oversee the original package, how many more GST police would be required if some foods were in and some were out?

Senator KEMP—Senator Murphy, just so that you get the point—

Opposition senators interjecting—

The PRESIDENT—Order! Would senators shouting across the chamber please desist from doing so.

Senator KEMP—Thank you, Madam President. As I have said, we are trying to advance the cause of tax reform. Any package—

Opposition senators interjecting—

The PRESIDENT—Order! It is just absurd during question time to have shouting going on the whole of the time so that people listening cannot hear and understand what is happening. Senators should have some regard for those who are attempting to watch and listen to this event.

Senator KEMP—Madam President, you are quite correct. The level of behaviour in this chamber over there is quite appalling. Every time you attempt to answer a question there is shouting and abuse.

Senator Faulkner—On a point of order, Madam President: Senator Kemp has never attempted to answer a question.

The PRESIDENT—There is no point of order.

Senator KEMP—In relation to that supplementary, I refer Senator Murphy to the questions that I have already answered in this chamber today.

Native Wildlife: Chemical Poisoning

Senator MARGETTS—My question is to the Minister for the Environment and Heritage, Senator Hill. I refer the minister to the decision in March by the Victorian Minister for Conservation and Land Management, Marie Tehan, to amend the Wildlife Act 1975 to permit the use of a variety of poisons, including organophosphates, to kill cockatoos, corellas and galahs in Victoria. I ask: is the minister aware of this decision? Was his department consulted? If so, what advice was provided? If his department was not consulted, does the minister agree that the potential for secondary poisoning of native mammals and birds of prey is serious enough to warrant a detailed examination of this proposal by his department, particularly given the role of Environment Australia in assessing the environmental impact of agricultural and veterinary chemicals within the national agvet chemical management framework?

Senator HILL—This was a decision taken by the Victorian government within its jurisdictional responsibilities in relation to land management.

Senator Faulkner—The old passing of the buck.

Senator HILL—It is interesting what you say about passing the buck, because Senator Margetts will be aware that endangered species are not a matter of national environmental significance under current Commonwealth legislation but under the bill currently before this parliament they will be. If Senator Margetts is really interested in the issue of Commonwealth powers in relation to endangered species, then she might pass our bill—but of course she will not, because it is a bill advanced by the coalition government. The point is that at the moment this is solely a jurisdictional matter of the Victorian government and they are exercising the powers that they believe are warranted in circumstances where they say there is severe crop destruction.

I note that they have indicated that these permits will be given only in extreme circumstances. Also, we have been assured by the Victorian department responsible for the administration of the system that all precautions will be taken to ensure that there are not undesirable secondary consequences.

I do not believe that we were consulted on the Victorian decision but, as the law now stands, I would not have expected that we would be consulted. If Senator Margetts is really interested in the Commonwealth having an area of responsibility in relation to endangered species—which we on this side of the chamber do believe are national issues—then

she will have the opportunity to help us in that regard in the near future.

Senator MARGETTS—Madam President, I ask a supplementary question. I thank the minister for the answers so far. As he knows, I am interested in endangered species, and he also knows his bill will not do it. Given that one of the stated aims of the agvet chemical management regime in Australia is to develop best management practices to minimise any non-target impact of pesticides and other agvet chemicals, what role is Environment Australia playing to achieve this aim, and does the minister believe that the use of organophosphates to kill cockatoos is the best management practice under the agreements that they have signed?

Senator HILL—There are other methods used in Victoria. The case was made that, in the extreme circumstances that exist at this time in some parts of Victoria, this extra method would be necessary. In relation to the approvals: yes, the approval for the licensing of agvet chemicals is through a Commonwealth process, and matters of the incidental consequences that might flow from the use of such chemicals would be taken into account in the licensing of such chemicals. These chemicals were licensed some time ago.

Goods and Services Tax: Advice from the Australian Government Solicitor

Senator BOLKUS—My question is to the Assistant Treasurer, Senator Kemp. Is the minister aware that the Australian Government Solicitor has confirmed that the government did in fact seek from the AGS advice on whether the GST rate could be locked in? Will the minister provide the Senate with a copy of that advice? If not, is it because the advice demonstrates that the so-called lock-in mechanism is merely a fraud?

Senator Carr—We'll ask the Democrats.

The PRESIDENT—Order! Senator Carr, you have been persistently interjecting today. Senator Kemp.

Senator KEMP—Thank you, Madam President, and thank you to Senator Bolkus for that question. It is interesting that he raised the issue of lock-in, because that was the very issue that was raised with his leader on TV recently. He was asked whether he could give a guarantee that the wholesale sales tax levels would not be raised under a Labor government. He said, 'I think we could have it fixed for a term—' or words to that effect—'but no longer.' There is no lock-in for the wholesale sales tax, which is beloved of the Labor Party, and that was very obvious in 1993 to those senators who were here. Labor went to the election opposing changes in wholesale sales tax and, as soon as they got in, wholesale sales tax rose, the l-a-w tax cuts were dropped and—

Senator Bolkus—Madam President, I raise a point of order. Senator Kemp knows full well that he has been asked a question about this government's lock-in mechanism in respect of the GST rate. He knows the question goes directly to that, and it goes to advice from the Australian Government Solicitor and providing that advice to the Senate. This waffle he is going on about at the moment has got absolutely nothing to do with this question, and I ask you to bring him to the relevance of the question.

The PRESIDENT—There is no point of order.

Senator KEMP—The question dealt with lock-in, and I was pointing out that under the beloved wholesale sales tax system which the Labor Party supports, there is no such thing as a lock-in; in fact, no promises can be given by your leader over the medium term about a fixed rate.

In relation to any advice which may have been given to the government, I am going to follow the practice which was regularly followed by the Labor Party in government. It is not the practice to provide any legal advice to this chamber, and I will follow that principle. We believe that the lock-in arrangements we have are effective. We believe they provide the assurances that the Australian public were seeking and, of course, they provide an assurance that Labor cannot give under its own preferred tax system. There is no lock-in mechanism under your wholesale sales tax—there is none whatsoever. We believe that the assurances that we can give the Australian people with the mechanism that we have adopted are important and effective,

and we stand by the bill that we are proposing.

Senator BOLKUS—Madam President, I ask a supplementary question. As I said, despite the waffle, the minister has not directly addressed the question. I will give him another chance. Minister, does the legal advice from the Australian Government Solicitor on the GST lock-in mechanism support the boast of the Prime Minister on 14 August last year when he said, 'You can't lock in anything more than this'? Minister, if the advice does confirm that boast, why won't you release it?

Senator KEMP—I am pointing out to Senator Bolkus that we will follow the practice of the Labor Party in relation to any legal advice which is given to this government. We will not be providing it to Senator Bolkus and we will not be providing it to this chamber.

Senator Bolkus—What a pathetic response!

Senator KEMP—It is exactly the response, I suspect, that you provided time and time again. It was your policy which you followed when you happened to be in government. So it is a bit rich to come in here and attack us for following the practice which you so regularly followed in government.

Vocational Education and Training

Senator TIERNEY—My question is to the Minister representing the Minister for Education, Training and Youth Affairs, Senator Ellison. Will the minister inform the Senate of the opportunities that are available for young people in the vocational education and training sector? How are the opportunities assisting the government to build the skill base of Australians? Finally, is the minister aware of any comments on these policies?

Senator ELLISON—I am pleased to see that Senator Carr has taken an active interest in this question. Of course, he wrote that article in the *Australian Financial Review* today which completely misses the point. If I were associated with the TAFEs in Australia, I would take exception to what Senator Carr has said—and even more so the Queensland government because he premised the whole of his article on a Queensland report which largely related to Queensland matters. In fact, any of the reflections he drew are reflections on the inadequacies of the Queensland government.

Senator Carr—What about TAFE?

The PRESIDENT—Senator Carr, stop shouting.

Senator Carr—What about TAFE?

Senator ELLISON—What this government—

The PRESIDENT—Senator Carr, I have called you to order a number of times today. I believe your conduct is persistently in breach of the standing orders. I am inclined to think that it is wilfully in breach of the standing orders, and I am monitoring that.

Senator ELLISON—What Senator Carr fails to recognise—although he does recognise the inadequacies of the Queensland Labor government—are the achievements of this federal government in relation to training. There is a record number of people in training—206,000 people; 118,000 young Australians involved in VET and schools. That is more than double the figures from 1995 when Labor was last in power. Those are issues which Senator Carr failed to address in his article today. But he also failed to recognise the increase in participation rates of teenagers in training.

Opposition senators interjecting—

Senator ELLISON—It is obvious that the opposition does not want to hear the truth. Under this government there have been great advances for young people in training—an increase from 5.7 per cent to 6.2 per cent teenage participation in training. Those are figures which spell good news for young people in training today. That is something which Senator Carr does not want to acknowledge. As I mentioned, his report today in the *Australian Financial Review* did not acknowledge the growth in TAFE places or the fact that in 1992 there were some 240,000 people in TAFE compared to 261,000 in 1997. What Senator Carr has failed to acknowledge is the increase in the participation of young people in training today under the Howard federal government. Senator Carr has failed to acknowledge the inadequacies of the policies of

the former Labor government in addressing training and young people.

He has failed to acknowledge the quality of training in Australia, and in that regard he does a disservice to Australia. At the UNESCO conference in Melbourne last year which dealt with lifelong learning it was acknowledged that Australia was one of the foremost leaders in the world today in vocational education and training, and that was under the present federal government.

What Senator Carr also fails to recognise are the industry training packages which have been developed in consultation with TAFEs. In fact, there are a multitude of partnerships today with TAFE and the private sector—very successful partnerships—which have come about as a result of training reforms under this government's policies. He also fails to recognise the Australian recognition training framework, which means that you can train in Darwin and get a job in Hobart. That is great news for young people, particularly those who travel. It is no secret that young Australians like to travel around their great country, and they can use those skills they have learnt in one end of the country at the other end of the country.

Madam President, this is just part of the reforms that this government is embarking on. But when you read this article by Senator Carr in the *Australian Financial Review* you think he is talking about planet Mars or, more importantly, the situation in Queensland under a Labor government where things are in trouble.

Senator TIERNEY—Madam President, I ask a supplementary question. Minister, of the opportunities that you have outlined, what opportunities in particular are there for people in rural and regional Australia?

Senator Forshaw—Are you looking for a job, John?

Senator ELLISON—I hear the interjection 'Are you looking for a job?' In regional Australia, training is very important, and it might be a good idea if Senator Forshaw listened. Regional Australia has a great need for training, and we have announced $51.4 million for 30,000 training positions in regional and rural Australia. That is great news for not only regional Australia but also those young people in rural Australia who are looking for training. And that was another aspect that Senator Carr failed to mention in his article today.

Goods and Services Tax: Collection Costs

Senator CROSSIN—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware that a recent study by the New Zealand Inland Revenue Department found that, while the New Zealand tax system is somewhat efficient, one country that was better over the past few years was Australia? Is the minister aware that the New Zealand Commissioner of Inland Revenue told a parliamentary inquiry, 'The GST is a little less cost efficient to gather,' and the current absence of a GST in Australia is the reason why this country has a more efficient tax collection system? Does the minister agree that collecting a GST would lead to increased deadweight cost to the economy and an increased collection cost for the Australian Taxation Office?

Senator KEMP—Let me assure you that we intend to have a system which operates at world best practice.

Opposition senators interjecting—

The PRESIDENT—Order! There are too many interjections. Opposition senators shall cease interjecting to that extent.

Senator KEMP—As I was saying, when we get tax reform through the Senate, you can be assured that the system will operate at a highly efficient level. I am aware of the report that was brought down by the Commissioner of Taxation. I assure the Senate that the government intends Australia to operate the GST at world best practice, and it will compare favourably with the collection of other taxes.

The cost efficiency of the new system obviously needs to be assessed in the context of a whole package of measures. Of course, costs of collection will be affected by changes in state taxes and the streamlined and simplified payment and reporting arrangements for business taxpayers—of course, not just with the GST. As I said, we are very conscious of

the need to develop a highly efficient and effective tax system, and those will be some of the key issues in the government's mind as it enters into negotiations with the Australian Democrats.

Senator CROSSIN—Madam President, I ask a supplementary question. Will the exemption of food from the GST increase or decrease the Australian Taxation Office GST collection costs, and what will be the benefits to the Australian economy from exempting food from the GST?

Senator KEMP—Senator Crossin, like all her colleagues, will just have to wait till the government announces the outcome of negotiations.

Opposition senators interjecting—

Senator KEMP—Before I was shouted down, I was trying to indicate to Senator Crossin that, despite her sudden interest in matters of taxation, the Labor Party decided it would not be at the table in relation to tax reform so that is why she and her colleagues are on the outer. Senator Crossin, as to what eventually transpires, you will have to await the announcement of the outcome of negotiations we are having with the Australian Democrats.

Disability Discrimination Legislation: Right Of Appeal

Senator ALLISON—My question is to the Minister for Family and Community Services. Minister, why is it that your government has now allowed the states to remove the right of appeal under the Disability Discrimination Act for people with mental illness? Isn't this contrary to the national mental health strategy statement which says that consumers have a right to appeal decisions? And is it the case that the Human Rights and Equal Opportunity Commission was not consulted or briefed on the drafting of your regulation?

Senator NEWMAN—I understand that Senator Allison is in fact referring to the issue which was debated in the disallowance motion yesterday. If I am right, that is a matter for the Attorney-General's portfolio, I understand.

Senator ALLISON—I seek your clarification on that point, Madam President. I did not refer to the disallowance or to yesterday's debate.

The PRESIDENT—It is for the minister to respond as she sees appropriate. It is not for me to direct.

Opposition senators interjecting—

The PRESIDENT—Order! Labor senators will stop making so much noise. It is important that I hear what Senator Allison has to say.

Senator ALLISON—Madam President, it is a matter about disability discrimination. As I understand, this is the minister's area and it is a straightforward question.

Senator NEWMAN—The senator is not right. I am not the minister responsible for discrimination issues to do with disabilities. I understand that that is the responsibility of the Attorney-General's portfolio and that is represented by Senator Vanstone in this chamber.

Goods and Services Tax: Food

Senator REYNOLDS—My question without notice is directed to the Assistant Treasurer, Senator Kemp. Does the minister recall telling the Senate on 13 May this year that 'making food GST free would be a very inefficient way of delivering assistance to the needy'? Does the minister stand by that statement? Does the minister also stand by his claim that exempting food would 'advantage high income earners' and that they 'spend more money on food'?

Senator KEMP—What I was pointing out to the Senate—

Senator Robert Ray—Is no longer operative.

Senator Faulkner—A bit like him—no longer operative.

Senator KEMP—It is a very hard to answer a question with Senator Faulkner lurching from side to side.

Opposition senators interjecting—

The PRESIDENT—Order! This is Senator Reynolds's question and she is entitled to hear what the minister has to say.

Senator KEMP—What we are trying to do, Senator Reynolds, is to advance the cause of tax reform. It is quite clear that the government's preferred option does not have the numbers in this Senate chamber. That is blatantly obvious. It is obvious to us and it is obvious to you. So the question is how we can advance this great cause of tax reform. What we have done is enter with good faith into negotiations with other parties to see whether we can progress the cause of tax reform through this chamber. Senator, that remains our key objective at present. As to the outcome, like all your other colleagues you will just have to wait until these negotiations are concluded.

Senator REYNOLDS—Madam President, I ask a supplementary question. Given that the minister is considering all options, could the minister in the chamber indicate whether he is aware that the material provided to the Senate GST committee by Professors Harding and Warren conclusively demonstrates that a food tax cut is worth more in dollar terms, the higher the income level? Doesn't this prove that removing food is an inherently regressive answer to the regressive nature of the GST? Is the minister in fact involving himself in devising an inequitable solution to an inequitable problem?

Senator KEMP—If Senator Reynolds wanted to be part of the negotiations, it is a great pity she was a member of the Labor Party. Senator Reynolds, as much as I would like to share with you the nature of the discussions which are occurring, you are in the wrong party. Frankly, you are asking these questions, Senator, but you do not seem to realise that your party is opposed to any tax reform. This party is not opposed to tax reform, and we hope we can negotiate a package which will advance that cause.

Women: Earnings Levels

Senator PAYNE—My question without notice is to the Minister for Family and Community Services and Minister Assisting the Prime Minister on the Status of Women. Will the minister advise the Senate of recent developments in the levels of women's earnings in Australia and the policy initiatives of the government aimed at assisting women?

Senator NEWMAN—I am delighted to have the opportunity to answer that question, because the opposition has wilfully and deliberately ignored the substantial gains being made by women in the work force in Australia. Contrary to the claims of the opposition, the latest Australian Bureau of Statistics average weekly earnings figures show that the gap between men's and women's wages is closing. This is a trend which the government wants to see continue.

Opposition senators interjecting—

Senator NEWMAN—They will continue to shout me down because they know that the facts are embarrassing for them. The ABS figures show that women's full-time adult ordinary time earnings are now 84.8 per cent of men's, up from 83.5 per cent at the same time last year. There has been a steady improvement in the status of women's pay relative to men's under this government. In February 1996, under Labor, the figure was only 83.1 per cent of men's earnings.

Senator Crowley interjecting—

Senator NEWMAN—I would have thought that Senator Crowley, who is carolling in the background, would have been the first to welcome the improvement in women's earnings. More good news that the opposition is determined to ignore has included the ABS work force statistics released on 13 May which showed rising women's employment—a rise of 210,000 jobs between April 1996 and April 1999. The unemployment rate for women has fallen to 7.3 per cent from 8.4 per cent in April two years ago. The participation rate for working age women from 15 to 64 remains stable at 64.2 per cent, contrary to opposition claims. And the number of mothers employed continues to rise, increasing 7,100 in March alone to reach 1,128,000 in April this year.

The Howard government's commitment to working women was also affirmed in the recent federal budget, with the government announcing a $24.2 million return to work initiative aimed at women who have been out of the work force for two or more years for parenting and caring. These women will receive access to reskilling to meet the demands of today's workplace, and this comes

on top of the successful JET program, which was introduced by the previous government in my portfolio.

The government has helped women and families in other ways: record spending of $5.3 billion for child care in the next four years, including an additional $598 million for the new child-care benefit; expanding the $1 billion family tax initiative to a $2.5 billion initiative; additional assistance for women in rural and regional Australia through regional health service centres and a fly-in, fly-out female GP service; legal assistance centres; a Women in Small Business Program to provide women with opportunities to enhance their business skills; strengthened support for women diagnosed with breast cancer by providing specialised health care and better information about support services; and a soon to be introduced law to enable the splitting of superannuation assets that will redress the imbalance of assets that women often suffer after divorce. They are all things that could have been done in 13 years of Labor government and were not done because they did not govern for all women. This government is governing for all women and in practical ways that meet their needs.

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

ANSWERS TO QUESTIONS ON NOTICE

Question No. 512

Senator WOODLEY (Queensland) (3.03 p.m.)—Pursuant to standing order 74(5), I ask the Minister for Aboriginal and Torres Strait Islander Affairs for an explanation as to why an answer has not been provided to question on notice No. 512, which I asked on 9 March 1999.

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (3.04 p.m.)—I have just become aware of Senator Woodley's concern, and my understanding is that the question on notice does not appear to come under my ministerial responsibility or under Health and Aged Care, for which I am responsible in this place. It would appear to fall under the responsibilities of the Minister for Education, Training and Youth Affairs, who is represented by Senator Ellison.

Since becoming aware of Senator Woodley's concerns, I have referred it to Minister Kemp's office, and his office has informed me that there is no 'Indigenous Education Supply Assistance Act 1989', which Senator Woodley refers to in the question. Nevertheless, they have undertaken to address the question and the content of the question as a matter of urgency.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Food

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.05 p.m.)—I move:

That the Senate take note of answers given by the Assistant Treasurer (Senator Kemp) to questions without notice asked today, relating to the proposed new tax system.

I remind the Senate that Senator Kemp again in question time today was not able to explain why the Prime Minister of Australia said there would never, ever be a GST and he broke that promise; why he continues to say that there are no losers under the government's GST policy when that is clearly untrue; why he has said so consistently that the system cannot be changed, only finetuned; and why the Prime Minister has consistently said, 'We cannot agree to the exemption of food.' He said that very recently on Radio 4BC. Yet these commitments have been broken time and again by the Prime Minister. Of course, we have seen a recent situation where quite clearly the stance of the Australian Democrats on the GST is softening. It was said originally by the Australian Democrats that exempting basic food was non-negotiable. On the *Sunday* program we had Senator Lees, however, say, 'There is a whole lot of things that are on the table.' When it comes to diesel, Senator Lees was quoted this morning as stating, 'We have to work within their parameters.' That means the government's parameters.

It is no wonder that in Australian politics there is such concern, such cynicism about politicians and the political process when you

get this sort of inconsistency from leading Australian politicians. But I am concerned about the issue of the Democrats' approach on the GST. I said yesterday that this was a matter that I believe Senator Lees should take back to the Democrat rank and file, but Senator Lees made it absolutely clear that the Democrat party members will not have a say in the negotiations with the government on the GST. Let me quote what Senator Lees said yesterday in answer to a journalist's question:

> If the deal is struck, will it have to be referred to Democrat members?
>
> Senator Lees: No, it won't, because we are within policy.

I ask the question: is it within policy? Democrat taxation policy was balloted to members in June 1998 and the ballot was reported in their journal in December last year—and I refer senators to that document, which is in the Parliamentary Library. Under item 6, members agreed to option C:

> The mix of taxation between direct income and indirect expenditure sources should be restructured to increase the proportion of direct tax, increasing income tax and/or wealth taxes relative to indirect tax.

That is, Democrat policy demands no tax mix switch from direct to indirect taxation. The government's GST package involves a $19 billion tax mix switch from direct to indirect taxation—a net $6 billion increase in indirect tax plus a $13 billion decrease in direct tax. Unless the Democrats are able to negotiate this away, they will be supporting a measure in direct breach of their balloted policy.

Senator Lees is wrong. The government's GST package is so far outside the Democrats' policy that surely a new ballot must be held. Maybe some of the Democrat senators do understand what the Democrats' taxation policy says and maybe that is why there are so many concerns in the Australian Democrats' party room itself. There is a way forward for the Democrats, there is an option that meets their policy objectives, an option that gets us genuine tax reform, and that is Labor's alternative, which was announced by the shadow Treasurer at the Press Club last week and conveyed to the Australian Democrats earlier this week. In accordance with the principles that Senator Lees has spoken about so often, as have other Democrats in this chamber, this is a matter that ought to go back to the members of the Australian Democrats for their endorsement or otherwise. *(Time expired)*

Senator McGAURAN (Victoria) (3.10 p.m.)—I do not think it is any secret that the optimum position of the government is that there be a GST on food. But, as we know, political circumstances have drastically changed. What is the big secret in that? As Senator Kemp said a dozen times in question time today and yesterday, you will not have to wait long to see the results of the negotiations. Senator Lees signalled that it could be as early as tomorrow—Wednesday—but certainly it looks like negotiations will come to a close this week. I am sure that the integrity of the government's tax package will be kept intact whatever the result.

Senator Lees also gave some advice to the Labor Party: if they want to be in the tax debate then they should put down a tax policy. Otherwise they are out of the main game. Senator Sherry announced to the Senate a couple of weeks ago that Labor do not have a tax policy—a rare honesty from the other side, from a man fighting for his preselection. What is more, they are not going to rush into a policy. We do not expect to see the emergence of any sort of policy until their Hobart conference, which is some 16 months away. At the very least we are 16 months away from a Labor Party tax policy. What a farce. We get all this criticism and negativity without an alternative policy. And this is coming from a party that went into the election in 1993 promising income tax cuts. After the election, on their victory, which was very much on the basis of the income tax cuts, they pulled that promise from under the taxpayers. They replaced the income tax cuts with an increase in the wholesale sales tax and an excise tax to the tune of some 8.7 per cent GST. That was the equivalent of Labor's tax rise—an 8.7 per cent GST.

However, we do see the first emerging signs of a Labor Party tax policy coming out of the Evatt Foundation, the Labor Party think tank, led by no less than Bernie Fraser, the

former Reserve Bank Governor, and Trevor Boucher, the former Commissioner of Taxation. They have put together a tax policy which they are recommending the Labor Party pick up. It will have great weight and influence because they are your number one think tank.

Senator Robert Ray—No, they're not.

Senator McGAURAN—What is, Senator Ray? They have withdrawn most of the funds that they received when Labor were in government, when hundreds of thousands of dollars were directed towards the Evatt Foundation. Obviously, since we have pulled that out they are not your number one think tank any more.

The recommendations in their paper—and it had all the hallmarks of Labor Party tradition and policy—were of course increasing the capital gains net, abolishing negative gearing and that favourite of the left wing of the Labor Party and Senator Carr particularly no doubt—death duties. They were the three old chestnuts to come out of the Evatt Foundation. If you think the GST is unpopular out there in the electorate, just bring on death duties—I hope you do.

Senator Robert Ray—We'll quote that.

Senator Carr—Senator McGauran wants death duties!

Senator McGAURAN—Just to qualify that statement for *Hansard*, I hope you bring on death duties because you will be slaughtered at the next election if you do. I realise the Evatt Foundation document is an embarrassment to you because no sooner had it come out than Simon Crean put out a press statement saying that he does not support it at all. But who can believe it? Who can believe you after your 1993 record? Who can believe it after your 1998 record? You went to the 1998 election with an increased capital gains tax and who can believe it when you have Senator Carr on the front bench in some sort of position, I am not sure what he holds—

Senator Robert Ray—More than you'll ever have.

Senator McGAURAN—Possibly so; I live in hope. You and your left wing would love to bring back death duties. That is the sop to the left wing every time you bring out a tax policy. We will never believe that you will never bring it in if you have the chance. That is how the electorate feels. Mr Crean is under the illusion that the tax system is not broken, that we can go on the way we are with these surpluses. Of course, we expect you to raid the surpluses, but those surpluses were put together by hard work. *(Time expired)*

Senator ROBERT RAY (Victoria) (3.15 p.m.)—Some people are born dumb, but Senator McGauran is a self-made man. On behalf of the Labor Party, I offer an apology to the listeners on the parliamentary network. We have had many letters and several phone calls pleading with us never to have a dedicated Senator Rod Kemp day again. We have let the listeners down because, once again, we have had one today. Listeners give a variety of reasons saying, 'If I have to listen to another hour of Senator Kemp at question time I will go mad.' That is the more moderate one. Even a cab driver in budget week said to me, 'Senator Kemp is a road hazard because every time he comes on air at question time I almost drive off the road.' We have let the listeners down badly. I apologise to them.

We are just a soft-hearted mob really, because we do not mind sitting here for an hour listening to evasion, listening to waffle and especially tolerating the simplistic mantras that Senator Kemp has managed to shove into his head. No matter what the question asked, out come the tumbling phrases: 'We are in favour of tax reform,' as though that is in fact an authoritative intellectual argument. Of course it is not. Every time Senator Kemp is asked a specific question we get a non-answer.

The fact is we felt a bit sorry for him today. We wanted to give him a place back in the sun. He has been ignored by the Prime Minister. How could a Prime Minister have negotiations as crucial as these with Peter Costello, Senator Lees and Senator Murray and leave the key Senate man out? How could they do it? What a heartless act. He is supposed to do all the hard yards in here. He has carriage of 27 bills, but when it comes to refining them, when it comes to reaching an

agreement, poor old Senator Kemp is left out in the cold—he is ignored. We will probably hear the details well before he does. I really cannot understand why the Prime Minister so dislikes Senator Rod Kemp. We know he did not promote him in March 1996. He got left out, even though he was the shadow minister for environment. It cannot be a family thing. The Prime Minister was happy to promote the brother and demote Senator Vanstone to an insignificant position. He was quite happy to do that, so we know it is not a family dislike. But why would the Prime Minister delete Senator Kemp from these particular negotiations? I find it extremely difficult to understand.

But some serious questions were put to Senator Kemp today. He was asked about the legal basis of the lock-in mechanism. We got no response from him at all. He said that he would not release the information. But at least he should mount an argument and say what the nub of the question is and what the answer is so the Senate can be reassured. He was asked about the New Zealand example. Mind you, the word 'New Zealand' has not gone past Senator Kemp's lips for the last three years because of the rate of economic growth there. For five or six years in the 1990s all we heard about from the coalition was how great New Zealand was.

Senator Calvert—That's what's wrong with Collingwood.

Senator ROBERT RAY—The Clarence supporter who got dudded by Burnie on the weekend wants to interject. I would be quiet if I were you. Burnie and the Swans went down the drain last weekend. The fact is that again we had a whole series of non-answers. So it is with some sadness that we have let the Australian public down, especially those who listen to parliament. We have made them endure cruel and unusual punishment—a factor that is factored into the US Constitution, not ours. Lucky for us. The fact is that, while the Berlin-Moscow pact is being negotiated in some secret room in this thing, poor old Senator Kemp is excluded. All the role he is left with in all this debate is to wander down to Aussies and blow the froth off his cappuccino.

Senator GIBSON (Tasmania) (3.19 p.m.)—Today we have seen again the Labor Party concentrating on tax when they and everybody in Australia know that the government is negotiating with the Democrats, trying to find a reasonable solution to their tax package. Why is it negotiating with the Democrats? Because the Labor Party decided at the last election to stay out of it. Yet it is not as if the leaders, including Senator Robert Ray, do not believe in tax reform. Go back to the Asprey Taxation Review Committee in 1975 and in 1986 the Hawke government trying to put forward tax reform with Mr Keating pushing that line.

Senator Conroy—The summit was in 1985.

The DEPUTY PRESIDENT—Senator Conroy, interjections are disorderly and even worse out of your seat.

Senator GIBSON—Then in 1993 we had the attempt from our side of politics with Dr Hewson and then in 1997 the Prime Minister came out with the plan for tax reform for this country. When we came to government in 1996 we did not go straight into tax reform. Why? Because the other side had left a mess of the economy and of the government's finances. So the first thing we had to do was live within our budget. We had to do something about tackling the debt left behind by the Australian Labor Party—$80 billion of debt built up over the last four years of the Labor government.

We have done that. We have set in train real government reform for setting the economy and the government's finances, and the economy has responded magnificently. Interest rates are the lowest for over 30 years, and inflation is the lowest for over 30 years. The government has had recognition of this by OECD reports. There has been recognition all around the world for its economic performance, and just in the last few days the credit rating has gone up from AA to AA plus. Are we stopping there? No. The Prime Minister announced almost two years ago that we were going on with tax reform. Why? Because it is needed for Australia, needed for all Australians, particularly for younger people—our children and our grandchildren. The Labor

Party know this, but they have opted no to play short-term politics.

Contrast that with the way the coalition treated the Labor Party when they were in power for 13 years. What were the major reforms—and they were major reforms—that they brought in for the Australian economy? Freeing up the Australian dollar, freeing up the finance markets, lowering tariffs and bringing in national competition policy were the four major planks they brought forward, but did they put any of them before the electorate at an election? No, not any of them. Not at all. How did they get them through the parliament? Largely because all four planks were supported by the coalition. Why? Because everyone knew, including the coalition, that they were good for Australia, good for the growth of Australia, good for the long term for all Australians.

Now that we are in power, what happens? They have taken the decision to play short-term politics and to hell with what is right for the long term for all Australians. That is what they have decided to do, that is what they are in the process of doing, and that is what we have seen here today. The government is committed to tax reform and we will push on. We have no choice but to try to negotiate with the Democrats. But if the Labor Party came to their senses and took a long-term view of what is right for Australia and for all Australians, they would be supporting the government's tax package and they would be seeing it through this chamber without change, including without excluding food, which is one of the issues they brought before us today. But they have not got the guts to actually do that. They want to play short-term politics. Let me remind them of a quote from their previous leader, Mr Keating, back in June 1985:

> For too long the politically unpalatable decisions have been put off in this country because our politicians have not had the strength of purpose to tackle the hard issues.
>
> When it has come to the crunch, short-term political interests have always come first.

I repeat:

> . . . short-term political interests have always come first.

That was Mr Keating in June 1985 and it applies today. Here we have had a great example for all Australians listening to the Senate today. They have heard the Labor Party in action playing short-term politics against the long-term interests of Australia. This tax package is good for all Australians. This tax package is a requirement and it will see us through the next recession. We need to go on with reform. We must keep going with reform. Australia is too small to do otherwise. *(Time expired)*

Senator CARR (Victoria) (3.24 p.m.)—Madam Deputy President, I am sure you would have noticed that today we did not hear any answers from the questions put to Senator Kemp. We were unable to gain from this session of question time any answers from the government to the questions that were put. I understand that Senator Kemp was particularly disadvantaged because the game plan has changed so dramatically. He has, unfortunately, not been placed in a position where he has been able to take up the trainer's brief because he is not able to actually join in the game at the centre circle. What has occurred is very much contrary to the way in which the Liberal Party has treated the Democrats in recent times.

The new game in town—commonly known as the 'Meg and Andrew Show'—centres upon what they might call the great political seduction of the Democrats. I saw this new show when it opened just last Thursday in Melbourne. Being a keen student of the geography of Melbourne, I noticed that the talks that occurred between the Democrats and the Liberals occurred at No. 4 Treasury Place. No. 4 Treasury Place, as we all know, is known locally not as Treasury Place but as 'Treachery Place'. This is a lesson I think the Democrats ought to understand only too well.

Locals will also know that this fine building at No. 4 Treasury Place is centred in the Treasury Gardens. I am sure if Senator Lees had walked across the road she would have come across the Fitzroy Gardens, which are only a few hundred metres from where she was meeting. She would have noticed that the Fitzroy Gardens are the famous site of the Fairy Tree in Melbourne. On many occasions,

I have taken my children down to the Fairy Tree. I bump into the odd Democrat on occasions, and I am sure Senator Lees would have been only too happy to join with others at the Fairy Tree.

Senator Lees would also have noticed Captain Cook's Cottage in the Fitzroy Gardens. Captain Cook's Cottage is one of the great landmarks of Melbourne. From afar, it looks like a stately building but, up close, you soon discover that it is very much a rustic, country, outdated dwelling. From afar, it looks much bigger than it is in reality. When you get inside, you notice that tall people soon bump their heads because that was the way in which, I am afraid, Captain Cook's Cottage was built. It reminds me very much of this argument about the GST. For the Democrats, from afar Captain Cook's Cottage would look attractive, but up close you soon discover what a sordid and small instrument it is. We all understand that great seductions occur all too often in politics, because we know the old adage that power is the greatest of all aphrodisiacs.

When we talk of these power relationships, I am reminded of the old psychologist description of the Stockholm syndrome. The Stockholm syndrome arose from the debate that occurred around the time Ms Patty Hearst, the daughter of the great United States media magnate William Randolph Hearst, was taken hostage. Patty Hearst was taken captive by the Symbionese Liberation Army. She became so enamoured of this organisation, so fully in love with this organisation, that she went around America robbing banks on their behalf. I am reminded yet again of the Democrats and their relationship with the great and powerful government of Australia.

Like so many rich boys and so many rich girls, Patty Hearst was of the mistaken view that she knew what was best for the poor of the globe, that she understood what was good for people who were somewhat less well-off than herself. In reality, her little episode to rob banks on behalf of the Symbionese Liberation Army was a wild, bizarre fantasy which bore little resemblance to what the real needs of ordinary people were. If we look at the other element of this tragic circumstance, we see that 'Mr Charm', Mr Costello, is involved. He is sitting alongside 'Mr Boring', the Prime Minister.

The DEPUTY PRESIDENT—Please do not reflect upon individual members.

Senator CARR—They come together and the Democrats have the opportunity to spend many long hours with them. Can you imagine what it must be like having to listen to them? One feels warm and fuzzy at the prospect of spending many long hours with 'Mr Charm' engaged in this debate about the future directions of this country! What we have seen here is the great tax adventure, the immutable tax adventure that was never ever to be changed. It was only in March that the Prime Minister said, 'On behalf of the government, I make it absolutely plain that we have no intention of retreating.' *(Time expired)*

Senator LIGHTFOOT (Western Australia) (3.29 p.m.)—I do not find a great deal of merit in the argument put up by the opposition during taking note of answers this afternoon, but nothing is new. What is of substance is that the economy of Australia is bubbling along. Even in the most recent quarter ended, the economy of Australia is bubbling along. What does the Labor Party want to do about that? Do they want to assist their fellow Australians in ensuring that our future is economically bright, is economically stable and is politically stable? No, they do not. What they want to do is what they have been trained to do. There is a film around town at the moment called *Natural Born Killers*, which is a bit like how the Labor Party is in this chamber today. They want to destroy and when they get into power again—God forbid—they want to build up out of the ashes some kind of phoenix that Jennie George and Bill Kelty see as the image for Australia.

But we have had that. We have had the economy of Australia practically destroyed because of the Labor Party. I do not think the people of Australia are going to go back to that. We inherited not just the $10 billion deficit, the infamous Beazley black hole, but also a type of economy that was in chaos—an economy and a tax system that needed to be improved, needed to be rebuilt and needed to

be reinvented, as it were. If that economy and new tax policy works, as so many economists throughout the world tell us it will, this coalition government will be in power for many, many years. That is why the Labor Party is not just being negative with respect to the economy; that is why the Labor Party wants to destroy what is good for Australia. The coalition team of the Liberal Party and the National Party have so managed the economy that it is the best in the world. It is the wonder economy that is going to enter into the Third Millennium. The Labor Party know that, unless they bring us down in an economic sense, they are not going to get back into power.

I do not want to leave here today without saying something about the lock-in mechanism. We have received no change to what was promoted, which is that all the states, along with the federal government must agree to an alteration of the percentage of GST. That means two houses of parliament in New South Wales, Victoria, South Australia, Western Australia and Tasmania; the unicameral house in Queensland; the two territory parliaments, one in Northern Territory and the other in the ACT; and both houses of the federal government. Do you imagine for one minute that Mr Beattie or Mr Carr, Labor premiers in Queensland and New South Wales respectively, would opt to increase the 10 per cent GST rate?

This is a scare tactic that is symptomatic of the Labor Party—it is almost symptomatic of the Labor Party Left. Labor wants to destroy. You cannot trust Labor with their hands anywhere near the till. You are not good economic managers and you know it. You know that you are the satraps of the ACTU.

The DEPUTY PRESIDENT—Please address your remarks through the chair.

Senator LIGHTFOOT—I was addressing the chair.

The DEPUTY PRESIDENT—You were referring to 'you'.

Senator LIGHTFOOT—My time is running out. You know as satraps of the ACTU here that they have bungled it, they have muffed it, they have given you a formula that you cannot work with. You cannot destroy the people of Western Australia—the people of Australia know.

Senator Carr interjecting—

The DEPUTY PRESIDENT—Order! Senator Carr.

Senator LIGHTFOOT—It shows my parochialism, and I am parochial. I do adore my state and I am here to work for the people of Western Australia. The people of Australia are awake to that. They know in their heart of hearts that a GST is good for Australia. It replaces a system of taxation that is simply not working. Why wouldn't you vote for the 80 per cent of the people who are going to pay no more than 30 cents of taxation in the dollar; why wouldn't you vote for $13 billion worth of tax cuts? I will tell why you are not going to do it: because you want to destroy it and build it in your own image. *(Time expired)*

Question resolved in the affirmative.

NOTICES

Presentation

Senator Ellison to move, on the next day of sitting:

(1) That a joint select committee, to be known as the Joint Select Committee on the Republic Referendum, be appointed to inquire into and report on the provisions of bills introduced by the Government to give effect to a referendum on a republic.

(2) That the committee consist of 18 members, 6 members of the House of Representatives to be nominated by the Government Whip or Whips, 6 members of the House of Representatives to be nominated by the Opposition Whip or Whips, 3 senators to be nominated by the Leader of the Government in the Senate, 2 senators to be nominated by the Leader of the Opposition in the Senate and 1 senator to be nominated by the Leader of the Australian Democrats.

(3) That every nomination of a member be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint select committee until presentation of the committee's report.

(5) That the committee report no later than 9 August 1999.

(6) That the committee elect a Government member as its chair.

(7) That the committee elect a non-Government member as its deputy chair to act as chair of the committee at any time when the chair is not present at a meeting of the committee.

(8) That at any time when the chair and deputy chair are not present at a meeting of the committee, the members present shall elect another member to act as chair at that meeting.

(9) That the chair, or the deputy chair when acting as chair, shall have a deliberative vote and, in the event of an equality of voting, a casting vote.

(10) That 3 members of the committee constitute a quorum of the committee, provided that in a deliberative meeting the quorum shall include 1 member of either House of the Government parties and 1 member of either House of the non-Government parties.

(11) That the committee have power to appoint subcommittees, consisting of 3 or more of its members, and to refer to any subcommittee any matter which the committee is empowered to examine.

(12) That, in addition to the members appointed pursuant to paragraph 11, the chair and deputy chair of the committee be ex officio members of each subcommittee appointed.

(13) That the committee appoint the chair of each subcommittee who shall have a deliberative vote but no casting vote, and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee, the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(14) That the quorum of a subcommittee be 2 members of that subcommittee provided that in a deliberative meeting the quorum shall include 1 member of either House of the Government parties and 1 member of either House of the non-Government parties.

(15) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(16) That the committee or any subcommittee have power to send for persons, papers and records.

(17) That the committee or subcommittee have power to move from place to place.

(18) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(19) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(20) That a message be sent to the House of Representatives acquainting it with this resolution and requesting that it concur and take action accordingly.

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

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on the development of the Hinchinbrook Channel be extended to 24 June 1999.

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

That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts References Committee on the Jabiluka uranium mine be extended to 28 June 1999.

Senator Murphy to move, on the next day of sitting:

That the time for the presentation of the report of the Economics References Committee on whether a new reactor should be built to replace the High Flux Australian Reactor at Lucas Heights on that site or on some other site in Australia be extended to 28 June 1999.

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

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the roles and responsibilities of various bodies in the regulation, design and management of airspace and the decision to terminate the Class G airspace trial be extended to 2 September 1999.

Senator Vanstone to move, on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the *Copyright Act 1968*. ***Copyright Amendment (Importation of Sound Recordings) Bill 1999***.

Senator Collins to move, on the next day of sitting:

That the following matters be referred to the Employment, Workplace Relations, Small Business and Education References Committee for inquiry and report by the last sitting day of the second sitting week in November 2000:

The effectiveness of the vocational education and training sector in developing the educational skills of the Australian people and the skills formation and productivity of the Australian workforce, including:

(a) an evaluation of national priorities set for Australia's vocational education system, with particular reference to:

(i) resource allocation across the sector, between the states and territories and within program priorities,

(ii) demographic distribution and equity of structured training opportunities,

(iii) opportunities for youth and for older people, and

(iv) the respective obligations of industry and government;

(b) an assessment of the quality of provision Technical and Further Education (TAFE) and private providers on the delivery of nationally recognised and non-recognised Vocational Education and Training (VET) services and programs, including:

(i) the adequacy of current administration, assessment and audit arrangements for registered training organisations and the credentials they issue,

(ii) processes for the recognition of registered training organisations, the effectiveness of compliance audits and validations of registered training organisations, operations and sanctions for breaching the conditions of registration,

(iii) the level and quality of vocational education and training occurring within registered training organisations, including TAFE, private providers, workplaces and schools,

(iv) the extent to which employers of apprentices and trainees are meeting their obligations to deliver training on the job and the adequacy of monitoring arrangements,

(v) the range of work and facilities available for training on the job,

(vi) the attainment of competencies under national training packages, and

(vii) the reasons for increasing rates of non-completion of apprenticeships and traineeships;

(c) an examination of the impact on the quality and accessibility of VET resulting from the policy of Growth through Efficiencies and User Choice in VET, with particular reference to the:

(i) viability of TAFE, particularly in regional Australia,

(ii) quality of structured training,

(iii) quality of teaching,

(iv) appropriateness of curriculum and learning resources,

(v) range and availability of student services, and

(vi) effects of fees and charges on TAFE;

(d) an evaluation of the provision of Commonwealth and State employers subsidies, including:

(i) the effectiveness of existing subsidies arrangements in meeting national vocational education and training needs,

(ii) the impact of changes to New Apprenticeships policy which broadened employer trainee subsidies to include existing workers, and

(iii) accountability and audit procedures within the Department of Employment, Education and Youth Affairs, the Australian National Training Authority and state training authorities;

(e) an evaluation of the growth, breadth, effectiveness and future provision of vocational education in schools, including:

(i) the quality of provision of vocational education and training in both government and non-government schools,

(ii) the relationship between vocational education in schools, and accredited training packages,

(iii) the effectiveness and quality of curriculum materials and teaching,

(iv) accountability provisions for the funding of vocational education in schools, and

(v) school to work transitional arrangements; and

(f) an assessment of the consistency, validity and accessibility of statistical information on the performance of national vocational education and training systems, especially relating to apprenticeships and traineeships.

Senator Quirke to move, on the next day of sitting:

That the time for presentation of the report of the Select Committee on the Socio-Economic Consequences of the National Competition Policy be

extended to the last day of sitting in December 1999.

Senator Woodley to move, on the next day of sitting:

That the Senate—

(a) notes that:

(i) the 'Journey of Healing' which follows on from National Sorry Day 1998 will be visiting the Great Hall of Parliament House on 26 May 1999, and

(ii) this journey was initiated at Uluru early in May 1999 when representatives of the stolen generations were 'welcomed back' by the traditional owners;

(b) condemns past policies and practices which saw indigenous children removed from their families;

(c) expresses sincere regret for the grief that these policies and practices caused for so many Aboriginal and Torres Strait Islander parents and children; and

(d) calls on the Government to implement all the recommendations contained in the Human Rights and Equal Opportunity Commission report, *Bringing them home*.

Senator Crossin to move, on the next day of sitting:

That the Senate notes that:

(a) 26 May 1999 is the first anniversary of National Sorry Day;

(b) as stated in the Human Rights and Equal Opportunity Commission report, *Bringing them home*, not one indigenous person has escaped the effects of the forced removal policies, and many people expressed sorrow for these policies in 1998; and

(c) the National Sorry Day Committee has invited all Australians to join the 'Journey of Healing', which offers the whole community the chance to take the next step to heal the consequences of the forced removal policies.

Senator Margetts to move, on the next day of sitting:

That the Senate—

(a) notes:

(i) the ongoing difficulties associated with the Royal Australian Navy's Collins class submarine project, as most recently reported on the Australian Broadcasting Corporation's '4 Corners' television program, including:

(A) serious deficiencies in the combat system;

(B) significant problems with the acoustic signature of the class; and

(C) questionable activities during the source selection process,

(ii) the ongoing investigation of the Joint Committee of Public Accounts and Audit into the reports of the Australian National Audit Office on the project,

(iii) that, as a result of the unsatisfactory state of the project, the Navy has only one Oberon class submarine and no Collins submarines available for operations, and

(iv) that the Government has found it necessary to appoint an inquiry into the project;

(b) expresses its concern that the membership of that inquiry may be perceived to compromise the independence of the inquiry; and

(c) calls on the Government to set up a fully independent inquiry into the source selection, management and production of the Collins class submarines without delay.

Senator Reynolds to move, on the next day of sitting:

That the Senate—

(a) supports the national launch in Parliament House of the 'Journey of Healing', which marks the first anniversary of National Sorry Day;

(b) calls on all Australians to become involved in reconciliation by recognising this as an opportunity to:

(i) respect and honour the Aboriginal and Torres Strait Islander peoples,

(ii) remember aspects of our past that have been ignored,

(iii) assess the progress made in overcoming the harm done,

(iv) promote understanding through sharing our own experiences, and

(v) recommit ourselves and plan the next steps together; and

(c) asks the Prime Minister (Mr Howard) to reconsider his attitude to a national apology.

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

That the Senate agrees with the notion that people who kick footballs with their left feet are normal.

Postponement

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

That government business notice of motion no. 1 standing in his name for today, relating to consideration of legislation, be postponed till the next day of sitting.

Items of business were postponed as follows—

General business notice of motion no. 144 standing in the name of Senator Bourne for today, relating to the 50th anniversary of the Chinese invasion of Tibet, postponed till 22 June 1999.

General business notice of motion no. 147 standing in the name of Senator Bourne for today, relating to human rights abuses in China and Tibet, postponed till 22 June 1999.

General business notice of motion no. 206 standing in the name of Senator Allison for today, relating to indigenous education, postponed till 26 May 1999.

General business notice of motion no. 220 standing in the name of Senator Stott Despoja for today, relating to the establishment of an Australian Embassy in Zagreb, Croatia, postponed till 26 May 1999.

NORFOLK ISLAND REFERENDUM

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

That the Senate—

(a) notes that:

(i) on Wednesday, 12 May 1999, the people of Norfolk Island voted in a referendum on the following question:

Do you agree with the Australian Federal Government's proposal to alter the Norfolk Island Act so that:

(a) people who have been ordinarily resident in the Island for 6 (six) months will in future be entitled to enrol on the electoral role for Legislative Assembly elections; and

(b) Australian citizenship will in future be required as a qualification to be elected to the Assembly, and as a qualification for people who in the future apply for enrolment on the electoral roll for Assembly elections.

(ii) the result of that referendum was that 74 per cent of Norfolk Islanders voted no, with more than 90 per cent of the eligible community voting in that referendum; and

(b) calls on the Government to enter into formal negotiations with the Government of Norfolk Island in view of the referendum result.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Reference

Motion (by **Senator Brown**) put:

That the issue of internet gambling, including its social and economic implications, and with particular reference to the impending ban in the United States of America, be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 27 August 1999.

The Senate divided. [3.45 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	33
Noes	34
Majority	1

AYES

Allison, L.	Bishop, T. M.
Bolkus, N.	Bourne, V.
Brown, B.	Campbell, G.
Carr, K.	Collins, J. M. A.
Conroy, S.	Cook, P. F. S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Evans, C. V.
Forshaw, M. G.	Gibbs, B.
Hogg, J.	Lees, M. H.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K. *	Quirke, J. A.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H. *	Campbell, I. G.
Chapman, H. G. P.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Harradine, B.	Heffernan, W.
Herron, J.	Hill, R. M.
Lightfoot, P. R.	Macdonald, S.
McGauran, J. J. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.

NOES

Synon, K. M.	Tambling, G. E. J.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Bartlett, A. J. J.	Kemp, R.
Denman, K. J.	MacGibbon, D. J.
Faulkner, J. P.	Macdonald, I.
Hutchins, S.	Knowles, S. C.

*** denotes teller**

Question so resolved in the negative.

MATTERS OF PUBLIC IMPORTANCE

Private Health Insurance: Rebate

The PRESIDENT—I have received a letter from Senator Chris Evans proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:

> The March figures for private health insurance membership which reflect the failure of the 30 per cent rebate to achieve the modest target set by the Government or justify the $1.7 billion of taxpayers' money spent on the rebate.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

The PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today's debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator CHRIS EVANS (Western Australia) (3.50 p.m.)—I think the issue that I have raised before the Senate today is a matter of great public importance. Just the other day we received the first report card on the government's health insurance rebate scheme. That report card came in the form of the statistics for the March quarter, indicating what effect the rebate had had on membership. By any measure, the result did not live up to the expectations of the government, nor justify the massive amount of government funds spent on this policy.

It is interesting that a few weeks ago Russell Schneider, the executive director of the health insurance industry association, made this prediction about the impact of the rebate:

> The March quarter result is going to completely validate the government's decision to introduce the rebate. The jump is certainly going to be more than 100,000, and that is just based on the preliminary sampling.

Russell Schneider was out there talking up the success of the scheme. It just so happened, for the interest of those journalists who ran the story, that it coincided with the lodgement of the industry's application for what I understand to be a six per cent increase in premiums. I am not sure whether those two events are connected, but it was interesting that while Mr Schneider was out there talking up the prospective success of the scheme, the funds were in there for their chop, for another six per cent increase in premiums, which I understand the minister will approve effective from next month.

The minister's view at this time was to say that we would have to wait until the official figures came out next month before making any comment. He was very keen that we not have this debate until those first quarter figures were released.

Those figures have been released. We now have a proper analytical assessment of the success or otherwise of the government's private health insurance rebate scheme. The figures show that only 57,000 extra people were covered by private health insurance in that three-month period. To put that in perspective, the number of people covered by private health insurance has risen from 5.68 million to 5.73 million—a 0.2 per cent increase. To meet the government's modest membership target of 33 per cent participation, set by the Prime Minister, a further 510,000 people would have to have joined. The rebate has barely reached 10 per cent of the government's own modest target set for the scheme in the first three months.

We have proof positive that the scheme is failing to achieve its objectives. I know the government will say we have got to wait longer, but their message up until now has been: 'Let's have a look at the March figures.' Industry funds were out there saying,

'One hundred thousand plus. It's a great success.' But when the hard data came out we found there were 57,000 new members. That is to be welcomed—no-one is saying that we do not welcome that participation in private health insurance. But we have to make an assessment about whether this is good public policy, about whether the investment of $1.7 billion of taxpayers' money in order to gain that result is a good use of that taxpayers' money. We have got to assess whether we have a strategic policy, well thought out and well implemented by this government, or whether we have a series of ad hoc measures, throwing money at a problem in the hope that something will work.

It is quite clear, I think, from these figures that the government is vainly throwing money at the problem. It is also worth noting that the March quarter is likely to be the best quarter for membership increases, given that the government spent $7.5 million of our money advertising the rebate in the lead-up to its introduction, and that people were more likely to respond in that initial advertising stage and while it was receiving a lot of free publicity through debate within the community. But we have had a very disappointing result.

The government have since been trying to talk down the result; trying to put a different spin on things, trying to steer us away from examining those hard numbers. But the Prime Minister said when pushed that a 33 per cent participation rate would be the result of this measure—that is, 550,000 new members would be achieved. What we have got is 57,000. We have a very minor improvement in membership as a result of one of the largest financial incentives ever given to private industry in this country. As I say, the minister is now trying to change his tune by saying, 'Oh, well, we'll need to wait a bit more time. We'll have to wait maybe 12 months until we can see the full picture.' In a sense that is right, I suppose—we will get a fuller picture. But the early indications really do give a fair indication of what will be achieved by this measure.

The government know the rebate has failed. They are out there making even more new policy announcements about private health, trying to distract attention from a proper assessment of this particular measure. The minister has announced the introduction of no-gap policies and lifetime health cover, and the government is now indicating that the rebate was only ever intended to halt the fall in health fund membership.

So we have gone from the private hospitals talking up 45 per cent participation rates, Mr Schneider talking about over 100,000 new members in the first quarter and the government talking about increasing private health insurance by a minimum of 33 per cent, to now being led to believe that all they were really trying to do was halt the fall in membership, halt the decline. They were not actually trying to improve the percentage; they were spending that $1.7 billion of taxpayers' money just to halt the decline. I do not think the Australian public are that gullible. They know what claims were made for the scheme. They know what the government said it would deliver. They will make an assessment about whether it is good public policy on what it does deliver. It is clear from the first quarter figures that the rebate is not delivering the sort of outcome required to justify the massive expense of public funds pumped in to prop up private health insurance in this country.

The minister now describes the rebate as a 'stopgap measure'—$1.7 billion as a stopgap measure. That is not $1.7 billion once; it is $1.7 billion every year to prop up private health insurance. Every year we are going to spend $1.7 billion that could otherwise have been spent on the health budget, that would almost have eliminated waiting lists in public hospitals in this country, on propping up private health insurance. What have we got to show for it? Fifty-seven thousand more people have joined private health insurance. Often they do not take out full cover when trying to escape the tax impost. A lot of them have taken out cheap and nasty cover, and they will still access the public hospitals. But we do have 57,000 more people with private health insurance.

As I say, we in the opposition accept the need to try to encourage some participation in private health insurance. But we have said all

along that the government have not had a strategy for this. They have not got a well thought out, coordinated approach to encourage private health insurance membership. They have got a series of ad hoc measures of throwing money at the problem, hoping that something will work. This measure is badly targeted and is clearly not working.

The government have got form on this issue. They should have learnt from their last failure. Who could forget that their last insurance incentive scheme, the PHIIS, was also a complete failure. They introduced the previous scheme at a cost of $450 million a year, predicting that it would increase membership from the then 32 per cent participation to 35 per cent participation. It was an understatement when the department admitted that they had got it wrong when assessing the effectiveness of the previous scheme. The reality is that membership continued to fall from 32 per cent to 30 per cent. They spent $450 million a year and membership continued to fall by about 330,000.

At the Senate inquiry into this rebate the department could not offer any reassurance that they would be any more accurate in predicting the impact of this rebate. They just do not know. They spent $1.7 billion of taxpayers' money on the basis of no research, no modelling, no analysis. They just hoped that, where $450 million had not worked, $1.7 billion might: 'You keep throwing money at it and something might work eventually.' That is not a policy, that is not a strategy; it is a desperate attempt to prop up one's own ideological convictions.

On both sides of this debate we argue that the other side is ideologically driven, but let us look at the facts. Let us take that sort of heat out of it and look at exactly what is happening. We are going to spend $1.7 billion and we have 57,000 new members. The government, when forced to name a target, went for an increased membership of 550,000. That is a very modest target. I would have argued that $1.7 billion for only 550,000 new members is not a satisfactory result, that it is not a good policy outcome, that we are not getting a bang for our buck. To get 57,000 members for $1.7 billion is a joke. It clearly is not working.

The government need to have a proper strategy, a proper thought-out policy, and not just keep throwing money at the problem, announcing new initiatives by the day and pretending that they have a strategy. How many more announcements are we going to have that they are going to solve this? How many more times can the minister make an announcement about how he has another idea or proposes another bill to come before the Senate? There is evidence of the failure of the previous scheme. There is now evidence that this scheme is not going to meet even the most modest targets set for it by the government.

The private hospital industry claimed that the rebate would increase membership by 45 per cent. I do not think anybody seriously maintains that claim any longer. The Prime Minister went for a very cautious estimate, as he described it, of 33 per cent. The reality is that both these estimates and predictions were plucked from thin air. When the department has been asked about any detailed work being done to evaluate the likely impact of the rebate, the answer has been there is none. They do not know. The government have not got a plan or any modelling. They do not know. They are going to casually throw $1.7 billion at the problem and hope that something happens to somehow fix the problem.

There is a range of reasons why it is not working. One of them will rear its ugly head again in June: the health funds will be increasing their premiums. That will again eat into the rebate discouraging new members while encouraging existing members to leave. So any net increase in the subsequent quarter is likely to be small. The whole idea of the rebate was to make it more attractive for people struggling to pay the premiums. If you are going to pay a rebate and then take it back by increasing the cost of the premium, clearly you are not going to get the result you were seeking to achieve. We are seeing again the same cycle of increasing premiums driving out members, which leads to further premium increases because the rebate does

not address the fundamental problems with private health insurance.

We also have to remember that every new initiative the government announces—no-gap policies, lifetime cover, et cetera—will lead to higher premiums and therefore increase the cost of the rebate. They built in this flaw where we pay 30 per cent of whatever the funds charge. So for every new idea that comes on stream and every new cost built into the system we are going to pick up 30 per cent of it. It is like a blank cheque, with no results required from the industry. The government just shrug their shoulders and say, 'Oh well, we've only got 57,000 new members. We were a bit more hopeful of a better result, but it's too bad. We'll just keep pouring the money in'—pouring it into a bucket with holes in the bottom. This is not public policy; this is not a strategy for health insurance or health care in this country.

We could do much better with that money. If this is all we are going to get for $1.7 billion—a mere 57,000 extra members—then clearly we could use that money much more effectively. Some of us argued that we could have used it more effectively at the start. The government now has the evidence that this is a waste of taxpayers' money, that it is not achieving even the most modest of targets and that we are going to continue to waste huge amounts of taxpayers' money which is sorely needed in other areas.

Senator Crowley, I and others met with the disability sector today. They are crying out for some assistance to meet unmet demand, to help families who cannot cope with their disabled children and cannot get services for their disabled children or respite care. There was not one cent in the budget to assist them.

Senator Patterson—Wrong; absolutely wrong!

Senator CHRIS EVANS—Sorry Senator: $20 million over four years. The government's own report said they needed $300 million per year. They just did not come up with any leadership or any answers, because they had spent all the money on propping up private health insurance. So every disabled child out there and every other person needing access to the public health system or who is on a public hospital waiting list knows that the government have spent this money propping up private health insurance. It was money that could have gone into the public health system, it could have gone to people with disabilities, it could have gone to proper public policy outcomes.

As it is, we have 57,000 people encouraged to join the health funds at a cost of $30,000 each. This is a public policy failure. The government must immediately reassess its objectives and reassess the proposal to see whether it can come up with a proper strategy for health insurance in this country, not just throw more money at the problem, announce another new scheme and another new policy. *(Time expired)*

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (4.05 p.m.)—Once again we see the typical example of the Labor Party playing snakes and ladders. It is a tactic that they often use in debate of this issue. They throw the dice and hope it comes up right, they put in a motion statistics that do not necessarily relate to one square or the other and they play around with those statistics. If we look carefully at the motion that has been put forward today by Senator Evans, it reads:

> The March figures for private health insurance membership which reflect the failure of the 30 per cent rebate to achieve the modest target set by the Government or justify the $1.7 billion of taxpayers' money spent on the rebate.

Senator Evans has failed to properly divorce those two issues very clearly. Private health insurance membership is something that this government need have no apology whatsoever in seeking to achieve. I will demonstrate in the course of my comments Labor's track record of what happened in that particular area. Certainly the 30 per cent rebate is there as an enticement to enable people to achieve a very proper identification and get back into it.

With regard to justifying taxpayers' money, the Labor Party are nothing more than a bunch of hypocrites on this particular issue. If we look very carefully at the waste of taxpayers' money, we only need remember

the period from 1984 to 1996, the 13 years of Labor administration.

I find it somewhat ironic that Senator Evans today did not bother to go back and check the economics of Labor's period in office. Instead, in Labor's usual manner, he attempted to put negative comments on the record to try to disparage anybody else who is seeking to do something good—in this case the government—as opposed to talking about the fact that they slipped off the slippery slide and went way out of the picture. The economics that we had to endure for 13 years under Labor were really serious in the areas of total health care. The legacy that was left to us by Labor means that we have had to look very carefully at this whole area.

Let me concentrate for a moment on high interest rates and how they impacted on each and every Australian's capacity to pay for health services, community services, any other services of government, or day-to-day living. The fact that the Labor Party raped the economy and pilfered can only be described as something that undermined the security of each and every Australian family. At the end of 13 years of Labor government, we need to ask the question: what did their economic management do to health care? I find the motion that has been put forward today nothing other than someone trying to salve someone else's conscience and looking for excuses for why the Labor Party is now—as Senator Evans quite rightly acknowledges—philosophically opposed to the government.

But there is a matter, if we look at Labor's health record, that is very important in this debate, and it goes to the fundamental issue of balanced health care and ensuring that every Australian family has access to quality health care at an affordable, cost-effective price. When we came to government in 1996, Australia's private health care industry—and, in turn, the entire health care system—was facing a very stark future. After 13 years of Labor government, private health insurance membership had spiralled down from the 50 per cent that Labor started with in 1984 to the 33 per cent that they handed over to the coalition government in 1996—a 17 per cent reduction in 13 years.

Senator Crowley smirks and smiles across the chamber—she was one of the ministers responsible for that particular program. In real terms, in 13 years Labor managed to drain private health insurance membership, at a rate of about 1.5 per cent per year, by over 16 per cent. These are not good figures; in fact, they demonstrate that Labor did nothing when in government to address the growing imbalance between public and private health care.

As we all know, Medicare was created back in 1984 on the basis that the Australian government would continue to maintain and, indeed, encourage a robust health care industry. You only need look at statements by then Minister Blewett and subsequent comments by former Minister Richardson to see the commitments that were given that were not honoured. Far from encouraging—or even accommodating—this essential sector, the Labor Party actively worked over the years to discourage private health care and therefore cost shift, placing increased pressure on the public system. This occurred over a number of years in what in retrospect appears to be a series of very ill-advised decisions.

Between 1983 and 1989, $100 million was taken out of funds by gradually phasing out the reinsurance pool scheme. In September 1986, $135 million was lost when the bed day subsidy was abolished. Then the Medicare rebate for in-hospital services was reduced to 75 per cent and, in 1993, the states were provided with incentives to increase public patient throughput at the expense of private patients. Overall, it is estimated that this systematic attack on private health care resulted in cost shifting from public to private hospitals of, in today's terms, $846 million—or a 39 per cent rise in premiums. So much for Labor's record in this area.

We need to look very carefully at what private health insurance underpins. Very importantly, it underpins the role of GPs in performing their vital function in communities around Australia. The viability of general practice is very much dependent on a functioning, robust private health care sector, and I am certainly aware that the AMA is working with the government to begin addressing the problem of gap fees. Private health insurance

underpins hospitals throughout Australia, and it underpins the very important Commonwealth-state relations on health. The fact that all governments, including Queensland, Victoria and Tasmania, have now signed off on important state health agreements is underpinned very much by this important pillar of health care. We need a balanced health care system with future access to health care in Australia dependent on an appropriate balance between the private and public sectors.

You only have to look at the 1999-2000 budget that is currently before the parliament to see the strategic directions in health care that take us into the century of healing. We are spending over $1 billion on new health care initiatives over the next four years. I invite senators to look very carefully at the commitment to doubling research, the focus on primary health care, enhanced quality in general practice and the revitalisation of general practice in primary health care—which is a landmark move. Previous governments, particularly the Hawke and Keating governments, have ignored or dismissed these sorts of policy directions as being too hard or politically too hard or too hot to handle. Certainly the initiatives that were taken with regard to the 30 per cent rebate are very important, but we also need to look at the government's 1999-2000 budget—the $24 billion commitment of the Howard government—compared with the ALP's paucity of ideas, which have not contributed in any way in this area.

There are so many areas that will benefit from this year's budget: medical research, biotechnology, primary health care, the commitment and extra expenditure of funds in rural and remote areas—and there are dozens of programs in each and every one of these areas that are worth looking at.

Meeting the health needs of indigenous Australians is probably one of the most serious and important commitments that we can make. But let me come back to the point of a balanced health system, which is so important. This can only be achieved in the long run by reversing the long-term trend of private health insurance participation that was so rapidly and nastily taken back by Labor during its 13 years. We have reversed this trend. We have now seen the first increase since the quarter ended September 1997. It is certainly interesting to note that the largest increase has been in the age group of 20 to 24. This year's budget commitment to lifetime health care is something that we can also be proud of because it builds on an existing community rating system. It attracts younger members, rewards longer term membership, stops hit-and-run membership, cuts costs and counters the adverse selection that has been so necessary.*(Time expired)*

Senator BOURNE (New South Wales) (4.15 p.m.)—The Democrats did not support the government's Private Health Insurance Rebate Scheme when it was proposed. We believed, and we still believe, that it represents an inequitable and inefficient use of taxpayers' funds. The recently released figures on membership numbers of private health insurance funds show that we were right. The extremely small increase in private health insurance membership in the March quarter provides unequivocal evidence that the rebate scheme has failed. An increase in fund membership of only 0.2 per cent of the population cannot justify the cost to the taxpayer of $1.7 billion a year.

The government did not set any outcome measures for this policy. Despite the Democrats' efforts to get the government to state publicly what it hoped to achieve by this expenditure, we were unable to obtain from the Minister for Health and Aged Care any statement at all concerning his goals for the rebate scheme. However, whatever measure is used to assess the success of this scheme, it is clear that it has been a dismal failure. The small increase in fund membership represents a cost to the government of over $29,000 for each new insured person. Clearly, this is a grossly inefficient use of funds when an annual insurance policy costs about $1,500 a year for a single person.

If the government had paid the entire premium for each of these 57,000 new members, it would cost the Australian taxpayer only $85,500 a year—considerably less than the $1.7 billion that we are spending to get

the same result. That is because for every new member the scheme manages to attract the government is paying 95 existing members to keep their insurance. This means that most of the $1.7 billion is going to existing fund members, many of them people on high incomes who do not need a hand-out to help them pay their insurance premiums.

The Democrats argued strongly when the rebate bill went through the Senate that the scheme was bad policy and bad economics. The recently released figures have proved us right. The most distressing aspect of this rebate scheme is that it is taking scarce health resources out of the health system when there are so many areas of desperate need where this money could be spent to achieve real health outcomes. As it now stands, most of the $1.7 billion being spent on insurance rebates is going straight into the pockets of existing health insurance fund members and it is not providing any additional funding for health services at all.

The Democrats receive letters every week from people who are desperate for extra health funding: people who are waiting months for an operation in a public hospital, people who rely on expensive medication which is not subsidised by the PBS and older Australians who are living in pain because they cannot afford the dental treatment, the physiotherapy and the medication that they need. These are areas in which funding is desperately needed, and the government has chosen to divert health funding into a rebate scheme which does not provide one new health service or address any one of these critical areas.

The government has been unable to provide any evidence at all to back up their claims that the rebate scheme has reduced pressure on the public system and has reduced waiting lists in public hospitals. This was one of the claims made by both the minister for health and the Prime Minister repeatedly during the last election campaign. The Democrats were sceptical of the claim at the time, and the failure of the government to provide any data at all to back it up has validated our belief that the rebate scheme has not had any impact upon waiting times in the public health system.

Of course there were many considered objections to this expensive scheme at the time. They included those of many of Australia's leading health economists as well as independent consumer groups, such as the Australian Consumers Association and the Australian Council on the Ageing. In fact, the only groups that supported the rebate were those that stood to profit from it—the AMA, the private health insurance industry association and the private hospitals. The credibility of these groups has been seriously called into question by their extravagant predictions that the rebate scheme would achieve private health insurance fund membership levels of 40 per cent to 45 per cent of the population.

These predictions, which have now been proven to be completely inaccurate, reveal the inability of the associations to understand the community's concerns about Australia's health system. They do not understand that most people would prefer a high quality, equitable public health system, funded fairly through taxation, than the expensive private system where people are faced with high out-of-pocket costs even after they have paid insurance premiums for many years.

The government should stop listening to the professional associations when developing health policy and start listening to the 70 per cent of the population who have not taken out private health insurance despite a 30 per cent rebate, a surcharge for high income earners and a $7 million advertising campaign. The failure of the rebate scheme should send a clear message to the government that it is time to stop trying to bribe, to cajole or to frighten people into taking out private health insurance and it is time to start fixing some of the real problems that we have with our health system.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (4.20 p.m.)—I have said in this place time and time again that Labor's response to the issue of private health insurance has been characterised by a devious and cynical campaign of misinformation and misrepresentation, and it is no different today. Over and over I have outlined and highlighted Labor's lies, their

scare tactics and their woeful past record on private health insurance, and here we are again wasting more time arguing over measures that the coalition has already taken to arrest the decline in private health insurance. And that decline was brought about by Labor's mismanagement.

For people to come into this chamber and say that increasing the number of people with private health insurance does nothing for the public health system is just unbelievable. Anybody with half a brain—and former Senator Richardson outlined this over and over again—knows that, as people leave the private health insurance scheme and are not able to use and access private hospitals unless they self-insure, they place pressure on the public health system. Often they are young people who have left the private health insurance scheme and who require immediate treatment because they have had an accident, an injury to a limb, need a meniscus repair or need a total knee or shoulder reconstruction because of football.

Senator Crowley—They never use the private health system in emergencies anyhow; they always use the public health system.

Senator PATTERSON—Senator Crowley, you will have your time. I hope I will not have to listen to you, but you will have your turn to spread more misinformation, as is usually done by the Labor Party. Under Labor, young people often moved out of the private health insurance system. Because they had acute injuries they found themselves able to go into a public hospital and push out of the way older people who were waiting for surgery which was seen to be not as urgent—maybe a hip replacement or another form of surgery that they could wait for. That is what was happening under Labor. When Labor was in government it recognised over and over—or somebody recognised—that something should be done about private health insurance, but it did nothing about it. Labor lacked the courage to bite the bullet and do something about boosting private health insurance.

Labor's top politicians—I suppose they were top politicians; Labor saw them as top politicians, top paid politicians anyway—Mr Keating and Dr Lawrence, openly bragged that they did not take out private health insurance cover, because they could self-insure. If something went wrong they could afford and they had the connections to get treatment immediately. They did not take out private health insurance cover and either self-insured or, most probably, would rely on taxpayers to fund their health costs. It is little wonder they never made the hard decisions to fix the system, because they did not believe in it.

Unlike our Labor predecessors, our government does not suffer from a stubborn reluctance to address the hard issues in health. We are not prepared to sit by and watch our public system grind to a halt because of Labor's history of mismanagement. What we saw was an absolute decline in private health insurance. It was on a hiding to nowhere. As I said, even heavyweights like Graham Richardson recognised the urgent need to bring back people into private health insurance. Regarding membership, he said in 1993:

> It was 70 per cent when we came to office and it's 40 per cent now.

It was 70 per cent when Labor came to office and it was 40 per cent in 1993. So in six short years they had actually decimated the private health insurance system. In 1993 he also said:

> The drop last year was dramatic. In Victoria, the State with the least per cent of public beds as against private, the drop was more than five per cent.

He went on to say:

> If the drop continues at any rate like it has been over the next few years, it won't be long before there will be enormous pressure on the public health system.

Senator Crowley used to come in here when she represented the Minister for Health and answer questions by saying, 'Oh no, if people leave private health insurance, they don't put pressure on the public health insurance system.' Well, I know who I preferred to believe. I preferred to believe Senator Graham Richardson at the time, because he knew that when people dropped out of private health insurance they put enormous pressure on the public health system. Senator Graham Richardson was saying it then. He was not listened to unfortunately. I suppose anybody

with a brain in the Labor Party got out. The Minister for Finance, Senator Peter Walsh, got out because they would not listen to him. Senator Richardson got out because they would not listen to him. Anybody who had an idea, who thought they might be able to do something for the country, left the Labor Party.

As I said, unlike our predecessors we are not prepared to stand by and watch our system grind to a halt. Even with the writing on the wall, Richardson, like Mr Beazley and many of his other cabinet colleagues, lacked the courage to do anything about it. They did nothing and let the Australian health system become a terminal case. We have resuscitated the health system through the introduction of Lifetime Health Cover. We now have a system in place that will acknowledge those people who have belonged to health systems over a period of time and have shown loyalty to private health insurance schemes. Labor did not do anything about that, which was a constant concern. People would come to my office and say, 'I have belonged to a health fund for 25 or 30 years and I get the same treatment and pay the same the fees as somebody who has come in a year before.' We have addressed that.

We have the 30 per cent rebate to assist people and we are pursuing reforms to address the gap—another concern which people expressed: that they went into hospital and found they had to pay more than somebody else in the same hospital who was there as a public patient. We are addressing that. Labor was unable to do that. The then Minister for Human Services and Health, Dr Carmen Lawrence, put in place a scheme that the medical profession just could not accept. That is how good she was—she failed to consult with them, negotiate and come to an agreement. We have also developed a coordinated care system in the private sector. All of these measures ensure that our health system remains viable and affordable for all Australians—something that Labor continually puts down by repeated, self-righteous misinformation.

We have to also look at comments such as those by the ALP shadow minister for health, Jenny Macklin. And even now Graham Richardson further reinforces the total lack of reality that is Labor Party policy. Before she got into this place, as chair of the national health strategy, Jenny Macklin said in the 1991 report entitled *Hospital Services in Australia* in relation to private health insurance:

> If increased funding to public hospitals reduces the perceived pressure on public hospitals . . . it is likely private health insurance will drop. This could result in increased demand for public hospitals and reduced revenue from private patients.

It is a shame she lost the plot on her way into parliament. Former Senator Richardson was quoted in an article by Adrian Rollins in the *Age* in November of last year as having said on a radio station:

> . . . Australia's private health system was within five years of collapse, with disastrous consequences for public hospitals.

That is the state Labor left it in. In the same article Mr Howard said:

> Years ago, something should have been done to increase the incentives while there was a critical mass of people in private health insurance. Once it got below a certain figure . . . it was always going to need quite a big subsidy to turn it around.

And he was right. *(Time expired)*

Senator CROWLEY (South Australia) (4.29 p.m.)—I am pleased to contribute to this debate. It is a very important debate, because it is essentially about the fact that this government's very expensive policy proposal in the area of health—that is, $1.7 billion (B for Betty) per year on the health rebate—has gone for near enough to nothing. There has been a mere modest increase of 57,000 members into private health insurance at an outrageous expense for each increase. The debate today argues that this clearly reflects a failure of that 30 per cent rebate to achieve even modest targets set by government and certainly a failure to justify the expenditure of $1.7 billion of taxpayers' money on the rebate.

I have heard my Liberal colleagues Senators Tambling and Patterson having a shot at the total inadequacy of the Labor Party. As Mandy Rice-Davies said, they would say that, wouldn't they? It is a bit of a shame that they do not actually deal with the full truth, and

that is that in the 13 years of the Labor government Labor introduced Medicare, an extraordinarily good health insurance system. Something like two million people were without any health insurance in 1982 and in the years before the Labor government. After Medicare was introduced, nobody in Australia any longer feared big health bills. That is what Medicare has done, and that is why it is so popular in the electorate. Thousands of people, and I might say particularly women, have in the past faced the fear of big health costs. What do you do when the kids are sick? What do you do when you might need to go to a doctor? Lots of families became sicker and sicker because they knew they could not afford the doctor or the hospital, so they went without health care because they were afraid of those bills. Medicare removed the bills and reduced the fear.

Another reason for this failure of people to have private health insurance is that the community is not stupid. They pay their contribution to Medicare according to their income and they get an excellent product in return. Should they ever need hospitalisation, they will get it. They may have to wait sometimes, but if it is an acute condition, an accident or an emergency they will get treatment straightaway in our state-of-the-art public hospitals, and they will be provided that with no extra outlay than their Medicare levy. They are free of any worry about those costs. On the other hand, you could buy private health insurance, which will not do anything to help you in an accident or an emergency because in 99.9 per cent of the cases you either choose or are taken to a public hospital. Ring Kerry Packer on this matter. That is where he went and had his life saved after he had a massive heart attack playing polo. It was the Westmead public hospital that saved Mr Packer's life. And that is what it does for thousands of citizens—no questions asked; just take the patients and provide the care.

When I came into this place in 1983 I became a member of a Senate committee looking at private hospitals and nursing homes. Then Senator Janine Haines had introduced a reference because there had been reports of 35 people, mainly children but not only children, dying in the private hospital system following tonsillectomy operations. These were the ones who could not be got to the public hospitals in time to save their lives. There are many other examples of people who were removed from the private system to the public system for repairing—

Senator Forshaw—It still happens today.

Senator CROWLEY—It does still happen. There are some private hospitals now that are approaching excellent quality, but if you are really crook in this country you go to the state-of-the-art facilities in our public hospitals. That is where we should be putting our funding, not into propping up the very bad product that is failed private health insurance. The community knows. Why would you pay $1,800 to $2,000 a year to insure a family? That is reduced under this massive contribution by a mere 30 per cent; so instead of being $2,000 or $1,800 it will only be $1,200 or $1,300. Thousands of families know they simply cannot afford that. And what does it buy them? The only way you can get a bill for health care in this country is if you have got private health insurance. It is a rotten product and the people know that.

Senators opposite said they have had letters from people in the community. So have I. People write things like, 'Dear Senator, I am a pensioner and for 30 years I have faithfully paid my private health insurance premiums. I have never needed it until now and finally I have had to go to hospital. I had an operation and I have got a bill for $3,000. Senator, what can I do? I will never be able to pay it.' That is what private health insurance bought many of those people. For years and years they have contributed, and what did they get? A big bill. The only way you can get that bill is if you have got private health insurance. It is a rotten product.

The cost is one thing, but the 30 per cent rebate will not persuade most people because it is still an extraordinarily high price. But the government knows that one of the other things that turns people off is the payment of the so-called gap, the difference between what private insurance pays and what the doctors and the hospitals charge. So what have we

seen? We have seen the AMA and some of the specialists working out a deal where they will come to an agreement that there will be no gap, provided they are allowed to charge 15 per cent above the going rate of Medicare rebate.

Senator Forshaw—It sounds like a closed shop to me.

Senator CROWLEY—It is not only a closed shop but a closed outcome. This government, bless its heart, supposed to be economic whiz-kids, has written a blank cheque for a 30 per cent rebate. It is estimated that it will cost $1.7 billion. But immediately there is a six per cent increase in the private health insurance rates, up goes the government's underwriting of 30 per cent. Up it goes every time there is any increase in private health insurance. It is a rotten product and the community knows that.

Many of them will not be bought by your proposals for life cover or by the 30 per cent rebate. The bribe is not doing what the community wants. What the community wants is easy access and fair access based on medical need, not your ability to pay, whenever they should need it, particularly through our large, state-of-the-art public hospitals. If you have the dollars, clearly that is the preferable place to be putting them. It is fairer, it is more equitable and it is where people go. Fifty per cent of the people in New South Wales a few years ago were admitted to the public hospital system from accident and emergency and were dealt with very quickly through urgent admission for accidents and emergencies. For others, there is a waiting time. One of the reasons there is a waiting time is that so many people with private health insurance prefer to go as public patients to the public hospital system because then they will get no bill. Doesn't this government understand what the community is doing? Don't they understand or is it that they don't want to?

Minister Wooldridge said on the *7.30 Report* on the night of the budget or the night after, 'We are not trying to get people out of the public hospitals.' The quote jangled on my ears; that is totally in conflict with everything all of you over there and the minister have said to this point. The reason you want to get people into private health insurance is to reduce the pressure on the public hospital system. Either you mean that or you do not. But it is not working, because most people know that if they can have their surgery or treatment through the public hospital system, whether they have private health insurance or not, they will have no extra costs to pay. The people are smart. They know the better and preferred way to go. You are putting funds into subsidising a rotten product—private health insurance long past its use-by date. You should be helping people make a fair and reasonable contribution to the health costs of themselves and all Australians and you should be looking at ways in which you can subsidise and put money into our large public hospital system. That is the fair and better approach.

You should not be abusing people, as Minister Wooldridge has been, when someone in the community gets upset about the proposal he has circulated in this letter—the new scheme called Lifetime Health Cover. Some people do not want those costs. They do not want to be pressured. They want to know that when they are sick they and their families can go to the public hospital system, get a bed and get the treatment and excellent care that is provided in this country without financially crippling themselves. This debate today is terribly important. Based on the figures my colleague has read out there has been no success at all.

Senator EGGLESTON (Western Australia) (4.39 p.m.)—The sad thing about what Senator Crowley has just said is that she thinks Medicare is a great success. She seems to be ignoring the fact that Medicare has very obvious and very serious problems as a system. We have overcrowded public hospitals with long waiting lists and overcrowded outpatient departments and what can only be regarded as a system in great stress which is not working in the way it was hoped it would. We have imported into Australia all the problems which used to characterise, and still do, the British National Health Service where there are long waiting lists. The waiting time in Australia now to have a hip replaced is 18 months. There are long waiting lists for

gynaecological and many other forms of surgery, all because the system that we have is non-discriminatory in whom it provides the service to.

We have a free system. Senator Crowley would have us believe that the system is doing what it was designed to do, and that is to provide universal health care for those poor and underprivileged people who need it, good emergency care and care for people who have sophisticated problems and who need all the advantages of an intensive care unit and the kinds of sophisticated services which cost a lot of money. Rather than that, what is actually happening is that a lot of very ordinary middle income people who could afford to pay for their health services are using the public health system because it is free. That is putting an enormous burden on the public hospital system.

Senator Forshaw—It's not free. They pay their taxes. They pay their Medicare levy.

Senator EGGLESTON—Indeed, people pay a Medicare levy, but the Medicare levy goes nowhere near covering the cost of the public health system. We have an enormous percentage of middle income earners who could pay a component of the cost of routine surgery and medicine. They are using the public health system because it is free, and that is why the public health system is collapsing, and that is why we have overcrowded hospitals, long waiting lists and overcrowded outpatient departments. In the past Australia had a very effective health system. We had a nice balance between public health and private health. What we have today, thanks to Labor—

Senator Forshaw—No, you didn't.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order! Senator Forshaw, your persistent interjections are going beyond what is acceptable. I ask you to remain silent.

Senator EGGLESTON—It is absolutely disgraceful, I have to say. We had a nice balance in the past. We had a public hospital system which served the needs of the public who required that system and alongside it we had an effective private hospital system. What we have today is an overutilised collapsing public system and an underutilised private system. The government has recognised that the answer to making Australia's health system more efficient and getting it back to a system of equity where the public dollar spent in public hospitals is spent efficiently and provides good service to people who need it is to encourage people back into private health insurance.

The government has set up some incentives to get people back into private health insurance. The major incentive is the 30 per cent rebate on premiums. This system has been in operation only a few months, but already it has had a very dramatic effect. As has been said, some 57,000 people have joined private health insurance funds again. Interestingly, that exactly reverses the trend which has occurred over the years under the Labor government when something like 50,000 people a month were dropping private health insurance. We have turned that around and we are getting a positive result.

It is too early to assess how successful that will be, because these incentives are related to taxation and taxation rebates. It will be very interesting to see what the situation is not in the March quarter but in the September quarter of the year after middle income earners have put in their taxation returns and sought to get the benefit of belonging to private health insurance funds. I suspect the reason this debate is occurring today is that the Labor Party are very anxious to get it up before 30 June when people have to complete their taxation returns because they know that the figures after then will be dramatically better because people will be joining health funds in droves over the next month or so to get the benefit of the taxation deductions.

The rather ridiculous assertion has been made not only by the Labor Party but also rather surprisingly by Senator Bourne, who I thought perhaps had a better understanding of these things, that the $1.7 billion that has been spent on attracting people back into health insurance funds divided by the number of people who have joined so far means that it is costing the public purse some $30,000 a head to get people back into private health

insurance. That may seem to be a reasonable statement to make, but it is really quite nonsensical because, firstly, it is too early to tell how many are coming into the system. By the end of the year, as I have said, when people complete their taxation returns there will be dramatically increased numbers in private health insurance.

Secondly, it does not take into account the cost reductions to the public system of taking people out of that system and getting them into the underutilised private hospital system. There is a saving to government by spending this money on getting people back into private health insurance because it means that the public hospital system will work more efficiently and effectively for the people who genuinely need to use that system. As I have said, that has been the greatest flaw in this Medicare system in that it has been used by middle income people who are, in effect, abusing the system by seeking free treatment in public hospitals and that is what we are seeking to redress. *(Time expired)*

SURVEY OF SENATORS' SATISFACTION WITH DEPARTMENTAL SERVICES 1999

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Earlier this year senators participated in the Senate department's biennial Survey of Senators' Satisfaction with Departmental Services 1999. I table the survey report, which will be circulated to senators for their information. The survey is a critical measure of performance for the department and its results and feedback are taken very seriously by all departmental managers. The 1999 survey has found generally high levels of satisfaction among senators. The results of the survey are being carefully studied by the department's senior managers. Measures are being devised to maintain and improve the level of senators' satisfaction with departmental services. These measures and their implementation will be reported in the department's annual reports.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The President has received letters from the Leader of the Government in the Senate and the Leader of the Australian Democrats seeking variations to the membership of committees.

Motion (by **Senator Vanstone**)—by leave—agreed to:

That senators be appointed to committees as follows:

Community Affairs Legislation Committee

Substitute member:

Senator Coonan to substitute for Senator Knowles from 31 May to 3 June 1999.

Employment, Workplace Relations, Small Business and Education Legislation Committee

Substitute members:

Senator Abetz to substitute for Senator Synon for the consideration of the budget estimates relating to employment matters from 7 to 9 June 1999.

Senator Coonan to substitute for Senator Synon on 10 June 1999.

Senator Lightfoot to substitute for Senator Ferris from 7 to 10 June 1999.

Environment, Communications, Information Technology and the Arts Legislation Committee

Substitute member:

Senator Coonan to substitute for Senator Tierney on 9 and 10 June 1999.

Senator Calvert to substitute for Senator Tierney on 7 and 8 June 1999.

Finance and Public Administration Legislation Committee

Substitute member:

Senator Calvert to substitute for Senator Watson from 7 pm on 3 June to the conclusion of the estimates hearings on that day.

Foreign Affairs, Defence and Trade Legislation Committee

Substitute members:

Senator Brownhill to substitute for Senator Sandy Macdonald for 7 and 8 June 1999.

Senator McGauran to substitute for Senator Sandy Macdonald for the period 9 and 10 June 1999.

Legal and Constitutional References Committee

Substitute member: Senator Bartlett to substitute for Senator Stott Despoja for the committee's inquiry into the operation of Australia's refugee and humanitarian program.

Participating member: Senator Stott Despoja to be a participating member for the committee's inquiry into the operation of Australia's refugee and humanitarian program.

SUPERANNUATION LEGISLATION AMENDMENT BILL (No. 3) 1999

First Reading

Bill received from the House of Representatives.

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

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

Bill read a first time.

Second Reading

Senator VANSTONE (South Australia—Minister for Justice and Customs) (4.48 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Madam President, this bill amends the superannuation legislation to change the definition of a self managed superannuation fund (currently known as an excluded superannuation fund) and the regulation of these funds. honourable senators may wish to note that an amendment was moved in the House of Representatives due to a drafting error. This has no effect on the intent of the bill and the explanatory memorandum remains unchanged.

The existing definition of an excluded superannuation fund will be replaced with a new definition of a self managed superannuation fund. In addition to requiring the fund have fewer than five members, the new definition will require that all members of the fund have a business or family relationship and that they are trustees of the fund.

The Financial Systems Inquiry found that under the present system there is little protection of the interests of beneficiaries who are at arm's length from the trustees in an excluded fund. In addition, that there is little practical scope for effective prudential regulation of such funds. As such, the inquiry concluded that excluded funds should not have beneficiaries who are at arm's length from the trustees.

Under the new definition, members of self managed superannuation funds will able to protect their own interests and as such, these funds will be subject to a less onerous prudential regime under the Superannuation Industry (Supervision) Act 1993 (SIS Act).

With this bill, the regulation of self managed superannuation funds will be transferred to the Australian Taxation Office from 1 July 1999, while regulation of all other funds will remain with the Australian Prudential Regulation Authority. The ATO will have responsibility for ensuring that self managed superannuation funds comply with the non-prudential requirements of superannuation law and APRA will continue its more extensive role as the prudential regulator of all other funds. Again, these changes have been introduced by the Government in response to the recommendations of the Financial Systems Inquiry.

The legislation provides for a reduced supervisory levy for self managed funds. The new levy amount will be included in the Superannuation Industry (Supervision) Regulation and will reflect to a larger degree the actual cost of regulating such funds.

In conclusion, the fundamental goal of the Government in introducing this bill is to ensure that the regulation of small superannuation funds reflects the needs of members of such funds as well as the Government's retirement income goals.

I present the explanatory memorandum to the bill and commend the bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned till the first day of sitting in the winter sittings 1999, in accordance with standing order 111.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL 1999

Report of Employment, Workplace Relations, Small Business and Education Legislation Committee

Senator O'CHEE (Queensland) (4.49 p.m.)—On behalf of Senator Tierney, I present the report of the Employment, Workplace Relations, Small Business and Education Legislation Committee on the provisions of the Higher Education Legislation Amendment Bill 1999, together with submissions and *Hansard* report of proceedings. I move:

That the report be printed.

Senator CARR (Victoria) (4.49 p.m.)—I will be seeking leave to speak to this matter. I would like an indication from the government if leave will be granted, given that leave was denied this morning. If leave is to be denied, I will then speak to this motion.

Senator O'Chee—I understand an arrangement was made by which we were happy to accommodate both Senator Carr and Senator Stott Despoja if they sought leave to speak for five minutes. The government is happy to honour that agreement. There is also, I under-

stood, some agreement in relation to an incorporation.

Senator CARR—There was no agreement.

Senator O'Brien—There was an offer.

Senator O'Chee—I am not in a position to change an arrangement as I was only advised about this matter by the opposition whip now. What I propose is that perhaps we could deal with some of these other reports and attempt to sort the matter out in the interim.

Senator CARR—If that is the clear indication, then I will speak to the motion before the chair. Speaking to the motion that this report be printed, I should explain why I think this report should be printed. The Senate should be made fully aware that Senate committees do have some memorable moments. I think it is appropriate that the Senate be made fully aware that it has been a long time since I have seen anything quite like the way in which this particular committee handled its affairs and, in particular, I think it is appropriate that the report be printed so that it can be made clear to the Senate—

Senator Forshaw—And the public.

Senator CARR—And the public for that matter, the burlesque comedy that has been afforded, obviously for our entertainment, by the recent proceedings of this committee, which was asked to consider voluntary student unionism.

Senator Tierney—Mr Acting Deputy President, I raise a point of order. We are quite happy for this report to be tabled. To save the time of the Senate, I would like to incorporate a tabling statement.

Senator CARR—What is the point of order?

Senator Tierney—The point of order relates to the tabling of this document. Senator Carr seems to be indicating we are not happy to table it; we are. I am quite prepared to do a tabling statement to save time and we will grant leave—

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Senator Tierney, that is not a point of order. Resume your seat.

Senator Tierney—Can I just seek your guidance, Chair? Given that we have an agreement that we will allow Senator Carr to speak, but for five minutes only—

The ACTING DEPUTY PRESIDENT—Senator Tierney, Senator Carr is speaking to a motion before the chair; he is not speaking under any agreement that may or may not have been made.

Senator CARR—Thank you, Mr Acting Deputy President. Might I say from the outset that humour in this situation, the comedy routine that Senator Tierney wishes to engage in—and quite clearly from his response he sees this as a very funny situation—is overshadowed by the fact that the business before the committee on this particular matter was of the most deadly serious nature. This matter is about a government that is trying to silence student voices in this country—a government which is guilty of being hell-bent on trying to nobble the overwhelming student opposition that has developed to what it has proposed in regard to voluntary student unionism.

This report should be printed to demonstrate just how disastrous and depraved the policy being pursued by the government is. I trust that through the printing of this report the public at large will come to understand that this government seeks to decimate our higher education sector and our higher education system. What we have seen with this comic drama—which I believe the printing of this report will reveal only too clearly—is that the Senate ought not to allow this to go on; it ought not to allow this to go unremarked.

This committee received some 409 submissions and some 1,500 letters. It is important that the report be printed so as to record that this inquiry probably had one of the highest levels of public reaction that has been seen for some time. Some 94 per cent of the submissions that were received were strongly opposed to the government's voluntary student unionism plan.

What I found particularly annoying was the way in which witnesses before the committee were treated by members of the coalition. What we saw, of course, were desperate attempts by the government to rustle up some expert, some level of opinion, some level of representation to articulate its sordid view on this matter. From the numerous submissions

that were listed as being presented to the committee, we saw that only four persons could be found to even fog up a mirror on behalf of the government; that is, four out of the 26 submissions that were presented on the day of the committee hearing.

Turning to the committee hearing itself, the opposition sought on numerous occasions to ensure that people had the opportunity to present their views. The government, through the force of numbers, acted to prevent there being hearings across this country; it acted in such a way as to suppress representations being made to this committee. That report be published by the Senate to highlight these things is, I think, important. It is important that the report be printed to demonstrate how every major stakeholder in the higher education sector was quite clearly of the opinion that the government's actions were wrong.

That opinion has come not just from students. The report, when printed, will demonstrate that lecturers and even vice-chancellors were taking a position strongly opposed to the government's action. Almost every university put in a submission opposing the voluntary student unionism legislation that the government has sought to force through this parliament.

We have heard from such well-known groups—such radical bolshevik groups!—as the Association for Christian Higher Education; the Tasmanian Chamber of Commerce and Industry; the Catholic Youth Services, Archdiocese of Adelaide; the Australian Union of Jewish Students; the New South Wales Council of Civil Liberties; the Bathurst City Council; the City of Greater Bendigo; Rugby Tasmania—a well-known militant group is Rugby Tasmania! There was the Armidale and New England Men's Hockey Association, another well-known group of revolutionaries! There was the Australian Law Students Association. We have seen La Trobe University Children's Association—

Senator Forshaw—Very dangerous!

Senator CARR—Another very dangerous group, Senator Forshaw! It is important that the report be printed so that these sorts of very dangerous groups can be exposed for opposing the government's shocking attitude towards higher education in this country! We have even heard from the Office of the High Commissioner of Malaysia, another well-known radical! He took the view that the government's action is aimed at undermining our contribution to the region, our contribution to ensuring that Australia delivers high-quality international education. The Malaysian government supports students' rights to organise themselves—especially when that organising is done in Australia.

We have seen the government's own hitherto 'tame cat' youth advisory body, the government-appointed National Youth Roundtable, also take the view that this is a very difficult proposition. So even organisations such as the Youth Advisory Body have opposed the government. We have had those obviously wild-haired revolutionaries, the army of the 409 people and organisations who cared enough to make a submission. These are the people whose voice the government wants to suppress; it wants to make sure that their views are not articulated within the community at large.

What we have seen—and this is why I think the report should be printed—is a majority report demonstrating yet again a paucity of government thinking on these issues. We have seen a majority report that has sought to support the legislation that the government has faithfully presented to the Liberal Party—and which, as I understand, has been opposed strongly within the Liberal Party itself. What it attempted to do was demonstrate its view yet again by unsubstantiated and misguided assertions that were made by a few persons before the committee as to what they believed to be the inappropriate actions of various students. This was farcical in itself.

We observed the committee's behaviour. Of particular concern was the behaviour of coalition senators on this committee. We heard this morning Senator Abetz's miserable, pathetic refusal to apologise for the outrageous allegations he made before the committee, despite the fact that he now understands and has come to realise that he made totally inappropriate claims about misappropriation of funds, allegations that turned out to be

totally baseless. Yet he refused to come in here and apologise to the people about whom he had made such accusations in the most shameless way.

Senator Bolkus interjecting—

Senator CARR—This is Senator Abetz. I think these sorts of actions should be outlined in the committee report. This bloke ought to understand that he cannot use the Senate to try to intimidate witnesses during an inquiry. This is one of many instances that we have seen all too often from this government of inaccurate allegations and other standover tactics employed by coalition senators in their hapless attempts to prevent witnesses from putting views forward which the government finds so difficult to accept.

Even Mr Alan Ramsey in his column in the *Sydney Morning Herald* a fortnight ago noticed that the shouting, unruly behaviour and flagrant abuse of witnesses by government senators went virtually unchecked by the chair. In fact, it was led by the chair. I hope that Senator Tierney, as chair of this committee, explains why he felt it necessary to behave in such an outrageous manner. Mr Ramsey makes the observations after quoting at some length from the transcript of the hearing where representatives from the ANU were so viciously attacked by the members of the coalition. Having abused the Labor Party's offer of goodwill when Labor Party senators had to leave because they had to catch aircraft home, the Liberal senators proceeded to abuse witnesses without the protection of having the Labor Party there. Mr Ramsey wrote this:

This small window not a bare few minutes of an eight-hour hearing by the Senate . . . committee says volumes about the suffocating hubris of the Howard government these days . . . Nothing should be allowed to obscure the rude, arrogant and often miserable behaviour of Abetz, Ferris, Tierney and Karen Synon.

Parliamentary committee hearings are supposed to be civilised affairs, as Mr Ramsey points out. He goes on to call this particular hearing a farce—the black Friday hearing of the Senate education committee under the direction of Senator Tierney.

We see the way in which other senators behaved in attacking other witnesses. The AVCC was intimidated by the first question from the chair: 'Why didn't you come and see me privately? Why didn't you come and get your instructions from me?' What a rude, arrogant, contemptuous attitude this chairman displays towards witnesses. *(Time expired)*

Senator TIERNEY (New South Wales) (5.02 p.m.)—I seek leave to incorporate my tabling statement on this report in *Hansard*.

Leave granted.

The statement read as follows—

Higher Education Legislation Amendment Bill

Rise to Table a Report from Senate Employment, Workplace Relations, Small Business and Education Legislation Committee—Consideration of Provisions of the Bill

The glue that makes this bill stick so solidly together, despite what debate has taken place in the public arena, or on the floor of this parliament, let alone the 407 official submissions to this inquiry—is that the status quo of maintaining compulsory student unionism in our universities is out of step and out of kilter with the Australia of the new millennium.

The Government objective of the bill is to ensure freedom of association and freedom of speech is truly guaranteed in relation to student organisations on all Australian university campuses.

As the report correctly illustrates the bill allows students to be free of any obligation to be represented by any elected body at a university.

I have a pretty fair understanding of what is presently occurring within hallowed walls of our great tertiary institutions in today's modern Australia, institutions in which I was once a student for thirteen years, and my present position on the ANU Council.

On the matter of freedom of association it still operates on two very different levels on each side of those walls—and of course is now enshrined in law in the workplace.

The time has clearly come for students to enjoy this very same right that their colleagues in any workplace or organisation.

The present "status quo" when it comes to student organisations and in their involvement in the delivery of student services on campuses outside of Western Australia and Victoria is no better highlighted in Point 1.11 of the Committee's report.

It reads in part:

Given the lengths that student organisations who are in favour of retaining the current compulsory regime gave in demonstrating how similar student unions are to government—where voting is mostly

compulsory—very little consideration was given to adopting the voting techniques of government. This only reinforced the perception that student organisations are not interested in actual representation of the aggregate student body, but are more concerned about maintaining the status quo where a small handful of students who choose to be politically active control student finances.

The point really says it all—quite clearly the report backs the growing sentiment of the silent student majority, and the general community that student politics has to be taken out of the equation in the delivery of student services.

It is true that there now exists an effective separation of spending powers in the control and spending of compulsory acquired student levies between the student union and its relevant SRC exists on some campuses.

In effect there are four models, which not taking into account fees from West Australia students, deals with the $125 million of annual student levies.

The Compulsory payment of student fees with non compulsory membership of the SRC at universities like the Uni of Melbourne where the collection of compulsory "amenities and Services fee" occurs with no breakdown in union, sports or SRC component. although the students fee payment is not tied to membership of union.

For Victorian institutions the auspice of Voluntary Student Representation has reinforced the fact that the fee not being tied to membership of the SRC and union.

Compulsory payment with conscientious objection provisions such as UNSW where the compulsory fee passed onto relevant student organisations. Conscientious objection to belong to student organisation can see compulsory fee placed in a special fund or account.

Macquarie University is an example where the Higher education institution collects compulsory student union/sports association, SRC membership and passes them onto the relevant bodies with no effective exemption to conscientious objection.

VSU inspired model of non compulsory payment / membership in West Australia's four universities.

There are some clear points that can be highlighted from these models that back the principles of the Government's bill.

. Conjecture exists to both the difficulties and indeed ability to conscientiously objecting to membership of a student union on all Australian campuses, despite the reassurances of the AVCC to the public hearing.

. The level of student body support to SRC's, on the basis of voting turnout at best underwhelming—at worst appalling. An exceptionally high level of voter turnout was considered at 15% with a more standard turnout between 5%—7%.

. The accountability of funds spent by SRC's for improper political and questionable causes through their direct access to student fee levies or the support forthcoming from funds allocated to the student union.

. General absence of commercial principles in the delivery of student services by students—the injection of a greater imperative for the professional delivery of student services, or more responsive to the greater need of the student majority is not encouraged, and is some cases discouraged by the maintenance of a compulsory student unionism regime.

Examples of SRC improper spending were put to the Committee in written and verbal evidence. Two examples of objectionable spending paint a very poor picture of the sideline activities that SRC's in particular at times get up too—funded of course by compulsorily acquired student foes.

1996 Federal election campaign the guild of Queensland Uni of Technology spent $44 500 mailing out material for ALP, guild vehicles were used to deliver ALP? material all over the state, $7 000 spent on T-shirts and paid people to turn up to demonstrations.

In 1994—Flinders University Student Association held a dope day, with marijuana provided by union.

Further examples of funding of dubious causes and practices, one of the latest being the spending of some compulsory funded student levies by the Newcastle University Students Association, NUSA, in hiring buses, printing posters in marching on my electorate office back on 11 May (the rally was lucky to attract 50 people) reinforces the very point.

As I said to broader media at the time when organisations like NUSA continue to devote substantive time and precious resources to such activities, they are not keeping an eye on the ball to ever improve the delivery and style of student services the broader student population seeks.

Last week I met with both students and in particular representatives from NUSA—face to face for an hour of questioning at the Newcastle Callaghan campus.

Reasonable to say the existing regime of compulsory membership to the student union at Newcastle University is not delivering outcomes the majority of students expect..

The President of the University of Newcastle Liberal Club, David Williams, perhaps put it even more bluntly.

"VSU is clearly the way forward to force student associations to act responsibly and to provide real services and representation, instead of wasteful

squandering. VSU is good for students. Its only the student politicians who are opposed to it."

Its on this very point that this legislation can drive an effective wedge—of the need to end compulsory membership to student unions often breeding ignorance to the professional delivery of student services and a failure to meet the real needs of the broader student populace.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (5.02 p.m.)—I thought Senator Tierney was going to contribute to the debate.

Senator Tierney—I was trying to save time. Why didn't you come to the hearing?

Senator STOTT DESPOJA—I will take that interjection, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—Order! Senator Stott Despoja, you will not take the interjection.

Senator Bolkus—Why not?

The ACTING DEPUTY PRESIDENT—She will not take it because the chair says she will not take it. That is why, Senator Bolkus.

Government senators interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Tierney! Senator Calvert! There will be order in the chamber. Senator Stott Despoja, you have the call.

Senator STOTT DESPOJA—Perhaps before adding my concerns and that of my party to those of Senator Kim Carr—and certainly we support the motion that the report be printed—I will refer to the fact that I did not attend that hearing. I am sorry that I was not there because I think it would have been an interesting opportunity to witness first hand some of what one student leader refers to 'as political thuggery at its best'. My presence was always uncertain at that hearing. The government knows full well that this committee hearing was scheduled for one full day to debate what they consider to be fundamental, quite important and urgent legislation.

Senator Tierney—Quite normal for urgent legislation.

The ACTING DEPUTY PRESIDENT—Senator Tierney!

Senator STOTT DESPOJA—They are claiming it is urgent legislation, but the evidence before the committee hearing does not substantiate that fact. In fact, the Australian Liberal Students Federation have been trying to get a successful referendum on this for 20 years but have failed to prove that it is either important or urgent. Nevertheless, we had a rushed committee process. Senator Tierney knows perfectly well that I was only going to be available for that morning—until fog set in—because I had constituency commitments on Friday, and for that I do not apologise. But, as Senator Tierney will full know, the Democrats are committed to a policy of universal membership.

Senator Tierney interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Tierney, I have called you before about interjecting and I have told the chamber that interjections are disorderly. I have called you a number of times since then. I really do not want to call you again and I am most certainly do not want to name you.

Senator STOTT DESPOJA—I am sorry that Senator Tierney has chosen not to contribute to this debate.

Senator Tierney—I made a tabling statement, which is normal practice.

The ACTING DEPUTY PRESIDENT—Senator Tierney, I have consistently called you on a number of occasions about being disorderly. I have given you a last warning. The next time I have to call you, I shall name you.

Senator Tierney—Mr Acting Deputy President, I raise a point of order. It is normal practice in this Senate during the tabling of committee reports for the chair to make a tabling statement, and you can incorporate that. That is precisely what I have done in order to save time so that, when we get to the real debate on the bill, we can debate these matters fully then instead of regurgitating it all now.

The ACTING DEPUTY PRESIDENT—Senator Tierney, can you come to your point of order?

Senator Tierney—I have.

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

Senator STOTT DESPOJA—I was quite happy to speak for only five minutes. The government was well aware of that. I am just adding my support on behalf of the Democrats to the motion before us. I believe that some of the interjections we have just heard in the chamber and that honourable senators and gallery members have just witnessed are probably quite indicative of the Senate committee hearing that took place on the voluntary student unionism bill a couple of weeks ago.

I put on record the Democrats' concern with the way witnesses were treated in this committee. We also feel that, if we are not careful, we will undermine the public confidence in the committee system of people who appear before us. Representatives of organisations and advocacy groups such as the Australian Vice-Chancellors Committee and the National Union of Students, as well as government departments and individuals, appear before us. We should respect the fact that they go to the trouble of preparing a submission and are available to appear before the committee to take questions from senators. They do not deserve to be abused or ridiculed, nor do those students deserve to have allegations implied, if not directed at them.

I do wish to put on record the treatment of Mr Jason Wood. I hope that as Senator Abetz has joined us in the parliament today with the intention of making a statement—I think it has been made public—an apology will be forthcoming. It states on the wire today that Mr Wood was never actually accused of a specific thing. It was not alleged that he had committed a particular crime or deed, but it was certainly implied that it related in some way to a misappropriation of funds. I listened to that part of the committee hearing. I was stunned to hear the treatment and the process to which this witness was subjected. It was quite an extraordinary example, as Jason Wood claims, of political thuggery.

For the record, the Democrats support universal membership of student organisations. We believe that the bill that is debated in this report, which we believe should be printed, is ideologically motivated. It is a political response in an attempt to emasculate the services that are provided by student organisations—that is, those very basic services, representative functions and facilities that are provided for students on campuses. We believe that the government has tried to guise its ideological and blatant political motivations in the form of arguments about freedom of choice and freedom of association.

In fact, this government is not interested in looking after students or student welfare. This bill's motivation is to silence dissent in much the same way that this government has defunded or reduced funding for organisations that represent students or young people or, in fact, any organisation or advocacy group that has spoken against this government's policies. I include in that list ATSIC, the Office of the Status of Women and the Australian Youth Policy in Action Coalition.

It is hardly surprising that a sector that has actually argued against government policies—most recently, of course, the common youth allowance and income support for students—and has criticised the government for its blatant attacks on universities and, in particular, operating grant funding should have its funding threatened in this way. Make no mistake, this is a bill of blackmail: if student organisations do not allow non-compulsory student membership, their fees and their grants are threatened.

Senator Abetz—Mr Acting Deputy President, I raise a point of order. Senator Stott Despoja gets very precious about comments that are made—

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—What is your point of order, Senator Abetz?

Senator Abetz—She has just reflected on the government, asserting that this government is engaged in blackmail by virtue of introducing legislation. That is imputing an improper motive, and ought be withdrawn.

The ACTING DEPUTY PRESIDENT—It is a debating point on the government as an entity and a whole, rather than on an individual.

Senator Abetz—Just to clarify—

The ACTING DEPUTY PRESIDENT—Do you have a further point of order?

Senator Abetz—Yes, I have a further point of order. Can I clarify that I can, therefore, accuse senators of blackmail? In this chamber can I accuse senators or groups of senators of engaging in blackmail, and have it ruled as being parliamentary?

The ACTING DEPUTY PRESIDENT—Order! As I understood what Senator Stott Despoja said in the first place, it might have been a criticism of government. It was not a criticism of a group of senators as such, and that is the reason it was not taken as being a point of order. It is not a point of order.

Senator Coonan—Mr Acting Deputy President, I raise a point of order. Pursuant to—if I am reading correctly—standing order 193(3), there is a very explicit statement:

> (3) A senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House . . .

It is not very much different to accuse the government of blackmail.

The ACTING DEPUTY PRESIDENT—It is actually quite different, Senator Coonan. It is specifically reflecting on either house of parliament. As I understood what Senator Stott Despoja said, she was not reflecting on the House of Representatives or indeed on the Senate. She was possibly reflecting on the government. There is no point of order.

Senator STOTT DESPOJA—Thank you, Mr Acting Deputy President. I am happy to withdraw the word 'blackmail' if it is particularly uncomfortable to senators opposite. I do not believe that it was actually offensive, and I certainly support your ruling on that point.

The ACTING DEPUTY PRESIDENT—I have ruled on the point of order, Senator Stott Despoja.

Senator STOTT DESPOJA—Thank you. I ask: if it is not the B word, then when you tie grants to a particular action—that is, if you say to a university, 'We are not going to give you money if you allow universal membership of student organisations—

Senator Abetz—Allow? Compel!

Senator STOTT DESPOJA—If it quacks like a duck. In fact, this is a policy that ties government funding—that is, operating grants—to the decisions by universities as to whether or not in their universities they allow student unionism to be compulsory or otherwise. So that is a 'tied grant', if you like, even if people are offended by the use of the word 'blackmail'.

But I am glad that Senator Abetz jumped to his feet in defence of his government and opposed any adverse reflection on his government or other government senators. I only hope that he and his colleagues will be so quick to jump to the defence of those witnesses who appear before committees in future, who are subject to allegations and who are subject to abuse. Again I put on record the Democrats' opposition to the bill. We supported the committee process, albeit a rushed committee process which had jam-packed witnesses and was short on time, and knowing that some senators were to be unavailable on that occasion.

This bill is probably not going to succeed before the Australian parliament, not simply because of the good sense of most non-government parties but because there are a number of backbenchers, a number of members of this government, who see how crazy it is and who know that they have so many students and academic and general staff as constituents that they would not dare legislate against universal membership of student organisations. They would not want to see for a minute an emasculation of those vital campus services that organisations and student unions and guilds provide—whether it is subsidised catering, whether it is child care on campus, whether it is representation in the form of advocacy on behalf of students, whether it is students who have a welfare issue or complaint, or whether it is providing those vital services in campus life like newspapers, student radio or even those sporting clubs.

I concur with Senator Carr's comments earlier. We hardly saw radical submissions come forth in favour of universal student membership. We saw an interesting group. We had religious groups, international groups, sporting and other representative organisations come before us in favour of universal student membership. The point of choice is the point

of enrolment. Universal membership is something that the Democrats will continue to support to ensure that students, especially those from traditionally disadvantaged backgrounds, have the opportunity to participate in campus life and have a holistic campus experience—not just in academic life but in the whole university environment. That is for all Australian students—not just the rich elite, as most government policies in relation to higher education would have it.

Senator SYNON (Victoria) (5.15 p.m.)—I seek leave to incorporate a statement that neither demeans nor casts aspersions on any of my Senate colleagues or people who appeared before the committee.

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—Is leave granted?

Senator Carr—Given the sorry history on this matter, I think the normal customs should be followed and we should see the statement before it is tabled. Our normal practice is to see these documents before they are tabled.

The ACTING DEPUTY PRESIDENT—Has the statement been shown? It is the normal practice.

Senator SYNON—Yes, I believe it has been shown to the ALP whip some time ago.

Senator Carr—That is not true.

Senator SYNON—It is true.

Senator CARR (Victoria) (5.16 p.m.)—by leave—I have no wish to deny the senator leave, but I do think it is appropriate that I see the statement before leave is granted.

Senator SYNON (Victoria) (5.16 p.m.)—by leave—Senator O'Brien did have a look at the statement earlier today, half an hour or 45 minutes ago.

Senator QUIRKE (South Australia) (5.16 p.m.)—by leave—I should make it pretty clear that, as the opposition whip in the chamber, Senator O'Brien left me with instructions as he was leaving this place that the statement was supposed to be shown to Senator Carr, and then we would agree with it. That process has not happened. Until we see this statement, we are not going to give leave to incorporate it.

The ACTING DEPUTY PRESIDENT—Prior to a number of people jumping to their feet seeking leave to speak, I was going to suggest—because of an apparent confusion about whether the document had been seen by those on the other side of this place—leaving the matter in abeyance until we could clarify who had seen the document and who had not. Other events intruded, persons sought the call and were given the call by leave. I was going to proceed with putting the question and letting the matter flow on. Does the government whip seek the call?

Senator CALVERT (Tasmania) (5.17 p.m.)—by leave—I just wish to make the point that I thought that Senator O'Brien had seen the tabling statement, which is only a page and a half. Obviously, he had not. If that is the case, we will make sure that he does see it. But I think it is a bit rich for Senator Carr to come in here and talk about breaking conventions when he turned around and broke a convention today.

The ACTING DEPUTY PRESIDENT—Let us move on. We will leave this matter in abeyance until we can get clarification from Senator O'Brien, the opposition whip and the opposition spokesperson on the matter.

Senator O'BRIEN (Tasmania) (5.18 p.m.)—by leave—The fact of the matter is that I have not seen the document. I did say that we would grant leave. As Senator Carr has indicated that he has some concerns about the matter, I think your suggestion, Mr Acting Deputy President, is eminently sensible. We are disposed to grant leave and I think we can overcome the problem if with deal with it in that fashion.

The ACTING DEPUTY PRESIDENT—Leave will be granted for the incorporation after the opposition spokesperson has seen it.

Senator Tierney—Mr Acting Deputy President, I raise a point of order. He keeps talking about a document. We are talking about incorporating a speech, not a document.

The ACTING DEPUTY PRESIDENT—That is not a point of order. I trust that the chamber understands what is going to happen with the speech from Senator Synon.

Question resolved in the affirmative.

A NEW TAX SYSTEM (FAMILY ASSISTANCE) BILL 1999

A NEW TAX SYSTEM (FAMILY ASSISTANCE) (CONSEQUENTIAL AND RELATED MEASURES) BILL (No. 1) 1999

Report of Community Affairs Legislation Committee

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (5.19 p.m.)—I present the report of the Community Affairs Legislation Committee on the provisions of the A New Tax System (Family Assistance) Bill 1999 and a related bill, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

COMPENSATION FOR NON-ECONOMIC LOSS (SOCIAL SECURITY AND VETERANS' ENTITLEMENTS LEGISLATION AMENDMENT) BILL 1999

Report of Community Affairs Legislation Committee

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (5.20 p.m.)—I present the report of the Community Affairs Legislation Committee on the provisions of the Compensation for Non-economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Bill 1999, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

WOOL INTERNATIONAL PRIVATISATION BILL 1999

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator CRANE (Western Australia) (5.21 p.m.)—I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Wool International Privatisation Bill 1999, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL 1999

Report of Employment, Workplace Relations, Small Business and Education Legislation Committee

Senator O'BRIEN (Tasmania) (5.21 p.m.)—by leave—The opposition, having seen the speech by Senator Synon, grants leave for its incorporation.

Leave granted.

The speech read as follows—

It is impossible to summarise all the findings of the Committee report into the aspects of the Government's Higher Education Legislation Amendment Bill 1999 relating to introduction of Voluntary Student Unionism, or VSU. Instead, I shall focus on some key aspects of the structural flaws and myths that exist under the current compulsory regime.

Firstly, I would like to dispel the myth that services that students currently use and enjoy will be placed at risk—this couldn't be further from the truth. The best guarantee to ensure that a service survives, under a compulsory or voluntary system, is when that service is in genuine demand by the student body. A case in point is University sports. As noted in the Committee report, the Sports Associations at the University of Western Australia and Edith Cowan University—both in a State with full VSU—are running surpluses. This has been achieved by a deliberate strategy of these Sports Associations to focus on service delivery and response to the sporting student body.

Secondly, there is an incorrect notion that student unions use the compulsory fee for provision of a range of goods and services that ultimately benefit the students. This Committee heard a range of evidence about extreme financial wastage that routinely occurs in student organisations. For example, at Latrobe University, their legal service pays a lawyer around $80,000 a year! Student fees are meant for students, not lawyers—and this is just one example.

The Melbourne University Student Union loses around $300,000 a year on badly run food and catering departments. There may be a temptation to call this a 'subsidy' but this is not the case. The food isn't cheaper and the private operators on campus stay open almost the same hours as the Union owned shops do and operators just off campus are open around the clock.

These are not isolated examples. This practice is endemic to student unions that, with guaranteed revenue year after year, do not need to be accountable to themselves, let alone the students. It is a

deep, structural flaw inherent to the compulsory payment of these fees.

Voluntary Student Unionism means that students will not be forced to subsidise these practices. I can't emphasise just how important this fact is. This legislation is about students, first and foremost. This legislation states that we are prioritising each and every student who goes to university above any organisation or group. This should never be forgotten—universities and student associations are there to serve the students, not the reverse.

Leaving aside the question of how representative student unions are, and many would argue they represent a vocal or activist minority and not the mainstream student body, at best a compulsory system forces minorities to fund the whims of the controlling activists in student organisations. For example, quite a few students have pro-life views. Articles promoting counselling for pregnant women submitted by students opposed to abortion don't find their way into Orientation Magazines which routinely list under Women's Health the names of the local abortion clinics.

I do not wish to draw the Senate into a debate about the merits of pro-life views, or of the numbers of students on campuses, many of which are from Christian backgrounds, or the views that many student associations advocate. That debate would be missing the point. The real issue is not who is right or wrong for a particular scenario, but whether you should be forced to fund an activity that you are so clearly opposed to.

There are no institutional clauses to protect these sorts of students at university. Conscientious objection clauses, whose mere existence demonstrates that something must already be amiss, fail to cover instances such as those I have just discussed. If you're a part of an isolated or numerically smaller group on campus, you have no chance of winning control from the dominant activist majority.

For these students, the only safeguard they have is if they control whether their money is spent, to whom, how much and for what purpose. This safeguard will be guaranteed by the legislation that the Government has introduced to this Parliament.

Compulsorily collected fees will always result in students being forced to pay for activities that they don't want to fund. The Government's legislation will finally give students choice.

I recommend this Committee's report to the Senate.

NOTICES

Presentation

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

That the amendments circulated by the Government to the Telecommunications (Consumer Protection and Service Standards) Bill 1998 on sheet ER229 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 29 June 1999, with particular reference to:

(a) whether the amendments would result in an acquisition of property from a person within the meaning of paragraph (xxxi) of section 51 of the Constitution; and

(b) alternative options for the regulation of undesirable material in the context of the existing classification scheme for restricted material in publications, films and computer games.

BROADCASTING SERVICES AMENDMENT (ONLINE SERVICES) BILL 1999

In Committee

Consideration resumed.

The CHAIRMAN—The committee is considering the Broadcasting Services Amendment (Online Services) Bill 1999, and opposition amendment No. 2 on sheet 1397 moved by Senator Bishop. The question is that the amendment be agreed to.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (5.22 p.m.)—I want to confirm that we are debating the Labor Party amendment in relation to the sunset clause.

The CHAIRMAN—Yes, we are. We are debating opposition amendment No. 2 on sheet 1397, the sunset clause.

Senator STOTT DESPOJA—Thank you very much. I will not reiterate the Democrats' ongoing concerns with this bill and our concern that this legislation has been drafted in undue haste. In fact, I do support, on behalf of the Democrats, the opposition amendment before us in relation to the sunset clause. We agree it looks like a good idea, but one message we have is that it should not be used as a substitute for coming up with an appropriate regulatory framework. I understand the motivation behind this amendment from the Labor Party and certainly we support it, but I maintain that this must not be used as an excuse to buffer or support legislation that is clearly inadequate and inappropriate. The

Democrats will be supporting the amendment before us.

The CHAIRMAN—The question is that opposition amendment No. 2 on sheet 1397 be agreed to. *(Quorum formed)*

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.26 p.m.)—As we have pointed out several times—I do not want to labour the point—Senator Bishop did say that there was a need for full and open debate, that there should be an opportunity to further assess the economic impact on ISPs and that, in many respects, we need to have another look at this down the track. All of that is true but that is simply supporting the case for a review, and I have no doubt the Senate will in due course support our review approach. That is then the time to decide whether you have a sunset operation.

If you go down the path you are proposing, you will create a great deal of uncertainty because people will have to proceed on the basis that, irrespective of how well it might be working, or even if there is a mood to extend it in all sorts of ways, no-one can be sure of the numbers at the time. So what you will be doing is setting in concrete a process that none of us may want to see. That is why I simply say I think we would all be best served if we had the review and then decided on whether to phase it out. You may well be right and the review may strongly support your case, but I just wanted to avoid that position arising prematurely. Once it is locked in legislation, I think you have got yourself into a no-win situation.

Senator MARK BISHOP (Western Australia) (5.27 p.m.)—I will not take a great deal of the time of the chamber. I just want to reiterate for the record that the opposition did consider both the issue of a review and the issue of a sunset clause. We came to the view that they were significantly different issues and that there should be a review, essentially to work out the effectiveness of the act. Our argument that we maintain the need for a sunset clause to be inserted now is simply that there has, in our view, been inadequate time for community consultation, public discussion, on the key matters considered by this bill. We do not know what our position will be within three years, but we do want to have the review. We want to bring, if you like, a fresh mind to consideration of the extension or otherwise of the bill as we come to that three-year period.

Senator BROWN (Tasmania) (5.29 p.m.)—I will be supporting this amendment. The amendment does not necessarily mean that the bill will collapse in three years time. What it does mean is that the parliament will have to consider the act in three years time and that the parliament will at that time have to say, 'We want to keep going with this particular process,' as it may or may not have been amended in the meantime. I think that is very sensible.

As the minister said, this is groundbreaking legislation. There are very real concerns with it. Inserting this clause would mean that the review that is inherent in what the government is doing will have to have been done after a couple of years of operation. Parliament's mind will have to be focused on whether or not the legislation has served Australia well and whether the fears of people on this side of the parliament have been realised; in which case, a new look at the problem which the government is trying to meet through this legislation will have to be undertaken. This is an important way of ensuring that the whole matter comes back for review, debate and vote in the parliament within three years of the beginning of operation of this legislation, which has very big ramifications for everybody in Australia.

Question put:

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

The committee divided. [5.34 p.m.]

(The Chairman—Senator S. M. West)

Ayes	33
Noes	35
Majority	2

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.

AYES

Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crossin, P. M.	Crowley, R. A.
Evans, C. V.	Faulkner, J. P.
Forshaw, M. G.	Gibbs, B.
Hogg, J.	Lees, M. H.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Quirke, J. A. *	Ray, R. F.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

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

PAIRS

Denman, K. J.	Eggleston, A.
Hutchins, S.	Knowles, S. C.
Lundy, K.	MacGibbon, D. J.
Reynolds, M.	Hill, R. M.

*** denotes teller**

Question so resolved in the negative.

Senator MARK BISHOP (Western Australia) (5.38 p.m.)—I move opposition amendment No. 3:

(3) Schedule 1, item 4, page 3 (lines 25 to 28), omit paragraph (a), substitute:

(a) enables public interest considerations to be addressed in a way that does not:

(i) impose unnecessary financial and administrative burdens on Internet content hosts and Internet service providers; and

(ii) degrade the technical performance of the Internet in Australia to a material degree; and

(iii) inhibit the development of Australia as an attractive jurisdiction for the conduct of electronic commerce and for investment in that industry; and

[regulatory policy]

Opposition amendment No. 3 seeks to amend schedule 1, item 4, page 3, lines 25 to 28, by omitting paragraph (a) and substituting provisions relating to public interest considerations in (i), (ii) and (iii). Labor believes the legislation must not impose unnecessary financial and administrative burdens on ISPs, degrade the technical performance of the Internet or detract from Australia's development as a destination for investment in e-commerce.

I think it is trite to say—it is probably common ground right around this chamber—that the Internet is a rapidly expanding medium. Earlier today we were discussing figures showing that Australia now has the second highest penetration rate of the Internet. It exists in almost 20 per cent of Australian homes and is a regular feature in business and commerce circles. It is almost impossible to engage in serious business and commerce these days without ongoing access to the Net and all the associated features that go with it.

On the evening news last night the Managing Director of Telstra was talking about investment in new technology, and how the increased demand has led to a doubling in the use of lines every five months. Not only is it important that domestic and business consumers be users of the Internet, but it is important, for a range of reasons, that we are able to develop an indigenous technological industry in this country. There has been a lot of discussion lately about outsourcing and whether that is an appropriate policy to follow but, in terms of the Internet, there is a significant amount of wealth to be generated and created through value adding in a range of areas attached to that.

The opposition listened closely to the evidence that was given at the Senate IT inquiry. There were quite strong arguments put by a range of associations and organisations that the bill as it is currently drafted does not have a proper degree of regard to the financial and administrative burdens being placed on ISPs. So the opposition regards this

amendment as quite important. We need to have this growth sector of the economy operating effectively. Unnecessary burdens have the potential to impede its growth and, worse, unnecessary financial burdens raise the option, for many providers, of locating their business offshore—and that is an unnecessary development.

It think it is trite to say that the Internet is a valuable tool for researchers, educators, those engaged in commerce, community organisations and the general population. In particular, it is a tool for communication, promotion and education. Degradation of the technical performance of the Internet will have an impact on these benefits. There was significant discussion by representatives from the CSIRO and a range of industry organisations which was quite technical in nature but was to the effect that the bill, as it was drafted then, did not have sufficient regard for the technical performance of the Internet. Imposing unnecessary blockages or filters at ISP level would degrade the operations of ISPs and has the potential to spin out and degrade the performance of the Internet right around this nation.

It is common ground that we are a major trading nation. Our trading volumes are growing, and a huge amount of commerce is increasingly being done over the Net. Four, five or six years ago—in fact, it may have been in excess of that—when I was in another life at Coles Myer, that organisation made a major shift. All of the suppliers, purchasers, manufacturers and wholesalers that provided goods to or received goods from Coles Myer had to shift down the path of standard procedures via electronic commerce, and that was a rather novel move. Coles Myer made it mandatory and it has since spread throughout the manufacturing and wholesale sectors which provide goods and services to major companies. It is nothing novel or new, and any legislation that has the unintended effect of degrading Internet performance and affecting the ability to engage in rapid commerce exchange is something that has to be looked at quite closely.

In the final analysis, it becomes, like everything, a question of priorities and there may well be good and sound public policy reasons why it is appropriate to say that we are going to marginally impede the effectiveness of the Internet and that the benefits to be gained from that marginal impeding of the Internet in terms of e-commerce are worth paying the price for.

The submissions that were put to us and the questioning of witnesses did not lead us to that conclusion. We are concerned that there are these demonstrable unintended consequences that are going to harm industry and, for this reason, we do not think it is appropriate. The government's amendments (1) to (4) are relevant here. Are we discussing them at the same time?

Senator Alston—If you like. Amendment (4) is actually the most relevant to this discussion.

Senator MARK BISHOP—My question to you, Senator Alston, concerns the supply of Internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community. My take on that phrase, and I did not get much help from the EM, was that it was very broad—almost a general statement of intent. I am not sure there is any specific meaning to be gained from it. When I looked at the EM I could not find any meaning. Apart from this broad statement, which is self-evident when you read III, what is the intent of the government in providing that amendment?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.47 p.m.)—I will make some general comments about our attitude to what Senator Bishop has been proposing and then deal specifically with our amendment (4). Our concern is not so much with amending the objects clause in itself but rather that the effective section, 37(2), to a large extent turns on what is then contained in the objects clause. We have got a bit of tidying up to do of our own, but in general terms we want the examination by the ABA to proceed on whether it is technically feasible and commercially viable for a particular ISP—in other words, project by project, case by case.

If you introduce notions such as degrading the technical performance of the Internet to a material degree—putting aside for a moment the obvious vagueness in those terms, because what constitutes 'sufficient degradation' or 'material'?—the real concern is that this could provide an out, even though an individual ISP may well be able to do something technically and may have the deepest pockets in the world and be able to afford to do it but, because of a generic concern for the industry, is effectively let off the hook. We do not think that is the way to approach this because it defeats the whole purpose of the exercise, which is to allow a genuine case by case assessment of each individual ISP's capacity to do its best.

The same comment would apply to amendment (3), because your first amendment is essentially a repetition of what is already there. So amendment (2) is the degrading and amendment (3) is inhibiting the development as an attractive jurisdiction. Again, that is remarkably broad and it would not be an acceptable outcome if one were to say, 'Well, okay, ISPs can do all of this, but because we have a concern to ensure that Australia remains an attractive jurisdiction for electronic commerce we are basically not going to enforce these rules.' I do not think that is what is intended by the whole thrust of the legislation and we do not want the objects to address it in that form in any event, but we certainly do not want any exemptions to be allowed for on that basis.

Our amendment, which would add in the supply of Internet carriage services at performance standards that regionally meet the social, industrial and commercial needs of the Australian community, is designed to put a floor under the process; in other words, just as you have a safety net arrangement built into the Telecommunications Act where the universal service obligation is to provide a standard telephone service—a minimum level of service. It is not specifying what it should be; it is simply saying it cannot fall below that particular level. So we think it is helpful to insert in the objects clause that we do not want the supply of Internet carriage services to fall beyond a level of reasonability, but beyond that we do not want the objects clause to serve as a backdoor means of exempting ISPs who would otherwise have the capacity to do what the act is intended to require them to do.

Senator MARK BISHOP (Western Australia) (5.51 p.m.)—I understand the comment that you are making, Minister—that is, if the particular ISP can meet the provisions in the act, the operators of it should and should not find the out in the general wording in the amendment. Our particular concern—why we put forward the amendment—is that there be a continuing review of the effectiveness of the bill and how it affects particular ISPs on an ongoing basis. The way we seek to achieve that end is to put that general provision into clause 4 so that the ABA will have regard to it.

Minister, going through your amendments (1) to (4) leads me to ask you to explain to us the difference between 'undue' and 'unnecessary' and why you have chosen to go down that path. What objective are you seeking to achieve? As much as I turn my mind to it, it strikes me as at best a minor change, and again there was not a greatly satisfactory explanation in the EM.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.52 p.m.)—This is actually a matter raised with us by the industry, because they argued that 'unnecessary' can be a fixed concept that does not take account of any particular capability to meet a threshold requirement whereas 'undue' at least introduces a greater element of flexibility. For my part, the most appropriate wording would be 'unreasonable', because that would allow for scalability—in other words, you would get a different result depending upon the impact of the obligations on a particular ISP. As we know, there are some 631 of them and, obviously, the precise burden will vary enormously, even if the requirement is identical. Larger ISPs can clearly do a lot more than smaller ones. So it seems to me on reflection that 'unreasonable' probably best meets our concerns. But 'undue' we still think would be more satisfactory than 'unnecessary', because 'unnecessary' is likely to be a one size fits all

approach which does not reflect the overall intent to take account of different circumstances.

I should say, just in terms of your ongoing review point, that I think we all expect that there will be effectively an ongoing assessment made by the industry. What we do not want is for the ABA in the context of making a particular decision to be taking a more general approach because, in a sense, it could depend on where you are in the cycle. If you are the first cab off the rank, someone might say, 'It is not going to pose any problems to the industry.' If you are the 10th cab off the rank, they might say, 'Enough is enough.' It is just your good luck if you happen to be the 10th cab—you are exempted. We do not think that is the right approach to take; it ought to be a judgment made on the merits of the offensive material on the one hand and your capacity to deal with it on the other. So we do think there will be plenty of effective ongoing review, because each time a decision is made the industry will be responding in various ways and, if they have particular concerns, no doubt they will approach us all and seek to have those matters addressed. So I do think you will get your ongoing review, but we do not want it to be in the context of specific decision making.

Senator MARK BISHOP (Western Australia) (5.55 p.m.)—On the first point you raised, Minister, you prefer the word 'undue' over 'unnecessary' and then you seemed to be tossing around in your mind whether you should not go to use of the word 'unreasonable'. We would not be uncomfortable with the use of the word 'unreasonable'. It is consistent with the earlier provisions in section 37 and section 4 and has a fairly readily understood meaning at law. I am sure 'undue' and 'unnecessary' have been litigated somewhere over the years. Certainly 'reasonable' and 'unreasonable' would be consistent, and we would not be uncomfortable with the use of that word in this context.

The TEMPORARY CHAIRMAN (Senator McKiernan)—Are you suggesting, Senator Bishop, that you will amend your amendment in order to accommodate what you have just said?

Senator Alston—I think that when we get to ours we might look at that.

Senator HARRADINE (Tasmania) (5.56 p.m.)—Frankly, whilst I have enjoyed the discussion between Senator Alston and Senator Bishop, I think we are overlooking the point—that is, there needs to be in good faith an attempt by the ISP to observe the instructions that are delivered to it by the ABA. The question that was raised, presumably in Senator Alston's mind, is that the word 'unnecessary' might not have an element in it which would have regard to other than what was necessary for the purposes of implementing the decision. I think myself that 'unnecessary' is the word. 'Unnecessary' is defined in the dictionary as 'not necessary, superfluous or needless'. I do think that we need to go back to what the legislation is all about. What if you have a smaller ISP which is making money hand over fist through a porn site, for example, or any of these other sites—whether they be violence or porn?

What I am asking the minister is whether he is suggesting that the word 'undue' or indeed the word 'unnecessary' will allow those ISPs to simply argue that the implementation by them of their obligations under this legislation would cause them undue economic loss. And what does 'undue' mean and what does 'unreasonable economic loss' mean? With such an ISP, it will surely be necessary for them to take action; otherwise you might as well not have this legislation at all. It is largely those organisations which are going to be the problem. If under that you are suggesting that it is considered unreasonable in economic terms for the ISP to observe its obligations under the legislation, what is the purpose of the legislation?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.01 p.m.)—I think the concern that we have, and I apprehend that Senator Harradine is approaching it in the same manner, is that we do not want a situation where someone can simply say, 'This might be a bit expensive for us, so don't impose the burden.' We want to ensure that, whatever precise word is used, it is considered in the individual context. In other words, if you are

looking at the impact on a particular ISP then you strike the balance and you will have regard to 'technically feasible' and 'commercially viable' in the same way as you look at whether it is 'unnecessary' or 'undue'.

I suppose the worry we had about 'unnecessary' was that it might involve determining in the abstract what is necessary and then applying that irrespective of the capacity of any individual ISP. As long as we accept that the intention is to allow case by case assessment to be made, I think we could probably live with 'unnecessary', because I would then be confident that it would be interpreted in such a way that it will allow for those variations. If it does not, you can have the converse of Senator Harradine's point. Once you have decided that a burden is unnecessary for one purpose, you simply apply that automatically to everyone else, and a lot of other people might then find that they can get away with things which they could well afford to fix up. So, if we proceed on the basis that it is part of a case by case analysis, I do not think there will be a difficulty.

Senator HARRADINE (Tasmania) (6.03 p.m.)—Can I follow that through. When you have a look at the word in context, what it says is:

> The Parliament also intends that Internet content hosted in Australia, and Internet carriage services supplied to an end-user in Australia, be regulated in a manner that, in the opinion of the ABA—

that has been deleted—

> (a) enables public interest considerations to be addressed in a way that does not impose unnecessary—

the amendment would substitute 'undue'—

> financial and administrative burdens on Internet content hosts and Internet service providers.

The word 'undue' is defined in the *Macquarie Dictionary* as 'unwarranted; excessive; too great'. Clearly they would be warranted if there is an obligation that is imposed upon the ISPs. They could probably not get out of it under that definition. Excessive or too great: what is the too great financial burden? We are dealing with, for example, an ISP which is almost predominantly being used by the content providers of hard-core porn or violent material, or even RC material. Surely you are not suggesting by the use of 'undue' that the definition 'excessive and too great' should apply to the exclusion of the purposes of the legislation, namely, to deal with the prohibited material or potentially prohibited material.

Going to the word 'unreasonable', 'unreasonable' means 'not reasonable; not endowed with reason. Not guided by reason or good sense. Not agreeable to or willing to listen to reason. Not based on or in accordance with reason or sound judgment. Exceeding the bounds of reason; immoderate; exorbitant'. You virtually take your pick, except for 'unnecessary'. I think 'unnecessary' is the word.

The clear point I am making is that you will have a lot of ISPs wanting to do the right thing, not only because of the legislation but because of the complaints they would presumably get from end users. They themselves do not want to see their particular service used by content providers of the prohibited or potentially prohibited material. My worry is that this will be an out for those who do not want to do the right thing and it will be to the detriment of those who do.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.07 p.m.)—I think we are moving with the same intent. I accept that 'undue' and all of these words have boundary problems in the sense that it is always a matter of how far it needs to go before it is undue. If 'undue' is defined as 'excessive or unwarranted', at what point do you reach those points? I would have thought it was out of all proportion, but there is no doubt a range of definitions of 'undue' which could muddy the waters. If 'unnecessary' is understood in the context that we have been discussing it, and that is considering the burden that is placed on an individual ISP or ICH, and accepting that necessary financial and administrative burdens can be required to deliver on the policy content, it is then a question of what is beyond that point that would render it out of the reach of that section. I can live with 'unnecessary' if it is in the context of making those individual assessments.

'Unreasonable' is a term we are all familiar with. I thought the virtue of it was that it

allows you to make a case by case decision. The assessment would then be: at what point is the burden so overwhelming that you are almost putting them out of business? That becomes unreasonable. I suppose it is something that lawyers are more familiar with. In any event, you can arrive at the same result with 'unnecessary', so I would not want to die in a ditch on that one because I think we are generally all of the same mind. We do not want to find a term being used that does not have some degree of flexibility and we do not want to use a term that is so vague it can allow people to escape unnecessarily.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (6.09 p.m.)—I am inclined to agree with Senator Harradine on this point, although I take on board the minister's earlier comments that it was a suggestion from the industry. Could the minister tell us the basis for that suggestion from the industry or the representative organisations or bodies that put forward that suggestion? I leave that up to the minister.

There is one point that I am quite curious about and that is the context in which these decisions and interpretations are being made. As Senator Harradine pointed out, the relevant section says:

> The Parliament also intends that Internet content hosted in Australia, and Internet carriage services supplied to end users in Australia, be regulated in a manner that, in the opinion of the ABA . . .

I note that the first government amendment seeks to delete those words 'in the opinion of the ABA'. I am wondering about the rationale behind the government's amendment. Who then will be responsible for this interpretation? Is this a matter for the courts? The minister mentioned lawyers. Is that going to be where these decisions are interpreted and made? I think that context is important. Could the government explain?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.11 p.m.)—It has not been relayed to me directly, but my understanding is that it is along the lines I indicated earlier, and that is that if you were to simply identify something as 'unnecessary' they would not want that test then applied automatically to every succeeding case, but if you are applying it on a case by case basis then I do not think there is a problem. I think we are all in heated agreement that 'unnecessary' is probably the best term. None of these terms are perfect.

Senator Mark Bishop—Are you saying there will be different tests for sequential complaints?

Senator ALSTON—Each case does involve a judgment being made. Yes, that is right. As far as the question of the opinion of the ABA is concerned, it is really a matter of having an objective assessment made. It is appropriate for the parliament to express itself in positive and neutral terms rather than trying to identify what is in the mind of the ABA at any particular time. If the matter is to be litigated, then again it would be very undesirable, if the court is to use the objects clause as an aid to statutory interpretation, to be, first of all, having to determine what something ought to be in the ABA's opinion. A much more secure basis for decision making and commercial decisions based on statutory provisions is obtained if those provisions are couched in objective rather than subjective terms.

Despite the fact that the bill was drafted in that form in the first place, it would be our view that it is much more desirable to express it objectively as we do in virtually all other legislation. We say that the objects of the act are to achieve A, B and C. We do not say that the objects of the act are to ensure that Senator Stott Despoja is happy with A, B and C. She may change her mind; she may not even be around. There are all sorts of problems.

Senator Mark Bishop—You've heard those rumours?

Senator ALSTON—She is in the country; I am quite happy to certify to that effect. But, if you see the point, it is a much more secure basis for decision making at all levels to have an objective standard. So that is the reason for that amendment.

It has also been indicated to me that one of the industry concerns was that 'necessary'

would require ISPs to do anything necessary to achieve blocking regardless of cost or complexity. I do not think that is right because the use of the term 'unnecessary' makes it plain that you can have reasonable or unreasonable burdens, necessary or unnecessary burdens. If you are taking the view that the detriment is so overwhelming you may well say that that is unnecessary in the context of the object you are trying to achieve. So, once again, I think we ought to see how it goes with 'unnecessary'.

Senator MARK BISHOP (Western Australia) (6.14 p.m.)—On that series of amendments, it had not been my interpretation that the phrase 'in the opinion of the ABA', which the government is moving to take out, if it remained in the bill, would have necessarily led it to being a subjective interpretation. The opinion of the ABA, I had presumed, would be an objective interpretation, with or without that phrase in the bill.

As a matter of policy the ABA does not make subjective decisions. It would have, I presume, regard to a set of criteria and publish guidelines, internally or externally, that would be applied when complaints came up. It is not a matter of what the relevant officer might think. The officer would apply the particular guidelines to a factual situation in coming to a conclusion.

In that context, I ask you two questions. Does the department intend to publish guidelines for the information of the industry as to what criteria are to be applied? Secondly, going back to the earlier issue, going to the scaleability or the size of ISPs, is it the intention of this provision that it apply equally to all ISPs, irrespective of their size?

The TEMPORARY CHAIRMAN (Senator Ferguson)—Minister, before you answer, I understand that opposition amendment No. 3 is the question that is before the chair. We seem to be moving on to the next amendment, which is a government amendment. While there is some relevance between the two, I think we ought to be sure that we know that we are actually debating opposition amendment No. 3 and that there will be a chance, when we move to government amendments 1 to 4, to talk about that then.

Senator Mark Bishop—I am happy to resolve opposition amendment No. 3 and go on to government amendments 1 to 4.

Senator BROWN (Tasmania) (6.17 p.m.)—I think the debate is a useful one in the way in which it is going because we are left to decide whether we like the opposition amendment or the government amendment because we cannot have both. Essentially an alternative is being offered to the committee.

The TEMPORARY CHAIRMAN—Senator Brown, we cannot have two questions before the chair. That is all.

Senator BROWN—Yes, but we can debate the two amendments, and I suggest we do. The question I want to put to either the opposition or the government or both is: how would they expect the conflicting considerations of the clauses that we are dealing with to be adjudged?

On the one hand, taking the Labor formula, somebody is going to be asked to ensure that the public interest is addressed in a way that does not impose unnecessary financial burdens on Internet service providers. That is the specific—an Internet service provider is not restricted in a way that is going to impose an unnecessary financial or administrative burden. But, at the same time, the generality is that you do not degrade the technical performance of the Internet in Australia and that you do not inhibit the development of Australia as an attractive place for e-commerce and investment in e-commerce.

There is an inherent difficulty here. This is at the heart of this debate. How do you put restrictions on Internet service providers without, at the same time, failing to inhibit Australia's attractiveness as a place where e-commerce is done? These things are contradictory. I wonder whether either the minister or the opposition spokesperson, Senator Bishop, might like to comment on that inherent contradiction.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.19 p.m.)—I do not think there is an inherent contradiction any more than there is when parliaments are faced with striking a balance between conflicting objectives. Clear-

ly, on the one hand, no-one wants to close down the online industry or to dramatically inhibit the growth of electronic commerce in Australia. At the same time, that is no reason why you should not take steps to control offensive material on the Internet. What the bill tries to do is strike a reasonable balance.

I think it needs to be understood that the only occasion on which regard would be had to the objects clause is if the ABA, under section 37(2)—and we have additional amendments that will build in technical feasibility and commercial viability—made a judgment which would include reference to the objects in 4(3). That arises only if there is no code registered. If you look at 37(1)(b), if a code is registered you notify the content to ISPs, et cetera, and ask them to take action. If (b) does not apply, then a written notice is given directing the provider to take all reasonable steps, et cetera. In determining what are reasonable steps, the ABA would have regard to the objects clause. You do not want the ABA, under 37(2), to be having regard to its own opinion in 4(3). It ought to be having regard to objective standards or criteria that have been set by the parliament.

I hope that addresses the concern that Senator Bishop had in terms of guidelines. We would not see the necessity for ongoing updated guidelines as much as judgments being made, hopefully on an occasional basis, by the ABA where there was not a code of practice and action was then required to implement the legislative intent.

Senator MARK BISHOP (Western Australia) (6.21 p.m.)—I thank the minister for that explanation. That does answer the two points that I raised. In response to the issue raised by Senator Brown, we did have a fairly lengthy discussion on that earlier, and you may not have been in the chamber.

Senator Brown—I have been.

Senator MARK BISHOP—The contradiction that you identified in our (ii) and (iii) in relation to (i) is correct. Subparagraph (i) is essentially a restatement of what is in the bill and it is directed at ISPs. In subparagraphs (ii) and (iii), which is our amendment, we have broadened out to have general regard to the nature of the industry and the impact of the bill on the industry. You have identified that distinction correctly, and we will be pressing that because we still believe it to be an appropriate thing to incorporate at this stage, notwithstanding the comment in explanation by the minister earlier.

Senator BROWN (Tasmania) (6.23 p.m.)—I would just ask the minister the question again then: does he see no contradiction in imposing a restriction on Internet service providers and in encouraging the provision of Internet services?

Senator Alston—No.

Senator BROWN—I think I should say that the minister said no, so that that is on the record.

The TEMPORARY CHAIRMAN (Senator Ferguson)—I certainly heard him say no, Senator Brown.

Senator BROWN—I have learnt today that, unless you sometimes quote what the minister said, it might not necessarily go in the *Hansard*.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (6.23 p.m.)—I support Senator Brown in that aim, especially when we are being broadcast and hearing impaired listeners are trying to make sense of the debate before us. I make that very serious point to the chamber.

On behalf of the Democrats, I would like to outline briefly our support for the opposition amendment. We think it is appropriate to legislate in a way that reflects the concern about any deleterious impact in a financial or any other sense this legislation might have, so we support the wording as currently expressed in Senator Bishop's amendment. We have made very clear all along that we like to have seen some study of the indirect and direct economic consequences of this legislation, particularly in relation to the impact on the Internet industry.

I note that the Democrats have outlined these concerns in our dissenting report on this legislation, so I will merely direct the Senate's attention to page 48 of the report on the Broadcasting Services Amendment (Online Services) Bill 1999. That reflects

some of the concerns we have in relation to content controls and their likely financial impact on this burgeoning industry. We will be supporting the amendment before us.

Senator BROWN (Tasmania) (6.25 p.m.)—To bring this into the realm of practicality, could the minister say what sort of administrative burden we are talking about in monetary terms?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.25 p.m.)—I am sorry Senator Brown was not here earlier when Senator Stott Despoja asked questions along these lines. I have nothing further to add.

Senator BROWN (Tasmania) (6.25 p.m.)—The matter then becomes whether the minister will explain how one balances those monetary considerations for an Internet service provider, whatever they may have been, with the very real but general provisions in the rest of the government's amendment. I am coming back to that contradiction again. I believe there is a real contradiction there, and I would like to hear from the minister how he believes that contradiction will be overcome. How do you sort out that contradiction if you are the administrator who is having to read this legislation, deal with a specific case of inhibiting an Internet service provider because they are providing pornographic material and at the same time enhance the provision of Internet services to the Australian community as a whole?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.26 p.m.)—The logic of that argument presumably is that, if you have any reasonable apprehension that it might in any sense impact adversely on online activities or electronic commerce, you do nothing. That is basically your argument because you say there is an inherent contradiction, and I have no doubt which side of the fence you fall on.

You know full well—and I have said this many times—that this is a serious attempt to strike a balance. It is not unique by any means for the parliament to be confronted by conflicting principles, as we all are on a regular basis. Parliament does the best it can. Obviously, we are concerned to maximise the benefits on both sides of the ledger. We do not want to unnecessarily put anyone out of business. We do not want to impede the growth of electronic commerce; we do not believe that will occur. But if there were a choice to be made between some slight degree of regression on those fronts and doing nothing at all to control the flow of offensive or illegal online content material, then I would be very surprised if you stood up and said, 'We ought to do nothing.' That is the logic of your position unless you amend it.

Senator BROWN (Tasmania) (6.28 p.m.)—We are getting close to tea time and that is a good thing because I did not mean to make the minister angry. I am seeking to get information because it is his amendment and it is an important matter.

The TEMPORARY CHAIRMAN—Senator Brown, it is not his amendment. We are dealing with opposition amendment No. 3.

Senator BROWN—Yes, we are dealing with opposition amendment No. 3 and the alternative of the minister's amendment. We vote for one and then we vote for the other, but these are alternatives and it is important for the Senate to sort that out, and that is what this debate is about.

What I am saying is effectively this: the minister cannot answer questions he is going to expect other people outside this Senate to determine in the implementation of this legislation. This debate is very healthy, because I will tell you that those administrators are going to turn to this debate to get some further clarification of the intent in the government's mind and the opposition's mind in bringing forward this quite complex amendment. They are not going to get much help from the minister's statement we have just heard. I would have thought it would have been a gift from him to give the administrators of this legislation—and it is going to be very hard on them—a little further enlightenment as to the intention of the words being used here. We are resorting to words like 'unnecessary', 'will readily accommodate', 'encourages' and 'made practicable by those technologies to the Australian community'. These are all rather vague terminologies, and

I do not think we should leave it to people to try to double guess what the committee was meaning when it dealt with them.

The TEMPORARY CHAIRMAN—The question is that opposition amendment No. 3 be agreed to.

Senator MARK BISHOP (Western Australia) (6.30 p.m.)—Mr Chairman, I would just advise you that we intend to divide on this amendment. It might be appropriate if the question is put after dinner in consideration of our colleagues.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

The CHAIRMAN—The question is that opposition amendment No. 3 on sheet 1397 be agreed to.

The committee divided. [7.35 p.m.]

(The Chairman—Senator S. M. West)

Ayes	32
Noes	34
Majority	2

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Evans, C. V.
Faulkner, J. P.	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	O'Brien, K. W. K. *
Quirke, J. A.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

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

PAIRS

Cook, P. F. S.	Minchin, N. H.
Denman, K. J.	MacGibbon, D. J.
Hutchins, S.	Knowles, S. C.
Lees, M. H.	Tambling, G. E. J.
Murray, A.	Boswell, R. L. D.

*** denotes teller**

Question so resolved in the negative.

Amendments (by **Senator Alston**)—by leave—agreed to:

(1) Schedule 1, item 4, page 3 (line 24), omit ", in the opinion of the ABA".

[Section 4—regulatory policy]

(3) Schedule 1, item 4, page 4 (line 2), omit "community.", substitute "community; and".

[Section 4—regulatory policy]

(4) Schedule 1, item 4, page 4 (after line 2), at the end of subsection (3), add:

(iii) the supply of internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.

[Section 4—regulatory policy

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (7.40 p.m.)—I move:

(5) Schedule 1, item 10, page 5 (before line 11), before clause 1, insert:

1A Explanation of the context of this Schedule

(1) This clause explains, in simplified form, the context of this Schedule within the proposed Australian scheme for dealing with content on the Internet.

This Schedule

(2) The first component of the proposed scheme is this Schedule, which regulates Internet service providers and Internet content hosts, but does not impose any obligations on:

(a) producers of content; or

(b) persons who upload or access content.

State/Territory laws and section 85ZE of the Crimes Act 1914

(3) The second component of the proposed scheme will be:

(a) State/Territory laws that impose obligations on:

(i) producers of content; and

(ii) persons who upload or access content; and

(b) section 85ZE of the *Crimes Act 1914*.

Non-legislative initiatives

(4) The third component of the proposed scheme will be a range of non-legislative initiatives directed towards:

(a) monitoring content on the Internet; and

(b) educating and advising the public about content on the Internet.

[Clause 1A of Schedule 5—explanation of the context of this Schedule]

This relates to Commonwealth-state responsibilities. I think it speaks for itself. It is simply designed to ensure that there is no misunderstanding of the respective roles of the Commonwealth and the states in terms of both their constitutional responsibilities and the practical way in which these matters ought to be handled.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (7.42 p.m.)—The Democrats will be supporting the government amendment. We think it seems quite reasonable. I am just wondering if the minister could outline the legal effect of this amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (7.42 p.m.)—I think there was some concern expressed during the Senate inquiry that effectively the first line of attack was to be ISPs and Internet content hosts and that they would be shouldering the totality of the burden. That is not the case. It has always been our intention, in line with a decision taken several years ago, that the responsibility for content regulation should remain with the states, as it does in a number of other areas relevant to content such as defamation and censorship, but that service providers should be regulated via the telecommunications power.

That being the basis of the action, it would still be our hope that the first port of call will be the content providers, certainly within Australia, because they are the ones who are responsible for generating the offensive material in the first place. It is much more difficult offshore, for obvious reasons, and that is why the burden of the legislation is directed more towards service providers, because they are the gateways through which this material comes. But the principle remains the same. It is simply a matter of the practicality in terms of offshore material that ISPs will normally be expected to accept responsibility for doing what they can under the codes of practice.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (7.44 p.m.)—I thank the minister for his answer. Just in relation to the states and territories, obviously I am just checking that this is not a case of the federal government telling the states what to do. You are obviously going to respect the independent legislative mechanisms of the states in these particular areas?

Senator MARK BISHOP (Western Australia) (7.44 p.m.)—I think it is probably appropriate for the opposition to make a few comments on government amendment No. 5 as it is basically a summary of the operation and structure of the bill. It seeks to include that in a new clause 1A. I think it is appropriate at this stage for the opposition to remind the government of its principal concerns with respect to this bill, which go to five particular matters. The first is the indecent haste—we use that phrase and do not resile from it in any way—with which the government has approached this issue and the apparent and blatant disregard that the government has had for a lot of the views of the community on this issue of censorship and control and regulation.

I said earlier today that there is a divide in the community; it manifests itself in this discussion on the worth of regulation and the worth of control. Last evening we had several contributions that raised some pertinent matters on the issue of censorship. I think it is fair to say that the views in the community are divided on this issue, but it is more important to note that this bill has now been around for about six weeks. It was tabled and

referred to the Senate select committee on IT. We sat for in the order of 20 hours on three evenings and a full day and heard submissions from a range of interested parties.

As we sat down after that and examined the *Hansard* and the views that had been put by a range of industry representatives and interested participants in this debate, what was and remains a glaring omission is that there appears to be no feedback from the wider community as to the nature of this debate. We certainly understand the views of the ISPs and the relevant industry organisations. We understand the views of the Australian Consumer Association, putting arguments on behalf of consumers. But what has concerned me over the last four or five weeks is that there has been little, if any, correspondence.

Since I have been in the parliament I cannot recall a bill on which I have not received ongoing correspondence from constituents all around Australia expressing a particular view one way or the other. Members of parliament receive streams and streams of emails, form letters and photocopies of documents stating points of view from all around Australia. Many of these are obviously organised and part of a lobby process, and you give those the amount of regard they probably should have.

A lot of the bills that have come before us in the last three years have dealt with economic matters, social security matters, giving benefits to particular sectors of the community, restricting benefits to particular groups in the community or taking benefits away from people who have enjoyed them for many years. You do get reams and reams of correspondence—usually handwritten, always signed and with a contact number to follow up and discuss over the phone the person's particular concerns.

With respect to this bill, I have received a lot of submissions from industry organisations. I have received reams and reams of emails, as I suppose all senators have, and we all acknowledge that. But I have received very little correspondence. Indeed, when I checked with my office back in Perth today, there had been hardly any calls at all to the office expressing a point of view.

It seems to me that discussion on this bill is occurring in isolation, away from the community. It is obviously occurring in this chamber, but it is most unusual for that discussion to occur in isolation from community sentiment. It is of concern to the opposition that the government is putting forward a bill which has not been properly aired. It has been the subject of much ongoing and often bitter discussion within industry groups as to a particular point of view. But out there in the community—amongst families, in social groups and community groups—there is no awareness whatsoever as to what is going on. It strikes me that that is a significant failure, I suppose on the part of all of us, and to some extent it demonstrates our distance in this respect from community attitudes. I ask why that is the case, why the community is not involved in this debate. Is it irrelevant? Are they bored? Are they not interested? The answer to those three questions is no. It is relevant, they are interested.

From time to time we are all invited to address a meeting or put forward a point of view or do an after dinner speech. At the end of the meeting there may be general discussion involving what people are interested in, what they want to talk about, what their points of view are. You may open the discussion by saying that we are discussing the issue of pornography at length in the parliament, that we are discussing regulation, and that it involves issues such as freedom of choice and whether the government should be interfering or involving itself in the mores of the community. My observation is that people pick up, they do listen, they are interested, and they have a point of view. But that has only been emerging in the last three or four weeks when members of parliament, or those particularly interested in this debate, take the opportunity to raise the issue and prod the audience, if you like, to invite a reaction.

With respect to any other matter that we have had division on in the last three years—child care, social security, superannuation, taxation—I have found that whenever you go into public and community forums, people are surprisingly well informed of the progress of debate and the issues at stake. They may not

express it in the detail that members of parliament do, but they are certainly aware of the principles involved in the discussion. But that has not occurred here. It has struck me for some weeks as a very odd development, because people are concerned about those things. It comes down to a very bold issue: if the government or the opposition say to people, 'You can have access to this material, you can look at it, you can do what you like,' people give a nod and say, 'Yes, that's right. Who are the government or politicians or a group of senators, to be interfering with our basic rights?'

As the argument develops and you say, 'Well, listen, if you think that's right'—about the material relating to race, race hatred, race vilification, bomb making, incitement to vicious and violent acts, access to pornography and material of the like that is not generally circulated in the community—people do pick up, they do respond. They say, 'Oh well, there's a little more to this debate than we thought.' There are two issues for them. One is: 'Should we, as adults and as responsible members of the community, be free to go about our daily lives without government, politicians and all of those people in Canberra restricting the rights we have come to enjoy over 100 years in this country?' At the same time, as they calm down and reflect upon the nature of the debate, people are increasingly concerned that their young children are becoming somewhat distant from them.

Indeed, I have discussed this with my colleagues in the opposition, particularly those who are in a similar age group to me and have young families with children aged from four to 12. I have also discussed the issue with a number of government members of parliament. They have all volunteered the fact that basically they believe in their hearts in freedom of choice without a great deal of government intrusion and regulation. But when you ask them if they have taken the option of subscribing to devices, mechanisms or products that will not harm their children, to a person they say, 'Yes, we have. We pay $10, $15 or $25 per month and we access those particular products.'

That, to me, is something of a surprising comment because it exactly mirrors the divide that is out there in the wider community. Yes, adults should be free to go about their daily lives and engage in legitimate social and community activities without the intrusion of Big Brother. But when it comes to their family, their home, their immediate concerns, they say, 'We make a choice, and the choice is that we want our children to have access to the wealth of information that is out there in the community. We want them to work hard, to attend libraries, to study after hours, to access all the information that is out there on the Internet. But we don't have the time, the ability or the information to be policemen in our own lounge room or in our own bedroom and watch over our children 20 hours a day.' When it comes to children going up to their bedrooms and doing their homework or whatever it is, parents on both sides of this chamber have said, 'I want to know that my children are not accessing, or being exposed to, material that I, as a parent, regard as being inappropriate or offensive.' They subscribe to those things.

This whole debate we are entering into is really just beginning. Earlier today I read out to the chamber an email that I had received from the United States. That email was to the effect that, within the last 48 hours, the United States Senate, in a 100 to zero vote across both parties, unanimously amended a bill mandating that ISPs provide the option of filtered products. We hear constantly that, in the land of the free, the issue of choice is absolute; that anything that infringes upon the ability of corporations or individuals to maximise their returns is distinctly not part of the culture of the people of the United States. But there you have a motion amending a relatively innocuous piece of legislation being carried 100 to zero. That is as a result of ongoing discussion in that country. That country is probably some three or four years ahead of us in debating this issue. They have been having that discussion.

The United States Senate has now had at least three attempts to regulate, control or restrict access to the Internet and the material that may be accessed via the Internet. Each

time the relevant legislation has gone through by a significant majority across both parties. Each time it has worked its way through the United States legal system, each time it has gone to the Supreme Court and each time the Supreme Court has struck down the relevant legislation. But the Congress over there still revisits the issue, both parties still appear to deal with it on a non-partisan basis and each time the issue is revisited in a different form. That tells us that the issue will not go away; that a lot of people, a lot of families, a lot of people in the community—and it is not just fringe right wing pressure groups, it is not just those who subscribe to particular family values or family matters in the United States; it is across the board—feel it is a significant issue. It is so significant that 100 senators out of 100 in the United States Senate feel obliged every 12 months or every two years, because of pressure from their own communities, to revisit this issue. The issue will not go away here.

We have put the view that this bill, the Broadcasting Services Amendment (Online Services) Bill 1999, is flawed. There will probably be a review mechanism. I understand the government's position. The sunset clause has been defeated but there is a need to have a proper and serious debate over the next 18 months or two years on the worth of control, on the worth of censorship. I do not believe it is appropriate to hide the issue, and I do not for one minute say that this government is running away from the issue. They have a particular solution to the mischief they have identified. We do not believe their solution is appropriate. We do not believe their solution is the best one that could have been achieved. We are somewhat alarmed by the haste involved in the tabling of the bill. *(Time expired)*

Senator LUNDY (Australian Capital Territory) (8.00 p.m.)—Government amendment no. 5 tells us many things about the Broadcasting Services Amendment (Online Services) Bill 1999. The first thing it tells us is that the government's first attempt at presenting this bill was completely flawed. I refer to the explanatory memorandum which says:

> Concerns have been raised that the Bill, taken in isolation, creates the impression that Internet service providers and Internet content hosts are to bear the prime burden in relation to offensive material rather than those who create and upload such material.
>
> To address this concern, Amendment (5) inserts a new explanatory statement at the beginning of proposed Schedule 5 to the BSA.

I read that out because it says many things about this bill: firstly, that in the first instance the government was prepared to put forward a bill in this place which did not make it clear how the multilayered approach to attempt to regulate the Internet was constituted. Australia, being a federation, has Commonwealth and state laws which all have application with respect to attempts such as this. For the first time, this particular amendment tried to clarify many of the concerns that were raised through the course of the hearings.

Minister, I have a series of questions in relation to this amendment to clarify even further its intent and indeed its effect. I would like to turn first to the third component of the amendment which talks about the proposed scheme and a range of non-legislative initiatives directed towards (a) monitoring of content on the Internet and (b) educating and advising the public about content on the Internet. So many of the witnesses during the inquiry and in their personal and professional representations to me and other senators have raised parental education and community awareness as being the key to what constitutes an effective regime with respect to controlling access by minors to offensive Internet content.

Whilst your explanatory memorandum goes some way to describe the work in this non-legislative area of what the government proposed, I am wondering whether you could be quite specific in outlining for the committee just exactly what the government is proposing to do, and what resources have been identified and funded to date, for the purposes of educating parents and raising the general awareness of not just the online community but all of the Australian community who no doubt are going to be confronted with this issue, if not now, then in due course.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and

the Arts) (8.02 p.m.)—I hope I do not smell a filibuster because, having had 15 minutes from Senator Bishop essentially repeating what he said on an earlier occasion, I am now being asked about the very clauses on which Senator Stott Despoja asked me to elaborate, and I have given the explanation in relation to Commonwealth-state responsibilities. I do not see that that has anything to do with community education campaigns. It is more a matter of delineating the respective responsibilities and ensuring that there is no confusion about the respective responsibilities of both content providers and service providers.

Senator LUNDY (Australian Capital Territory) (8.03 p.m.)—Minister, I think you misunderstood my question. This amendment traverses three areas in identifying and mapping them out for the schedule. I am asking you in the first instance with respect to the specific initiatives for the education programs about Internet content and carriage as identified in the explanatory memorandum. I will come back to questions about the relationship between the states and the Commonwealth as explored initially by Senator Stott Despoja earlier in this discussion.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.04 p.m.)—A number of people have responsibilities for ensuring that there is maximum community awareness of the options that are available. Certainly, as I think we traversed at an earlier stage, there are a number of people in the industry who see commercial opportunity in promoting material. You will find in the United States that there are very many organisations and service providers offering a range of filtering technologies or access to ISP controlled blocking devices. We certainly think that there should be the opportunity taken to ensure that parents understand what is available to them, but at the end of the day this legislation is designed to ensure that there are minimum provisions put in place to ensure that people do not accidentally come across material, through either ignorance or a feeling of uncomfortability about technology. We believe that the combination of those measures will be sufficient to ensure that we get the maximum level of community protection.

Senator LUNDY (Australian Capital Territory) (8.05 p.m.)—Minister, I am seeking more detail. I refer you to the explanatory memorandum for amendment No. 5 as provided by the government. There is a series of six dot points at the end of that, each going to specific initiatives. To be more specific in my questions, if that assists you, the first point says:

> to monitor compliance with industry codes and standards registered under Part 5 of proposed Schedule 5 to the BSA.

I presume that would be a role that the ABA would have as part of their responsibility—I seek your clarification on that. The next point is:

> to advise and assist parents and responsible adults in relation to the supervision and control of children's access to Internet content.

What does that mean? Does it mean you are going to fund a campaign or specific initiative through television advertising or through the publication of glossy leaflets? What are you going to do to give effect to that point as described in the explanatory memorandum?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.07 p.m.)—Essentially, the ABA will be in a position to direct people, either through its own web site or through the NetWatch arrangements that will provide a community mechanism for expressing concerns and, as parents seek further information, it will be made available to them. We do regard the ABA as having a responsibility in that regard and the $1.9 million that has been set aside will assist.

Senator LUNDY (Australian Capital Territory) (8.07 p.m.)—The NetWatch arrangements that you describe: we know that about $1.5 million of that money goes to the OFLC to assist them in their classification role with respect to this bill—so we are not talking about $1.9 million, for a start, in terms of the ABA's resources to enforce these aspects. So I think you are being a trifle misleading in citing that amount of money when you know full well that that is not the full allocation for the role I am describing.

You mentioned NetWatch. What is NetWatch and what role will it play in advising on this? Is NetWatch something you announced in the budget? Is it a funded measure? Will it be an initiative that goes more than just online—remembering that the big problem here is educating those parents who are not online and who perhaps are not overly familiar with what the Net holds, and that feeling of uncertainty could actually be preventing them from choosing to participate in what the information society and the Internet have to offer. Can you tell us, Minister, what NetWatch is and what your budget funded measures are to give effect to such a proposal?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.09 p.m.)—The explanatory memorandum says:

> At least in the short to medium term, Commonwealth funding will be required to establish the community/industry body and to assist with ongoing administrative costs. Establishment costs for that body are estimated to be $0.2 million—

that is $200,000—

> with ongoing annual funding of $0.5 million required.

Senator LUNDY (Australian Capital Territory) (8.09 p.m.)—So you envisage that that particular role of the ABA—to advise and assist parents—will come under that budget funded measure and it will be called NetWatch?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.09 p.m.)—NetWatch is also an organisation that will be drawn from the wider community to provide for monitoring and to provide a conduit for complaints, so it will not be simply an educational body; it will be a means of processing some of the concerns that are out there in the community. But the ABA will certainly have the capacity to provide that level of funding and to ensure that, at the same time, it is able to disseminate information about the options available to parents.

Senator LUNDY (Australian Capital Territory) (8.10 p.m.)—Minister, I am finding all this quite interesting given that today a lot of the public statements by you have not, to my knowledge, deviated far from the course of the ABA being the first port of call for complainants. What you are describing is another layer for complaints to be dealt with in—from what I can interpret from what you have just put forward—some sort of community based body with $200,000 worth of funding that will be the first port of call for complaints arising from the community. Can you clarify what the process is and whether or not the first call that is made by a complainant goes to the ABA, or will it go to a different body?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.11 p.m.)—I am surprised that Senator Lundy should affect such surprise at this whole concept, because if she had been following the debate she would know that this is very much based on the UK approach, which does provide a mechanism for providing advice to parents and also for monitoring community concerns. The ABA can have formal responsibility but it is helpful if it is supplemented by industry and community input. The NetWatch committee concept is designed to ensure that it is not left entirely to the bureaucracy, that people do have confidence that they can be involved at various levels and that there is a point of reference that can provide at least informal advice in the way that they would want.

Senator LUNDY (Australian Capital Territory) (8.12 p.m.)—What will the relationship between NetWatch and the OFLC be?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.12 p.m.)—The OFLC will make the judgments in terms of classifications. The NetWatch committee would simply bring matters to the attention of the ABA, which could then pass them on and obtain a quotation from the Classification Board. So the NetWatch committee does not have any formal powers of judgment; it is there either as a conduit or as a mechanism for providing advice and assistance.

Senator LUNDY (Australian Capital Territory) (8.12 p.m.)—Can you describe the relationship between the ABA, the NetWatch

committee and the OFLC, and what the channel of communication would be for someone who rang up with a complaint? Who would receive that call in the first instance and what would the process be in the handling of that complaint? Also, can you describe what the process is for appointment to the management committee or board of the NetWatch organisation as you describe it?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.13 p.m.)—I think I have already indicated the general nature of the structure. We have not got the legislation in place so clearly we are not in a position to determine precisely how appointments might be made. But you could take the UK experience as a guide. I would expect that people would make contact with the ABA in the first instance, but these things can happen by word of mouth and people can be referred to a range of bodies. At the end of the day, unless it comes to the ABA—either from the public direct or via something like a NetWatch committee—there is the risk that the matter will not be properly handled. So the formal channel will be the ABA but the NetWatch committee will be working closely with it and will be able to provide a two-way role, in terms of both passing on complaints and disseminating educational information.

Senator LUNDY (Australian Capital Territory) (8.14 p.m.)—Just another point of clarification: is the establishment of the NetWatch committee part of the process of the development of a code of practice for the industry, or does it sit outside that process?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.14 p.m.)—It is outside the process.

Senator LUNDY (Australian Capital Territory) (8.14 p.m.)—So the relationship between NetWatch and any processes or regimes as determined within a code of practice is as yet unresolved?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.15 p.m.)—No, it is not unresolved. The scheme is that the industry itself will develop codes of practice which will take account of all the developments of which the industry is aware and then guide and regulate the conduct of ISPs, content providers and content hosts. To the extent that people want to know the detail of how that process works, there would be no reason why the NetWatch committee would not pass that on, if asked. However, the primary concern of complainants is not likely to be, 'Tell me how the code of practice works,' but, 'I find this offensive. What are you going to do about it?' To the extent that the codes of practice provide a mechanism for resolving those complaints, they will have that degree of relevance, but there will not be any formal interaction between the two.

Senator LUNDY (Australian Capital Territory) (8.16 p.m.)—The next dot point in the explanatory memorandum for amendment No. 5 says that part of the ABA's additional functions are:

> . to conduct and/or co-ordinate community education programs about Internet content and Internet carriage services, in consultation with relevant industry and consumer groups and government agencies.

That moves in the direction that I would have expected, but it seems to run a little bit counter to the explanation that you just provided. I think the issue is just how far down the track the government is in putting in place a suitable regime. Obviously, the structure of the legislation provides for quite a powerful mechanism to encourage the industry to develop their code of practice and yet, at the same time, this particular amendment really maps out in the explanatory memorandum a very defined role that is outside of that industry code of practice process. It goes to some degree of specificity in describing precisely the role of the ABA, including the notion of a community education program, in advising and assisting parents and responsible adults in relation to supervision and control of children's access.

These are issues that I would expect—and I know—to be at the forefront of the Internet Industry Association's goals, to actually provide some mechanism to facilitate these outcomes. I am again wondering if it is your intention to consult directly on these matters with those parties to the industry code. Fur-

ther, from my recollection, we have previously had discussions about these issues at estimates and you spoke of some market research that was being conducted on the views of the community for the purposes of developing a community education program. Is that research proceeding and can you tell us where it is up to?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.19 p.m.)—I have to confess that I do not have any recollection of telling the estimates committee that we were undertaking research. Certainly, the ABA's additional functions will include the capacity to conduct or commission research into issues relating to Internet content and carriage services. The NetWatch committees will be consulted and given the opportunity to comment on the codes of practice, and the general scheme will evolve once the legislation is in place and we have a firm legislative basis on which to proceed. You cannot dot every 'i' and cross every 't' in these matters until you know whether you have survived the vagaries of the Senate process, apart from anything else. Clearly, once these aspects have been put in place, we will be in a position to take the process further. But we are making it plain that we expect the ABA to ensure that a number of different aspects of these matters are addressed—that it is not simply all left to government or all left to parents—so that we have an ongoing process of ensuring that everyone is up to date in terms of industry research, community attitudes and industry developments.

Senator LUNDY (Australian Capital Territory) (8.20 p.m.)—Minister, I do find it astounding that you make statements like, 'Well, we will nut out the detail once we have dealt with the vagaries of the Senate.' Goodness me! Here we are, dealing with a bill that you brought forward in such a hasty way and that you forced through a condensed committee process, you subsequently returned to the chamber with a comprehensive set of amendments to your own bill to try to fix up the gaps and the problems and the deficiencies and the inaccuracies in it, and then you stand up and say, 'Well, there are a few vagaries that we will not be able to deal with and we will worry about that later.'

What on earth possesses you to think the industry, the stakeholders in this and the parents will have any confidence in you if you stand up here and say, 'We will worry about the detail later'? You have had ample opportunity to map out some of these issues. I think it would be only fair and reasonable to expect, at least at this point, that you would be prepared to offer something a little more tangible than just vague references to a range of NetWatch committees, to mapping out their relationships later on and to seeing how it all evolves. Don't you think you owe the industry, which you messed around in the first instance by leaping across their endeavours to pull together an industry code, a little more than waffle such as you have provided? It is obvious that you do not know a lot about the intentions in this particular part of amendment (5) and the additional initiatives that are non-legislative and under the auspices of the ABA.

Can I ask you to take on notice to provide the committee with a full explanation of your conceptual framework of NetWatch committee/committees, if I heard you correctly, and how they will operate within the Australian community. Will they be the first port of call for any complaint? If so, where does that leave all of your statements to date about the ABA? And where does that leave the evidence from the ABA themselves that was quite explicit: 'We will be the port of call for complaints'? This was actually quite a significant point in the early stages of this debate. It was certainly supported by the industry that the ABA be the first port of call for dealing with those complaints. It is now a little more vague as a result of your answers than it was before. Unless you have anything that can provide a little more light, a little more detail, perhaps you could take on notice to provide the committee with a complete explanation of just what your plans are and how closely they reflect international schemes.

I am sure I heard earlier in this committee stage debate that there were no other international examples that you could turn to and in fact that you were breaking new ground. So

which is it, Minister? Are you using an international model—you mentioned the UK—or are you doing something new and different, or are you blending two approaches? I think you owe a proper explanation.

Senator BROWN (Tasmania) (8.23 p.m.)—I think the minister is pondering the answer to Senator Lundy's questions and will be coming up with those answers shortly. While he is thinking about that, I also go to the explanatory memorandum where the reference to the NetWatch group is that it is intended that 'the designated body will be a community based organisation established to monitor material, operate a "hotline" to receive complaints about illegal material and pass this information to the ABA and the police authorities'. As Senator Lundy said, that sounds very much like the role that the ABA was primarily positioning itself to take.

Obviously, this is going to be an extremely important filter to the ABA. I ask the minister whether he can tell us about this community based organisation. 'Based in the community' has the clear implication that it has a representation that reflects what the community wants. My experience is that it is much more likely that this will be an organisation selected by the minister and/or the government. I wonder if the minister can tell me which of those two things it will be, how the process of appointing people will go and how big it will be.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.25 p.m.)—I am very pleased that at least Senator Brown seems to have an awareness of the concept of NetWatch and the community advisory body and he has even managed to read the explanatory memorandum, which is in marked contradistinction to Senator Lundy, who has made it plain to all concerned that she has never heard of NetWatch, has no idea of any such approach in the UK or anywhere else and somehow thinks this is the first time we have ever mentioned it. If one strips away most of the pejorative rhetoric, there is not much left, but let me simply make the point again that until the legislation is in place there is no basis on which to make final decisions. It is utterly normal practice to spell out the matters that will be addressed and the bodies that will be established once the legislation is in place.

As Senator Brown rightly points out, a community advisory body will be established 'to monitor material, operate a "hotline" to receive complaints about illegal material and pass this information to the ABA and police authorities, and advise the public about options'. Quite clearly, the ABA remains the formal port of call. The community advisory body, along the lines of NetWatch, is simply a mechanism for having a bit more of a consumer friendly approach about it. It will provide the opportunity for ordinary citizens to be involved rather than simply bureaucrats manning some body which might as well be in the ABA itself. It also provides, I think, an additional and helpful means of ensuring that community concerns are properly addressed. So I do not think there is any doubt in the minds of consumers about what we are doing. I have not heard the industry raise any concerns about this matter at all. As far as I am concerned, they all see the virtue of this approach and, given that we have already provided the funding in the budget, all that now remains is for you to support that appropriation and we will have the necessary wherewithal to set about establishing the necessary structures.

Senator BROWN (Tasmania) (8.27 p.m.)—I get the distinct feeling that if I ask more than one question, as Senator Lundy has done, I might cop it. However, I will take that risk. I am going to ask the minister again, because this is based on Senator Lundy's questions too, as to what the nature of this community based organisation is. In dealing with similar pieces of legislation I recall, for example, the establishment of the Natural Heritage Trust Fund where a community body was set up to overview—or at least to report to the minister or give comment to the minister, powerless and toothless as it turned out to be—the distribution of those funds across the country. The amendment that was adopted there had the set-up of the committee—where the representatives of the committee were coming from. So that important body helped the consideration of senators as to

whether they were going to support the legislation at the end of the day or not.

I think Senator Lundy is quite right here. We are being asked to support something of a pig in a poke. We are being asked to support a committee that we do not know the make-up of. We do not know how the government is going to establish it. We do not know whether the government is going to simply go around and seek a group of people who are feeling censorious about issues or whether we are going to see a committee of free thinkers. A community based organisation is one that reflects community views. It is a pretty difficult thing to do. I think the committee could be helping the minister if he had a proposal before us and we could comment on that. I would certainly feel much more secure about the process which is afoot here if the minister was outlining how he is going to ensure that it would in fact be a community based organisation and would not be a selection of people who have a particular point of view that ends up not reflecting what the community thinks at all.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.30 p.m.)—I do not know to what extent some senators do not want to understand this, but we are very much concerned to ensure that the community is properly involved in this process, that it is not simply a top-down bureaucratic structure that they have to live with whether they like it or not. We think it is important to ensure that we do have proper consultative mechanisms, and once this legislation is safely away we will consult with the industry and presumably interested community groups and parties to determine the most appropriate mechanism. You might not like it, Senator Lundy. It suits your purpose as an opposition to pretend that somehow there are perfect models that should be identified down to the last degree, but there are not. Otherwise I do not know why you are shaking your head, because what we have done in this legislation is to spell out our determination to fully involve the community in this process. If you think this is a bad thing then you should say so.

Senator Lundy—I want more detail. I don't trust you.

Senator ALSTON—It is not a matter of trusting us at all.

Senator Lundy—Be a little less ambiguous.

Senator ALSTON—What is ambiguous about saying we want a consultative community group, we want to establish a hotline and we want to ensure that parents are fully informed and educated? If you want to say you do not trust anything that the government says on any issue, that is fine. That is what got you into trouble at the last election, basically, having that sort of negative approach. But it does not in any shape or form detract from legislation that commits a government to being very specific in terms of community consultation. If we do not deliver the goods, then you can quite rightly criticise us when the time comes. But to somehow say at the very outset, even before the legislation has gone through, that we should have a precise, unique model that should never be amended is totally unreal.

Senator Lundy—Just precise.

Senator ALSTON—It might be your approach to say that you have all the answers and that you know precisely how this ought to work and that there is only one model and you would enunciate it in advance. We do not have that degree of overconfidence. We would like to consult with industry and we would like to consult with a range of interested parties and see how they think we could best effect a community advisory body that will do the things we have set out for it.

Senator LUNDY (Australian Capital Territory) (8.33 p.m.)—That says it all. It is the community that does not trust the government. Let us look at this government's history over the last three years. They are not exactly known for their comprehensive consultation with the community.

Senator Alston—Is this a filibuster or isn't it?

Senator LUNDY—This is the point, Minister. You have a go at the opposition because we raise concerns about the lack of specificity in what your consultation mecha-

nisms are going to be in the establishment of the NetWatch committees. Don't you think that, having regard to your record as a government and your winding back of just about every mechanism that has existed in Australian society, there is some degree of distrust on our part about your commitment and your ability to actually deliver a genuine consultative mechanism? I think that is a fair and reasonable point to make at this stage in the debate.

With respect to your general comments about NetWatch, it is a little rich also to expect the community who are listening to this debate to continually have to backtrack over your rhetoric to find out whether or not you are actually using international models. Yes, there are plenty to actually look at to see how various countries are trying to tackle this, although I make the point once again that none have trod the legislative path that you are seeking to tread. How about some consistency coming into it from your rhetoric? How about some consistency in the messages you are trying to put across? It would be refreshing indeed for this committee to be able to proceed through this debate on the basis of at least your coming clean on a whole series of issues where so far you have resorted to provocative, emotive rhetoric—and I do not want to go through that because I think that only perpetuates the situation of all the dreadful reasons why we need, in your view, to proceed with this legislation. You need to actually have a look at the exact mechanisms that are put in place and to remove whatever degree of ambiguity you possibly can. I do not believe that has happened to date. Unfortunately, it will mean that, as we move through this debate, gradually the picture you are trying to paint with this bill will become fuzzier and fuzzier, and that benefits no-one.

Senator MARK BISHOP (Western Australia) (8.35 p.m.)—I also have a couple of issues to pursue arising out of this discussion on NetWatch. I listened with interest, Minister, to your response to Senator Lundy, that having in principle decided to establish the community advisory body or community advisory committee, however it is described, you were unwilling or unable at this stage to flesh out the composition and the detail of that committee and thought it appropriate that that be done only after you had consulted with the industry. That goes to one of the key points that the opposition has been making all along. One would have thought that if community awareness and community empowerment were going to be one of the tiers of regulation, supervision and surveillance—surveillance is probably too strong, but regulation and supervision—in a policy approach to this issue, it would have been appropriate that consultation concerning that committee had occurred prior to the bill being tabled and going through the Senate committee.

Senator Lundy—That would mean they would have had to think about social policy.

Senator MARK BISHOP—That is right, Senator Lundy. They would also had to have thought about how they were going to give effect to their policy intent. It just confirms the proposition that we have been putting for some time that there has not been the necessary degree of consultation with the community on these sorts of issues. I do not think anyone on this side of the chamber is in any way opposed to a community network, a community watch, that is going to act as some sort of filtering mechanism to receive—

Senator Lundy—Unless they put Senator Tierney in charge.

Senator MARK BISHOP—That is something that would be worth consideration at the appropriate time, but no-one is going to be opposed to that approach. But I do have two serious issues to raise with you, Minister. Presumably, once this committee consisting of community citizens, activists or whatever from around Australia who represent particular points of view is established, it is going to be making some sorts of threshold decisions. When members of the community, parents or aggrieved citizens think a matter is over the top, offensive or illegal and should not be available, they will make the complaint to this body, NetWatch. Presumably, that committee then makes threshold decisions. Is there worth to this complaint? Is this complainant a nutter with nothing better to do than ring up NetWatch and involve it in things that do not really matter?

I presume that it is going to have some sort of threshold decision making ability: yes, there is substance to this complaint; yes, we think that prima facie it raises serious issues in respect of offensive material; and, yes, it requires referral on to the relevant agency, the ABA. Alternatively, is it simply intended to be a post office box where the complaints go and get bundled up at the end of the week and referred on to the ABA for appropriate action? Do you envisage NetWatch having that threshold role of filtering out real complaints from complaints that might otherwise be characterised as nonsense? That is the first issue I ask you to address, Minister.

Secondly, in the estimates process—and I see Ms Holthuyzen over there in the advisers box—we had a discussion on the components of the $1.9 million allocated to operational costs. My memory is that Ms Holthuyzen advised us that the government anticipated an extra five staff being employed. Is she shaking her head? My memory is that someone advised us in the estimates process that an extra five persons were going to be hired as part of the administration framework of this act and that those persons were going to be seconded from within the organisation and that they would be, for want of a better description, multiskilled—they could receive complaints, follow them up, do some policy analysis, write advice and all of those types of things. Minister, is this NetWatch going to have a secretariat? Will it be staffed or are those additional five persons allowed for in the $1.9 million going to be part of the support mechanisms for this community organisation?

Unless I am wrong, and I stand to be corrected, there was no suggestion in the estimates process that the five staff with a budget of around $¼ million per annum were going to be involved in this type of community liaison and involvement role. They were essentially policy people—middle to senior level officials within the department carrying out those sorts of tasks. Minister, so that we do not waste too much time, could you advise us whether NetWatch is going to have that threshold role of filtering out complaints from members of the community, what its staffing structure will be and whether that staffing is going to be only those five additional persons discussed in the estimates process?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.42 p.m.)—The advisory body will have a range of functions, but it will not be there as a filter. It will not be making threshold decisions in the sense of arbitrarily deciding whether a complaint is legitimate. It will be a point of reference. It will generally channel people in the direction of the ABA. To the extent that people might want advice about whether something is likely to offend against the classification regime, then I suppose there will always be levels of informal advice offered, but if people want a proper response they will go through the ABA and normal processes will follow. We do not envisage this as being a bunch of community activists. I know that is your preferred approach, but we do not think that is what is required here.

Senator Lundy—Who will they be?

Senator ALSTON—Ordinary citizens. I know you do not come across them very often, but we can probably send you a few photos in due course. They do exist, but you have to go to meetings other than trade union sponsored ones.

Senator Mark Bishop—Give us a sermon on that.

Senator ALSTON—Do I need to say any more?

Senator Mark Bishop—It's not too late. Give us a sermon.

Senator ALSTON—I was simply making the broader point that, whilst we are very comfortable with ordinary Australians—

Senator Mark Bishop—Here you have a student activist and an ex-union official—go for it!

Senator ALSTON—I am sure that they will make plain that they are ordinary members of the public and would like to be involved. It is our view that ordinary Australians should not be disqualified from participating in community processes. It should not be confined simply to those who make the

loudest noise, who have an axe to grind or who claim that they are somehow experts in the field. As much as possible we would want to see parents put in touch with people they can relate to, not academics who are busy trying to drum up theses on the strength of their latest experiences.

Senator Stott Despoja—They are not ordinary citizens?

Senator ALSTON—No, in this respect they are not—they are professionals. We feel more comfortable about people who have only a degree of amateur association with the Internet rather than a professional association because if you are trying to genuinely service public needs—

Senator Mark Bishop—You don't want industry capture, do you?

Senator ALSTON—Not only do we not want industry capture but we do not want elite capture. We want to be in touch with community standards and we do not think you need experts to do that. Once again, it will be a matter of ensuring that the body is appointed from a wide range of people. The industry view on how we would go about that would be helpful, but at the end of the day we will make the decisions. No-one on this side has a recollection of identifying five staff members, senior or junior. So Ms Holthuyzen pleads not guilty.

Senator Mark Bishop—I am advised it is the ABA.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Senator Bishop, please wait until you have received the call when you stand.

Senator ALSTON—She has now been acquitted and she is very grateful. One cannot speak on behalf of the ABA, but it is probably a good ambit claim. With a bit of luck that would take up half the funds and then they will come back to us for more in due course. I am sorry that Mr Granger is no longer with us. He was earlier in the day. I do not think we have a firm view on what is needed in terms of servicing that committee, but clearly there would have to be some staffing arrangements to provide the normal logistics assistance and whatever else is desirable in terms of ensuring that they are properly able to carry out their roles. That, again, is something we can determine a little further down the track.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (8.46 p.m.)—In relation to how far down the track, I am wondering whether Citizen Alston or Minister Alston would like to give us an impression of the time line. Can he tell us when he would envisage the NetWatch committee or committees being established or, more importantly, when can we imagine seeing some legislation before the parliament?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.46 p.m.)—I know this is a great insult, but I did not catch much of that. Could you give me a succinct summary?

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (8.46 p.m.)—He is not a man of the people, my goodness! I am just asking for information about time lines. When can we expect to see some legislation before the chamber, leading to the establishment of the NetWatch committees?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.47 p.m.)—I have been asking that question myself for some hours. When are we going to vote on this legislation so it is in place and we can get on with establishing NetWatch? It is in your hands. I implore you to speak to Senator Lundy and stop this manifest filibuster so that we can bed it down and get NetWatch established. We might even consult with you if we get to that position.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (8.47 p.m.)—There is a lot of consultation with the Democrats going on lately. Even if we get through this legislation this evening—let's be optimistic—and if this legislation is passed in the next day or so, when would we see a NetWatch committee established? If it is contingent upon the passage of this legislation, can the minister give us an idea of how long it would take? I was under the impression that we would need

to see at least some regulations or more legislation coming to the chamber in order to establish those committees. Could the minister outline the process and the time line?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.48 p.m.)—No, I do not think we would need any further legislation or regulation. We certainly want budget approval of the funding. I assume that that will be through by 30 June. Once all of that is in place, then we will set about it as expeditiously as we can. Obviously the consultation process will be the start of that and then we will presumably appoint people as soon as we can thereafter. So there is no thought on our part that there needs to be anything more done once the legislation is through the parliament.

Senator LUNDY (Australian Capital Territory) (8.49 p.m.)—I want to clarify finally the minister's position with respect to the complaints process and the role of the NetWatch committees. The original explanatory memorandum, which you so kindly referred me to, is actually quite specific. It states:

> . . . if a person has reason to believe that:
>
> . an Internet service provider is supplying an Internet carriage service that enables end-users to access prohibited content or potential prohibited content; or
>
> . an Internet content host is hosting prohibited content in Australia or potential prohibited content in Australia;
>
> the person may make a complaint to the ABA about the matter.

I would like to know whether it is your intention to place between the complainant and the ABA another structure that would require them to first place that complaint with anybody other than the ABA.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.49 p.m.)—No.

The TEMPORARY CHAIRMAN—The question is that amendment No. 5, moved by the government, be agreed to.

Question resolved in the affirmative.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.50 p.m.)—by leave—I move government amendments 7 and 8:

(7) Schedule 1, item 10, page 9 (lines 14 and 15), omit "does not include information that is transmitted in the form of a broadcasting service.", substitute:

does not include:

(c) ordinary electronic mail; or

(d) information that is transmitted in the form of a broadcasting service.

[Clause 2 of Schedule 5—definition of Internet content]

(8) Schedule 1, item 10, page 9 (after line 21), after the definition of ***online provider rule***, insert:

ordinary electronic mail does not include a posting to a newsgroup.

[Clause 2 of Schedule 5—definition of ordinary electronic mail]

They basically relate to the definition of Internet content. The first amendment excludes email. We do that because I think there was always some concern that they might be unintentionally caught up in the process. Emails are generally not stored. They are private communications. They are therefore not the normal subject of concern in this area. We therefore go on in amendment 8 to make it clear that newsgroups would not come within the definition of emails.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (8.51 p.m.)—I have a process question. I am happy for these amendments to be dealt with in committee together, but I am wondering whether they will be put separately.

The TEMPORARY CHAIRMAN (Senator Ferguson)—They can be if you so request.

Senator STOTT DESPOJA—I would request that, if that is acceptable to the chamber.

The TEMPORARY CHAIRMAN—Yes.

Senator MARK BISHOP (Western Australia) (8.52 p.m.)—The opposition generally supports government amendment 7. The government has clearly recognised the enormous difficulty involved in regulating Internet email content; it would obviously be enor-

mously difficult to control. The opposition is supportive of the express removal of email from the bill because it is consistent with our policy position of not monitoring the private communications between individuals, except when it is obviously required for law enforcement purposes and the like.

In terms of government amendment 8—and I understand we are dealing with them together but they are going to be voted on separately—we do need a bit of an explanation. It appears to the opposition that the amendment attempts to make a somewhat ridiculous assumption that there is somehow a difference between an ordinary email and an email posted to a newsgroup. The provision in the bill relating to Internet content already covers the instances where newsgroup content becomes Internet content. It details that such content must be (a) kept on a data storage device and (b) accessed or available for access using an Internet carriage service. Arguably, it is only once the email has been incorporated into such an archive that it would fall under such a provision. The express attempt to divide or delineate between an ordinary email and one that is destined for a newsgroup is therefore, in our view, irrelevant. It only adds to the confusion caused by the original failure to expressly indicate whether emails and newsgroups were incorporated into the definition of online content.

So ordinary emails are outside the bill but emails to a newsgroup, which are archived and available for public access, are caught by the bill. We do not understand why the government has attempted to bring in this division. We do not understand its consequences, and we would ask the minister to explain the difference in substance between communication between two persons via ordinary email and an email between two persons where the recipient archives it via a newsgroup. We do not understand that difference and we would ask the government to give us a fair amount of detail as to why it seeks this difference, why it draws this distinction, what is being sought to be achieved or what mischief is attempting to be remedied.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.55 p.m.)—The mischief is clearly the offensive material and the way in which that is normally accessed. Emails, by their nature, are private communications. They are normally ephemeral and they therefore do not constitute a cause of concern. It would be very rare indeed that people would be able to access other people's emails legitimately, let alone be able to access them as members of the general public.

Newsgroups, however, are in a different category. When material is posted, the intention is to preserve it and it is then available. You call it archived, but the fact is that it is there and is able to be accessed. A lot of this offensive material does find its way into newsgroups and does constitute a source of concern for that very reason. It is not just passing through and then goes or is utterly private between two citizens; it is there for all the world to see or access. If that is a source of offensive material which is then excluded from the ambit of the legislation, it would seem to be a very easy way of circumventing the legislative intent.

Senator MARK BISHOP (Western Australia) (8.56 p.m.)—I thank the minister for that explanation, but if the email is received, stored and accessed, isn't it caught by the bill anyway? I refer the minister to the definition of 'Internet content' on page 9, lines 10 through 15. It is information that:

(a) is kept on a data storage device; and

(b) is accessed, or available for access, using an Internet carriage service;

but does not include information that is transmitted in the form of a broadcasting service.

Our reading of the bill is that it is caught already, so we ask: why are you introducing this further distinction when it does not appear to be necessary?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.57 p.m.)—If by 'caught' you mean that emails would otherwise be caught by that definition, I think you are right, and that is why we are specifically going out of our way to exclude them. There was legitimate concern that, because of the breadth of

the definition, it could well cover emails. That is not our intention for the reasons I have advanced—that is, emails are normally private and secure transactions that are not going to cause offence to anyone other than the recipient. Telephone conversations, unless they are subject to a police access order, remain private and confidential, and we would regard emails as entitled to that protection in the same way.

On its face, that definition of 'Internet content' could have picked up emails when that was not our intention, so we therefore exclude them. We think newsgroups are in a quite different category, and we thought it advisable to specifically provide for them so there was no doubt if the legislation was silent on the matter.

Senator MARK BISHOP (Western Australia) (8.58 p.m.)—Minister, I understand what you are saying. We are happy with the definition of an email and we are happy that you exclude it. We are not quarrelling with that. But why isn't an email to a newsgroup so caught? That is the point we are trying to make.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.59 p.m.)—Because it is no longer what you would regard as ordinary email. It then becomes a public document rather than a private document, and it is the public documents that can be accessed by ordinary members of the public and children that are the concern.

Senator MARK BISHOP (Western Australia) (8.59 p.m.)—Again, I acknowledge that an email is an email and not caught by the bill. An email that goes to a newsgroup, is archived and made accessible to members of the public is now characterised not as an email. Why would it not have already been caught by the definition of 'Internet content' in the bill? It seems to us that you are doubling up or doing the same thing twice, and we do not understand why.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.00 p.m.)—We are trying to identify the particular mediums and then deal with them one by one. People ask, 'What about emails?' The first answer is that they are not mentioned. So are they or are they not covered? We think it is desirable to make it plain that they are not caught by the legislation.

Similarly, when it comes to posting to newsgroups, rather than simply relying on an interpretation—you may be right that the current definition of 'Internet content' may well be wide enough to cover newsgroups—we think it is highly desirable that we have specific answers to these matters so that people are not left saying, 'The best legal advice we have is that Internet content does cover newsgroups.' People would then ask us, 'If that is the idea, why didn't you specifically legislate for it?' It is an abundance of caution, if you like, but we think it is more transparent to spell out the position that applies in respect of each type of material.

With hindsight we would not have simply had a broad definition of 'Internet content', because that did quite legitimately lead to concerns that email was caught. That was not the intention. It is a refinement of the original. If we were starting again, I suspect that we would not have had that definition of 'Internet content'.

Senator LUNDY (Australian Capital Territory) (9.01 p.m.)—Given the explanation you have just provided, I was wondering if you could provide the committee with an explanation of how the bill intends to treat mailing lists.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.02 p.m.)—To the extent that they are archived they would be in the same category as newsgroups.

Senator LUNDY (Australian Capital Territory) (9.02 p.m.)—Minister, are you aware that the mailing lists are not open for public consumption and that it is only the subscribers who are privy to that content?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.02 p.m.)—That is not a sufficient basis for excluding the regime, otherwise you could have the most offensive material imaginable precluded from scrutiny simply because

it was the subject matter of a commercial transaction. That could not be right.

Senator LUNDY (Australian Capital Territory) (9.02 p.m.)—A mailing list is essentially a private conversation between participants who choose to participate in that particular conversation. Are you now arguing that, for the purposes of your definition, a mailing list would constitute material publicly posted on the Net?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.03 p.m.)—My understanding is that some of the worst sources of paedophilia have been those contained within closed user groups, where on the face of it seemingly harmless Internet addresses known only to those in the circle provide an opportunity for material to be mailed to a recipient and then disseminated to the other members of the group. We would take the view that, if that material were provided to more than just the recipient—if in effect it is available to selected members of the public—then it ought to be subject to this regime; otherwise the very sort of vice that we all express concern about would be exempt.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.04 p.m.)—I would like the minister either to table for the committee's information or at least to draw our attention to the evidence that he has regarding his last statement about paedophilia. Following on from Senator Lundy's question, I would like the minister to clarify this: are you specifically stating that you intend to cover the use of mailing lists as well as newsgroups under this legislation? If not, I am curious as to how you are going to distinguish between the two. It does not sound like you are going to distinguish between the two. What about newsgroups and mailing lists that are connected together; and what about the archives of mailing lists?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.05 p.m.)—Mailing lists, assuming that they are posted and archived, would be caught by the definition of 'Internet content'. I have made it clear that I believe newsgroups would similarly be caught by that definition but, because we think it is preferable to make it plain what the status of that type of material is, we are including a specific definition.

Senator LUNDY (Australian Capital Territory) (9.05 p.m.)—Minister, in many respects I think this goes to the heart of the difficulties of actually achieving your stated aim. Whilst I acknowledge the sentiment that we are trying to protect minors in this country from undesirable material, once you enter this area of what constitutes public and private communication then you are dealing with a medium that extends far beyond the notion of what we used to be able to consider as a private communication via a phone call into an area now where an email constitutes a private communication. You have already spoken about how that, in your view, is worthy of exemption and you have identified that in your amendments.

If that is the case, I would like to point out a few technical issues that highlight further inconsistencies and inaccuracies in your treatment of email, both in the general and in the specific senses. First of all, it is a complete misnomer, and indeed a technical inaccuracy, to use a definition of 'storage' or 'archiving' of email as a means by which to preclude it from the bill. Right here in Parliament House every email that is shunted between the range of LANs within the offices and the wider area network that constitutes the parliamentary network is stored on a server and is available for perusal through a criminal investigation. Is this not the case with email that traverses through ISPs? It is not publicly available, that is true, but to use a definition of 'storage' as a determinant in this bill is, I think, technically incorrect.

The other issue is that of what constitutes public or private communication. If I choose to forward an email to a group of people that I select out of my contact database, does that constitute a mailing list of my choice? Does that mean that that particular email that I choose to circulate amongst people who want to receive it constitutes a mailing list and is therefore subject to the regime that you are seeking to implement?

It is a very fine line between that type of personal mailing list—and that is what they are called in many of the applications—and going to the next stage of organised mailing lists between friends. For example, a group of friends who ski together in winter and use the Internet to communicate. It is a formal mailing list. They use a list server, they organise it properly and they make sure they keep coordinated.

Then you go to the next step. Perhaps a sports club utilises a mailing list for their membership. They register online, keep track of events online through the web page and use a mailing list to communicate on a regular basis. I have to say I am a member of at least two sports clubs that use precisely this method of communication.

Is that content going to be subject to the application of this bill? Where is the next layer? Where is this cut-off point where mailing lists become the subject of scrutiny under this legislation? Firstly, how under this legislation are people to raise a complaint about a mailing list? And, secondly, depending on the location of the server of that mailing list—and it could be anywhere—how do the formal take-down notices of private circulated correspondence occur? I would be interested in the minister's explanation of where these cut-off points lie within the definitions he has described.

I would be very interested to know what advice you have received with respect to the ability for records of personal communications—be it on these more informal or, indeed, more formal types of mailing lists—to actually be taken down or removed from the public record. Why? Because these emails have evidentiary status in a court of law. That has been established for quite some time. Indeed, the mechanisms and the processes that the government has talked so long about but has not, in fact, legislated to date formalise even further the role of email in terms of its status in the eyes of the law.

How do you apply a take-down notice to something where there is actually a statutory obligation upon those who store it to actually preserve it? Minister, if the issue is one of public access to this material, where do you draw the line on a mailing list as to what constitutes public access and what constitutes a series of private communications amongst two, three or a wider group of people?

Senator HARRADINE (Tasmania) (9.11 p.m.)—I am just a bit concerned about this amendment. There are groups that are attempting to distribute, far and wide, prohibited material, potentially prohibited material, refused classification material or illegal material using email. We are not talking about private communications between a couple of people, in fact, over the email; we are talking about a quite deliberate attempt by these hardcore porn merchants, largely, to utilise the email to send unsolicited mail into the home. That mail, of itself, is of such a character as to be highly offensive. For example, I have one here. It comes by the email. You open up your machine and click on what is news, and here it is. It is actually 'all teen, all hard core'. The description of the actual details of it, of course, would be offensive to this parliament and to the listeners. But this, having read the email, says, 'You have a free membership.' Click the link, and you have got the material downloaded. A week's free trial and then, of course, you are hooked.

Senator Stott Despoja—Brian, have you seen the name of that site?

Senator HARRADINE—I will not tell you what the name is. But, quite seriously, this is of quite considerable concern to a large number of people, and I am sure it is going to be of concern to the Internet service providers. They do not want to see that sort of material stacking up in their system. Minister, I don't think I have shown this to you. If I have not, I apologise. I may have shown it to one of your officials. Will this amendment exempt this sort of material? I would have thought that maybe it would have been caught by the provisions of the clause we are talking about. If anybody else wants me to, I could ask that this be provided to the minister.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.14 p.m.)—Senator Harradine does raise a matter of particular concern, and I think the reason why Internet content definition was drawn in such wide terms in the first

instance was to actually endeavour to catch offensive material by whatever means.

Senator Harradine interjecting—

Senator ALSTON—I am sure you could come up with other nom de plumes. We were also concerned that, as the industry rightly pointed out, the vast bulk of emails were not offensive. It is becoming the killer application in the Internet. It is the way in which many millions of people interact with one another. If you believe the likes of Telstra, they will have you sending emails rather than making phone calls in the not too distant future.

Senator Lundy—They have got you under the thumb.

Senator ALSTON—Well, you can read some extraordinary stories. I remember Scott McNeely of Sun saying that a Netscape employee sent something like 5,000 emails a year.

Senator Lundy—Is that all?

Senator ALSTON—It might have been more, I do not know. But he thought that this was not an optimum use of company time, and I can understand his concern. So on the one hand you do not want to discourage what is an entirely harmless and, in many ways, socially desirable form of interaction; but on the other hand you do not want to then broaden the definition in such a way that you allow through highly offensive material. So we have chosen the term 'ordinary email' to indicate that we do regard what ordinary people treat as emails as harmless and therefore not subject to the regime.

But material that Senator Harradine has given us an example of would not be characterised as ordinary email. It is simply using the mechanisms of the email medium to transmit pornography. If that is the case, then it should not be exempt any more than any other form of distributing illegal or highly offensive material should be. It is certainly not uncommon to find newsgroups being used for those sorts of improper practices, but I doubt very much that Senator Lundy's sherry and tennis club would be subject to too many complaints—

Senator Lundy—It is not a tennis club, it is a rowing club.

Senator ALSTON—A rowing club, all right. Pumping iron, whatever. I thought you were into downhill skiing these days, Senator Lundy, but it is probably an uphill climb on the other side of the chamber.

Senator LUNDY (Australian Capital Territory) (9.17 p.m.)—I think this particular aspect of the debate comes back to a fundamental point that we have been highlighting from the start: it does not matter what the government tries to do; ultimately, the only control can come back to the end user. As with many browsers and all the technological solutions available to the end user now in terms of filtering, the ultimate way of dealing with undesirable email is to make the adjustments on your particular email application in whatever shape or form that might arrive on your PC. There are mechanisms built within those applications to filter out any undesirable email, to the highest degree of specificity as to whom you want to receive from—be it white list, black list, whatever approach you choose to take. This is what we in the opposition have been saying from the start of this debate.

We have been saying that you can try and define and legislate and block content and mandate filters and do all of that, but ultimately, because this is the nature of the Internet, it will find its way through. Obviously Senator Harradine has been the recipient—

Senator Alston—So don't bother trying; is that what you are saying?

Senator LUNDY—It is not a question of not bothering trying; it is a question of picking reality over a false impression and a false approach that is not going to serve the outcome. The issue here is one of empowering and educating end users. How many people out there know that they have that capability within their email application? I do not hear you talking about that; I do not hear you giving money to the appropriate authority or anyone else, as yet, to talk to parents about that. I do not hear you putting facts on the table, like the encryption technologies that are available to actually bypass anything you seek to put in place anyway. We know that those technologies are there to bypass anything that you try to put in place legislatively. We know

from your rhetoric that you are seeking to put in place some attempt to regulate it.

As you have heard from us on many occasions, we support the intent; we just do not think that what you are trying to put in place will do the job. What will do the job is educating people at that end user point about how they can manage the receipt of content on the Internet, be it via email, newsgroups, the mailing lists or the World Wide Web. That is the key to this debate. More than anything else I think this discussion on this particular amendment has highlighted the fundamental flaw that lies within your proposition.

Senator MARK BISHOP (Western Australia) (9.21 p.m.)—As we wrap up this very interesting discussion we have had for the last half an hour, I thought I would put the position of the opposition on the record. We agree with the definition of 'email exclusion' proposed by the government. We believe that emails to newsgroups that are stored, archived, are caught by the definition in clause 2 of the bill. We believe the government is seeking to create an artificial distinction between emails and emails to newsgroups, and the whole debate has been on a faulty premise.

From our understanding of the Acts Interpretation Act, the intent of the parliament in this bill is clear and the government is achieving its purpose, which we support. We believe the mistake of the government is in this artificial distinction. We do not feel so strongly that we would disturb the bill of the government, but if others so move, so be it.

Senator LUNDY (Australian Capital Territory) (9.22 p.m.)—I want to return to my question which has not yet been answered: at what point are mailing lists captured by this definition? The minister has not answered that question, and I think that he should for the purposes of clarifying the intention and coverage of this particular clause.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.22 p.m.)—I think you are in grave danger of speaking with a forked tongue, Senator Lundy. The fact is that the definition is couched in very wide terms. We have just been told by Senator Bishop that it is wide enough to cover newsgroups without any amendment, and it would clearly cover mail lists where they are distributed and therefore accessible to others.

If you want to argue that somehow we should not go down this path because it is all too hard, then just say so and make it very clear. It is, I presume, your personal view that it is not worth having a broad definition; that you would have no definition at all. You would simply put out a press release saying you are all in favour of the spirit of Internet content regulation but, beyond that, you have no solutions. So, if that is your approach, we would like to hear it.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.23 p.m.)—The Democrats do support government amendment No. 7 relating to the exclusion of electronic mail. I note that this leaves in place a broadcasting exclusion, and I am just wondering if the minister would explain what he means by a 'broadcasting service'. I note that the definition in the Broadcasting Services Act covers radio or television programs but excludes services that are no more than data. I am just wondering what this means in the digital and, of course, Internet context where all transmissions are data. Is the intention to include a completely outdated or perhaps even useless reference to broadcasting to promulgate some sort of fake distinction? What is the intention? I am quite happy for the minister to respond to that first.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.24 p.m.)—In relation to the words in lines 14 and 15, broadcasting services are elsewhere regulated and they do not need to be referred to any definition under the Internet.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that government amendment No. 7 be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The question now is that government amendment No. 8 be agreed to.

Question resolved in the affirmative.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.25 p.m.)—I move government amendment No. 9 on sheet 239:

(9) Schedule 1, item 10, page 10 (lines 13 to 15), omit subclause (3), substitute:

(3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

[Clause 3 of Schedule 5—restricted access system]

This amendment is designed to require the ABA to provide a certificate that a restricted access system should be a disallowable instrument. That enables the identification of particular technology approaches such as PINs and conditional access systems.

Senator MARK BISHOP (Western Australia) (9.26 p.m.)—The opposition supports this amendment. The amendment is based on a recommendation to the Senate Select Committee on Information Technologies and would dictate an instrument made by the ABA in relation to determining what constitutes a restricted access system be a disallowable instrument. The amendment, on our understanding, merely clarifies an omission in the original bill that required the instrument made by the ABA to be made before each house of the parliament but did not expressly state that the instrument was a disallowable instrument. This was found by the Scrutiny of Bills Committee to be possibly in breach of the term of reference relating to the overextension of executive powers without due regard to parliament. It was discussed in the IT committee and, as I said, the opposition supports this amendment.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.27 p.m.)—I move government amendment No. 1 on sheet ER244:

(1) Schedule 1, item 10, page 10 (after line 24), after clause 4, insert:

4A Replacement of X classification

(1) If the *Classification (Publications, Films and Computer Games) Act 1995* is amended by replacing the classification X with another classification, this Schedule has effect as if each reference in this Schedule to the classification X were a reference to the other classification.

(2) To avoid doubt, the rule in subclause (1) applies even if the other classification is not equivalent to the classification X.

[Clause 4A of Schedule 5—replacement of X classification]

This amendment inserts a new provision in relation to the replacement of X classifications so that if the classification act is amended by replacing X with another classification—be it 'non-violent erotica', or 'non-violent pornography', which would be our preference—then it will continue to apply to X successors in title. In other words, despite any name change, you would still have that classification in the regime.

Senator LUNDY (Australian Capital Territory) (9.28 p.m.)—I would just like to ask the minister what his motivation was with respect to applying a bit of forward speculation to this amendment whereas forward speculation in so many other areas of this bill is so completely lacking.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.28 p.m.)—It is a bit beyond speculation, Senator Lundy. The government did announce quite some time ago that it would be replacing the existing X regime in respect of videos with a new classification of 'non-violent erotica'. As I have indicated, my preference is to change that terminology to 'non-violent pornography' so we all know what we are talking about. Given that that would then become the standard classification instead of X, it is only appropriate that that change should flow on to this legislation, otherwise you would be left with a repeal of X effectively repealing a whole area of classification in this legislation.

Senator LUNDY (Australian Capital Territory) (9.29 p.m.)—Surely, Minister, any subsequent legislative change with respect to classification of X transferring to NVE would come with a series of consequential bills that would deal with the matter in due course and at the appropriate time.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.29 p.m.)—That may or may not

be so. We are putting the matter beyond doubt now by making it clear that this is not meant to be a temporary measure; it is meant to apply to X in whatever manifestation it ultimately finds itself.

Senator MARK BISHOP (Western Australia) (9.30 p.m.)—Government amendment No. 1 on sheet ER244 seeks to amend the Broadcasting Services Amendment (Online Services) Bill 1999 to allow for the future substitution of the X classification with another classification. I assume this amendment has been drafted with the government's proposals for the adoption of the non-violent erotica classification in mind, as was indeed stated by the minister.

Labor has previously indicated its support for the adoption of the NVE category and believes that the category should be otherwise treated consistently with the current X classification for other purposes. The government adopted the NVE classification in April 1997 and, following the election last year of the Beattie and Bacon Labor governments in Queensland and Tasmania respectively, it obtained the consent of all of the state and territory censorship ministers to the NVE category's adoption. As a result, we believe the government should have had in mind, from the moment it considered drafting this legislation, its desire to introduce the NVE category.

As well, because of the way in which subclause 2 is drafted, the government could substitute any further classification for the X classification, no matter how narrow or broad. Clearly, it would be far better if this amendment were dealt with at the time the NVE classification is introduced. It would be a natural consequential amendment to this legislation resulting from that change. It would be much more sensible to deal with this change at the same time as introducing the NVE classification because I assume it is to this classification that the legislation will have to operate in future. It strikes us as being somewhat silly to make a prescriptive provision in advance. The opposition believes a far more sensible approach would be to leave this issue until that time.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.32 p.m.)—The Democrats share that opinion; that is, this is a rather odd and inappropriate amendment to be moving at this stage. I think it is unnecessarily prescriptive, in the way that Senator Bishop has outlined. I am wondering whether this amendment is evidence of a general intention to tighten the operation of the legislation through later amendments to this and other bills. This is clearly being put forward with particular changes. It is foreshadowing changes to the classification system. Yes, many of us may support the NVE category, but when those changes are confirmed that would be an appropriate time to change the legislation. Perhaps the minister would like to provide an outline of what current proposals are foreshadowed in this amendment. Is it simply NVE?

I note that this amendment not only allows for the replacement of X classification and continued operation, but even if the new classification is not equivalent. I do not see why we cannot revisit this amendment to the bill, as Senator Bishop suggested, as a consequential amendment at a later stage after this legislation has been passed, but this is quite inappropriate here.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.33 p.m.)—One cannot assume the precise form in which a renamed X might emerge, but our intention is to ensure that that new replacement regime is automatically translated across to the online services area. If we were to wait until that new legislation is in place and then talk about changes, you may well end up with two different forms of NVP, which is not what we have in mind. We have in mind that you mirror RC, X and R. If there are changes of nomenclature, then they ought to not impede the automatic translation into this regime. Subparagraph (2) is simply there to ensure that minor changes which might not be made do not then negate the whole purpose of transferring from one to the other. It seems to the government that it is a much tidier way of doing business because it ensures in advance that people under-

stand that X, or its replacement, are the standard by which material ought to be judged.

Senator MARK BISHOP (Western Australia) (9.35 p.m.)—The opposition has put its position formally on the record on this. We understand the comments just made by the minister referring to name changes. We regard the position of the government as being, at best, somewhat odd. Nonetheless, as I said earlier, we do not feel so strongly on the issue that we propose to disturb the government's bill.

Senator HARRADINE (Tasmania) (9.35 p.m.)—I hate to throw a little disturbance into what is obviously a peaceful exchange across the chamber. I would love to revisit some of the discussions that were held previously, but I know you would not want that to occur. For the record, Minister, I simply ask: do I recall correctly that you and the Attorney-General, in a famous statement of April 1997, actually did say, after the decision of the various ministers, that you would, in fact, amend the Broadcasting Services Act in accordance with what you are attempting to do now? It is a little belated, but I add my congratulations to you for honouring what, at least, was something in that particular statement.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.36 p.m.)—I hesitate to suggest that that was a disingenuous question to which you well know the answer.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.37 p.m.)—I move government amendment No. 10 on sheet ER239:

(10) Schedule 1, item 10, page 20 (lines 6 to 10), omit subclause (1), substitute:

Complaints about access to prohibited content or potential prohibited content

(1) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content using an Internet carriage service, the person may make a complaint to the ABA about the matter.

[Clause 20 of Schedule 5—complaints]

Government amendment No. 10 is simply designed to ensure that the focus of complaints in the first instance is end users rather than service providers. In other words, if a person has reason to believe that end users can access prohibited content, a complaint may be made. I think we are putting the emphasis where it ought to be. It does not dramatically change the approach, but I think it gets the balance right.

Senator LUNDY (Australian Capital Territory) (9.37 p.m.)—I think that, at this point in the debate, it is worth referring back to the original work of the Internet Industry Association in their endeavours, within their draft code of practice, to try to find a mechanism of complaint. Whilst this amendment is a technical one and we will be supporting it, it is worth noting that an Internet service provider cannot have control of the content that they hold. Indeed, when a complaint is made about content it is entirely appropriate that it is dealt with through a process that does not involve the ISP in the interpretation or subjective assessment of that content in any way, shape or form.

Continually, we have seen through the amendments the restating of this. I think that is a worthy endeavour because I do recall, Minister, for some time in the early stages of this debate, attempts on your part to try to sidestep the framework put in place—by our Constitution, no less—to provide for a telecommunications power that allowed the Commonwealth to involve itself in the transmission of voice data but not content storage.

This bill tightens up that distinction and protects Internet service providers from liability with respect to content that is placed on their servers via the technology of the Internet. This is a point that I think is not only recognised in this legislation but this series of technical amendments seek to reinforce it. I would like to put on the record that not only is this direction the correct one but I think we will find that the Internet service providers, with the goodwill that they have shown with their code and development to date, will provide a very cooperative base for developing the complaints mechanisms and responding to the process that the government is putting in place.

There is a lot of goodwill out there, Minister, and I think you did a lot to undermine and damage that goodwill with the path you set upon. I would like to acknowledge the diligent work of those representing Internet service providers, who have pursued their interests to the point where they are able to move forward within the framework that this legislation provides for the development of their code of practice.

I make these points notwithstanding our general complaint about the code of practice because, more than anything else, the people who stand to be most detrimentally affected are the ISPs. At the same time, they are arguably the group that have shown the greatest goodwill in cooperating with the government to try to find a worthy outcome. I think the minister should at least, at some point, acknowledge that goodwill shown by the Internet service providers and perhaps even put a little emphasis on acknowledging the flaws in the original draft of the bill and speak some words of support as to why you need to clarify their position. I will look forward to those comments, Minister.

Senator MARK BISHOP (Western Australia) (9.42 p.m.)—The opposition, as Senator Lundy mentioned, supports this amendment. Essentially the amendment is technical and the explanatory memorandum gives a concise analysis of what is involved. It reads:

> Subclause 20(1) of proposed Schedule 5 to the BSA provides that if a person has reason to believe that an Internet service provider is supplying an Internet carriage service that enables end-users to access prohibited content or potential prohibited content, the person will be able to make a complaint to the ABA about the matter.
>
> Concern has been expressed that the wording of subclause 20(1) can be read as implying that an Internet service provider is in some way responsible for the nature of the content on the Internet.
>
> To address this concern, Amendment (10) replaces subclause 20(1) and its heading by a new subclause 20(1) and a new heading. The new subclause omits the reference to an Internet service provider.

The previous clause could have been interpreted in such a way as to apportion responsibility for making the material available to ISPs, who clearly cannot be expected to monitor all content available through their carriage services. With those few brief comments, the opposition supports this amendment.

Amendment agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.44 p.m.)—by leave—I move government amendments Nos 11, 18 and 19:

(11) Schedule 1, item 10, page 27 (line 34) to page 28 (line 1) omit "substantially similar to", substitute "the same as, or substantially similar to,".

[Clause 34 of Schedule 5—anti-avoidance—special take-down notices]

(18) Schedule 1, item 10, page 33 (line 24), omit "substantially similar to", substitute "the same as, or substantially similar to,".

[Clause 43 of Schedule 5—anti-avoidance—notified Internet content]

(19) Schedule 1, item 10, page 34 (line 27), omit "substantially similar to", substitute "the same as, or substantially similar to,".

[Clause 44 of Schedule 5—anti-avoidance—special access-prevention notice]

These amendments are designed to ensure that the take-down provisions cannot be avoided simply by moving material onto a fresh site. So, in addition to material that is substantially similar, material that is identical should also be covered by the special take-down notice provisions.

Senator MARK BISHOP (Western Australia) (9.45 p.m.)—Why did the government feel driven to strengthen the wording from 'substantially similar' to 'identical'?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.45 p.m.)—Because we think that it may be a simple avoidance mechanism to transfer the precise material to another site, and then it would not be 'substantially similar', so it would not be caught. So if it is 'identical' but still offensive it ought to be caught up in the arrangements. We are just broadening that power to ensure that special take-down notices are able to be issued in those circumstances.

Senator LUNDY (Australian Capital Territory) (9.45 p.m.)—Once again, I draw the attention of the committee to the difficulties in attempting to regulate the Net and

make the point that the process by which material can be transferred from server to server, right around the globe, is a very simple process. Once again, this amendment highlights that technical challenge and the great difficulty that I think confronts any proposed regime for controlling content or limiting access to content on the Internet. It is a global network of computers communicating with each other and it is irrelevant, in terms of how I access content, whether this comes from a server in this country or whether this comes from a server in Peru. I think this, more than anything else, once again underlies some of the more unachievable aspects of what the government is saying they can achieve through the implementation of this bill.

Amendments agreed to.

Senator MARK BISHOP (Western Australia) (9.47 p.m.)—by leave—I move:

(4) Schedule 1, item 10, page 28 (line 14), omit "24 hours", substitute "48 hours".

[compliance with take-down notice]

(5) Schedule 1, item 10, page 28 (line 18), omit "24 hours", substitute "48 hours".

[compliance with take-down notice]

(6) Schedule 1, item 10, page 28 (line 22), omit "24 hours", substitute "48 hours".

[compliance with take-down notice]

(9) Schedule 1, item 10, page 35 (line 10), omit "24 hours", substitute "48 hours".

[compliance with access-prevention notice]

(10) Schedule 1, item 10, page 35 (line 15), omit "24 hours", substitute "48 hours".

[compliance with access-prevention notice]

There are essentially three different propositions available in these amendments and I will discuss the opposition amendments at the same time as I discuss the government's proposed amendments. The bill contains a take-down notice of 24 hours and, as we sat through the Senate select committee inquiry on the issue of 24 hours, it was a recurring complaint of industry that 24 hours was insufficient time. If offensive material has been the subject of complaint and the subject of inquiry by the ABA and, as a result, has been the subject of a take-down order, industry complained to us that 24 hours would be insufficient time for them to properly attend to the lawful command of the ABA.

The opposition, in considering that issue, came to the view that there was some substance to the complaint of the industry. In particular, as we all now know, this is an industry that is characterised by half a dozen large providers—Telstra Big Pond and the like—a degree of medium sized providers and a significant number of smaller providers. Some of those smaller providers, being so small, are one-person operations or husband and wife operations with one casual or part-time employee. They are not really different or distinct from many new industries. There is a concentration of volume and value at the top, but the barriers to entry are not so high that persons with modest amounts of capital can enter, set up a business, capture a degree of the market and turn their small business into a viable concern.

Of course, if you are a one-person operation or a husband and wife team or you have only one or two employees, it is not practicable to be in attendance at your business all of the time. I think it is fair comment that a lot of small business operators in a lot of industries do work excessive hours—12, 13 and 14 hours a day, seven days a week, are not untypical and, indeed, a range of surveys increasingly demonstrate that is becoming the norm in our society. I think it is fair to take the evidence at face value that a lot of the smaller operators in this growing industry are already working excessive hours and it is not unreasonable that they have some evening time and some of the weekend to themselves.

So the problem would arise that, if the ABA—acting lawfully and properly, pursuant to complaint and investigation—should issue one of the various take-down notices in the bill and deliver and serve it properly on the ISP, the operator of the ISP may well be away from his place of business for 24 or 48 hours and hence unable to comply with the directive of the ABA. That is obviously going to occur and it would be silly for us to pretend that it is not going to occur. Indeed, the ABA might be going about its business quite properly in issuing the take-down notice at midday on a Friday and serving and deliver-

ing it in the early afternoon, but the operator of the ISP might not access the notice, for no fault of his or her own, until opening time of business on Monday. That is a result, but I am sure it is not one that the government wants. It is certainly not a result that the opposition would countenance in any way. It is just an example of silly regulation that is not appropriate or necessary.

The government has taken on board some of those comments, because our amendment seeks to extend that period of notice, the take-down notice, the period of compliance by the ISP operator, from 24 hours to 48 hours. We considered going out longer, but I think there has to be a line drawn and, whilst a person can legitimately be away from his business for 24 or 36 hours, in the ISP industry you are in a service industry and you do have to comply with the demands of your subscribers, of consumers, and 48 hours struck us as being a reasonable position.

The government has come back with an alternative proposition that the period of notice, the take-down period, be extended from 24 hours out to 6 p.m. on the following day of business. For example, if a notice was served at nine o'clock on a Thursday morning, the ISP operator would have until 6 p.m. on the Friday to take down the notice—certainly two full days of business, perhaps not 48 hours. I think it is fair to characterise the government's proposed amendment as a serious reaction to the legitimate complaints made by those witnesses in the industry to the IT committee inquiry.

The opposition regards it as a halfway house. We think, all things being considered, that extending the period from 24 hours out to 48 hours is a preferable solution. It avoids any grey periods, everyone knows the outside boundaries and they have to comply. So our position is that we will press on with the position of 48 hours and see what emerges from the comments of the other parties.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (9.54 p.m.)—I was keen to hear the arguments put by both the government and the opposition on the amendments specifically in relation to the take-down notices. I think the government's amendments indeed are a reaction to evidence presented before the Senate select committee's inquiry and it is a not unreasonable response to that evidence. While I understand Senator Bishop's concerns that it is not necessarily a 48-hour period as outlined in the opposition amendment, I am quite attracted to the government's definition of 'business day' and also ruling out a Saturday or a Sunday or a public holiday in the place concerned. At this stage I am inclined to support the government amendments, unless there are issues that I have failed to acknowledge in them. But I think both amendments are quite worthy and I do not see them as necessarily incompatible.

Senator Lundy—You can support both.

Senator STOTT DESPOJA—Senator Lundy interjects, 'Can you support both?' Certainly, but as they are currently drafted it may be a difficulty. I would like to see the Labor Party perhaps take into account the definition of the term 'business day'. I do not see why that cannot be incorporated. If I am incorrect, perhaps someone could outline that for the chamber. At this stage the Democrats are inclined to support the government amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (9.56 p.m.)—Senator Stott Despoja is correct that 48 hours is a blunt instrument. It does not pick out even Friday night to Monday morning, let alone public holidays, long weekends, Easter and the like. I do not think it would be the intention of the opposition that simply because you happened to be the victim of a long weekend you would be limited in your rights. Our approach allows the flexibility that is required. In a normal working week, it would be less than 48 hours, as it should be, because action ought to be taken as promptly as possible. But where it is reasonable not to expect people to be at work then it takes account of those working arrangements. So we think ours is the problem mix of urgency and accommodation, and I urge the Senate to support them.

Senator LUNDY (Australian Capital Territory) (9.57 p.m.)—I would just like to make a few comments with respect to the

impact on small Internet service providers. These amendments have come forward in direct response to evidence received through the IT select committee about the burden imposed upon those small businesses and their ability to comply. It is relevant in this debate because of the relationship between small ISPs and larger ISPs and their operation in what is an intensely competitive environment. If this bill imposes restrictions on the smaller ISPs, you are actually putting in place a mechanism that will somehow thwart or impact upon their ability to compete in an environment. Obviously, larger ISPs do have 24-hour shifts operating to keep their businesses up and running, so their ability to comply at short notice is far greater. It would be with the smaller ISPs, which are one-, two- or three-person operations without that round-the-clock staffing of their technology, where this problem would arise.

I am not sure if I will have the opportunity to touch on this issue later in the debate, but the difference in the impact on small and large ISPs with respect to the various provisions of this bill should be of major concern to the government and has been of major concern to the opposition and other parties. With regard to its representation in the form of the amendments, as my colleague Senator Bishop said, we needed to do something, and it is interesting to see that the government has also seen it necessary to do it.

Once again it indicates the lack of thought and lack of preparation in the original drafting of this legislation that once again the government neglected to consider the issues confronting small businesses which are out there on the ground and subject to the provisions of this bill, if it is in fact to be supported in this place. Why is it important not to put in place legislation which will undermine the ability of these small Internet service providers to operate in the marketplace? It is important because they offer a range of services, a diverse service. If you support the notion of having some consumer choice and the presentation of a range of methodologies to end users on how to resolve their particular concern about online content, it is absolutely essential that there be a vast range of Internet service providers from which they can actually choose to source their service.

Earlier in the day we had quite a lengthy debate about the various competing filter technologies. What if there is a complete consolidation of ISPs, facilitated by legislation that puts pressure on the smaller ones and puts them out of business? What if the filtering options that subsequently become available in the market are presented to the community in a way where diversification is reduced and consumer choice becomes severely curtailed? I suppose these are esoteric concepts and a lot of what ifs, but this government, within their rhetoric on many other pieces of legislation before this place, probably most notably one recently in relation to unfair dismissals, consistently emphasise the impact on small business. Yet with this particular bill it became an irrelevancy, and the concerns of small business are only now being addressed in the context of a range of amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.02 p.m.)—I might just indicate that as far as the actual business hours of large ISPs, which might effectively be open 24 hours a day, are concerned, they would not automatically have the benefit of 6 p.m. the next business day. The arrangements require them to take action as soon as practicable and in any event within that period. So it is only an outer limit rather than simply the standard that they could take advantage of.

Senator Lundy—Take a reality check.

Senator ALSTON—All I am doing is pointing out that it may well be more reasonable for smaller ISPs to take advantage of a provision that allows them to go to the end of the following business day, but it might not be reasonable for larger ISPs, which have the capacity to address the issue immediately, even if it is over weekends.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.03 p.m.)—I think the opposition is correct in pointing out that the fact that we need to change the take-down notice provisions is an indication of the haste in which this bill was prepared. Having said that,

the government has responded. I am wondering whether the minister would give an undertaking on behalf of the government that, if for some reason the amendments pass or the government amendment passes in relation to business days, et cetera, and if it is seen not to be working, it is not going to be practical, you will review that and obviously come back to the chamber with a view to making it more appropriate. I am sure that the government would be open to give such an undertaking. It is not a big thing to come back, surely.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.04 p.m.)—I think we are all doing the best we can. Clearly everyone would reserve the right to come back to the chamber to seek amendments if they are glaringly required, but it does not seem to us, on the advice we have to date, that our proposed form of words is likely to be draconian. Certainly we think the industry would prefer our wording to the strict 48 hours. We will obviously keep it all under review in a general sense and if it becomes apparent that changes are necessary then of course we would not rule those out.

Amendments not agreed to.

Amendments (by **Senator Alston**)—by leave—agreed to:

(6) Schedule 1, item 10, page 7 (after line 30), after the definition of ***Australian police force***, insert:

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

[Clause 2 of Schedule 5—definition of business day]

(12) Schedule 1, item 10, page 28 (line 14), omit "within 24 hours", substitute "by 6 pm on the next business day".

[Clause 35 of Schedule 5—compliance with rules relating to prohibited content etc.]

(14) Schedule 1, item 10, page 28 (line 22), omit "within 24 hours", substitute "by 6 pm on the next business day".

[Clause 35 of Schedule 5—compliance with rules relating to prohibited content etc.]

(22) Schedule 1, item 10, page 35 (line 10), omit "within 24 hours", substitute "by 6 pm on the next business day".

[Clause 45 of Schedule 5—compliance with access-prevention notices]

(23) Schedule 1, item 10, page 35 (line 15), omit "within 24 hours", substitute "by 6 pm on the next business day".

[Clause 45 of Schedule 5—compliance with access-prevention notices]

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.06 p.m.)—by leave—I move:

(15) Schedule 1, item 10, page 29 (after line 1), after clause 36, insert:

36A Application of notices under this Division

A notice under this Division applies to particular Internet content only to the extent to which the content is accessed, or available for access, from an Internet site, or a distinct part of an Internet site, specified in the notice.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

[Clause 36A of Schedule 5—application of notices under this Division]

(24) Schedule 1, item 10, page 35 (after line 23), after clause 46, insert:

46A Application of notifications under this Division

A notification under this Division applies to particular Internet content only to the extent to which the content is accessed, or available for access, from an Internet site, or a distinct part of an Internet site, specified in the notification.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

[Clause 46A of Schedule 5—application of notifications under this Division]

These amendments simply require a further specification in order to properly identify Internet content. The source of the content, normally the URL, is obviously a required element of properly identifying material and bringing it under the regime.

Senator MARK BISHOP (Western Australia) (10.07 p.m.)—This is a technical amendment. As the minister outlined, it makes more specific the directions that are issued in respect of part of a web site. The opposition does not have any problem with the amendments and we will support the government's position.

Amendments agreed to.

Senator MARK BISHOP (Western Australia) (10.07 p.m.)—by leave—I move:

(7) Schedule 1, item 10, page 29 (lines 31 and 32), omit "the matters set out in subsection 4(3)", substitute:

:(a) the matters set out in subsection 4(3); and

(b) whether the particular steps are technically feasible, commercially viable and cost effective; and

(c) whether the particular steps enable end users to be better informed about the use of, or assisted in the actual use of, filter devices for self-regulation of Internet content.

[reasonable steps]

(8) Schedule 1, item 10, page 35 (lines 2 and 3), omit "the matters set out in subsection 4(3)", substitute:

:(a) the matters set out in subsection 4(3); and

(b) whether the particular steps are technically feasible, commercially viable and cost effective; and

(c) whether the particular steps enable end users to be better informed about the use of, or assisted in the actual use of, filter devices for self-regulation of Internet content.

During the committee inquiry there was, from memory, extensive discussion with Mr Granger and Ms Holthuyzen. The opposition put, through its questions to the witnesses, a number of questions on notice arising out of this matter and foreshadowed that we might have a problem with respect to clause 37(2). We believe the reference to clause 4(3) on its own is too narrow. In response to questions, the witnesses advised that the matters set out in paragraph (b), 'technically feasible, commercially viable and cost effective', were appropriate matters for consideration in a discussion of reasonable steps.

Indeed, I have a memory of a lengthy discussion with Mr Granger on what was meant by reasonable steps. He outlined to the committee the sorts of things that he thought were appropriate to be considered by the ABA and what was comprehended by reasonable steps. The examining senators had to put a series of propositions to Mr Granger as to the relevance of commercially feasible, commercial contracts and a range of technical issues. After time, Mr Granger did respond. The conclusion of that evening's discussion was not particularly satisfactory and Mr Granger undertook to go away and consider the position of the agency and respond in writing to the opposition. That question was properly responded to in due course. When the response came and we considered it, it was difficult to argue against the proposition outlined by Mr Granger.

The phrase 'technical feasibility, commercial viability and cost effective' has been running around now for a couple of months. The reason we regard this as a matter worth contesting, as an issue of significance, is that by analogy if you allocate a sufficient degree of capital any enterprising person can grow strawberries in the Arctic. You just need the heating, the protection, the water and the soil. It can all be imported if cost is not an issue. It can be achieved with the required degree of capital. It is possible to mandate or to say that reasonable steps include million dollar technology, but we do not believe that to be the intent of the government.

There has been no suggestion by the government in the committee process or in negotiations over the various amendments that it is their intention to mandate particularly expensive forms of technology for small-end ISPs. It would certainly be possible to mandate it. The effect would be to put small-end ISPs out of business because they do not have the capital to purchase the technology. If they did, it would probably achieve the purpose of the government. The opposition does not believe that is the intent of the government and, accordingly, the amendments we put seek to overcome those sorts of issues and problems. We are keen to ensure that the act sets out an effective code for the ABA to have proper regard to in the discussion in clause 37. They are the thoughts that have been motivating us and why we have sought at this stage to have the phrase 'technically feasible, commercially viable and cost effective' included. They are appropriate matters for consideration and we urge the government to support our amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.12 p.m.)—I will indicate the government's attitude. We have our own amendment, to be considered immediately after this one, that will address the issues of technically feasible and commercially viable. We use the expression 'technical and commercial feasibility of taking the steps' and then we simply reiterate the reference to section 4(3).

The great concern we have in relation to that opposition amendment is that it goes on and adds a clause which would effectively allow service providers to avoid being caught by the legislation because reasonable steps could well be regarded as including the fact that the ISP has taken steps to inform end users about what filter devices are available. In other words, the whole purpose of the exercise is to ensure that they put systems in place irrespective of whether parental education programs are undertaken. We do not want to see a means of avoiding all of that by adding in an additional ground of reasonableness which may well tip the balance in favour of giving them an exemption largely because they have embraced self-regulation. That is not what is intended here.

We certainly encourage ISPs and others to draw the attention of parents and end users to the availability of filter technology, but this is not an either/or arrangement—it ought to be both. The great danger we see in the opposition's amendment is that it would allow people to slide around what we think is a reasonable test of technical feasibility and commercial affordability into areas of whether they have taken reasonable steps to promote self-regulation. Whilst we hope and encourage them to do that, it should not be a basis on which they would be exempt from take-down notices.

Senator LUNDY (Australian Capital Territory) (10.14 p.m.)—This is one of those crunch points in this particular legislative debate. What we are discussing here is the issue of do we or do we not mandate the provision of filtering technologies at ISP level. It is very interesting to hear the minister slide around, in his own words, about whether or not they are actually moving down a path of mandating filtering technologies at ISP level. The government's amendments that the minister has foreshadowed do mention the words 'technical and commercial feasibility', but I would argue that they have gone no further in progressing the position than the minister's weasel words during public discussion and as recorded in a range of press releases and media commentary.

The minute the minister realised that his promise of making the Net safe for children was completely undermined by the fact contained in the CSIRO report entitled *Blocking content on the Internet: a technical perspective*, he adjusted his rhetoric to say, 'Technical feasibility includes this qualification of what is actually technically and commercially viable.' The conclusion of that report I mentioned goes to the heart of the matter and says, in the first instance, 'No, it is not technically feasible to achieve the blocking of content or the filtering of content.' Then the minister, through the National Office of Information Economy, sought an additional opinion from the CSIRO, which did serve the purpose of helping the minister adjust his rhetoric in relation to what was technically feasible and what was not. It went like this: the minister said, 'Yes, it is technically feasible to implement filtering technology, but it is not going to be 100 per cent effective.'

So what is technically feasible and what is not? What we know is that it is technically feasible, because the products actually exist, to implement some sort of filtering regime at a range of levels including the ISP level and certainly including the ability of the end user to install on their own PC some form of filtering application. So we know it is technically feasible. But what it is not is effective. It is not effective because it cannot provide the guarantees of which the minister has been so quick to try to assure the public.

So here we have an amendment in which the government are arguing they are putting qualifications of technical and commercial feasibility. It is an interesting step. I do not think it changes their position one iota, whereas the opposition's amendment identi-

fies the substance of the issue—that is, we do not support the mandating of filtering technologies because they are not effective, albeit they may exist and in some respects, depending on your definition, may be technically feasible. The opposition's amendments go a step further and, once again, to the heart of the matter—it is empowerment of end users. The third part of our amendment states:

(c) whether the particular steps enable end users to be better informed about the use of, or assisted in the actual use of, filter devices for self-regulation of Internet content.

This is a crunch point in this legislation, as I said. It is about putting in place a mechanism that encourages Internet service providers to tell their clients about what options are available to them in the first instance. Surely this is one of the most useful mechanisms for educating the community—not trying to pretend that you are not mandating filtering technology, not trying to pretend that you are qualifying it on commercial grounds, but stating unequivocally that part of what constitutes reasonable steps is the proactive presentation to potential Internet users of the range of options that are available to them. They are not predetermining a filtered system, but our amendments best reflect what is the most effective way to enable the community or parents—let's be specific about this; it is about parents protecting their children from undesirable content—to have the power, the capability, the knowledge, the confidence and the skills to put in place something that suits them.

Again, this is a question of diversity. If this provision is not included with respect to what constitutes reasonable steps, what options are parents going to have to make informed choices about the range of filtering technologies? This actually requires or identifies particular steps being taken by ISPs to promote differential services. It is interesting that in that first report by the CSIRO the whole notion of differential services was one of the key recommendations. It does go to the point I raised earlier about the importance of having a diversity of options available for the filtering of content for people who choose to go down that path.

It is important that users of the Internet also have a choice not to filter their content. More than anything else, the government's plan lends itself to not allowing Internet users in Australia the option of choosing not to filter their content. I am concerned that, despite this qualification identified in the government's amendment, that option will not be available to some people, perhaps inadvertently because they will sign on with an Internet service provider that offers a filtered feed service and for whatever reason—perhaps lack of awareness or lack of communication by the service provider—people will get a filtered feed in terms of the content they can access and they will not be aware of it. The issue of end user empowerment once again comes to the fore. I believe that only with this additional item contained within our definition of what constitutes reasonable steps are we at least trying to steer this bill back in the right direction and putting the emphasis on end user control of content.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.23 p.m.)—Can I simply respond to that by saying that Senator Lundy—I presume, unintentionally—fundamentally misunderstands the whole concept of what is being put forward here. She said that this is about encouraging information about end user empowerment, which is a term that seems to get a run every couple of minutes from Senator Lundy. I do not know whether it has currency at branch meetings, but it does not mean much in the real world. If what you want to do is encourage parents to take up all of those options, then you will support NetWatch and a range of other mechanisms and you can get out there and spruik to your heart's content.

This is in no shape or form an attempt to close off an option to encourage parents to be as fully informed as possible. What this is about is what should constitute reasonable steps in the absence of a registered code. Under our proposal, reasonable steps would be constituted if you have had regard to the matters set out in subsection 4(3) and the technical and commercial feasibility of taking the steps. The opposition has gone a crucial

stage further and said that a basis for saying a provider has taken all reasonable steps is if it has undertaken some sort of end user education campaign. That is an entirely different proposition to saying, 'Are you in favour of end user empowerment?' What you are saying is that it may be sufficient for you to be exempted because you have got some education program going. That is not what this is about at all, and you ought to be absolutely clear on what you are saying.

Your amendment takes the matter a whole stage further to the point where you will effectively allow people to be in a situation where it is technically feasible and commercially affordable but, nonetheless, they will be immune from action because they can demonstrate that they have taken particular steps to ensure that end users are better informed. That is not the basis of this whole approach. It might be your preferred escape route. I have heard what you say on a regular basis and you are not interested in regulating the Internet at all; you have a preference exclusively for information and education campaigns. So be it, but that is not the scheme of this legislation, and you should not insert such a basis for exemption under the guise of claiming that it is all about end user empowerment.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (10.26 p.m.)—Just briefly, I think it is unfair to suggest that non-government members in this place are not in favour of some kind of regulatory regime, but it is quite fair to say that some of us oppose the unworkable and undesirable aspects of this legislation. The Democrats believe that the reference to 'technically feasible, commercially viable and cost effective' are all appropriate and valuable references, but we do query the reference to filtering devices in this part of this bill.

The Democrats are aware of the importance of end users being empowered and of education. We are conscious of some of the difficulties in relation to the regulation, operation and use of filtering technologies. I certainly see that whole notion as part of a broader solution—it is an important part of a better solution—but I do not know if we should be introducing the filtering devices into this part of the bill. I am not quite sure if it is appropriate, but I do think it may be a bit dangerous to put it in here although I am happy to hear more arguments from the opposition.

The opposition have put on record their concern about mandating in relation to filtering technologies. I share that concern. The Democrats have pointed out in the chamber during this debate and in the committee report our concerns about those technologies for a range of reasons. Perhaps for different reasons to Senator Alston, I am not sure, I think it is quite inappropriate to introduce that notion into the legislation at this stage. I look forward to other arguments from the opposition as to why they have it here in the amendment.

Senator MARK BISHOP (Western Australia) (10.28 p.m.)—I will briefly respond to the point raised by the minister and then come to the comments raised by Senator Stott Despoja. Senator Alston alleges that, by including paragraph (c) in our amendment, the opposition is somehow or other making the reasonable steps process ineffective and easier to achieve and that we have effectively destroyed the operation of this critical clause within the bill. That is a plain and obvious misrepresentation of the opposition's position.

If you look at the three paragraphs—(a), (b) and (c)—you will find at the end of paragraph (a) and at the end of paragraph (b) the word 'and'. So it is (a) and (b) and (c). If the word 'and' was not there and the word 'or' was there—so it was (a) and (b) or (c)—the minister would be right. But by using the word 'and' at the end of paragraph (b)—so it reads (a) and (b) and (c)—it includes all the reasonable steps identified by the government and, in paragraph (b), whether those steps are technically feasible, commercially viable and cost-effective. Where did we obtain those words? We obtained those words from the government's own explanatory memorandum and the minister's press statements. So on those two paragraphs, we are on all-fours with the government. In paragraph (c), all we offer is the option of ISPs advertising, educating and informing.

Progress reported.

ADJOURNMENT

The PRESIDENT—Order! It being 10.30 p.m., I propose the question:

That the Senate do now adjourn.

Geelong Road

Senator SYNON (Victoria) (10.30 p.m.)—I rise tonight in my capacity as patron senator for the Victorian electorates of Corio and Lalor. When I first became a senator in May 1997, one of the first tasks I undertook was visiting all my patron seats. When talking to local constituents I asked them all the same question: what is the one most important issue for your area? The answer that dominated in Corio and Lalor was 'upgrade the Princes Highway'. During my term I have made regular trips to the Bellarine Peninsula and, without fail, every time I go there I am asked the same question: when is the Geelong Road going to be upgraded?

The city of Geelong and the surrounding areas are of increasing national importance. Tonight I wish to highlight some of the worthy results that have been achieved in Geelong through the active involvement of the City of Geelong council and local state members of parliament. Included in these is the addition of an $11.4 million watersports complex. The Central Activities Area Revitalisation is a project involved in the greening of Geelong to promote aesthetic appreciation of the area to further induce retailers to choose this city. Similarly, there is $30 million for the waterfront project. No-one who has been to Geelong could fail but be impressed by the regeneration of the harbourside and waterside down there. More recently and very importantly Qantas has announced a $30 million investment with its intention to locate its Boeing 747 maintenance hangar at Avalon, which will bring a much needed industry boost and more jobs into the local area.

The city of Geelong provides Victoria with one of its greatest industrial centres. The area has car manufacturing plants, glass works, petroleum refining, paper mills, dairy farming and clothing production, to name but a few. Geelong is located on Corio Bay with a busy port linked via the national standard gauge rail. These all contribute to make Geelong and Corio one of Victoria's most important industrial centres. However, to reach its full potential, this area needs to be connected to Melbourne and the only road that provides this connection is the Princes Highway West or, as it is better known, the Geelong Road. The electorate of Lalor supports several important industries such as the petrochemical and aerospace industries, as well as a saltworks and market gardens. The highway runs through the south-east of the electorate and, once again, it is the main link between many of the industries and the city of Melbourne.

One of my first speeches to the Senate was regarding the upgrading of the Princes Freeway West to national highway status. I urged back then, as I still urge now, that Geelong Road's importance be given prominence. Why is the state of this road such an issue of great concern to all the people who live in these two electorates? A look at the facts is illustrating. Between 1990 and December 1998, 86 people have died on the road. The total number of crash victims exceeds 6,000, with 1,000 of them being injured as a result.

The journey is not a long one compared with many roads in Victoria—it is around an hour from Melbourne to Geelong in non-peak traffic. But, despite this short distance, the number of white crosses that mark deaths on the road has kept increasing. Having driven down the road regularly, I have witnessed serious accidents and I am ever grateful that I am not required to drive along it on a daily basis. However, thousands of Victorians are compelled to drive on the highway daily. In some sections it is estimated that the road carries approximately 132,000 vehicles per day—they have no choice. The road is not dangerous because of particularly vicious corners, crests, dips or hills; the main danger comes from the vast carriage of traffic travelling on far too few lanes.

Putting aside the high risk and accidents that frequently occur, we must also consider the other effects of the resulting delays. The people in the cities of Melbourne and Geelong are suffering routine economic hardship because of the delays caused by the numerous accidents and the resulting traffic jams along

this road. These accident-induced delays are above and beyond the usual congestion of peak-hour traffic.

Geelong Road is a road of great economic significance to Victoria, and its upgrading will result in further growth for the Victorian economy, as I outlined in my first speech to the Senate. I am heartened by the news that the Victorian government is willing to contribute $118 million towards the upgrading of the road. I, along with many other Victorians, welcomed this announcement. The estimated expenditure to upgrade the road and change its classification is just over $200 million, according to VicRoads. So we are only some of the way there.

Tonight I would again like to add my personal plea that any further reviews to Victoria's federal road funding arrangements give urgent consideration to the Princes freeway upgrade. The federal government, in a prudent and responsible budget delivered just two weeks ago, has put aside $195 million of additional funding to the national highway and Roads of National Importance (RONI) programs. These include worthy projects such as the Goulburn Valley Highway, maintenance of the Hume Highway and improving safety on Victoria's national highway network, including further duplication of the Calder Highway between Melbourne and Bendigo. I hope that future reviews will see the merits of the Geelong Road upgrade.

No-one can visit the dynamic city of Geelong and environs without being impressed by the resilient spirit, dogged determination and optimistic vision of the local people and the councillors of the city of Geelong. My term as a senator for Victoria is due to end soon and I am disappointed that I will be leaving this place with the knowledge that the Geelong Road is still in a fairly deplorable state. I have made recent representations to my colleagues the federal Treasurer, the Hon. Peter Costello, and the Prime Minister on this issue. An upgrade of this grisly stretch of road will bring positive safety, social and economic benefits not only for the people of Geelong but also for all of the people who rely on this road either directly or indirectly.

Questionable Trading Practices: National Facsimile Directory

Senator WEST (New South Wales) (10.36 p.m.)—I rise tonight to draw attention to a practice which I think is, to put it mildly, questionable and I think bordering on illegal perhaps and a rort. I go back in history to last year when my office received a phone call from a group calling themselves the National Facsimile Directory. On the phone their first approach to us was to ask whether my staffer would confirm that this wording was the appropriate wording for the entry that they were going to put in the directory. We do not operate like that in taking phone calls—and there was money attached—and they were told to put it in writing.

We then received a one-sheet facsimile saying 'proof wording'. When we looked at what was written, it outlined my name, the street address, the phone number and the fax number, and listed us as a political organisation. All of the information contained in that was nothing more than was available in the *White Pages* and, for that matter, the *Yellow Pages* that Telstra puts out each year—for nothing, I might add or, if it is paid for, it is paid by the Department of Finance and Administration.

After we received the second facsimile last year, I wrote back across the top of it that if they were a reputable organisation they would know that this was not the correct practice to adopt, and I did not hear any more. I thought it had all gone away. But in April of this year I received—we have received several—a phone call again asking whether this was the correct wording for our entry in the National Facsimile Directory. Fortunately, my senior staff member took the phone call and said, 'Put it in writing.' Again, we got the usual one-page blurb from them with no more information than is available on the public record. We ignored that and got a further fax, followed by another fax.

There is always a price attached to this as well. The price that we were being quoted was something like $640. I actually searched the Internet today and found their directory. Everybody's entry there is about four or five lines long, and it obviously has not been

updated since at least before the election because they have listed a number of old departments. I bet the departments do not know they have paid this money. There will be some interesting estimates questions for them.

They rang—they also adopt a very aggressive phone manner—demanding that we approve the entry there and then, to which none of my staff would agree. I took one of the phone calls and left the person on the other end of the line with no uncertainty as to what I thought of their organisation—that I thought it was a rort, that if they were reputable they would not be doing this, that they would not be undertaking business like this, and that it was not the way I expected a reputable organisation to conduct their business.

I was advised by this particular person that she would remove my name and my staffers' names from their database. I thought that I had fixed it. But on 14 April we received another note from them with a bold headline saying 'Important notice', again addressed to my staff member, advising me that we had not requested inclusion in the entry faxed to them.

Senator McGauran—Give it to *A Current Affair*.

Senator WEST—I can say things in the chamber that I cannot say on *A Current Affair*.

Senator McKiernan—You can say them, but you can't afford to pay for them.

Senator WEST—That is probably correct. Again, they are telling me that it is available and what the package consists of, but this time they are offering a holiday getaway with the package as well. The price has gone from $640 to $95. I had had it by this stage, because this was the third or fourth correspondence we had had from them, and I referred them to the New South Wales Department of Fair Trading, who acted very promptly. They wrote me a reply letter which I received in the office on 14 May.

They identified the principal of the group which runs the National Facsimile Directory, which is a company called Telecommunications Group Australia. The principal is Mr Desmond John O'Keefe, who is not only the principal but the owner of the National Facsimile Directory. On the Department of Fair Trading's request he agreed to withdraw both my name and my staffer's name from his company's database. I thought that was wonderful. The service from Fair Trading was excellent. Blow me down—that was on 14 May—on 18 May we received a phone call. This time, it was the Telecommunications Toll-Free Directory. All they want this time—this is the 1800 number—

Senator McGauran—Is that the same group?

Senator WEST—Hang on, Senator McGauran, you are pinching my punchlines. All they want this time is $295. We told them again to put it in writing, so again the one-page blurb comes. I said to my staffer, 'Just grab the other one and see if the addresses are the same.' She came to me saying, 'No, the addresses are different.' But I looked at the telephone numbers, and it was the same 1800 number and the same 1800 fax number. It says that it is also a division of Telecommunications Group Australia—the same ACN, the same email address. I was incensed at this, and I thought I would ring them up and abuse them. I thought, 'Blow that. I will go up and talk to Fair Trading.' They are only three doors away from my office.

While I am actually talking to Fair Trading a second facsimile arrives, again with 'Important notice' written on it. The $290-odd has now gone down to $98 dollars. I have to say that when we looked at the Internet site today, only two of my colleagues are listed there, and they have failed to note on the listing that the 1800 numbers only work in the state in which they reside. So I have passed that on to Fair Trading for them to look at.

I then decided to ask the Parliamentary Library to do a company search for me of Mr Des John O'Keefe with those ACNs. It appears he is currently a director and the company secretary of the Australian Computer Awareness Association. He is a previous Principal Executive Officer of Australian Yearbook Publishing Pty Ltd, which ceased

to exist on 7 July 1995 and is deregistered. He is a previous director of Australian Purchasing and Tender Service Pty Ltd. That is in 'external administration', which I understand means that the auditors have been called in.

He is a previous director of Australian Trade and Directory Publishing Pty Ltd. That company is deregistered. He is a previous director of Australian Yearbook Publishing Pty Ltd. That is deregistered. He is a previous director of Jemadale Pty Ltd. That is deregistered. He is a previous secretary of Australian Purchasing and Tender Service Pty Ltd. That is an external administration. He is a previous secretary of Australian Trade and Directory Publishing Pty Ltd. That is deregistered. He is a previous secretary of Australian Yearbook Publishing Pty Ltd. That is deregistered. He is a previous secretary of Jemadale Pty Ltd. That is deregistered.

In the organisations on this list, he is noted as being a current director of Telecommunications Group Australia Pty Ltd, which position he was appointed to on 4 July 1997. That company has strike-off action in progress. My understanding from the information that the Library gave me after their conversations with the ASIC is that this indicates that this company has failed to lodge all the financial statements and reports that are due by the correct dates. They have been written to by the ASIC, asking them to comply by a certain date, after which time, if they fail to comply, they will be deregistered. So they are obviously on very shaky ground. So there are two strike-off actions in progress. Australian Business Publishing Pty Ltd is deregistered, Australian Industrial Marketing Pty Ltd is deregistered. Strike-off action is in progress in relation to Ibiza Queensland Pty Ltd, and Australian Business Publishing Pty Ltd again is noted as being deregistered.

It is quite apparent that the gentleman that is running this organisation has a very poor history in business. His actions and attitudes and the things he is expecting his staff to do are not appropriate from members of business in this country.

National Rural Finance Summit

Senator SANDY MACDONALD (New South Wales) (10.47 p.m.)—When the government was elected in 1996 we undertook as a priority to hold a National Rural Finance Summit. This was aimed at addressing some of the pressing financial problems facing the farming community, based on a record of high interest rates, high inflation, low commodity prices and the disastrous drought of the early 1990s, which probably stands as the worst on record. From the summit's outcomes the government determined basically to do three things. Firstly, we determined to provide farmers with the capacity to plan for economic and seasonal downturns in the future. Secondly, we determined to provide where possible for farming families to have the same access to the welfare provided to other Australians in times of a loss of income through severe drought or misadventure. This resulted in the introduction, among other things, of family farm restart and assistance in generational transfers of farming land. Thirdly, the government made a commitment that there was a vision for agriculture in this country, not just for traditional broadacre farming operations and production of commodities but for everything ranging from grazing to intensive horticulture.

In line with these three intentions, I want to bring to the attention of the Senate tonight three direct initiatives that came out of the National Rural Finance Summit which are important to Australian farmers and to the local communities on which they rely. Probably the most important was the introduction of the Farm Management Deposits Scheme. This was an entirely new scheme and legislation for the scheme passed through both houses of parliament before the election. Farm management deposit regulations were tabled in the parliament at the end of the last sitting period in December and were on the table for 15 sitting days. That period concluded at the end of March 1999, so the scheme has now been operating since the end of March. The previous Income Equalisation Deposits Scheme and the Farm Management Bonds Scheme were considered inflexible by many producers. Extensive consultation, both with

rural industries and the finance sector, including the Australian Bankers Association, resulted in the revised scheme.

Farm management deposits will be available commercially through those financial institutions which meet the government's prudential requirements for deposit taking institutions. This is expected to include banks, credit unions and building societies, but not pastoral houses. Not all of those eligible institutions will offer the farm management deposits. For those that choose to, it provides an opportunity to include those facilities as part of their commercial product range, offering farmers choice and flexibility in their commercial decisions.

Depositors must be recognised as primary producers by the Australian Taxation Office. Taxation benefits from deposits are available only to producers with off-farm income not exceeding $50,000 in the year of deposit. The maximum amount of deposits held by a taxpayer cannot exceed $300,000. Depositors must be individual taxpayers. The scheme is not available to partnerships, trusts or companies, although individual taxpayers of a partnership or beneficiaries of a trust may make deposits. Interest will be paid on the full amount of the farm management deposit, and that is probably the most striking difference between this and the previous arrangements. Taxation benefits will be available only on deposits held in excess of 12 months.

Not all primary producers will be able to afford access to this scheme—perhaps later they will be able to do so—but for those who can it does provide a very big advantage. Although the scheme has not been operating very long, one bank predicts that the new Farm Management Deposits Scheme could attract $1 billion of deposits in the next three to five years, given a reasonable run of seasons and prices. That is a big potential plus for primary producers and to rural communities.

The second matter that came out of the National Rural Finance Summit was the introduction of the Agricultural Finance Forum. The Agricultural Finance Forum is a direct outcome of the summit, and was announced as part of Agriculture—Advancing Australia. It is a package to promote better communications and regular consultation between the farm sector, financiers and government on rural financial issues. The forum includes representatives from major financial institutions, pastoral houses, credit union associations, the National Farmers Federation, the Rural Counselling Program, farm consultants, business people, accountants and government. The parliamentary secretary who is in the chamber at the moment, Senator Judith Troeth, presently chairs that forum.

The first forum meeting was held on 20 November 1997, and subsequent meetings were held on 19 February, 18 June, 18 November 1998 and, quite recently, on 2 March 1999. I think Senator Troeth chaired that meeting at the Wimmera field days. The next meeting is scheduled for July 1999.

The forum's terms of reference are to: investigate ways to increase the finance and rural sectors' understanding of the implications of a deregulated market where there is rapidly changing technology and fluctuating farm incomes; identify new and improved financial products and services, including commercialised farm management deposits—about which I have just spoken—and encourage their usage; examine codes of practice and mediation processes between financial institutions and rural clients; and examine ways to promote improved business skills, including in relation to risk management, succession planning and farm business structures.

Some primary producers out there might feel the forum is just another opportunity for a lot of words, but these things are important. Communications and education are important to everybody trying to run a business, and that is especially so in the farming community, who frequently do not have access to the range of financial products that many other small business people have. It is part of the tranche of advantages that we have put in place—and there are others that we have and will put in place—that will make their job of running their farm businesses easier.

The last aspect of a range of things that came out of the National Rural Financial Summit was our continuing commitment to

provide financial counselling by the Financial Counselling Service. This service is part of the Australia-Advancing Agriculture package under the Rural Communities Program. The Financial Counselling Service, through the Rural Communities Program, provides rural community groups with Commonwealth grants to contribute towards the cost of employing a financial counsellor and associated administrative costs.

I think it goes without saying that the nineties produced an enormous need for rural counselling and guaranteed the continuation of this very important program. I think the nineties especially have left many farmers very weakened and very chastened by a run of bad seasons and difficult financial circumstances. I think that almost everybody in regional areas really appreciates the very important role that financial counsellors play. I think that some people perhaps had a jaundiced view of independent farmers who previously had withstood everything and were able to handle almost any situation but who, in the nineties, needed assistance from outside. But I think that, in the way it has worked, the Rural Counselling Service has been an enormously helpful aspect of meeting the very difficult structural challenges that the farming community has met.

The Commonwealth has committed some $11.7 million in funding over a three-year period from 1 July 1998 to 30 June 2000 for financial counselling services under this program. To date, 72 community groups have had funding approved and some 98 financial counsellors have been employed—a very impressive number. The Rural Communities Program as a whole offers the opportunity for people in rural communities to identify their needs and develop local solutions to meet those needs. Funding is directed towards small rural communities. These communities manage the funding provided and direct their projects to those areas identified by the communities as their highest priority. A further assessment round is currently being completed, and my colleague Senator Ian Macdonald and Minister Vaile will announce further community grants in the near future.

Sport: Soccer

Senator McKIERNAN (Western Australia) (10.57 p.m.)—I am going to use a few moments of the time of the Senate tonight to indulge myself in one of my passions in life. I also want to tip a bucket, and then I will end on a happier note by handing out some bouquets.

One of the joys in life that I get is watching sport; not participating in it, but watching it. The sport that I enjoy perhaps most of all is soccer, and I am very pleased with the developments that have occurred in Australia in recent years with Australia reaching near world standards in the world game. I want to speak particularly about the phenomenon that is the Perth Glory soccer club. It is a young club—it is only in its third year of participation in the National Soccer League—and this year has been its most successful to date. It gave me great joy during January this year to be able to attend three games. We only won one; nonetheless, it was a magnificent spectacle to be there among the greatest crowd of soccer supporters in Australia.

Glory attracts an average of 15,000 spectators to each home game at the Perth oval. That attendance is not matched by any other club in Australia, although Northern Spirit, a new club out of Sydney, is going very close to matching Perth Glory.

I want to reflect very briefly on the events of the last three weeks. I had the great pleasure of being at the second elimination semi-final of the Ericsson Cup at the WACA on Saturday, 8 May. It was the second leg and Perth were playing Adelaide City. There were over 25,000 people at that game—a sell-out at the Western Australian Cricket Association ground. Perth won 2-1 in the second leg, and went on to the minor semi-final at the same ground the following Sunday, 16 May, when they played Marconi out of Sydney, a game which attracted some 27,000 people. It is a record crowd for the National Soccer League of Australia. That brought Perth Glory to the elimination final in Sydney just a couple of days ago at the Marconi Stadium where they played Sydney United in front of a crowd—a very disappointing crowd—of 8,000, almost the capacity of the stadium.

Unfortunately, Perth lost 2-1 to Sydney United and I must say that the best team won the day. They had luck with them and deserved their victory. I wish them well in the final in Melbourne next week when they play Melbourne.

What I want to dwell on now is tipping the bucket. Some dreadful incidents occurred during this game. Early in the first half, a firecracker was tossed onto the ground and passed very close to the Perth Glory goalkeeper, Tony Franken, and then exploded. It could have injured that individual or, had it been thrown at a different time when there were more players in the area, it could have injured a number of other people, possibly causing eye injuries.

There were a number of flares let off in one particular section of the crowd. I personally noticed two going off. I was informed later that police had broken up a crowd disturbance where they had had to use capsicum spray and arrested one offender. I am a bit disappointed that there was only one person arrested. To the best of my knowledge, nobody has been charged with an offence following the game.

Another huge disappointment to me was the unfurling on two separate occasions of a huge Croatian national flag. The unfurling of nationalistic banners has been banned at soccer games in Australia for a number of years, following provocation between crowds and disturbances, but this happened on two occasions last Sunday. Nationalistic chants were also heard by me on a number of occasions. Again, this has been banned at soccer.

The most disturbing and unprofessional thing that happened was when an injury occurred to one of the Perth players, Craig Deans. He clashed with another player, got his shoulder dislocated and lay writhing in agony on the ground for a number of minutes when the referee authorised a stretcher to be brought to the ground, but no stretcher turned up. A stretcher was not available at the second most important game of the National Soccer League in Australia. In agony, that player had to be dragged to his feet and walk with assistance off the field. Then we heard over the loudspeaker a call for a doctor. There was not even a doctor available at the ground at the second last game of the National Soccer League.

Then it got worse. They had to wait half an hour for an ambulance. There was a near-capacity crowd at this stadium and an ambulance was not laid on and was not available. That injured player remained in agony all of the time. That really is not good enough for a sport that seeks to join the international league, that seeks to hold its place at a national level in this country. Events such as those would not happen at the Australian Football League. They certainly would not happen at the National Rugby League. They would not happen at the top level in cricket, in Super 12 rugby, nor, dare I say it, in most other national competitions. It reflects very poorly on the administration of soccer in Australia. They really will have to lift their game after that. Perth Glory is showing them the way in pulling the crowds in, but you have to provide services to the players and to supporters. That is the bucket, Madam President.

Now for the congratulations. Obviously I have passed them on to Sydney United. I do wish them well. They deserved the victory last Sunday. What I am saying tonight is not sour grapes because we lost the game. I want to pass on congratulations to all of the Perth Glory players who have carried themselves very well through the year. It is by far and away the most successful year ever and augurs well for the future of this very young club. I congratulate the officials of Perth Glory, particularly the general manager, Roger Lefort, Paul Tana, the chairman, Paul Afkos, the deputy chairman and the wonderful coach, Bernd Strange, and last of all the Perth Glory spectators.

In all of the games they played in Perth with the huge crowds they attracted—I remind you again, four times the number attended there the week before the incidents of last Sunday—there has been no crowd disturbance at all with 4½ times the number: 27,000. Indeed, there have been very few problems over this season or in previous seasons. The loutish, unruly, hooligan behaviour of a few last Sunday spoiled a wonderful spectacle. It harmed soccer in Australia and the administrators really have to crack down on this and

make sure that it is not allowed to continue. Events such as those of last Sunday should not be allowed to occur at the final next Sunday.

Senate adjourned at 11.05 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Advance to the Minister for Finance and Administration—Statement and supporting applications of issues—March 1999.

Centrelink—Social security compliance activity in Centrelink—Report—July to December 1998, including a statement by the Minister for Community Services (Mr Truss).

Science and technology budget statement 1999-2000.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Attorney-General's Department: Value of Market Research

(Question No. 233)

Senator Robert Ray asked the Minister representing the Attorney-General, upon notice, on 26 November 1998:

(1) What was the total value of market research sought by the department on a month-by-month basis between March 1996 and November 1998.

(2) What was the purpose of each contract let.

(3) In each instance, what was the involvement or otherwise of the Office of Government Information and Advertising.

(4) In each instance, (a) how many firms were invited to submit proposals; and (b) how many tender proposals were received.

(5) In each instance, which firm was selected to conduct the research.

(6) In each instance, what was the estimated or contract price of the research work and what was the actual amount expended by the department.

Senator Vanstone—The Attorney-General has provided the following answer to the honourable senator's question:

I am advised by my department of the following details in relation to market research costs between March 1996 and November 1998:

(1)

Month/Year	Amount
June 1996	$191,700
January 1997	$46,362
March 1997	$45,828
April 1997	$34,542
June 1997	$16,392
August 1997	$16,663
September 1997	$2,193
November 1997	$16,392
April 1998	$286
June 1998	$141,500
September 1998	$10,575
October 1998	$34,273
November 1998	$37,675
Total	$594,381*

*This figure does not include the cost of market research conducted by the firm Donovan Research in relation to men's counselling, and marriage and relationship education community awareness. This information should be sought from the Minister for Family and Community Services, who now has portfolio responsibility for these programs.

(2), (3), (4) and (5)

Purpose of Contract	Involvement of OGIA	No. of Firms Invited to Tender	No. of Tenders Received	Firm(s) Selected
Public education campaign for the Australian Firearms Buyback	The Department sought and was given by OGIA the names of two research suppliers to approach directly in view of the urgency of the campaign as indicated by the Department.	2	2	Elliott and Shanahan Research* Newspoll Market Research **
Survey of Commonwealth organisations in relation to the Commonwealth's legal needs, as part of the review of the Legal Practice of the Attorney-General's Department***	No involvement	3	2	SICORE International
Exploratory research amongst crime prevention practitioners and the general public for the National Campaign Against Violence and Crime (NCAVAC)	OGIA provided advice on the brief and a list of consultants to be invited to tender for the project. A representative of OGIA was also part of the selection process.	5	4	Elliott and Shanahan Research Keys Young Pty Ltd
Concept testing of new logos for NCAVAC	Low level of involvement	1	1	Elliott and Shanahan Research

* Selected to undertake the qualitative research in relation to the campaign.

** Newspoll Market Research was selected to undertake the quantitative research for the campaign.

*** This survey was sought by the independent taskforce which conducted the Review of the Attorney-General's Legal Practice, but the costs were paid for by my Department.

(6)

Research Conducted	Consultant	Contract Price	Actual Price
Public education campaign for the Australian Firearms Buyback	Elliott and Shanahan Research	$233,003	$233,003
	Newspoll Market Research	$169,813	$169,813

Research Conducted	Consultant	Contract Price	Actual Price
Survey of the Commonwealth's legal needs re the Review of the Attorney-General's Legal Practice	SICORE International	$33,500	$34,542
Practitioners research re NCAVAC	Elliott and Shanahan Research	$111,273	$101,273*
General public research re NCAVAC	Keys Young Pty Ltd	$70,978	$45,750**
Concept testing for NCAVAC	Elliott and Shanahan Research	$20,000	$10,000***

* This is the amount paid to November 1998—the final actual payment will not be known until the report is complete.

** This is the amount paid to November 1998—the final actual payment will not be known until the report is complete.

*** This is the amount paid to November 1998—the actual cost was $20,000.34

Minister for Arts and the Centenary of Federation: Newspapers, Magazines and Other Periodicals

(Question No. 540)

Senator Robert Ray asked the Minister representing the Minister for Arts and the Centenary of Federation, upon notice, on 9 March 1999:

What was the total cost during the 1997-98 financial year of the provision of newspapers, magazines and other periodicals to the minister's: (a) Parliament House office; (b) home/state ministerial office; and (c) private home.

Senator Alston—The Minister for Arts and the Centenary of Federation has provided the following answer to the honourable senator's question:

No cost was borne by the former Department of Communications and the Arts during the 1997-98 financial year for the provision of newspapers, magazines and other periodicals to the minister. All of the Minster's responsibilities were, during the period in question, the responsibility of the Minister for Communications, the Information Economy and the Arts.

Australian Quarantine and Inspection Service: Recovery of Funds

(Question No. 610)

Senator O'Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 23 March 1999:

(1) Did the Australian Quarantine and Inspection Service (AQIS) over-recover funds through levies paid by the Australian Grain Growers.

(2) When did AQIS discover the over-recovery of money through the grain industry levy.

(3) How much money was over-recovered.

(4) What arrangements were put in place to return the funds to levy payers.

(5) (a) How much money has been repaid so far; and (b) when does the Minister expect all moneys to be repaid to the industry.

(6) Has AQIS over-recovered funds from any other industries through the levy system; if so: (a) which industries were involved; (b) how much money was over-recovered; and (c) how much has been subsequently been repaid.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

(1) Yes. AQIS revenue from all industries it services is dependent on seasonal and other fluctuations from the projected level of activity. When these are greater than forecast, an over-recovery may occur. AQIS therefore has arrangements with each industry it services to report and manage, by agreement, any such over-recoveries.

(2) AQIS over-recovered the costs of its inspection service in the Export Grains Program in 1993/94, 1994/95, 1996/97 and 1997/98. AQIS and the grains industry review cost recovery levels mid financial year (usually around November) and any

necessary variations are considered through the AQIS/Grains Industry Consultative Working Group (AGICWG).

(3) 1993/94—$4,182,000; 1994/95—$3,564,000; 1996/97—$1,295,000; 1997/98—$274,000.

(4) The grain industry agreed that the 1993/94 and 1994/95 over-recovered funds should be repaid in proportion to exporters from direct invoices; this occurred. In accordance with the grain industry's wishes the 1996/97 and 1997/98 over-recoveries have been repaid to industry by rebate on current charges, or by funding of projects approved by the AGICWG.

(5) (a) All over-recovered monies from 1993/94, 1994/95, and 1996/97 have been repaid. As at 6 April 1999, an amount of $101,872 of 1997/98 over-recovered funds was still to be repaid.

(b) By the end of June 1999.

(6) Yes. The following programs have over-recovered funds for services provided to their respective industries:

Import Clearance; Fish Exports; Animal Exports; Horticulture Exports; Dried Fruit Exports; Dairy Exports; Grain Exports; Other Processed Food Exports; Post Entry Animal Quarantine; Post Entry Plant Quarantine.

The attached table shows the over-recoveries for 1993/94, 1994/95, 1995/96, 1996/97 and 1997/98, the amounts rebated to industry and the amounts held in the Income Equalisation Reserves.

	1993/94 Over-recovery	1994/95 Over-recovery	1995/96 Over-recovery	1996/97 Over-recovery	1997/98 Over-recovery	Sub-total	Pay-ments/rebates	Balance in IER*	Balance Over-re-coveries as at 6/04/1999
	$	$	$	$	$	$	$	$	$
Import Clearance	3,725,000	4,658,000		1,587,000	2,062,000	12,032,000	7,492,559	2,665,600	1,873,841
Fish	666,000	301,000		23,000	237,000	1,227,000	935,057	281,800	10,143
Live animals	940,000	853,000	63,000	-		1,856,000	1,856,000	-	-
Seaports	775,000	41,800		484,000	178,000	1,478,800	1,050,593	334,100	94,107
Horticulture	550,000	612,000	4,000	-		1,166,000	1,062,191	-	103,809
Dried fruit	208,000	-		104,000	7,000	319,000	298,000	15,050	5,950
Dairy	557,000	804,000		98,000	147,000	1,606,000	1,379,025	64,600	162,375
Post entry animal	-	-	92,000	171,000	577,000	840,000	n/a	n/a	n/a
Grains	4,182,000	3,564,000		1,295,000	274,000	9,315,000	8,701,628	511,500	101,872
Other processed foods			7,000	73,000	4,000	84,000	7,000	4,500	72,500
Post entry plant				99,000	-	99,000	-	58,200	40,800
Total	11,603,000	10,833,800	166,000	3,934,000	3,486,000	30,022,800	22,782,053	3,935,350	2,465,397

* IERs are agreed with industry as a buffer to unexpected fluctuations in revenue levels.

Airservices Australia: Consideration of Instrument Landing System Proposal

(Question No. 663)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 April 1999:

(1) Does the document *Sydney Airport; Runway 25ILS for LTOP*, November 1998 state that, 'The ILS [Instrument Landing System] is proposed to facilitate the achievement of the noise sharing targets of the Long Term Operating (LTOP) for the use of Mode 5'.

(2) (a) When did the Board of Airservices Australia (ASA) first consider the proposal for the installation of an ILS for runway 25; and (b) on how many further occasions did the board consider the project.

(3) When did the board endorse the project.

(4) Did the Minister, or his office, also endorse the ILS project; if so, when did that occur; if not, why not.

(5) What was the original timing for the implementation of the runway 25 ILS for the plan.

(6) What is the current timing for the implementation of the runway 25 ILS.

(7) What are the reasons for this delay.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided

the following answer to the honourable senator's question:

(1) Yes.

(2) (a)&(b) The Ministerial Direction issued (by the then Minister for Transport and Regional Development) to Airservices Australia on 30 July 1997 required Airservices Australia to provide advice to the Minister on the costs and benefits of installing an Instrument Landing System on Runway 25. I am advised that following the Ministerial Direction of 30 July 1997, the Airservices Australia Board has discussed the Runway 25 ILS on a number of occasions.

(3) and (4) A further Ministerial Direction was issued to Airservices Australia on 18 March 1999 requiring the installation of an ILS on Runway 25. The Board is expected to consider the project plan at its May Board meeting.

(5) The Ministerial Direction to Airservices Australia of 30 July 1997 required Airservices Australia to provide advice to the Minister on the costs and benefits of installing an ILS on Runway 25. The timing of implementation was dependent on the outcome of this process.

(6) and (7) I am advised that the plan being proposed to the Airservices Australia Board involves commissioning of the Runway 25 ILS by February 2000. This timetable is based on expected time frames for activities related to equipment delivery and implementation for an ILS project.

Very High Frequency Omni-Directional Radio Range Ground Navigation Aid: Relocation

(Question No. 666)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 April 1999:

(1) When did the Board of Airservices Australia (ASA) first consider the proposal to relocate the Very High Frequency Omni-Directional Radio Range Ground Navigation Aid (VOR) from the western side of the main north-south runway at Sydney Airport near its intersection with the east-west runway.

(2) On how many further occasions did the board consider the project.

(3) When did the board endorse the project.

(4) Did the Minister, or his office, endorse the project; if so, when; if not, why not.

(5) What was the original timing for the relocation of the VOR system.

(6) What is the current timing for the implementation of the VOR system.

(7) What are the reasons for this delay.

(8) Can the Minister provide a comprehensive project schedule for the relocation of the VOR, including estimated construction time for the completion of the proposed new taxiway to increase the capacity of runway 25.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) I am advised that the Board was originally informed of the circumstances and the requirement to relocate the Sydney VOR in May 1998.

(2) I am advised that the Board again considered the project when it was formally presented for endorsement on 19 June 1998.

(3) I am advised that the project was endorsed by the Board on 19 June 1998.

(4) The matter was solely an operational decision for Airservices.

(5) I am advised that the VOR commissioning timetable was planned around a major aeronautical chart release scheduled for December 1998.

(6) The VOR was commissioned on schedule in December 1998.

(7) Not applicable.

(8) Not applicable.

Stevedoring Companies: Redundancy Packages

(Question No. 667)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 April 1999:

(1) How many employees of stevedoring companies have taken redundancy packages, or plan to take a redundancy package since the answer to Senate question on notice no. 311 was provided.

(2) Where were the employees located.

(3) How many of the above companies received assistance, or have applied for assistance, to meet the cost of redundancy packages through the Maritime Industry Finance Company Limited (MIFCo).

(4) What is the value of assistance provided by, or sought from MIFCo, to each of the above companies.

(5) Have any of the employees who have taken redundancy packages been re-employed by a contractor engaged by their former employer, or re-employed by their former employer; if so: (a) how many employees have been re-engaged; (b) when

were they paid out; (c) when were they re-engaged; (d) which company did they work for; and (e) what is the name of their new employer.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) I have been advised by MIFCo that since 14 December 1998, a further 72 employees of stevedoring companies have taken redundancy packages.

The exact number of employees who plan to take a redundancy package is yet to be determined although the Department estimates there will be several hundred further redundancies to be funded under the scheme, in addition to the 838 already funded. More detailed information about the total number of employees planning to take redundancy packages may be indicated in submissions from companies seeking assistance in meeting redundancy related costs. These submissions are provided to the Government in confidence. The information can be made publicly available when MIFCO has made a determination as to the amount of redundancy related payments that should be offered and made.

(2) Employees who have taken redundancy packages since 14 December 1998, as well as between 8 April 1998 and 14 December 1998 have been located as follows:

NSW	
Sydney	309
Newcastle	19
Wollongong	16
Victoria	
Melbourne	321
Queensland	
Brisbane	95
Townsville	18
Cairns	2
South Australia	
Adelaide	9
Western Australia	
Perth	35
Tasmania	
Devonport	8
Hobart	1
Launceston	5
TOTAL	838

(3) Six companies have received assistance from MIFCO as at 30 April 1999:

* Patrick Stevedores No 1 Pty Limited (PS1)(subject to Deed of Company Arrangement);

* Patrick Stevedores No 2 Pty Limited (PS2) (subject to Deed of Company Arrangement);

* Patrick Stevedores No 3 Pty Limited (PS3) (subject to Deed of Company Arrangement);

*National Stevedores Tasmania Pty Limited (NSTAS) (subject to Deed of Company Arrangement);

* Patrick Stevedores Holdings Pty Limited (PSH); and

* Northern Shipping and Stevedoring Pty Limited (NSS).

The Government has received requests for assistance from a further 12 companies.

(4) MIFCo has advised me that as at 30 April 1999, it that it has provided the following assistance:

PS1:	$59,542,294.03
PS2:	$29,555,835.17
PS3:	$2,478,283.00
NST:	$831,791.23
PSH:	$10,214,049.86
NSS:	$2,053,063.68

These are net amounts including interest earned by the recipient and deducting amounts repaid to MIFCO by the recipient. As the companies have not finalised their redundancies, these amounts may change.

Information about assistance sought from MIFCO is contained in submissions which are provided to the Government in confidence. The information can be made publicly available when MIFCO has made a determination as to the amount of redundancy related payments that should be offered and made.

(5) MIFCo has advised me that it has not received any information concerning redundant employees who may have been re-employed by a contractor engaged by their former employer. I am also advised that to the best of MIFCo's knowledge none of the employees that have been made redundant have been re-employed in any capacity by their former employer.

Precision Approach Radar Monitoring: Ministerial Direction

(Question No. 671)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 April 1999:

(1) Did the Minister issue a ministerial direction with respect to the Precision Approach Radar Monitoring (PRM) system at Sydney Airport; if so, when and what was the nature of that direction; if not, does the Minister intend to issue a ministerial direction in respect of the PRM system.

(2) When does the Minister anticipate the testing of the PRM system, currently under way for aircraft movements over Botany Bay, will be completed.

(3) When did those trials commence.

(4) (a) When did testing of the PRM system for aircraft movements to the north commence; and (b) when were those trials suspended.

(5) Is it the Government's intention that the PRM system be implemented before the full implementation and completion of the Long Term Operating Plan at Sydney Airport; if so, why; if not, why not.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) No. I have informed the Chairman of Airservices Australia that, should Airservices Australia decide to proceed with the implementation of the Precision Runway Monitor (PRM) system in the Runway 16 direction (from the north), it should seek designation as the proponent for PRM operations in the Runway 16 direction in accordance with the Environment Protection (Impact of Proposals) Act 1974.

(2) Airservices Australia advises that the validation trial was completed during May for arrivals in the Runway 34 direction (from the south over Botany Bay).

(3) Airservices Australia advises that the validation trial commenced on 17 February 1999.

(4) (a) and (b) There have been no PRM trials for arrivals in the Runway 16 direction (from the north).

(5) The Government has made it clear that there will be no operation of the PRM in the Runway 16 (from the north) direction until an assessment pursuant to the Environment Protection (Impact of Proposals) Act has been completed and the community has been fully consulted.

Precision Approach Radar Monitoring: Pilots and Air Traffic Controllers Training

(Question No. 673)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 April 1999:

(1) What period of training for pilots and air traffic controllers is necessary to ensure the safe use of the Precision Approach Radar Monitoring (PRM) system currently being tested at Sydney Airport.

(2) (a) When will that training commence; and (b) who will provide the training.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) Pilots must have completed training approved by the Civil Aviation Safety Authority (CASA) before conducting an Instrument Landing System (ILS) Precision Runway Monitor (PRM) approach. CASA has specified the content for this training and the training must include completion of an examination conducted by an appropriate testing authority but CASA has not specified a period for such training.

Training for Air Traffic Controllers in the use of the PRM system varies between 4 days and half a day depending on the specific functions being performed by the controller.

(2) (a) Training for controllers commenced in October of 1998 and was completed in December of 1998. Pilot training commenced in mid 1998 and advice from domestic airline operators to Airservices indicates that more than 95% of pilots had completed the required training by the beginning of 1999.

(b) Airservices Australia is providing the training for Air Traffic Controllers and the individual aircraft operator is responsible for pilot training.

Post-Schools Options Program: Funding Withdrawal

(Question No. 675)

Senator Margetts asked the Minister for Family and Community Services, upon notice, on 13 April 1999:

(1) Has the Government withdrawn funding from the Post-Schools Options Program for school leavers with disabilities; if so, why.

(2) In the 1997-98 financial year there were 88 individuals in Western Australia who received post-school options: (a) what alternative is being put in place to provide this sort of assistance to school leavers with disabilities; (b) what specific services are in place for 1998 school leavers with disabilities; and (c) what services will there be for 1999 school leavers.

(3) Is the Minister aware of the warning sounded by the Western Australian Government in the Report on Government Services 1999, on page 835, that initiatives such as this, which have a profound positive impact on numerous individuals, may well be lost sight of in the overall context of broadly based performance indicators.

(4) What efforts are being made to ensure that the profound positive impact of the program and other such initiatives are not lost sight of.

Senator Newman—The answer to the honourable senator's question is as follows:

(1) No.

(2) (a) See answer to (1).

(b) and (c) The post school options program will continue to assist school leavers to access disability support services. In addition, the Commonwealth funds Centrelink to assess eligibility of all job seekers with disabilities, including school leavers, to access specialist disability employment services. Priority access to Commonwealth specialist employment assistance will continue to focus on people with disabilities aged 15—24 years. Around 2000 additional job seekers with disabilities will be assisted in 1999-2000.

(3) Yes.

(4) A proposal is currently being developed in consultation with the Western Australian Government, to ensure that school leavers continue to have ready access to the Commonwealth Job Network or Specialist Disability Employment Services.

Mixed Oxide Fuel Shipments

(Question No. 679)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 20 April 1999:

With reference to the upcoming shipment of Mixed Oxide (MOX) nuclear fuel from the United Kingdom to Japan:

(1) Will the MOX fuel in the shipment contain Australian-obligated nuclear material (AONM); if so: (a) what is the quantity of AONM; and (b) what does it consist of (uranium or plutonium).

(2) (a) Has the Australian Government given approval for the security provisions in the transport plan; and (b) what are the security arrangements that have been made.

(3) Given the presence of AONM, will the Australian Government be given details of the route of the shipment, either in advance or as the shipment proceeds from Europe to Japan.

(4) What is the latest information that the Government has regarding the timing of the shipment.

(5) What plans are there for further shipments of MOX fuel containing AONM from Europe to Japan.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

(1) No.

(2) (a) No.

(b) The British Secretary of State for Trade and Industry, Mr John Battle, informed the United Kingdom Parliament on 18 January 1999 that consultations on the security arrangements were taking place with Japan "to ensure that appropriate measures are put in place for the physical protection of the material in line with internationally agreed commitments and recommendations on physical protection and reflecting the concern of all parties to prevent the proliferation of sensitive nuclear materials. This includes compliance with the recommendation of the International Atomic Energy Agency that MOX fuel, like all other Category 1 nuclear material, should be accompanied during transport by an armed security escort."

(3) Not applicable.

(4) Mr Battle told the United Kingdom Parliament on 19 April 1999 that "the timing of the first shipment is not yet finalised but the intention is to carry it out this calendar year".

(5) Japanese utilities have a substantial quantity of "Australian Obligated" spent fuel in Europe (UK and France) awaiting reprocessing. On that basis, we expect that some future shipments of MOX from Europe will be partially derived from the reprocessing of AONM.

Cairns Airport: Aviation Incident Reports

(Question No. 684)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 22 April 1999:

(1) How many confidential aviation incident reports (CAIRs) have been submitted to air traffic control at Cairns Airport since 1 January 1998.

(2) Can details be provided of: (a) each incident; and (b) the result of the investigation that followed each CAIR.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) The Bureau of Air Safety Investigation (BASI) is unaware of any CAIR reports being submitted to Air Traffic Control at Cairns Airport since 1 January 1998. However, from 1 January 1998 to 5 May 1999, the BASI Confidential Aviation Incident Reporting Office in Canberra has received 4 CAIR reports relating to air traffic control at Cairns airport.

(2) (a) Yes, the CAIR reports (9801814, 9805212, 9803313, 9900515) with reporter identification removed are publicly available and are available from the Senate Table Office for your information.

(b) 9801814—This report was referred to the Airservices Northern manager. No further action was considered necessary by BASI at that time. A subsequent CAIR report on the same subject matter, 9805212, was received and actioned, see below.

9805212 - this report did not contain sufficient details to assess either the factual accuracy or possible gravity of the report, therefore, in accordance with BASI policy the report was forwarded to Airservices Australia in the form of a For Your Information (FYI) report, report number 9805212 (copy attached). Airservices Australia subsequently conducted an audit and determined that they could not find any documents requiring amendments that affected the day to day operational running of the control room from a safety/separation aspect. There were no outstanding requests from Terminal Control Unit staff for changes to the Local Instructions.

9803313 - this report was received concurrently as a CAIR report and an incident report through the mandatory reporting system, incident report number 9803261 (Brief print attached). The investigation into 9803261 determined that an Airbus, A320, VH-HYB, was permitted to cross runway 12 while that runway was active with an aircraft on approach. VH-HYB crossed the runway while the aircraft on approach was well clear of the runway, there was no breakdown of separation.

9900515 - this report alleged a breakdown of separation within the Cairns Terminal Area. Other than the CAIR report received on 3 February 1999 alleging a breakdown of separation (BOS) standards, no incident reports had been received from pilots or air traffic controllers reporting a BOS occurrence on 28 January 1999. In cases of BOS occurrences, it is normal to receive reports from pilots and air traffic controllers involved, since such occurrences are required to be immediately notified to the Bureau.