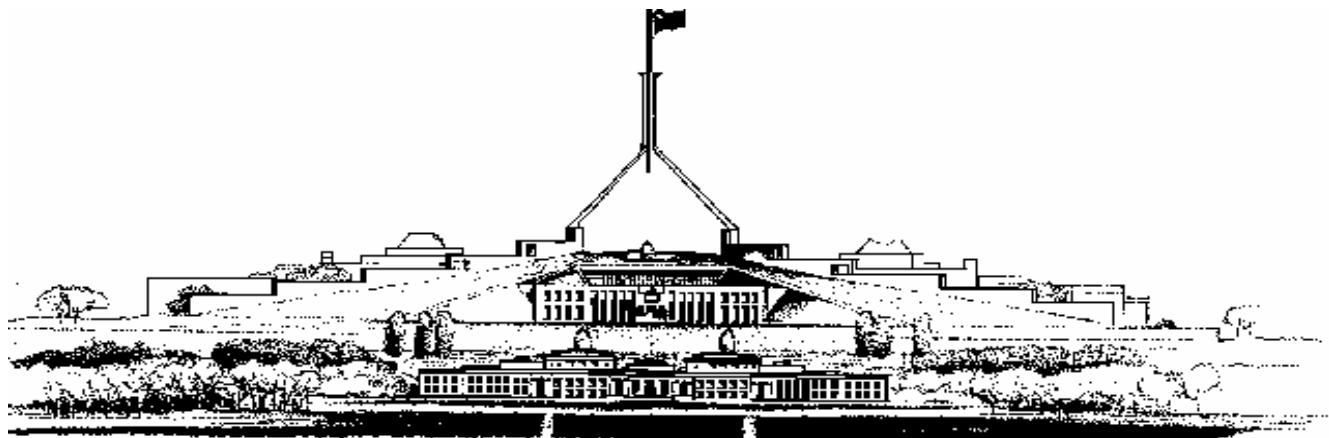




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 15, 2003**  
**TUESDAY, 25 NOVEMBER 2003**

FORTIETH PARLIAMENT  
FIRST SESSION—SIXTH PERIOD

BY AUTHORITY OF THE SENATE



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### SITTING DAYS—2003

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

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<i>ADELAIDE</i>	972 AM
<i>PERTH</i>	585 AM
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*Tuesday, 25 November 2003*

**The PRESIDENT (Senator the Hon. Paul Calvert)** took the chair at 12.30 p.m., and read prayers.

**BUSINESS  
Days of Meeting**

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—I move:

That the days of meeting of the Senate for 2004 shall be as follows:

**Autumn sittings:**

Tuesday, 10 February to Thursday, 12 February

Monday, 1 March to Thursday, 4 March

Monday, 8 March to Thursday, 11 March

Monday, 22 March to Thursday, 25 March

Monday, 29 March to Thursday, 1 April

**Budget sittings:**

Tuesday, 11 May to Thursday, 13 May

**Winter sittings:**

Tuesday, 15 June to Thursday, 17 June

Monday, 21 June to Thursday, 24 June

**Spring sittings:**

Tuesday, 3 August to Thursday, 5 August

Monday, 9 August to Thursday, 12 August

Monday, 30 August to Thursday, 2 September

Monday, 6 September to Thursday, 9 September

Monday, 27 September to Thursday, 30 September

Tuesday, 5 October to Thursday, 7 October

Monday, 25 October to Thursday, 28 October

**Summer sittings:**

Monday, 22 November to Thursday, 25 November

Monday, 29 November to Thursday, 2 December.

Question agreed to.

**HIGHER EDUCATION SUPPORT BILL  
2003**

**HIGHER EDUCATION SUPPORT  
(TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS)  
BILL 2003**

**Second Reading**

Debate resumed from 24 November, on motion by **Senator Ian Campbell**:

That these bills be now read a second time, upon which **Senator Carr** had moved by way of an amendment:

At the end of the motion, add

“but the Senate deplores the fact that important features of the nation’s higher education system are being fundamentally reshaped and redefined by the Higher Education Support Bill 2002 and that such a radical assault of the fundamentals of the system was not foreshadowed nor discussed during the review process, and notes:

- (a) further shifting the cost of university education onto students and their families by allowing HECS to increase by 30 per cent and doubling the number of full-fee paying places;
- (b) that the education sector and the broader community do not support discarding university autonomy and academic freedom;
- (c) that these bills will initiate a regime which will shift costs to students, stifle student choice and impose a heavy burden on families; and
- (d) that these bills will deepen inequalities in society, and undermine economic and social prosperity”.

**Senator FORSHAW** (New South Wales) (12.31 p.m.)—The Senate is currently debating the **Higher Education Support Bill 2003** and the **Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003**. This is the much vaunted higher education package that the Minister for Education, Science and Training, Dr Nelson, has been endeavouring to

convince the Senate, convince the university vice-chancellors, convince all of the tertiary education institutions in Australia and convince the Australian public should be implemented. The message that has come through loud and clear to Dr Nelson and to this government is that this package should not be passed by the Senate.

This package will do nothing to improve the opportunity for students in this country or the financial arrangements for universities in this country. It will do nothing to repair the damage that has been done to the university and higher education sector by this government since it came to office. Rather, what these two bills do is continue this government's abandonment of the fundamental principles that have always underpinned this country's higher education system—that is, equality of opportunity, equity of access and, above all, a government funded higher education system, because it is ultimately in the interests of Australia as a nation to provide that funding support.

Let us have a look at the government's record on higher education since it came to office in 1996. What has it done? What it has done is cut \$3 billion out of funding for universities in that time. We all remember in the first budget after the government came into office the massive cuts that were implemented in university funding and TAFE funding. Three billion dollars was taken out of universities. I recall the minister at the time, Senator Vanstone, taking the approach—a bit like Tom Collins in Joseph Furphy's novel *Such is Life*—of 'pick a number, pick any number of 10 per cent or more'. A massive cut was the result. TAFE funding was slashed by \$240 million. Students were forced to make higher and higher repayments on their HECS loans. Rural and regional universities particularly suffered under this government. Funding of \$170 million was ripped out of rural and regional uni-

versities. Student assistance schemes were affected when the government cut their funding by more than \$500 million. And the result was that Australia was left with the second lowest level of increase in the rate of university enrolment in the entire OECD. We fell almost to the bottom of the heap. Twenty thousand qualified Australian students or potential students were denied an opportunity to study at university. Research and investment declined substantially. Indeed, it got to the point where the Chief Scientist condemned this government's approach which has resulted in Australia becoming the only advanced Western nation where private business investment into R&D is going backwards. Not only was the government not putting the money in; it was not even encouraging private sector investment in R&D, something that occurs in all advanced countries around the world.

As I said, these bills continue this government's abandonment of the principle of equity in higher education and simply cannot be accepted in their current form. Dr Nelson has recognised that his package has major, significant flaws, and he has been trying to reach some accommodation with other senators—minor parties and Independents in this place. He has also been trying to convince the university vice-chancellors, staff associations and other representatives that they should come to the party. He is trying to come up with solutions each and every day as we get closer and closer to voting on this bill. But he cannot achieve it because the package is fundamentally flawed. It will definitely damage Australia's university system if this package goes through. Students, families, university teachers and administrators will all be considerably worse off.

Let me point to a couple of the issues—and I know that many of them have been widely canvassed during the debate. Let me go firstly to the proposal which allows the

minister and this government to interfere in the management of universities in their negotiations with staff on employment conditions. This is a government that has said for years and years that industrial relations issues should be left to the workplace. It should be the preserve of employers and employees to negotiate what is fair, equitable and suitable in the circumstances. It has talked incessantly about that principle: that, really, third parties should not get involved in industrial relations matters. Of course, that is the government's agenda and it is an agenda which is essentially about denying employees the opportunity to be collectively represented by trade unions or staff associations. When the government talks about not having third-party involvement in industrial relations matters, it really means not having unions involved. In this proposal, in higher education, the government has actually said it wants to interfere directly in the industrial relations negotiations that occur between universities and their academic staff.

Over recent months, the universities and their staff have been seeking to negotiate enterprise agreements. That is allowed for under the industrial relations act. It is allowed for under the act that was implemented by this government. But the government has said, 'Unless you ensure that university staff are covered by Australian workplace agreements and not by enterprise agreements, you will be denied \$400 million of funding.' It is a straight-out bribe. Now, there is an important difference between an enterprise agreement and an Australian workplace agreement. An enterprise agreement is one where the staff can be collectively represented in the negotiations. In AWAs—Australian workplace agreements—this does not occur. The government is saying that, unless the universities agree to the government's view about how staff wages and working conditions should be imple-

mented and unless they get the unions out of the negotiations, the government will withhold funding from the universities. They will withhold \$400 million.

What sort of an approach is that to running a higher education system? To say that you will be denied necessary funding unless you sign up to the views of the Liberal-National Party government when it comes to industrial relations is simply an ideological bludgeon that this government wants to take to the universities. To the great credit of the universities, they have said to the government: 'We're not going to be stood over. We are going to continue to negotiate with our academic and other staff and come to agreements through enterprise negotiations. We're not going to be stood over and threatened in such a way.'

A fundamental indicator of this government's approach to higher education is that it is prepared to sacrifice the educational opportunities of students in this country. It is prepared to deny funding to universities in this country for the sole purpose of trying to implement its anti-union industrial relations agenda. As I said, it is hypocritical for such an approach to be taken by a government that claims that industrial relations matters should be the preserve of employers and employees only and that governments and other third parties should stay out of the arena.

The other critical area that I want to speak about is HECS fees. Since this government came to office, it has increased HECS fees across the board for just about all courses. Students and their families have been hit with staggering fee hikes. Student debt has more than doubled under the Howard government. In this country today, HECS debt is now at the level of \$9 billion. When students reach the end of their higher education studies and get their degree, they find they are saddled with a massive debt. It is well-

recognised now that it is having an impact on other areas of their life and activity, such as their ability to undertake other investments—housing, for example. Indeed, people are deliberately delaying the time when they may start a family in order to try and overcome the debt burden that they inherit from their HECS fees.

This government wants, under these new bills, to allow universities to increase HECS fees by 30 per cent. It is saying to universities, 'If you want extra funds, put up HECS fees by 30 per cent. Cripple the students with debt.' That of course will mean that many students and potential students, particularly those from families with low incomes and those from poorer communities, will face the dilemma, 'Can we as a family afford for our son or daughter to go to university to undertake a degree, when we know that this huge potential debt burden will accompany them?' This proposal will mean HECS debts of up to \$50,000. An arts degree could cost \$15,000; a science degree, \$21,000; and a law degree, \$41,000. If you want to do a combined degree or go on to do honours in a subject, you will have to pay even more. In many cases now in universities, people are undertaking double degrees as undergraduate students. The new fee hikes that this government is proposing through this legislation could see average student contributions through HECS more than double, compared to when the government came to office. In particular, for courses like law and veterinary science it is estimated that the cost could increase by up to 240 per cent.

What we are witnessing in this country is a move towards the American system of university education. I recall just recently speaking to a student from Michigan who was in Australia undertaking a parliamentary internship. I was speaking to him with another senator in the building here—having a coffee at Aussie's, actually—and he was telling us

that the cost of a university degree in America was in the order of \$US50,000 a semester—that is, six months. So the cost is up to \$US100,000 a year to do a degree. I said, 'How do you pay for that?' He said, 'You take out a student loan and you are paying it off for years and years.' That is the sort of system this government is driving our higher education sector towards, firstly, by starving it, cutting out funds, as it has done massively over the last six or seven years; secondly, by depriving universities of the funds that they need; and, thirdly, by putting increased costs back onto the student to get a place at university. Since 1998, when this government introduced a provision whereby people could buy a university place and pay full fees, we have had a situation where it is money—it is income—rather than ability that determines who gets a place at university. That was something that the Whitlam reforms of the 1970s got rid of in this country.

I was one of the beneficiaries of the reforms by the Whitlam government, when university fees were, essentially, abolished. In the days prior to the Whitlam government, you got to university either through a scholarship or by paying fees. Whitlam's reforms meant that you could get to university on the basis of ability, whether you came from a poor background or a wealthy background. What is so telling about that is that, when you have a look along the front bench of government ministers, whether in this place or the other place, you see people who obtained degrees under the reforms introduced by Whitlam, people who did not have to put their hands in their pockets to get their university degrees. They all got their university degrees under the Labor Party's reforms in higher education, and they should hang their heads in shame at what they are doing to students today.

Kids out there who have just finished their HSC are wondering whether they will be

able to afford to go to university or TAFE college next year, even though they got good results in the HSC. That is what you are doing to thousands of kids in this country! There was a time when they could look forward to getting their HSC results and know that, if they had worked hard, they would be able to make a choice about which university course they would undertake. Today when they get their results and receive an offer, they have to wonder whether they will be able to afford to take up their place. That is the legacy of six years of this government. That is what you are proposing for the future students of this country. You should hang your heads in shame. You should withdraw this bill, go back to the drawing board and fix up the problems that you have already created, not foist more and more debt onto students.

**Senator WEBBER (Western Australia)**  
(12.50 p.m.)—Mr Acting Deputy President Lightfoot, I seek leave to incorporate my remarks.

Leave granted.

*The document read as follows—*

I rise to contribute to the debate on Higher Education.

A great British Prime Minister, Benjamin Disraeli, once said;

“Upon the education of the people of this country the fate of this country depends.”

Our collective future prosperity comes down to one priority and one priority alone, and that is education.

Education in all its forms and in all its flavours!

Education that is not dependent on how rich you are!

Education that is unfettered from government interference.

Education that will teach subjects and courses in areas that many of us don’t understand.

Or in fact are not interested in.

Subjects and courses that may lead to the next productivity boom that none of us today can foresee or imagine.

The CEO of IBM said in 1943 that there was a potential market for about 5 computers in the world.

In 1949 experts concluded that there was only a world wide market for 13 computers of which 1 would be in Australia.

The CEO of Microsoft said in 1982 that nobody needed more than 640 kilobytes on a computer.

All experts and all wrong.

What has fuelled the computer or information productivity surge?

Education.

Each year more and more people studied computer science and technology.

Each year bought more and more advances.

Our current economy in the information age is based on the education of millions and millions of people around the world.

The history of the Industrial Revolution is no different.

It was driven by the engineers and scientists of the 18th and 19th centuries.

The key ingredient is and has always been education.

That is why Disraeli said what he did.

He knew that the future prosperity of England depended upon the education of the people.

Education is the means by which a country sets itself up for the next generation.

Those opposite will argue no doubt that capital is the key to the Industrial and Information Revolutions.

However it does not matter how much capital you have if there is no human capital to go with it.

A skilled, highly educated workforce is the critical success factor.

For a prosperous future, education must be allowed to find its own way.

When we start to dictate what can be taught and by whom we begin to restrict fundamental rights to choose.

Personally I may not see the benefit of courses in Golf Course Management, but there is obviously a demand out there.

It may lead to innovations that we cannot imagine in areas like water conservation, land usage or improved technology and designs.

Is it for those of us in Parliament who one day may become the Minister for Education to take on the role of Education Censor?

This role that none of us is qualified for.

It may result in innovation being stifled.

As Samuel Broder, Director of the United States National Cancer Institute, once said when talking about centrally controlled research

“If it was up to the NIH to cure polio through a centrally directed program. . . You’d have the best iron lung in the world but not a polio vaccine.”

Who has the right, who has the knowledge to go before the Australian people and say that only he or she has the ability to determine what can be taught?

This is the authoritarian approach to education.

This is a dictatorship of ignorance over knowledge.

A situation where because I don’t understand what it is that you are doing, then you can no longer do it.

As I mentioned earlier even experts in the computer industry could be impressively wrong in trying to work out future trends.

As an elderly friend once said to me;

“Who would have thought there would be shops that sold nothing but telephones?”

When we begin to think that we know what is going to happen is normally when innovation and change takes off in a different direction.

As the Prime Minister said only last Friday,

“The ability of a nation to adapt and use new information technology is the key to its economic strength.”

AAP also reported that he said

“Australia had become a nation of people that had converted information technology to advantage and to effective use.”

Would this country have been able to do all this if we did not have a strong, vibrant and diverse education system?

Would we have the capacity to embrace and then convert information technology without the educated workforce, the researchers and scientists?

Of course not!

Our current situation, this current economic strength, this ability to convert information technology to advantage is a direct consequence of reforms enacted between 1972 and 1996.

The current prosperity is a direct consequence of an open, largely free and diverse higher education system that has turned out the skilled workforce of today.

What this bunch of educational terrorists on the Government benches want to do is to throw away the benefits of that vibrant and well funded education system.

To cast off the benefits of an educated and skilled workforce.

If this legislation is passed, the Minister for Education will be able to cherry pick his way through the courses on offer in our education institutions.

The Minister for Education will be able to suddenly, by virtue of this legislation, determine what is a worthwhile course of study and what is not.

The Minister for Education will in fact become the Minister for Conformity.

Conform and be funded.

The simple reality behind this legislation is that the current Minister for Education and the education hooligans of the government benches want the right to determine what can be taught and what can’t.

To determine what is worthwhile and valuable and what is not.

They bring before this Parliament an attack on the personal and collective freedoms of this country by dictating what will be taught and by whom.

By restricting what can be taught, this legislation will ensure that as a country we do not reach our full potential.

When you dictate what can be taught, you begin to restrict what can be learned.

One of the greatest minds in Western society, Socrates was condemned and put to death for teaching in a style unacceptable to others in his society.

His accusers claimed that he was corrupting the young and interfering with the religion of the state.

His great crime was to challenge a person's confidence in the truth of popular opinion.

Condemned to death by being forced to drink hemlock.

Now he is recognised as the father of Western philosophy.

This legislation is the Liberal and National Parties cup of hemlock for an independent higher education system.

Once we enact legislation that enforces educational conformity then we are creating an unthinking society.

As the popular saying goes:

"Education makes a people easy to lead, but difficult to drive; easy to govern but impossible to enslave."

To strangle the institutions of funds, to deprive them of their basic freedom of choice diminishes the rest of us.

There can be no greater abdication of responsibility than that displayed by this current government.

A government that fails to invest in education, is a government that is not fit to govern.

This government and their fellow travellers walk away from the boundless opportunities offered to the future well being of this country by slamming the door shut on education for all of us.

Universities and colleges, schools and academies are the engine rooms of the future.

They are the first stage in the building blocks of tomorrow.

Elected in 1996 on their doublespeak slogan of "For All of Us" the average person would conclude that no-one would be left behind.

The Australian people now know that is a fraud.

What the Liberals are about is entrenching wealth as the basis for an education system.

As L.L. Henderson once said;

"Fathers send their sons to college either because they went to college or because they didn't."

What this bunch of elitists over on the Government benches want to do is to restrict access to education to your capacity to pay for it.

They want to remove from the working men and women of Australia the ability to send their children to universities and colleges.

Education is the way out and the way up for the children of the working and middle classes of this country.

Education is the method by which the people of this country reach their full potential and enable the rest of us to share in that potential.

To have a policy that aims to overturn thirty years of good and sensible government education policy for the sake of user pays ideology is not an outcome that this country deserves.

This bill seeks to deny access to those of talent and little wealth in favour of those with wealth and little talent.

The Minister of Education has run his sneering ideological lines of how only 30% of the population have a university degree and why should the rest of us pay for it.

Of course he doesn't add that he is one of the 30%.

Neither does he add that Australian taxpayers paid for his university education.

He runs this mantra on the mistaken belief that the Australian people are driven solely by their hip pockets.

He believes that the community is as short sighted as he is.

Australians have always understood that money spent on education is an investment in the future.

The Australian people reject this mean spirited tactic that seeks to create a division between those people with a higher education and those without.

Rather than railing against those people who have gone onto higher education as having somehow ripped off the rest of the community, the Minister should be held accountable as to why only 30% of the population has gone onto higher education.

Back in the 1980's the Hawke Labor Government set ambitious targets to increase the retention rate of students completing Year 12.

Now is the time to set ambitious targets aimed at increasing the percentage of the population that has a higher education.

This is not achieved by creating more disincentives for Australians to go onto higher education.

This will not be achieved by creating yet another ideological user pays system.

As Cicero once said;

“What greater or better gift can we offer the republic than to teach and instruct our youth?”

What held true over 2000 years ago is still true today.

I would however add another group beside our youth.

One of the other aims of the education system should be to educate the mature aged.

To educate those people who have left the workforce to raise children, or who find themselves in the situation of being able to return to study.

One of the great results of the education reforms between 1972 and 1996 was the influx of people back into education.

There is no doubt, as anybody who has come into contact with a mature aged student will testify.

Mature age students grab onto their opportunity to participate in higher education and make the absolute most of it.

In my opinion once you have been in the workforce you gain a huge appreciation of the value of higher education.

You see young people entering the workforce with a higher education qualification earning more than people who have been in the job for years and years.

That is why mature aged students perform at such high levels.

They have seen in workplaces all across Australia the real value of a higher education.

It is also the reason that parents are strong supporters of education.

The greatest failing of the current government has been to create an environment where it has be-

come increasingly difficult for mature aged students to participate.

In conclusion this government's neglect of the higher education system between 1996 and now has created the current situation.

This ideological solution contained within this legislation is no solution at all.

The Labor party's policy is called Aim Higher.

That must always be the purpose of any society.

That it must be better for the next generation than it has been for us.

As John F Kennedy said

“Let us think of education as the means of developing our greatest abilities, because in each of us there is a private hope and dream which, fulfilled, can be translated into benefit for everyone and greater strength for our nation.”

There can be no more important role for government.

No higher priority to fund.

No greater benefit for today and for future generations than to invest in education.

Invest in education without strings, without conditions and without favour.

**Senator HUTCHINS (New South Wales)**

(12.51 p.m.)—I rise to speak on the **Higher Education Support Bill 2003** and the **Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003**. In doing so, I will be making reference to the disastrous effects this legislation will have on the University of Western Sydney and the Western Sydney region generally. These effects were the subject of a great deal of public debate and discourse when it was revealed that UWS stood to lose millions under the government's package. Since that time, the issue has been handled so poorly by the member for Lindsay, whose electorate is home to UWS's largest teaching campus, at Kingswood, that first Minister Nelson and more recently the Prime Minister have been forced to intervene to shield UWS from the crippling effects of these bills.

The greater Western Sydney region is a powerhouse of national growth and development. It has become the nation's third-largest economy, behind Sydney and Melbourne, generating more than \$54 billion in output a year. Between 1996 and 2001, its population grew by 8.5 per cent and it is predicted that a quarter of all population growth in Australia in the next 25 years will be in Western Sydney. Yet as a region Western Sydney faces unique challenges and constraints. It has experienced a long history of socioeconomic disadvantage. Accordingly, it remains underrepresented in terms of tertiary education participation. The higher education participation rate for the region stands at three per cent compared with 5.2 per cent for the rest of Sydney. Around one in 10 Western Sydney residents has a degree compared with one in five for the rest of Sydney.

The University of Western Sydney was set up and funded by the Hawke Labor government in 1989 to provide university education and research opportunities for Western Sydney as a region. This remains the university's legislative charter, purpose and mission. More than 35,000 students study at UWS's teaching campuses in Bankstown, Blacktown, Campbelltown, Hawkesbury, Parramatta and, in the heart of Mrs Kelly's electorate of Lindsay, at Kingswood. Around 25,000 of these students come from Western Sydney.

UWS thus continues to serve its purpose in providing local educational opportunities for the people of Western Sydney. In doing so, however, it faces a number of unique challenges that set it apart from other universities. As a relatively new university, it does not enjoy the benefits of years of public funding and accumulation of assets and infrastructure. It does not receive the same levels of endowments, bequests and alumni support enjoyed by older universities.

UWS is also a multicampus institution. The university's charter requires it to offer a broad range of courses and research across six teaching campuses in an area of 2,000 square kilometres, 14 local government areas and one-tenth of the nation's population. A third of its students are from non-English speaking backgrounds, and 12 per cent of its students are classified as coming from low socioeconomic status postcodes. This compares with 4.3 per cent for the University of New South Wales and 5.9 per cent for the University of Sydney.

Accordingly, the university faces two major and conflicting challenges—an expensive operating structure and a relatively modest, non-government funding base. To illustrate the significance of these non-government funding differences, UWS has an income of \$11,016 per full-time student, compared with the Group of Eight universities' average of \$27,793. On top of this, the university has suffered dramatic funding cuts since the coalition, and Mrs Kelly, were elected in 1996. More than \$270 million has been ripped out of the university in real terms.

UWS has thus faced ongoing deficits as it struggles to meet the terms of its charter. This has not only resulted in poorer resources generally for students, some of which were outlined by Senator George Campbell yesterday, but also a student to staff ratio of 22 to one—well above the 20 to one sector average and the 18 to one enjoyed by Group of Eight universities like Sydney and Melbourne. There were 2,700 over-enrolments in 2003, meaning that UWS had to turn away 2,700 students qualified to study at university this year. Also, between 1996 and 2001, the higher education participation rate gap between Western Sydney and the rest of Sydney grew from 1.8 per cent to 2.2 per cent.

Under this bill, things will get even worse because the government's new funding structure fails to cater to the individual needs of universities like UWS. It fails to acknowledge the unique challenges faced by UWS—challenges that arise due to its role as a university that caters wholly for one of the largest, most geographically spread and fastest growing regions in Australia. The government's new funding structure under this bill relies upon universities increasing HECS fees by up to 30 per cent and increasing the number of up-front full fee paying students.

Independent of the gross inequities of this proposal, from a purely financial point of view, older, high-demand and single campus institutions like Sydney and Melbourne, with lower percentages of poorer students and teaching and nursing students, will benefit from this package. UWS will not. In fact, from a financial point of view, it will be significantly worse off.

This package is another funding cut for UWS. This is due to the fact that UWS will not utilise the option available under this bill to increase HECS fees and up-front fee paying places. Such a decision would seriously undermine participation at UWS from the Western Sydney region—it is unlikely that the 12 per cent of UWS students who come from low SES backgrounds would be able to afford the extra fees.

UWS has estimated that under the government's package, a three per cent increase in staff salaries would require an eight per cent increase in HECS to cover that cost. UWS has 19 per cent of its load in nursing and teaching—fee increases are not permitted in these areas. Accordingly, other courses would have to bear the brunt of any need to increase fees to cover costs. So at UWS you would have affordable courses in nursing and teaching and exceptionally expensive courses in other areas like business and law.

Perhaps this is what the coalition want—the idea of people from Western Sydney, from modest backgrounds, becoming lawyers and business leaders is a complete anathema to them. For the coalition, this is putting the working class back where they belong—at the lower end of the pay scale as teachers and nurses.

But the university has said time and time again that such an increase for its students would not be practical or viable. In fact, recent interventions from Minister Nelson and the coalition seem to implicitly accept that there will be no fee increases at UWS. The university initially stood to lose upwards of \$31 million in funding. Since that time, Minister Nelson has performed two major backflips.

Following a great deal of negative publicity surrounding these funding cuts for UWS and other similarly placed regional universities, the minister announced an increase in the size of the government's so-called 'transitional fund' to \$38.6 million. Under these changes, the government claimed that UWS stood to lose \$4 million in 2005 and \$684,000 in 2006 before funding returned to normal levels. UWS's estimates were not so optimistic. In its submission to the Senate inquiry into this legislation, UWS estimated it stood to lose \$7 million, \$5 million and \$2 million respectively for the years 2005 to 2007, or a total of \$14 million. Vice-Chancellor Janice Reid has also estimated that, at best, the university stood to lose \$10 million and, at worst, \$20 million.

Following revelations that UWS was looking to lease land and introduce parking fees for students to cover the funding shortfall, yesterday the government backflipped again. The Prime Minister announced he would directly intervene to save UWS by introducing a special loading for multi-

campus universities like UWS. We are yet to see the details of this new funding.

The real story behind this recent backflip has nothing to do with any concern the government has for the future of the University of Western Sydney or the 25,000 Western Sydney students who are enrolled at UWS. Rather, it has everything to do with saving the political hide of the member for Lindsay, Jackie Kelly. This recent backflip underlies the complete failure of the member for Lindsay to stand up for the interests of the residents of Western Sydney. A report in yesterday's *Sydney Morning Herald* revealed that, rather than coming about through lobbying from local MPs like the member for Lindsay, the Prime Minister's recent UWS backflip came about as a result of 'special talks' between the Chancellor of UWS, Mr John Phillips, and the Prime Minister himself. In other words, UWS was forced to appeal directly to the Prime Minister. The chancellor had to do this following a complete failure on the part of Miss Kelly to stand up for UWS and the people in her electorate who study—or hope to study—at the university.

These funding cuts were first made public in May this year following the announcement of the government's reform package. The member for Lindsay immediately contrived a cynical, manipulative and dishonest scheme to minimise any resulting local political backlash. Instead of fighting for a better deal for UWS and sticking up for the people of Western Sydney, Miss Kelly decided to sink the slipper into the university to try to divert attention away from her government's savage cuts. In a letter to all 17 UWS board members, which conveniently found its way into the hands of several media outlets, including the *Daily Telegraph* and ABC radio, the member for Lindsay accused UWS management of being guilty of maladministration, wasting money and a lack of vision. This was in spite of the fact that

the university had in 2001 undertaken a major restructure which saved around \$10 million and put UWS on a sound financial basis for the future.

However, the scheme of the member for Lindsay backfired. She copped a drubbing in the media and—judging by the number of people who have contacted my electorate office in Western Sydney—from her own constituents. The people of Western Sydney are not nearly as stupid as the member for Lindsay would like to think they are. They have seen through the scheme and the Prime Minister knows it. But before the Prime Minister was forced to intervene to save the member's political bacon yet again, Miss Kelly waged a desperate campaign to defend the cuts. The following excerpt from an interview on ABC radio's *PM* program would be amusing were it not so frightening. Miss Kelly said:

Their—  
that is, the University of Western Sydney—  
funding hasn't been cut. I've worked with the  
university and in terms of the university's position  
on the changes to funding in terms of not  
funding universities per place, but funding universities  
according to the expense of the degree  
they do, okay, new universities across six campuses  
yada yada yada.

They are not my words at the end. The member for Lindsay is actually quoted as finishing off such a powerful argument with those words—and I am still trying to work out what on earth 'yada yada yada' means in that context.

The member for Lindsay then attempted to deflect the growing anger at her actions by taking out a full-page advertisement in her local newspaper. In this Orwellian masterpiece that puts Sir Humphrey Appleby to shame, the member for Lindsay moved beyond the not so persuasive argument of 'yada yada yada' to a series of what can only be

described as Kelly-isms. In the advertisement, it was claimed that, rather than suffering funding cuts, UWS was experiencing more pleasant sounding Kelly-isms such as a 'new funding system' with 'changed funding arrangements'. According to the advertisement, this was necessary because UWS was funded on the 'old model' and the government had to 'correct' UWS's funding.

Perhaps 'funding correction' is Miss Kelly's new politically correct term for when you rip the guts out of a great institution like the UWS. In 2007, when UWS will be up to \$14 million worse off under this package as it stands, I will bet that Miss Kelly will be describing UWS as 'funding impaired'. And so who could blame the Chancellor of UWS for going straight to the Prime Minister? All he could get out of the member for Lindsay, whose electorate is home to UWS's largest campus at Kingswood, was 'yada yada yada' and the news that his already 'funding impaired' university was merely undergoing a 'funding correction'.

The member for Lindsay has once again failed people in her electorate of Western Sydney, only to be saved at the last minute again by the Prime Minister. I am sure the people of Lindsay will see through this latest backflip and see it for what it is—a last ditch attempt to save the hide of an MP who is known to be increasingly disinterested and disengaged with her electorate. They know that Labor created UWS and only Labor cares for the future of that great institution, because only Labor believes in the sort of society where the disadvantaged can be whatever they want to be—whether they be lawyers or business people. It is about time this government started doing the same and gave people in Western Sydney a fair go.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (1.07 p.m.)—As the final speaker for the Austra-

lian Democrats on the **Higher Education Support Bill 2003** and the **Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003** I would like to summarise the range of views and concerns that Democrat senators have expressed on this issue. The bottom line—and this is probably appropriate seeing we are talking about an education package—is that the mark that this package gets is an F, a fail. We are happy to write on the bottom of it 'must try harder' because the government must try harder. We believe that the government should go back to the drawing board and take this issue seriously. My view is that there has been ample evidence over quite a long period of time through Senate committee reports—not just the Senate report on this legislation and the surrounding issues but the Crossroads report before that and the Senate committee report into universities in crisis. They not only identified problems but put forward solutions. I believe that the government has not taken those solutions seriously.

The government has acknowledged, as everybody has, that there is a funding crisis. It is important that all of us, both in this chamber and in the community, recognise that throwing this package out is not going to fix the current crisis. That still has to be dealt with. But you do not fix a crisis by making it worse, and that is what this package would do, despite the fact that it has a small amount of extra money attached to it. I say 'small' in comparison to the amount that has been taken out of the higher education sector over preceding years. It seems to me that the crisis—partly a self-generated situation, I might add, by this government—has in some ways been used to attempt to insert a range of ideologically driven changes. Then the government has dangled the necessary money and said, 'This is the only way to resolve the crisis'—a crisis that the government had a good role in generating.

We will not use the excuse of a crisis to allow an ideologically driven agenda to be put forward under the masquerade of a solution. But there is a crisis and it does need solving. The Democrats are certainly, as we always are in our balance of power role in the Senate, willing to not just put forward ideas but attempt to work constructively with people throughout the community and the government to resolve issues in a positive way. One of the positive aspects of the Senate committee inquiry was that it involved people from across the community and across the spectrum, including vice-chancellors, staff, students, consumer groups, various industry groups and science groups—not just one ideological group fighting against the government's ideological agenda. That situation demonstrated that there is a wide range of concerns.

Clearly the verdict was, as I said at the start, the mark was an F, a fail. It was clearly so fundamentally wrong. It needed dramatic overhaul. We acknowledge that there have been some changes, but they do not go to the core of the problems. They miss the main issues facing the sector. So our clear message as a party—and it reinforces our role and responsibility as the balance of power party in the Senate—is to always look for opportunities to engage positively to address problems to move things forward. It is also about having the ability to make those judgment calls about whether the totality of something will move things forward, whether it will not address the issues or whether, as this package does, it will make things worse. It will lock in changes that will be virtually irreversible under the totally inadequate carrot of short-term inadequate funding. It is sufficiently flawed, as all Democrat speakers have said, and fundamentally flawed. I suggest the best and most efficient way of dealing with this is for the government, let alone the parliament,

to toss it out, sit down again and start from scratch.

I would like to make a few comments about my own state of Queensland. The Democrats have always given high priority to education issues and higher education issues, not just universities but TAFEs as well. Education is a fundamental. So many of the other issues that we often deal with in this chamber—social inequality, unemployment, inequality of opportunity, human rights issues and ways of dealing with environmental problems—can be addressed in the long term if we have the highest quality education system and a world-class educated community and society. So it is fundamental not just in itself but to all other issues.

Education has always been a priority of all Democrat senators, and all of us take this issue seriously. Even though the vast bulk of the work was done by the portfolio holder, Senator Stott Despoja, all members take it seriously, take interest in it and paid attention to the representations we received from people across the community. It must be emphasised, even though these bills deal with universities, it is not just an issue for university administration or people at universities. It is not just a student issue, a staff issue or a universities as an entity issue; it is an issue for the whole community, and it affects the whole community. In some ways, this is true none more so than in my state of Queensland. Queensland is the most decentralised state, with still over half of the population located outside the capital city precinct.

As a senator for Queensland I made a particular effort over the last few months to visit every university campus outside the south-east corner. I would have liked to have been to more in the south-east corner. Oftentimes people go to places around Brisbane and do not go elsewhere so I prioritised the rest of the state and went not just to every university

but to every university campus, including one that I did not even realise existed until I started looking at it. That was the Central Queensland University campus at Emerald. It is a small campus but nonetheless an important one and a good example of why in many respects this issue is more important for states such as Queensland, which is decentralised and has regional universities and regional university campuses.

Those universities are critical for those regions. I am told that the CQU campus in Rockhampton is the largest employer in the town. Any impact on that university will flow through to the economy of that town. CQU has also in many ways led the field. It is in I think the top three or four in the country with international students. It is ironic that some of Central Queensland University's biggest campuses dealing with international students, apart from Rockhampton, are in the capital cities of Brisbane and Sydney.

James Cook University head campus, if you like, is at Townsville but it also has a campus at Cairns and a small unit at Mackay. It is one of the few truly regional universities and as such it will receive a regional loading, which is one of the areas that are superficially attractive with this package. However, in its submission to the inquiry that university stated that it was:

... not possible to gauge accurately how each of these measures will affect individual institutions, because of the contingent nature of several large funding mechanisms.

Queensland universities were eight per cent overenrolled last year. It is also the state with the highest unmet demand and fastest population growth. It will record about 50 per cent of all national growth in the 15- to 24-year-old group in the next decade. In response to this growth, the government says that students are not paying enough for their education currently and that the long-term

solution is to have student funded expansion of higher education. Leaving aside the objectionable aspect of having the expansion funded by students rather than by the community as a whole through the government, such expansion will not be possible for regional universities, who are least able to exploit the full fee paying student market. The effects will be worst in regions which have the greatest proportion of people from lower socio-economic backgrounds, debt averse students. That has a flow-on not just in terms of the economy of towns and cities like Rockhampton but indeed in terms of the education opportunities for people in the regions.

One of the big concerns I have if this whole radical right turn in the operations of universities were put in place is that regional universities would be faced with the choice between looking for market specialisation to enable them to attract the necessary revenue and doing what they should do, and I believe must do, which is, as a primary purpose, to focus on the needs of their community and their region. One of the reasons why universities like Central Queensland University have campuses in places like Bundaberg, Gladstone, Emerald and Mackay is that they know they need to have places that can service the local community. Having those reasonably new campuses such as the one in Bundaberg is providing opportunities for people in the regions who perhaps cannot leave their region to upgrade their skills, and certainly do not want to. These are opportunities that people in the city, whether they are young people or older mature age students, take for granted. That is a real danger in terms of the direction that this package takes us in.

Already the focus for regional universities has shifted away from the regions where they exist as an integral part of the community because of the need to chase the dollars

elsewhere. Universities are crucial for the future development of our regions but, sadly, their focus will shift further away from quality education in their region and into income generation further afield, if this legislation is passed. As a senator for Queensland and as Leader of the Australian Democrats, I cannot support legislation that will impact on my state and the nation in the way the government's proposals will. I believe the package has fundamental flaws. What I found valuable when visiting all the campuses, meeting not just with students but with staff and vice-chancellors or senior representatives, was to see the major role that these campuses play in their region. That must not be ignored and it must not be undermined. The value of that—not just the immediate economic benefit but the long-term social benefit—to regions is something that is already under threat. We certainly do not want to do anything that will make it worse, let alone dramatically worse, as many aspects of this package would do.

In summary, my view and the view of the Democrats as a whole is that the package is so fundamentally flawed in its core aspects that it is appropriate and desirable—and I suggest even desirable from the government's point of view—to simply reject it in the Senate at the second reading stage and to start again. I reiterate the Democrat view in relation to our approach to this issue, which is identical to our approach on every issue: we use our balance of power role responsibly and we always seek to find opportunities to address social problems, to find solutions that will move things forward. Even if we do not move them forward as far as we would like in one go, if we can move them clearly forward in a way that is not only demonstrably the case but also sustainably the case then we will do so. It would be irresponsible of us to do otherwise. We are not here to insist on getting all we want all the time. We

would if we had a majority in our own right but we do not, and we recognise that. Nobody does in this chamber or in this parliament, and that is why the Senate and the parliament are so important. But we will not support things that move things backwards or lock in structural changes that will allow things to go backwards in the future. That is what this package does, and it does it in a big way.

We are saying and have said throughout a number of years, and certainly over the period of community debate surrounding this legislation, that universities are in crisis. The Democrats have led the way in this chamber in highlighting that fact and putting pressure on the government to do something about it. This government has done something about it, but what it is doing is making things worse. Clearly, just throwing out this package does not resolve the current university crisis. We are very conscious of that as a party. We will act responsibly in trying to do everything we can to alleviate that crisis. As always, we are willing to work with government and everybody else throughout the community to attempt to do that. But we recognise that we have to have the ability, and we do have the ability, to make the necessary judgment calls to assess whether or not something is truly sustainably alleviating a crisis or is just a bandaid that will allow the crisis to continue to fester and to grow worse. This is what this package does and that is why we will not support it. That is why we believe the best approach for the community as a whole and the parliament as a whole is to throw it out at second reading and start again.

Hopefully, when we start again the government will recognise that it is not going to succeed if it just persists with trying to implement an ideologically driven agenda. But, if it is trying to genuinely alleviate the crisis that exists and genuinely address community

concerns, to ensure that universities are better funded and to have a more equitable arrangement whilst having high-class educational standards, the Democrats will certainly be gladly alongside it there. But clearly the government has not shown that willingness to date, and really it is up to it to make that move.

**Senator KIRK (South Australia) (1.22 p.m.)**—I seek leave to incorporate the speeches of my colleagues Senator Ursula Stephens and Senator Jacinta Collins.

Leave granted.

*The incorporated speech of Senator Stephens read as follows—*

I rise to speak against the Liberal Governments Higher Education Support Bill 2003. This legislation is fatally flawed. It is designed to increase the costs of higher education for Australian students, and to reduce the opportunity for rural and regional students and women to pursue a higher education.

There are three main elements of the Government package that the Labor Party cannot support:

- the 30 per cent price hike in HECS;
- the doubling of the number of \$100,000 full fee degrees;
- and the 20,000 qualified Australians being turned away from university every year and 15,000 young people missing out on TAFE places.

I have been a teacher and I am a parent—and I am someone who has been a beneficiary of the higher education system that was introduced by the Whitlam reforms of the 1970s.

And what this government is proposing is just not acceptable. It is such a retrograde step that it defies logic. Where modern economies invest in education, Australia is the country that has withdrawn its funds from the higher education sector.

We speak constantly about having a smart society—working smarter not harder, investing in intellectual capital of this country. We all know the value and liberation that an education can pro-

vide; it gives not only to the individual but also to the nation as a whole.

Education and a commitment to life long learning provides a society that is a thoughtful and diverse base within the community, with the capacity to value diversity, to debate issues and to participate and contribute to public life. We've known this since the times of Socrates. We value a thinking society.

It is an ideal we have grown to cherish in this country. Our ability to embrace learning and develop new ideas has made Australia into the vibrant and internationally successful nation we are.

This package denies talented people the opportunity to gain a tertiary qualification and we will all suffer as a result.

I have heard Dr Nelson repeatedly declare by way of justification for this package that not one Australian university is ranked within the top 100 in the world—he of course conveniently forgets to mention that all of Australia's 38 existing universities are in the top 200. All our existing universities are very good—there is always room for improvement in various areas of each university but as the National Tertiary Education Union (CSU Branch) pointed out in their submission to the higher education inquiry “this will not be achieved by propelling one or two into a so-called world elite. Under the proposed funding, governance and staff/management arrangements the success of the elite will be at the expense of every other university: their management, staff and students will pay the cost.”

They went on to say:

“Today all students, regardless of where they live or the background they come from, can expect to get a high quality university education. Tomorrow, under these proposals, only the rich or the brightest will get a world class education the rest will miss out.”

The Howard government's approach to higher education over the past seven years has been a wretched one—and it has failed—miserably—the number of Australians starting an undergraduate degree has actually dropped for the last two years running. Here we are, living in an information age, yet the proportion of our population aiming to gain a degree is actually falling. As we have

heard from various speakers in this debate, Australia is now the second worst OECD performer at increasing the rate of enrolment in Universities.

And what is the government's response to this disturbing trend? It is actively working to exacerbate it. This government has created a high level of anxiety about higher education in this country.

Many students report concerns about even starting a degree for fear of tremendous HECS debt they will incur.

The government has also reduced the number of HECS fees paying places so that more and more Australians will be forced to pay full fees.

Add to this are the restrictions the Minister is trying to place on what and how Universities teach. So here we have an attack not only on the quantity of applicants and places but the quality of the education as well. Colleagues this is not in the interests of Australia.

The Higher Education Contribution Scheme has almost doubled under the Howard Government, meaning Australian students and their families pay some of the highest university fees in the world. It will be made even worse for those currently considering higher education.

They are facing the prospect of starting their working lives with debts well into the tens of thousands, even \$100,000. This is incredibly daunting for most people—many are at a time in their lives when they are considering their future in the property market or contemplating starting families of their own. This policy of the government is disabling those in our community who want to get an education and contribute to our economy and our nation in general.

What does this legislation mean for regional universities and regional communities?

Regional universities in Australia have brought so much to Australia; they play a pivotal role in facilitating community development. Institutions such as Charles Sturt University, University of New England, the University of Wollongong and Southern Cross University make a significant contribution, both socially and economically to our regions.

A 1997 study commissioned by the Review of Higher Education Financing and Policy suggested

that Australia's regional universities contributed over \$2 billion to regional output. They provide an injection of intellectual capital to the regions, bringing with it innovation, entrepreneurship, research and development. More importantly, they allow regional youth to stay in the regions, to stay with their families, gain employment and reinvest their skills within the regions. Mature students in the regions have opportunities to maintain their lifestyles with their families whilst improving their education.

In their submission to the higher education inquiry the NTEU—Charles Sturt University Branch discussed some issues particular to rural and regional universities. They articulated their particular vulnerability to market driven reforms. Rural Universities generally have a greater reliance on public funding and less capacity to diversify their funding sources. Many are more recently established and have a lower resource base than metropolitan universities. They also face higher cost structures arising from factors such as distance, inability to achieve the same economies of scale as larger universities and the greater learning needs of equity target groups who are better represented in these institutions.

An intensification of entrepreneurial activities in the overseas higher education market imposed by inadequate public funding will force CSU to "fundamentally alter its priorities". As it stands the university has been very successful in attracting first generation university students from a range of educationally disadvantaged sections of the Australian community, but if it is required to self-fund it will need to impose higher fees and so many of these first generation students will miss out. This is particularly devastating. Its research efforts will need to be curtailed, staff levels will need to be reduced and less experienced academics will need to be engaged. A question they put to us, and I put to the government is "Why should regional Australians be forced to forgo a higher education (despite the public and private gain) because the federal government wants to shift public funds from all universities to a few elite ones?"

The New England Students Association describes for us the benefits that their university bestow upon their community:

- 71 per cent of UNE's young graduates gain employment in regional Australia.
- UNE provides 25.4 per cent of the local area's total employment.
- Around \$280 million is injected by UNE into Armidale each year.

The UNE currently offers a wide variety of courses and many of these courses have low enrolments, but are exceptionally valuable even if they aren't particularly profitable. "UNE must maintain this diversity by continuing to offer courses that may have small enrolments by comparable standards with metropolitan universities, but are credible, academically vigorous and provide regional students with the opportunities they deserve."

Under this package universities do not receive funding for their external students—this would seriously disadvantage The University of New England as it caters for so many of these students.

"Increases in fees, the lack of diversity in courses offered, and the lack of regional loading for external students will severely inhibit the access to higher education of students from rural and isolated communities."

The Government's package aims at University specialisation. This means particular universities will 'specialise' in particular disciplines or areas of interest resulting in a narrower range of courses being offered at any university campus.

Rural universities thrive on diversity and generating relationships across faculties and with communities. These unique relationships are not recognised by this legislation.

What effect will specialisation have? Well, There are two main foreseeable effects for rural Australians that colleagues should be aware of.

Firstly, It means that our students—our children—are likely to have to travel thousands of kilometres to attend university. This is extraordinarily disadvantageous for regional youth, pricing many regional students out of the education market. Those from disadvantaged backgrounds—anyone in fact except the well off are being excluded from higher education.

The government is attempting to establish accommodation scholarships for rural students at a

rate of \$4000 a year but, again this will fall miserably short and four out of five rural students will miss out. For many rural Australians a local university is their only choice—if the course they want or need to do is not offered, they will go without an education.

My second concern relates to the need of rural and regional universities to a diverse range of courses to suit the local community, one course will not fit all and often people simply cannot afford to relocate to another town to do a different course. It is one thing to say that a Sydney person will have the option to attend several Universities with varying specialties within the metropolitan area but for many rural people a the local university is the only choice. It will probably mean that small universities and regional/rural universities and campuses will be closed down for lack of enrolment (and therefore funding) or made irrelevant—offering only courses made up of subjects from larger universities.

Deregulation will force universities to rely on increased student fees for funding—stitutions unable to attract students will become vulnerable and may be forced to stop offering disciplines where the Commonwealth contribution has decreased. Universities will need to axe courses and close campuses.

The government's education package demonstrates a complete lack of understanding of the social and economic barriers in place for rural youth to get the education they need. Students from low-income families and rural backgrounds already work against several obstacles to University. The costs of attendance, university fees, academic attainment, and parental support. The government wants to make these barriers completely insurmountable.

Many students from rural communities have been economically affected by the drought. Further debt is likely to be considered insupportable by such groups and the small amount of funding offered by scholarships cannot compensate for this.

In many rural communities there is a culture of debt-aversion—this in contrast to the attitude that middle and high-income families have to taking on large mortgages and loans. Rural youth will be turned off education in favour of earning an in-

come on leaving school to support themselves and their families.

Rural people need access to quality and affordable higher education. Unemployment is four times higher among people who have not completed secondary school compared to those with a bachelor degree and it is reported that Tertiary qualifications boost earnings by around 40 per cent while completing Year 12 or a TAFE qualification raises earnings by around 10 per cent. By depriving rural Australians from an education the government will be creating a cycle of poverty or working poverty which will be near impossible to escape from.

Regional universities and campuses are playing a pivotal role in facilitating community development. They are, generally, deeply embedded in the social and economic networks of their communities.

**Conclusion:**

A cycle of debt and reduced ability of access to education will be created. Those who do not attempt to gain Higher education run the risk of not having the skills and education required by the work force thus reducing their earning capacity, additionally the capacity for their children to access higher education will be reduced on financial grounds. Those who do access higher education will be forced to work longer and harder to pay off the debt they have created, this may impact on their ability to even have children, buy a house or save for their retirement.

The reduction in the diversity of access is likely to create a skewed intellectual elite creating a gap in intellectual capital. A gap between those who have access and those who do not. The resulting absence of diversity will be to the detriment of our culture and the quality of our education.

The government's workplace reforms, the increases in HECS, a fee loans scheme, the filling of half the courses with full fee paying students including any reduction in representation of academic staff and students in governance, will work to aggravate the problems I have outlined. How can this government even pretend like they care about the access of Australians to Higher education? Education will quickly become an option only for the privileged.

The government is trying to push this catastrophic package through and we are expected to simply accept that it will all work out in the end. The governments negotiating down to the wire here but this is far too important an issue to have a patch up job of a bad package. Australia requires a new workable package for such an essential issue.

*The incorporated speech of Senator Jacinta Collins read as follows—*

I rise today to oppose the Higher Education Support Bill 2003.

In rising to deliver his second reading speech Dr Nelson said that

“Australia, and the next generation of Australians in particular, is moving into a world which is quite different from that of the past. “

Indeed we are.

We are moving from a world where Government believed it had a fundamental responsibility to provide for social capital and social infrastructure to a world where Government will entrust the future of existing social capital and social infrastructure to market forces.

Social capital and social infrastructure refers to those institutions and programs that provide for people, their families and their communities. They can be institutions such as public schools, public hospitals and public housing. They can be programs such as Medicare, children's services, concessions and payments. Australia's Universities are social capital and social infrastructure.

Social capital and social infrastructure exist because there is a fundamental view that people, their families and their communities are important and that as part of a civil society we have a fundamental responsibility to assist the participation of all in that society.

Social capital and social infrastructure provided by government have always been distinct from any other type of government service because they seek to provide that which the market either cannot, or is not prepared, to provide. Such services are intrinsic to the cohesion of our social fabric.

Historically it has been considered that to govern and provide for individuals and families (particu-

larly those who could not provide for themselves), the development of communities and the future of society as a whole, was an essential role of government.

But in this new world that Dr. Nelson dreams of, it is clearly intended that the future of social capital and social infrastructure will be determined by the market.

Indeed, in their establishment Universities could have been considered elite institutions that provided for wealthy men. But the fundamental ideal that education is a basic right of all young Australians, indeed all Australians, gave way for building an Australian system of higher education that provided for great teaching and research institutions that people accessed according to merit rather than according to ability to pay.

Indeed, Dr. Nelson claims to support this ideal. He said in the House that "the government's vision of education, science and training is that our ambitions and our policies should enable every human being—especially every young person in this country—to find and achieve their own potential."

Yet, ludicrously, despite strident opposition from universities, academics, university staff and students, they are persisting with this legislation that will only serve to restrict access to education.

Dr Nelson claims that he agrees with Dean Mary Kalantzis, the President of the Australian Council of Deans of Education spoke of bringing students "from the periphery to the centre of the higher education experience".

Yet if Dr. Nelson truly agreed he would resolve the chronic shortage in HECS places, tackle escalating levels of student debt and reduce rather than increase the cost of degrees. All products of this governments approach to management of social capital and social infrastructure.

The Howard Governments regressive education strategy has meant that increasing numbers of young people are failing to secure a University place despite achieving academic results. Indeed, on average 20,000 qualified and motivated Australians who apply for acceptance to Australian Universities are rejected every year. According to the OECD's Education at a Glance 2003 report, Australia has the second lowest increase in the

rate of enrolment in universities in the OECD. The Governments own figures demonstrate that the number of Australians commencing an undergraduate degree has declined in consecutive years. None-the-less this Government has failed to propose strategy or programme that would even, as a bare minimum, maintain current numbers of fully funded university places over the next three years. The Howard Governments failure to adequately arrange funding for University places will force Universities to cut around 8,000 HECS places by 2007. Notably, after 2007, publicly funded places will not even keep pace with population growth.

The Minister claims that he wants to bring students in "from the periphery to the centre of the higher education experience" yet the Howard Governments strategy means that dwindling proportions of Australians are enrolling in university. In contrast, by 2008 Labor intends to create over 20,000 new full and part time university places every year for Australians starting a degree.

The Howard Governments regressive education strategy has already meant that students, and often their families, are forced to try and pay crippling hikes in fees. Now the Howard Government wants to let universities increase HECS fees by 30 per cent. This means students are accumulating HECS debts of up to \$50,000. The Howard Government's proposed fee hikes could represent a doubling of the average student contribution since 1996. Significantly, student debt has more than doubled under the Howard Government blowing out to more than \$9 billion.

However, Dr. Nelson's supposed solution to financial support for young people pursuing further education is a Commonwealth learning scholarship program and the introduction of a loans scheme with a 6 per cent interest rate to encourage more Australians to pay full fees. That means someone studying a specialist nursing degree could have to pay \$4,300 in interest alone, over and above the cost of living.

Importantly, the current range of income support payments for students is particularly meagre. This is particularly so for students aged under 25 whose payments are dependent on the means testing of their parent's income. The parental means test for the youth allowance is punitive and

restricts payments to students whether or not parents actually provide some financial assistance to them. When the Howard Government introduced Youth Allowance it increased the age of independence from 22 to 25 years of age. It is absolutely absurd that this government is forcing families to continue to support their children until the age of 25 if they are studying. Too many Australian families are suffering extreme financial pressure because they are forced to support their young adult children through further education.

Currently, students who receive Austudy are ineligible for rent assistance. As a consequence many students are forced to work very long hours, in times when they need to study, just so that they may pay their bills and buy their educational tools. Further, under the current system, an unemployed person who rents gets more under Newstart than a student in similar circumstances gets under Austudy. This means that somebody who is 25 years or over gets more government support if they are unemployed than if they are a full-time student. This is a serious disincentive to students over the age of 25 to further their education. There is also the ludicrous fact that two students could be sitting beside each other in the same class as part of the same course, with the same income and the same living expenses but they receive different levels of financial assistance because one is 24 and the other is 25. I challenge the Government to justify why the 25 year old needs \$90 a fortnight less than the 24-year-old student sitting beside them.

Again, the Minister claims that he wants to bring students in "from the periphery to the centre of the higher education experience" yet the Minister is compelling students, and their families, to compensate for the \$5 billion they have slashed from Australian universities. The Howard Government's strategy means that cost is increasingly a barrier to young people achieving a university education and that of those who can put up the costs many will spend a large part of their working lives weighed down by massive debt. Labor will not support any measures to increase the cost of education for young people and their families.

The Howard Government is creating an American-style system. The government has turned over valuable social capital and social infrastruc-

ture to the market. Students, mostly young people, are at the whim of the market. Those who have worked hard and made the grade are often rejected by the system that favours those who can afford to pay. As of 1998, full fee paying students have been able to use dollars rather than grades to acquire a University place. This will be increasingly so as Degrees costing as much as \$150 000 will force all but the very wealthy out of the market.

Again, the Minister claims that he wants to bring students in "from the periphery to the centre of the higher education experience" yet the Minister wants to increase the number of full fee paying places so that the determination of half of all university places will essentially be determined by the market.

Labor believes that all Australian citizens should have an equal opportunity to get into university based on ability rather than market forces. Labor will restore merit as the only criterion for getting a university place. Labor will abolish full fees for Australian undergraduates. Labor will abolish the real interest rate on postgraduate loans.

After seven years of the regressive strategies of the Howard Government, Australian Universities are at crisis point. The Howard Government has slashed \$5 billion from our universities since 1996. According to the OECD's Education at a Glance 2003 report, between 1995 and 2000 Australia's public investment in universities declined by 11 per cent—more than any other country in the OECD, with average OECD growth of 21 per cent. Australia is being left behind while our international competitors are reaping the economic and social benefits of investing in tertiary education. Decreasing levels of investment mean that our universities are in many ways failing to keep up with international standards. Class rooms are over-crowded, infrastructure is in poor condition and insufficient student resources have all become increasingly common characteristics of Australian universities. Between 1996 and 2002, the number of students per teaching staff has blown out by 31.3 per cent. At some institutions the increase has been over 50 per cent. This means a lack of individual attention, fewer tutorials and bigger classes. Australia's young people

are suffering the consequences. Now the Government wants them to pick up the pieces.

What is even more disgraceful, although hardly surprising when considering the antiunion, anti-worker agenda of this most immoral Government, is that the Minister has hijacked over \$400 million of desperately-needed university funding and is trying to blackmail universities into implementing unfair and unreasonable industrial conditions. Their hypocrisy is however astounding. On every other level they are seeking to deregulate the Australian Higher Education system yet on this level they are seeking to absolutely micro manage it. This Government clearly prioritises its extreme and unjust ideological bent over the needs and want of Australian Universities, academics and other staff, students and ultimately the communities and society of which they are all an important part.

In conclusion,

Education is a fundamental right of every young person, of every person.

Education is fundamental to our society and to our economy. It moulds our social fabric.

For these reasons Government has always believed in the importance of education, particularly further education.

Government has always ensured that social capital and social infrastructure provided for that further education.

To turn leave the provision of that education in the hands of the market will compromise both access and standards.

The Government's solution is to shift the burden to young people, and in many cases, their families.

The Minister claims that he wants to bring students in "from the periphery to the centre of the higher education experience" but all the Minister is really doing is pushing them further behind than they have ever been before.

Labor will not stand for it.

**Senator HARRADINE (Tasmania) (1.23 p.m.)**—There is a tendency when considering these sorts of difficult pieces of major legislation, where there are so many un-

knowns and fears of potential change, to just reject the bill. But that would be an easy approach, and I do not think it is an appropriate approach at the moment. I have been asking myself whether this higher education legislation is indeed salvageable. I do think there is still a chance to get this legislation into a form which can be supported by the Senate. At the moment, it would not surprise me if it were not supported by the Senate. In considering this legislation, I am mindful of the comments of the Australian Vice-Chancellors Committee that if we reject this legislation:

... the prospects of reform would drift into 2004 (or even 2005) with no resolution, fifteen years since the last major reform of higher education in Australia, an intolerable outcome for that sector.

It is I think a valid concern that if the state rejects the legislation's passage it may be years again before there is another attempt to address the problems of the higher education sector. This is a particularly difficult piece of legislation, as I indicated, and it is difficult to consider because there are so many aspects to this bill and so many different interests putting forward their views. The legislation also raises concerns because it involves significant changes to a system that can impact so much on everyday people. I have taken the opportunity of talking to a wide variety of people about this legislation: students, unions, vice-chancellors, private providers, the government, the opposition, Senate colleagues and, of course, my constituents. All have very particular and valid concerns, and I thank them for drawing their concerns to my attention.

I have to give consideration to Australian students and families, not just students studying at university now but those future students who may have the terms of their studies set under this legislation. In particular, I have to focus on my constituents in Tasmania. Senators may be aware that the University of Tasmania is the one university in

our state but that we also have other prestigious organisations and institutions, including the Australian Maritime College, to consider. Honourable senators may be familiar with the particular economic difficulties facing my state of Tasmania. Encouraging more Tasmanians to improve their qualifications at university is one way to attract further employment and better paying jobs to our state. I am conscious that Tasmania has a particularly low participation rate of school leavers going on to university, and I am conscious we should do something to help improve participation.

We need a substantial increase in the places available. The main concern for me, when considering this package of legislation, was how the package would impact on students and their families. For me, the focus of concern has come down to student fees and the student loans schemes that help students to pay for their studies. Apart from whether it was fair to continually increase charges for students, it seemed to me that increasing fees by definition would deter students from undertaking university studies. That is why I came to what I thought was a commonsense analysis of that situation. I have had a look at a number of studies, and it remains that most studies show that HECS has not deterred students from study. I have not found evidence of a significant impact on students in the studies undertaken on this issue. Certainly there is evidence, widely reported, that differential HECS has discouraged the participation of a particular group of lower income men from participating in some higher cost courses. The 2002 study by Aungles and others found that some male students from low socioeconomic backgrounds might have been encouraged by higher charges to switch to lower charge HECS courses.

Broadly speaking, HECS fees have not deterred students from undertaking university studies to date, according to these stud-

ies, but there is some evidence that HECS debts are impacting adversely on students who have completed their university studies. The recent AMP.NATSEM report *Generation Xcluded* points to the effect of increasing student debt through the current HECS system. The report says:

The delay in leaving the parental home, the extra years of study and HECS debts, and the difficulties in leaping the first home hurdle are just some of the factors underlying the dramatic deferral among Generation X in starting a family.

At a recent conference called 'Housing Futures in an Ageing Australia', Simon Kelly from NATSEM made an intergenerational comparison between two people—one born in the 1930s and one born in the 1980s. For the person born in the 1930s, superannuation was not around for most, so they have little or no superannuation; it was possible to retire at 55; those who had super could take it as a lump sum; there was a full age pension; there was no HECS debt; they own their own home; and 80 per cent have no mortgage. By comparison, the person born in the 1980s contributes, on average, nine per cent super guarantee for 40 years; it is possible to retire at 60 but will probably retire at 65, with no lump sum; has little or no eligibility for age pension; has a HECS debt of \$20,000, being repaid at five per cent extra tax for 14 years; is less likely to own a home; and is paying more tax due to higher labour force participation, being in higher-paying jobs and more full-time employment. These factors have led to a situation where older Australians may be on a lower income but they have double the wealth of younger Australians. Professor Anne Harding from NATSEM commented that governments:

... need to be very aware of the implications for future generations of higher education fees. It's possible that we may see major declines in fertility amongst university-educated women if they have to struggle with very high HECS debts, and

that has long-term implications for age pension, healthcare and so on down the track.

Needless to say, I do not support the industrial relations aspects of the package. The package requires universities to offer individual AWAs, Australian workplace agreements, but AWAs can be used as a way of undercutting collectively negotiated conditions of employment. Universities already allow common law agreements with individuals, but the important point is that those common law agreements provide for conditions above those provided for in certified agreements. AWAs allow for conditions below those provided for in certified agreements.

This package is important because it recognises the central role of universities in regional communities. By boosting funding to regional universities like the University of Tasmania, the government has recognised that universities play a role in the economic and social life of those communities that goes far beyond their traditional educational activities. In this package the government recognises this important role in regard to the teaching of students, but not the importance of regional universities undertaking research. Research creates a range of social benefits, such as the high-level expertise in agriculture and in medicine in Tasmania at the moment.

There are obviously a range of other issues that need to be considered. These include ensuring that undergraduate students at private higher education institutions have access to student loans to defer their fees—something these students have not had. Universities are also concerned about maintaining their autonomy. There are also a number of anomalous situations where, for instance, the Victorian College of the Arts—at which there are quite a number of Tasmanian students—appears to be at risk of losing substantial funding under this package. I will be keeping my eye very closely on these and

many other matters over the coming days to see if we can salvage this legislation.

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (1.37 p.m.)—As there are no other formal speakers on the bill at this stage, I move:

That the debate be now adjourned.

**Senator CARR** (Victoria) (1.37 p.m.)—by leave—The opposition will not be supporting the motion. The government have insisted that this matter is of such urgency that it be dealt with forthwith and now they are not ready to proceed. For that reason, we will not be supporting this motion.

Question put:

That the motion (**Senator Kemp's**) be agreed to.

The Senate divided. [1.42 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	34
Noes.....	<u>31</u>
Majority.....	3

#### AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Campbell, I.G.	Chapman, H.G.P.
Colbeck, R.	Coonan, H.L.
Eggleston, A. *	Ellison, C.M.
Ferguson, A.B.	Ferris, J.M.
Harradine, B.	Heffernan, W.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lees, M.H.
Lightfoot, P.R.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Murphy, S.M.
Payne, M.A.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

#### NOES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.

Brown, B.J.	Buckland, G. *
Campbell, G.	Carr, K.J.
Cherry, J.C.	Collins, J.M.A.
Denman, K.J.	Evans, C.V.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Hogg, J.J.
Hutchins, S.P.	Kirk, L.
Ludwig, J.W.	Mackay, S.M.
McLucas, J.E.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Sherry, N.J.
Stephens, U.	Stott Despoja, N.
Webber, R.	

**PAIRS**

Harris, L.	Marshall, G.
Hill, R.M.	Wong, P.
Knowles, S.C.	Crossin, P.M.
Macdonald, J.A.L.	Lundy, K.A.
Patterson, K.C.	Conroy, S.M.

\* denotes teller

Question agreed to.

Ordered that the resumption of the debate be made an order of the day for the next day of sitting.

**BUSINESS****Consideration of Legislation**

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (1.46 p.m.)—I move:

That government business order of the day No. 2, Health Legislation Amendment (Medicare and Private Health Insurance) Bill be postponed till a later hour of the day.

Question agreed to.

**PETROLEUM (SUBMERGED LANDS)  
AMENDMENT BILL 2003**  
**OFFSHORE PETROLEUM (SAFETY  
LEVIES) BILL 2003**  
**In Committee**

Consideration resumed from 30 October.

**PETROLEUM (SUBMERGED LANDS)  
AMENDMENT BILL 2003**

**The ACTING DEPUTY PRESIDENT** (Senator Bolkus)—The committee is considering the Petroleum (Submerged Lands) Amendment Bill 2003, to which an amendment was moved by Senator Brown and an amendment to that amendment was moved by Senator Allison. The question is that the amendment moved by Senator Allison be agreed to.

**Senator BROWN** (Tasmania) (1.48

p.m.)—News has come through today about the stranding and deaths of 100 whales on the west coast of Tasmania. While I recognise that it may well be impossible to know the cause of that, I want to explore at this point the go-ahead on the testing of sound bombs in the Otway Basin to the north of Tasmania by the Victorian government and the Victorian Minister for the Environment, Mr Thwaites, and by the federal government, without consideration of the impact on the marine environment. That is what these amendments get to. They would prohibit these sound invasions of the marine environment and the damage that we know can occur to whales and lead to their deaths.

I ask the minister what information he has about today's whale stranding in Tasmania. I would be quite surprised if, having come forward with this legislation now, he was not well acquainted with the information that is available. Secondly, I ask the minister whether he can report on the proximity of blue whales to this testing by Woodside Pty Ltd off the Victorian coast in the last two weeks. Is it true that the testing came within a few kilometres of blue whales? Is it true that the blue whales stayed away from the testing area?

*Senator Minchin interjecting—*

**Senator BROWN**—The minister laughs, but let me put this to the committee. While

we are talking about a smaller version of blue whales, these are the largest creatures ever to move on the face of the planet. There are possibly only 1,000 of the larger blue whales left in the Southern Hemisphere, if we are lucky. We do not know whether they will recover from the depredation of whaling and the impacts of future krill fisheries and global warming. But I am concerned about the impact—and it is a totally designed impact—of mineral exploration, which is an enormous intrusion into the habitat of these great creatures, who steer and communicate not just locally but across vast areas of ocean using their own sonar attributes. What we are talking about here is bombing that communication and steering system. In the previous sessions we established that the government does not have the foggiest about what is going on here and that Woodside—this giant exploration company—has done nothing to protect the whale migrations. We know that whales were in that proximity in the two weeks since we last talked about this. I expect the minister to be able to report to the committee about it as Senator Allison's and my amendments are specifically about this issue.

It is not about some theoretical future; it is about what is happening right now off the Victorian coast to the north of Tasmania. I expect that the minister is able to give this committee a detailed account of the seismic testing by Woodside, the observations that have come from those who have been observing it, the impact on the whale migration and the relationship, if any, with the stranding and deaths of 100 whales—not blue whales, but 100 whales—off the west coast of Tasmania today.

**Senator MINCHIN (South Australia—Minister for Finance and Administration)** (1.52 p.m.)—I do not have any information on what Senator Brown alleges is this ‘beaching of whales’. Regrettably, beaching

of whales occurs from time to time around the world for a whole lot of reasons that scientists do not yet seem to fully understand. I have no information on this, but if I get any I will pass it on to the committee. I would remind the committee that this is a bill about occupational health and safety. This is about the safety of Australians working in this industry, and I wish that we would keep our focus on that subject.

We have said many times that we have a very comprehensive regime in place for seismic operations for this very important Australian industry of gas and oil operations offshore, for which we have a responsibility at the federal level. We believe it is a very comprehensive regime regulating seismic testing. As we have said before, we are dealing with a bill on occupational health and safety. On the matter you have raised, Senator Brown, I am advised that Environment Australia are investigating that incident. As I understand it, the Woodside matter is an operation occurring in Victorian waters, not federal, and therefore it comes under Victorian law. So that is not directly a matter for this government. I would urge the committee to proceed with the Petroleum (Submerged Lands) Amendment Bill 2003 and pass it in due course.

**Senator BROWN (Tasmania)** (1.53 p.m.)—This is a matter that is occurring in federal waters. There seems to be a studied ignorance from the minister that when you have seismic testing it occurs only where the sound explosion actually takes place. But the minister is aware, and his department is as aware as anybody else, that these sound-waves travel vast distances, including in federal waters. Let me read a report from today's ABC Online headed ‘Whales found dead on Tasmanian Beach’. The report says: About 100 pilot whales have died on a remote beach on Tasmania's remote south-west coast.

Nature and Conservation Branch officers are on their way to the scene.

Tasmanian Environment Minister Bryan Green has told state Parliament the whales beached themselves south of Strahan in the South West National Park.

Minister Green would blame the whales for their own deaths! Minister Green said:

A report came in from a west coast-based abalone diver yesterday afternoon that he had seen what he thought to be as many as 103 whales on the beach.

And so on. Minister Green in Tasmania would not know, and would not want to know, if there was some human factor involved in the stranding of whales—and we simply do not know. What we do know is that seismic testing does have an impact on whales. As I have told this committee before, recent testing after the Spanish navy was engaged in submarine sonic blasts immediately connected the deaths of whales after their beaching with those events, through destruction of their auditory steering systems.

The minister says that this discussion is about occupational health and safety for human beings, as it is. But Senator Allison and I have said that this is also the time for the minister to account for the natural environment when there is sonic testing done by this industry. Yet Senator Minchin has been unable to give any information at all to the committee about events that are taking place right now. I asked about the impact on blue whales, which have been in the vicinity of this testing but which seem, from the reports I have heard, to have been defrayed by the testing, in the two weeks since I last asked about that in this parliament.

I expect the responsible minister to know, when he knows there will be amendments that he has to face when he comes back into the Senate, to be informed about the issue and to be able to inform the Senate about it,

instead of sitting there in ignorance, unable to give any information to the Senate and pretending that he does not know that seismic testing is occurring or what the impact of that seismic testing will be. The Senate has a right to be informed. The Australian people have a right to know that the government is doing more than having a watching brief and that it is actually monitoring what is going on there and is informed itself. If the minister were able to inform the Senate, we could then deal with these important amendments that Senator Allison and I have before the Senate on an intelligent and informed basis. There will be some time before we resume this afternoon for the minister to get the information that is required here. I expect that he will do that so that we can at least proceed on an informed basis.

**Senator ALLISON (Victoria) (1.57 p.m.)**—Just to make the point in the couple of minutes remaining: the Democrats circulated amendments that in fact overtake the amendments on our sheets 3138 and 3133. I seek leave to withdraw those amendments, including the amendment I moved on 30 October, since I have foreshadowed the later amendments.

Leave granted.

**The TEMPORARY CHAIRMAN (Senator Bolkus)**—Senator Brown, your amendment is the only one before the chair. The question is that Senator Brown's amendments be agreed to.

**Senator BROWN (Tasmania) (1.58 p.m.)**—We are in the difficult situation where I have asked the minister for answers to questions before the vote on that amendment takes place. I am aware that there is a minute to go until question time, but I ask the minister to inform the committee whether he has the information that is available before we proceed to that vote.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (1.59 p.m.)—There are a lot of expectations from Senator Brown. I can only repeat what I have already said: the relevant authority at the federal level, Environment Australia, is investigating the incident of the pilot whales. I have said that whale strandings occur around the world from time to time for a variety of reasons and that the relevant federal authority is investigating this current incident. Woodside's operations were approved by the relevant authority of the state government of Victoria because they are occurring in Victorian waters. If any further information comes to my attention prior to the resumption of the debate on this bill later this afternoon, I will inform the committee of it.

Progress reported.

#### QUESTIONS WITHOUT NOTICE

##### Immigration: People-Smuggling

**Senator KIRK** (2.00 p.m.)—My question is to Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs. Can the minister outline the memoranda of understanding, agreements and protocols in place between Australia and Indonesia relating to people-smuggling and asylum seekers? Can the minister provide details of when these arrangements came into operation? Can the minister also inform the Senate whether all these arrangements, agreements and protocols were followed and complied with by Australia in the handling of the crew and passengers of the *Minerva Bone*?

**Senator VANSTONE**—I thank the senator for the question. Senator, it is clear to me from your question that I wasted my time last week in giving your leader a briefing in relation to this matter. Your leader has this information. I do not know whether he regards it as information that he should keep to himself and not share, but it is not confiden-

tial. In the sense that we have had regional cooperation arrangements, the details have been covered through the media over a number of years. I do not think it is unfair of me to say that, when Mr Crean was advised that we have in fact had regional cooperation arrangements with Indonesia since June 2002, maybe because of the pressures cast upon him—not by us, but by people on your own side, Senator—he responded to the assertion that we had had these arrangements in place since June 2002 with a pointed and rapidly fired question: ‘June 2002—what year was that?’ He did not take any time to reflect on this. Having been told we had had them in place since June 2002, your leader asked, ‘Which year was that in?’ I must say it left me somewhat lost for words.

These are arrangements that we have with the Indonesian government. You will not find them in any one particular document. If you want advice on these arrangements arrived at between the Australian government and the Indonesian government, your question would be more properly addressed to Senator Hill.

**Senator KIRK**—Mr President, I ask a supplementary question. If these agreements, protocols et cetera were fully complied with, why then did Indonesian immigration department official Mr Ade Endang Dahlan say Australia should not treat Indonesia as a dumping ground? And, if these bilateral agreements were not complied with, can the minister inform the Senate of the details of how Australia breached these understandings, agreements or protocols?

**Senator VANSTONE**—These arrangements are negotiated on a government to government basis, and what one particular official says does not necessarily speak for the government as a whole. These arrangements have worked in the past; they are working on this occasion. I have no advice that in any way whatsoever these arrange-

ments were not dealt with as they were meant to be.

#### Immigration: Border Protection

**Senator EGGLESTON** (2.03 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Would the minister inform the Senate of the government's ongoing commitment to border protection? Would the minister inform the Senate of any other proposals in this area?

**Senator VANSTONE**—I thank the senator for his question. Every senator on this side of the chamber takes border protection extremely seriously. People-smuggling is a serious crime, and we must do everything we can to stop it. We must deter the people smugglers. The excision regulations voted down in this chamber yesterday sent a very strong and clear message to people smugglers that our borders are protected—and yet the Senate chose to reject these regulations. We will not walk away from our determination to protect Australia's borders.

Members opposite—the Labor Party—have continually, and I believe deliberately, confused the community as to what excision means. They have done this because they do not take border control seriously and they wish to try and use it as a cheap political football. Mr President, I will give you an example. Ms Nicola Roxon, who happens to have a law degree from the University of Melbourne, said of the excision regulations: 'They give away thousands of islands. We don't need to surrender Australian territory to deal with this issue properly.' Nobody who is a spokesperson for an alternative government—and nobody who has a law degree, let alone one from Melbourne university—should be able to get away with that. She must know the difference. She must have deliberately chosen to misrepresent the situation. I do not know about Mr Crean's back-

ground, but he said, 'Their view was that you protect the nation by surrendering it.' If the alternative leader of this nation thinks that excising islands from a migration zone is somehow surrendering them, he should not have the job and you should get on with the job that you are all itching to do. You all know you want to do it, and that statement is a clear indication of why you perhaps should.

I have heard reports of journalists asking locals in the Tiwi Islands how they felt about being excised. It is no wonder that the journalists were confused. When you have the would-be alternative Prime Minister confused and when you have the would-be alternative immigration spokesperson confused, it is no wonder the journalists were confused. That is not surprising. The question we need to ask is: are they doing this out of ignorance or out of malice? Excision does not give away chunks of the country.

Senator Crossin in this place yesterday was in fact relying on an interview given to the ABC by Fred Mungatopi, chair of the Tiwi Land Council. Senator Crossin was urging us to take notice of what they had to say. I do not know what was said to Mr Mungatopi before the interview, but in any event Senator Crossin should be aware that Mr Mungatopi wrote to me on 5 November, as chair of the Tiwi Land Council—and I am not confusing it with the local council, although they also support us—and said, among other things, 'We support the regulations to stop these illegal migrants coming to our islands.' Why Senator Crossin came in here and said what she said yesterday, when this letter had been distributed, I do not know.

But the situation gets worse. Not only does the would-be alternative Prime Minister not understand the regulations that he has encouraged his colleagues to disallow and

not only does the alternative immigration spokesperson not understand—or choose to mislead—but the would-be Prime Minister is also out there causing a bit of trouble on the airwaves. I have plenty more to say about this, just in case anybody was in any doubt. I remember my friend and colleague Mr Ruddock being absolutely pilloried when he first suggested that people who come here illegally may be terrorists or have some criminal background. *(Time expired)*

**Senator EGGLESTON**—Mr President, I ask a supplementary question. Can the minister give the Senate any further information about her expectations of the likely security of our borders in view of recent events?

**Senator VANSTONE**—As I was saying, I remember Mr Ruddock being pilloried for querying the good faith of every person who seeks to come in here illegally. He was a scaremonger. He was maligning innocent people. He was the devil incarnate. And what did I hear when your own shadow Attorney-General said these boats could have terrorists on them? Nothing! Mr Beazley is out there saying that in fact these boats might have a couple of landmines on them that could be just rolled overboard. I wait, and I think: when is the torrent of abuse going to come? When is someone going to say Mr Beazley is scaremongering? When is someone going to say Mr Beazley is using this issue to promote his own ambitions? I wait, but the silence is deafening. Now—for the senators' benefit—Mr Beazley says that we will have a coast-guard: three extra boats, patrolling thousands of islands, and some volunteer fishermen! *(Time expired)*

#### Taxation: Family Payments

**Senator HUTCHINS** (2.09 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm whether she advised the Minister for Health and Ageing that, in link-

ing eligibility for the \$500 health cost threshold to the receipt of family tax benefit A, lower income parents of children aged 16 and over may have to pay three times more than a family on a higher income? Minister, is it not the case that some families whose children receive youth allowance will have to collectively spend \$1,500 before they reach the threshold, while the wealthier family whose child remains on family tax benefit will have to spend just \$500?

**Senator PATTERSON**—We will get a series of these questions, case by case, from the Labor Party, but I want to remind senators on the other side that for 13 years you were in government and not one of you did I ever hear being concerned about people who had out-of-pocket expenses—not once. We see the press saying, ‘Only a few families are affected.’ They are the families who have extremely high out-of-hospital, out-of-pocket expenses and Labor never once cared about them or did anything for them. These were families, some of them on low incomes, who would suddenly find that they had large out-of-pocket, out-of-hospital expenses because two kids in the family were sick or a parent and a child were sick. Labor cared not a jot about them. It did nothing about them.

As soon as we suggest that we will do something about those people—people on low incomes getting a lower safety net and people on higher incomes having to reach a higher level—then of course it all comes out: who will get it and who will not get it. But never ever did they care about those families who were in really extreme circumstances—and some of them have very high out-of-pocket expenses that can actually ruin them when they are trying to pay their mortgage. Labor never cared about them. As soon as we suggested it, of course, then the carping and the poking around started about who got it and who did not get it. Let me just say that Labor never once cared about families either

on low incomes or on higher incomes who are going to face—as they faced under Labor—high out-of-pocket, out-of-hospital expenses. You can sit here and pick and nitpick about the details, but you never once did anything about those families who faced high out-of-pocket, out-of-hospital expenses.

**Senator HUTCHINS**—Mr President, I ask a supplementary question. Minister, the details are clear, all we need is a response from you. Why won't the Howard government offer ordinary families the same certainty in respect of their family payments as is being offered for the Medicare thresholds, so that families are not saddled with debts averaging \$900 at the end of each year due to modest movements in their income? If it is good enough for wealthier families in relation to their health costs, why can the same flexibility and certainty not be extended to battling families receiving family benefits?

**Senator PATTERSON**—We have given battling families more in family tax benefits than you ever gave them, but we are about making sure that people in similar circumstances are treated similarly. Under your family allowance, when people got an underpayment they never got a top up. Thousands of Australians now get a top up. It is only fair—and your shadow minister said it is only fair—that, if they have a debt, they pay it back.

#### DISTINGUISHED VISITORS

**The PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the chamber of a delegation from the Greek parliament led by Mr Anastasios Mantelis, MP. On behalf of honourable senators, I have very much pleasure in welcoming you to our Senate, and I trust that your visit will be both informative and enjoyable.

**Honourable senators**—Hear, hear!

#### QUESTIONS WITHOUT NOTICE

##### Iraq

**Senator FERGUSON** (2.13 p.m.)—My question is to the Leader of the Government in the Senate and Minister for Defence, Senator Hill. Will the minister inform the Senate of how Australia's ongoing involvement in Iraq is helping to deliver better health and education services to the Iraqi people? Will the minister outline the significant progress that is being made in providing a better way of life for all Iraqis after the removal of Saddam Hussein?

**Senator HILL**—I thank Senator Ferguson for his question. I recently visited Iraq and was pleased to be able to spend time with ADF personnel, Australian diplomats and other officials working in Baghdad. I can report that they are in good spirits, morale is high, and they realise their efforts are making a real and significant contribution to the rebuilding of Iraq and to providing a better way of life for all Iraqi people. I took the opportunity to express to them the thanks of the government and the wider Australian community for their efforts. I was also impressed, but not surprised, by the high level of recognition and respect for Australian efforts from within the coalition forces, the provisional authority and the Iraqi governing council.

More than 30 countries now have forces in Iraq contributing to the stabilisation and rebuilding of that country. Over 70 different countries now name themselves as within the coalition. While the security situation in parts of Iraq obviously remains of concern, significant progress is being made in a range of programs. Economic life is being restored to the cities of Iraq, a new Iraqi currency is circulating, and banking services have been restored to an estimated 95 per cent of pre-war bank customers. Nearly 20,000 Iraqis have now been employed through a national

employment job generation program. Training of security forces in Iraq continues to show success, with coalition forces recently handing over security duties for 20 electrical power facilities to local security forces.

The removal of Saddam Hussein has also provided a brighter future for Iraqi children. Iraqi children are returning to school and are being given a real education in a wide range of subjects. By the end of the year, the coalition will have distributed 72 million new textbooks. At least 64,000 secondary teachers and 5,000 principals and administrators have been trained in modern teaching methods. Teachers are now being paid 12 to 25 times their former salaries to educate the new generation of Iraqis.

Health services are being restored, and public health spending has increased 26 times over prewar levels. Children are being immunised, doctors are getting back to work, medical technology is being updated, and infrastructure and equipment are being fixed. By the end of this year, 70 to 80 per cent of Iraqi children will have been protected against diseases—a dramatic increase on levels under the former regime—and 400 doctors will have been fully trained by our core team of Iraqi master trainers. Hospital water and sewerage systems are being restored and upgraded, and mobile health teams are being established. There remains work to be done in Iraq and there is still, obviously, a violent resistance to the rehabilitation efforts. But, despite the efforts of that violent minority, progress towards a better future for all Iraqis continues to gather momentum.

#### Taxation: Family Payments

**Senator MARSHALL** (2.17 p.m.)—My question is addressed to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm that families that claim their family tax benefit through

the tax system will be eligible for the Medicare safety net only in the year following their tax claim? Will this not discourage families with variable incomes and high medical costs from taking lump sum family tax benefit payments, putting them even more at risk of getting an end of year family payment debt?

**Senator PATTERSON**—I predicted it, Mr President. I predicted that we would get it question by question by question. They cannot come out and say, ‘Isn’t this a positive step that the coalition have undertaken to actually protect families against those unexpected out-of-pocket, out-of-hospital expenses.’ No, no, no: what we have is a Labor Party carping, carping, carping, and finding all the possible problems that might occur. Let me just say that this government is concerned about families that have high out-of-pocket, out-of-hospital expenses. Labor had 13 years in government; they did nothing about it.

People have high out-of-pocket, out-of-hospital expenses. We decided that we would do something about that for families—and I will repeat it, because you most probably were not listening when Senator Hutchins asked me the previous question—who unexpectedly have high out-of-pocket, out-of-hospital expenses, either because a child gets sick, two children get sick or a parent and a child get sick. They now know that their expenses will be reduced and they will only have to pay 20c in the dollar of any of those extra costs. What a way to ensure that those people have a sense of security, knowing that they will not have huge debts that will affect them in terms of paying for their mortgage or paying—

*Senator Forshaw interjecting—*

**The PRESIDENT**—Senator Forshaw, interjections are disorderly.

**Senator PATTERSON**—Senator Forshaw is shouting out some interjection, but he will not admit that this government—and this is what irks them beyond belief—have done something for families. They are angry and they are cross because we have done something to help families avoid facing large out-of-hospital, out-of-pocket expenses. What they are going to do now is nitpick and nitpick bit by bit on those issues. In fact, the question that was asked of me would most probably have been better directed to Senator Ian Campbell, who is representing the minister for health. He would get up and say exactly the same thing: that Labor did nothing for families who were facing large out-of-pocket, out-of-hospital expenses—nothing. This government has done something. What you need to do is get on and pass the legislation so that those families can rest assured that, when they have large out-of-pocket, out-of-hospital expenses, they are covered.

**Senator MARSHALL**—Mr President, I ask a supplementary question. Maybe the minister could answer the supplementary question. What reason does the government have for allowing families who take their family tax benefit through the tax system to access the Medicare safety net on the basis of their past year's income? Why can't exactly the same method be used for the 90 per cent of families who currently receive family payments on the basis of future income, which results in risk of debts year after year? If the Howard government is prepared to change the rules to justify its two-tiered plan for Medicare, why can it not do the same for the flawed family payment system?

**Senator PATTERSON**—The family payment system gives families access to almost \$2 billion more than they got under Labor. We now have families receiving top-ups—which Labor never did. Under Labor, when you overestimated your income and got too little in family allowance, you did not

get a top-up. Under us, you get a top-up. We are ensuring that families on similar incomes in similar circumstances over a year get the same benefit from the taxation system. Labor carps, again, because they have no policies, they have no solutions and they do not care about families facing large out-of-pocket expenses, but what they will do is nitpick around the edges of a very good policy, which will protect families against high unexpected medical costs.

#### Immigration: Refugees

**Senator BARTLETT** (2.22 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. Is the minister aware that the United Nations High Commissioner for Refugees recently suspended voluntary repatriation of Afghan refugees from Pakistan because of the deteriorating security situation in Afghanistan and the killing of a UNHCR officer? Is the minister also aware that the UNHCR has closed offices in the cities of Kandahar, Gardez and Jalalabad and that it currently cannot assist returning Afghan refugees? Is it the case that it is planned for a number of Afghans to be removed from Nauru back to Afghanistan next week? Will the government now acknowledge that Afghanistan is not safe and is not likely to be safe any time soon, and stop pressuring people on Nauru and those who hold temporary protection visas in Australia to go back to such danger?

**Senator VANSTONE**—I thank Senator Bartlett for his question. In relation to the specific allegations he makes about the UNHCR in Afghanistan, my answer is, no, I am not aware of those nor do I have details of the four or five people, or any such number as he might have mentioned, who may be due in the near future to be returned to Afghanistan. I will—straight after question time, if someone has not done it already—get together a brief on both the situation you

refer to in relation to the UNHCR and the people who may be about to be repatriated, and I will come back to you as quickly as I can with respect to that. As to whether the incidents to which you refer as having happened in Afghanistan mean that across the board Afghanistan is not a safe place for anyone to return to, that is an entirely different question.

**Senator BARTLETT**—Mr President, I ask a supplementary question. In addition to seeking information about the safety or otherwise of many parts of Afghanistan, and the fact that the UNHCR has pulled out of large parts of Afghanistan and is unable to provide assistance, can the minister give a response to calls from communities, such as Young in New South Wales and Albany in Western Australia, for assistance in enabling Afghan people on temporary protection visas who are working and providing productive assistance to those towns' economies to be able to stay working in Australia and make a long-term contribution to the community, rather than be pressured to be sent back to a country that quite clearly is not safe for them or, even more importantly, for their children?

**Senator VANSTONE**—Senator, you have given me the opportunity in your supplementary question to clarify what I am sure you understand but, in case there is anyone else who does not, I will make it clear. Australia does not repatriate people if we believe there is a risk to them—an inappropriate risk: I mean, there is a risk in walking across the street obviously. Each case is treated individually and on its merits. If people are judged to need further protection, they are given it. That is the situation with people on temporary protection visas. At the expiration of that visa, they can make an application for further protection and, if further protection is required, it will be given.

### Employment: Work for the Dole

**Senator GEORGE CAMPBELL** (2.25 p.m.)—My question is to Senator Abetz, representing the Minister for Employment Services. I refer the minister to his criticisms yesterday of Professor Borland's study on Work for the Dole while at the same time citing the findings of the Ann and John Neville study entitled *Work for the Dole: obligations or opportunities* in an effort to defend the indefensible. Minister, is it not true that both the Neville and the Borland research highlight the same problems with Work for the Dole—namely, a lack of wage subsidies, the stigmatising of job seekers and a lack of training opportunities for Work for the Dole participants? Why did the minister mislead the Senate as to the findings of the Neville and Borland research?

**Senator ABETZ**—I assure Senator George Campbell that I did not mislead the Senate. In fact, what irked him was that I was able to refer to scientific research that completely debunked the assertions that Senator George Campbell made yesterday. Now he is coming back for a second bite of the cherry. I suggest to him that he ought to quit while he is behind. The simple fact is—and it is something that the Australian Labor Party simply cannot abide—the Australian people like Work for the Dole. They accept it as a scheme that is socially just, educational and supportive with training for those who are unemployed.

We have heard the Australian Labor Party—because Work for the Dole has an acceptance rating well above 80 per cent in the Australian population—using weasel words, saying, 'We'll change the name; we'll change the program but we won't actually get rid of Work for the Dole.' It is code for saying that they oppose Work for the Dole. The questions that we are getting from the likes of Senator George Campbell fully indi-

cate that the Labor Party agenda is to abolish Work for the Dole.

I remind the honourable senator that the statistics in the information I provided yesterday were very clear in relation to the benefits for participants in Work for the Dole. Many of us on this side of the chamber have been at launches of Work for the Dole schemes and also at the graduations. We have personally witnessed the benefits of Work for the Dole. It is another classic example of this government's practical approach to social problems.

Those on the opposite side are driven by the harsh ideology of the left wing, and it is no coincidence that Senator George Campbell has been asked to lead the charge in the Senate about this. They did not even bother to ask these questions in the House of Representatives yesterday, because the individual members of the House of Representatives know that their electors support Work for the Dole. But the ideologically driven Senator George Campbell and the extreme Left of the Australian Labor Party are the ones who seek to denigrate the Work for the Dole program, which has a positive employment effect with a net impact of around four percentage points, which means participants of the program are 14 per cent more likely to be employed 16 months after commencing the program than similar job seekers who have not participated.

These are the scientific facts. That is the case in relation to Work for the Dole. That is why it is so supported by members of the public—by the Australian population. Because it is practical and successful, the likes of Senator George Campbell and the Australian Labor Party oppose it. We support Work for the Dole. We are proud of it. We believe, yes, it can always be improved—we are always looking to improve it. But relying on studies from pilot programs in 1997 and

1998 does not exactly reflect the Work for the Dole program of 2003.

**Senator GEORGE CAMPBELL**—Mr President, I ask a supplementary question. Contrary to his assertions to the Senate yesterday, can the minister confirm that the Nevile research actually recommended an overhaul of the program, including the introduction of wage subsidies for Work for the Dole participants, the renaming of the program and the introduction of real training opportunities for job seekers undertaking the program? Aren't these remarkably similar recommendations to the Borland research that the minister went out of his way to rubbish yesterday? Again, why did the minister mislead the Senate as to the findings of these research studies, both of which highlight significant deficiencies with Work for the Dole?

**Senator ABETZ**—It is very simple, isn't it? We on this side support Work for the Dole; those on that side oppose it. They ought to have the guts to actually come out and say what they mean in these weasel type questions. The Nevile study found a positive impact on employment for those who participate in Work for the Dole, Senator George Campbell. That is the ultimate goal of Work for the Dole. That is the ultimate goal—to have a positive impact on employment for those who participate in Work for the Dole. That is what the report found. Because it is successful and because it is liked by the Australian community, it means as a matter of course for the Labor Party that they must oppose it. It is the same with border protection and all the other practical initiatives of this government. *(Time expired)*

#### Environment: Australian Wetlands

**Senator NETTLE** (2.32 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage. Given that Lake Cowal in New South Wales is

listed in Environment Australia's directory of important wetlands and is home to many migratory bird species for which we have agreements with Japan and China, is the government considering listing Lake Cowal as a wetland of international importance under the Ramsar convention? If so, at what stage is the process at, and when will it be completed?

**Senator HILL**—I will have to take advice on that. We normally list on the recommendation of a state government. I am not sure whether that recommendation has been made. We obviously assess to ensure the values of the Ramsar convention are being met and, if they are, we then make an application and the Ramsar authority decides whether to list. Australia has a proud record of listings under Ramsar and takes the issue of the protection of wetlands and migratory species very seriously. Certainly Dr Kemp continues the fine record of Australia in this regard and I will ask him if, in fact, there is a current application in relation to Lake Cowal.

**Senator NETTLE**—Mr President, I ask a supplementary question. At the conference on the Ramsar convention last November, Japan and Australia cosponsored a resolution seeking greater cooperation between countries in our region to conserve important waterbird habitats. Is this not a hollow commitment to preserving waterbird habitat when the government has not even ordered a federal environment assessment of the Barrick Gold proposal to build a cyanide leaching goldmine next to the home of these internationally recognised migratory bird species at Lake Cowal?

**Senator HILL**—I have been reminded that I have rearranged myself out of this job, and the question should have been directed to Senator Macdonald. I am sure he would have given a better answer. But in relation to migratory species, Australia has agreements

with Japan and China and we help conserve a range of wetlands up the Australian coast and also support other Asian countries in conserving their wetlands in order to support migratory species. That is part of our proud record of conservation in this regard. But in relation to Lake Cowal, as I said, I will get specific information from Dr Kemp via Senator Macdonald.

#### Trade: Live Animal Exports

**Senator O'BRIEN** (2.35 p.m.)—Given that Senator Macdonald's right to answer a question has just been usurped, I will now direct a question to him, this time as the Minister representing the Minister for Agriculture, Fisheries and Forestry. Can the minister confirm that the security arrangements at the Portland feedlot subject to last week's alleged sabotage attempt have been certified by the government as part of the premises' export certification? Can the minister confirm that registration criteria for all export feedlots include physical security, and that these criteria were reviewed by the government earlier this year? How soon after he received news of last week's alleged sabotage did the Minister for Agriculture, Fisheries and Forestry order a review of security arrangements at Portland and other export feedlots, and when will the review be completed? Doesn't this export certification confirm that the federal government bears some responsibility for the regrettable lapse in security last week?

**Senator IAN MACDONALD**—First of all I point out to Senator O'Brien, as I did in this chamber yesterday, that matters of security and criminal activity—which this is—are matters for the state police forces. I indicated to Senator O'Brien yesterday that if he has a concern about security and law and order issues in Victoria, he should speak to his colleague Mr Bracks, the Premier of the Labor state of Victoria.

*Senator Kemp interjecting—*

**Senator IAN MACDONALD**—He should report it to Kim Carr then, Senator Kemp. That is where those sorts of issues are dealt with. Senator O'Brien asked me if I am aware of some conditions on the registration of the feedlots. I have to say that no, I am not. From a quick look at my brief, I do not have anything that would enable me to answer that part of Senator O'Brien's question. I will certainly refer that to Mr Truss and get an answer for Senator O'Brien at the very earliest time.

This criminal activity does draw into question a very important export trade for Australia. Over \$1 billion comes to Australia through the live animal trade. That sustains workers' jobs in country Australia and certainly in many rural communities. It is a trade that the Australian government is trying to support against what seems to be a concerted campaign by these criminal elements that do these sorts of things in Portland and by the Labor Party, who continue to nitpick and try to make political points against Mr Truss on this issue. As I have said before—and as I think all fair-minded parliamentarians will accept and understand—Mr Truss has done a magnificent job in this very difficult area. The way he handled the *Cormo Express* incident against all interference by Senator O'Brien and the Labor Party was just magnificent.

What we are trying to do, Senator O'Brien, is to assure the buyers of our live cattle, who produce this money for Australia, that Australian animals are well looked after, they are in very good health and we do care very much about that in Australia. This whole incident at Portland really highlights the fact that some Middle East buyers could simply allege that there has been a problem in Portland, and certainly the publicity that Senator O'Brien gives them will put them in

that line of thinking, and then we will have the *Cormo Express* incident all over again. While Senator O'Brien may think he is making a political point against the government, what he really is doing is destroying a very lucrative trade for Australia—one that is humanely exercised and one that is very humanely implemented. Senator O'Brien, I have said to you many times before: if you have a good idea on how we could support Australia's farmers and support the wealth that is created for rural and regional Australia from the live animal trade then let us have your ideas, but please do not destroy this very lucrative trade to Australia and please do not destroy Australian workers' jobs by this continual nitpicking campaign against the live animal export trade.

**Senator O'BRIEN**—Mr President, I ask a supplementary question. I look forward to the response to the question that the minister has promised to obtain from Minister Truss. Given that the minister is obviously looking at the situation of the 70,000 sheep currently stranded at the Portland feedlot, when will the fate of those sheep be resolved? What action has the government taken to secure a market for these sheep? Will the sheep be exported, sent to Victorian saleyards or destroyed? What communication has the Minister for Trade had with the governments of Kuwait, Bahrain and the United Arab Emirates in relation to the fitness of the sheep stranded in Portland for export, slaughter and consumption in those markets?

**Senator IAN MACDONALD**—Senator O'Brien again raises a series of questions. I will try to get him accurate answers on them. I can assure Senator O'Brien that neither Mr Truss, his office nor his department would have left any stones unturned in trying to resolve this issue. The difficulty is that, whilst we try to negotiate with governments in destination countries to get governments to accept responsibility, we never quite know

what is going to happen with the prominent people in those proposed destinations who may make unfair and untrue allegations against the sheep—

**Senator Sherry**—Against the sheep?

**Senator IAN MACDONALD**—Yes, that is correct; against the animals, against the sheep. They make the allegations about the health of the sheep. That makes it very difficult for us to do anything with it and then we get back to the *Cormo Express* situation. *(Time expired)*

#### Environment: Murray-Darling River System

**Senator HEFFERNAN** (2.42 p.m.)—My question is addressed to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald, in case he feels he needs another question. Will the minister outline to the Senate the Howard government's ongoing commitment to the Murray-Darling Basin and highlight the recent steps taken to address the environmental needs of the Murray River? Is the minister aware of any alternative policies?

**Senator IAN MACDONALD**—Senator Heffernan lives in the Murray-Darling Basin area and is very well aware of the importance of that basin to Australia. It comprises over one-seventh of Australia's landmass and has 19 catchments. Three million people depend directly on the Murray-Darling Basin and 41 per cent of Australia's agricultural production comes from that basin. As Senator Heffernan will know, through years of inactivity the Murray-Darling Basin is now very stressed and the river system is degraded. Unless something was done about that there would have been a disaster in the making in the Murray-Darling Basin.

I am very pleased to say that on 14 November 2003 the Murray-Darling Basin Ministerial Council—under the chairmanship and very great leadership of Mr Truss—and

which includes Dr Kemp, me and the state ministers, took a historic first step with the Living Murray initiative towards restoring the iconic River Murray to environmental health. Up to 500 gigalitres of carefully managed environmental water per year will be put into that system over the next five years. That amount, incidentally, is equal to the volume of water in Sydney Harbour.

The first step will focus on achieving significant environmental benefits for six key ecological sites: the Barmah-Millewa Forest, the Gunbower and Koondrook-Perricoota forests, the Hattah Lakes, the Chowilla floodplain, the Murray mouth, Coorong and lower lakes, which I know Senator Ferguson will be very interested in, and also the River Murray channel. The states and Commonwealth will be using up to \$500 million over five years, and that was the money allocated in the COAG meeting on 28 August this year.

This Commonwealth-led initiative is a very good thing for Australia's environment, and it is no wonder that the respected former Conservation Council coordinator, Susan Brown, asked in an article in the *Australian* today, 'Who would have thought that the Liberal Party would become the party of the environment?' Of course, she is quite right. We have demonstrated in this way, in the Barrier Reef, in the Queensland land clearing issue and in many other ways that this government is the greenest government that there has ever been in Australia. I give great credit to Senator Hill, Dr Kemp and even Senator Rod Kemp, who was our spokesman in opposition and who set that going.

I am asked if there are alternative proposals. I have to say that the opposition tried to destroy the Murray-Darling Basin commitment through the ministerial council but, fortunately for the Murray-Darling communities, their spokesman was ignored. Mr

Crean's proposal is to put \$150 million into it, which is less than we are already putting in. Graham Richardson has rubbished Mr Crean's proposal and indeed any reasonable commentator would. Even the New South Wales Labor minister Craig Knowles said of the Labor policy:

There is not much point in simply shoving speculative gigalitres down the river system and hoping for the best.

That is Labor's policy. It is criticised not only by our side of politics, not only by Graham Richardson but by many of the state Labor ministers who understand this issue. There are other policies and other approaches from particular conservation groups, from farmers' groups—(*Time expired*)

**Senator HEFFERNAN**—Mr President, I have a supplementary question. Could the minister provide further information on alternative policies?

**Senator IAN MACDONALD**—I did mention that the Labor Party seemed to have no credible policy, and its policy has been rubbished by all of the sensible commentators. But there are other people who have an interest in the Murray-Darling proposal. The Australian Conservation Foundation said of the Commonwealth initiative that the states entered into that it was a good first step for the Murray River. The National Farmers Federation said that this first step proposal provides a strong foundation for the delivery of positive outcomes for the environment and for river communities. Murray Irrigation Ltd said that the results of the ministerial council meeting showed that ministers have listened to the arguments put forward by irrigators and other organisations representing irrigators. Mr John Hill, the South Australian minister, said of this historic decision that this is a dramatic breakthrough that shows that all of the Murray-Darling Basin gov-

ernments and the Commonwealth are prepared to spend money restoring the river. (*Time expired*)

#### Taxation: Family Payments

**Senator MOORE** (2.48 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm that her department has drawn up a hit list targeting young people receiving youth allowance for debts ranging from \$100 to \$10,000 going as far back as five years? Can the minister confirm that this hit list results from the government's failure to properly monitor payments against family income and will result in debt notices being sent to thousands of families in the weeks leading up to Christmas? Minister, why should families who have played by the rules have money stripped from them in the run-up to Christmas?

**Senator PATTERSON**—Senator Moore says that families have played by the rules, and I understand where she is coming from and will give her the benefit of the doubt. But families are informed through a number of means—through brochures that go out from Centrelink, through information that goes out to them as clients, through material that is available when they visit Centrelink offices—about family tax benefits and about family incomes. What we do is treat families in similar circumstances in a similar way. Some families have not in fact informed Centrelink about their family income.

**Senator Forshaw**—Many have.

**The PRESIDENT**—I remind Senator Forshaw that interjections are disorderly and I remind him of what he told me last night.

**Senator PATTERSON**—We have attempted to ensure that families in similar circumstances are treated similarly. One of the things that have occurred and a problem that has created debts is that some families, especially those with a small business, have

not put in their tax returns. We have legislation before the Senate which I would appreciate that we passed before the end of the year so that the families Senator Moore is concerned about can actually get their family tax benefit and their taxation situation reconciled so that they do not have the debts that they have because they have not submitted their taxation return for that 12 months. But it is a fact that if students work and they exceed a certain amount of income it will be taken into account in terms of assessing the family's income for the purpose of family tax benefits, in order to treat families in similar circumstances in similar ways.

Yes, we are advising those families. I believe that we can do more to advise families about issues surrounding family tax benefit. We have families on family tax benefit who have not been used to reconciliation with the tax system at the end of the year, families that have not had investments, families that have often had small returns, if any, at the end of the financial year. But we are now seeing families choosing more options. I think it is over 260,000 families who have taken up the more choices option that Senator Vanstone brought in in relation to family tax benefit where, if people have lumpy benefits, there are seven choices they can make. More and more families are taking that up. I have been out to Centrelink offices at Taylors Lakes and Queanbeyan, sitting down with people who have had overpayments. I have asked Centrelink to have those people brought in and I have been very grateful to those people who have given up their time to sit down with me for an hour or two and talk about some of their concerns. Some of them find it difficult to understand that when they tell Centrelink about the fact that their child has started to work it is taken into account in their income over the whole year. I think that as people become more used to the system they will understand that.

But there are some misunderstandings, and I am working with Centrelink, as is Larry Anthony, to try to make sure we have material that is more explicit, simple and helps people to understand the system. We are giving families \$2 billion more than they were getting under Labor for family tax benefits. We are treating families more equally. You never hear the Labor Party talking about top-ups. You never hear them complaining and saying, 'Isn't it terrible that people have got a top-up?' Tens of thousands of families are getting a top-up which they never got under Labor. If they overestimated their income and got less family allowance than they were entitled to, Labor did not give them a top-up. Senator Moore can come out and say, 'Isn't it great that under our system people get top-ups?' but you will never hear them talking about top-ups; you will only ever hear them talking about the debt.

**Senator MOORE**—Mr President, I ask a supplementary question. Can the minister also advise how many of the 3,779 families who, between July last year and March this year, received a family tax benefit debt because their teenage children earned more than \$8,346 from part-time work during the year have had their tax returns stripped?

**Senator PATTERSON**—They do not get their tax returns stripped. In the taxation system, and I have said this before, if a family on a low income has a small number of shares, which a lot of families on low incomes have—we now have people investing in the stock market, and they have an income during the year; they may complain that they have an income of \$200 or \$300 from their shares and they have to pay tax on that at the end of the year—they understand that it has to be reconciled at the end of the year. They do not call it tax stripping. They have tax taken out from their pay-as-you-earn tax, but they have not had any taken out for the income they have received on a small invest-

ment. They do not go around saying that it has been stripped; it has been reconciled. The family tax benefit is within the family tax system to ensure that families in similar circumstances are treated similarly. In order to do that, we look at whether they have a tax return and, if they have a debt, that is reconciled. Just like if you have an income from any sort of investment and you have a return, it is reconciled. *(Time expired)*

#### United States of America: Nuclear Treaties

**Senator ALLISON** (2.55 p.m.)—My question is to the Minister representing the Minister for Foreign Affairs. During the recent United Nations First Committee on Disarmament and International Security, Australia was lead sponsor of the Comprehensive Nuclear Test Ban Treaty resolution; 151 nations voted for our motion and only the United States voted against. The United States has said it will not become a party to the treaty. What steps has Australia taken to urge the United States to support not only the test ban treaty but the Nuclear Non-Proliferation Treaty? Why is the United States ignoring our views? Does this not indicate that the United States respects its alliance with Australia only on its own terms?

**Senator HILL**—For the detail I will refer to the Minister for Foreign Affairs, but speaking generally Australia is obviously a very strong supporter of the non-proliferation regime, abides by the conventions and urges other parties to join conventions. In fact, Australia has been a proud contributor to the development of the regime that is put in place to minimise proliferation—both vertical and horizontal proliferation. In relation to shortcomings within the existing regime, we have also indicated a preparedness to look at other ways in which we can respond to the possibility of proliferation of weapons of mass destruction, such as through the Proliferation Security Initiative, which exercised

off Queensland a few months ago. It was a practical illustration of countries joining together in an exercise scenario to obstruct or defeat a potential transfer of weapons of mass destruction or their precursors by sea. So, through both diplomatic channels and in other practical ways, Australia has demonstrated for a long time, and continues to demonstrate, efforts against proliferation of weapons of mass destruction. Australia will continue to urge other countries to join with us, both diplomatically and, as I said, in other practical ways, to achieve that goal.

**Senator ALLISON**—Mr President, I ask a supplementary question. I thank the minister for his answer. Yesterday, the United States passed a \$400 billion defence bill that lifted the ban on research into low-yield nuclear weapons, also known as mini-nukes. Isn't it the case that this is a step towards vertical proliferation which goes against several of the practical disarmament steps in the non-proliferation treaty that parties, including the United States, adopted in 2000? Isn't it the case that this will encourage other countries to pursue new types of nuclear weapons? What is the Australian government's attitude to the policy of the United States of being prepared to use nuclear weapons even against non-nuclear weapon states?

**Senator HILL**—There were a number of questions raised within the supplementary. I can recall when this issue arose some time ago that it was said that it did not amount to a decision being taken by the United States to recommence this research. I will see if there has been any change in policy since that time and report back to the Senate.

#### Taxation: Family Payments

**Senator BOLKUS** (2.59 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. I ask the minister whether she can confirm

whether her department is involved in a work and family task force established by the Prime Minister's department to address concerns with the family payment system. Can the minister confirm that the task force has been instructed by the PM's office that it will not support an end to the practice of stripping of tax returns to claw back family tax benefits debts?

**Senator PATTERSON**—Senator Bolkus asked a question about the work and family task force. The work and family task force is about balancing work and family. The issue is about family tax benefit overpayments and reconciling—not stripping—at the end of the year benefits that families got from the taxpayer. I do not know how many times I have to say this. I just said to Senator Vanstone that she must have got sick of saying this. I guess I will get sick of saying it, but I will say it over and over till the people on the other side understand that under our system we are determined to ensure people in similar circumstances are treated similarly. If in fact they have an overpayment of their family tax benefit because they have underestimated their income—and I can understand why some of them do underestimate their income; it is not on purpose—we have now given them choices. Thousands of people have taken up those choices to reduce the likelihood of having an overpayment. If they have a rebate due to them in the tax system, it is reconciled at the end of the year. As I said to the previous senator, just like if you have a rebate from your pay-as-you-earn tax and you have a small income from investments on which you owe tax, it is reconciled at the end of the year. This is no different. It is money that is owing to the taxpayer, whether through the tax system or through payments for family tax benefit; but, unlike under Labor, if a person is underpaid, they get a top-up to ensure that families in similar circumstances are treated similarly. You did

nothing like that when you were in government.

**Senator BOLKUS**—Mr President, I ask a supplementary question. I note with some concern that the minister refuses to address whether there was an instruction from the Prime Minister's office. Minister, can you confirm that the work and family task force is considering the replacement of the government's baby bonus, just two years after it was introduced?

**Senator PATTERSON**—I can confirm that the work and family task force is working on the issue of balancing work and family.

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

#### QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

##### Immigration: People-Smuggling

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (3.02 p.m.)—It occurred to me some time after I sat down that I may have answered Senator Kirk's question in relation to the year in which the regional cooperation arrangements commenced as June 2002. If I did that, I meant to say June 2000.

*Opposition senators interjecting*—

**Senator VANSTONE**—Yes, I did. In fact, the point in relation to Mr Crean was that, having been told the year, he then asked what the year was that he had been told. Anyway, *Hansard* will show that—

**Senator Robert Ray**—Simon Crean was right then!

**Senator Chris Evans**—Wipe the egg off your face!

*Opposition senators interjecting*—

**The PRESIDENT**—Order! The minister is trying to give an explanation. Senators on my left, please listen in silence.

**Senator VANSTONE**—I am not certain that I did in fact say 2002. Senator Kirk—

**Senator Chris Evans**—You know you did!

**Senator Forshaw**—Your nose is getting bigger!

*Opposition senators interjecting—*

**Senator VANSTONE**—Obviously, these people are desperate for humour. I don't know what is going on; I cannot hear myself.

**The PRESIDENT**—Order!

**Senator VANSTONE**—On Senator Kirk's advice, I accept that the wrong year was given. What I should have said was that when Mr Crean was told the year 2000 he said, 'The year 2000—which year was that?' That is exactly the point. The second—

*Opposition senators interjecting—*

**Senator VANSTONE**—Yes, it is commonplace, when you have been given a year, to ask which year it is! It is like being told 'Here's a dollar' and saying, 'Which dollar is that?' There was an additional point drawn to my attention by Senator Faulkner, and I am grateful to him for that, and this point is that Mr Beazley surely would not be so silly as to suggest that terrorists would be dropping landmines off boats. In fact, he suggested sea mines.

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

**Taxation: Family Payments**

**Senator HUTCHINS (New South Wales)**  
(3.04 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Patterson) to a question without notice asked by Senator Hutchins today relating to the family tax benefit.

When Minister Patterson was moved from Health and Ageing into Family and Community Services, she promised to address the problems of the family payment system. This is a maddening, complex and unfair system. In fact, this system saw the tax returns of 230,000 families stripped of an average of \$890 last financial year. In the first year, 728,000 families were hit with debts; in the second year, 643,000 were caught. In all, about \$1.2 billion in debts has been raised from Australian families. That is about \$1,000 per family. Senator Patterson promised to investigate these problems—a promise similarly made by Senator Vanstone—but at the first hurdle Senator Patterson has failed to act. Labor recently introduced a simple amendment into the parliament to the family payment rules that would have made a difference for families. This amendment would have allowed families filling out their income estimate at the start of the financial year to nominate a debt repayment option. Labor believes families should be able to tick a box to say, 'Yes, you can strip my tax return,' or, 'No, you can't,' or, 'Take the debt out of my future payments.' Senator Patterson will not agree to this change; now she is allowing the family tax benefit system to be extended to Medicare.

The government has based its proposal for a safety net system on family tax benefit A. Yesterday, the minister said the new two-tiered system would be enforced to prevent abuse. But the only way to enforce it is to start clawing back Medicare payments made to families, like the government does under the family tax benefit system. The reason for this is simple: families are paid family tax benefit on the basis of an estimate they provide the government, not on actual income earned. That is the reason so many families have got into debt—because they cannot predict future income. However, the changes that will be necessary to the family tax bene-

fit with the inclusion of the Medicare rebate will mean even greater debts and greater complexity. That is because many families concerned about being eligible for the safety net may guardedly underestimate their income but then incur debts at tax time when they find out they were not eligible for the rebate throughout the course of the year.

The craziest thing about the new Medicare package is that families who choose to avoid tax debts through lump sum payment of the family tax benefit will not be eligible for the Medicare rebate in that year. That means a breadwinner who gets sick and faces big health care bills while struggling to make ends meet may not be eligible for the rebate when they need it. That same family will then become eligible for the rebate in the next calendar year when they will not need it. What is more, some families will get the safety net on the basis of their income for the previous year when they may or may not be entitled to it. The only certainty is that working families will get either a tax debt or yearly worries about their eligibility for a rebate that is meant to be for ordinary families just like them. While the government is happy to use a family's income for the previous year so that it can implement its Medicare safety net, it will not allow families a similar test for their family payments. The message is clear: the Howard government will do anything to justify its attack on Medicare, including extending the flawed family payment system, but it will do nothing to fix the maddening problems with the family payment rules, which conspire to give families huge end of year debts every year.

**Senator BRANDIS (Queensland) (3.08 p.m.)**—How ironic it is to hear the Labor Party giving another one of its customary lectures on family policy. Let us remind ourselves: what is the bedrock, what is the foundation, for the welfare of Australian families? It is good economic management. It is

the four items in particular on which the Howard government has delivered—low unemployment, 5.6 per cent; low inflation; increasing real wages; and low interest rates. Those four economic conditions—which represent in Australia today the most benevolent set of economic conditions this country has known in more than a generation—are the bedrock on the basis of which the prosperity, the security and the wellbeing of Australian families are founded. So let us not hear any carping criticism about the family tax benefit. Let us remind ourselves that Australian families today have a much greater sense of economic security than they ever had under the Australian Labor Party. Unlike the Australian Labor Party in government, the Howard government has delivered on those big four—higher real wages, low inflation, low interest rates and low unemployment.

Let me turn to the question of the family tax benefit. The family tax benefit, as you know, was introduced as an offsetting payment at the time the new tax system was introduced. Around two million Australian families with approximately 3.5 million children—that is, the vast majority of Australian families with dependent children—benefited from the introduction of that scheme. In nominal terms, government expenditure on family assistance has increased by \$2 billion a year, compared to the payments that were made for the benefit of families prior to the introduction of the new tax system two years ago. In the specific area of targeted payments and targeted benefits to families, the Commonwealth government in real terms has spent more on Australian families—not merely by making sure the economic fundamentals are right, not merely by making sure the bedrock for the financial security of families is sound, but by a specific, focused and generous system of family payments through the family tax benefit—than any

Australian government has ever delivered on before.

Then it is said by our opponents, ‘There is some anomaly in the family tax benefit, because what happens is that, if families underestimate their income, they might have to make a repayment back to the Commonwealth.’ Of course they must, because the family tax benefit is a part of the tax system. And just as a taxpayer who underestimates their income is obliged to file a supplementary return so that they pay the full amount of what is due by them, so a recipient of a family tax benefit who underestimates the family income ought quite properly, as a matter of good policy, as a matter of equity, make a balancing payment. But what we do not hear from Labor Party senators is that the corollary also applies so that, if a family overestimates its income in the relevant year, they will receive a top-up payment from the Commonwealth to ensure that they are not out of pocket. At the end of the relevant tax period, there is a reconciliation. If there is neither an underestimate nor an overestimate, there is no adjustment made. If there is an underestimate, there is properly an adjustment made so that the outstanding tax is paid. If there has been an overestimate, there is a payment back to the family so that, once again, the appropriate tax is paid. What could be more sensible, more logical or more just than that?

**The DEPUTY PRESIDENT**—Before calling Senator Kirk, I just acknowledge the presence in the gallery of former senator Michael Baume. Welcome this afternoon.

**Senator KIRK (South Australia) (3.13 p.m.)**—I rise also to take note of answers given to questions asked of Senator Patterson, the Minister for Family and Community Services, in relation to the link between the family tax benefit and Medicare. We have seen that this government is a government

with no commitment to the universality of Medicare. What it wants is a two-tiered American style health system. The Prime Minister and the Minister for Health and Ageing are pretending to Australians that a safety net will catch them when they have high health costs. They call their package MedicarePlus and have indulged in an extravagant advertising campaign to convince the Australian people that it is a plus rather than a minus. They are trying to convince the public that it is anything but the truth—that is, Medicare minus bulk-billing.

In the federal electorate of Sturt, where my office is located, bulk-billing has declined—just as it has in many electorates across South Australia and across the nation—by 18.6 per cent in the past three years. In a survey I recently conducted in the Sturt area, many people who responded to the survey reported that increasingly they were not seeking medical advice because of the cost of a visit to a doctor, with some ending up in hospital emergency departments. Others reported to me that their doctor lets patients who pay extra jump the queue whereas most patients must wait up to 10 days for an appointment.

What is this government offering as a solution? A safety net that is full of holes. Australians do not want a safety net that does not work. They do not want Medicare minus bulk-billing. You cannot get the support of this safety net without paying \$500, or even \$1,000, up front. Australians do not get access to the sham safety net until they have paid out \$500 or \$1,000. The government’s \$500 sham safety net applies to the two million Australian families receiving family tax benefit A. Families receive fortnightly payments of family tax benefit if they register with Centrelink and provide an estimate of their future income. Due to the difficulty of predicting income, six out of 10 families are paid incorrectly, either too little or too much.

In 2001-02, 1.2 million families received incorrect payments. Families are consistently lumped with massive bills due to the inadequacies of this system. Many families who have already been burnt by the family payment debt trap now choose not to register with Centrelink for family tax benefit. Instead, they wait until the end of the financial year to get the family tax benefit paid with their tax return. These families are eligible for family tax benefit A but are not registered for it. How will these families get extra Medicare payments if their expenses are more than \$500 a year?

If Medicare payments are to be made on the basis of this failed system, it leaves the door open for the government to claw back Medicare payments if families are subsequently found ineligible for family tax benefit. Government assurances that it will not do this simply do not stack up with its zero tolerance policy for family tax benefit. Instead of fixing the family payment debt trap, the government is exporting the idea to Medicare. The linking of these two doomed schemes could result in families having to repay family tax benefits and Medicare benefits at the end of the financial year, imposing an even greater burden on struggling Australian families.

Under this scheme only 200,000 Australian families will get anything at all. Only 0.8 per cent of the government's health budget will be spent on this so-called safety net. Only Labor is committed to saving Medicare and to ensuring Australians get access to bulk-billing. The \$5 increase in the Medicare rebate for concession card holders and for children under 16 simply does not go far enough. There should be a \$5 increase for bulk-billed consultations for all Australians. Labor's plan is for a \$1.9 billion injection into the health system to ensure that all Australians get fair access to bulk-billing and that all Australians have an extra \$5 in their

Medicare rebate for bulk-billed consultations.

**Senator FERGUSON (South Australia)**

(3.18 p.m.)—I listened very carefully and with interest to Senator Kirk reading out a very carefully prepared five-minute statement supposedly responding to answers to a question given by Senator Patterson. I find it very difficult to understand how anybody can come in here with a pre-prepared speech that in any way responds to the answers that were given to a question. In fact, Senator Kirk was actually taking note of the question, not of the answers. In taking note of the question, she raised a lot of other material that was not even dealt with by Senator Patterson in her answers.

When the opposition come in here and start to question this government's commitment to Australian families, they ought to look at their own record over the 13 years that they were in government. As far back as I can remember, and certainly over a number of preceding governments, this is the fairest system that has ever been devised for families. Why is it so fair? It is so fair because, with family tax benefits, nobody receives any more or any less than they are entitled to. Under the former Labor government, it was quite possible to receive less than you were entitled to, but you could not receive more than you were entitled to. Under Labor's system, if you received more than you were entitled to, you had to pay it back and, if you received less than you were entitled to, there was no top-up system in place. Before the Labor Party criticise this government for its attitude towards families and the payments that it gives to families, they ought to look at their past record on the treatment of families. There are still members opposite who were part of that government. They did not care whether people were underpaid and they made sure that nobody was overpaid. This government has put in place the fairest

system that I can remember. Nearly 700,000 families were topped up with the family tax benefit and child-care benefit for the last tax year because those families had overestimated their income.

Families receive that top-up when their actual income for the year is assessed with their tax return. It is important to remember that an enormous number of families have benefited under our tax system whereas, under the Labor Party's system, they received no benefit at all for their underpayments. I am quite sure that when Senator Moore, Senator Stephens and Senator Ludwig get up to comment they will tell us why they thought their policy was so superior, when they did not mind underpaying families but they made sure that at no time would they overpay families, because if people overpaid they always required the money to be paid back.

The government's use of top-ups is fair and generous. Every Australian family gets their full entitlement, and families who are in the same circumstances get the same entitlement. That is what I call fairness in the system, and I am sure that Senator Moore will probably get up and say how she totally supports a system that is fair to all families. Under the system inherited from Labor, as I have said frequently, families had to repay any overpayments. The Australian community will never forget the unfair system that was in place when Labor were in government.

As my colleague Senator Brandis so rightly said only a while ago, over two million Australian families with 3.5 million children have benefited from the introduction of the family tax benefit scheme. That is the vast majority of Australian families with dependent children. In nominal terms, this government's expenditure on family assistance increased by around \$2 billion a year com-

pared with the period pre the introduction of the new tax system. Income testing arrangements are more generous, more families are receiving maximum levels of assistance and families are able to keep more of the dollars they earn. So when we hear senators on the other side of this chamber bringing up issues of equality and fairness for Australian families, I think they should look at their own record and acknowledge what this government has put in place to make sure that all Australian families are treated equally and fairly. *(Time expired)*

**Senator MOORE (Queensland) (3.23 p.m.)**—I also wish to take note of answers provided by Senator Patterson in question time this afternoon. When Senator Patterson responded she predicted that there would be a series of questions, case by case, this afternoon on the responses that she gave. Indeed, she was right. Senator Patterson also said that she was tired of people from this side of the house nitpicking about the details of the payments that were under question.

It is so disappointing that genuine questions being raised about ways the system can be better are defined as 'nitpicking about the details'. The most important way to ensure that a system is accurate, right and fair is to get the details correct. The best way of making the family payments system work in Australia is to identify where it is going wrong, to identify how it can be done better and to ensure that there is an acceptance that families in Australia deserve to get accurate payments. They do not deserve to be dismissed as mere details when their circumstances indicate that they are receiving significant overpayments or underpayments. The whole process is determined by a system based on guesses.

As I have said, the real success of the system is making sure that the details are accurate. This is accepted by the people who

work in the system. The people who work in the department and who are involved in developing the policies know that it is part of the job to ensure they develop a policy that works, so that the issues about which we have been questioning—not nitpicking, Minister, but questioning—are the ways to ensure that the system can be better.

The minister said that she had been able to meet with a number of people who have been the victims of overpayments through the Centrelink system. That is a really positive initiative. I bet those people with whom the minister spoke did not see themselves as 'details'. They would have seen themselves as clients of a system who have suffered because the details of the payment are not working as well as they should. I hope the minister, through that series of consultations that she referred to this afternoon, has found out exactly where the system has failed people who in good faith have put in a claim to their department and have found through the year, and most particularly at the end of the year, that there has been a problem. That is not a dismissible detail; that is a problem in the system.

When we talk about stripping tax returns, it is not a semantic argument. We know that this particular family payment is linked to the tax system. We know that when people put in tax claims there is a possibility that they will either have to repay money to the government or, sometimes, get money back from the government. The issue we were talking about in question time this afternoon, and have talked about at length on previous occasions in this place, is when someone at the end of the financial year puts through their tax claim and expects to get money back but, as a result of the family tax system, has incurred an overpayment and, instead of being able to negotiate a repayment, has their proposed tax return stripped. Minister, that is stripping a tax return. It is not reconciliation

and it is not balancing; it is having your money stripped away before it is returned to you.

Minister, we acknowledge there have been changes in the processing of family payments. There are advantages in the process of people being able to receive top-ups. But this system will not be effective and will not be fair until the details are fixed up and those people who receive overpayments and who are damaged by the system are recognised and respected.

Question agreed to.

#### PETITIONS

**The Clerk**—Petitions have been lodged for presentation as follows:

##### Immigration: Detention Centres

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the damaging long-term effects to children of prolonged detention in Immigration Detention Centres.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to release all children from immigration detention centre into the community, and to provide them with psychological counselling, education and medical services.

by **Senator Bartlett** (from 20 citizens).

##### Education: Higher Education

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

The Petition of the undersigned draws to the attention of the Senate, concerns that increasing university fees will be inequitable.

Your petitioners believe:

- (a) fees are a barrier to higher education and note this is acknowledged by the Government in the Higher Education at the Crossroads publication (DEST, May 2002, Canberra, para 107, p, 22);
- (b) fees disproportionately affect key equity groups—especially indigenous, low socio-

economic background and rural, regional and remote students—and note, participation of these groups improved from the early 1990s until 1996 but have subsequently fallen back to about 1991 levels (lower in some cases) following the introduction of differential HECS, declining student income, support levels, lower parental income means test and reduction of Abstudy;

- (c) permitting universities to charge fees 30% higher than the HECS rate will:
  - a. substantially increase student debt;
  - b. negatively impact on home ownership and fertility rates;
  - c. create a more hierarchical, two-tiered university system; and
- (d) expanding full fee paying places will have an impact on the principle that entry to university should be based on ability, not ability to pay.

Your petitioners therefore request the Senate act to ensure the principle of equitable access to universities remain fundamental to higher education policy and that any Bill to further increase fees is rejected.

by **Senator Bartlett** (from 50 citizens).

### Iraq

To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned calls on the members of the Senate to support the Australian Democrats' motion opposing Australia's involvement in pre-emptive military action or a first strike, against Iraq.

We believe a first strike would undermine international law and create further regional and global insecurity.

We also call on the Government to pursue diplomatic initiatives towards disarmament in Iraq and worldwide.

by **Senator Bartlett** (from 36 citizens).

### Constitutional Reform: Senate Powers

From the citizens of Australia to the President of the Senate of the Parliament of Australia.

We the undersigned believe that the Prime Minister's call for Senate Reform is an attempt to dilute the powers of the Senate and to enable the Executive to have absolute control over parliament.

We urge all Senators to ensure the powers and responsibilities, of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people and to oppose any moves by the current, or future, Governments to weaken the ability of the Senate to be a check and balance on the Government of the day.

by **Senator Bartlett** (from 94 citizens).

### Defence: Involvement in Overseas Conflict Legislation

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

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

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

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

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

by **Senator Bartlett** (from 47 citizens).

### Child Abuse

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the damaging long-term effects to Australian society caused by the sexual assault and abuse of children and the concealment of these crimes

within churches, government bodies and other institutions.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to initiate a Royal Commission into the sexual assault and abuse of children in Australia and the ongoing cover-ups of these matters.

by **Senator Bartlett** (from 164 citizens).

Petitions received.

## NOTICES

### Presentation

**Senator Stott Despoja** to move on Thursday, 27 November 2003:

That the Senate—

- (a) notes that there are at least nine close relatives of Australian citizens currently being detained by the People's Republic of China on the basis that they practise Falun Gong;
- (b) expresses its support for the ongoing human rights dialogue between Australia and the People's Republic of China;
- (c) calls on the Australian Government, in the context of the human rights dialogue, to:
  - (i) raise the issue of the continued detention of Falun Gong practitioners with close family ties to Australia,
  - (ii) emphasise that the release of these practitioners would help to strengthen the existing ties between Australia and the People's Republic of China, and
  - (iii) discuss the possibility of these practitioners being reunited with their family members in Australia; and
- (d) reaffirms its commitment to freedom of belief within Australia and recognises the freedom of Australians to practise Falun Gong without fear of harassment.

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

That the Senate—

- (a) congratulates the following winners of the 9th National Aboriginal and Torres Strait Islander Sports Awards:

National Sportsman Award: Anthony Mundine, Sydney, New South Wales: WBA super middleweight champion;

National Sportswoman Award: Bo De La Cruz, Darwin, Northern Territory: Australian touch football representative since 1998;

National Junior Sportswoman Award: Kathleen Logue, Tennant Creek, Northern Territory: co-winner of world mixed pairs darts championship;

National Junior Sportsman Award: Kyle Anderson, Maddington, Western Australia: world darts champion;

National Disabled Sportsman Award: Troy Murphy, Kirwan, Queensland: national tenpin bowling champion;

National Disabled Sportswoman Award: Tegan Blanch, Stuarts Point, New South Wales: all rounder—member of the Australian deaf tennis squad, swimmer, shot-putter, javelin and discus thrower;

National Coach Award: John Roe, Australian Capital Territory: head coach of the Australian gridiron squad;

National Official Award: Stacey Campton, Australian Capital Territory: netball umpire; and

### State Achievers:

Western Australia: Bianca Franklin: state netball representative;

Australian Capital Territory: Katrina Fanning: rugby league;

Victoria: Mungara Brown: Australian rules;

New South Wales: David Peachey: rugby league;

Northern Territory: Sarrita King: netball;

South Australia: Joseph Milera: Australian rules;

Queensland: Ashley Anderson: swimming;

Tasmania: Nathan Polley: boxing;

- (b) recognises the important role that sport and physical activity plays in the social well-being of Indigenous communities, especially among young people; and
- (c) recognises also that Indigenous sports champions are valuable role models for young Indigenous people and that their achievements are a source of pride for all Australians, particularly Indigenous communities.

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

That the Senate—

- (a) notes:
  - (i) the release of the Productivity Commission report, 'Overcoming Indigenous Disadvantage', which allows the Council of Australian Governments (COAG) to monitor outcomes and measure governments' performance in addressing Indigenous disadvantage, and
  - (ii) that, for the first time, COAG will focus on whether Indigenous programs and funding are having an impact on the lives of Indigenous people;
- (b) recognises that this report provides policy-makers with a broad view of the current state of Indigenous disadvantage and what changes are needed to ensure that Indigenous people enjoy the same life expectancy and overall standard of living as other Australians; and
- (c) calls on:
  - (i) the Prime Minister, as Chairman of the Council of Australian Governments, to secure a commitment from COAG members regarding the timing and implementation of action plans that will provide the mechanism for achieving advances in the key indicators outlined in the report, and
  - (ii) the premiers and chief ministers of each state and territory to commit to the COAG Communiqué for Reconciliation, and ensure that realistic, sustainable and implementable action plans are prepared as soon as practicable but prior to the next COAG meeting.

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

That the Health Legislation Amendment (Medicare and Private Health Insurance) Bill 2003, the proposed government amendments to the bill and the implications for access and affordable health care coverage and safety nets be referred to the Community Affairs Legislation Committee for inquiry and report by 10 February 2004.

**Senator Sherry** to move 15 sitting days after today:

That the Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 5), as contained in Statutory Rules 2003 No. 251 and made under the *Superannuation Industry (Supervision) Act 1993*, be disallowed.

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

That the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment be referred to the Joint Standing Committee on Treaties for inquiry and report by 23 March 2004.

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

That the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003, the Ozone Protection (Licence Fees—Imports) Amendment Bill 2003, and the Ozone Protection (Licence Fees—Manufacture) Amendment Bill 2003 be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 31 March 2004, with particular reference to:
 

- (a) the need to phase out ozone-depleting substances and synthetic greenhouse gases;
- (b) the means by which the use of air conditioning can be reduced and the transition to natural refrigerants can be encouraged;

- (c) the desirability of banning imports of split system refrigeration and air conditioning equipment 'pre-charged' with hydrofluorocarbons and hydrochlorofluorocarbons; and
- (d) standards for installation, operation and maintenance of refrigeration systems.

**Senator Brown** to move on Thursday, 27 November 2003:

That the Senate—

- (a) notes the clear fell logging for woodchips in Tasmania's Styx Valley, which has the world's tallest hardwood forests and is habitat for Commonwealth-listed rare and endangered species such as the spotted-tailed quoll, Tasmanian wedge tailed eagle and white goshawk; and
- (b) calls on the Government to:
  - (i) protect such habitats, and
  - (ii) review the potential of the valley to provide more jobs and long-term local investment through tourism.

**Senator Nettle** to move on Wednesday, 3 December 2003:

That the Senate—

- (a) notes that 11 December 2003 marks 12 months since the Federal Sex Discrimination Commissioner reported on the need for a national maternity leave scheme and recommended a modest model for such a scheme;
- (b) further notes that Australia remains one of only two Organisation for Economic Co-operation and Development countries without a national paid maternity leave scheme and that a growing number of foreign countries are now providing paid leave for fathers; and
- (c) calls on the Prime Minister (Mr Howard) to commit to introducing a national paid leave scheme for women and men in Australia as a priority.

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

That the Senate—

- (a) notes that the official unemployment rate fell to 5.6 per cent in October 2003;
- (b) further notes the report released by the Australian Council of Social Service on 13 November 2003, which found the official unemployment rate gravely underestimates the true level of joblessness and insufficient hours of work, and that the real level of unemployment is double the official rate; and
- (c) calls on the Federal Government to change the official definition of unemployment from one hour a week to a more realistic measure that accurately captures the extent of joblessness and insufficient hours of work.

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

That the Senate—

- (a) notes the finding of the Australian Bureau of Statistics that 99 900 people were homeless in Australia on census night 2001;
- (b) further notes that there are 200 000 people on waiting lists for public and community housing;
- (c) condemns the Federal Government's move away from public housing through a reduction in its financial commitment to the Commonwealth-State Housing Agreement and its increasing reliance on private rental subsidies over support for direct provision of housing; and
- (d) calls on the Federal Government to:
  - (i) review rent assistance to ensure that it more adequately helps jobless tenants who are unable to access public or community housing and who cannot afford home ownership, and
  - (ii) commission an independent review of the tax treatment of investment housing property with the aim of restructuring arrangements so that tax concessions are provided in a cost-effective way and only for investment in housing for low-income earners, as a means of

addressing the need for affordable housing.

#### Withdrawal

**Senator FERRIS** (South Australia) (3.28 p.m.)—On behalf of Senator Tchen and pursuant to notice given on the last day of sitting, on behalf of the Regulations and Ordinances Committee I now withdraw business of the Senate notice of motion No. 1 standing in the name of Senator Tchen for five sitting days after today.

#### Presentation

**Senator FERRIS** (South Australia) (3.29 p.m.)—At the request of Senator Tchen, I give notice that, 15 sitting days after today, he will move:

That the Migration Amendment Regulations 2003 (No. 7), as contained in Statutory Rules 2003 No. 239 and made under the Migration Act 1958, be disallowed.

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

Leave granted.

*The document read as follows—*

**Migration Amendment Regulations 2003  
(No. 7) as contained in Statutory Rules 2003  
No. 239**

The Regulations amend the requirements for applicants for a 'Distinguished Talent' visa.

The Regulations substitute new subclauses 124.211(2) and 858.202(2) in the Principal Regulations. Under these subclauses, applicants for a 'Distinguished Talent' visa are required to demonstrate a record of "exceptional and outstanding achievement" in any of the four specified areas; they must be "still prominent" in that area; and they must show that they would be "an asset to the Australian community". It is not clear by what criteria these requirements are to be assessed.

It is also not clear what right of appeal is available to an applicant who has their application refused on one of these grounds.

The Committee has written to the Minister seeking advice of these matters.

#### COMMITTEES

##### **Economics Legislation Committee Meeting**

**Senator FERRIS** (South Australia) (3.30 p.m.)—At the request of the Chair of the Economics Legislation Committee, Senator Brandis, I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 25 November 2003, from 7 pm, to take evidence for the committee's inquiry into the provisions of the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 and associated regulations.

Question agreed to.

##### **ASIO, ASIS and DSD Committee Meeting**

**Senator FERRIS** (South Australia) (3.31 p.m.)—At the request of the Chair of the Parliamentary Joint Committee on ASIO, ASIS and DSD, Senator Ferguson, I move:

That the Parliamentary Joint Committee on ASIO, ASIS and DSD be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 27 November 2003, from noon to 1.30 pm, in relation to its inquiries on the Intelligence Services Amendment Bill 2003 and on the accuracy of pre-war intelligence in Iraq.

Question agreed to.

#### **TRUTH IN FOOD LABELLING BILL 2003**

##### **Report of the Community Affairs Legislation Committee**

**Senator FERRIS** (South Australia) (3.31 p.m.)—At the request of the Chair of the Community Affairs Legislation Committee, Senator Humphries, I move:

That the report of the Community Affairs Legislation Committee on the Truth in Food

Labelling Bill 2003 be presented by 11 March 2004.

Question agreed to.

**COMMITTEES**

**Corporations and Financial Services Committee**  
Meeting

**Senator FERRIS (South Australia)** (3.31 p.m.)—At the request of the Chairman of the Parliamentary Joint Committee on Corporations and Financial Services, Senator Chapman, I move:

That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 26 November 2003, from 4 pm, to take evidence in relation to its duties to inquire into, and report on, the activities of the Australian Securities and Investments Commission and to examine its annual report.

Question agreed to.

**Rural and Regional Affairs and Transport Legislation Committee**  
Extension of Time

**Senator FERRIS (South Australia)** (3.32 p.m.)—by leave—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I move the motion as amended:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Maritime Transport Security Bill 2003 be extended to 27 November 2003.

Question agreed to.

**Economics References Committee**  
Meeting

**Senator MACKAY (Tasmania)** (3.32 p.m.)—At the request of the Chair of the Economics References Committee, Senator Stephens, I move:

That the Economics References Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 2 December 2003, from 7.30 pm, to take evidence for the committee's inquiry into the structure and distributive effects of the Australian taxation system.

Question agreed to.

**Environment, Communications, Information Technology and the Arts References Committee**  
Meeting

**Senator BARTLETT (Queensland—Leader of the Australian Democrats)** (3.33 p.m.)—At the request of the Chair of the Environment, Communications, Information Technology and the Arts References Committee, Senator Cherry, I move:

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 26 November 2003, from 11.30 am to 1.30 pm, to take evidence for the committee's inquiry into the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002.

Question agreed to.

**Medicare Committee**  
Reappointment

**Senator NETTLE (New South Wales)** (3.34 p.m.)—by leave—I, and also on behalf of Senator Chris Evans, move the motion as amended:

That—

- (a) the Select Committee on Medicare, appointed by resolution of the Senate on 15 May 2003, be reappointed with the same powers and membership as previously agreed, except as otherwise provided by this resolution;
- (b) the committee inquire into and report on the Government's 'Medicare plus' package including, but not limited to:

- (i) the Government's proposed amendments to the Health Legislation Amendment (Medicare and Private Health Insurance) Bill 2003,
- (ii) the Government's proposed increase to the Medicare rebate for concession cardholders and children under 16 years of age, and
- (iii) the Government's proposed workforce measures including the recruitment of overseas doctors;

(c) the committee have power to consider and use for its purposes the minutes of evidence and records of the select committee appointed on 15 May 2003; and

(d) the committee report by 11 February 2004.

Question put.

The Senate divided. [3.38 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	34
Noes.....	28
Majority.....	6

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.
Brown, B.J.	Buckland, G.
Campbell, G.	Cherry, J.C.
Collins, J.M.A.	Cook, P.F.S.
Denman, K.J.	Evans, C.V.
Greig, B.	Harradine, B.
Harris, L.	Hogg, J.J.
Hutchins, S.P.	Kirk, L.
Lees, M.H.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M. *
Marshall, G.	McLucas, J.E.
Moore, C.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
Ray, R.F.	Sherry, N.J.
Stephens, U.	Stott Despoja, N.
Webber, R.	Wong, P.

NOES

Alston, R.K.R.	Barnett, G.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Chapman, H.G.P.
Colbeck, R.	Coonan, H.L.

Eggleston, A.	Ferguson, A.B.
Ferris, J.M. *	Heffernan, W.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lightfoot, P.R.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Payne, M.A.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

PAIRS

Carr, K.J.	Campbell, I.G.
Conroy, S.M.	Hill, R.M.
Crossin, P.M.	Macdonald, J.A.L.
Faulkner, J.P.	Knowles, S.C.
Forshaw, M.G.	Patterson, K.C.

\* denotes teller

Question agreed to.

BUDGET

Consideration by Legislation Committees  
Meeting

**Senator LUDWIG** (Queensland) (3.41 p.m.)—At the request of Senator Faulkner, I move:

- (1) That the Legal and Constitutional Legislation Committee reconvene to resume its consideration of the 2003-04 Budget estimates on 25 November 2003, during the sitting of the Senate from 6.50 pm, for the purpose of further examination of the Department of Immigration and Multicultural and Indigenous Affairs and the Attorney-General's Department, with particular reference to migration zone excision matters and the *Minasa Bone*.
- (2) That officers and staff representing all of the responsibilities of the People Smuggling Task Force, and relevant officers with responsibility for the above mentioned matters and outputs from the above departments and agencies, including officers attending or advising in any court proceedings, appear before the committee to answer questions.

Question agreed to.

**TRADE: FREE TRADE AGREEMENT**

**Senator BROWN (Tasmania) (3.42 p.m.)**—I move:

That, in the opinion of the Senate, any legislation that implements any of the proposed Australia-United States free trade agreement (FTA) should not be supported if the FTA does not contain an exclusion clause protecting present and future Australian cultural content.

Question agreed to.

**SEXUALITY AND GENDER IDENTITY DISCRIMINATION BILL 2003****First Reading**

**Senator GREIG (Western Australia) (3.43 p.m.)**—I move:

That the following bill be introduced: A Bill for an Act to prohibit discrimination on the ground of sexuality, transgender identity or intersex status, and for related purposes.

Question agreed to.

**Senator GREIG (Western Australia) (3.43 p.m.)**—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator GREIG (Western Australia) (3.44 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—*

I am very pleased to introduce the Australian Democrats' Sexuality and Gender Identity Discrimination Bill 2003.

This bill will provide avenues of redress for gay, lesbian, bisexual, transgender and intersex (GLBTI) citizens who have been discriminated against in the public and private sector, and it will legislate against vilification on these grounds.

It will ensure that ongoing inequities under Federal law such as superannuation death benefits, taxation arrangements, income support, immigration access, industrial relations' conditions, public service entitlements including within the Federal Police and Defence Forces, veterans' pensions, and access to the Family Court, among other things, are abolished.

In essence, the bill prohibits discrimination against sexual minorities, transgender and intersex citizens and legally recognises same-sex couples under Commonwealth law.

This bill is a slightly amended version of the original Spindler Bill, which was introduced in 1995.

For more than eight years the Australian Democrats' have been a lone voice in this chamber by persistently calling for legislative protection for gay, lesbian, bisexual, transgender and intersex people, ensuring their rights and freedoms right across all Commonwealth legislation.

No other Australian community group remains so unprotected from discrimination, harassment and vilification on the basis of their membership or affinity with that group.

No other section of the community has met such staunch and irrational resistance to the development of legal equality and protection.

While hugely significant legal reforms have occurred domestically and internationally in the area of sexuality and gender rights, the Federal Government has persisted in meting out some of the most sustained resistance against any such progress.

Every Australian state and territory has enacted, to varying degrees, legislation that has provided a measure of equality to gay, lesbian, bisexual, transgender and intersex Australians.

In 1996 Tasmania became the last Australian state to repeal its laws prohibiting consensual sex between men in private.

All States and Territories have enacted anti-discrimination legislation, variously covering sexuality, gender identity, and lawful sexual activity, with NSW and Tasmania also including anti-vilification measures in their laws.

Although variation still exists between the states and territories, ages of consent have been equalised within all jurisdictions except the Northern

Territory, which I note is set to do so this very week.

WA, Qld, NSW, Victoria, the ACT and Tasmania have introduced laws ensuring same-sex relationships are afforded equality under the law. Again, the Northern Territory is expected to debate and pass similar legislation this week, and South Australia, having already granted equal access to same-sex couples for the purpose of superannuation death benefits, is considering similar action.

Tasmania has gone so far in this regard as to remove all reference to “de-facto” in its legislation, replacing it instead with a series of definitions relating to interdependent relationships covering family members, carers, and significant personal relationships including those of same-sex.

WA allows same-sex couples access to general placement adoption, and in Tasmania access is granted to known-child adoption. The ACT is expected to consider similar legislation this December.

The High Court has ruled in favour of lesbian access to IVF and the right of transgender men and women to marry, and the Australian Bureau of Statistics has made provision for the inclusion of same-sex relationships in the gathering of its statistics.

Transgender, intersex and androgynous people are able to alter birth certificates, passports and other legal documents to ensure their gender identity is properly represented.

Internationally, there have been major reforms in the United Kingdom, United States, the Netherlands, Canada, South Africa, New Zealand and other comparable jurisdictions.

All of these changes are the result of battles long fought and hard won. Their benefits are tangible and profound—not just in the lives of GLBTI people, but also in the lives of their families, partners and children.

These reforms were possible because State and Territory Governments acknowledged and acted upon dramatic shifts in public perception and public understanding over recent years, and in some cases also showed considerable leadership.

Perhaps the best illustration of the extent of this support is provided by very recent events in the Northern Territory.

Two weeks ago, staunchly conservative Northern Territory Opposition Leader, Mr Denis Burke, lost his leadership for failing to allow his Country Liberal Party a conscience vote on the issue.

The headline in the Northern Territory News the next day, “Gay Stance Costs Burke Job”, should be a wake-up call to the Federal Government—it is out of step with a public that is demanding a more sensible, reasonable and intelligent approach to this issue.

The message is clear—a failure to act will not be tolerated forever, and yet failing to act is precisely what this Government continues to do.

In fact, the last action on this issue by the Commonwealth was in 1994, when under duress following a United Nations ruling on Tasmania’s anti-gay laws, the Keating Government introduced the Human Rights (Sexual Conduct) Act.

To its credit, the Government sidestepped the usual states’ rights and national sovereignty red herrings, to ultimately gain bipartisan support for the bill that would enshrine the right to sexual privacy, and lay the groundwork for a High Court challenge to the validity of the Tasmanian laws.

A decade later, and the Commonwealth has fallen behind every other comparable international jurisdiction.

Perhaps, even worse, a decade later the same United Nations committee has found the Commonwealth continues to breach the same article of the same covenant by failing to ensure that fundamental GLBTI human rights are protected and enshrined in law.

How have we failed to progress as a nation in ten years?

I have consistently argued that failure to achieve any real change in this place has come as a consequence of two key factors—the unapologetic homophobia of the Coalition Government and the unwillingness of the Labor Opposition to support any real move for reform.

The Government’s history of homophobia barely requires explanation. Led by a Prime Minister who describes himself as “conservatively toler-

ant", who said he would be "disappointed" if one of his children turned out to be gay, and who wears as a badge of honour, the public deification of the 1950s family model, while maintaining that any other should remain a distinctively private affair, is indicative.

On issues of superannuation, the Government considers it appropriate that profitability and market forces should determine equality, whereby disenfranchised citizens can "vote with their feet" to find a friendly Super fund. This advice would be unthinkable if the issue was racial discrimination, for example.

The Defence Minister says discrimination in the Australian Defence Forces is the fault of departmental policy rather than the legislation that drives it, while the ADF itself argues the reverse. Even under the glare of the international spotlight, the Prime Minister, who promotes himself as a leader for all Australians, cannot acknowledge the unambiguous finding of the United Nations Human Rights Commission that treating someone differently on the basis of their sexuality is discriminatory—that to do so is a breach of human rights obligations under international law. Contrary to extensive legal opinion, the Australian Government refuses to even acknowledge that the views of the Committee are binding.

Yet, in spite of all this evidence to the contrary, the Coalition Government continues to insist it does not support discrimination of any kind.

Sadly, the Opposition has historically been little better. In responding to my criticisms in this area, the ALP consistently refers us to policy platforms, state reforms, and a stated desire to support wholesale and all-of-government reform, rather than piecemeal attempts to rectify inequity via amendments, as proof of its support.

It argues that supporting the wrong measures at the wrong time is counter-productive.

I have never accepted these lines of defence and I have been vocal in my criticism of them at each opportunity.

Over many years, I have called upon Labor to take active steps to rectify its previous mistakes. I have at times beseeched the ALP to take an active and principled stand, by supporting Democrat attempts to achieve equality and justice for gay, lesbian, bisexual, transgender and intersex individuals and couples.

I am delighted to see that this pressure appears to have finally taken effect.

A truly historic moment took place in September when, for the first time ever, same-sex amendments to a superannuation package made it through the Senate. It took the Democrats eleven previous attempts, but finally we were successful—to a degree. At the end of the day, the Government's homophobia won out, and the bill was passed unamended, thanks to the support of the Independents in this place.

During this debate and subsequently, Labor has made numerous statements that lead me to believe the time is now ripe for the reintroduction of the revised and updated Sexuality and Gender Identity Discrimination Bill.

ALP backbencher Senator Kirk enunciated Labor's anti-discrimination policy during my urgency debate on the UNHRC finding, by stating that Labor supports the enactment of legislation prohibiting discrimination on the grounds of a person's sexuality.

However, all this ad hoc and sometimes contradictory positioning by the alternative government is not matched with any specific or detailed policy position, draft legislation or private senator's bill.

This is where the Democrats can and do make a real difference. This bill represents we Democrats wearing our hearts on our sleeve, and it sets the benchmark for future reform and the kind of national law reform we think is needed to address all the issues properly.

The electorate's mood for change, long recognised by the states, now appears to have gained the recognition of Federal Labor following my agitation on this matter in the Senate. I call on Labor to support the introduction of this significant and long overdue reform, not because it might be electorally popular, but because it is the right thing to do.

Here is the wholesale reform which will, once and for all, provide legislative protection from the discrimination, harassment and vilification experienced by so many Australians, on the basis of their sexuality or gender identity.

The substantive provisions achieving these aims are contained within Part 2 of the bill.

Divisions 1 and 2 of this Part prohibit discrimination on the basis of sexuality, transgender identity and intersex status in employment and in other non-employment areas including in education, the provision of goods and services, club membership, sporting activities and the administration of Commonwealth programs.

The prohibition against discrimination in employment covers employees, commission agents, contract workers and volunteers in relation to a range of areas including the offering of employment, terms and conditions, payment of superannuation, and the provision of services.

Divisions 1 and 2 contain exemptions covering domestic duties, provision of accommodation in which the provider resides, and the disposal of estates by way of will or gift.

In addition to extending protection from discrimination, Division 1 also confers the same rights currently enjoyed by opposite sex persons living together in a genuine domestic relationship upon those of the same-sex. Division 2 ensures that the sex of transgender persons and those with an intersex condition is recorded on all official documents in accordance with that stated on a certificate issued by a law of a State or Territory.

Division 3 prohibits the incitement of hatred on the grounds of sexuality, transgender identity or intersex status.

The relationship between the physical violence and abuse, property crime, and harassment that GLBTI people experience, in measures significantly greater than the broader population, and public acts that seek to incite hatred, serious contempt, or severe ridicule of them, is well researched, and clearly documented.

This Division, which previously constituted the Sexuality Anti-vilification Bill 2003, only differs in that it more specifically extends protection to transgender people and those with an intersex condition.

Division 4 determines it is not unlawful to do an act that ensures people of a particular sexuality, transgender identity or intersex status are afforded equal opportunities in areas of employment, access and all other areas that fall within the scope of the bill.

Division 5 outlines a range of exemptions including those for religious bodies (if that discrimination conforms to the doctrines, tenets, or beliefs of that religion), acts done under statutory authority, and those in relation to superannuation and insurance (if that discrimination is based on relevant data and is reasonable).

The remainder of the bill outlines the role and responsibility of the Human Rights and Equal Opportunity Commission and confers responsibility for issues of sexuality and gender identity discrimination upon the existing Sex Discrimination Commissioner, subject to review after two years of operation.

Again, I am pleased to introduce the Sexuality and Gender Identity Discrimination Bill 2003. Its time has come. I call upon my Senate colleagues to vote to bring the Commonwealth up to date with all other States and Territories and comparable overseas jurisdictions.

I call upon my colleagues to ensure that the extensive range of discriminatory laws and practices currently suffered by gay, lesbian, bisexual, transgender and intersex Australians, their families, partners and friends, are brought to an immediate end.

The “gay rights movement”, for want of a better term, represents I think the last great human rights movement of our time. While the 1950s and 60s witnessed the Black Civil Rights movement and counter-racism, and the 1970s and 80s saw the wave of feminism and woman’s liberation being progressed, it has been the 1990s and the start of the new millennium that is witnessing the recognition and advancement of gay and lesbian people, and other sexual minorities.

Community attitudes on this matter are far in advance of our parliament.

This is no longer a fringe issue to be dismissed, but a mainstream issue to be dealt with. There is no valid reason to oppose this reform. Religious intolerance and general ignorance must be confronted and challenged. This bill offers our nation its best starting point to do just that.

**Senator GREIG**—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**COUNCIL OF AUSTRALIAN GOVERNMENTS**

**Senator HARRADINE (Tasmania) (3.45 p.m.)**—by leave—I move the motion as amended:

That the Senate—

- (a) notes that the Council of Australian Governments (COAG) is not directly accountable to the Australian people, yet determines many important policies that affect all Australians;
- (b) reaffirms the primacy of Australian parliaments over consultative and coordinating bodies like COAG and rejects any attempts to impose COAG's will on Australian parliaments; and
- (c) calls on the Australian Government and the state and territory governments through COAG to provide greater transparency and accountability to the Australian people by:
  - (i) reviewing freedom of information legislation as it applies to COAG;
  - (ii) establishing a detailed and dedicated COAG website;
  - (iii) providing notices of meetings and decisions on the website; and,
  - (iv) providing other material on the website to inform the public on COAG's activities.

Question, as amended, agreed to.

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

**Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.46 p.m.)**—I move:

- (1) That the Senate—
  - (a) notes:
    - (i) the opinion of the Reserve Bank of Australia that deposit bonds are likely to have encouraged the over-development of inner city rental units,

(ii) that deposit bonds have been a factor contributing to the current housing boom, and

(iii) that deposit bonds are issued by a range of organisations, some of which are not regulated by the Australian Prudential Regulation Authority; and

(b) calls on the Government:

- (i) to review the regulation of deposit bonds and related instruments and to include both the Australian Prudential Regulation Authority and Australian Securities and Investments Commission in the review, and
- (ii) to develop a regulatory scheme that will protect consumers and take some pressure from the housing boom and that will ensure:
  - (A) issuers of deposit bonds must conduct appropriate checks on the credit worthiness and ability to repay of applicants, and
  - (B) all deposit bond providers are regulated.

(2) That there be laid on the table, no later than 3.30 pm on 1 December 2003, any documents prepared by the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Department of the Treasury in relation to deposit bonds.

Question agreed to.

**PUBLIC AND COMMUNITY HOUSING**

**Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.46 p.m.)**—I move:

That the Senate—

- (a) notes:
  - (i) the finding of the Australian Bureau of Statistics that 99 900 people, including 9 941 Australian children under 12 years of age, were homeless in Australia on census night 2001,

- (ii) the Australian Council of Social Service and National Shelter report that found that 330 000 rent assistance recipients paid more than 30 per cent of their income in rent and that one in ten recipients paid more than half their income in rent,
- (iii) that there were 223 290 households waiting to be housed in public housing on 30 June 2002 and only 36 877 housed during 2001, and
- (iv) that the level of funding for public and community housing decreased by 28 per cent in real terms over the past decade and continues to reduce under the terms of the current Commonwealth State Housing Agreement; and
- (b) calls on the Federal Government to implement a national housing strategy that includes strategies to ensure low income Australians are housed in affordable and appropriate housing.

Question agreed to.

**INTERNATIONAL DAY FOR THE  
ELIMINATION OF VIOLENCE  
AGAINST WOMEN**

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (3.47 p.m.)—At the request of Senator Stott Despoja, I move:

That the Senate—

(a) notes that:

- (i) 25 November is the International Day for the Elimination of Violence against Women and marks the beginning of the global campaign called ‘16 days of activism against gender violence’;
- (ii) the campaign highlights all forms of gender violence, sexual violence and physical violence: violence against mothers, violence against daughters, violence against women in their homes, violence in the community, violence by loved ones, violence by the state, violence against women in the armed forces, violence against refugees,

violence in times of peace and violence in times of war, and

- (iii) violence is a reality for millions of women around the world, irrespective of their race, culture or age; and
- (b) urges the Government to sign and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Question agreed to.

**MINISTERIAL STATEMENTS**

**Military Detention: Australian Citizens**

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (3.47 p.m.)—I table a statement entitled *Government accepts military commissions for Guantanamo Bay detainees*.

**Senator BROWN** (Tasmania) (3.47 p.m.)—by leave—I move:

That the Senate take note of the document.

I want to comment on this statement, which was earlier read to the House of Representatives by the Attorney-General, Mr Ruddock. The statement is a complete failure to defend the interests of the Australian nation. It is important in recognising that the fate of Mr Hicks and Mr Habib in Guantanamo Bay is very much tied to the esteem in which we as Australians hold ourselves and all Australians in whatever circumstances we may find ourselves around the world.

In this particular situation, there can be no doubt that the Australian government has decided, in its forelock-tugging to the White House, to allow these two individuals in Guantanamo Bay to be treated not only outside the law—including international law and Australia’s domestic law—but as second-class citizens of a world in which the US President has deemed that only Americans are first-class citizens. That is not acceptable. This statement from the Howard government today says to this nation and to the world that Australians accept our role as secondary to

Americans. I am not about to accept that. This statement says that the Australian government:

... has been advised—

presumably by the American government—that Mr Hicks or Mr Habib could not be prosecuted in Australia in relation to their activities in Afghanistan or Pakistan under Australian laws that applied at the time. The Government has also been advised that Mr Hicks and Mr Habib both trained with Al Qaeda. That organisation has committed ... terrorist acts around the world. These are serious matters that must be addressed.

Let me take the kernel out of that. The serious matter that must be addressed here is that the government is stating that these men have not committed a crime under Australian law. Its responsibility is to see that people are prosecuted under the law of this country, and not in some other jurisdiction, when they are Australians. Mr Deputy President, you will note that towards the end of this four-page statement from the Attorney-General is this assertion:

... Australians who breach the laws of foreign countries while overseas have no automatic right to be repatriated to Australia for trial.

But what the government does not go on to say here is that these men were not arrested in the United States; they were arrested in Afghanistan and Pakistan. There has been no case to put that they breached the laws of those countries, and the government has asserted that they breached no laws in Australia. What we have here is the effective hijacking of Australian citizens and their transfer to Guantanamo Bay to be dealt with under laws that suit the US military jurisdiction. I note, because this is core to this matter, that the two Americans who were in Guantanamo Bay have been removed to a civil jurisdiction in the United States. Mr Howard, our Prime Minister, knows that, but he has not asked for the same course of events when it comes to Australian citizens.

So we have in this statement a subservience to an American system which is unjust.

This is not American civil law we are talking about; it is military law. There is an acceptance that, while these people are not military detainees—because the US President has said that the Geneva conventions do not apply—they can still be tried under military law. That is not just ironical or hypocritical; it is a manipulation of the law, as recognised internationally, for political purposes by the White House. In Canberra, there is an acceptance of that manipulation by the Howard government, transgressing international and our Australian domestic law so that they can stay sweet with the White House. What a travesty. If it is not picked up by this parliament, where next will it occur? The Australian government refuse to assert themselves as an independent sovereign nation but say, ‘When it comes to some matters, we hand across the rule of law over our citizens to a foreign state’—for political purposes.

In the statement the government say—and I am leaving out a lot here, because I cannot take more time from the Senate:

Should Mr Hicks or Mr Habib choose to retain an Australian lawyer as a consultant to their legal teams—

The government well know they have chosen that, but it is a deceitful way to state that—as the sentence unfolds—should they choose Australian lawyers to defend them, those lawyers will be deprived of their proper rights in the court. The statement goes on to say that they may choose Australian lawyers as consultants to their ‘legal teams’—that is, the American military legal teams—

following approval of military commission charges, subject to security requirements, that person may have direct face-to-face communications with their client.

They 'may' have, under this gunshot law of the United States in dealing with Australian citizens. It says:

In addition, the defence shall be able to present evidence in the accused's defence ...

'The defence' means the military people giving a so-called defence to these Australians in Guantanamo Bay. The evidence in their defence—what evidence? These people have been jailed and detained without trial for the last two years. What ability have they had to get any evidence together? They have been deprived of the ability to get evidence by this unlawful and illegal transgression of international norms. The statement goes on to say:

Like the military commissions—

referring to the Australian military commissions which dealt with Japanese war criminals—

those tribunals did not apply the usual procedures, including the normal appeal rights and rules of evidence, applicable in criminal trials at the time.

This is half a century later. There has been a great deal of legal conjecture about whether justice was served post World War II. But to use that as an argument for dealing with two Australian citizens in these circumstances, when American citizens have been returned to civil law, is outrageous indeed. The Attorney-General says:

I would remind the honourable members that the rules governing the military commission trials—which have been laid down by the US President, not an Australian—

provide fundamental guarantees for the accused.

They do not. He says:

These guarantees are similar to those found in our own criminal procedures ...

They are not. He says:

The guarantees include: the right to representation by defence counsel—

they do not—

a presumption of innocence—

that is not here—

a standard of proof beyond a reasonable doubt—that does not apply—

the right to obtain witnesses and documents to be used in their defence—

that is denied. These people are locked up—no charge, no ability. He says they are guaranteed:

... the right to cross examine prosecution witnesses and the right to remain silent—

They have neither of those rights. They have had their silence clamped on them for two years, and the right to cross-examine witnesses does not apply to them or their counsel. They have none of that. The Attorney-General knows that. This Attorney-General is a disgrace to the office in the way he is selling out Australian citizenship to a military tribunal which denies Australians the rights that Americans have at Guantanamo Bay. This Attorney-General is a disgrace to this nation, because this does not apply to two citizens; it applies to 20 million citizens. When you allow some other nation to treat Australians as second rate in one circumstance then it will happen in other circumstances. This is an outrageous concession that Australia's jurisdiction is second rate, that Australian citizens are second rate and that this government's abilities are second rate if not worse. *(Time expired)*

**Senator GREIG (Western Australia)**

(3.58 p.m.)—In response to the ministerial statement, I think it is no accident that, despite more than two years of reprehensible detention of these Australian citizens and others, it is only now the US is indicating it will move ahead with a military trial. I think that is not because the issue was raised and became the subject of media speculation during President Bush's visits recently to both Australia and the UK but because citizens in America are challenging the validity of Guantanamo Bay under their own constitu-

tion through their Supreme Court. The question soon to be before the highest court in the land in the USA is whether or not the very existence of and practices, behaviour and detention at Guantanamo Bay are legally valid in any circumstances let alone the system which the Americans currently operate under.

We know, for example, that Mr Hicks was detained as an enemy combatant—itself a legal fiction, a legal nonsense, given that the US was not at war at the time with the country in question. The fact is that this Australian citizen was clearly not in breach of any Australian law. Yet we have the extraordinary situation where Australia's own ratification of the Rome statute would oblige us to hand over any of those accused of crimes against humanity to the International Criminal Court, the ICC—not to have them banished to Guantanamo Bay or left in the hands of the Americans—if we were unable or unwilling to prosecute such people under Australian law. Yet that is the situation we have before us: it is argued by the Americans that their reluctance—or, frankly, their refusal—to return these Australian citizens to home soil is because there is no law in Australia under which they can be prosecuted. As Senator Brown says, quite rightly, that points to nothing less than the fact that these men have broken no Australian law.

Yet, contradicting that, the US believes that special exceptions must be made for American citizens who commit such crimes. It has asked the Australian government to sign an agreement which would grant American citizens immunity from prosecution by the ICC. The request creates an interesting conundrum for the Australian government, which was instrumental in the establishment of the ICC itself. In fact, it appears that the government has not quite worked out what it is to do about this, despite the fact that the matter was first raised

by the US well over a year ago. In December last year—roughly this time last year—we Democrats successfully moved a motion to refer the proposed agreement to the Joint Standing Committee on Treaties so that it could be scrutinised by the parliament. Yet the committee has refused to commence the inquiry, claiming that it was unaware of any such proposed agreement. This is despite the fact that members of the government have on numerous occasions acknowledged that the matter is being negotiated between the US and Australia.

Meanwhile, the US has convinced—or, in many cases, coerced—some 50 or more countries to enter into similar agreements with it. Refusing to sign such an agreement carries serious consequences, particularly for poorer nations. To this end it has suspended some \$US47.6 million in military aid and \$US613,000 in military education programs to some 35 countries that have refused to sign those agreements. Despite its failure to secure agreements for those countries, the US has made contingency plans should they attempt to refer a US citizen to the ICC for prosecution. It has passed legislation—which has since been dubbed the ‘Hague invasion act’—allowing US military personnel to invade the Hague, where the ICC is situated, in order to retrieve US citizens who have been referred to it by the court. It is an extraordinary double standard which, by contrast, sees Australian citizens detained nominally on US soil, despite being in Cuba under very different circumstances.

It might be of some cold comfort to Mr Hicks, and more importantly his family, that should he be found guilty of any charges that may be brought against him—and as of yet they are unclear—he would not be subject to the death penalty. It may be of some comfort that, should he be found guilty, arrangements could be made with the Australian government for him to be returned to this country

and detained here. There is no suggestion, however, that that might be in the city of Adelaide, where his family is.

We know that President Bush has already described all those in Camp X-Ray as 'bad men', begging the question as to whether these people can receive a fair trial. Can they receive a fair trial given the psychological and physiological condition that they would be in after two years of extraordinary detention, in cages no bigger than two metres by two metres, under exceptional sleep and exercise circumstances? They have been out of contact with their friends and family and lawyers for all of that period under psychological circumstances that we cannot even begin to imagine.

I was stunned by the breathtaking hypocrisy of the Minister for Foreign Affairs only a matter of days ago in relation to a fellow whose name escapes me—the Australian citizen, also ironically from Adelaide, who is being detained and/or questioned over suspicions around him and his behaviour and his current circumstances in Iraq. I heard the foreign minister, Mr Downer, say on one occasion that this person was simply in the wrong place at the wrong time—something that was never offered in terms of Mr Hicks or Mr Habib's circumstances. He also said that they should be presumed innocent until proven guilty. Three cheers for that! I can only agree with that. But why doesn't the same principle apply to Mr Hicks and Mr Habib? If there was any suggestion or evidence of their guilt or involvement in terrorist activities, that must and should have been dealt with months and months ago and not have been allowed to drag on to the appalling situation we now find.

We also see in the government statement today the suggestion that Mr Hicks was involved in terrorist training with al-Qaeda. I think it is worth pointing out that that par-

ticular allegation is relatively new in terms of Mr Hicks's detention. As I understand it, the allegation was always that his involvement was not with al-Qaeda but with the Taliban—two very different identities; remembering that the Taliban was the government of the day at the time in Afghanistan, which was for many years supported, resourced and funded by the US.

The question really is: what is it, if anything, that Mr Hicks is guilty of? I would argue that it is little more—unless I can be shown concrete evidence to the contrary—than being in the wrong place at the wrong time. Being labelled an enemy combatant is little more than having been nominated as offending American foreign policy. That was his crime. His crime was one of offending American sensibilities rather than being involved in terrorist activity. If I am wrong, if evidence can be shown to the contrary, then I will be the first to say that the full weight of the law must apply—that terrorism and involvement in it is reprehensible and the full weight of the law must apply. But we have to seriously question the US motivation in this matter; we have to seriously question the government's lack of representation for Australian citizens and the way in which it has kowtowed to US interest and to US foreign policy. I note the stark difference in the way in which Prime Minister Blair and his government approached this issue in relation to British citizens and the way in which the Prime Minister has not approached this issue with Mr Bush in terms of Australian citizens.

From the outset it was alleged that some of the detainees at Guantanamo Bay had no involvement whatsoever with terrorism. That was confirmed earlier this year when more than 40 detainees were released without charge, including two elderly farmers who were taken into custody because they happened to be in the wrong place at the wrong time. As the government itself acknow-

ledges, the procedures which will be adopted by the military commissions differ greatly from those that apply in criminal proceedings under Australian law. We know also from further information on this matter that, regardless of the particular finding the military trial or tribunal may come up with, the ultimate say rests entirely in the autonomous hands of President Bush, who, I remind people, is already on the record as having labelled and nominated these people as 'bad'.

The minister makes a particularly interesting argument in his statement where he seeks to justify the use of these military commissions. He argues that they represent a recognised way of trying persons who may have committed offences under the laws of war. In doing so, the minister concedes that such commissions have previously been used to try prisoners of war, and he cites the trial of Japanese prisoners immediately after WWII as an example. The obvious point to be made there is that the US has refused to grant Mr Hicks and Mr Habib, along with all other Guantanamo Bay detainees, the basic rights usually afforded to prisoners of war under the Geneva conventions.

This statement is a statement of weakness. It is a statement of subservience. It reminds us that much more needs to be done in the protection of rights and civil liberties of Australians and reminds us again of the desperate need in this country for a statutory or constitutional bill of rights.

**The ACTING DEPUTY PRESIDENT**  
(**Senator Lightfoot**)—I call Senator Faulkner, the Leader of the Opposition in the Senate.

**Senator Brown**—And a very honourable one too.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (4.08 p.m.)—That is very generous of

you, Senator Brown. I thank you sincerely for saying so.

**The ACTING DEPUTY PRESIDENT**—  
Senator Faulkner may care to address his remarks to the chair.

**Senator FAULKNER**—Thank you. It seems you have a unity ticket with Senator Brown on this matter. Naturally, the opposition welcomes any improvements to the situation of Australian citizens David Hicks and Mamdouh Habib. Mr Hicks and Mr Habib have now been incarcerated without charge at Guantanamo Bay for approximately two years, incarcerated without charge and without trial. Detention for such a long period of time without charge or trial is, in the view of the opposition, completely unacceptable to Australians. The government has today announced five commitments given by the United States about the continued treatment of these two Australian citizens. Regrettably, it must be said that they are marginal and do not go to the heart of concerns about the proposed military commissions.

Firstly, the United States has said that the commitments already given in relation to Mr Hicks would also apply to Mr Habib if he is charged. Indeed, it would be surprising if that were not the case, as it should be the right of all Australian citizens to equal treatment before the law. Is the government seriously suggesting that, in the absence of this commitment—which it must be said has come late in the piece—Mr Habib would have been afforded an inferior standard of trial?

Secondly, the government may make submissions to the review panel which would review any military commission trial. The review panel consists of three military officers appointed by US Secretary of Defense, Donald Rumsfeld. This is not an independent court of appeal, yet under the mili-

tary commission rules it is not required to consider submissions from the accused. We ask: why is the government allowed to make submissions when the rules provide Mr Hicks and Mr Habib with no such opportunity? What role does the government play? Is it there to represent the interests of Mr Hicks and Mr Habib, or is it there in some other capacity, for example, to make submissions about the implications of the case for Australia's national security?

Thirdly, any Australian lawyer retained by Mr Hicks or Mr Habib as a consultant would, subject to security requirements, be allowed face-to-face communications with their clients. As we have noted, the right to speak to an Australian lawyer is a right that has been denied to Mr Hicks and Mr Habib for approximately two years. It will come as a pleasant surprise to Mr Hicks and Mr Habib that they even have an Australian lawyer.

Fourthly, Mr Hicks—and, if listed as eligible for trial, Mr Habib—may talk to their families via telephone, and two family members would be able to attend their trials. Again this is a right that has been denied to these two men for far too long. Indeed, it will continue to be denied to Mr Habib until a decision is finally made about whether to charge him.

Fifthly, an independent legal expert sanctioned by the Australian government may observe any trial. This is an initiative announced by the Law Council of Australia some months ago, and it was warmly received by Labor at that time. Regrettably, the phrase 'independent legal expert sanctioned by the Australian government' may appear to some to be an oxymoron. Are there some independent legal experts the Australian government will not sanction? If so, who are they? Is there a list? If there is a list, who is on it? These seem to the opposition to be very important questions and very reasonable

questions not only to ask but to expect answers to.

The fact remains that these military commissions do not meet a standard of fairness the Australian community would expect. The government has not given any explanation why John Walker Lindh, an American citizen captured in a war zone in Afghanistan, was given a civil trial, as opposed to a military trial, while Australian citizens are not entitled to the same standard of justice. As the opposition has repeatedly said, the government should be pressing for Mr Hicks and Mr Habib to receive a standard of justice that would be acceptable to the Australian community: either a civil trial or some other form of procedure that is genuinely independent of the executive government of the United States. If they are unlikely to receive such a standard, the government should be pressing for their prompt return to Australia.

Question agreed to.

#### ENVIRONMENT: SEPON MINE

##### Return to Order

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (4.15 p.m.)—by leave—This statement is on behalf of the Hon. Mark Vaile, the Minister for Trade. The order arises from a motion moved by Senator Nettle as agreed by the Senate on 16 October this year. It relates to documents detailing the results of the independent environmental and social audit of the Sepon mine project in Laos conducted by Graham A. Brown and Associates and provided to the Export Finance and Insurance Corporation, EFIC—the providers of political risk insurance, PRI—for this project.

I wish to inform the Senate that Minister Vaile has decided to claim public interest immunity against the order and will not release the report. This audit report contains information which, if released, could cause significant commercial detriment to EFIC

and an investor in the mine, Oxiana Resources NL. This detriment would outweigh any public interest in the release of the report. The audit report was prepared by Graham A. Brown and Associates on behalf of the private company Oxiana Resources NL. The report was provided to EFIC in accordance with its contractual risk reporting obligations. EFIC receives numerous confidential documents that form the basis on which EFIC commercially underwrites and manages its transactions. This disclosure is necessary to enable EFIC to make a fully informed risk assessment and to effectively manage risk throughout the transaction, including minimisation of financial loss. The information obtained from counterparties is an essential tool for EFIC to balance its financial risk.

The tabling of commercial-in-confidence information such as this audit report would inevitably undermine confidence among EFIC's clients in its ability to handle commercially sensitive information. The precedent established by the release of this information would lead to deterioration in the volume, frankness and general quality of information provided to EFIC. This would in turn restrict EFIC's capacity to assess, monitor and manage risk. It should be noted that EFIC is subject to secrecy obligations under section 87 of the Export Finance and Insurance Corporation Act 1991. This provision represents clear legislative acknowledgment that commercially sensitive information provided to EFIC by its clients should be protected.

EFIC only agreed to provide PRI to Oxiana after it undertook a rigorous examination of the environmental and social impact of the mine. This involved, in accordance with its environment policy, an extended process of public consultation. EFIC was satisfied with the environmental mitigation procedures put in place by Oxiana. Further,

EFIC provided a point by point response to all of the issues raised in the public consultation process. EFIC has already discharged its duty for public consultation in relation to this project and is a world leader in transparency on environmental issues. Protecting EFIC's commercial viability is in the public interest. Safeguarding the frank and open exchange of information in this regard is also in the public interest. The release of this report would jeopardise EFIC's commercial position and add little to public debate. The minister therefore claims public interest immunity from this order to return.

**Senator BROWN (Tasmania) (4.18 p.m.)**—by leave—Senator Nettle sought information from the government which is involved in supporting an Australian company in a mining venture in Laos. It was to do with the environmental impact assessment. The minister is saying he is not going to give it. He is hiding behind, in this case, a fraudulent claim that it would compromise commercial-in-confidence matters to do with an Australian government instrumentality which the minister says is a world leader in transparency on environmental issues. That is absolute nonsense.

What the minister should have done here was to negotiate with Senator Nettle to ensure that the whole of the environmental brief which EFIC has and which this company has was delivered to the Senate. There is nothing in an environmental impact assessment which transgresses the need for commercial confidentiality. This is an attempt by the minister to prevent the Senate from having access to information that it should have about the environmental activities in Laos of an Australian company supported by taxpayers' money. What the minister's actions today say is that there is something very rotten about it indeed.

I can tell you on behalf of Senator Nettle that the matter will not end here. It is not good enough for the minister to come in here and say, 'I am not giving to the Senate information which a Senate motion, a majority of the Senate, has sought, on the basis that it is commercial-in-confidence.' We are asking about the environment. That is what Senator Nettle sought information on. For the minister to say there will be no information at all because there is some economic secrecy about it is obviously illogical and unacceptable to the Senate. I can assure you, Mr Acting Deputy President, and I can assure Senator Minchin, who has just failed in his duty to provide this information to the Senate, that Senator Nettle will be taking the strongest action possible to ensure he does his job and delivers the information that the Senate asked for by way of resolution.

#### BUDGET

##### Consideration by Legislation Committees

###### Additional Information

**Senator McGAURAN** (Victoria) (4.21 p.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Tierney, I present additional information received by the committee relating to various hearings on the budget and additional estimates for 2002-03 and 2003-04.

#### HEALTH INSURANCE: ANTICOMPETITIVE PRACTICES

##### Return to Order

**The Clerk**—A document is tabled in response to the order of the Senate of 25 March 1999, as amended on 18 September 2002, relating to assessment reports by the Australian Competition and Consumer Commission on anticompetitive health cover practices.

#### COMMITTEES

##### Membership

**The ACTING DEPUTY PRESIDENT** (Senator Lightfoot)—The President has received a letter from a party leader seeking variations to the membership of committees.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (4.22 p.m.)—by leave—I move:

That Senator Wong be appointed a participating member of the Economics Legislation and References Committees

Question agreed to.

#### MIGRATION LEGISLATION

##### AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

###### MIGRATION AGENTS

###### REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003

##### Report of Legal and Constitutional Legislation Committee

**Senator McGAURAN** (Victoria) (4.23 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the provisions of the Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003 and a related bill, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

##### PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2003

##### OFFSHORE PETROLEUM (SAFETY LEVIES) BILL 2003

##### In Committee

Consideration resumed.

##### PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2003

**The ACTING DEPUTY PRESIDENT** (Senator Lightfoot) (4.24 p.m.)—The

committee is considering the **Petroleum (Submerged Lands) Amendment Bill 2003** and Greens amendment (1) on sheet 3133 moved by Senator Brown. The question is that the amendment moved by Senator Brown be agreed to.

**Senator BROWN (Tasmania) (4.24 p.m.)**—Before lunch, we were awaiting the minister's response to two matters to do with whales. He had no information at that time but he may have now. The first matter sought any information about the stranding on the west coast of Tasmania of over 100 whales that were discovered yesterday. Secondly, and definitely pertinently to this, was the impact on blue whales and other whales that are known to have been in the vicinity of seismic testing by Woodside Energy Ltd off the Victorian coast. They are whales, I might add, that to my best information were in Australian waters—Commonwealth waters—in the last few weeks while this testing proceeded. As this minister has made clear, the government has no clear information about the impact of testing on whales.

We do know that it has a deleterious and at times very destructive impact on whales. These are explosions of sound of up to 200 decibels—quite intolerable to the human ear if in the close vicinity—which are meant to penetrate the marine seabed for many hundreds of metres to discover oil and gas. They have, of course, a huge and destructive impact on the marine ecological systems in the vicinity. The committee has been asking the minister to supply it with information about the impact of the seismic testing in the Otway Basin as it proceeds and to join with the Greens in an amendment to the **Petroleum (Submerged Lands) Amendment Bill 2003** which reads:

It is a specific condition of a permit that seismic testing or other activities using sound to determine offshore petroleum or other mineral deposits are not permitted unless demonstrated to the min-

ister to not have a negative impact on ecosystems or living species.

That is a very reasonable amendment. It puts in place the principle that you do not have these sound bombs occurring in whale habitat when you know that it causes damage to whales. I know there has been monitoring of the seismic bombing of the Otway Basin by Woodside, this giant Australian exploration company, and I asked the minister earlier to provide the committee at this stage, seeing we are dealing with this amendment, with the information he has about the impact that has had on whales in the last few weeks.

**Senator MINCHIN (South Australia—Minister for Finance and Administration) (4.27 p.m.)**—I record my objections to the unduly sensational description of the essential seismic surveys that are undertaken in offshore exploration as 'seismic bombing'. I am afraid that is typical of the Greens. But as we all know—and I am pleased that the Labor Party has acknowledged—seismic surveys are an essential part of the critical Australian industry of offshore exploration for oil and gas. It is our view, and I hope it would be shared by the opposition, that the current regime, which quite comprehensively regulates seismic surveys, is adequate.

In relation to the matters Senator Brown has raised, the information that has been drawn to my attention is that a mix of species, comprising bottlenose dolphins and pilot whales, have died on a remote beach on Tasmania's south-west coast. I am advised it is suggested that they had been dead for some time. We are informed that Nature Conservation Branch officers from Tasmania are going there to investigate exactly the situation. I am advised that Dr David Pemberton, Curator of Zoology at the Tasmanian Museum and Art Gallery, has stated that a beaching of mixed species such as this is quite rare. On that basis, I gather that he has stated that he believes that the beaching

occurred as a result of killer whale hunting. I am also advised that there has been no seismic activity in this area for a number of years.

In relation to Woodside and its seismic surveys, I am advised they occurred in Victorian waters and commenced on 25 October and finished on 11 November. During this survey, Woodside was alerted that a southern right whale was observed nine to 10 kilometres from the survey area. It was outside the survey area and not actually observed by the vessel. However, Woodside informed the Department of Industry, Tourism and Resources that it stopped the survey, turned the boat around and soft-started it in the opposite direction and that there were no blue whales sighted at that time.

I can further advise the chamber that Santos, a great South Australian company, did report what is described as 'interaction with blue whales' in a recent survey. In undertaking a seismic survey in the Victorian Otways between 14 and 17 November, Santos reported to DEH by phone indicating that they had seen blue whales some 20 kilometres from the seismic area. The sighting was made by an accompanying Santos aerial survey. The activity is well within the seismic guidelines which provide for complete shutdown of seismic activity if the seismic activity is within three kilometres of cetaceans. It is the first time that blue whales have been sighted in the Otways in November. I gather that they are normally there from mid-December until March. These reports such as Santos made are done as a matter of course now. I think this incident and the Woodside incident, which was in Victorian waters, show that the current system does work well and that we do have very responsible Australian companies in Woodside and Santos conducting their very important activities for the future of this country in a very sensitive way

and within these very comprehensive regulatory arrangements that are in place.

**Senator BROWN (Tasmania) (4.31 p.m.)**—We have just had the minister give no information, effectively, other than that which I supplied to the committee earlier. You would expect that he would be in the position to be able to do better than that. What we do know is that blue whales came within a number of kilometres of seismic testing and did not proceed because, one must assume, of the defraying impact of the seismic testing at what the minister says is 20 kilometres. He objects to the term 'seismic bombing'. He would rather say 'seismic surveying' because the minister is a master of greenwash. I can tell him that, if a 200-decibel explosion went off next to him, that would be the end of his hearing. If he cannot connect with whales, he should do a little assessment himself of what the impact might be in his own environment were he subject to this sort of unacceptable intrusion.

There is not going to be much point debating this further. We have already had the minister refuse to give information about another international matter of mining in Laos—any environmental information at all. He is not going to understand the seriousness of seismic testing on the whales. He does not, apparently, appreciate the importance—even if we leave the environment aside—of blue whale migrations to the economies of South Australia and Victoria. Everything is put on the altar of the seismic testing for these big oil and gas exploration corporations and let everybody else go hang, including the whales that are resuming, hopefully, some toehold on existence on this planet now that the great whaling destruction days of the whaling fleets are over.

The minister has just admitted, by saying that it is expected that the blue whales would come into this vicinity in December, January

and February but not in November, that in fact those who are in control of these operations simply do not know what they are dealing with. It is not that the blue whales appearing in November are doing something that is unusual for them. This is their territory, these are their time zone arrangements and this is their migration. What the minister is saying is that that is very secondary to his interest in Santos and Woodside wreaking whatever damage they may to the environment because they are in pursuit of a seismic testing regime about which this minister can give the committee almost zero information. That is a deplorable way for a committee to have to proceed but that is the nature of the minister we are dealing with on this occasion.

I cannot proceed any further with it. It would be simply knocking one's fist on an empty vessel. We should have expected better from the minister. He has had a lot of time to prepare on this. He has had a lot of time to give this committee information and to deal in a constructive and informative way with these important amendments. But he does not want to, it is not in his domain and we are not going to get any further with it.

Question put:

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

The committee divided. [4.39 p.m.]

(The Temporary Chairman—Senator P.R. Lightfoot)

Ayes.....	2
Noes.....	48
Majority.....	46

AYES

Brown, B.J.	Nettle, K. *
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NOES

Allison, L.F.	Barnett, G.
Bartlett, A.J.J.	Bolkus, N.
Boswell, R.L.D.	Brandis, G.H.

Buckland, G.	Campbell, G.
Chapman, H.G.P.	Cherry, J.C.
Cook, P.F.S.	Denman, K.J.
Evans, C.V.	Ferguson, A.B.
Ferris, J.M. *	Forshaw, M.G.
Greig, B.	Harris, L.
Hogg, J.J.	Humphries, G.
Hutchins, S.P.	Johnston, D.
Kirk, L.	Lees, M.H.
Lightfoot, P.R.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Minchin, N.H.	Moore, C.
Murray, A.J.M.	O'Brien, K.W.K.
Payne, M.A.	Ridgeway, A.D.
Scullion, N.G.	Sherry, N.J.
Stephens, U.	Stott Despoja, N.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Watson, J.O.W.
Webber, R.	Wong, P.

\* denotes teller

Question negatived.

**Senator ALLISON** (Victoria) (4.43 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 3151:

(1) Clause 2, page 2, at the end of the table, add:  
.....  
6. Schedule 4 The day on which this Act receives the Royal Assent

(2) Page 110 (after line 22), at the end of the bill, add:

***Schedule 4—Amendments relating to petroleum exploration and recovery operations***

**Petroleum (Submerged Lands) Act 1967**

#### 1 Subsection 5(1)

Insert:

**Commonwealth marine area** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**Commonwealth reserve** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**conservation zone** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**declared World Heritage property** has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

**seismic testing** means any activity that involves the use of sound vibrations to obtain geological information.

## 2 After subsection 19(1)

Insert:

(1A) A person must not explore for petroleum in a Commonwealth marine area that is part of a declared World Heritage property, Commonwealth reserve or a conservation zone.

Penalty: Imprisonment for 5 years.

## 3 After section 27

Insert:

### 27A *Restriction on grant of permits*

The Joint Authority must not grant a permit that authorises a person to explore for petroleum, or do anything associated with petroleum exploration, in a declared World Heritage property, Commonwealth reserve or a conservation zone.

## 4 After subsection 33(1)

Insert:

(1A) It is a condition of all permits issued under this Part that seismic testing, or any other activity that uses sound to determine offshore petroleum or other mineral deposits, that has, will have, or is likely to have, a significant impact on a matter protected by a provision of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* is not permitted unless:

- (a) there is no prudent and feasible alternative to the testing or other activity; and
- (b) all reasonable measures have been, and will be, taken to minimise the

impacts of the testing or other activity on the relevant matter.

## 5 After section 38BD

Insert:

### 38BE *Restriction on grant of leases*

The Joint Authority must not grant a lease that authorises a person to explore for petroleum, or do anything associated with petroleum exploration, in a declared World Heritage property, Commonwealth reserve or a conservation zone.

## 6 Section 39

Repeal the section, substitute:

### 39 *Recovery of petroleum in adjacent area*

(1) A person must not carry on operations for the recovery of petroleum in an adjacent area except:

- (a) under and in accordance with a licence; or
- (b) as otherwise permitted by this Part.

Penalty: Imprisonment for 5 years.

(2) A person must not carry on operations for the recovery of petroleum in a Commonwealth marine area that is part of a declared World Heritage property, Commonwealth reserve or a conservation zone.

Penalty: Imprisonment for 5 years.

## 7 After section 51

Insert:

### 51A *Restriction on grant of licences*

The Joint Authority must not grant a licence that authorises a person to carry on operations for the recovery of petroleum, or do anything associated with the recovery of petroleum, in a declared World Heritage property, Commonwealth reserve or a conservation zone.

## 8 After subsection 58(1)

Insert:

(1A) The Joint Authority must not direct a licensee under subsection (1) to recover petroleum in a declared World Heritage property, Commonwealth reserve or a conservation zone.

#### 9 Section 59A

Repeal the section, substitute:

#### 59A *Construction etc. of infrastructure facilities*

(1) A person must not, in the adjacent area:

- (a) begin or continue the construction, or the alteration or reconstruction, of any infrastructure facilities; or
- (b) operate any infrastructure facilities; except:

- (a) under and in accordance with an infrastructure licence; or
- (b) as otherwise permitted by this Part.

Penalty: Imprisonment for 5 years.

(2) A person must not, in a Commonwealth marine area that is part of a declared World Heritage property, Commonwealth reserve or a conservation zone:

- (a) commence or continue the construction, or the alteration or reconstruction, of any infrastructure facilities; or
- (b) operate any infrastructure facilities.

Penalty: Imprisonment for 5 years.

#### 10 After section 59E

Insert:

#### 59EA *Restriction on grant of infrastructure licences*

The Joint Authority must not grant an infrastructure licence that authorises a person to:

- (a) commence or continue the construction, or the alteration or reconstruction, of any infrastructure facilities; or
- (b) operate any infrastructure facilities; in a declared World Heritage property, Commonwealth reserve or a conservation zone.

#### 11 After subsection 60(1)

Insert:

(1A) A person must not, in a Commonwealth marine area that is part of a declared World Heritage property, Commonwealth reserve or a conservation zone:

- (a) commence or continue the construction, or the alteration or reconstruction, of a pipeline; or
- (b) operate a pipeline.

#### 12 After section 65

Insert:

#### 65A *Restriction on grant of pipeline licences*

The Joint Authority must not grant a pipeline licence that authorises a person to:

- (a) commence or continue the construction, or the alteration or reconstruction, of a pipeline; or
- (b) operate a pipeline; in a declared World Heritage property, Commonwealth reserve or a conservation zone.

#### 13 After subsection 112(3)

Insert:

(3A) The Designated Authority must not grant an access authority that authorises a person to carry on petroleum exploration operations or operations related to the recovery of petroleum in a declared World Heritage property, Commonwealth reserve or a conservation zone.

#### 14 Application

(1) The amendment made by item 2 of this Schedule does not apply to an activity that is authorised under a permit or lease that was granted prior to the commencement of this Schedule.

(2) The amendment made by item 6 of this Schedule does not apply to an activity that is authorised under a licence that was granted prior to the commencement of this Schedule.

- (3) The amendment made by item 9 of this Schedule does not apply to an activity that is authorised under an infrastructure licence that was granted prior to the commencement of this Schedule.
- (4) The amendment made by item 11 of this Schedule does not apply to an activity that is authorised under a pipeline licence that was granted prior to the commencement of this Schedule.

I do not propose to proceed with the amendments on sheets 3133 or 3138. Our reasons for proceeding down this path were canvassed in my speech in the second reading debate. I will ask the ALP to look again at the amendments that we put some weeks ago. At that stage I think the ALP indicated that this had come with too little time to consider those amendments. They are very carefully couched. They relate to Commonwealth marine areas, Commonwealth reserves, conservation zones, declared World Heritage property and seismic testing that involves any use of sound vibrations to obtain geological information.

The minister talked earlier about essential exploration. I would argue that, no matter how essential exploration is, it ought not to take place in these environments. That is really the key to our amendments. We have canvassed in this debate the likelihood of damage to the hearing of finfish, whales, dolphins and the like, and decompression sickness in marine animals and so forth. I do not propose to go over that again but rather to indicate what our amendments would do by way of requiring procedures to be put in place before there was seismic testing in those areas, outside the areas I have just mentioned. I want to make it quite clear that the intention of these amendments is that there would not be exploration in Commonwealth marine areas, World Heritage properties, Commonwealth reserves or conservation zones. As I have said, we have had this

debate already. I commend the Democrat amendments to the chamber.

**Senator BROWN (Tasmania)** (4.46 p.m.)—These are far weaker amendments than the one from the Greens that was just rejected by the Senate. That is because these amendments would allow seismic testing unless there is ‘no prudent and feasible alternative’, which companies like Santos and Woodside will always say is the case. The second part states:

- (b) all reasonable measures have been, and will be, taken to minimise the impacts of the testing ...

Minimise how? Of course when you introduce words like that the current situation can pertain.

I note that the current activity by Santos is in Commonwealth waters and the minister did not know that this morning. He seems to know very little about what is going on in his portfolio. He did not know about this exploration in Commonwealth waters off Portland. It has, according to the company, conditions of approval under the Environment Protection and Biodiversity Conservation Act. The company says it will be undertaking acoustic monitoring studies and aerial surveillance for the duration of the drilling activities. It goes on to say:

These studies are being undertaken in conjunction with researchers from Curtin and Deakin Universities respectively and aim to measure the potential impacts of the proposed drilling operations on whale species and blue whales in particular.

The question I will put to the minister is: where are the baseline studies? They are seminal to any functioning environmental work. Here we have seismic bombs being let off by Santos in Commonwealth waters under the Environment Protection and Biodiversity Conservation Act and studies being done to see what the impact is. But I ask the minister: where are the baseline studies from

which you measure that impact? The researchers from Curtin and Deakin will have insisted that there be baseline studies because they know that that is a scientific absolute. You cannot measure anything unless you are measuring from a baseline study from which you can then see the impact. We can proceed from there.

**Senator O'BRIEN (Tasmania) (4.49 p.m.)**—The Labor Party have already expressed our view to the Democrats and to the chamber on these amendments, but I will just make it clear. We believe that the **Petroleum (Submerged Lands) Amendment Bill 2003** is an important bill to establish a National Offshore Petroleum Safety Authority to regulate safety in the industry. Labor does not believe it is appropriate to address environmental matters relating to exploration in this bill.

We do believe that the Petroleum (Submerged Lands) Act and the Environmental Protection and Biodiversity Conservation Act already contain adequate safeguards for conducting seismic testing for petroleum exploration so as to adequately protect ecosystems and living species. In addition to provisions in both the acts and associated regulations and guidelines, the Department of the Environment and Heritage has specific guidelines for offshore seismic operations and their interaction with cetaceans. Companies might also require a whale permit if their activities might interfere with a cetacean in Australian waters. These guidelines were originally negotiated not just with the industry, the Department of the Environment and Heritage and with the Australian Petroleum Production and Exploration Association but also with environmental non-government organisations and the Department of Industry, Tourism and Resources. In addition, those guidelines are currently being reviewed.

Under the Petroleum (Submerged Lands) Act and its environmental regulations, companies must also prepare an environmental plan prior to undertaking any activity. Environmental plans outline any potential impacts and mitigation measures to minimise those impacts. As I understand it, those environmental plans are then approved by the relevant, designated authority. In addition to that, of course, the resources division is currently drafting a strategic environmental impact assessment. One of the areas being considered by that strategic environmental impact assessment is the issue of mitigation measures for further minimising the potential impacts of seismic testing on cetaceans.

Given all of that, it is not as if this matter is not being addressed. One would be led to believe, by the matters put to the chamber by Senator Brown and Senator Allison, that this legislation left a void in relation to these matters. Clearly that is not the case. That is the reason we do not believe it is appropriate to further address the environmental matters relating to exploration in these bills. We are keen to see the legislation passed. We are keen to see these occupational health and safety matters given effect. We do not believe that the passage of this legislation without these amendments will lead to a fundamental problem in relation to the regime that exists with regard to seismic testing. In addition to the existing measures, we are satisfied that the steps that are in place to review existing guidelines provide an opportunity for concerned members of the community to correspond with the department to put views that they think may be germane to such a review. The opposition will not be supporting this amendment. I think we have already said that but I reiterate that to make it clear.

**Senator BROWN (Tasmania) (4.53 p.m.)**—There is a constructive contribution from the Labor Party! I ask Senator O'Brien

if he could briefly outline to the committee the environmental plan and the impact mitigatory measures on whaling that he said are in place for Santos and Woodside in their current seismic bombing in the Otway Basin.

We will get no further here because when I asked the Minister for Industry, Tourism and Resources to give an account of the baseline studies from which any decent scientific assessment must be made he remained glued to his chair. He refused to get up, because there is no such study. That is a debauchment of principles of science which we should expect if we are going to be dealing realistically with very important environmental, and therefore economic, outcomes for this nation. But there are none. The minister knows that and he cannot get up and defend the indefensible.

Senator O'Brien came, he thought, tangentially to his defence of a deplorable situation—of whales in Australian waters being confronted by this seismic testing by the oil and gas exploration companies—with his outline of the mitigating measures and environmental plans that have to be in place, but he does not know the first thing about it. When I asked him to explain it to the committee he could not get to his feet because there is nothing that is effective there. So we have both the Labor and the Liberal parties saying, 'The whales are a darn nuisance.' That is effectively what they are saying. There is no mitigation for the deplorable potential impacts of what is happening during the whale migratory season along the southern coast of Australia.

If there were no other aspect to it, you would think that the government and the opposition—and I know, Chair, you will be concerned about this because you are from South Australia—would be doing something to defend the growing economic component of whale migrations to the Australian shores.

But they are not doing anything, because these oil and gas exploration companies rule the roost. And there is not much that the good people in the bureaucracy or in scientific circles can do about that except be left as an add-on to a wrong process. That process is being practiced under the EPBC, the Environment Protection and Biodiversity Conservation Act. This is not about biodiversity conservation; it is an absolute infringement of the whole tenet of that act, which is meant to defend Australia's environmental interests.

Finally I must say this: the Minister for the Environment and Heritage, Dr Kemp, makes a welter in international forums of the defence of the Australian populace's love for whales and dolphins. You can guarantee that, if some other country is doing the wrong thing by whales and dolphins, the minister will be there speaking out about it. But when it happens in our own country, in the interests of big oil and gas exploration ventures—which make donations to the big political parties—he is silent. Where is the Hon. Dr Kemp, the Minister for the Environment and Heritage, in protecting the whale's interests in this migratory season off the south coast of Australia? He is absent. He is aiding and abetting the deleterious circumstances that come out of these testings during the migratory season against these great cetaceans. That is an indictment of both the government and the opposition. Until the Greens get themselves into the position of government we are going to see that continue.

The Minister for Industry, Tourism and Resources might laugh but I think it is a serious matter because the corporate sector here—Santos and Woodside on this occasion—are never going to put whales before their commercial gas drilling interests. The aim is to undertake that drilling as cheaply as possible. So here we are in 2003 with a situation that is not going to change. You have

heard Senator O'Brien's lame and uninformed submission—it was unable to be substantiated—to try to defend the government and the companies in this situation. So this situation cannot be altered by voting for the Labor Party. That is simply not going to change circumstances here. The Greens will be supporting the Democrat amendment.

**Senator ALLISON (Victoria) (4.59 p.m.)**—I ask the government to outline for us whether it would support seismic testing and exploration in the areas in which my amendments specifically prohibit those things—that is, in declared World Heritage properties, Commonwealth reserves and conservation zones. It would be useful to know why it is necessary that there be no prohibition, or why the government is so opposed to a prohibition, given that these are fairly strict conservation zones. Does this refusal to consider these amendments indicate a change in the government's approach? Is seismic testing okay in these areas? If so, why, when the exploitation of whatever is discovered in those areas would presumably be prohibited?

**Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.00 p.m.)**—Senator Brown accuses me of knowing nothing about my portfolio. He obviously knows nothing about the government. I have actually been the Minister for Finance and Administration for over two years. It is some time since I was Minister for Industry, Science and Resources, which is now the portfolio of Industry, Tourism and Resources. If Senator Brown would like further briefings on the very comprehensive regime we have in relation to seismic surveys and the basis of that regime, I am sure that the two departments—the Department of the Environment and Heritage and the Department of Industry, Tourism and Resources—would be happy to brief him.

In relation to the question from the Democrats I can only reiterate the very fair and proper point made by Senator O'Brien on behalf of the opposition: we are dealing with a bill that deals with occupational health and safety for Australians working offshore in this industry; we are not dealing with a bill that deals with seismic surveys or whales. In relation to these specific amendments, again I acknowledge and welcome the comments made by Senator O'Brien on behalf of the opposition that the regime governing seismic surveys is comprehensive and seeks to fairly and properly balance all the competing interests that come together. One of the things about being in government—and the Labor Party still remembers what it is like to be in government—is that you do have to find the right balance. There will always be arguments on that point, but we do not have the luxury of extremist positions such as those taken by parties that will never be in government; we have to find the right balance.

We believe—as, clearly, does the opposition—that we have a properly balanced regime which provides appropriate environmental protection, particularly under the Environment Protection and Biodiversity Conservation Act, which we brought in. Any activity in the areas suggested for a complete prohibition is subject to those areas' own management plans. We have a national oceans policy. We have a range of protections which seek to ensure that activities are conducted in such a way as to minimise or avoid any environmental damage. That is an appropriate and proper balancing of all the interests at play. But this legislation is essentially about occupational health and safety; it is not about the issues being raised by the Greens and the Democrats. I can only repeat that we have had long debate, long discussion, and we should vote on this to ensure that Australian workers are properly protected in their role in this industry, against

the backdrop of a very comprehensive regime in relation to environmental protection in these areas.

**Senator BROWN (Tasmania) (5.03 p.m.)**—The Greens will be supporting the measures in the bill—that is not in dispute—but we have brought forward the very important environmental matters that are properly dealt with by the act. Senator O'Brien says, ‘Do it somewhere else, somehow else,’ but he is simply ducking the issue. In response to the briefing that the minister wants me to have I say yes, I will join the minister for a comprehensive briefing in Warrnambool or Port Campbell with the Professional Fishermen’s Association and other people who are concerned about seismic testing. Will you come?

**Senator ALLISON (Victoria) (5.03 p.m.)**—I do not want to prolong this debate but I restate that our amendments do two things. First, they prohibit petroleum exploration and development in World Heritage areas, Commonwealth reserves and conservation zones. That does not seem to me to be an extreme measure. It may well be that this bill deals with occupational health and safety, but the Senate does not often have opportunities to respond to what are very serious environmental measures; so I make no apology for having moved these amendments. They do not seem to me to be at all extreme, because World Heritage areas, Commonwealth reserves and conservation zones are places where there should be no exploration and, in my view, if there is to be no exploration there should be no seismic testing.

The other thing these amendments do is restrict seismic testing. They do that by asking for a range of procedural aspects of the Environment Protection and Biodiversity Conservation Act to be applied and, as Senator Brown mentioned, they require demon-

stration that there are no prudent and feasible alternatives to the testing or other activity and that all reasonable measures have been taken and will be taken to minimise the impacts of testing or other activities on the area. These are not extreme amendments; they are reasonable. It is very disappointing that neither the government nor the ALP feels that it can protect our Commonwealth marine environment in this way.

Question negatived.

Bill agreed to.

**OFFSHORE PETROLEUM (SAFETY LEVIES) BILL 2003**

Bill—by leave—taken as a whole.

Bill agreed to.

Bills reported without amendment; report adopted.

**Third Reading**

**Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.06 p.m.)**—I move:

That the Petroleum (Submerged Lands) Amendment Bill 2003 and the Offshore Petroleum (Safety Levies) Bill 2003 be now read a third time.

Question agreed to.

Bills read a third time.

**FAMILY ASSISTANCE LEGISLATION AMENDMENT (EXTENSION OF TIME LIMITS) BILL 2003**

**Consideration of House of Representatives Message**

Consideration resumed from 24 November.

**Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation) (5.07 p.m.)**—I move:

That the committee does not further press its requests for amendments not made by the House of Representatives.

*(Quorum formed)*

**Senator MARK BISHOP** (Western Australia) (5.11 p.m.)—I understand that we are dealing with a message from the House of Representatives to do with the **Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003**, which was considered in the House on 3 November. I think it is appropriate that the opposition place a few remarks on the record concerning this bill. It is fairly clear, as we have been stating for some time, that families are under significant financial pressure and simply cannot afford this government any longer. Labor proposes two key amendments which might ease that financial pressure.

What we have here is a family payment clawback that, I think it is fair to say, makes Ned Kelly look like Santa Claus. Under this government, families pay more tax and get less in family payments. They are then expected to pay more and more for the health and education of their children. This \$1 billion black hole, which was highlighted very early in question time on 3 November, has been saved through stripping the payments of hardworking Australian families. Last financial year, 2002-03, the Howard government spent \$1 billion less on family tax benefits and child-care benefits than it forecast. This system has an inbuilt automatic clawback.

Today the government has been given an opportunity to start to repair its ramshackle family payment system, but it is apparent that it does not want to make tangible improvements. In the House, the government has rejected the Senate's amendments. That is not good enough, and Labor will be insisting on them again today. The problems with this system are well documented. There are

700,000 families a year that are hit with FTB or CCB debts—one in three families who receive benefits. As I said earlier, total accumulated debt now stands at over \$1.2 billion. To recap, the limited scope of this bill is yet another attempt by this government to stick a bandaid on a system that is clearly haemorrhaging.

Nevertheless, this bill has some limited benefit in that it removes the ridiculous 12-month time limit for families to be paid past period claims when they are eligible for them. Labor will be insisting on amendments that will both ensure a further lengthening of the time frame for past period claims to three years so that families who missed out on entitlements for 2000-01 may obtain them and ensure that families have a say in whether their tax returns may be used to recover overpayments rather than endure the clandestine tax stripping that currently occurs. The government's refusal to back the first of Labor's amendments will mean 25,072 families who lodged their 2001 tax returns after 30 June 2002 will not receive their entitlements. They are owed \$37 million—an average of \$14,077 each—in top-ups of their 2000-01 FTB entitlements. These figures do not include information on those who are owed lump sum amounts.

Families who missed out on family payment top-ups in the first year of the scheme's operation, 2000-01, are not assisted by this legislation. Why should these families be treated differently? They have been short-changed by the government, and it ought to pay them their entitlements. This situation is also at odds with the government's repeated claim that FTB and CCB are tax benefits. The government would be aware that tax deductions and offsets may be claimed up to four years after the financial year to which they are related. Accordingly, Labor will be moving amendments to bring the time limit for FTB and CCB claims closer in line with

other tax benefits by allowing a three-year time frame for claims. I urge the government to accept Labor's amendments.

**Senator GREIG (Western Australia)** (5.15 p.m.)—Likewise, the Australian Democrats are committed to the amendments first debated and passed in this place and believe they go a long way to improving the legislation. We know, for example, from early debate on this legislation that, some three years after the government first pushed through its family tax system, the ideology behind that has not fairly matched the reality that people are dealing with, and the government has been unable to reconcile the tax system with the family payment system.

It is ironic that the government that has brought uncertainty into the work environment—more part-time work, more casual work, industrial reforms stripping conditions and protections—now expects low-income families and those on unreliable incomes to rely on the tax system. The government blew the opportunity to harmonise the relationship between the tax and transfer systems and provide top-ups to low-income families on a fortnightly basis. It decided, instead, on the more fifties family version of ‘top-ups to dad’ on an annual basis. The requirement for families to estimate annual incomes resulted in the first year in massive debts for very large numbers of families—some 700,000 families, in fact. In 2001-02 nearly half a million families had to pay back \$801 in family tax benefits each, amounting to some \$400,000 in debt, while another 128,900 families had to pay back some \$34 million in child-care cash benefits. That is more than one in four families. A further 380,684 families overestimated their incomes and so were underpaid FTB. In November last year the system was changed to allow for families to report to Centrelink changed income circumstances to avoid overpayments, and now the system is set to become even more complex,

with the government proposing to link family assistance to the Medicare safety net.

I have previously criticised the apparent failure by Centrelink to make people aware of the options available to them for repayment of debts, and numerous speakers during this long debate have criticised the stripping of tax returns to recover debts. The system is dysfunctional in part and adversely affects those attempting to do the right thing, either by underpaying them and leaving them short or by overpaying them and leaving them with major debts. I have argued that this is partly due to the government’s philosophy which treats income recipients differently from other members of the community.

I introduced a number of amendments, previously supported in this place, which would have responded fairly to these flaws. The amendments sought to ensure, firstly, that debts could be waived if they arose as an error of Centrelink; secondly, that the period over which repayment can be made be doubled; thirdly, that Centrelink be required to notify of this option in writing; and, finally, that families be given a choice as to the method of recovery within a reasonable time.

The minister suggested at the time of the debate around those amendments that they would create an additional administrative burden with little additional benefit to Centrelink customers. But we Democrats have argued that the amendments would provide immediate and tangible relief for families and would force Centrelink to become much more accountable in the way it provides information to its customers—in order to avoid responsibility for debts incurred. In the first instance, I would argue that, if there are substantial costs associated with our amendments, it is because there is so much room for improvement required within the system, and that the costs at present are being unfairly borne by families.

The minister did suggest at a late stage of that debate that Centrelink might undertake a process of notifying customers of the possibility of an incurred debt, in spite of the administrative costs in doing so. But that is really quite beyond belief. In effect, the government is saying it will wear the cost of informing customers about the system's flaws but it will not bear the costs of informing about, and implementing measures that would ameliorate and respond to, those flaws. The government's rejection of these amendments confirms to me its mean-spiritedness and unwillingness to cooperate to create solutions in this system and shows a dire need for administrative review in this area.

The minister did undertake at the time of debate on this legislation to engage in discussions with Centrelink customers caught up in this situation about the ways in which they thought the system could be improved, and I would be interested to hear what some of the outcomes of those discussions have been. In the meantime, however, I call on the opposition to reconsider its intention to not insist on some of these more important measures.

**Senator PATTISON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.20 p.m.)—The schedule of requests from the Senate for amendments to the **Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003** involves extending the time limits for making past period claims for payment of top-ups by a further 12 months. The changes will also allow the tax file number link between Centrelink and the Australian Taxation Office, which facilitates the reconciliation process, to remain open for an additional 12 months. Consequential changes consistent with a further 12-month extension are also requested for the applica-

tion of provisions in the bill. The amendments cover the 2000-01 income year and the Income Tax Assessment Act 1997.

The government opposes these changes to the bill. The bill already gives families an extra 12 months—and this is what the aim of this bill is—in which to make family tax benefit and child-care benefit lump sum claims and to receive a top-up payment of family tax benefit. What we are doing is trying to help the families in that year, not two or three years down the track. The bill gives families up to two years after the end of an income year to claim their entitlements, and we believe this is sufficient and adequate time. Two years is a generous time frame, particularly when compared with time frames applying for other payments. Extending the time frame by an additional 12 months—that is, giving customers three years to claim or receive a top-up payment—is not needed. The majority of customers lodge within two years of the end of the income year.

As well, the proposed amendment would weaken the purpose of the payments, as I said before, which is to assist with the costs of raising children at that particular point in time. Families need the support when they are raising children, not three years later. In relation to extending the time frames to the 2000-01 income year, it would not be possible to identify all family tax benefit customers who missed out on a lump sum payment of top-ups to their family benefit as a result of lodging their tax returns late for the 2000-01 income year. This is because the tax file link between Centrelink and the ATO, which facilitates the income reconciliation process for the 2000-01 income year, has already been broken, which is in accordance with the current legislative requirements.

**Senator MARK BISHOP** (Western Australia) (5.23 p.m.)—I want to put on the re-

cord a few brief comments about both sets of amendments and to repeat the comments that we did make last time, particularly in response to the invitation from Senator Greig. I turn firstly to the extension of time limits group of amendments. When we were last discussing these amendments in the Senate they were amendments (1), (2), (3), (6), (7), (8), (9) and (10). This group of amendments which we are insisting upon—if that is the correct terminology—seeks to further extend the time limit for catch-up payments and lump sum claims to three years rather than the two years sought from the government's perspective. These amendments would bring the family assistance claims closer into line with tax rules which allow variations in offsets and deductions for up to four years.

Importantly, these amendments would allow families who missed out on their entitlements in the 2000-01 year to claim them up until 30 June 2004. The government's incremental increase in the time limit will not allow entitlements to be paid to these particular families. We know that these families number more than 25,000, and they were denied over \$37 million in 2000-01 FTB payments, an average of \$1,477 per family. There was no reason why these families should have missed out on their entitlements in the first place, and there is certainly no reason why they should continue to miss out.

Labor has been approached by a number of these families. Many of them are desperate for some financial relief. Many are on modest incomes. Some are owed more than \$8,000 in family tax benefit payments. The government ought to remember that it was the one encouraging families to claim at the end of the year or seek a catch-up payment to minimise the risk of getting a debt. Now it has turned around to these families and said, 'You can't have your entitlements.' It is a double standard Labor will not stand for. Labor has no problems with the 12-month

limit for families to lodge tax returns for compliance purposes, but this has nothing to do with eligibility for past period claims. If a family subsequently proves its entitlement, it should be paid the benefits.

I would also like to address comments from the government that Labor does not provide any sort of top-up payment. This is an argument that simply does not stack up. The previous family payment system had very little use for top-up payments, as most families were paid on the basis of their previous year's income. With wages growth, this was a very generous system, as it allowed families to be paid greater payments than they would be eligible for if a prospective annual income test was used. For those whose income was going to fall, the system allowed a 10 per cent income buffer, allowing families to retain all entitlements, even if their actual income was up to 10 per cent more than the estimate. These amendments which Labor is moving will come at a cost for the government—an estimated one-off cost of \$45 million in 2003-04. It is not insignificant, but the government cannot credibly argue that it cannot be afforded. The government is swimming in money, principally due to its tax grab on families. The money is there. There is no reason why the government should not pay families what they are owed.

I turn now to the amendments which were (4) and (5) when we were previously discussing this, to do with consent required for debt recovery—tax stripping. Those amendments sought to address the government's clandestine recovery of family assistance debts from family tax returns without consent. Currently when a family accrues a family assistance debt, often without their knowledge, their tax return may be stripped to recover all or part of the overpayment—all of which occurs without warning to hapless families who were counting on the money

for bills or school fees. Most do not even know they have a debt, let alone that it may run into the thousands.

The government relies on fine print in the *TaxPack* that says refunds may be used to offset family assistance debts. But the truth is that there is not so much as a phone call or a letter before the money is stripped. The Ombudsman has called for an end to this practice or at least a requirement whereby a family assistance debt may not be recovered from a tax return until a subsequent financial year. Labor's amendment will ensure that the written consent must be obtained from families before debts are recovered from tax returns. This need not be an administrative burden either. The consent could be contained in the *TaxPack* or the annual income estimate forms that families are required to fill out or at the time of an original claim.

Labor's amendments, if passed, would only apply to families who are continuing customers and would give them some choice as to whether debts are recovered directly from tax returns or as a deduction from their future benefits. Labor's amendments would also provide some limited discretion for the recovery of debts from tax returns without consent if the secretary is satisfied that the overpayment occurred due to a deliberate misrepresentation of circumstances by the recipient. Accordingly I urge all senators to vote with Labor and insist upon the amendments now before the chair.

**The TEMPORARY CHAIRMAN**  
**(Senator Bolkus)**—The question is that the committee does not press its requests for the amendments which the House of Representatives has not made.

Question negatived.

**Senator Patterson**—I think the ayes have it.

**The TEMPORARY CHAIRMAN**—No, the question was that the committee does not

press its requests. The minister voted aye; the opposition and Democrats voted no. The noes have it.

**Senator Patterson**—The government opposes the changes.

**The TEMPORARY CHAIRMAN**—Maybe the motion should have been put in a more logical form, but that is the way we put it. The government has moved that the committee does not press its requests. That has not been agreed to. The question now is that the resolution be reported.

Question agreed to.

Resolution reported.

**The ACTING DEPUTY PRESIDENT**  
**(Senator Bolkus)**—The Temporary Chair of Committees reports that the committee has considered message No. 433 from the House of Representatives in relation to the *Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003* and resolved not to press its requests for amendments not made by the House of Representatives.

**Senator Patterson**—It might best if I just clarified that.

**The ACTING DEPUTY PRESIDENT**—It would be really good if you could.

**Senator Patterson**—The motion was that the committee does not press its requests for the amendments which the House of Representatives has not made, because the House of Representatives opposed it as well. So the committee does not press its requests because the House of Representatives did not make those amendments. I supported that, and the Democrats and the opposition opposed it, because they want to press the requests. There is a double negative in there. You have been doing Christmas cards, so you most probably have not been as involved in what we have been doing. But that was it.

**The ACTING DEPUTY PRESIDENT**—That was a bit gratuitous, Minister.

**Senator Patterson**—Thank you. I would like the chance to speak in a moment.

**The ACTING DEPUTY PRESIDENT**—The motion before the chamber, in technical terms, was that the committee not press its request for amendments not made by the House of Representatives. That motion was moved by Minister Vanstone. The Senate resolved not to not press those requests, and so on. In essence, the Senate has resolved to press the requests. So, if we could take away the technical gobbledegook of the process, we can accept a report that says that the Senate has resolved to press its request for amendments.

#### Adoption of Report

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.32 p.m.)—I move:

That the report of the committee be adopted. I will speak to the motion. I would like honourable senators to think very carefully when the bill comes back again, when we look at the amendments—not the requests. Senator Bishop was talking about some of the amendments, but we were talking about a schedule of requests from the Senate for amendments; there is a difference. Today we were talking about scheduled requests from the Senate for amendments. When the bill comes back, we will be talking about the amendments. I remind honourable senators that, if the bill does not pass, it will mean that people will not get the extension of time for putting in their tax returns and having their FTB and their tax returns reconciled, and there will be people who will not get a payment if they were eligible for a top-up.

I think honourable senators on the other side need to think very carefully. Senator Bishop, I hope you are listening very carefully, because you need to convey to your

shadow minister that this bill is about helping people and extending the time in which they can submit their tax returns. If the bill goes down when it returns to the chamber, people will not have that opportunity. You need to understand what you are doing if you oppose the amendments and they come back and we continue with this. I would caution you to look very carefully at the bill when it comes back, because you will be held responsible for people not being able to get the extension of time to put in their tax return.

Question agreed to.

Report adopted.

#### AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

#### Consideration of House of Representatives Message

Consideration resumed from 24 November.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (5.34 p.m.)—I move:

That the committee agree to the amendments made by the House of Representatives.

**Senator LUDWIG** (Queensland) (5.34 p.m.)—Considering the nature of the Australian Protective Service Amendment Bill 2003 and, as we said last time, that the issues contained within it are necessary, we are disappointed that the House of Representatives could not agree to the Senate's amendments, which were moved here. However, given the nature of the bill, in this instance we will not be insisting on the Senate's amendments, which were removed by the government in the House, although we do expect the government to continue to consult on this matter, ensure that the Australian Protective Service is maintained and ensure that the issues contained within this bill are fully looked at at some further stage because, of course, there

will be an opportunity to have this debate again.

We suspect that this bill, should it pass—which I suspect it will very shortly—will not end the APS there, because there are some measures contained within it which have been brought forward from the proposed integration. It is not appropriate to talk about that here now, but of course that does give us the opportunity to have a look at the government's record in relation to the Australian Protective Service. We expect that the commitments that the government gave to the opposition on those issues will be met, and we will have an opportunity to see those commitments met by the government in the future. But in this instance we do see the necessity for this bill to pass and will not be insisting on the amendments.

**Senator GREIG (Western Australia)**  
(5.36 p.m.)—We Democrats take the opportunity to express some disappointment that the House of Representatives has removed a number of the amendments made to the **Australian Protective Service Amendment Bill 2003** by the Senate. In my speech in the second reading debate, I indicated that the Democrats considered the bill to be one of the more sensible and balanced initiatives of the government to address the current security environment. However, I did outline a number of outstanding concerns with respect to the bill. Some of those concerns were remedied by Democrat amendments which gained the support of both the government and the opposition and which have been retained by the House of Representatives. Other concerns were remedied by opposition and Democrat amendments which have now been removed from the bill by the House of Representatives.

The first of these concerns relates to the potential for APS and AFP officers to interfere with the legitimate right of Australians

to engage in political protests. While the bill has been promoted by the government as an important antiterrorism measure, it is important to emphasise that it permits the exercise of these new powers in circumstances where there is no threat to security. In particular, we are concerned about the potential use of these powers in relation to offences under the Public Order (Protection of Persons and Property) Act. Offences under that act include causing unreasonable obstruction while participating in an assembly or behaving in an offensive or disorderly manner on Commonwealth premises. That means that an APS or AFP officer can, for example, require information from a person if he or she suspects the person might be about to behave in a disorderly manner on Commonwealth premises. There is no requirement for any suspicion that the person might commit an act of terrorism while participating in a political protest.

The government argued that public order offences should not be excluded from the scope of the act, because terrorists could potentially use political protest as a cover. We Democrats believe that this argument is flawed. If there was any suspicion that such a person may be about to commit an act of terrorism, the APS and the AFP could exercise their powers regardless of whether or not the person was participating in political protest. Through our amendments, we Democrats were seeking to ensure that these powers could not be exercised where the only offence a person was suspected of was a public order offence. The current security environment does not warrant the extension of new powers to offences which are unrelated to terrorism. The government's suggestion that protest activities are somehow associated with terrorism is dangerous and misleading.

It is particularly disappointing that the government has removed from the bill the

opposition's amendment on this issue. The opposition's amendment could be characterised as a halfway position between the amendments advocated by the Democrats and the original proposal in the bill. It established a defence relating to participation in political protest or industrial dispute. It is very concerning that the government was unable to support that amendment. The Democrats believe it is an imperative safeguard and ought to be insisted on.

The second issue of concern relates to the way in which information compulsorily obtained under the legislation can be subsequently used. The government has said that this bill provides a legislative framework to facilitate rapid responses to immediate threats of security. It is in that context, and that context only, that basic information can be compulsorily acquired from individuals. However, we are concerned by the indication in the explanatory memorandum that this power should be construed as the first step in a graduated response to security threats. The EM also states that the new powers will:

... provide protection service officers with greater flexibility in suspicious circumstances where the exercise of the arrest power is not immediately necessary ...

It is clear that an APS or AFP officer can proceed with arresting a person after exercising these powers. While the Democrats recognise that there is a need to obtain information urgently where there is an immediate security threat, we are concerned about the potential for officers to compulsorily require information from a person who may ultimately be arrested prior to that person's right to silence kicking in. The Democrats believe that information obtained in this way and under this power should not be able to be used in criminal proceedings against the person. That is what our amendment—which the government has now opposed and removed—sought to achieve.

Clearly the powers in this bill are directed at facilitating a rapid response to security threats. As Senator Ian Campbell said in his second reading speech on the legislation, the powers are proactive rather than reactive or investigative. At that time he said:

The powers are intermediary and are designed to be preventative.

They do not confer police investigatory powers on protective service officers.

That appears to be entirely consistent with the intention of the government to place a limitation on how information obtained pursuant to proposed section 18A can be used. That will not in any way affect the ability of APS or AFP officers to provide a rapid response to security threats.

Moreover, we would argue that preventing the use of information obtained pursuant to the new powers will not seriously hinder criminal proceedings against a person. The information which can be requested pursuant to proposed section 18A is basic information which could be obtained through other avenues of investigation, including formal questioning of the person following their arrest. If information acquired pursuant to proposed section 18A cannot be used in criminal proceedings against the person, there is effectively no abrogation of the right to silence since the right is one which applies specifically in a criminal context and is tied to the privilege against self-incrimination and the presumption of innocence.

The Democrats are disappointed that the government has not agreed to this amendment. In our view, it would not in any way hinder the ability of the APS or the AFP to respond rapidly to imminent security threats, nor would it be likely to hinder the prosecution of offences under the APS Act. But it would have ensured that the right to silence is not abrogated by proposed section 18A of the bill.

Finally, I indicate that the Democrats support government amendment (4), which is essentially a slight rewording of a Democrat amendment to which the government had previously agreed. With the exception of that amendment, we Democrats believe the Senate should oppose the government amendments passed by the House of Representatives.

**Senator ELLISON** (Western Australia—  
Minister for Justice and Customs) (5.43 p.m.)—For the record, let me say that the government acknowledges the contributions by Senator Ludwig and Senator Greig in relation to this debate but is of the view that it has to press with these amendments if the scheme of the bill is to be preserved. When the bill was last before the Senate, the government put forward two amendments which were accepted by the Senate. Non-government parties moved eight amendments which were passed. The government accepted five of those but the government believed that three amendments undermined the operation of the bill. For that reason, it could not support them. In the other place, amendments passed by the government removed these three amendments.

The first of these amendments was the one concerned with extending the defence of reasonable excuse to include participating in an industrial dispute, a genuine demonstration or protest or an organised assembly. That was removed. The government removed that amendment in the House because a person who was a potential security threat could use such gatherings as a cover for illegal activities. Officers responsible for security must, at the very least, be able to ask a person for their name and evidence of identity in order to proactively assess whether any potential security threat exists.

The other amendment was moved by the Democrats in the Senate. That provided for

the complete exclusion of the Public Order (Protection of Persons and Property) Act 1971 from the operation of the new powers. The government removed that amendment in the other place because the bill is designed to support and enhance the ability of AFP and APS to provide the best possible response to protecting Australia's national interests. Many of the offences in the public order act directly relate to safeguarding Australia's interests, particularly the offences addressing violent conduct. The government was therefore of a view that it could not agree to this amendment remaining.

The third amendment related to a Democrat motion in the Senate to prevent the use of information obtained as a result of requests for information on criminal proceedings against the person who provided the information. The government removed this amendment in the other place because it saw it as unnecessary. The original bill did not abrogate the common law privilege against self-incrimination, which is available unless excluded by unmistakable language in a statute. It will be open to a person to claim the privilege rather than answer questions. The Democrat amendment went much further than merely ensuring the privilege was expressly provided for. For those reasons the government removed those three amendments. I would commend the motion to the chamber.

Question agreed to.

Resolution reported; report adopted.

## BUSINESS

### Rearrangement

**Senator ELLISON** (Western Australia—  
Minister for Justice and Customs) (5.48 p.m.)—I move:

That intervening government business be postponed until after debate on the Customs Legislation Amendment Bill (No. 2) 2002.

Question agreed to.

**CUSTOMS LEGISLATION  
AMENDMENT BILL (No. 2) 2002**  
**Second Reading**

Debate resumed from 3 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator MARK BISHOP** (Western Australia) (5.48 p.m.)—The **Customs Legislation Amendment Bill (No. 2) 2002** is a complex and omnibus piece of legislation, in large part technical with respect to further regulation of Australia's customs regime but also controversial with respect to antidumping law as it affects what are called 'economies in transition'. The bill is also controversial in that it has now been in the parliament for 11 months all because of classic conservative indecision, empty rhetoric and confusion on policy. I would also add that the key issues within this bill—namely, the antidumping proposals—have been subject to scrutiny by the Legal and Constitutional Legislation Committee, which reported last May. The bill has sat idle on the *Notice Paper* since then but now of course the government seeks rapid passage, having dithered for the past six months.

I will turn to a summary of the bill. To begin with, though, let me remind the Senate of the main provisions of this bill. First, the bill redefines the process of determining the normal value of goods imported from economies in transition for use when deciding whether goods are being dumped. Second, it amends the antidumping provisions of the Customs Act to align them with the World Trade Organisation agreement on implementation of article IV of the General Agreement on Tariffs and Trade, the GATT. Third, it exempts air security officers from the passenger movement charge and, finally, it makes minor technical changes for the purposes of the customs, trade and moderni-

sation program whereby Customs has embarked on an ambitious program of reform to its processes and the law which underpins them. I will deal with the antidumping measures first.

As we know, the debate on dumping is much like that on tariffs whereby some Australian industries benefit from cheaper imported goods and others suffer, depending on the nature of the industry. Dumping is the sale of a good in another country for less than the normal price in the exporting country to gain competitive advantage. In Australia, for example, primary industries benefit from cheaper chemicals from overseas but local manufacturers may suffer. Where they believe they suffer from dumped goods they may complain and the Australian Customs Service must decide whether, first, there is a *prima facie* case and then, second, either dismiss the claim or conduct an investigation as to whether countervailing duties should be levied.

Subsidisation of exports, with the exception of agricultural commodities, is prohibited under GATT and WTO rules. The extent of subsidies, however, is often hard to determine. This is especially the case in what are called 'economies in transition' which are no longer centrally planned but may retain some features of government control or influence which impact on the costs of production. This may involve finance arrangements or other incentives at a national or local level.

For the purposes of investigating antidumping complaints Customs relies on subsection 269TAC(1) of the Customs Act, which defines normal value, and subsection 269TAC(5)(e), which allows the minister to determine whether price control exists. For economies in transition, however, where the criteria are more detailed and difficult to assess, this has proven very onerous and the

minister has accordingly issued guidelines which are of dubious legality to provide clarification to the process. Hence, we have this bill, which seeks to define 'economies in transition' and also to set conditions for the determination of 'normal value' of goods in those countries, which is essential in the determination of dumping. This includes the substitution of 'price influence' for 'price control' in recognition of the absence of the regulation once contained in a centrally planned economy. The particularly contentious words in the bill are 'significantly affected', which are to be the test of that government influence. The words are considered by the PRC and others to be more stringent than the GATT-WTO test of whether or not market economy conditions prevail. Customs expressed the view to the Senate committee that they meant the same but, as the minority report commented, if they are the same, then why not use the WTO wording? These definitions are then reflected in the draft regulations, which provide the detail of the processes to be followed in codifying the existing ministerial guidelines.

The real controversy in this bill is the more sinister purpose. It has been seen, and rightly so, as an undisguised attack on exports from the People's Republic of China. As we know, China is now Australia's third largest trading partner but also an 'economy in transition' for the purposes of the WTO. That status has been confirmed on China by virtue of its articles of accession to the WTO, particularly article 15. It was in fact this deliberate assault on the PRC which provoked the sharpest reaction to the bill on introduction, resulting in a number of delegations from China protesting to the Howard government about the way they had been targeted. This was followed by a referral of the bill to the Senate Legal and Constitutional Legislation Committee, to which the PRC

government, along with Australian industry, made a number of submissions.

I make particular reference to the submission from the PRC, because it raised four key objections to the bill. First, it protested in the strongest terms about the lack of consultative process—not a new issue with the Howard government. In fact, it is the standard modus operandi which results in so many backflips when the polls show popular attitudes different to their own stubborn myopia and prejudice. Second, the Chinese were rightly concerned at the discretionary powers of the minister in determining 'normal price'. Third, they were concerned at the use of the words 'significantly affect' as wording conferring wide discretionary power on Customs and the minister—and certainly wider than the language of the GATT. Finally, they were concerned that the burden of proof in any investigation was being shifted in part to the exporter. Some of these submissions were repeated in other submissions and were reflected in the ALP minority report of the Senate committee. Clearly, the government rejected these submissions as well as the minority report, and then silence reigned for five months. We now know that the government had gone into secret dialogue with China. There was, of course, a bigger issue at stake—the trade and economic framework.

It probably should not have come as a surprise to see, immediately following the Prime Minister's grandstanding announcement of the signing of the trade and economic framework agreement with the government of the People's Republic of China on 24 October last, that the government propose extensive amendments to this bill. This saw a backflip whereby most of the elements of the bill which offended the Chinese were removed. Hence, the government's amendments to this bill being considered today in the Senate. Notably, too, the government's proposed amendments vindicate in large part

the ALP minority report of the Senate committee. It is most pleasing to be able to say to the government today, 'We told you so.'

The bill, therefore, no longer offends China to the same degree, but it must be said that the proposal is much tougher than before. However, these are major changes to the bill; they are not cosmetic or minor, technical alterations. Hence, we have an amended explanatory memorandum. Most importantly, we need to see redrafted regulations for the same reason. As we all know, however, there is more intrigue about this matter because, in agreeing to the trade and economic framework, the Howard government has agreed in paragraph 8 to suspend the operation of article 15 of China's protocol of accession to the WTO.

This means that for the two years in which China and Australia explore the potential for a free trade agreement, China will not be regarded as an 'economy in transition' as the starting assumption investigating antidumping complaints. But nor will it be treated as a market economy, because there is clearly no intention to list China in the schedule of market economies as provided for in regulation 182. That is for two years at least, at which time Australia will have to determine whether China is, in effect, a market economy or whether it should revert to being an 'economy in transition'. Suspending article 15 itself, though, is curious, because the expressed attitude of the government is that Australia is not bound by article 15. That has been the evidence given to both the Senate Legal and Constitutional Committee and more recently a Senate estimates committee by officers of the Department of Foreign Affairs and Trade.

Yet, as we know, article 15 was the inspiration of this bill. As we know, paragraph (a) empowered importing governments to develop their own dumping tests against China

in particular—and this was exactly what the Howard government was doing. That is why the original provisions were targeted at China, and hence the immediate reaction from the government of China. Now, though, by a deft sleight of hand, the authority of article 15 is not relevant. Instead, the general antidumping provisions of article 6 of the GATT are invoked as the reference point. This bill, therefore, can no longer be said to be focused exclusively on China but on all such non-market economies, and the draft regulations, when they emerge, will set out the tests for, first, determining whether an economy is a market economy and, failing that, what the surrogate, normal price might be.

For those interested in this diplomat intrigue, the Howard government is still getting tough with China, as originally intended, though with a wink and a nod that antidumping processes will not change—that is, that most applications will fail as they have in the past. On the other hand, China can portray a significant victory by having most of its objections to the original bill accepted, as set out in the amendments circulated, and it can claim that Australia has removed its status as an economy in transition. *Ipsa facto*, this is seen as an important step to becoming accepted as a market economy and, indeed, the perception that China is already a *de facto* market economy. After all, the suspension of article 15 may lead some to that conclusion.

Minister Vaile has denied this publicly, but the real issue will have to be addressed in two years time: will China achieve market economy status in fact or will it revert to being an economy in transition? Backflips by our Prime Minister are routine, as is shown by these amendments, but not for China. We can be sure that the US and the EU, as Australia's other major trading partners, will be watching with great interest. Fortunately for the government, this matter will not mature

until the next election is over and it will no doubt soak into the sand of endless discussion and inaction. The public relations coup has been achieved.

Beyond that saga, however, let it be said that, technically, the amendments the government is proposing do remove most of the serious objections to the bill. It is a pity that it took so long for the stubbornness to be shifted and for reason to prevail. The language of the bill has been changed to conform more closely to that of the GATT. The words 'significantly affect' have been removed and substituted with 'market conditions do not prevail'. The definition of an economy in transition is satisfactory, and the minister's discretion has been reduced, in that he can only determine 'normal price' against the criteria set out in the regulations.

However, some issues remain. In submissions to the Senate inquiry into the bill, strong representations were made by Australian industry in support of the government's crackdown on dumping, particularly with respect to China. I repeat that the bill as originally drafted was aimed at responding to that view. Hence, I refer in particular to the submission of the industry task force on antidumping, who continue to this day to express great fear about the inroads into local industry being made by imports from China. Curiously, the task force's support for the bill continues, even though some of the elements designed to 'fix' China have been removed. Moreover, their concern that most antidumping complaints against China have been dismissed has been replaced by the concern that the first complaint under the new provisions will be the acid test of the government's intentions. The same, of course, could be said for China.

However, the bill is still tougher on foreign exporters. First, they have been passed the onus of proof—remembering, though,

that the original complainant still has to make a *prima facie* case of sufficient weight to have Customs begin an investigation. The same might be said of the retention of the requirement that the exporter subject to an antidumping complaint must answer a questionnaire from Customs. In its original form, that bill allowed no extension of time beyond 30 days. In fact, under the bill in its original form, failure to respond to a questionnaire within 30 days resulted in the determination falling automatically within the minister's discretion for determining 'normal value' and probable failure due to lack of information. At least the provision for an extension on application has now been included, thus satisfying another recommendation of the Senate committee minority report.

However, the procedure also recommended in that report that Customs be obliged within the bill to inform exporters of the availability of that extension, and that exporters receive assistance from Customs in completing the questionnaire has been ignored. On this we must accept the bona fides of Customs, which have provided assurances that such procedures are built in and that codification of such administrative detail is unnecessary. We shall, therefore, watch with interest.

I turn now to other antidumping provisions. Also within the first schedule of the bill are essentially technical amendments that go to issues such as the cumulative assessment of duty, whereby the act is brought a little closer to article VI of the WTO and to the processes of assessing interim countervailing duties. Changes have been made to wording to reflect the outcome of the Amcor case and to the requirements of antidumping complainants and third parties as to the detail that must be supplied with applications and further evidence.

These amendments also recognise that importers may not have access to export price detail, hence the power of Customs to deal with third parties in a commercial-in-confidence manner and to determine what information may be revealed to the applicant. This particularly refers to information given by an exporter, which will be protected unless permission for release is given by the exporter. There has been some objection to this on the grounds of lack of transparency and of inconsistency with the GATT implementation agreement. But, considering the practicalities, it is difficult to see an alternative that would satisfy everyone. Commercially sensitive information must be protected, yet there has to be trust that the work of Customs is fair, thorough and objective.

Finally, a considerable number of refinements to the antidumping measures are contained in this bill. They go to processes and powers to reject applications on the basis of insufficient evidence, reimbursements where circumstances have changed, refunds of overpayments and reviews of rejection decisions. These are not controversial, although they do include provisions dealing with the Amcor case, where Customs were obliged to refer a termination decision to the minister but did not. Some argue that the delegation entailed here is not appropriate, but it is a matter of process and time will be the judge of the veracity of the concerns expressed. Other amendments providing for accelerated reviews for new exporters and for the provision of notice by Customs where termination of a dumping measure is being contemplated or where it is due to expire are not controversial either.

The third element of this bill is the exemption of air security officers employed by the Commonwealth as part of its antiterrorist program from the payment of this tax. As they are Commonwealth officers, it does

seem pointless to charge a tax for the seat they are given by the airline, but the exemption is inconsistent. In other areas of taxation, under the principles of accrual accounting, government departments pay tax—for example, GST. This allows the full cost of services to be calculated. Why air security officers are different is not disclosed, but the least that can be said is that the proposal saves unnecessary administrative process.

As we know, the spate of Customs amendment bills passing through the parliament frequently involves changes to the law to facilitate the trade modernisation program. This is understandable, as a constant review of processes reveals shortcomings that need to be remedied. Again, these are not controversial, except for the extension of the infringement notice scheme to errors on import and export entries lodged with Customs, even when withdrawn or amended. Remission of penalties is no longer available in such circumstances. Overall, there is a view within industry that this is unnecessarily draconian. There can be no doubt about Customs' intent to improve the quality of the information being provided to it and the overall need for accuracy for assessing duty—also now needed for security reasons. Industry must lift its game, but at the same time inadvertent errors do not justify such a heavy response. I simply encourage Customs to look again at this. To that end, further briefings will be sought in due course. The ALP supports the bill and the amendments as circulated.

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

**FAMILY AND COMMUNITY  
SERVICES AND VETERANS' AFFAIRS  
LEGISLATION AMENDMENT (2003  
BUDGET AND OTHER MEASURES)  
BILL 2003**

**Second Reading**

Debate resumed from 8 October, on motion by **Senator Kemp**:

That this bill be now read a second time.

**Senator MARK BISHOP** (Western Australia) (6.07 p.m.)—This omnibus bill gives effect to most of the Family and Community Services and Veterans' Affairs 2003 budget measures that require legislative changes. The bill also gives effect to a 2001 budget measure upon which 2003 measures relating to the recovery of overpayments arising from lump sum foreign pension payments depend. Labor has indicated its support for a number of non-controversial items in the bill. The first item is to exclude payments for National Socialist persecution from income. Currently, payments made under the laws of Germany or Austria by way of compensation to victims of National Socialist persecution are excluded from income under the social security and veterans' entitlements income test. The bill seeks to extend the current income test. The bill seeks to extend the current income exclusion to any such payment regardless of the country making it so that this beneficial treatment under the income test is available to all who receive the payments. The changes would take effect from the date of assent of the legislation and would cost half a million dollars over four years.

The second item is assurances of support. The bill seeks to make amendments to improve the operation of the assurance of support scheme and simplify arrangements for people who provide an assurance of support. Under the proposed new arrangements, the Department of Immigration and Multicultural and Indigenous Affairs would continue to determine which new migrants are subject to an assurance of support. However, once this determination is made, the assurance of support would be issued under the social security law and Centrelink would administer the scheme. The new arrangement is designed to enable Centrelink as a single point of contact to provide people giving assurances with more comprehensive information regarding the implications of their commitment to provide financial support to the new migrant. The government argues assurers would also benefit from easy access to clear advice provided in their preferred language through the Centrelink network. The government anticipates the changes would result in fewer migrants claiming income support during their assurances of support period and, if claims are made, in improved recovery of assurances of support debts from the assurers. The measure would commence from 1 July 2004 and save the government \$11.2 million over four years.

The third item is stopping payments for people absent from Australia without notice and comparable foreign payment debt recovery. The bill seeks to make amendments to strengthen the arrangements for ceasing payment to people travelling overseas who do not notify the department of their departure. Under the new rules, there will be capacity to suspend payment where a person leaves Australia without notifying the department of their departure and the secretary of FACS finds out about the departure before the end of the person's portability period. A person's entitlement to payment would then be reviewed and, depending on the outcome of the review, payment would be either fully restored or cancelled. The bill also seeks to amend the social security debt recovery provisions to allow for the full recovery of overpayments when a foreign pension payment is made as a lump sum in arrears.

Amendments are made to enable recovery from a person who receives a lump sum foreign pension payment, and from a person's partner where relevant. The measure is planned to commence on 1 July 2004 and will result in savings over four years of \$14.8 million.

The fourth item is access to information by the Child Support Agency. This bill seeks to restore access by the Child Support Agency to financial transaction information held in the AUSTRAC database. The agency lost this access when it ceased to be part of the Australian Taxation Office following the 1998 changes in administrative arrangements. The restored access is, as it was previously, only for the administration of the child support legislation, including in cases of substantial avoidance of child support liabilities. This measure would apply from royal assent and savings from the changes are estimated to be negligible.

The fifth item is technical corrections. The bill contains some minor technical amendments, commencing at various times as appropriate. There is no financial impact from these. Labor will be supporting these amendments. However, we do have some concerns about others.

I will turn now to controversial items—firstly, access to information by Centrelink. The main cause of incorrect social security payments is failure to disclose income and assets, including in cases of serious fraud. Most undisclosed earnings are detected by the data-matching arrangements that are currently in place. The bill proposes amendments to enhance Centrelink's compliance activities to allow limited access to newly available data sources relating to taxation and financial transaction activities but only for the purpose of the administration of the social security law. This measure would

commence on royal assent and save \$197.8 million over four years.

In its last two budgets the government has put in place measures to pursue debts for incorrect payments dating back up to seven years. Many of these retrospective debts have arisen because data matching of Centrelink and tax records has not taken place regularly with the pensioner population—for example, age pension, DSP and carer's pension. In many cases it is arguable that the debts have arisen solely from Centrelink administrative error; however, this is difficult to prove. Centrelink debt recovery teams have sought to recover these new, large debts aggressively by threatening people to remortgage their homes and to offset debts with their credit cards. While this measure in itself will not be opposed by Labor, we wish to put the government on notice that debt recovery practices need to be overhauled. Should the situation not improve, Labor will move detailed amendments in subsequent legislation to reform debt recovery practices.

The second measure, which Labor will oppose, is a reduction in the portability period. The bill seeks to reduce the allowable period of temporary overseas absence for portable social security payments from 26 weeks to 13 weeks. The new portability period will also apply to disability support pensions, although there will be a capacity to grant an unlimited portability period to a severely disabled disability support pensioner in defined circumstances. A person's rate of family tax benefit is subject to modification if the person, or an FTB child of the person, is absent from Australia for longer than 26 weeks. The bill contains amendments to reduce this allowable period of absence to 13 weeks. Labor has consistently opposed the government's attempts to reduce or eliminate portability provisions in the social security legislation. Portability provisions are extremely important to Australians

who were born in other countries and serve to enable social security recipients to travel overseas for short periods to visit sick and dying relatives.

Labor are particularly concerned about the impact of this measure on some of our larger communities that have a heritage overseas. This includes former UK citizens and the Greek community. There are good reasons why the portability provisions should be 26 weeks and not 13. Many families who have parents or siblings living overseas are called upon to go to their aid when they get sick or are dying. In some cases, this may involve finalising a person's estate. Often there is a need for the person to spend considerable time overseas. There has never been any evidence presented that shows the current rules have been abused. The net savings the government expects to make over a four-year period, just \$4.1 million, confirms this. They are mean changes that will have a direct impact on people who have loved ones in other countries. They are changes that we will be opposing, and we will be moving an amendment to this effect in the committee stage of the bill.

In conclusion, this legislation provides further evidence—if any were needed—that the Howard government has run out of steam. There is some housekeeping, there are savings and there is some meanness, but most of all there is nothing that indicates the government has a vision for a better social security system or a better life for the people who currently rely on social security payments.

*(Quorum formed)*

**Senator GREIG** (Western Australia) (6.17 p.m.)—The Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003 includes a collection of amendments, some of which represent a

semblance of unusual government compassion but some of which are, more typically, mean and small-minded savings measures. It is unfortunate that, while family trusts continue to prosper, the government has an army of bureaucrats looking at a myriad ways in which it can strip \$5 or \$10 a week from some of the poorest in our society.

Schedule 1 is commendable. The government announced in the 2003-04 budget a proposal to exempt from income testing compensation payments from all countries to Holocaust victims. Currently only compensation payments from Germany and Austria to Holocaust victims are exempt from the income test. However, when we see the cost, we see the likely reason for the government's benevolence: the anticipated cost of this proposed legislative change, as presented in the budget papers, is \$0.215 million in 2003-04, \$0.102 million in 2004-05, \$0.107 million in 2005-06 and \$0.122 million in 2006-07. That is a total of \$0.6 million over four years. Nevertheless, we commend the government for thinking about how it should consider compensation and that it needs to recognise that people who have had trauma in their lives that is recompensable should be able to enjoy this compensation without having their right to income support stripped.

Despite the odd discussion paper talking about simplification, the income support system remains as complex as the tax system. If people other than age pensioners were able to afford advice, such as that provided by accountants, I think there would be a veritable advice industry. In fact, for age pensioners there is already a significant industry evolving, telling people how to maximise their pensions while retaining their assets. The fact that the government is making so many amendments in this omnibus bill is due to the complexity of the income support system. The government itself is finding that its bureaucrats cannot keep up with the com-

plexity in interactions and unintended consequences.

A significant component of this bill is data matching—data matching that has a significant investment of resources—yet I think about the sort of people it will catch and why it will catch them. I very much hope that the government, through Centrelink, will give people simple and clear messages—information that will help them make a decision to stick to the rules—because I suspect that this will be very much more draconian than the way the Australian Taxation Office treats tax deductions for all folks fortunate enough to have jobs. Just about any other regulatory power considers margin for error. The police will allow drivers a margin of a few kilometres for speeding, recognising that compliance with the law happens to be best when people respect it. If the police know that people can unintentionally go a few kilometres over and then correct it or that poor calibration can mean inaccurate speedometers, their understanding means that when they do book people most people accept it as fair. But the Commonwealth Ombudsman has clearly indicated, as have academic reports in the last few months, that Centrelink is unfair in its treatment of people when they assess their income. People often cannot work through the morass of what is income and what is not, and they make genuine mistakes.

Schedule 6 in this bill is, I think, the most mean and small-minded side of the legislation, as it seeks to restrict movement of people without giving good reason as to why. Given that some 40 per cent of our population is overseas born, we see no reason why people should be denied their entitlement to a small amount of income support while they renew their ties with family. We have a range of international treaties with countries in the event that people move permanently, and this

measure appears to be an attempt to undermine that.

**Senator BOSWELL** (Queensland—Leader of The Nationals in the Senate) (6.22 p.m.)—We are debating the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003, which gives me the opportunity to raise some very important issues. This bill gives effect to a 2001 budget measure upon which the 2003 measures relating to overpayments arising from lump sum foreign pensions depend. I would also like to take the opportunity to discuss other schemes administered by the Department of Family and Community Services which affect all Australians—veterans, holders of certain Commonwealth concession cards and others. I refer to the very generous federal government program that provides several hundred million dollars to the states and territories for concession travel for pensioners but which the majority of the states retain solely for their own rail service reimbursement.

The Commonwealth has three types of concession cards for which they provide travel concessions—the pensioner concession card, the PCC; the Commonwealth seniors health card, the CSHC; and health care cards. There are a total of 5,029,780 concession card holders Australia-wide, with 50 per cent of coach and rail passengers travelling at concession fare rates. The Commonwealth provides this money to the states and territories, and the states and territories determine its distribution. This is a program that the Commonwealth has been committed to since 1951 and which it has continued over the years to extend. In 1993 the Commonwealth extended compensation to the states for travel when the Commonwealth Department of Family and Community Services agreed on compensation under pensioner concession cards going to part-pensioners. In the year

2001, the payments to PCC card holders alone for public transport, vehicle registration, utilities and rates amounted to \$164 million.

As stated in the recent BTR report, commissioned by the Minister for Transport and Regional Services, states and territories are free to distribute the shares of the funding between the different concessions as they see fit. The Howard-Anderson government has further extended this funding to senior concession travellers. This is to be provided to the Commonwealth seniors health card recipients through the 2002-03 budget allocation of \$25.5 million. There are large payments by the Commonwealth to the states which state and territory governments choose to return predominantly to their own state government transport services. As concession travellers know, there are many private state and territory, as well as interstate, transport operators who offer concession rates; yet these private operators do not see one cent of the Commonwealth government money that has been specifically allocated for concession travellers—the only exception being state licensed and contracted routes. The states instead choose to pay for their own rail transport system without reimbursement to the private coach operators, who are providing their own similar travel concessions to their coach travellers, except South Australia and Western Australia which reimburse private operators on some interstate routes. These two state governments reimburse private operators where certain contracts and licences have been issued, resulting in some reimbursement payments being paid to interstate operators.

I will give an example. McCafferty's Greyhound, the largest bus operators in Australia, traverse Australia along coastal and interstate routes, often in tandem with State Rail. They also provide an invaluable service to country and remote areas through their

extensive coach services. They offer pensioner concessions to all concession card holders on all routes. In fact, an enormous 60 per cent of all McCafferty's travellers travel at full concessional rates. Yet, other than for interstate passengers in South Australia and Western Australia, McCafferty's receive no compensation for their concessional rates, despite the Commonwealth government's allocation of compensation to the states and territories for travel for all concession card holders.

There are several undesirable follow-ons from the way the states and territories apply the Commonwealth payments for travel concessions. Firstly, the states and territories choose to use the funds to subsidise travel on their own rail network. It has recently been revealed that in Queensland, on the Brisbane to Cairns tilt train, more than half the passengers who travel on this \$1 billion service travel for free. Of the remaining half, only 20 per cent pay full fare—the good old Commonwealth picking up the difference. A breakdown of these figures show that 56 per cent are using free travel entitlements, a further six per cent are using half full-fare concessions, with a further 18 per cent using discounted fares used to promote travel off-season and Queensland Rail employees travelling on passes. Apart from all the questions, is this any way to run a profitable rail service? In this case, the question must be asked of the Queensland government: what about pensioner concession card holders who are not able to access rail networks? What about other Queenslanders who live on bus routes, not rail routes, who are also pensioners and use their bus routes to meet the many needs of their daily lives? We have to ask: shouldn't the providers of concession travel to these people be also compensated by the Commonwealth by direct payment at the reimbursement of concessions?

State and territory governments are ignoring these providers, instead using their Commonwealth allocations to prop up state owned rail services. These same governments leave private transport providers out of the Commonwealth funding allocation. While state governments such as the Queensland government may give lip-service to rural and remote areas other than on the contract routes, they do not and will not allow any concession reimbursement to bus operators. Remote, rural and regional dwellers often live without the benefit of state funded transport services which are provided by all taxpayers.

Companies such as McCafferty's and other operators do not leave these people out who access their bus routes: they offer pensioner concessions and concessions to the unemployed and to other people. It is the coach companies themselves that fund these reduced fares. They fund their own government style concessions to concession card holders. We have to ask: for how long can this go on? Is it fair for state and territory governments to take money from the Commonwealth while limiting reimbursement to their own state owned rail operators?

You have to look at the plight of these companies. They operate the popular routes up and down the coast and between capital and large cities. The very same routes operate in competition with the highly subsidised state rail systems. The states then proceed to use Commonwealth concession payments by paying booking agents a commission as though the bookings are full-fare trips when actually they are free. The Nationals are very concerned that regional rural and remote areas continue to receive a coach service. These coach services are vital lifelines to the inhabitants of these areas. Many concession card holders live in these areas. These companies provide the only transport and freight services—a trip to the doctor, a trip for bank-

ing, the medical supplies and groceries that travel out on the coach—to rural and remote areas. They supply tractor machinery parts and are a means to maintain important family contacts. These basic services should be as available to these Australians as to any other concession card holder living on a Queensland rail line.

For years, bus companies such as McCafferty's have been providing these concessions out of their own funds. No business should have to be run as a charity. The difficulty is that, if subsidised rail routes such as the coastal routes eat into coach company takings, the companies are less able to subsidise the services to go to uneconomic routes in country areas. This is the simple impact of state and territory rail subsidies on competitive private enterprises.

States apply their Commonwealth concession payments to a range of concessions—boat licences and council rates—but a substantial part goes to their railway services. I have asked how much and I have been told that it would take a huge investment to break the payments down. It seems that the states and territories do not know what part of their total payments are allocated to the transport subsidies and what amount within this mix they are siphoning off to their rail services. They cannot explain what proportion of the Commonwealth payments goes to state rail corporations.

All of us know the demographic distribution in Australia, with its concentration of population along the coastal fringe and more sparse population in the centre, yet country people still provide the massive share of export earnings. Country people provide essential support services to the great mining and rural industries. Coach companies servicing rural and remote areas also contribute much needed resources to local businesses through meals, accommodation, fuel purchases, asso-

ciated jobs and commissions to agencies, making valuable contributions to local economies and employment opportunities.

People in rural and remote regions are transport disadvantaged—people for whom the Commonwealth has directed concession payments through the states and territories to cover all concession card holders. Under the present allocation, states do not consider country concession card holders and all country transport users will suffer when these services have to be curtailed. Coach travel continues to be one of the most popular forms of transport in Australia. Importantly, in many remote parts of Australia coach travel is the only means of travel. Railways do not service those areas, nor do airlines. State and territory governments must address the allocation of the Commonwealth payments made to them for travel by concession card holders. States and territories cannot continue to appropriate these moneys to subsidise their own rail corporations. State and territory transport ministers need to address this misallocation of Commonwealth funding. Not only is this unfair to concession card holders who cannot access rail travel, those whom this program is intended to benefit, but also it is an extremely unfair way to treat other modes of transport which are forced to compete against subsidised government rail services. It is not right that private companies provide their own self-funded concession fares, while not getting a look in from the state allocations of the Commonwealth concession payments. It is extremely unfair. I hope that consideration can be given by the states to pass on some of the money that is provided by the Commonwealth to offset the concessions that bus companies such as McCafferty's and others provide to concession card holders. I commend the bill to the Senate.

**Senator HUTCHINS (New South Wales)**  
(6.36 p.m.)—I rise this evening to speak on

the **Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003**. As some of my colleagues in the Senate and in the House of Representatives have indicated, Labor will be supporting this bill and the many and varied measures contained within it. For the most part, this bill contains a series of sensible proposals for minor reform of welfare and veterans support provisions that ought to be supported.

There are two aspects of this bill that I would like to discuss in detail—data matching and Centrelink debt collection. Schedule 2 of this bill relates to the use of data matching by government agencies. Data matching is used to bring together information from various Commonwealth agencies to, amongst other things, detect instances where people are possibly receiving incorrect Commonwealth payments, often from Centrelink. Schedule 2 of this bill will expand the use of data matching to a greater range of databases. In addition, in this year's budget the government promised to conduct an extra 125,000 data-matching reviews each year and increase the number of asset valuations by 20,000 a year. It is my firm view that these are positive initiatives that will be welcomed by most Australians, especially those who receive payments from Centrelink or other Commonwealth agencies.

There is a small minority of individuals in the community who do the wrong thing and make false declarations to agencies like Centrelink to get more money than they deserve. However, the far greater majority of individuals and families who receive inaccurate payments do so as a result of an honest mistake. This mistake often occurs on the part of the government agency in question. I have had numerous constituents come into my office in Parramatta who have been given a debt notice by Centrelink claiming that they have in fact informed Centrelink of a change

in their circumstances. The expanded use of data matching will ensure that, where people are receiving incorrect payments, it will be picked up early and only a small debt will amount.

It is a shame, however, that this bill does nothing to address the increasingly despicable and outrageous practices adopted by this government in recovering debts individuals owe to Centrelink. In many cases, individuals have amassed huge debts even for minor discrepancies owing to the government's failure to adequately check whether they have been receiving accurate payments through crosschecks and data matching. We have heard numerous times in this chamber and in the House of Representatives how more than one million Australian families have been hit with more than \$1 billion in debt in just two years. This year alone, one in three Australian families in receipt of family tax benefit payments was hit with a bill because they were overpaid by the Family Assistance Office. Let me reiterate: of the many people who have come to see me in my electorate office in Parramatta to complain about these debts, most of them have done the right thing. They are not welfare fraudsters but more often than not have provided the Family Assistance Office with a plethora of information. It is as a result of these bureaucratic mistakes and a failure to crosscheck people's circumstances that they have ended up with a debt at the end of the year.

On top of this, the government has recently taken aggressive action to recover debts from age and disabled pensioners and students who have received wrong payments. The government has had no checks in place at all for these people for the last seven years. What has happened is that, even where there are minor discrepancies over seven years, these overpayments have built up, gotten out of hand and are now leaving people with massive amounts of debt owed to the

government. Take the case of pensioners: the government has announced that it hopes to collect \$100 million from age and disabled pensioners. As such, it recently decided to review the past financial records of 43,000 pensioners each year to check for discrepancies. Following these reviews, numerous age and disabled pensioners have been hit with huge bills from Centrelink. Even small variations in fortnightly pension payments have accrued over the years and added up to thousands of dollars worth of debt.

My colleague the member for Lilley, Wayne Swan, reported to the House recently that some pensioners have received bills as high as \$50,000 from Centrelink. In addition, many of these people have complained that they have been bullied and threatened by government debt collector teams. And the government's response to these complaints has been nothing short of heartless, insensitive and arrogant. In an interview on the television program *A Current Affair* in August this year, the following exchange took place between the former Minister for Family and Community Services, Senator Vanstone, and the interviewer concerning pensioners hit with massive bills:

Interviewer: What if they don't have the cash?

Senator Vanstone: Well, we would look at their assets.

Interviewer: So you would be prepared to sell up their family homes?

Senator Vanstone: Well, I would be.

So here we have a government that is prepared to seize and sell up the homes of pensioners. Many of these pensioners, especially in the age pension category, have worked a lifetime to save for and finally own these homes. And now they have a government that is arrogant enough to say that it is going to seize and sell that home—all to satisfy a debt that has arisen as a result of the government's own incompetence. Pensioners are

quite often the people least able to afford any sort of debt, let alone a debt as high as \$50,000.

As many senators would be aware, over the last few months the committee I chair, the Senate Community Affairs References Committee, has been conducting an inquiry into poverty and financial hardship in Australia. One group doing it particularly tough at the moment are age pensioners—the same group this government is hoping to recoup more than \$100 million from. In its submission to the inquiry, the Combined Pensioners and Superannuants Association stated that older people have the lowest incomes of all Australians, with an average of \$319 per week per person and only \$429 per couple. This income is squeezed pretty tightly by the increased health costs borne by older Australians. These costs have increased under this government due to the decline of bulk-billing and will get worse with the government's proposals to increase copayments for essential medicines. As a result of this poverty, 250,000 older Australians are homeless or at risk of homelessness: that is, they rent or live in boarding houses and have an income of less than \$12,000 per annum.

The increased cost of housing makes it almost impossible for older Australians to buy into the current inflated market. What is more, many find it difficult to get into residential aged care due to the requirement many facilities have for residents to put up a bond. If the new Minister for Family and Community Services, Senator Patterson, makes good on her predecessor's threat to sell pensioners' homes, then this figure of 250,000 older Australians who are either homeless or at risk of homelessness will undoubtedly increase.

My colleague Mr Swan also advised the House recently of the unscrupulous methods being employed by government debt collec-

tors to get back money owed to Centrelink by pensioners and families. Apparently there have been reports of people being advised to pay off their debts to Centrelink on their credit cards. A major issue that emerged throughout the Community Affairs References Committee's inquiry into poverty and financial hardship was the role that credit cards and lines of credit can play in plunging individuals and families into spirals of debt and poverty. To be actively advising people to pay off these debts with credit cards is nothing short of outrageous—it is a move that will have the effect of pushing more and more Australians and their families, many of whom are reliant on Centrelink benefits to keep their heads above water, into severe hardship and poverty.

Mr Snellgrove, a financial counsellor who gave evidence to the committee in Lismore in New South Wales, made the following observation:

By giving people more credit, you take away the point of dealing with the problem. You move it from being a small crisis ... to a major crisis which may have only one avenue of outlet, which could be bankruptcy.

He went on to say:

Asking 'What would people do without the credit?' is like saying, 'Okay, we'll give you a bit more credit so you will have another six months of happiness and then in six months time your life is going to be even worse.'

Not only has this government made life incredibly hard on these people by failing to administer their payments system properly; it then sought to make their lives even worse by potentially pushing them into a spiralling debt cycle. Mr Snellgrove and other witnesses who appeared before the committee also spoke about the problem of credit surfing. In the words of one witness:

They are encouraged into levels of debt that they cannot manage and, in turn, use other forms of credit to pay off those debts.

That is when credit surfing occurs. As people who find themselves in serious debt, like pensioners hit up with a \$50,000 Centrelink bill, surf from one line of credit to another to satisfy growing debts they will often move to riskier and riskier loan or credit agreements. Over time, they will be forced to take up inferior financial products from unscrupulous lenders who make their money by either charging exorbitant rates of interest or by taking security over individuals' possessions. These payday or fringe lenders profit from the misfortune of people who credit surf to stay afloat. The committee heard of how one of these so-called fringe lenders was charging up to 240 per cent interest on their loans. There are real people out there who are caught in these debt cycles. For example, in Lismore the committee heard about a 74-year-old pensioner whose credit card repayments ate up 55 per cent of his Centrelink income. This is where this government wants the pensioners and families of Australia to end up to make up for their own bureaucratic mistakes.

I welcome the provisions of schedule 2 of this bill. I believe increased data matching will ensure that fewer Australians who receive payments from Centrelink will be asked to pay off thousands of dollars worth of debt on their credit cards or by selling their homes. The provisions of schedule 2, however, are seven years too late. They are too late for the thousands of Australians who have already been hit with massive debts from this heartless and arrogant government. It is a shame that this bill does nothing to address the government's increasingly aggressive debt collection practices as they reap hundreds of millions of dollars from families, the aged and the disabled. It really goes to show how heartless and arrogant they are.

I would also like to briefly comment on a more positive aspect of this bill. I welcome

schedule 1 of this bill which will exempt from income testing all Australians in receipt of payments from countries who compensate victims of the Holocaust. Previously, the exemption only extended to Holocaust victims from Germany and Austria. This is because, until recently, it was only these two countries that offered compensation to Holocaust victims. However, in recent years an increasing number of European governments are living up to their moral responsibility to properly compensate Holocaust victims for the pain and loss they suffered during the Second World War. Compensation schemes have recently been set up in France, Belgium, The Netherlands, Switzerland, Hungary and the United Kingdom. These schemes compensate victims not only for the immeasurable pain suffered in concentration camps but also for the time spent in forced labour and for stolen assets. The Holocaust represents one of the darkest periods in human history. I think it is only right and just that the Australian government ensures that, now many Holocaust victims are finally receiving compensation, they not be further victimised by having other payments they might receive from the Commonwealth government reduced. *(Time expired)*

**Senator PATTERTON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.50 p.m.)—I thank honourable senators for their contribution. The Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003 provides legislation to underpin several important Family and Community Services and Veterans' Affairs 2003 budget measures. It also makes a small number of non-budget minor policy or technical changes.

I do have to respond to what Senator Hutchins said about the family tax benefit. The Labor Party talks about the overpayments. I

said over and over in question time today, and I will say it again: these overpayments have been incurred by families who have received taxpayers' benefits during the year in excess of what they were entitled to because they have not been able to estimate their incomes correctly. I am not saying that they have done that on purpose. Sometimes people have lumpy incomes because they are going in and out of the work force or because they have part-time work and cannot accurately estimate their incomes and do have an overpayment. As I have said before, what the government is aiming to do is to ensure that the \$2 billion additional funding that we are giving to families goes to families in similar circumstances in an equal way—that is, that families in similar circumstances will get a similar benefit from the taxpayer.

We have brought in a number of measures where people can choose to have their family tax benefits paid in a way that will cope with the fact that some of them have what I call 'lumpy incomes', and this will give more choice to families. I believe we need to do more to make sure that families know about those choices but, in the end, it is up to the family to make a decision about how they receive their benefit: whether they receive it during the year, whether they receive a lump sum at the end of the year, or whether they receive a lump sum in part during the year and in part at the end of the year. But to indicate in some way that it is not correct to take the money back if it is an overpayment misrepresents what is occurring. As I said before, what we are trying to do is ensure that people in similar circumstances are treated in the same way. The shadow minister himself has indicated that, if a person has had an overpayment, it should be repaid.

I wanted to correct that and to say also that Senator Hutchins and the Labor Party never, ever give the coalition any positive comments for improved outcomes. When

they were in government and a person overestimated their income and received less than they were entitled to, they did not get a top-up. Under this system families can get a top-up if they make an error and overestimate their income which results in them getting less during the year than a family on a similar income who has been able to correctly predict their income over the year.

Senator Bishop talked about this government being cold and heartless. Let me say that when we came into government there were a significant number of people who had overpayments that were not being recovered by the government of the day. We saw that a significant portion of the debt that the Labor Party incurred in that last year—about \$10 billion—was in either fraud or overpayment. Because I mentioned 'fraud' and 'overpayment' together, that does not necessarily mean that anybody who has an overpayment has been involved in fraud; that would be wrong. But there was fraud, overpayment and a total mismanagement of the social security system, and we saw taxpayers paying benefits to people who were not entitled to them. That is not fair to people who are getting their right entitlements.

This bill provides legislation to underpin several important Family and Community Services and Veterans' Affairs budget measures. It also makes an important extension to the current income test for victims of National Socialist persecution who receive compensation payments for that persecution. Currently, payments of that sort made under the laws of Germany or Austria are excluded from income under the social security and veterans' entitlements income tests. However, more countries, such as France, The Netherlands and Belgium, are now making these payments. As the government believes that all people receiving these payments should attract the same beneficial treatment under the income test, this bill will exclude

from income any such payment regardless of the country making it.

The bill continues the government's commitment to combat serious social security fraud. The current comprehensive data-matching arrangements already identify many sources of incorrect payments. These arrangements are now to be enhanced, particularly to address concerns about the impact of the cash economy and increasing identity fraud. With this in mind, the amendments made by this bill will allow Centrelink limited access to certain newly available data sources that relate to taxation and financial transaction activities for the purpose of administering social security law. Under related amendments, access to financial transaction information held in the AUSTRAC database will be restored to the Child Support Agency for the purposes of administering the child support legislation. The agency, which is part of the Department of Family and Community Services, lost this access when it ceased to be part of the Australian Taxation Office in 1998.

As one of a series of measures relating to international aspects of social security payments, responsibility for the operation of the Assurance of Support Scheme will be transferred from the Department of Immigration and Multicultural and Indigenous Affairs to the Department of Family and Community Services. The scheme will be established under the social security legislation and administered by FaCS through Centrelink. The responsibility for and administration of the scheme is currently split between the Department of Immigration and Multicultural and Indigenous Affairs and the Department of Family and Community Services. The newly established FaCS scheme will feature improved administration and strengthened assurance of support debt recovery. DIMIA will continue to decide when assurance is needed, but the scheme will be generally

administered by Centrelink. Centrelink will assess proposed assurances, accept or reject them and handle debt recovery.

Centrelink will become a single point of contact for assurers, using its extensive customer service network to provide assurers with easy access to comprehensive information about their financial commitments in their preferred language. No assurance will be accepted without an assurer having the nature of the commitment explained in a face-to-face interview. All this will enhance awareness on the part of assurers, resulting in fewer migrants claiming income support. The fact that Centrelink will have direct control of all the relevant data related to assurers and the migrants covered by assurances will lead to improved recovery of assurance of support debts.

It is important that customers departing Australia notify this to Centrelink, because overseas absence can affect their entitlement to, or rate of, social security payment. Customers who leave Australia without telling Centrelink may incur a debt. This bill will help prevent this by providing for Centrelink to suspend payment where a person leaves Australia without notifying the departure and where entitlement to the payment while the person is overseas needs to be reviewed. Depending on the outcome of the review, payment would be fully restored or cancelled.

Further international related amendments in this bill will now allow for full recovery of overpayments that arise when a foreign pension payment is made as a lump sum in arrears that covers a period when the customer was also receiving a social security payment. The amount by which the person's social security payments would have been reduced if the arrears had been paid as periodical payments will be a debt. The effect will be similar for partners of customers who receive these arrears payments because half of the

person's arrears payment is counted as the partner's income.

The last major measure in the bill addresses the current period for which most portable income support payments and family tax benefit may be paid while the customer is temporarily absent overseas. The portability period is to be reduced under the bill from 26 to 13 weeks. This change will not apply to age, wife or widow B pensioners, who currently have unlimited portability. The new 13-week portability rule will apply to disability support pensioners, including those who are severely disabled. However, severely disabled customers may be granted unlimited portability in defined circumstances. The first is where the pensioner is terminally ill and leaves Australia permanently to be with family or to live in his or her country of origin. The second is where the pensioner is overseas on 1 July 2004, when these amendments commence, and returns to Australia for a short stay.

The existing capacity to extend the portability period where a person is unable to return to Australia will also be kept. Some of the reasons for this may include serious illness of the person or a family member or a natural disaster occurring in the country where the person is located. Customers who are overseas on 1 July 2004 will not be affected until they return to Australia. This measure was criticised during debate in the House of Representatives. However, it is in line with the government's overall welfare reform strategy which aims to engage people of work force age in activities in Australia that will lead to greater levels of economic and social participation. Given Australians' migration history and links with family members overseas, it is reasonable to allow a period of portability for payments that do not require active job search. However, it is not appropriate for taxpayers to subsidise a work force age person's overseas stay for pro-

longed periods. This new period is fair and equitable and there will be discretion to extend it in genuine exceptional circumstances. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

### In Committee

Bill—by leave—taken as a whole.

**Senator MARK BISHOP (Western Australia) (7.01 p.m.)**—I move the opposition amendment circulated in my name on sheet 3210 addressing the issue of reducing portability periods:

(1) Schedule 6, page 35 (line 2) to Page 39 (line 5), **TO BE OPPOSED**.

This is the only amendment that the opposition wishes to move. I want to speak to the amendment very briefly to outline our position for the record.

This bill seeks to reduce the allowable period of temporary overseas absence for portable social security payments from 26 weeks down to 13 weeks. The new portability period will also apply to disability support pensions, although there will be the capacity to grant an unlimited portability period to a severely disabled disability support pensioner in defined circumstances, so that does ameliorate the impact to some extent. A person's rate of family tax benefit is subject to modification if the person or an FTB child of the person is absent from Australia for longer than 26 weeks. This bill contains amendments to reduce this allowable period of absence to 13 weeks, and that is the substance which we oppose.

Labor have consistently opposed the government's attempts to reduce or eliminate portability provisions in social security legislation. We believe portability provisions are extremely important to Australians who were born in other countries and serve to enable social security recipients to travel overseas

for short periods to visit sick or dying relatives. As I said in the second reading debate, Labor are particularly concerned about the impact of this measure on some of our larger communities that have a heritage overseas, and this includes former citizens of the United Kingdom and those within the Greek community.

There are good reasons why the portability provisions should be 26 weeks and not 13. Many families who have parents or siblings living overseas are called upon to go to their aid when they are sick or dying. In some cases, this involves finalising a deceased person's estate. Often there is a need for a person to spend considerable time overseas. The government has failed to present any evidence at all that shows that the current rules have been abused. The net savings, if the amendment should be rejected and the bill is passed in its current form, are only \$4.1 million. That small amount of net savings convinces us that the seriousness of the abuses, if alleged, are so minimal that this is not worthwhile. Finally, we say this particular change is a mean change which will have a direct impact on people who have loved ones in other countries. It is unnecessary.

**Senator GREIG (Western Australia)** (7.04 p.m.)—I have a question for Senator Bishop. In looking at the intention to maintain the provision for 26 weeks in terms of the anecdotes given of funerals and of people travelling overseas and that kind of thing, were you thinking in terms of matching complementary visa provisions? I am not familiar enough with immigration processes, but would it be the case that, if someone were travelling to the UK for example, there would be a six-month visa? Was that your thinking?

**Senator MARK BISHOP (Western Australia)** (7.05 p.m.)—I am just having a look at the brief before me. To respond to Senator

Greig's query, with respect to the particular issue you raised of the relationship between our amendment and visa periods, the answer is no, there is no suggestion in the brief to that effect. The reasons, as I outlined, relate to time periods overseas with sick and dying relatives and periods to establish estate transfers.

**Senator GREIG (Western Australia)** (7.05 p.m.)—I ask the minister if she is able to provide any jurisdiction comparison with perhaps the UK, Canada or New Zealand? How does their legislation provide for the portability of such payments? How does this legislation equate with the time frames that they use? Is there some kind of international benchmarking comparison?

**Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women)** (7.06 p.m.)—Firstly, I would like to comment on Senator Bishop remarks. For the examples he gave—with the exception of somebody organising an estate, and let me say I have just been in that situation of organising an estate where it was spread across five countries, so you do not always have to be the country to do it—of someone being with a relative who is ill or terminally ill, there are discretions within this bill to extend the time period, so it does cover the issues raised by Senator Bishop.

With regard to what other jurisdictions do, this amendment came to us quite late, as Senator Greig knows, and I do not have details of what other jurisdictions do. What I have said though is that this is for people who are of work force age. One of the things that staggered me, when I moved into this portfolio, was the information that if we were able to increase the participation rate of people of work force age by two per cent—from about 64 per cent to about 66 per cent—the impact on the GDP would be

about nine per cent. That is \$68 million. That is four times our education bill, twice our national health bill and the whole of social security. One of the honourable senators on the other side is frowning.

**Senator Hogg**—You said \$68 million.

**Senator PATTERSON**—Sorry, it is \$68 billion. It is a staggering figure. One of the things we have to look at as we move towards more people relying on social security and fewer younger people is this issue of participation of people of working age. This is about people who are of working age and who would have access to a program which would encourage them to participate in the work force, albeit in a limited way. That is why we have brought this legislation in. I think most taxpayers would think that 13 weeks is a reasonable period of time to be absent from Australia and to still be receiving a benefit—26 weeks is half a year. As I said, there are discretions within the legislation for people who are terminally or seriously ill.

This brings about much greater uniformity and addresses what we are attempting to do because it is in line with our overall strategy of getting people of work force age, who are on some form of income support, to engage in activities that will lead to greater economic and social participation. Being away for half a year on a benefit does not assist that. Given the fact that we now have jet travel, I think it is very reasonable. We have people on very low incomes who get 10 weeks annual leave a year. They have to go overseas and do all the things they have to do with their long service leave and maybe some holidays. So I think it is in line with people who are in similar circumstances but are working. The government will not be supporting the amendment. I am sorry, Senator Greig, had we had more time on this

amendment I would have given you that information.

**Senator MURPHY** (Tasmania) (7.09 p.m.)—I have to admit that I have not followed this debate in detail but I am interested in this matter: the reduction from 26 weeks to 13 weeks. I had a conversation with Senator Bishop with regard to the amendment that he is proposing and why. You may have been asked this question already, Minister, and I apologise if you have; I did not hear the answer. What about circumstances where it is necessary for people to be overseas for longer than 13 weeks? Is there a capacity within what you are proposing to allow that to happen? People might have to deal with the death of a family member and estate matters et cetera which might require them—I do not know—to be out of the country for longer than the period you have talked about.

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.10 p.m.)—With regard to estate matters, given the email communication we have now, it is quite possible to deal with estate matters much more expeditiously than we could before. I speak from experience because I am dealing with an estate across a number of countries at the moment. I am not sure that it would have been as easy 10 years ago, without the Internet and without cheaper telephone calls. But with regard to a person who is dealing with a family crisis or other personal matter overseas, there will be discretion to extend the time in genuinely exceptional circumstances—for example, if a person goes overseas and becomes ill.

I can understand that as an Independent it is difficult for you to keep on top of the minutiae of all these matters and we only got the amendment quite late. If a person is ter-

minally ill and chooses to go overseas or to return to their country of origin to get assistance—they may not go to their country of origin; they may move to a place where they have a relative who can look after them—that is the sort of circumstance where it would be extended. Or in genuinely exceptional circumstances where they had a family member for whom they were caring, an extension of time would be considered. There is a discretion.

**Senator MURPHY (Tasmania) (7.12 p.m.)**—Is the 13-week period a cumulative period—for instance, if a person went for two weeks then came back to Australia and then went for four weeks and came back to Australia?

**Senator Patterson**—I understand what you are asking.

**Senator MURPHY**—Is it a cumulative thing or is there a new start time every time?

**Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.13 p.m.)**—When a person goes overseas the clock starts; they come back and the clock starts if they go away again. If you have two people in similar circumstances, one of whom does not come from overseas, is in Australia and is required to participate in work activity tests, it seems a little unfair that the other can be away for 26 weeks and can avoid the activity tests and be paid. I believe 13 weeks—three months—is a reasonable time to be away. There is jet travel now; we are not going by ship and taking four weeks to get there. I am sure—I am not sure; I had better check—that if somebody had some condition that meant they could not fly that would be an exceptional circumstance. We would have to take into account the fact that they could not fly. There are some rare conditions where a person is not able to fly, but such cases

would be very few and far between. If a person had a genuine need for care overseas because they were terminally ill and had no family here, their payment would continue. This issue is about people who are going away. I believe that is sufficient time and we have a discretionary power within the legislation.

**Senator MURPHY (Tasmania) (7.14 p.m.)**—The reason I ask about the cumulative matter is that some people who have a family member who is incarcerated in another country may want to visit them and may want to do that for a period of time, and I think the cumulative thing is an important aspect of it. I know of at least one person who is confronting circumstances in which their son is in prison somewhere else, they are on a benefit and they are seeking to visit their son over a period of time. But if, as you say, it is not cumulative then at least that is a positive step.

Question put:

That schedule 6 stand as printed.

The committee divided. [7.20 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes.....	31
Noes.....	<u>31</u>
Majority.....	0

#### AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Chapman, H.G.P.	Colbeck, R.
Coonan, H.L.	Eggleston, A. *
Ellison, C.M.	Ferguson, A.B.
Ferris, J.M.	Harris, L.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lees, M.H.
Lightfoot, P.R.	Mason, B.J.
McGauran, J.J.J.	Murphy, S.M.
Patterson, K.C.	Payne, M.A.
Santoro, S.	Scullion, N.G.
Tchen, T.	Tierney, J.W.

Troeth, J.M.  
Watson, J.O.W.

## NOES

Allison, L.F.  
Bishop, T.M.  
Brown, B.J.  
Campbell, G.  
Conroy, S.M.  
Crossin, P.M.  
Evans, C.V.  
Greig, B.  
Hutchins, S.P.  
Lundy, K.A.  
Marshall, G.  
Moore, C.  
Nettle, K.  
Ray, R.F.  
Sherry, N.J.  
Wong, P.

Bartlett, A.J.J.  
Bolkus, N.  
Buckland, G.  
Cherry, J.C.  
Cook, P.F.S.  
Denman, K.J.  
Forshaw, M.G.  
Hogg, J.J.  
Ludwig, J.W.  
Mackay, S.M.  
McLucas, J.E.  
Murray, A.J.M.  
O'Brien, K.W.K.  
Ridgeway, A.D.  
Webber, R.

\* denotes teller

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

## Third Reading

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.27 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

## BUSINESS

## Rearrangement

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.28 p.m.)—I move:

That government business order of the day No. 7, Energy Grants (Cleaner Fuels) Scheme Bill 2003 and Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Bill 2003, and government business order of the day No. 8, Interna-

tional Tax Agreements Amendment Bill 2003, be postponed until the next day of sitting.

Question agreed to.

**CUSTOMS LEGISLATION  
AMENDMENT BILL (No. 2) 2002**

## Second Reading

Debate resumed.

**Senator FORSHAW** (New South Wales)

(7.29 p.m.)—I rise to speak on the *Customs Legislation Amendment Bill (No. 2) 2002*. I would like to start by saying that this bill is a complex, omnibus piece of legislation, in large part technical with respect to the further regulation of Australia's customs regime. I also have to say that it is controversial with respect to the antidumping law as it affects what are called 'economies in transition'. The bill is also controversial in that it has now been in the parliament for 11 months, all because of classic conservative indecision, empty rhetoric and confusion on policy.

*Senator Boswell interjecting—*

**Senator FORSHAW**—You can guess where that is coming from, Mr Acting Deputy President. It is coming from the government, whether it is represented by the minister in charge at the moment, Senator Ellison, or by the honourable senator from The Nationals who is not actually sitting in his seat but is interjecting—Senator Boswell. As I said: conservative indecision, empty rhetoric and total confusion on policy. I would also add that the key issues within this bill, namely the antidumping proposals, have been subject to scrutiny by the Legal and Constitutional Legislation Committee, which reported last May. How long ago was that? This bill has sat idle on the *Notice Paper* since then—it was five months ago. But now, almost at the end of the parliamentary sittings, we can point out the fact that, having dithered with this bill for six months, the government finally seeks its rapid passage.

I do not wish to take up any more of the chamber's time tonight, because, as I said, the government has wasted six months. We are very busy in this chamber and we have plenty of legislation to get through. I know that Senator Ridgeway wants to make some important remarks from his perspective on this legislation, so I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

*The speech read as follows—*

To begin with though, let me remind the Senate of the main provisions of this Bill.

First, the Bill redefines the process of determining the 'normal value' of goods imported from 'economies in transition' for use when deciding whether goods are being dumped.

Second, it amends the anti dumping provisions of the Customs Act to align them with the World Trade Organisation (WTO) Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT).

Third, it exempts air security officers from the passenger movements charge.

And finally, it makes minor technical changes for the purposes of the Customs Trade Modernisation Program whereby Customs has embarked on an ambitious program of reform to its processes and the law which underpins them.

I will deal with the anti dumping measures first.

### **Anti Dumping Measures**

As we know the debate on dumping is much like that on tariffs, whereby some Australian industries benefit from cheaper imported goods, and others suffer—depending on the nature of the industry.

Dumping is the sale of a good in another country for less than the price in the exporting country—the 'normal price'—to gain competitive advantage.

In Australia, for example, primary industries benefit from cheaper chemicals from overseas, but local manufacturers may suffer.

Where they believe they suffer from dumped goods, they may complain and the Australian

Customs Service must decide whether first, there is a *prima facie* case, and then either dismiss the claim or conduct an investigation as to whether countervailing duties should be levied.

Subsidisation of exports, with the exception of agricultural commodities, is prohibited under GATT and WTO rules.

The extent of subsidies however, is often hard to determine.

This is especially the case in what are called 'economies in transition' which are no longer centrally planned, but may retain some features of government control or influence which impact on the costs of production.

This may involve finance arrangements, or other incentives at a national or local level.

For the purposes of investigating anti dumping complaints, Customs relies on subsection 269 TAC (1) of the Customs Act which defines 'normal value', and subsection 269TAC (SE) which allows the Minister to determine whether 'price control' exists.

For economies in transition however, where the criteria are more detailed and difficult to assess, this has proven very onerous and the Minister has accordingly issued guidelines, which are of dubious legality, to provide clarification to the process.

Hence we have this Bill which seeks to define 'economies in transition' and also to set conditions for the determination of 'normal value' of goods in those countries which is essential in the determination of dumping.

This includes the substitution of 'price influence' for 'price control' in recognition of the absence of the regulation once contained in a centrally planned economy.

The particularly contentious words in the Bill are 'significantly affected' which are to be the test of that government influence. These words are considered by the Chinese and others to be more stringent than the GATT/WTO test of whether or not 'market economy conditions prevail'.

Customs expressed the view to the Senate Committee that they meant the same—but as the minority report commented, if they are the same, then why not use the WTO wording?

These definitions are then reflected in draft regulations which provide the detail of the processes to be followed in determining codify the existing ministerial guidelines.

**Trade with China**

The real controversy in this Bill is the more sinister purpose in that they have been seen, and rightly so, as an undisguised attack on exports from the People's Republic of China.

As we know, China is now Australia's third largest trading partner, but also an 'economy in transition' for the purposes of the WTO.

That status has been conferred on China by virtue of its Articles of Accession to the WTO, and particularly Article 15.

It was in fact this deliberate assault on China, which provoked the sharpest reaction to the Bill on introduction, resulting in a number of delegations from China protesting to the Howard Government about the way they had been targeted.

This was followed by a referral of the Bill to the Senate Legal and Constitutional Legislation Committee to which the PRC Government, along with Australian industry, made a number of submissions.

I make particular reference to the submission from the PRC because it raised four key objections to the Bill.

First, it protested in the strongest terms about the lack of consultative process—not a new issue with the Howard Government—in fact it is the standard modus operandi which results in so many back flips when the polls show popular attitudes different to their own stubborn myopia and prejudice.

Second the Chinese were rightly concerned at the discretionary powers of the Minister in determining 'normal price'.

Third, they were concerned at the use of the words 'significantly affect' in the Bill as wording conferring wide discretionary power on Customs and the minister—and certainly wider than the language of the GATT.

And finally they were concerned that the burden of proof in any investigation was being shifted in part to the exporter.

Some of these submissions were repeated in other submissions, and were reflected in the ALP minority report of the Senate Committee.

Clearly the Government rejected these submissions, as well as the minority report, and then silence reigned for five months.

We now know that the Government had gone into secret dialogue with China—there was a bigger issue at stake.

**Trade and Economic Framework**

It probably should not have been any surprise to see immediately following the Prime Minister's grandstanding announcement of the signing of the Trade and Economic Framework Agreement with the Government of the People's Republic of China on 24 October last, that the Government proposed extensive amendments to this Bill.

This saw the back flip whereby most of those elements of the Bill which offended the Chinese most, were removed—and hence the Government's amendments to this Bill being considered in the Senate today.

Notably too, the Government's proposed amendments vindicate in large part the ALP minority report of the Senate Committee—and so it is most pleasing to be able to say to the Government today that "we told you so".

The Bill therefore, no longer offends China to the same degree, but it must be said that the proposal is still much tougher than before.

Let me say however, that these are major changes to the Bill they are not cosmetic or minor technical alterations.

Hence we have an amended Explanatory Memorandum.

And most importantly, we need to see redrafted regulations for the same reason.

As we all know however, there is more intrigue about this matter, because in agreeing to the Trade and Economic Framework, the Howard Government has agreed in paragraph 8 to suspend the operation of Article 15 of China's Accession protocol to the WTO.

This means that for the two years in which China and Australia explore the potential for a free trade agreement, China will not be regarded as an

'economy in transition' as the starting assumption in investigating anti dumping complaints.

But nor will it be treated as a market economy because there is clearly no intention to list China in the schedule of market economies as provided for in regulation 182.

That is for two years at least, at which time Australia will have to determine whether China is in effect a market economy, or whether it should revert to being an 'economy in transition'.

Suspending Article 15 though itself is curious because the expressed attitude of the Government is that Australia is not bound by Article 15. That has been the evidence given to both the Senate Legal and Constitutional Committee and more recently in Senate Estimates by officers of the Department of Foreign Affairs and Trade.

Yet, as we know, Article 15 was the inspiration of this Bill, because as we know in paragraph (a) it empowered importing governments to develop their own dumping tests against China in particular—and this was exactly what the Howard Government was doing.

That is why the original provisions were targeted at China, and hence the immediate reaction from the Government of China.

Now though, by a deft sleight of hand, the authority of Article 15 is not relevant, and instead, the general anti dumping provisions of Article VI of the GATT are invoked as the reference point.

This Bill therefore, can no longer be said to be focussed exclusively on China, but on all such non market economies, and the draft regulations when they emerge will set out the tests for first determining whether an economy is a market economy, and failing that, what the surrogate normal price might be.

For those interested in this diplomatic intrigue, the Howard Government is still getting tough with China, as originally intended, though with a wink and a nod that anti dumping processes won't change—that is that most applications will fail as they have in the past.

On the other hand China can portray a significant victory by having most of its objections to the original Bill accepted—as set out in the amendments circulated—and it can claim that Australia

has removed its status as an economy in transition.

Ipsso facto, this is seen as an important step to becoming accepted as a market economy—and indeed the perception that China is already a de facto market economy. After all, the suspension of Article 15 may lead some to that conclusion.

Minister Vaile has denied this publicly, but the real issue will have to be addressed in two years time. Will China achieve market economy status in fact, or will it revert to being an economy in transition?

Back flips for our Prime Minister are routine, as shown by these amendments—but not for China.

We can be sure that the US and the EU as Australia's other major trading partners will be watching with great interest.

Fortunately for the Government, this matter will not mature until the next election is over, and no doubt will soak into the sand of endless process of discussion and inaction.

The public relations coup has been achieved.

#### **Current Position on Amendments**

Beyond that saga however, let it be said that technically, the amendments the Government is proposing do remove most of the serious objections to the Bill. It is a pity that it took so long for the stubbornness to be shifted and for reason to prevail.

The language of the Bill has been changed to conform more closely to that of the GATT. The words 'significantly affect' have been removed and substituted by 'market conditions do not prevail'.

The definition of an 'economy in transition' is satisfactory, and the Minister's discretion has been reduced in that he can only determine 'normal price' against those criteria set out in the regulations.

However, some issues remain.

In submissions to the Senate Inquiry into the Bill, strong representations were made by Australian industry supporting the Government's crackdown on dumping, particularly with respect to China.

I repeat—the Bill as originally drafted, was aimed at responding to that view.

Here I refer in particular to the submission of the Industry Task Force on Anti Dumping, who continue to this day to express great fear about the inroads being made by imports from China into local industry.

Curiously their support for the Bill continues even though some of the elements designed to 'fix' China have been removed.

Moreover, their concerns that most anti dumping complaints against China have been dismissed, have been replaced by the concern that the first complaint under these new provisions will be the acid test of the Government's intentions.

The same could be said for China.

The Bill however, is still tougher for foreign exporters. First, they have been passed the onus of proof, remembering though that the original complainant still has to make a *prima facie* case of sufficient weight to have Customs begin an investigation.

The same might be said of the retention of the requirement to answer a questionnaire from Customs to the exporter subject of an anti dumping complaint, which in its original form, allowed no extension of time beyond 30 days.

In fact, in its original form, failure to respond to a questionnaire within 30 days resulted in a determination falling automatically within the Minister's discretion for determining 'normal value' and probable failure due to lack of information.

At least the provision for an extension on application, has now been included, thus satisfying another recommendation of the Senate Committee minority report.

However, the procedure also recommended in that report that Customs be obliged within the Bill to inform exporters of the availability of that extension, and to receive assistance from Customs in completing the questionnaire, have been ignored.

On this we must accept the bona fides of Customs who have provided assurance that such procedures are built in and that codification of such an administrative detail is unnecessary. We shall therefore watch with interest.

### **Other Anti dumping Provisions**

Also within the first schedule of the Bill are amendments, essentially technical, which go to issues such as the cumulative assessment of duty whereby the Act is brought a little closer to Article VI of the WTO, and to the processes of assessing interim countervailing duties.

Changes are made on wording to reflect the outcome of the Amcor case, and to the requirements of anti dumping complainants and third parties as to the detail which must be supplied with applications, and further evidence.

These amendments also recognise that importers may not have access to export price detail and hence the power of Customs to deal with third parties in a commercial- in- confidence manner, and to determine what information may be revealed to the applicant.

This particularly refers to information given by an exporter which will be protected unless permission for release is given by the exporter.

There has been some objection to this on the grounds of lack of transparency and inconsistency with the GATT Implementation Agreement, but considering the practicalities, it is difficult to see an alternative which satisfies everyone.

Commercially sensitive information must be protected, and yet there has to be trust that the work of Customs is fair, thorough and objective.

Finally on the anti dumping measures contained in this Bill there is a considerable number of refinements going to processes and powers to reject applications on the basis of insufficient evidence, reimbursements where circumstances have changed, refunds of overpayments, and reviews of rejection decisions.

These are not controversial, although they do include a provision dealing with the Amcor case where Customs were obliged to refer a termination decision to the Minister, but did not.

Some argue that the delegation entailed here is not appropriate, but it is a matter of process, and time will be the judge of the veracity of the concerns expressed.

Other amendments providing for accelerated reviews for 'new exporters', and for the provision of notice by Customs where termination of a

dumping measure is being contemplated, or where it is due to expire, are not controversial either.

#### Air Security

The third element of this bill is to exempt air security officers employed by the Commonwealth as part of its anti terrorist program, from the payment of this tax.

As Commonwealth officers it does seem pointless to charge a tax for the seat they are given by the airline, but it is inconsistent.

In other areas of taxation, under the principles of accrual accounting, Government departments pay tax—for example GST. This allows the full cost of services to be calculated. Why air security officers are different is not disclosed, but the least that can be said is that the proposal saves unnecessary administrative process.

#### Trade Modernisation

As we know, the spate of Customs Legislation Amendment Bills passing through the Parliament frequently involve changes to the law to facilitate the Trade Modernisation Program. This is understandable as the constant review of processes reveals shortcomings which need to be remedied.

Again, these are not controversial except for the extension of the Infringement Notice Scheme to errors on import and export entries lodged with Customs, even when withdrawn or amended.

Remission of penalties is no longer available in such circumstances, and overall there is a view within industry that this is unnecessarily draconian.

There can be no doubt about Customs' intent to improve the quality of information being provided to it, and the overall need for accuracy for assessing duty—but also now for security reasons.

Industry must lift its game, but at the same time, inadvertent errors do not justify such a heavy response. I would simply encourage Customs to look again at this, and to that end further briefing will be sought in due course.

Mr Acting Deputy President, the ALP supports the bill and the amendments circulated.

**Senator RIDGEWAY** (New South Wales) (7.31 p.m.)—I also rise to speak to the **Customs Legislation Amendment Bill (No. 2) 2002**. There are, however, a number of points that I want to make before speaking to the bill itself. First of all, I want to thank the Minister for Justice and Customs, Senator Ellison, for earlier adjourning the debate on this bill. Let me say, on behalf of the Democrats, that we were not expecting the bill to be dealt with, and the amendments had not been provided to us. We were prepared on the basis of the old bill, so it was not clear to us that the government were going to introduce amendments in the chamber and that there would be discussion on those. I understand that they thought that Senator Murray was dealing with it. He received a letter yesterday, but I want to put it on the record that there was still little time to deal with it.

The bill amends the Customs Act to make provision for the determination of the normal value of goods that are exported from economies in transition to assist in the investigation of antidumping matters. Dumping itself is the practice of selling a good in another country for less than the price in the home country, that being the normal price to gain a competitive advantage over other suppliers. While dumping itself can have benefits for consumers through lower prices, the practice itself can injure domestic producers and they can apply to have retaliatory or antidumping duty applied to dumped imports.

In carrying out antidumping investigations, the Australian Customs Service has reference to the normal value of the good in the home country. In market based economies, the normal value is relatively easy to discern. Problems arise, however, in relation to controlled economies where the extent of government influence in setting the price for a particular item is sometimes very difficult to discover. This situation is exacerbated when the economy in question is moving

from what was a centrally planned system to a market based system, and these so-called economies in transition are essentially the focus of this particular bill.

The bill itself introduces a new scheme for determining the normal value of goods imported from economies in transition, but it also amends the current antidumping provisions of the Customs Act 1901 to align them with WTO and GATT implementation requirements. Naturally, of course, we were supportive of the bill being referred off to a committee. The majority committee report indicated that there were three main issues with the scheme introduced in this bill. The first issue was the significantly affected test. It seems to us that this is an ambiguous and untested term, and it has been proposed that it would be better to replace it with a test that asks whether market economy conditions prevail in the relevant economy. This market economy conditions test is used in the European Union.

The second issue was about procedural and evidentiary requirements associated with the provision of information in antidumping investigations. The third was about the adequacy of consultation processes associated with this bill. Whilst the bill applies generally to all economies that are in transition, the People's Republic of China is the only economy in transition that is also a full member of the WTO and, as a result, China is the one country that stands to be most affected by the provisions in this bill. Our trade relationship with China is an important one, and the Prime Minister and the President of China have, as people know, recently announced plans to commence negotiations for a free trade agreement between Australia and China. The Chinese Chamber of Commerce have indicated their opposition to this bill—that is, in its original form—and urged that it not be supported.

Earlier this year, out of session, I met with representatives from the Chinese Ministry of Commerce and the Chamber of Commerce and Chinese industry leaders. They expressed their concerns that the provisions of the bill in its original form unfairly disadvantaged Chinese exporters and were contrary to the accession protocol for China's accession to the WTO. They were also concerned about the impact that the bill might have on the trade relationship between Australia and China. As a result of further extensive consultation with various stakeholders, both Australian and Chinese, we are pleased to note that the government has seen fit to amend the bill and to take note of the various concerns that have been expressed. These amendments are essentially along the lines of the recommendations of the committee minority report. These changes address the key issues with the bill in its original form.

The first thing is that the test for the normal value of goods has been amended from significantly affected to whether market economy conditions prevail. As the Labor senators have stated in their minority report, this does bring the test in line with the language that is used in China's accession protocol to the WTO and in the European Union legislation. The amended bill also includes the provision that requests for extensions of time can be formally considered. This is an important change and will allow for greater procedural flexibility in allowing exporters a fair chance to prove their cases in antidumping investigations.

The Australian Democrats' position with respect to industry matters is focused on the need to support the Australian industry and a rejection of the notion that unchecked capitalism and freer trade is a solution to all the economic problems. Evidence was given during the committee process to the effect that, while Australian companies often prove their cases successfully in antidumping in-

vestigations, the failure of the current test for the normal value of goods creates a situation whereby they are unsuccessful in their applications to have dumping duty applied to the imported goods in question. What needs to be considered is the balance of interests of the Australian industry domestically and abroad. There were fears initially that this bill could cause significant damage to Australia's trading relationship with China. The Australian industry, in my view, would be detrimentally affected if unable to export goods to this major world market. Thankfully, the trade-off between these two competing interests now no longer has to be made.

The recent announcement that talks would soon begin on a potential free trade agreement with China also emphasises that the Howard government have given up on the multilateral process for world trade. The government have made it clear that they have no interest in putting any real effort into the multilateral arena. Whilst the WTO process is fraught with issues, it does remain the only forum that can achieve outcomes for the whole world, not just our best friends or the ones that we choose to deal with. The foreign affairs and trade white paper, *Advancing the national interest*, clearly signals this government's preference for bilateral initiatives at the expense of multilateral ones. So it does remain a fundamental problem, given Australia's limited ability to devote resources to both labour intensive functions.

Just like in the case of the proposed Australia-US free trade agreement, Australia stands to gain very little through this approach. According to DFAT, in 2002 Australia experienced a merchandise trade deficit with China of some \$5 billion, which demonstrates a huge imbalance in the trade between the two countries, particularly with respect to the textiles, clothing and footwear industries. The Chinese economy is three

times the size of the Australian economy. Commentators have noted the damage the free trade agreements could do to Australia's other trading partners by displacing their exports with preferential access for free trade partners. The Democrats also believe that the Australian government should have a policy of ensuring basic human rights standards as a condition of trade agreements. This, in my view, will be an important consideration in the negotiation of a free trade agreement with China.

The final thing that I want to say about this bill is that, whilst we would have been happy to support the bill as being non-controversial—although I am not sure whether the Labor Party would have taken the same view—the bill as it currently stands, in the new amended form, includes a workable test for use in antidumping investigations, necessary for the protection of the Australian industry. This amended form of the bill does remove the need to trade off this important objective against the potential damage that could have been done to Australia's trade relationship with China.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (7.41 p.m.)—I thank senators for their contributions on the *Customs Legislation Amendment Bill (No. 2) 2002*. This of course is a very important bill. It deals with an area of the law which not many Australians would be well acquainted with: antidumping. This is an essential part of the world's trading framework and something which is provided for by the WTO. It is not, as long as it remains within its proper parameters, protectionism. It is a part of the trading regulations in the world today which accommodates trade between nations. Therefore antidumping provisions, which have been around for an exceedingly long time, are quite proper to have in place.

Australia has a rather conservative approach to antidumping. I might say at the outset that our time lines are some of the shortest in the world. We have streamlined those. In recent years we have seen the abolition of the antidumping authority. I believe that has all gone to improve the system in which we work. Of course we can always improve on that, and that is why it is so important to listen to industry. That is precisely what formed the genesis of this bill. What we had was a situation where countries like China, Russia and some others were economies in transition. That is, they were moving from being centrally planned economies, where the state played a crucial role and exercised control, to the other end of the spectrum, where they have free markets. It was important that we addressed these economies in transition and that we had in place guidelines and practices which did just that.

But industry in Australia wanted some certainty. So it was that in December last year we introduced the bill. We did not expect for a moment to have it passed overnight, because we knew there would have to be a good deal of consultation—and there has been. First and foremost, the Senate Legal and Constitutional Legislation Committee looked at the bill and gave its report in April this year. It had some useful suggestions which we took on board. As well, we had to listen to the sector of the Australian industry which wanted to have this legislation proceed to provide greater clarity and certainty, but we also had to listen to other sectors of Australian industry who thought that perhaps we did not need to go as far as this bill.

Added to that were the consultations with the Chinese. China, of course, is a very important trading partner of Australia. It is the third largest that we have, accounting for \$22.5 billion in relation to trade between our countries. It is a very important relationship,

which we recognised during the course of the consultation period for this bill. What people have overlooked is that during the lifetime of this bill we had a visit by the Prime Minister, John Howard, to the PRC and, in turn, we had a visit by the new President of China, President Hu, to this country. All of that formed a backdrop to negotiations and consultation with the Chinese authorities. So I say to those people who say that this bill has been lying idle and we have been dithering with it that in fact that is not the case. What we have been doing is ensuring that we got it right and that we addressed all the concerns.

We now have a bill with government amendments—which I intend to propose during the committee stage—which will address all those concerns, to strike a balance between that end of Australian industry which wanted to make sure that we had clarity and the other end which thought that this bill was not needed, and to allay any concerns of people, such as the Chinese, who are so important to our trading prospects. We have done that. It is interesting to note that this bill now has general support in the amended form, and I am anticipating support for those government amendments. I do think that in this case the Australian Customs Service has done an outstanding job in the consultation that it has carried out. I thank the Senate Legal and Constitutional Legislation Committee for the work it has done on this bill and its useful suggestions, which we have taken up. I also thank areas of Australian industry which have been constructive in putting forward their views in relation to how this should proceed.

I mentioned antidumping provisions. Of course, this bill does have other aspects. The bill also includes an amendment to exempt Australian Protective Service officers who travel on aircraft for the purpose of enhancing security from paying the passenger movement charge. I think that that is a sensi-

ble provision. There is also the final set of amendments in this bill which address minor omissions in the Customs Act related to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001. I think, again, that it is useful to use this bill to address those areas.

For those who are concerned that this might interfere with trade with China, I point out that it certainly will not. We have a robust attitude to trade with China. In fact, the trade and economic framework, which we announced recently, was history in the making. We have a trading relationship of \$22.5 billion, and we have measures in place relating to China which affect only a fraction of a per cent of the trade I am talking about. Less than 0.2 per cent is affected by any measures as a result of antidumping.

I mentioned that we are cautious in our approach to antidumping measures. Since 1998 we have applied measures in only 36 per cent of cases investigated, compared with 58 per cent internationally between 1995 and 2002. I would like Max Walsh of the *Bulletin* to remember those figures next time he writes about antidumping in Australia, calling it a form of protection and stating that Australia is perhaps a country which is prone to use this more than others. When you compare our rates to those of other countries of a similar nature, you see that we are very cautious. We do not use antidumping as a form of protection; we abide by the WTO rules and we believe that other countries should as well. Having said all that, I commend this bill to the Senate and look forward to moving those government amendments that I mentioned.

Question agreed to.

Bill read a second time.

**In Committee**

Bill—by leave—taken as a whole.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (7.50 p.m.)—At the outset, I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 25 November 2003. I seek leave to move government amendments (1) to (8) together.

Leave granted.

**Senator ELLISON**—I move:

- (1) Schedule 1, item 3, page 4 (lines 30 to 32), omit subparagraph (5D)(a)(ii), substitute:
  - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
- (2) Schedule 1, item 3, page 5 (lines 4 to 6), omit subparagraph (ii), substitute:
  - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
- (3) Schedule 1, item 3, page 5 (line 10), after “subsection”, insert “or subsection 269TC(9)”.
- (4) Schedule 1, item 3, page 5 (line 12), after “269TC(8)”, insert “, or the further period mentioned in subsection 269TC(9).”.
- (5) Schedule 1, item 3, page 5 (line 13), omit “that subsection”, substitute “subsection 269TC(8)”.
- (6) Schedule 1, item 3, page 5 (line 19), at the end of the note, add “Under subsection 269TC(9) the CEO may allow the exporter a further period for answering the questions.”.
- (7) Schedule 1, item 3, page 5 (lines 22 and 23), omit “This does not limit the matters to which the Minister may have regard for that purpose.”.
- (8) Schedule 1, item 7, page 6 (after line 28), after subsection (8) (after the note), insert:
  - (9) Despite the fact that, under subsection (8), the CEO has informed an exporter given a questionnaire that the exporter

has a particular period to answer the questions in the questionnaire, if the CEO is satisfied, by representation in writing by the exporter:

- (a) that a longer period is reasonably required for the exporter to answer the questions; and
- (b) that allowing a longer period will be practicable in the circumstances;

the CEO may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.

I thank the committee for that indulgence. In addressing these amendments as a whole, I have already stated that they came about as a result of the Senate Legal and Constitutional Legislation Committee recommendations and also consultation with various sectors of Australian industry and, of course, Chinese authorities. This bill was introduced on 12 December last year and, as I said, the Senate Legal and Constitutional Legislation Committee reported on 4 April 2003. It stated, amongst other things:

The bill would not significantly alter the existing anti-dumping and countervailing legislation contained in part XVB of the Customs Act 1901. To a large degree the Customs Legislative Amendment Bill and associated regulations will merely enshrine in the Customs Act and Customs Regulations ministerial guidelines on price control issued in December 2000.

Those guidelines are based on the European Union legislation and practice. This bill is necessary to overcome a legal risk that the plain meaning of the undefined expression 'price control' requires the government of a country with an economy in transition to act with the intention of influencing domestic selling prices. This is a stricter test than the one intended when the price control provisions were introduced in 1999. To overcome this uncertainty, the bill before us proposes to replace the term 'price control' with 'significant government effect on prices'. The

criteria for determining whether such an effect exists will be set out in regulations. This will assist in providing greater clarity and transparency for all parties in an antidumping investigation.

During the Senate committee inquiry, the Chinese government expressed concern that the Customs Legislation Amendment Bill (No. 2) might be more onerous than the existing legislative provisions, which have been in force since 1999. A process of consultation with China, Australian industry and consumer representatives was undertaken with the aim of clarifying points of concern. As a result of this consultation, three clarifying amendments have been identified. The first clarifying amendment is the removal of references to 'significant government effect on prices' and the insertion of references to 'market conditions do not prevail'. However, the criteria for determining these will remain unchanged in regulations.

The second clarifying amendment is that there will be clearer definition of the criteria by removing the scope for the minister to go beyond matters set out in the regulations. This change was sought by both Australian industry and China, and it speaks for itself. The third clarifying amendment was the inclusion of a provision enabling the chief executive officer of Customs to formally grant a request for extension of time for an exporter to respond to a request for information about matters set out in the regulations. This is in accordance with the usual practice of Customs in dealing with parties to an antidumping investigation, but it was felt that an express power was desirable in respect of exporters in economies in transition.

Australian industry has indicated its acceptance of the need for flexibility in this bill, provided that an effective antidumping regime is maintained to address the effects of government influence over prices in econo-

mies in transition. This addresses the fundamental tenet of antidumping rules—namely, the principle that a fair comparison should be made between the domestic selling price in the country of export and the export price into Australia. Australian industry understands that government influence over prices will continue to be addressed via regulations.

While sensitive to its continuing treatment as an economy in transition, China's Ministry of Commerce has acknowledged that Australia has listened carefully to China's concerns and that the proposed government amendment is a significant gesture. China would like to see changes to the criteria included in regulations but has been advised that this is not possible in the short term. China has also signalled its ambition to be acknowledged as a market economy. Its accession to the WTO provides for non-market treatments to be applied for up to 15 years unless China demonstrates that market economy conditions prevail within sectors of its economy. No other major antidumping administration is yet moving to accede to these requests. Hence, these issues remain the subject of continuing discussion with China.

As I said earlier, the recent trade and economic framework agreement that we signed with China was history in the making. It was an important development in our trading relationship with that country. Notwithstanding that, we had to have in place fair antidumping provisions which provided that accommodation of Australian industry and is something which is enshrined internationally in the WTO. We say that Australia does abide by its obligations. It is a shame that some other countries do not, but we do. This bill achieves a balance between encouraging continued trade with China and accommodating the interests of Australian industries, albeit that they have different views amongst themselves. I commend the amendments to the committee.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (7.57 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

### SPAM BILL 2003

### SPAM (CONSEQUENTIAL AMENDMENTS) BILL 2003

### Second Reading

Debate resumed from 13 October, on motion by **Senator Coonan**:

That these bills be now read a second time.

**Senator LUNDY** (Australian Capital Territory) (7.58 p.m.)—Both the *Spam Bill 2003* and the *Spam (Consequential Amendments) Bill 2003* are an attempt to address the growing issue of unsolicited commercial email, or spam—an unwelcome phenomenon that is costly to the Internet user and to the economy generally and that causes great annoyance, frustration and even offence to its recipients. I will go into the details of this problem in a moment, but I am certain no one would argue that spam is a problem that can be ignored. The issue of how we take on the spam problem is what we will be discussing throughout the debate on these bills.

Labor has consistently called for legislation as a key part of a broader approach designed to combat the growth of spam. But it is clear that legislation alone will not stop spam. It certainly will not stop it overnight. For one thing, most spam arrives into Australian computers from overseas, which is effectively out of reach of Australian law. However, Labor has always argued that leg-

islation would serve to achieve the following things. First, it would stifle spam originating in Australia. Second, it would set out clear legal avenues that individuals can pursue when seeking to address spam, and thereby reduce extralegal spam vigilantism. Third, it would make it clear that spam is unacceptable in Australia.

Anti-spam legislation would also provide a good basis for Australian negotiations with other countries on the issue. It would be an expression of forward thinking and, indeed, leadership. Labor are pleased that the Howard government has finally listened to our opinion and we support the general objectives of this legislation. However, while we agree with the goals of this package, we disagree on a few points in the detail. We will therefore be introducing some very constructive amendments, which I am very confident will improve the operation of these bills.

This legislation marks the end of a long wait for action from the Howard government. Back in February 2002 the former minister for information technology, Senator Alston, claimed to be concerned about spam. Later he promised a report from the National Office for the Information Economy 'to be made public by mid-year [2002]'. However, all that appeared in August 2002 was an interim report which recommended a continuation of the Howard government's light-touch approach to spam. One recommendation of this interim report actually said:

Regulatory agencies, in particular the Australian Competition and Consumer Commission (ACCC), Australian Securities and Investment Commission (ASIC), and the Office of the Federal Privacy Commissioner (OFPC), should be encouraged to fully apply existing laws to spam. But it was very clear at that time that the existing laws were not good enough. This issue required a tougher response and it was left to Labor to frame an appropriate response, one which advocated a strong new law to deal

with spam. That is why in December 2002 Labor released a discussion paper advocating tougher legislation to attack unsolicited emails and a legislative approach to do that. This was a key point of difference from the government position outlined up to that point in the interim report. In contrast to the government's position at the time, Labor stated:

While there are limitations to what legislation can do to enforce any kind of practice on the internet, as far as spam is concerned it can still have its place as part of a holistic approach to addressing the problem. A strong legislative regime specifically addressing spam [is] necessary.

The Howard government's response to Labor's position was to reverse its position—eventually. The final NOIE report released in April this year effectively endorsed Labor's contribution to the debate by reaching almost exactly the same conclusions as Labor had earlier done including that new anti-spam legislation should be enacted by government. Better late than never. It is that legislation that we are debating here and now in November.

It is difficult to get accurate figures for the extent of spam but most indicate that the incidence of spam is significant and rapidly increasing. For example, Brightmail Inc., an anti-spam firm, estimates that between February 2002 and October 2003—coincidentally, the length of time the government has prevaricated over this issue—spam has grown from making up 17 per cent of all emails to 52 per cent of all emails. That is a dramatic increase in anyone's language. If one considers the Australian Bureau of Statistics estimates that 4.4 million households and over 600,000 businesses had Internet connections in March 2003, and if one considers estimates from the National Office for the Information Economy that 75 per cent of Australians accessed the Internet in the first quarter of 2003, then it is obvious that there are a lot of Australians having to put up

with an extraordinary amount of rubbish clogging up their in-trays and in-boxes on their computers.

Let us be clear about this: it is rubbish, it is unwanted, it is certainly unsolicited. It is rubbish like unwanted advertising for products and services. There is a lot of adult content, and unwanted spam is a quite often a very unwelcome pathway into unwanted sexually explicit content on the Internet or even scams that constitute deceptive conduct. Whether they are originating here or overseas, some people still get drawn in by the scams, and spam email is the vehicle by which they get sucked in. It is rubbish that unfortunately consumers pay for. It is not just annoyance and frustration at the way junk mail can build up in your letterbox outside the front of your house. There is a direct cost for the consumer, the Internet user. The reason for this is that email comes through the telephone lines, and the usual way that people pay for those connections is either on a volume basis or a time basis. When spam comes down those telephone lines it takes time and it constitutes volume—and I will go into that in more detail later.

The cost of spam has been estimated as being quite extraordinarily huge. The United Nations has estimated the worldwide cost to Internet subscribers of spam to be in the vicinity of \$A28.4 billion a year. The National Office for the Information Economy quotes figures from October 2001 estimating the cost to business in lost productivity as a result of spam at \$A915 per employee each year. NOIE also quotes Erado's 2002 white paper on spam, viruses and other unwanted content, which estimated the annual cost of spam per employee at around \$US1,000 a year, or about \$A1,700—quite an extraordinary figure and cost to individuals, businesses and the economy generally.

To make matters worse, these costs almost always trickle down to the end user. Unlike physical junk mail, spam costs little for these people to send. It is not a huge investment. In fact for many it is not much of an investment at all for spam email to be generated. All the cost is borne by the end user either directly or indirectly through download times or as Internet service providers pass on the costs they end up paying for spam to their customers. This means that Australians are paying to receive in-trays and in-boxes full of unwanted email.

For example, just last week—and I think this explains it really well—I got an email from an Australian frustrated by the lack of action on spam. He said that on one day between 11 a.m. and midnight he had received 62 genuine emails and 229 spam emails. He said that that came to:

... 2.467 MB of junk. Clearly this is conservative as this doesn't include the spam I blew away between 7.00 am and 11 am.

He does a bit of math and concludes:

This is the equivalent of a conservative 49.34MB per month. Call it [roughly] 50MB. Telstra charges \$0.145 per MB when you are over the limit, so this equates to \$7.25 per month or \$87 per annum—roughly equivalent to one month's ISP access charge.

So you start to get a picture of the cost of spam on the recipient—on the consumer. This is an insight into how much this is costing generally. For this particular victim, this was apparently on a good day.

Owing to the ongoing increase in spam, it is clear that it will continue to be a costly, inconvenient and, for many, offensive problem. Labor do welcome, at last, the introduction of legislation to deal with this problem. We believe that with our very constructive and succinct amendments to iron out some of the creases, it will be part of what will be several effective steps to help government

combat the growing problem of spam and, indeed, to ultimately help consumers combat this problem.

There are two spam related bills currently before the parliament—the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003—and I would like to turn my comments to each of these briefly. The Spam Bill 2003 sets up a scheme for regulating the sending of commercial electronic messages, commonly referred to as spam, especially when unsolicited, sent from or into Australia. The regime is enforced by the Australian Communications Authority, or ACA, and contains a number of civil, as opposed to criminal, penalty provisions.

The main elements contained in the bill are, firstly, a prohibition on sending commercial electronic messages, either singly or in bulk, unless consent has been given or there is an existing business relationship. This is therefore an opt-in regime. The second element is the requirement that commercial electronic messages contain accurate information about the individual or organisation that authorised the sending of the message and a functional ‘unsubscribe’ facility. So if people are getting these messages and they have given the sender permission, they have the right to say to that sender, ‘We just don’t want to get any more of it,’ and that has to be respected. The third element is a prohibition on the supply, acquisition or use of software which harvests email addresses or a list of these harvested email addresses. This is a really important point, because the power of the technology that is used to create these email lists is unprecedented. It is not reliant on any huge investment in technology by the senders of spam; rather, it can be pulled together with off-the-shelf software or, indeed, freeware. So this legislation targets those who seek to harvest those email addresses or supply or sell them.

Certain emails are exempt from the regime: emails from government bodies, registered political parties, religious organisations, or charities or charitable institutions; emails relating to student or former student matters from educational institutions; and messages containing no more than factual information and that comply with the identification obligations under the legislation.

There is also a tiered enforcement regime available to the Australian Communications Authority, including a formal warning, acceptance of an enforceable undertaking, the issuing of an infringement notice, application to the Federal Court for an injunction and the commencement of proceedings in the Federal Court for breach of a civil penalty provision. The Federal Court may order an offender under the regime to pay a monetary penalty or may order compensation to be paid to a victim who has suffered loss or damage due to the contravention. The court may also make an order to recover financial benefits from an offender which can be attributed to a contravention of a civil penalty provision.

The Spam (Consequential Amendments) Bill amends the Telecommunications Act and the ACA Act for the purposes of investigating breaches and enforcing the regime. The main elements include: a framework to enable industry to develop codes to deal with the sending of commercial email based on part 6 of the Telecommunications Act; an investigation role and information-gathering powers for the ACA to investigate complaints relating to breaches of the Spam Bill and regulations made under that bill based on parts 26 and 27 of the Telecommunications Act; monitoring warrants to monitor compliance with the Spam Bill 2003 and regulations; and search warrants relating to breaches of the Spam Bill 2003 and regulations based on part 28 of the Telecommunications Act. As I am sure everyone is aware,

the explanatory memorandum goes into greater detail.

Labor are only too aware of the length of time—around 18 months—that the Howard government kept us waiting for the introduction of this legislation and believe there is some urgency in relation to this bill. Nonetheless, as I have already indicated, while we support the broad objectives of these bills we have some concerns about the detail, which needs to be addressed. That is why we have developed some constructive amendments to resolve some of the most pressing problems with this legislation.

I will outline briefly the nature of the amendments I will move in the committee stage, where I intend to discuss them more fully. They are informed by the Senate legislation committee process that we went through and the subsequent report produced. We heard from several witnesses, all of whom developed what I would describe as a general consensus around these issues of concern, upon which Labor have built these constructive amendments.

As currently drafted, the Spam (Consequential Amendments) Bill grants too much power to ACA inspectors investigating breaches of the Spam Bill. These excessive powers include: the power to search computer files held on a premises without a warrant and without the knowledge or permission of the owner of those files; the power to conduct similar searches to recipients of spam who have not been suspected of any breach of the Spam Bill; and the power to threaten individuals not suspected of breaching the Spam Bill with six months imprisonment if they do not provide passwords or encryption keys to computers. Remembering that even those found guilty of a breach of the Spam Bill are not subject to imprisonment, this punishment is excessive in that it does not relate to the original breach, which

involves civil penalties, and in that it could apply even if the individual genuinely did not know or could not recall the password.

Labor do not believe that these features of the bill are ill motivated in any way; it is more perhaps a matter of some unintended consequences of the drafting. Labor believe that these amendments will curb some of these excesses—I do not know whether they are unintended consequences but I am giving the government the benefit of the doubt—in an appropriate way in order to better protect the rights of Australians. It is quite alarming that the irony of this is that legislation designed to improve Australians' privacy in the fight against spam might inadvertently, or perhaps advertently, allow worse privacy intrusions by government bodies, and we cannot ignore this. Our amendments are designed to fix those problems.

The second area of amendments relates to exemptions for organisations. The Spam Bill currently exempts certain organisations—government bodies, political parties, religious organisations and charities—from its operation. It is our understanding that this is in order to avoid any possible restrictions on religious or political speech and freedom of speech, which to some degree are protected by the Constitution. For example, religious expression on the part of a religious organisation might arguably be restricted where a non-commercial message is combined with an invitation to participate in a fundraising activity. It crosses that line into what could be constituted as commercial. However, it is Labor's contention that if this reasoning is to be adopted for some types of organisations it should be applied consistently so that all organisations engaged in political or religious speech are protected. This is why Labor will be moving an amendment to ensure that political lobby groups, such as Ausflag, Amnesty International or trade unions, are afforded the same treatment as political parties

and other organisations as described. Labor will also be moving an amendment to ensure that these organisations are required to include an unsubscribe facility in their emails. It sounds like an anomaly—I understand there is a rationale there—but it should be included.

Labor have other concerns which we have addressed by drafting some additional amendments. These include provisions to clarify the regime in regard to single commercial emails and to tighten up the conspicuous publication exemption to the provisions relating to consent. I will discuss these amendments more fully in the committee stage of this debate.

As I mentioned before, Labor have always called for tougher legislative action to be taken to address spam, and for the most part we welcome these bills and will be supporting them. However, this does not mean we have cast an uncritical eye over them. We have found some flaws that we would like to amend and we look forward to the government's constructive participation in the process of improving this bill. The government's response to these amendments will be a test of its commitment to controlling spam. I look forward to the committee stage. *(Time expired)*

**Senator GREIG (Western Australia)**  
(8.18 p.m.)—The **Spam Bill 2003** and the **Spam (Consequential Amendments) Bill 2003** are important bills: spam is an expensive problem. Combined with malicious software such as viruses and trojans, themselves often transmitted via spam email, it is currently costing companies over \$US20 billion worldwide in indirect costs. Security companies have suggested that a real cost of \$US10 billion will be spent worldwide this year to filter malware and spam before it enters company servers, thereby reducing the

even greater costs that this would normally entail.

Some people have suggested that there is no need for such legislation or that such legislation will be ineffective. Some other people have attempted to quantify the percentage of spam that originates in Australia or is produced by Australian companies. The basis for much of this argument and investigation has been that the bill only attempts to reduce spam originating in Australia, yet they argue that most spam comes from overseas sources. These are surely amongst the very same people who were stunned a couple of weeks ago to discover that one of the world's largest spammers, a man who sold physical enhancement products of the sort referred to in section 6 paragraph 2 of the act, was in fact a resident of New Zealand. Perhaps they were also surprised by the extent of Australian involvement in the Nigerian banking scheme. The reality is that no-one knows the originating source of most spam. We can often find out which server spam is physically sent from and its location but not the location of the actual spammer.

One of the ongoing problems in this area has been the slow pace with which many Internet service providers have closed their systems to open relay. Open relays ensure that the physical location of the originating servers can be hidden. Telstra BigPond, for example, delayed the closure of its system to open relay use which allowed enormous quantities of external spam traffic to travel through its network while appearing to originate from Telstra BigPond customers. These clients were then charged by Telstra for bandwidth stolen from them as a result of this security lapse.

Controlling spam would seem at face value to be an impossible task. However, such is not the case and I would suggest that the prophets of doom in that area are quite

wrong. What is clear, however, is that it will take a multi-pronged approach if we are to be successful. International pressure has proved to be successful in forcing rogue Internet service providers that initially refuse to upgrade server security to ensure they are not being used as open relays to provide an acceptable level of security. This certainly helps local authorities determine local origins of spam.

However, the way to control spam in the first place is to remove the reward. No-one is going to go to the trouble of writing and sending spam or monitoring replies if they gain nothing in return. It is here that we can have some effect as legislators; it is here that the spammer can be reached. Eventually, a real person or company must present to collect the money, and it is here that the spammer is vulnerable. Sure, Australia cannot solve the spam battle unilaterally—no-one would suggest that. However, what we can do is make sure that no Australian or Australian company benefits from the use of this insidious form of privacy invasion. With no benefits, the temptation disappears.

The Australian Democrats and the people of Australia generally were hoping that the bill currently before us would represent an improvement in the government's IT management. It was only a few short months ago that the government's approach to spam was to just not open it and the suggestion to those who received it was just do not open it. That is not a fitting or adequate solution to a multibillion dollar a year problem. The bill represents a real change and a change for the better. There is much to be commended, and indeed we do so. However, we believe that it still short-changes the Australian people. The Democrats believe even the name of the bill is a misnomer; it should really be called the 'commercial spam bill'. That is the first major problem we identified with the bill as it is currently offered. It is not commercial spam

that Australians want banned; it is all spam. Regardless of how strong the desire may be for some to send it, I have heard of no potential recipients complaining that they will be stopped from receiving it if this bill is strengthened to ban all spam.

The second major flaw we identify is that this bill and the associated consequential amendments bill do give unprecedented powers of seizure—powers that, if implemented, could result in serious damage to innocent businesses. They are powers that ride roughshod across the rights of Australians and all they have come to cherish and value, and they are powers that were drawn up by someone not too familiar with the new technology and its uses in modern computing and storage devices. Such devices the act calls 'things'. It is for the purpose of preserving the rights of all Australians that we Democrats are proposing a series of amendments. Whilst removing an evil from society, we must make sure that we preserve the rights of Australians to privacy, the presumption of innocence and the right to carry on lawful business.

As has already been said of this bill, the devil lies in the detail. To read the bill by itself initially suggests no problems. However a walk through the related schedules and the consequential amendments bill suggests otherwise. The Spam (Consequential Amendments) Bill division 5A, section 547B paragraph (1)(c) gives an inspector the right during a search to 'inspect any document held at the premises'. Perhaps an initial scan of a document may be necessary to establish its relevance; however, the act says 'inspect any document'. Note that there is no requirement for the document to be relevant to the current or, indeed, any investigation. I find it hard to support the concept that the private emails between a husband and wife could be removed or copied with no requirement that they be relevant to the inves-

tigation at hand. Similarly this applies to many other documents that businesses are required to keep.

Modern data storage devices hold vast amounts of information. The same server may hold the details of many unrelated companies. IT magazines are full of advertisements for shared server facilities, an appropriate method of data storage for many small to medium sized enterprises. The removal of the server to investigate company B's information may also remove access for company C—a completely separate entity—whilst the owner of the server network may be a company totally unrelated to either company B or C. As a means of addressing this, the Democrats will therefore move an amendment that restricts the power to seize data to data which is relevant only to the investigation. We find a similar overarching authority in subsection 549 which requires a person to answer 'any question put by the inspector' and, further, to 'produce any documents requested by the inspector'. I will move amendments to restrict the capacity for this provision to be used as a fishing exercise for information. These amendments will also ensure that, in the absence of a search warrant specifically detailing what may be searched or seized, only an owner may consent to search and seizure of property.

I now move to the area of compensation for damage to equipment, where that damage is caused by insufficient care by the inspectors. Subsection (4) states that when determining compensation regard must be given to whether the owner's agent, if present at the time, gave any appropriate warning or guidance on the operation of the machine. This begs the question that the employee or agent knew what constituted 'appropriate warning or guidance'. A good security system contains a range of administrative protections that an employee or other representative may not be aware of. We will therefore

propose an amendment that reflects this fact to ensure that a person is not subject to prosecution for failing to provide security information they do not possess, and to also ensure that a failure to consult with the holder of full administrative access is considered when determining compensation for damages. To punish a person or company for maintaining strict security should not be a part of this or any bill.

Section 547H, regarding the occupier's entitlement to be present during a search, contains a logical absurdity. Subsection (1) states that 'the person is entitled to observe the search being conducted'. Subsection (3) says:

This section does not prevent 2 or more areas of the premises being searched at the same time.

Well, yes it does. Unless the two areas are contingent with no visibility impedance or unless the person is capable of being in more than one place at a time then this section most definitely does prohibit two or more areas being searched at the one time. We will of course be moving an amendment to remove that absurdity.

I now return to the core issue that we Democrats have with the bill. As I have said, spam is spam. It does not matter to the recipient how much the sender wished to send the spam. It does not even matter how important the sender considered the spam to be. Spam is spam. It may be in a good cause or it may be with criminal intent. It may advertise things of beauty or things of repugnance. However, the fact remains that spam is spam. Not because of its commerciality or otherwise—spam is spam because it is unsolicited bulk email. And this bill should be about stopping spam of all kinds.

Instead the government has restricted the bill to commercial spam and, in the process, is introducing a whole new class of exempted uber spam—that sent by political

parties, religious organisations and charities. The opposition, I understand, want to extend this further to include trade unions. We argue that spam is spam whether it is pressing for votes, viagra or the Vatican. This class of uber spam is so powerful that it even breaks new anti-spam laws in many countries which require a functional unsubscribe facility. Not only can this new class of spam be sent unsolicited; it does not need to carry any functional unsubscribe facility.

The Minister for Communications, Information Technology and the Arts in a press release of 19 November claimed that we Democrats were confused about the intention of this bill after we claimed the day before in a press release that it offered a free kick to the religious right. He suggested that because the bill only relates to commercial spam our claim was false and absurd. The bill, he argued, was carefully drafted so as not to impinge on free speech.

Why then contain any exemptions for those organisations? What possible reason could there be? The reason is that exemptions give charities and religious organisations the special right to send spam for commercial purposes—for example, fundraising—with no requirement to provide an opt-out facility to recipients, whereas other non-charitable, non-religious organisations will not be able to do so. These organisations will be able, unhindered, to spam the entire Australian community calling for donations for their conservative causes such as anti-abortion, anti-gay law reform and anti-euthanasia, whereas pro-choice, civil liberty, human rights groups would not be afforded the same right. We Democrats are deeply opposed to such a move, and we reject it outright.

This concept appears to be lifted from the do-not-call regulations of the Federal Trade Commission in the United States where it

was widely seen as a sop to the religious right. I believe the people of Australia do not want to be spammed by the religious right in Australia any more than the majority of Americans want to be phoned by them in that country. If they wish to communicate with each other then that is entirely their right, however I do not want to use up my bandwidth, and nor do most Australians, downloading material that we find offensive. I believe that is how most Australians feel about the proposed exemptions.

When you consider that the average person receives many emails every day we can start to see where the cost arises. Okay, so they do not reply to them, but the time wasted combined with lost bandwidth is an unnecessary expense to business and to the broader community. Just one silly hoax as you may see from time to time probably costs the taxpayers of Australia the equivalent of a week's full-time work for one employee when you single out particular examples. Business does not hire people to read email hoaxes. It is time to stop the plague. Let us finish this beating round the bush and ban all spam. The bill before us does not aim to do that. It ought to and it remains the position of the Australian Democrats that spam should be banned outright without exemption and without apology.

**Senator KIRK** (South Australia) (8.34 p.m.)—I also rise to speak this evening on the *Spam Bill 2003* and the *Spam (Consequential Amendments) Bill 2003*. As other speakers have said tonight, spam is a very serious issue for the Australian community. Email is a unique and powerful tool for communication, and in a country the size of Australia the ability to instantaneously send text, pictures and other types of data over long distances, at virtually no cost, is invaluable. Email allows families and friends to stay in touch with each other when they are apart. It allows members of the community

to communicate easily with the government, the media and each other, creating new kinds of social and political discourse. It allows business and government to communicate more efficiently both internally and externally.

Unfortunately, however, the very characteristics that make email so useful—its low cost and its high speed—have also made it easy for a small number of individuals to abuse the system with the aim of making fast money. It has been estimated that about 50 million emails are received every day in Australia and that up to a third of those are unsolicited commercial messages.

It is commendable that the government has finally decided to take some serious action against unsolicited commercial emails. However, this bill is, of course, several years too late, but this is appears to be par for the course when it comes to the government's approach to technology issues. It is perhaps worth briefly reviewing the ponderous path that eventually led to the legislation before us today. The government initially gave us the feeble e-commerce best practice model for business—a voluntary and unenforceable code of practice—which in 2001 was described by the then minister for consumer affairs as a tough approach on spam. It is clear now, as it was then, that this was a naive and inadequate response to a growing problem designed simply to create the impression that the government was reacting to the problem of spam.

The code of practice was not backed up by any regulatory powers and as a voluntary scheme was never likely to be adopted by the kinds of individuals and businesses involved in sending large numbers of unsolicited emails. In light of its failure, the code of practice was quietly put to one side and the issue was passed on to the then Minister for Communications, Information Technology

and the Arts, Senator Alston. In February of last year, the minister announced that the National Office for the Information Economy would investigate and report on the problem posed by spam.

Although the National Office for the Information Economy published its interim report in August of the same year the minister somehow managed to hold up the final report until April of this year—well over a year after it was originally commissioned. It then took another half a year for the government to get around to introducing legislation—hardly the kind of response that might be expected from a government that presents itself as the friend of business at a time when it is estimated, as Senator Lundy pointed out, that spam is costing Australian companies over \$900 per employee annually in lost productivity.

The speed of the government's response appears even more glacial when it is considered that the serious economic and social problems posed by spam were widely recognised as early as 1996. The Federal Trade Commission in the United States was holding hearings into the effects of spam in June 1997. Nevertheless, at long last we have the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003 before us this evening. Labor offers its support for the general aims of these bills, which are to regulate the sending of commercial email in Australia and to provide an enforcement regime to help reduce spam.

It is clear that this type of legislation is necessary. Self-regulation is an unrealistic proposal in the chaotic realm of the Internet, and technical solutions are presently unable to effectively deal with the problem of spam. In the absence of a significant worldwide change in the basic technology behind email, countries like Australia must take such measures to improve the situation domesti-

cally, and as such it is a step in the right direction that we are belatedly considering this bill here today. Unfortunately, both the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003 suffer from problems caused by poor drafting, an apparent misunderstanding of the subject matter and a failure to adequately consider the civil liberties of Australians.

I would like to spend the remainder of the time I have to speak in this debate today raising some of these issues in detail and urging the government to accept amendments to the legislation to make it more effective, balanced and fair. In particular, I would like to draw attention to three main areas. Firstly, the effect of the exceptions in the legislation for exempt organisations such as religious, charity, political and government bodies in schedule 1, paragraph 3(a) of the Spam Bill 2003 unfairly exempt some organisations and not others. Secondly, the clause in paragraph 18(1)(b) of the bill compounds this problem and means that messages from exempt organisations are not required to include a functional unsubscribe option to allow recipients to opt out of future mailings. Finally, and perhaps most seriously, certain provisions of the Spam (Consequential Amendments) Bill 2003 have the very real capacity to arbitrarily and unnecessarily impinge on the freedoms of Australians through the inclusion of poorly drafted search and seizure powers.

Schedule 1 of the Spam Bill 2003 sets out a definition of the kinds of electronic messages that are to be covered by the rules relating to unsolicited email. Regardless of the nature of the organisation sending a message, the bill only relates to those messages that are commercial in nature. Paragraph 3(a) of the schedule states that a message is exempt from the operation of the legislation if:

(a) the sending of the message is authorised by any of the following bodies:

- (i) a government body;
- (ii) a registered political party;
- (iii) a religious organisation;
- (iv) a charity or charitable institution.

The effect of this section is to allow the government, political parties, religious groups, and charities to send unsolicited commercial messages. I would like to emphasise the word 'commercial' because I think it is very important to point out that we are not talking about unsolicited messages containing non-commercial information such as government, political or religious ideological information, or free educational information. Even without the exemption in schedule 1 there is nothing to stop a government body sending unsolicited information about a free government service, to use one example. It is somewhat harder to understand why such exempt groups should be allowed to send unsolicited messages relating to goods and services. It is debateable whether there is any good reason why a political party or religious group should be allowed to send unsolicited messages in an attempt to sell goods, whereas an ordinary business cannot.

This point aside, the exemption in paragraph 3(a) is inherently skewed and uneven. The exclusion of trade unions and non-profit political lobby groups, which Senator Lundy referred to, is at best a sloppy oversight and at worst suggests a calculated attempt to marginalise groups of a certain ideological bent. It is very hard to understand how it is acceptable for a church or a political organisation to send unsolicited commercial messages but it is not acceptable for a union, a women's rights organisation or an Aboriginal rights group to do the same thing. The explanatory memorandum accompanying the bill refers to a desire to ensure that there is 'no unintended restriction on ... religious or political speech'. Therefore, in the interests of fairness and to allay fears of ulterior mo-

tives, which I am sure the minister will tell us are unfounded, I urge the government to accept an amendment to include these groups among the exemptions listed in schedule 1.

I now turn to paragraph 18(1) of the Spam Bill. This section creates a requirement that commercial electronic messages contain a functional facility for recipients to elect not to receive future messages—a so-called opt out or unsubscribe facility. This is a wholly sensible requirement and the government is to be commended for its inclusion. It is a sound principle that email users should have the right to decide who they will receive messages from, and the ability to prevent certain organisations or individuals from sending them messages in the future. Unfortunately, there is a problem with the section that constitutes a significant deviation from this principle and creates a loophole by which it may be possible for an organisation to send unsolicited commercial messages without giving the recipient any opportunity to decline future mailings. I have already discussed the exempted organisations defined in schedule 1. Paragraph 18(1)(b) provides that these organisations are not only exempted from the prohibition on sending unsolicited commercial messages but are also exempted from the requirement that a functional unsubscribe facility be supplied.

It is very hard to see the logic behind this loophole. Even if we accept the premise that certain groups should not be precluded from sending unsolicited commercial electronic messages, what possible basis is there for preventing Australians from requesting that particular groups do not send them messages in future? Once again I would emphasise that the messages in question must be commercial in nature. Is the government seriously suggesting that it is a good idea to effectively force Australians to receive electronic messages advertising goods and services simply because they happen to come from a reli-

gious group, charity or political party, even when they actively wish not to receive those messages?

In considering this, it should also be noted that Australia is home to a great deal of religious diversity and that, in enforcing laws relating to religious groups, courts have consistently given considerable latitude to groups claiming to be religious in nature. This raises the possibility that individual Australians may effectively be forced to receive unsolicited commercial messages from religious or pseudo-religious groups whose beliefs or practices they find offensive or provocative. Under the proposed regime, a person receiving such messages will be unable to request that the group in question cease sending those messages. The government should support an amendment to the bill requiring that all unsolicited commercial electronic messages provide a functional unsubscribe option.

Finally, I turn to the *Spam (Consequential Amendments) Bill 2003* and the search and seizure powers contained therein. This bill contains the kind of poorly drafted, poorly thought-out provisions that bring to mind the disregard the government has often shown for the civil liberties of Australians in other legislation—most notably in the original version of the ASIO bill. The Telecommunications Act 1997 currently contains provisions allowing inspectors to exercise search and seizure powers with respect to technical regulations in that act—for example, where equipment has been illegally connected to the telecommunications network. However, the amendments proposed by the government in this bill would expand the way in which those search and seizure powers could practically be used to include inspection or seizure of a significant number of personal possessions, such as the information stored on a computer.

Furthermore, the proposed changes would allow for such searches to occur without a warrant where the consent of the owner or occupier of a property is obtained. In the context of illegal telecommunications equipment, this type of arrangement is logical, because such equipment is typically attached to a permanent line in a particular property and so the consent of the owner or occupier of that property is logically connected to the removal of the need for a warrant. But this is not the case with electronic messages. The physical location of a computer is utterly irrelevant to the sending or receipt of an electronic communication. As the bill stands, however, a landlord or even a co-tenant would be able to give consent for inspectors to search or seize a computer owned by another person and, by giving that consent, remove the requirement that a warrant be obtained as per section 542.

As if allowing a landlord or house mate to approve the search or seizure of the personal property of another without a warrant were not enough, in its current form the Spam (Consequential Amendments) Bill 2003 appears to authorise searches of the personal property of someone who has received a prohibited electronic message. All that the legislation requires to enliven the powers set out in sections 535 and 542 is that the powers be used with respect to a thing that is 'connected with a particular breach of the Spam Act 2003'. This could apply equally well to the computer of a person who has received spam and to the computer of the person or business sending it. This is nothing more than sloppy, poorly thought-out drafting, and it highlights the fact that the government will happily ride roughshod over the civil liberties of Australians in pursuit of other objectives. It should be quite obvious why this is an inappropriate and unworkable provision.

In order to strike a better balance between the rights of Australians and the need to fight spam, the bill should be amended to require a warrant in all searches relating to the Spam Bill 2003 and, further, to allow search and seizure powers to be exercised only with respect to items used in the sending of unsolicited commercial electronic messages. As Senator Lundy has foreshadowed, Labor proposes these amendments in a spirit of cooperation and on the basis that the fundamental aims of the bills before the Senate are sound and constructive. I urge the government to view these amendments as they are intended: not as an exercise in negativity and not as elements of a competing policy but as an attempt to produce good legislation that best serves the Australian community.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.49 p.m.)—I thank those who have spoken on the Spam Bill 2003 and the Spam (Consequential Amendments) Bill 2003 and I thank the members of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, which examined these bills. I think there is agreement that we delay the committee stage, so I will not discuss the bills in any detail now. I just indicate that, as advised by the Minister for Communications, Information Technology and the Arts, the government's position is that we have examined the amendments that have been proposed by the Labor Party and the Democrats and, while we are not agreeable to those amendments, they can be debated at the committee stage.

The government has spent a lot of time developing a comprehensive response to what is a very live issue. It acknowledges that, and I think everybody here acknowledges that. At least the opposition have given the government some credit for this legislation—at least Senator Lundy did, if not Senator Kirk. It is of course quite tricky

to get the right balance between the rights of Australian consumers and those of legitimate marketers who are using the Internet for marketing purposes. It is an obvious and legitimate way to market, but we all know the problem that spam is causing—and that is what this bill is about. Given that there is general concurrence with the intent of the legislation, I think that debate on the detail of amendments should be left to the committee stage. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Ordered that consideration of these bills in Committee of the Whole be made an order of the day for a later hour.

**FAMILY AND COMMUNITY SERVICES AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (2003 BUDGET AND OTHER MEASURES) BILL 2003**

**Recommittal**

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.51 p.m.)—I seek leave to move a motion to recommit the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003 and to provide for the reconsideration of schedule 6 of the bill.

**Senator MACKAY** (Tasmania) (8.52 p.m.)—by leave—The Labor Party have no problem with that. However, we would appreciate an explanation, which I think is the normal procedure, as to what happened with that particular division. I see that the Government Whip is now organising that. Obviously these sorts of things do happen from time to time, and they are unfortunate. The normal procedure would be for the senator who missed the division, or who caused the division not to constitute the will of the Senate more generally, to perhaps come in and

give the Senate an explanation as to why that occurred. That has certainly happened on several occasions in my time. That allows us a modicum of internal discipline, with respect, which is very handy for the whips and the managers in the Senate in ensuring that people do understand how important it is for people to make themselves available in divisions. As I said before, this is a normal procedure; it has happened on several occasions. We are aware that senators often do get caught in unfortunate and difficult circumstances. I do not think that anybody would have a particular problem with that. However, on behalf of all senators here, we would appreciate an explanation from the offending senator, Senator Heffernan, who has arrived. With those few words, I will sit down and allow Senator Heffernan to throw himself on the mercy of the Senate.

Leave granted.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.54 p.m.)—I move:

That the bill be recommitted immediately and the committee reconsider schedule 6 of the bill.

**Senator HEFFERNAN** (New South Wales) (8.54 p.m.)—I apologise to the government, the Senate and everyone in the chamber for missing the division. My personal explanation is that I do not know where I was at the time. I did not hear the bells and I did not have my beeper on, so I am not too sure at what stage of the game I missed the division. That is the honest truth; it is no more complicated than that. I have obviously been in the building. I must have been somewhere where I did not hear the bells, the noise was too loud or whatever. I throw myself on the mercy of the chamber and humbly seek your indulgence to resubmit this important amendment from the government's point of view. I cannot add anything to further my explanation, because it

would be only a series of words that would not mean anything. I honestly did not hear the division and missed it, so there you go.

Question agreed to.

Question put:

That schedule 6 stand as printed.

The committee divided. [9.00 p.m.]

(The Temporary Chairman—Senator A.B. Ferguson)

Ayes.....	32
Noes.....	<u>28</u>
Majority.....	4

AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Chapman, H.G.P.	Colbeck, R.
Coonan, H.L.	Eggleston, A.
Ellison, C.M.	Ferguson, A.B.
Ferris, J.M. *	Harradine, B.
Harris, L.	Heffernan, W.
Humphries, G.	Johnston, D.
Lees, M.H.	Lightfoot, P.R.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Murphy, S.M.	Patterson, K.C.
Payne, M.A.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

NOES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.
Brown, B.J.	Buckland, G. *
Campbell, G.	Cherry, J.C.
Cook, P.F.S.	Crossin, P.M.
Evans, C.V.	Forshaw, M.G.
Greig, B.	Hutchins, S.P.
Kirk, L.	Lundy, K.A.
Mackay, S.M.	Marshall, G.
McLucas, J.E.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Stephens, U.
Webber, R.	Wong, P.

PAIRS

Campbell, I.G.	Sherry, N.J.
Hill, R.M.	Faulkner, J.P.
Knowles, S.C.	Carr, K.J.
Macdonald, J.A.L.	Collins, J.M.A.

\* denotes teller

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

**Third Reading**

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (9.04 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**BUSINESS**

**Rearrangement**

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (9.04 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 13 (Fuel Quality Standards Amendment Bill 2003) and no. 17 (Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003 and a related bill).

Question agreed to.

**FUEL QUALITY STANDARDS AMENDMENT BILL 2003**

**Second Reading**

Debate resumed from 16 September, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

**Senator FORSHAW** (New South Wales) (9.05 p.m.)—I am indebted to the Minister for Finance and Administration, Senator Minchin, for moving the interruption to business tonight to bring on the **Fuel Quality Standards Amendment Bill 2003**, because I know how terribly interested he is in this

legislation, and I am sure he is going to be sitting here and listening with great attention to the remarks I am about to make.

**Senator Ian Macdonald**—You've got the expert here to listen to.

**Senator FORSHAW**—I have just found out that I have Senator Ian Macdonald here, so I will probably get through this very quickly. I rise to speak on the Fuel Quality Standards Amendment Bill 2003 and I particularly want to address the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on this bill. I will, at the conclusion of my remarks, be moving a second reading amendment to this bill which I understand is now being circulated in my name.

Let me say at the outset that we support the introduction of a national mandatory labelling regime for blended fuels. Indeed, in September last year, Labor announced a policy on the introduction of capping ethanol blended fuel to 10 per cent and also a labelling system. Our position has not changed, and we have consistently called for consumer protection in this area. But, unlike their quick and extensive action to protect their mates when a shipload of Brazilian ethanol was steaming towards Australia, on consumer protection the Howard government have been slow to act. They were quick to act when it suited them with respect to that particular shipload of ethanol from Brazil, but with respect to the broader interest of consumer protection for the Australian community they have been very slow to act—it has been at a snail's pace. We have finally tonight got this legislation before us.

In December last year Dr Kemp, the Minister for the Environment and Heritage, called on state governments to introduce mandatory labelling and indicated that the federal government would take action if the

states failed to shoulder what is really a Commonwealth responsibility. Three months later, in February 2003, Dr Kemp announced that the federal government would introduce a national mandatory labelling regime for blended fuels and that relevant legislation would be introduced at the resumption of parliament this year. Evidence provided at the committee inquiry by officers of the Department of the Environment and Heritage asserts that the department commenced preparation for the introduction of this policy in January 2003—11 months ago. In April 2003, five months after Labor, Dr Kemp finally announced the capping of ethanol blended fuel to 10 per cent and reannounced the introduction of a national mandatory labelling regime.

The Fuel Quality Standards Amendment Bill 2003, the bill we are debating here tonight, was introduced into the parliament on 26 June 2003. It was introduced on the last sitting day of the winter session. Dr Kemp and the Department of the Environment and Heritage have been developing the relevant material for this bill since January of this year. The department, however, advised the Senate committee that it was yet to prepare draft regulations or propose labels, because to date it had not been instructed to do so by the minister. Labor considers that without draft regulations and labels the committee—and, indeed, the parliament—has not been given significant information to fully understand the labelling regime that this legislation will put in place.

I understand that prior to the committee's public hearings the committee discussed the benefits to its deliberations of being able to consider the draft regulations and proposed labels at the inquiry. To this end it was resolved that the chair of the committee would request the minister to release such information. Despite the committee's request, the minister has consistently refused to make

draft regulations or proposed labels available to the committee for consideration with this legislation. It is not unprecedented that draft regulations be released at the same time that legislation is being considered in the parliament. Indeed, I am sure all of us who are in the chamber tonight—and those of us who have been in this parliament even a short time, let alone for a number of years—agree with the proposition that, when legislation is being introduced into the parliament, if it is necessary to have draft regulations accompanying that legislation they will also be made available for scrutiny by senators and by the relevant Senate committee. As we know, it is often in the detail of the draft regulations that the real aspects of the enforceability and the application of that legislation are contained.

From time to time, even this government, the Howard government—who seem to believe only whilst they are in office—have made a show of caring about good public policy outcomes. They have, on occasions, released draft regulations to allow the parliament to determine more fully how legislation will actually work and how it will impact upon the Australian people. We consider that the release of such information is entirely reasonable. Indeed, we actually go further and say that it is absolutely necessary. It is only understandable that the parliament and the Senate should be frustrated at being required to consider legislation at this point in time without being provided sufficient information to fully assess any draft regulations as to how such legislation would be implemented. I also wish to highlight that the Department of the Environment and Heritage has been working on the implementation of a national mandatory labelling regime for most of this year. But I also have to point out that it has not yet been asked to prepare draft regulations or proposed labels. Officers of the department clearly indicated to the Senate committee that once the legislation has

been passed by the parliament, then draft regulations and labels could be swiftly provided. That is not good enough.

The principal operation of this bill is to introduce consumer protection labelling for ethanol blended fuel. There has certainly been legitimate public concern over ethanol. On the one hand, the debate has focused on the way that the Prime Minister has entered into deals behind closed doors, and I believe misled the parliament and the Australian people. Ultimately, we have seen taxpayers' money used to help mates of this government. The debate has also focused on the safety of various ethanol blends used in petrol. In this case, the issue of consumer awareness has been of primary importance to Labor. It has not been so for the Howard government.

Minister Kemp called in December 2002 for action to be taken. He has repeatedly announced the government's intention to introduce mandatory labelling for ethanol blended fuel since February 2003. However, when it came to the committee hearings on this matter, the department was unable to explain to the committee why it was that the introduction of this bill was delayed until 26 June 2003. Given that the department advised that it can quickly produce draft regulations and labels once instructed, and that to date it has not been instructed by the minister to do so, we are compelled to conclude that for some reason the minister wishes to delay the introduction of a national mandatory labelling system. I will listen with interest to hear the reasons why that is the case when the minister responds at the conclusion of the second reading debate.

Labor are concerned to ensure that this legislation will provide consumers with information and protection, and it was for this reason that we referred the legislation to the Senate committee. The minister has repeat-

edly claimed that we delayed the implementation of a national mandatory labelling system by referring the bill to the committee. Clearly the evidence is to the contrary. The committee heard evidence detailing the inaction of the minister in providing instructions to his department and the late introduction of the relevant legislation. Clearly that inaction is the real reason for the delays in consumers being able to make informed choices about the fuel they buy and put into the tanks of their cars. We will continue to call on the minister to release those draft regulations and those proposed labels in order to expedite the passage of this bill and the introduction of mandatory labelling of blended fuels. I said at the outset that we were intending to move a second reading amendment, which has been circulated in my name. I now move:

At the end of the motion, add:

“But the Senate notes:

- (a) the failure of the Federal Government to protect Australian consumers by delaying the implementation of a mandatory national labelling regime for ethanol blended fuel despite the repeated public assurances of the Minister for the Environment and Heritage;
- (b) the decision by the Howard Government to continue to protect the interests of the ethanol industry by continuing to subsidise the industry while failing to provide adequate protection for consumers;
- (c) the failure of the Federal Government to release the proposed regulations that will determine what labelling information consumers will be given;
- (d) the Government's general conduct in developing its ethanol policy behind closed doors in a clandestine manner; and
- (e) calls on the Government to release the regulations immediately to

ensure public scrutiny of their proposals”.

**Senator ALLISON (Victoria) (9.17 p.m.)**—I also rise to talk on the **Fuel Quality Standards Amendment Bill 2003**. This bill, as we know, has been around for some time and is part of the mess, as I think we can describe it, that is the current situation for alternative fuels and ethanol in particular. The purpose of the bill is to set out a framework which will provide for determinations to be made that set fuel quality information standards for specified suppliers of specified fuels. The minister said in his second reading speech:

This is a flexible mechanism and, in the first instance, will be used to set parameters that will apply to the labelling, at the point of sale, of ethanol blends.

One of the major problems with this legislation, which the Democrats will move to amend to get it right, is that very approach—that is, that it will be used in the first instance to label, at the point of sale, ethanol blends. One of the problems with that approach is that, rather than it being about informing consumers about what is a desirable fuel to use and what are the benefits of one fuel over another, the intention is to use this framework to warn motorists about the fact that a fuel is an ethanol blend.

The reason we are in this situation is that the ALP has run a pretty effective scare campaign over the whole business of ethanol blended petrol. Despite the fact that we think labelling is a terrific idea, and we would be the first to say that consumers should be entitled to know what is in the fuel that they get and the relative merits of different fuels, we do not support a labelling system which singles out one fuel additive without considering the many hundreds of components in the fuel. Why say, for instance, that a petrol has ethanol in it and not say what else is in that fuel?

There are some fuels which would have more than 100 components to them, so we recognise that this would be problematic. However, the approach that has been taken by the government, aided and abetted by the ALP, is that this labelling is a warning much like you would get on tobacco products—a warning label saying ‘beware’. We think this is a very serious problem, especially given the lack of confidence in the industry at the present time thanks to the sort of scaremongering that has gone on. We would like to see a label which genuinely informs consumers about fuel quality and fuel efficiency.

Let me refer to the web site of a major fuel supplier, BP. If consumers were to go to this web site, they would find that most BP stations would make four different petrols available to consumers. The first of them is BP lead replacement petrol, otherwise known as super. The web site says that it contains no lead and ‘lower benzene and sulphur’. The web site also mentions BP regular unleaded petrol. It says:

BP Regular Unleaded Petrol was introduced in 1986 to enable new vehicles to operate with a device known as a catalytic converter which was designed to lower emissions ... BP Regular Unleaded Petrol contains a detergent additive to keep your injectors and inlet valves clean and maintain performance.

Again, you will not know this if you just rock up to your petrol station. BP also offers as a product BP premium unleaded petrol. The web site says:

BP Premium Unleaded is a special blend of petrol designed to bring high octane and knock free performance to unleaded cars with a high octane requirement. BP Premium Unleaded is seasonally blended to help cars start easily, and because of the higher energy content, gives the potential for a reduction in fuel consumption all year round.

Then there is BP Ultimate. The web site says that BP Ultimate is:

... a very powerful, high octane (98 RON), unleaded fuel that maximizes engine power and performance. BP Ultimate’s unique formula also produces less pollution than any other Australian petrol.

Not surprisingly BP Ultimate™ is the only fuel to receive the Australian Greenhouse Office’s ‘Greenhouse Friendly’ certification. Plus, every time a BP plus card customer buys BP Ultimate, BP invests 1-2 cents per litre in a range of independently audited environmental projects which offset cars’ greenhouse gas emissions.

That is just one example of the range of petrol products which are available at your average petrol retailer.

As I said, we are now focusing on ethanol blends because of the scare campaign that the ALP—and some of the motoring groups—have run. The claim has been made that ethanol is harmful to cars. In some states, quite large ‘Guaranteed no ethanol’ signs have appeared at petrol stations around the country. This is despite the fact that ethanol is widely used, promoted and accepted in many other countries around the world. Ethanol is mandated in many states in the United States and it is being considered by at least one Canadian province at the present time. It has been used in Brazil for more than 30 years.

What are the benefits of ethanol? It is an oxygenate, for a start, and that means that it makes fuel burn much more cleanly. It raises octane levels whilst eliminating the need for harmful chemicals such as benzene, toluene and xylene. They are all carcinogenic substances. If you look at the fuel that I just mentioned—BP’s high-octane fuel, BP Ultimate—you will probably find that those are the additives which increase the oxygen level in that fuel. It would be much more sensible for people to be encouraged to use ethanol blends rather than those additives. Ethanol also reduces carbon monoxide and other harmful greenhouse gases. It is a renewable

fuel, of course. It can be made from a range of sources. One that we have been using in this country for almost a century is molasses, a sugar by-product. We have been using it and exporting it from this country in large quantities for a great number of years. Mostly it ends up in spirits.

**Senator Forshaw**—Sake.

**Senator ALLISON**—Sake, yes. Wave over a little bit of flavouring and it becomes sake. I am sure they do other things to it, but it is the case that it is a very high use of what is a by-product. It is also possible, as we know, to make ethanol from a range of materials, some of which are waste products from agricultural activities. Our technology has become better and better at turning these waste products into usable ethanol and other by-products. The production of ethanol from grain can result in a very good feedstock for animals which, I am told, is particularly valuable because it sits in the second stomach of the cow. This makes it very valuable as a stock food, particularly for dairy cows. And, obviously, ethanol is renewable. The more we can displace fossil fuel petroleum products in this country, the closer we will get to sensible greenhouse reductions and the closer we will be to being self-sufficient in transport fuel. Of course, the greatest reason for supporting ethanol is the fact that it provides rural and regional communities with job creation prospects. It also provides farmers with additional income and an opportunity to diversify their crops. And, importantly, in times of drought, it allows the water-intensive cotton industry, for instance, to grow crops such as sorghum, from which ethanol can be produced. The last time this issue was debated in this place, the ALP was again scaremongering about the effect of using grain on the meat industry, the beef industry. None of that is justified.

As I said, the reason we think that the proposal that has been put forward is flawed is not that we do not want to see a labelling system. We do; we think it is a very healthy thing for consumers—motorists—to know what is in their petrol, know the effect it has on the environment, know the effect it has on asthma rates in this country and have a sense of doing the right thing and being able to recognise when that is the case. At the present time, that is impossible. If we just focus on ethanol, then, firstly, we will exacerbate the current lack of confidence in the fuel, which is quite unjustified, and, secondly, we will not educate consumers to make the right choices or the best possible choices.

As I understand it, the current situation is that the Energy Task Force has been working on a proposed fuel quality standard label. Again, it is just for ethanol; the task force is not looking at the broader picture. The label will be mandated at the point of sale. As I understand it, two labels have been proposed, and there has been a compromise, as is so often the case when you get a proposal which has to be agreed to by consensus between two groups that perhaps might have opposite interests and opposite viewpoints. We understand the situation to be that the labels have been a compromise between the label that the ethanol producers and promoters wanted and the label which the automotive industry cynics are proposing. The Energy Task Force apparently could not decide on what a final label should look like; it has left it to the minister to do that and to discover what the preferred label should be. It is also my understanding that there is no time frame in place for that final decision to be made.

It is also the fact that the industry is somewhat disgruntled that so much work, effort and argument is going into a labelling system which is likely to do further damage to the ethanol industry. A great deal of work

is going into this labelling system, but there is very little on the much more important question of what the excise rates on alternative fuels will be. The proposal we are debating tonight may be a pointless exercise if, at the end of the day, we have no alternative fuels and no ethanol in our fuel mix. If, by 2008-12, that industry ends up with an excise which puts it out of business, we are all wasting our time here.

Part of the scare campaign here has been the misuse of information to do with whether or not ethanol blended petrol is harmful to cars. As was pointed out the other day, many countries have been using ethanol blends for a very long time. In fact ethanol fuels have been in use here even at higher levels than 10 per cent for a long period. Yet no-one can stand up in this place and point to specific instances where cars have been shown to have been damaged by using ethanol blends.

A vehicle list was being prepared based on testing, and a lot of testing has been done over time. In fact the original Ethanol Development Board was set up to do testing way back in the early 1990s. Its purpose was to test vehicles and to come up with both fuel standards and an understanding of which vehicles could run safely on ethanol. Auto manufacturers were still in the process of consulting component manufacturers and their head offices overseas to determine which models would run safely on ethanol. A preliminary list, which was not by any means complete, was leaked and used by the auto industry and the ALP to cause a great loss of consumer confidence in the ethanol industry.

The Energy Task Force, as I understand it, has gone back to work and the FCAI is currently working on a second list. They are currently in the process of consulting engine manufacturers, components manufacturers and the like, and I would be very surprised if the final list which is produced does not

show that the vast majority of vehicles can run on ethanol. In fact they will probably run much better than on non-ethanol blends.

The problem here is that perception becomes reality. The media often does not print all of the details, all of the arguments or a balanced account of the current situation, and so a lot of people have simply picked up on the general message. Perception is reality, and perception at the present time is that they are being ripped off if they are using ethanol blended petrol and, added to that, that there is a danger their vehicle will somehow be damaged.

One of the problems here is that the process for determining that list is being conducted behind closed doors between auto manufacturers, their head offices and components manufacturers, and I think it is regrettable that that process is not an open, transparent or independent one. You could ask why it is that models in other countries that are already running on ethanol, and are recommended by manufacturers to be running on ethanol, are somehow on the other list in this country so far. We do not have any idea when that list is going to be finalised. At the very least we should not move on labelling for ethanol until we have had a good promotional campaign and a good reassurance promotion that makes sure that whatever labelling is put in place does not do further damage to the industry.

It has been suggested to me that part of this problem is the lack of communication between government departments. It has been suggested that the auto industry has been slow in responding to questions and, all in all, there is not as much of a sense of urgency in getting this right as there ought to be. The fact of the matter is that motorists in other countries drive cars which burn cleaner fuels, and in Australia there are major barriers to doing that.

In submissions received by the Senate Environment, Communication and the Arts Legislation Committee that looked into the bill, the committee heard that an independent Commonwealth funded study was conducted in 1997-1998 into viability of ethanol as an additive in fuels. That study tested a total of 60 vehicles—19 of which were pre 1986 and 41 post 1986. It concluded that the use of E10, or 10 per cent ethanol blends, in these vehicles presented ‘no apparent detrimental effect on other aspects of engine or vehicle performance’. Since 1992, a large proportion of vehicles driving in the Sydney Basin have been driving on E10 without any substantiated reports of engine damage to vehicles.

The Democrats will be moving amendments to this legislation to not proceed with ethanol as a labelling system, at least not in the first instance. We would like to see developed a star rating system. We have star rating systems for energy efficiency in washing machines. This approach applies to a range of consumer products. We say that the labelling of the contents of fuel should not take place until we have such a comprehensive labelling scheme in place. That labelling should apply to petrol, diesel, unleaded, lead replacement, LPG, CNG and LNG and so on. We think that it is just not fair to single out a single additive to fuels without considering those other additives such as toluene, benzine and xylene, which are of course harmful to public health. We propose that a labelling scheme take into consideration emissions levels and the impact of emissions on public health, as well as fuel efficiency. It may be that we need two different rating systems to be presented to take into account those two factors. But I am sure it is not beyond the wit of people to develop such a scheme.

**Senator O'BRIEN (Tasmania) (9.36 p.m.)**—It is interesting that the Democrats apparently do not support ethanol fuel labelling.

**Senator Allison**—We do; we just do not want it without the others.

**Senator O'BRIEN**—Senator Allison said, ‘We do,’ but I interpreted the latter comments of her contribution to suggest that amendments that were going to be moved were actually to replace an ethanol-labelling regime with a star-rating regime. Perhaps I misunderstood—the *Hansard* will show. You either support labelling to let consumers know that the fuel they are purchasing contains the additive ethanol or you do not. The ALP supports it wholeheartedly. We support consumers’ right to know; we support consumers’ right to be able to assess the fuel that they are putting in their car where there are issues as to whether the consumption of a particular fuel—in this case, fuel that contains a proportion of ethanol—will possibly render their warranty void. The ALP believes that consumers deserve to know whether they are taking such a risk, and that is why we will support labelling. I am surprised that the Democrats have adopted a Jekyll and Hyde position on ethanol labelling—they support it but they do not want it—or perhaps it is just a confused position.

Ethanol blends, it was suggested, cannot damage cars. That is neither the position that the motor vehicle industry has advised the opposition nor the position that they advised the government, as I understand it. The automotive industry in Australia is very clear—it is on the record. It has taken the position that unregulated quantities of ethanol in motor vehicle fuel in excess of 10 per cent can cause damage to some vehicles. It is interesting to note that one of the examples used by Senator Allison in her contribution was Brazil and the fact that in Brazil much higher concentrations of ethanol are found in fuel. That is convenient for that country, where a great amount of ethanol is manufactured from sugar cane and sugar cane waste.

The fact of the matter is that one Australian manufacturer, General Motors-Holden, exports a Commodore vehicle to Brazil. But the vehicle they send to Brazil is modified to cope with quantities of around 20 per cent plus of ethanol. It is not the same vehicle that is sold here for the fuel that is generally sold in Australia and, as I understand it, General Motors do not sell that modified vehicle in Australia. If that vehicle were commonly available, it would be appropriate for the automotive spirit sellers to sell a higher blend—with notice, of course, to the motorist that they would be purchasing the petrol with perhaps a 20 or 30 per cent ethanol blend.

The issue for the opposition is that the motorist knows that the fuel they are purchasing contains an amount of ethanol or no ethanol, depending on their wish, and that they make an informed choice. We would take quite a different position from the Democrats in that regard. I also understand that, in the past, the ACCC has commented on the fact that it is inappropriate for motorists to be purchasing fuel with a higher quantity of ethanol in the fuel where they may be taking, unwittingly, a risk of voiding their warranty and that they should know as a matter of consumer right the volume of ethanol that is contained in the fuel. So we would differentiate ourselves from the Democrats in that regard.

The handling of this bill by the government is just another chapter in the pattern of deceit of the Howard government on ethanol policy. The first act of deception occurred on 17, 18 and 19 September last year when the Prime Minister told the House of Representatives that he did not meet with the Chairman of Manildra, Mr Dick Honan, prior to the government's announcement of its Manildra-friendly ethanol package on 12 September. We know, through the release of a meeting record that I obtained under

freedom of information, that Mr Howard and Mr Honan did meet on 1 August last year.

That was a meeting that Mr Howard wanted to keep secret. It was only revealed upon the release of the small number of heavily censored documents from the Prime Minister's department under freedom of information. The record of the meeting shows us that the Prime Minister and one of the coalition's biggest donors, Mr Honan, discussed just two matters. One topic for discussion was so sensitive that the Department of the Prime Minister and Cabinet has refused to disclose its nature. The second matter was the ethanol industry. What did that discussion include? According to the meeting record, the Prime Minister and Mr Honan discussed:

... the payment of a producer credit to ethanol producers to enable Australian ethanol producers to compete with cheaper Brazilian product.

A production subsidy and industry protection are exactly what the Prime Minister delivered to Mr Honan and Manildra six weeks after that meeting took place. The Prime Minister has run a rather flimsy argument that a reference to competition from cheaper Brazilian product did not mean that they talked about Brazilian imports. It begs the question: how does cheaper Brazilian product become a competitive item if it is not imported into this country? Does the Prime Minister seriously expect the Australian people to believe that he had a discussion with Mr Honan about competition from cheaper Brazilian product but not Brazilian ethanol imports? That just does not ring true. That is just an impossibility.

It is not just the Prime Minister who has bent the truth on ethanol; it is endemic to this entire government. The Howard government appears prepared to continue this deceit through their arrogant failure to comply with a Senate order for the production of docu-

ments related to ethanol policy—that order falling due on 21 October last year. On 21 October the Manager of Government Business in the Senate, Senator Ian Campbell, told the Senate that the government would comply with that order. It did not happen. On 12 December last year, Senator Ian Campbell gave another commitment to the Senate. At that time Senator Campbell told the Senate that the minister, Mr Macfarlane, was happy for him to commit to tabling the documents out of session on the following Tuesday.

But on 5 February this year, Senator Ian Campbell told the Senate the government was seeking to conclude its consideration of the documents and that the government would respond as soon as possible. For more than a year the Howard government has continued to defy the Senate and has not complied with the return to order. I do not hold Senator Campbell responsible for deceiving the Senate. Clearly he was acting under instruction from Minister Macfarlane or perhaps even the Prime Minister. In fact I feel some sympathy for Senator Campbell. I expect his advice to the Senate and private advice to me was given in good faith.

The fact is that the pattern of deceit applies not only to what this government tells the Australian people but also to what they tell each other. Clearly for the Howard government, anything, even the public humiliation of Senator Ian Campbell, is worth it to keep the truth of the government's ethanol policy from the Senate and the Australian people.

The deceit I find most offensive is that perpetrated on struggling sugar farmers. The National Party, including Senator Boswell, the Deputy Prime Minister, Mr Anderson, and the agriculture minister, Mr Truss, have repeatedly told the sugar industry that the Howard government's ethanol policy will be

the saviour of the sugar industry. This defies logic. The Howard government's ethanol policy was devised to do but one thing. It was devised to support Manildra, Australia's near monopoly grain based—not sugar based—ethanol producer. The last time the government released details about this matter, Manildra was receiving 96.1 per cent of the Howard government's ethanol funding, amounting to nearly \$30 million in taxpayers' money per year. The National Party are treating Australian sugar farmers as mugs, expecting them to believe the Howard government designed its ethanol policy with them in mind.

What the sugar industry needs is the \$120 million sugar restructuring package promised by Mr Truss over a year ago. This is a package that has so far delivered only \$20 million in income support, a package which is currently \$100 million short of the promised expenditure, and a package which to date has delivered not one red cent of Mr Truss's centrepiece \$60 million program for regional adjustment, diversification and industry rationalisation. The contempt with which Queensland National Party members and senators treat the proud sugar industry is staggering.

Finally, the Minister for the Environment and Heritage, Dr Kemp, has joined in the Howard government's deceit over ethanol. Dr Kemp has claimed that Labor has delayed the introduction of labelling for fuel ethanol blends and other blended fuels by referring this bill to a Senate committee. This is just further evidence of another Howard government minister playing with the truth, looking for scapegoats and taking the Australian people for mugs.

This legislation is necessary because some unscrupulous fuel outlets have been caught out selling fuel blends containing more than 20 per cent ethanol—way above the gener-

ally accepted safe limit of 10 per cent so far as Australian motor vehicle manufacturers are concerned. The Howard government could have moved last year to introduce a labelling and blend cap regime that would have brought this practice to a halt. But the government delayed doing so to protect the business interests of the Manildra Group. This delay has led to massive damage to consumer perceptions of ethanol as a fuel, and it means the Howard government has done more damage than any other organisation or individual to the future of the Australian ethanol industry.

Labor announced its position on ethanol caps and labelling in September last year, a policy position supporting a blending cap of 10 per cent and mandatory labelling of ethanol in petrol where content is five per cent or more. We did so because we believe ethanol deserves the chance to build a self-sustaining future, and the only way for this to happen is for Australian motorists to know what they are buying and therefore enjoy some confidence in the product they are pumping into their vehicles. Nearly three months after Labor's policy announcement Dr Kemp promised to introduce nationally consistent labelling legislation by February 2003, saying:

If the States do not move immediately to institute this labelling the Commonwealth Government will introduce legislation when parliament resumes to give it the power to require all petrol retailers to label ethanol content of their petrol at the pump.

It is unclear why Dr Kemp thinks the states should bear the burden of what in this case is a federal responsibility and clean up a mess of the Howard government's making.

On 19 February this year Dr Kemp declared an intention to take action on this matter. Nearly nine months after Labor released its policy, six months after Dr Kemp's first announcement and four months after his second announcement, Dr Kemp finally kept his

promise and introduced the enabling legislation in the other place on 26 June, the last sitting day of the winter session. Dr Kemp knew that introducing the bill when he did meant that the legislation could not be considered by parliament until it resumed on 11 August, some six weeks later. Labor believes the draft regulations and details of the labels are vital for the parliament to understand the labelling regime this legislation will put in place. Labor has long called on Dr Kemp to make draft regulations available to be considered by the parliament at the same time as we are considering the bill.

Prior to the recent Senate committee inquiry into this bill, the committee discussed the benefit that would be derived from access to draft regulations and labels. To this end, the chair of the committee wrote to the minister requesting the release of this information. Despite the committee's formal request, the minister refused to make draft regulations or proposed labels available to the committee. And, despite the fact that Dr Kemp's department has been working on the bill since January this year, the department advised the recent Senate inquiry that it has not been instructed by the minister to prepare draft regulations. What a go-slow. The department further advised that, once instructed, it could provide draft regulations very quickly.

Given that the department advised that it could quickly produce draft regulations and labels once instructed and that, to date, it has not been instructed by the minister to do so, Labor is compelled to conclude that the minister wishes to delay the introduction of a national mandatory labelling system. Labor strongly supports the implementation of an effective labelling regime to protect the rights of consumers and to rebuild confidence in ethanol. It is consumer confidence, above all else, that will ultimately determine the future of the Australian ethanol industry.

Labor renews its call for the minister to immediately release the draft regulations and proposed labels and, if he has not done so, to direct the department to prepare those draft regulations and labels in order to expedite the introduction of mandatory labelling of blended fuels.

We will be supporting legislation to give the government power to provide for labelling of ethanol. Labor believe that ethanol does have a future as a component of the fuel systems of Australian vehicles and for other uses. It should be remembered that the ethanol industry as it exists today was substantially created by the ethanol bounty—a bounty created by the previous Labor government. It was a bounty that this government removed in 1996. As I recall, the first question I asked in this chamber was to the government in relation to the withdrawal of the ethanol bounty, and, as I also recall, the Democrats were appreciative that Labor were raising the issue at that time. I hope they appreciate the stand that Labor take now. I hope the Democrats do come to their senses and support a labelling regime for ethanol, and realise that the future of the ethanol industry is tied up with Australian motorists having confidence in it.

Australian motorists will not be hoodwinked again into using a fuel in which they have no confidence. They need to know what they are putting into their cars, they need to know what effect that fuel is going to have on their motor vehicle warranty and they need to know that they can be confident in consistent product being delivered. Australian motorists want the sort of regime where there is a 10 per cent cap on ethanol until appropriate vehicles are available in this country. We believe that, firstly, this legislation needs to be carried and, secondly, we need to very expeditiously see the regulations. Thirdly, we need to see labelling in place so that the ethanol industry can become

the industry it can be for this nation and so that those regional parts of Australia that consider they have prospects in manufacturing ethanol can develop their industries with that certainty.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (9.55 p.m.)—I thank the senators who have made a contribution to this debate, and I appreciate the support being given to the *Fuel Quality Standards Amendment Bill 2003* by the opposition. I am disappointed that the Democrats will not be supporting the bill. I can indicate now for the record that of course we will not be supporting the second reading amendment.

**Senator Forshaw**—Oh, Jeez!

**Senator IAN MACDONALD**—It was a nice attempt by Senator Forshaw to get a bit of political mileage against a government that has been so very successful. I appreciate his enthusiasm for his amendment but obviously we will not be supporting it. I can say that I appreciate the Democrats' decision not to support the second reading amendment. I am also a fraction disappointed that Senator McLucas, who was on the speakers list, will not be speaking tonight. She and I both come from an area where sugar cane is very important, and I would like to have heard Senator McLucas's views on sugar cane and ethanol. I wonder if she shares Senator O'Brien's views on that issue.

This is not a bill that relates particularly to sugar and ethanol but, in view of what Senator O'Brien has said, I think it is important for me to indicate that I am very conscious of a lot of very dedicated and learned farmers in the north who are doing a great deal of work on ethanol. By coincidence, tonight there was a dinner held in Townsville hosted by Mr John Honeycomb, who is the deputy chair of the industry guidance group set up by the government to assist the sugar indus-

try in the face of the attack by the Queensland state government. Mr Honeycomb is hosting a dinner of some very learned people who have particular views about ethanol and about how sugar can be involved. I only mention that to say that there is a lot of work being done by the farmers themselves. It is not getting a lot of support from others but they are determined.

In the part of North Queensland where I live—the Lower Burdekin area—there are a lot of farmers who have a particular commitment to ethanol and who believe that ethanol can help the sugar industry. They do not accept the sorts of comments that Senator O'Brien was making. I would like to mention a lot of people: George Nielsen, the head of the Canegrowers executive, Mr Jeff Cox, who is playing a very significant role in his work on ethanol and sugar, and people like Ian Haigh, a sugar industry leader who over the years has done a lot of work to try to help his industry get through the difficulties that it currently finds itself in because of exceptionally low prices and because of the fact that, in most other countries around the world where sugar is produced, certain subsidy-like payments are made to support farmers. That does not happen in Australia and it will not happen in Australia. Australians understand that their industry, which is the most efficient, has to be even more efficient—even better—to maintain its place in the world.

I have confidence in the future of the sugar industry and I will be supporting the industry as best I can. Given support and confidence, the industry will continue on and get through this very difficult period. The opposition's continued focus on the timing of the introduction of this legislation is, I think, reasonably petty and very irrelevant to the debate. The states failed to act on the minister's call to act and the Australian government has had to respond by introducing this

bill. Legislative timetables change all the time; there has been no particular undue delay with this bill. As I think all senators will understand, the path through this chamber is often tortuous, the drafting of amendments and additions to the bill by the minor parties does take time and we are not able to proceed with the committee stage tonight for that reason. Suggestions that there has been undue delay are simply wrong.

The minister has said that he will move to introduce ethanol labelling once the legislation is passed but it must be passed before he can undertake the statutory process the bill provides for. Senator Forshaw moved that the government should table the draft label and determination before the bill is passed. This approach is neither, with respect, sensible nor necessary. The Commonwealth does not yet have the power to require that fuels be labelled. This legislation gives the government that power and also sets out a statutory process to be followed in the setting of labelling standards. That includes formal consultation with the Fuel Standards Consultative Committee—a representative stakeholder body established under the act—before a draft label can be put forward for parliamentary consideration.

There would be little point in the government proposing a label for debate before the statutory process and the required consultations have occurred. It would also be a waste of the parliament's time. A label agreed on by the Senate in the context of this debate would have no legal status whatsoever under the act. The label could be changed substantially as a result of the required consultations with the Fuel Standards Consultative Committee. The bill is not just about ethanol labelling. This bill provides the Commonwealth government with the power to set uniform national labelling standards for fuel so that in future it will not have to rely on state governments exercising those powers.

This power is important not only for labelling ethanol blends but also for labelling other alternative fuels that enter the market—for example, the government has recently set a fuel standard for biodiesel in order to encourage greater use of that particular fuel. Experience has shown us that it is important to establish consumer confidence in these fuels as soon as possible, and labelling will be very important in this regard.

The bill is also about strengthening other parts of the Fuel Quality Standards Act that are designed to protect consumers and the environment from the impacts of poor quality fuel. This is not the last chance that the parliament will have to scrutinise the proposed ethanol label, and holding up the bill on these grounds will hold up other important activities. As a disallowable instrument, the labelling determination will have to be tabled in both houses of parliament and honourable senators will know that, because it is a disallowable instrument, it can be debated and disallowed in this parliament. However I am confident—knowing the good work that the minister and his department do—that all senators will support those regulations when they come in.

Senator Allison stated that she would like to see a more comprehensive labelling scheme that provides a clean fuel rating for all fuels. Labelling fuels for environmental friendliness is desirable in theory but quite difficult in practice. This is because the environmental impact of each fuel varies significantly through factors that are not linked to the fuel itself—for example, fuel consumption and tailpipe emissions are related to many factors including driving style, vehicle load, engine conditions and vehicle technology. Without the amendments proposed in this bill, the government has no power to label any fuels. Once the government does have the power to label fuels, the minister will be able to consider the need for labelling

particular fuels on the merits of the case. However, it must be clear that there is a need for such labelling and that labelling would have to be in the public interest.

I know Senator Forshaw is vitally interested in the points I am making but I will help his interest by briefly summing up the debate on the [Fuel Quality Standards Amendment Bill 2003](#). I will go through the points very quickly. In summary, the states have existing powers under their fair trading acts to require labelling of fuels. It is disappointing that only Victoria responded to the minister's call for them to require labelling of ethanol blends. Why the others would not, one can only surmise. My summation would be that again they saw some political benefit in not doing that and—as the state Labor governments are so wont to do—as they could try to score a political point, that is what they did. In the absence of that action by the states, the amendments that are being proposed here will ensure that the Commonwealth gains the power to act swiftly to require labelling of fuels where it is in the public interest to do so. These labelling requirements will be uniform across the country and will be backed up by a world-class monitoring and enforcement program.

The bill provides for advice, transparency and accountability in the setting of labelling standards by requiring that the Fuel Standards Consultative Committee be consulted prior to the making or varying of the fuel quality information standard. This committee was created under the Fuel Quality Standards Act 2000 and contains representatives from all jurisdictions, the fuels and vehicles industries, and consumer interest groups. As a further safeguard, fuel quality information standards will be disallowable instruments. Of equal importance are the strict liability amendments contained in the bill. These changes will strengthen the act and will ensure that key offences in the act can be prop-

erly enforced. This will significantly improve the effectiveness of the act as an instrument to achieve the objectives of reducing vehicle emissions and improving engine operations. I thank the Senate for its support of the bill and I look forward to the matter proceeding quickly through the committee stage and becoming law before we rise in a couple of weeks time.

**Senator FORSHAW (New South Wales)** (10.08 p.m.)—by leave—I rise to speak because during his remarks in closing the second reading debate, Senator Ian Macdonald referred to the fact that he was disappointed that Senator McLucas, another Queensland senator, was not able to participate in the debate tonight when she was listed on the speakers list. Because I know that people are listening to the broadcast tonight—particularly people in Queensland who may have a particular interest in this issue—I think it is important to point out that this bill was not listed on today's order of business. In fact, it was listed for either tomorrow or Thursday on the forward order of business. It was not listed for today. It was because of the ineptitude and the inability of the government to manage its program that it has had to bring on this legislation at short notice tonight. This has meant that speakers who may have otherwise wished to participate in the debate—including, I know, Senator McLucas—were unable to do so.

I know that the debate will continue through the committee stage—I assume in the next few days or in the next couple of weeks—and I know that Senator McLucas, who has a deep interest in this issue, will be able to come along here and represent the state of Queensland and the Labor Party in the excellent manner in which she has always done so when the debate resumes. I wanted to put that on the record because of the cheap shot that was just played by Senator Ian Macdonald.

Question negatived.

Original question agreed to.

Bill read a second time.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for the next day of sitting.

**FAMILY AND COMMUNITY SERVICES (CLOSURE OF STUDENT FINANCIAL SUPPLEMENT SCHEME) BILL 2003**

**STUDENT ASSISTANCE AMENDMENT BILL 2003**

**Second Reading**

Debate resumed from 15 September, on motion by **Senator Alston**:

That these bills be now read a second time.

**Senator MARK BISHOP (Western Australia)** (10.11 p.m.)—Student financial assistance is a complex matter. There is no one answer to the numerous, often difficult economic positions in which students find themselves. Students need flexibility and choice. Today, in opposing the legislation before us in its current form, I will argue that this government is not serious about providing real financial assistance to students. Further, through the proposal of a series of amendments, I will demonstrate how Labor would achieve financial flexibility and choice for many, if not all, Australian students.

The legislation before us, the **Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003** and the **Student Assistance Amendment Bill 2003**, amounts to nothing more than a blatant attack on Australia's young people seeking access to further education. Again, it is evident that this government has little care for eliminating the many barriers that students face under current legislation.

The Student Financial Supplement Scheme was introduced in 1993 in response

to student demands for additional financial support to help them undertake their studies, especially in a climate of high interest rates and when few commercial loan packages were available to students. It is a voluntary scheme that has enabled struggling students to increase their income so that they may meet better the costs of living and studying. It is reported regularly in the newspapers that poverty amongst university students has reached unprecedented levels as students struggle to pay for the basics: food, rent, transport, books and increasingly, of course, fees. The Student Financial Supplement Scheme provides students who are in need of extra cash to undertake their studies with financial choice and flexibility. It is entirely voluntary—students choose to utilise the scheme.

The government is seeking to abolish a decade-old scheme that has provided thousands and thousands of students with the option of accessing additional funds to finance their studies through government provided loans. The Student Financial Supplement Scheme provides a voluntary loan whereby eligible category 1 tertiary students trade in \$1 of their income for \$2 of loan, up to a maximum of \$7,000. Category 2 students are those dependent young people not receiving youth allowance as a result of parental income or the family actual means test whose family income is below a prescribed threshold—less than \$64,500 in the year 2003. Category 2 students are able to apply for a loan of up to \$2,000. For those category 1 students taking a loan, the income support traded in becomes part of the loan.

Importantly, students can make voluntary repayments on the SFSS loan at any time after they begin receiving it. Indeed, students receive a 15 per cent repayment bonus for doing so. However, they do not have to commence repaying the loan until after the end of the contract period, and then only

when their income reaches average earnings. The contract period ends on 31 May of the fifth year after the loan is paid. In the first five years 7.6 per cent of loans are partially or fully repaid voluntarily.

I turn now to government arguments which need to be addressed in this debate. The government has raised a number of concerns about the Student Financial Supplement Scheme. I would like to address these concerns, because many of them are unwarranted and none of them is a justification for the government's intention to close the scheme. The government has argued that the SFSS is structurally flawed. It has indicated that in order to receive a loan students have to trade in a component of their income support payments. This means that they can incur an effective interest rate sometimes as high as 16 per cent. The design of the scheme requires students to trade in, or to give up, \$1 of their student assistance entitlement for \$2 in loan payment. Both the \$1 traded and the extra \$1 provided by the loan have to be repaid.

Obviously this situation is less than ideal, but the government can rectify this problem by reforming, rather than ruining, the Student Financial Supplement Scheme. Instead of simply axing the SFSS, why doesn't the government reform the structure and basis of the scheme to change the ratio of the trade-in amount to the supplement amount so that it is more beneficial? Why doesn't the government improve incentives for voluntary repayment? If the government was seriously interested in improving financial assistance for students, it would indeed reform the scheme.

The government have claimed that the Australian Government Actuary has estimated that 56 per cent of those on Youth Allowance will never repay their SFSS loans. They have also suggested that 84 per cent of

those on Abstudy will never repay those loans. They have claimed that the SFSS has generated more than \$2 billion in debt since its establishment in 1993. Importantly, however, the government have refused to share the report by the Australian Government Actuary with the rest of the parliament. They have told us that it is an exclusive document for the government and they have asked us to take their word on the content. Given the misleading nature of this government, why should the parliament take their word in relation to this matter?

Notably, information provided to Labor regarding loan acceptances and amounts outstanding indicates that repayments in excess of \$500 million have been made. These repayments have resulted in total loans outstanding being worth some \$467 million less than the loan amounts issued. In other words, almost 25 per cent of the value of all loans issued has been repaid. Labor's information indicates that almost half the total value of the loans that have matured in the 1993-97 period has been repaid. This is equivalent to almost 50 per cent of the value of all loans that have matured. Whilst improvements can be made, government concerns about bad debts appear to be deliberately overstated.

Furthermore, when the government announced its intention to close the SFSS on the basis that the scheme is creating high levels of student debt, it failed to acknowledge the reality of the situation. The scheme is not for everybody—no such scheme ever is—but it has proven very popular since its introduction. It is attractive to students in immediate need. Between 40,000 and 60,000 students make use of the scheme each year. There is strong support amongst those who rely on the SFSS for its retention as a voluntary option for students. Many members of parliament have received constituent support for the maintenance of the scheme.

There is strong support amongst students for the retention of the scheme. This is because, despite its structural flaws, some students have no other way of making ends meet over the course of their study. The scheme is useful to students who are in need of income greater than that granted under basic Youth Allowance or Austudy provisions. In particular, it is important to students who do not want or are unable to combine unreasonable levels of part-time work with study requirements. In response to the proposed closure of the SFSS, students are saying that they would be forced to leave university if it were abolished. This possibility is in itself justification for the maintenance of the scheme. The closure of the scheme would have a direct and devastating impact on the capacity of students to get a qualification and, in turn, on their job prospects, skills and knowledge.

Notably, the government referred to the falling take-up rate of the SFSS. The take-up rate of the loan has fallen by more than 35 per cent since it was introduced in 1993. However, this is not an argument to close the scheme. It is reasonable to assume that the increased accessibility of commercial loans and alternative university loans would have influenced the reduction in the take-up of SFSS loans. The government is clearly not serious about providing choice and flexibility in student financial assistance.

Labor accepts that the SFSS is not without difficulties, but the government arguments for the closure of the scheme are clearly not sufficient. This legislation would only increase financial pressure on a group of people—largely young people—who are already struggling. Labor will not allow the government to close the scheme. Labor will not allow the further restriction of students' financial options without proposals to reform or replace the SFSS. On the contrary, Labor will maintain the SFSS as a financial option

for students. Furthermore, Labor will move amendments to the legislation that will effect even greater flexibility and choice for students. Labor's amendments will, firstly, address the design of the scheme and the information provided to students who are considering taking out a supplementary loan. Secondly, they will address the adequacy—or, perhaps more accurately, the inadequacy—of income support payments.

I turn now to those foreshadowed amendments. Labor will require the government to provide students considering a loan with meaningful information regarding the scheme. As I have said, the SFSS is not without flaws. No such scheme ever is. Whilst the government has failed to acknowledge it, a legitimate concern is that some students do not fully comprehend the nature of the scheme at the time they decide to take out a Student Financial Supplement Scheme loan. They are not fully informed about the nature of the product. This can in part be attributed to the inadequate materials provided by Centrelink. In particular, some students do not necessarily understand the impact of the trade-in amount and the fact that what was once an entitlement becomes a repayable loan.

Furthermore, the information booklet provided by Centrelink to the students for the SFSS claims the loan is interest free. This is considered to be disingenuous. In the instance of category 1 students, the supplement amount repayable is twice the net amount that the scheme provides. Also, the loan amount is indexed to CPI. Commercial loan products effectively factor indexation into their gross interest rate. In the case of the supplement loan, the effective interest rate over five years is of the order of 16 per cent per annum. This may be reduced if voluntary payments which attract the repayment bonus are made. Importantly, the SFSS compares favourably to many commercial loans. This

is particularly because of its flexible conditions of repayment. Nevertheless, the material Centrelink provides to those seeking to undertake the SFSS must be clear. It must set out how the supplement loan compares to commercial loan products and what effective interest rates or actual interest rates may apply.

Accordingly, Labor will move amendments to require the government to provide students considering a loan with meaningful information so that they are fully informed in their decision to use the scheme. Secondly, Labor will move amendments to lower the age of independence from its present age to 23 years. Labor are committed to truly addressing the genuine issues that face young people in relation to student assistance. We argue that the current range of income support payments for students is particularly meagre. This is particularly so for students aged under 25, whose payments are dependent on the means testing of their parents' income. The parental means test for the youth allowance is punitive and restricts payments to students regardless of whether or not parents actually provide some financial assistance.

When the Howard government introduced Youth Allowance, it increased the age of independence from 22 to 25 years. Labor will amend this legislation to give effect to Labor's policy of reducing the age of independence under Youth Allowance to 23. Notably, many students would like the age of independence to be lower still. Whilst further reducing the age of independence becomes progressively more costly, Labor is committed to reducing the age of independence so far as budget outlays would allow.

It is absolutely absurd that this government is forcing families to continue to support their children until the age of 25 if they are studying. Too many Australian families

are suffering extreme financial pressure because they are forced to support their young adult children through further education. These amendments will definitely serve to ease the pressure for tens of thousands of Australian families. Once moved, these amendments will make a considerable difference to the financial position of many young people seeking to achieve further education.

Labor will move amendments to extend rent assistance to Austudy recipients. Labor believes that students need increased financial support if they are to make the most of their educational opportunities—indeed, if they are to meet their educational requirements and responsibilities. Currently, students who receive Austudy are ineligible for rent assistance. As a consequence, many students are forced to work long hours in times when they need to study just so they may pay their bills and buy their educational tools.

Under the current system, an unemployed person who rents get more under Newstart than a student in similar circumstances gets under Austudy. This means that someone who is 25 years of age or over gets more government support if they are unemployed than if they are a full-time student. This is a serious and obvious disincentive to students over the age of 25 to further their education. There is also the ludicrous fact that two students could be sitting beside each other in the same class as part of the same course with the same income and living expenses but receiving different levels of financial assistance because one is 24 and the other is 25. In a move that will benefit around 15,000 students per year, Labor will move amendments that seek to extend rent assistance to Austudy recipients.

In a report completed by the University of Melbourne and entitled *Managing study and work*, it was found that nearly half of the students involved in the study described

themselves as being under significant and immediate financial pressure. A third of them said they had seriously considered ceasing their enrolment at university in order to earn more money. Notably, between 1995 and 2000 Australia had the second lowest increase in the rate of enrolment in universities in the OECD. Furthermore, a quarter of students indicated they chose their classes to suit their work commitments rather than the other way around.

It is indeed an indictment on our system of student financial assistance that we even need to operate a program such as the SFSS. However, the fact that this government has little care for those young people who are striving to complete their education makes the scheme vital. Whilst this government remains in power, there will always be thousand of students who will need to obtain financial support. That is why there is a place for the SFSS. Importantly, people who choose to take up the SFSS must be provided with meaningful information about the nature of the scheme.

Labor is committed to providing real choice and flexibility in the financial options that are available to students. Labor seeks to amend this legislation in order to effect Labor's policy of reducing the age of independence under Youth Allowance from 25 to 23. Labor will also seek in the committee stage to extend rent assistance to Austudy recipients. Labor is committed to a system of student assistance that enables young people to successfully meet their study requirements so that they may achieve the qualifications that will enable them to become leaders in tomorrow's society.

**Senator GREIG (Western Australia)**  
(10.28 p.m.)—We Democrats did not support the introduction of the Student Financial Supplement Scheme back in 1993. We believed at the time—and have maintained

since—that the scheme is essentially inequitable in its application. Yet we now find ourselves, in this debate on the *Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003* and the *Student Assistance Amendment Bill 2003*, in the unusual position of defending continued access to the Student Financial Supplement Scheme or, at the very least, for existing recipients.

Why do we support continued access if we have previously opposed its inherent inequity? We have argued that it is inequitable because it offers an easy and immediate financial fix to students facing the worst current financial difficulty in exchange for debt that does not have to be repaid until some years down the track. It is understandably a most appealing offer to the poorest of all students. The scheme is appealing because it provides a remedy to the desperation many students feel about meeting the growing cost of their education as well as the raft of other costs that students—like many of us—face on a daily basis, whether that is food, rent, utilities, entertainment or whatever. Let us face it, meeting these expense when you are a student is difficult.

It must be acknowledged, even by the government that seeks to scrap this loans scheme, that desperation is a key factor influencing many to accept the terms on which the Student Financial Supplement Scheme is offered. The offer of \$1 of loan today in exchange for a repayment of \$2 tomorrow hardly seems a worthy or balanced deal, yet desperate is what many students continue to be. Although the government is right in asserting that the take-up rate of the scheme has continued to fall, clearly there are large numbers of students who still feel the deal on offer is a good one, or at least better than nothing—for now, at least. In fact, 40,000 students in 2002 believed that to be the case. The government has argued—rightly—that,

compared with the time when the supplement scheme was introduced, there is now a range of cheaper financial options available to students.

One can safely assume that those students who have opted out of the scheme are those for whom cheaper financial options exist—people who have been able to secure cheaper commercial and student loans, access financial support from family or partners or secure casual and part-time work. By contrast, it is those who have found no other way, no better way, to fund their education and meet their expenses who have chosen to remain in the scheme—those who have failed to meet the requirements of many commercial loans, either because they have no savings, are not currently employed, do not own assets or do not have someone willing or able to be a guarantor.

The truth is that the SFSS assists the poorest of all students to get through increasingly expensive university or TAFE courses, with the problem of how to repay the loan being a future concern. Unlike the range of commercial student loans on offer, the SFSS is not immediately repayable at the conclusion of study. It is not repayable at all, in fact, unless earning capacity is such to require it, similar, therefore, to HECS. Of course, this issue of loan payment is one of concern to the government, and one of the reasons it wants to see the scheme dropped. In many instances—in fact, in up to half of all cases—the Student Financial Supplement Scheme debt is proving to be unrecoverable.

It is precisely because the SFSS offers financial support in an otherwise fairly barren environment to those students most desperate to meet their expenses that we are now compelled to defend that scheme. We defend it as a means of ensuring continued access to education for a range of students who, without the additional fortnightly income generated

by the scheme, would find continuing higher education a proposition quite beyond their reach. We defend it because, for many students, the expectation of a certain level of income is the basis upon which they entered study in the first place, and to shift the goalposts part way through their course is not only an unfair approach, it is unjustified. We defend it, too, because many of the students are only facing the additional cost of study as a result of government policy that has at least encouraged them to do so or, at worst, has required them to do so.

In the years since the scheme was first introduced, an ever-tightening social security system has forced increasing numbers of young people to remain in education and older people of income earning age to return to education as a means of meeting harsh mutual obligation and activity agreement test requirements introduced by the current government. This tightening of welfare eligibility and the increased onus on the recipient to earn their payment have occurred in an environment in which the costs of education have also steadily increased, and the burden of meeting this cost has increasingly been shifted onto students themselves. In effect, what we have seen is pressure for students to stay in education in exchange for income support payments well below the poverty line, an increased burden of debt in order to pay for that education and, for those most financially disadvantaged, even greater levels of debt through the inducements offered by the SFSS. By anyone's measure, this system can hardly be called fair. Consequently we Democrats have argued that a fairer system needs to be developed, a system which raises the payments made to all students to enable them to better meet life's costs throughout the duration of their education.

Rather than introducing a fairer, more equitable system or pension and allowance levels that will sustain students in an environ-

ment of rising costs in education, transport, food and rentals, the government instead proposes to remove the SFSS altogether—no replacement, no fairer system. The government has argued that the SFSS should be abolished because of its flawed structure, increasing rates of unpaid debt and its increasing lack of relevance and take-up.

When we look at where the fall in take-up has occurred and, by contrast, those who have continued to access the scheme, a really interesting picture emerges. It is true that students receiving Austudy, Abstudy and Newstart allowance have dramatically reduced their take-up of the scheme. Most notably, this has occurred in the case of Austudy, which has fallen from a peak of over 56,000 in 1996 to just over 9,000 in 2002. However, when we examine the number of pensioner education supplement claimants who also receive the SFSS, we find that these figures have remained reasonably constant over recent years and actually increased by about 20 per cent between 2001 and 2002.

Pensioner education supplement recipients, those with disability and sole parent payments, are a group for whom substantial barriers to participation exist in further education, not the least of which are financial. These are the very people who, in many instances, face a range of additional costs associated with their study—people who need to make a range of alternative and costly arrangements in order to make their study possible. For students with disabilities, this can include multiple aides and equipment, speech-to-text software, text-to-speech software, computer hardware, typewriters and other items. These are items that are expensive and often require upgrading and repair. These are not expenses easily covered by the \$208 education entry payment when you consider that all of the other costs that students must cover, such as university fees, permits and books, must also be met by these

pensioners. Significantly, single parents and people with disabilities are also often unable to supplement their incomes with part-time paid work. This difficulty arises as a result of parental responsibilities, or disabilities and discrimination that restrict employment in open markets. The fact is that, for many, the option of part-time work is simply not there.

Of course the proposed removal of the SFSS has been just one of a number of recent government measures targeting pension recipients. The government have only just recognised the heartlessness of their approach in relation to the proposed removal of the pensioner education supplement over the summer months. Thanks to pressure first brought about by the Democrats, this measure has now been withdrawn. I now ask how the minister can possibly justify a decision that puts \$60 a fortnight back into the pockets of pensioners over summer breaks when she will now take that same amount out of pensioners' pockets every fortnight all year round by removing the SFSS. This is a cruel card trick.

Having been forced into the costly exercise of further study under the guise of their mutual obligation to the community, pensioners, sole parents and people with a range of disabilities and other learning difficulties will be amongst the most heavily affected by the scheme's withdrawal. These are students who have made supreme sacrifices to re-engage with study and have budgeted on a knife's edge to do so. They will now find, halfway through their course, that the rug is to be pulled out from under them. As was the case with questions I put to the former minister on the PES issue, the new minister has acknowledged, in answer to questions put to her on the SFSS, that no modelling has occurred to assess the impact of the withdrawal of this scheme. It beggars belief that yet again the government proposes to make a substantial change to income support with

little or no investigation of its impact. I have to say that, while the combined impact of changes to both supplements is of great concern, it would be dangerous to assume too much success for having saved PES while we now do away with the SFSS. This is only half the battle won.

The Australasian Network of Students with Disabilities, who mounted a strong campaign in opposition to the restriction of the PES and removal of the SFSS, are at least as concerned about the removal of the loans scheme as they were about the PES restriction. They have argued that up to half of all students with disabilities will be forced out of tertiary education as a result of the proposed changes. A vast number of community disability peak bodies and student welfare organisations have also indicated their opposition, claiming that the proposed changes will place undue stress on some of the most disadvantaged of all students and, for many of them, make their further study untenable. This is an unacceptable set of circumstances which simply cannot be allowed to occur. These decisions fly in the face of the government's stated philosophy of ensuring that those most in need are supported and assisted to participate in their communities. It is apparently occurring with little regard to the real impact and the actual experience on the ground for those already struggling to stay in education.

It is for these reasons that we are strongly opposed to the removal of the Student Financial Supplement Scheme, and why my colleague Senator Stott Despoja will later move a range of amendments to increase payment levels and the parental income test threshold and to maintain the SFSS for existing students in the event of the scheme's closure. In addition to these amendments soon to be proposed by my colleague, I believe the closure of the SFSS would require further changes to the Social Security Act to ensure

that pensioners, particularly those with disabilities, are better able to meet the range of up-front upgrade and repair costs to aids and equipment, which I referred to earlier. In the meantime, however, the desirable outcome is to ensure that this scheme is maintained. Yes, it is inequitable, numbers may be falling and as a part of the student financial income support system it certainly reflects a broader need for dramatic overhaul—but it is one of the fewer and fewer income supports students have to rely on in the face of spiralling costs, and so it must be maintained. (*Quorum formed*)

**Senator CROSSIN (Northern Territory)**

(10.44 p.m.)—I rise tonight to speak on the Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003 and the Student Assistance Amendment Bill 2003. We know that these two bills are significant in that they take away the very means by which many students currently survive while attending university. This point cannot be overemphasised. There are over 40,000 students who currently rely on this money to finance themselves while they undertake their further education. Without this extra money, many would not be able to continue to study. This is primarily because of the increasing costs associated with tertiary education and training and the inadequate support and assistance currently offered to students by this government. In a recent media release, the Australian Vice-Chancellors Committee stated:

... the debate over the Student Financial Supplement Scheme (SFSS) misses the point. In its current form the Scheme does not work but reform must be much more than simply abolishing the Scheme.

That was on 16 September this year. This statement highlights the problem with this bill. Rather than provide practical solutions to the increasing financial burden students face in Australia today, the Howard govern-

ment has decided to completely abandon students once again.

The fact is that many students have relied in the past, and continue to rely, on the Student Financial Supplement Scheme as a means of support throughout their years at university. It is no secret that today more students are forced to work while they attend university. Many have to enrol part-time in order to work enough hours to support themselves while they study. Full-time students, more often than not, are also working part-time, casually or even full-time in order to stay at university and gain a tertiary education or even a TAFE qualification.

The Australian Labor Party recognise the pressures that students face today in this country. This of course is reflected in our Aim Higher higher education policy, released by our deputy leader, Jenny Macklin, earlier this year. Not only do we retain the Student Financial Supplement Scheme in this policy but also we address the serious inadequacies of rent assistance in relation to Ausstudy and Abstudy payments. Rather than give up and abandon our future generation, Labor have come up with the answers. It has become blatantly obvious that this government does not understand, or want to understand, the problems that students face.

The fact is that attending university is incredibly expensive, and a large majority of parents cannot afford to fully support their children when they attend university. The Student Financial Supplement Scheme gives students an option to access additional funds to finance their studies through government provided loans. The Student Financial Supplement Scheme was introduced in 1993 by Labor to provide flexibility to students who were in need of extra cash to undertake their studies. It is entirely voluntary, and students can take up this option if they need to.

It must be said that the Howard government has not addressed the increasing cost of attending university either in this bill or in any of the higher education reforms that are also currently before the Senate. In fact, the higher education reforms work against students. There would be increased burden on students under these proposals by this government. The proposed user-pays system would mean that students would not only have to worry about where they were going to get the money to pay for everyday living expenses and books but may also have to figure out how they were going to pay up-front fees to get into the course they wanted to do. Of course, the more popular the course, the more expensive it would become under this government's proposals.

The closure of this scheme would not benefit any students, current or future, anywhere in the country. However, it would surely penalise the around 40,000 students a year who currently rely on this money to get through their studies. Students have indicated through letters and emails to members and senators of this parliament, including me, how badly they would be affected by the closure of the scheme. Many have explained that they simply could not afford to continue to study if they did not receive this money. Students would be forced to quit university if the scheme were abolished.

In stark contrast to the Howard government's approach, Labor have announced that we will keep this voluntary scheme and in addition we will extend existing systems of financial support to relieve the burden on students. As the Deputy Leader of the Opposition, Jenny Macklin, stated in the House of Representatives, it is extremely important that the government do more, not less, to help students who are struggling to cope with mounting costs while they are studying, by supporting the amendments Labor are moving in the Senate.

Debate interrupted.

#### ADJOURNMENT

**The ACTING DEPUTY PRESIDENT**  
(**Senator Ferguson**)—Order! It being 10.50 p.m., I propose the question:

That the Senate do now adjourn.

#### Special Broadcasting Service

**Senator SANTORO** (Queensland) (10.50 p.m.)—One of the most important and most worthwhile duties of a senator is to represent the views of Australians in their national parliament. I regard that element of the job as a special privilege. Australians who feel aggrieved by government policies or actions—and, in the case of tonight's topic, the policies or actions of public entities—have an absolute right to have their views represented in this place. It is on that basis that I speak tonight, in the happy circumstances of not only being able to make representations of these views but also agreeing with them.

Over many months now there has been a public debate about perceptions of bias and lack of balance in the media. In the context of the Australian Broadcasting Corporation and the Special Broadcasting Service, honourable senators will not need to be reminded that I have pursued this issue with particular vigour. I say tonight that my sense of vigour on this issue is in no way diminished. I shall continue to speak out when that is necessary. I shall always be happy—and, as I mentioned a moment ago, also privileged—to represent the views of Australians in this place. There are two separate issues currently to the fore: that of the grievance of what some might loosely term the Jewish lobby over the ABC and SBS coverage of the difficult and dangerous situation of Israel and the Palestinians; and that of the Vietnamese community, or a very large section of it, over the broadcasting by SBS of Communist Party of Vietnam propaganda on the unedited satellite download news program it has been

showing in its *WorldWatch* service. I want to address each of these issues in turn.

I turn first to the complaints of anti-Israel bias, because they are of longer standing and of deeper, more evidently global importance. That is not to diminish in any way the separate but similar complaints from Australian Vietnamese. Indeed, I make the point tonight that these two communities—Australian Jewry and Australian Vietnamese—appear to have a common cause, and may indeed make common cause, in their struggle to be heard on matters of media bias and lack of balance.

Last month the Australia/Israel and Jewish Affairs Council produced a report entitled *SBS-TV and the Middle East*. The report said:

This report originates in the long-running concern of the Australian Jewish community that SBS exhibits an entrenched and strongly pronounced bias against Israel in its news, reportage and selection of documentary material and in the lack of responsiveness, indeed negativity of SBS ... to reasoned and documented complaints.

Those are the words of the report produced by the Australia/Israel and Jewish Affairs Council; they are not my words. I am representing their views in this chamber. I happen to agree with the thrust of these views in this instance, but that is, in a sense, beside the point. The point is that an analysis of SBS Television news and current affairs indicates a pattern of factual inaccuracy and bias in selection of material, emphasis and reportage that spills over into overt editorialising. It is the view of those who level this charge that, when viewed against SBS's legislative guidelines and codes of practice, the record indicates that the network has consistently violated both where coverage of Israel is concerned.

In the context of the debate over how perceptions of Israel are formed in the Australian community, I think we need to start from a very basic premise. Israel is a functioning

democracy with an independent judicial system—it is not like ours, but it is a robust democracy moulded to its own historical precepts—and wages war and controls its security in line with the proper limits on executive action that are set by functioning democracy and independence in the judiciary. Its opponents in the context of this debate are not national states, even though it must be conceded that Israel—and indeed the very concept of Israel—is defined in many Arab countries and cultures as anathema.

Israel's opponents are terrorists. They are Palestinian terrorists, but that gives them no special status and can never do so. Not many Palestinians are terrorists. The overwhelming majority of Palestinians are ordinary, law-abiding people who want a peaceful life and to make a living. Terrorists are people who blow up or otherwise extinguish the lives of total strangers at random, in large numbers, for causes that have nothing to do with their innocent victims. We know the pain inflicted on us by terrorists who blew up two bars in Kuta, Bali, on 12 October 2002, where the greatest proportion of victims was our own people. No-one tries to find an excuse for that obscene act of irredeemable horror. No-one can. Any moral relativist who tried it would be shouted down, and rightly so.

Consider the Israelis. They deal with that obscenity—and I made this point last night in the adjournment—on almost a daily basis. Consider the Palestinians—leaving out of that consideration the terrorists themselves, whose agendas have nothing to do with genuine Palestinian aspirations. They are subjected to a high risk of death or injury, because terrorists who operate among them—and with the active support of some of them and the tacit support of many others—cross into Israel and commit mass murder, and Israel retaliates. It is as simple as that.

According to the Australia/Israel and Jewish Affairs Council, a review of SBS current affairs coverage reveals a decade-long pattern of favouring overwhelmingly anti-Israel documentaries or material severely critical of Israel, no matter how biased or unreliable. For example, over the two-month October–November period last year, the review found that SBS screened eight documentaries on Arab-Israeli issues. Five were anti-Israel. Three were reasonably balanced. None—in the assessment of the review—could be described as particularly sympathetic to Israel. The report said:

Additionally, an in-depth analysis of SBS news coverage over a one-year period identified 57 cases of serious bias involving editorialising, selectivity, graphics, and, most importantly, 13 cases of outright factual errors.

It is sometimes said that a democracy, because it applies the rules of democratic behaviour to its national policy, and because by definition it has an independent judiciary, has an international duty to behave better than others are expected to. In general, democracies do behave better than states that are governed by unelected elites or strongarm egotists. The real tragedy of Israel's consistent misrepresentation to the world—in the case of the issue tonight, regrettably, on Australian free-to-air television—is that its national story has tended to be told in terms of Israel's supposed responsibility to just put up with the bad, and too often murderous, behaviour of other people in its neighbourhood.

I commend the report of the Australia/Israel and Jewish Affairs Council to honourable senators. It is a very useful resource and a substantial guide to the ever-present need to ensure that news and current affairs reportage achieves true balance.

There is another new publication which many people may find quite instructive. It is *Special Report No. 15: The Australian Left and Antisemitism*, prepared for the B'Nai

B'rith Anti-Defamation Commission by Dr Philip Mendes of Monash University. It explores the history of the Left towards Jews, from the early socialist movements of Europe in the 19th century through to the seminal events of the 1967 Six-Day War and the current, post-2000 intifada views of elements of the extreme Left.

Before turning to the other issue I want to talk about tonight, I would just like to apprise the Senate of a necessary corrective measure recently applied by the British Broadcasting Corporation to its own coverage of the Israel/Palestine question. The BBC has appointed a senior editorial adviser as its 'Middle East policeman' to oversee its coverage of the region amid mounting allegations of anti-Israel bias. There is in that appointment, perhaps, an example that SBS and others could follow here.

Turning now to the other issue of SBS's broadcasting of self-confessed communist propaganda, I would like to acquaint the Senate with the views of different sections of the Australian Vietnamese community. It is fair to say that there is a divergence of view within the Vietnamese community about these broadcasts. One Australian Vietnamese who wrote to me recently, Mr H. Tran from New South Wales, made the point that what is at stake is the matter of the right to information, which he describes as a right that is fundamental to the inherent dignity of all people. He suggests that action to curtail that access—in this case to direct, unedited satellite broadcast downloads from Vietnam—is action that will curtail the choice, the options, of free people, and that this is wrong. Of course, he is absolutely right. But the curious thing in that argument is that the Vietnamese people at home in Vietnam do not have that choice, and if they protest about it they wind up in jail. The federal president of the Vietnamese Community in Australia, the VCA, is Mr Trung Doan. He takes a contrary

view. Mr Doan makes the point that, if Australian Vietnamese wish to import Vietnamese newspapers, they can do so. If they were in Vietnam and wanted to import Australian newspapers, they would, he suggests, go to jail.

There are rights and wrongs on every side of every argument. It would certainly benefit Australian Vietnamese to have access to news and views from their original homeland. I accept that this is part of what SBS has tried to do by taking—since 6 October—the satellite service of VTV4 in Vietnam. I think they made the wrong decision. So, as it happens, does the recognised leadership of the Australian Vietnamese community. And so do the 40 Australian Vietnamese youth organisations which tomorrow will launch an official complaint against SBS Television's decision to broadcast—run—the Vietnamese news program. In a collective effort that surely shows some degree of universality in their view, the youth organisations will issue a joint written complaint to SBS Television. The organisers say it is the first time their 40 organisations, with thousands of members across Australia, have taken collective action on one issue. It is instructive that these organisations are totally separate entities operating in wholly different fields of interest. *(Time expired)*

#### **International Day for the Elimination of Violence Against Women**

**Senator MOORE (Queensland) (11.00 p.m.)**—On 17 December 1999 the United Nations adopted resolution 54 of 134 on the International Day for the Elimination of Violence Against Women. That included designating 25 November as the international day for remembering the elimination of violence against women. This day was chosen to commemorate the lives of the Mirabel sisters. It originally marked the day that the three Mirabel sisters from the Dominican

Republic were violently assassinated in 1960 during the Trujillo dictatorship. These sisters were political activists and highly visible symbols of resistance to a dictatorship. The brutal assassination of these women was one of the events which helped propel the anti-dictatorship movement and that dictatorship came to an end very quickly.

The sisters, referred to as the 'Unforgettable Butterflies', have become an international symbol against the victimisation of women. They have become a symbol of both popular and feminist resistance. The International Day for the Elimination of Violence Against Women is also linked to 16 days of activism against gender violence which arose from the global campaign for women's human rights. That time period encompasses four significant dates: 25 November, today; 1 December, World AIDS Day; 6 December, the anniversary of the Montreal Massacre when 14 women engineering students were gunned down just for being women; and 10 December, Human Rights Day. Those dates culminate in the acceptance and the knowledge that violence is wrong and, in particular at this time, violence against women must be stamped out across the world.

Today, White Ribbon Day, is when Australia and the rest of the world mark the International Day for the Elimination of Violence Against Women. The wearing of white ribbons—and many people in both houses of parliament today have been wearing white ribbons—began as a statement by a group of Canadian men to highlight the responsibility of men and the community at large to address violence against women. The white ribbon campaign is the largest effort in the world of men working to end men's violence against women. Wearing a white ribbon is a public pledge never to commit, condone, or remain silent about violence against women.

The Australian government response to the Beijing conference in 2005 states:

Violence and the threat of violence against women and girls is a fundamental violation of human rights. Both are forms of discrimination that prevent women from achieving full social and economic equality.

The key objectives of the Office of the Status of Women in this area are to:

- work towards a society where women's lives are free from violence and the threat of violence, and their safety and wellbeing is secured; and
- position Australia as an international leader in reducing violence against women.

To work towards these objectives, OSW will:

- promote policies and practices that address prevention, early intervention and crisis assistance;
- promote incorporation of demonstrated good practice at national, state, territory and local levels;
- facilitate the development of appropriate and comprehensive community responses;
- raise community awareness to reduce tolerance of violent behaviours and to reduce the use of violence;
- implement complementary strategies for men and boys and women and girls, to prevent family violence and reduce the use of violence in the community; and
- promote programmes and policies for women's security and health—addressing the needs of women affected by violence, including recovery and wellbeing.

As we said, Australia has a role to play in the international fight against violence. The worldwide statistics are staggering. At least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime, and the abuser is usually someone known to her. In a World Bank report it was estimated that violence against women was as serious a cause of death and incapacity among women of

reproductive age as cancer and a greater cause of ill health than traffic accidents and malaria combined.

In Queensland, which is my state, the fear of violence diminishes the lives of many women, and that has been acknowledged by Premier Peter Beattie in his ministerial statement on International Women's Day in 2003. Violence is most likely to occur in the home and be perpetuated by a family member or a current or former partner, someone who is near and frequently very dear to the woman. Twenty-three per cent of women who have been married or who are in a de facto relationship have experienced violence from their male partner. Last year, according to the Queensland police, 90 per cent of the women who were murdered in Queensland knew their killers. Seventy-one per cent of murdered women in Queensland were killed by a member of their family. More than 70 per cent of female assault victims and almost 60 per cent of sexual assault victims are family members and are very close to their assailant.

These statistics are even worse when we look at Indigenous communities. What we have is dedicated action in Queensland to address these issues of family and domestic violence. In Queensland the amendments to the Domestic and Family Violence Prevention Act 1989 extended formal protection from abuse and violence to people in intimate, personal family and informal care relationships. The government has committed \$10.4 million over three years for new and better counselling and support services to back up that new legislation. There is not time to look at all the programs that have been instituted in Queensland or at the national level, but there has been a growing awareness of the issues of violence.

The major Commonwealth initiative, Partnerships Against Domestic Violence,

known as PADV, was launched at a national domestic violence summit in November 1997. The project was funded in two stages and was designed to encourage the Commonwealth, states and territories to work together on various pilot projects focusing on the prevention of violence against women. This program also funds the Australian Domestic and Family Violence Clearinghouse, which publishes research on the key issues of family violence, policy, practice and research.

A key element of the partnerships strategy is communication. The development of a useful web site and information exchange has been a valuable component of the project. The Beijing experience clearly highlighted the absolute need for education and the strong exchange of experience, so that the causes and dangers of violence can be identified and addressed and the horrific cycle can be broken.

The Senate estimates process concentrated on the progress of the partnerships program and we received regular information through the estimates process from the Office of the Status of Women on how the pilot funding is going and what the ongoing commitment to funding must be. We expect that this funding will be extended into 2005, and I think that the work that has been done indicates that this must be a key initiative for the Commonwealth government.

The whole issue of the awareness campaign and the understanding and the elimination of violence is an important issue and we hope that in the future there will be continued involvement and awareness of the White Ribbon Campaign. UNIFEM Australia has taken a leading role in this program and has been encouraging leaders of government, both at the federal and state level, to be personally involved in this process. I know throughout many states today there have

been public activities encouraging political leaders, sports leaders and personalities to wear the white ribbon and show that this is a public exercise that will promote the need to ensure that there is a peaceful society and that women will no longer continue to be the major victims of violence in our community. We hope that in 2005 there will be a much stronger involvement at the Commonwealth level. In the past there has been some activity at the Commonwealth level, but this year it has been quite small. We hope that next year, with 12 months to plan, there will be able to be a strong, public acceptance that White Ribbon Day is important and that we can work together to stamp out violence and make this a safer society for us all.

#### Trade: Banana Imports

**Senator CHERRY (Queensland) (11.09 p.m.)**—Earlier today 42 cartons of bananas were delivered to Parliament House—good quality, North Queensland bananas, delivered by the President of the Australian Banana Growers Council, Len Collins. The bananas came with a message: the future of the \$350 million Australian banana industry hangs in the balance, as Biosecurity Australia and the Director of Quarantine decide whether Australia will approve the importation of Filipino bananas. I stood with Mr Collins today and the federal member for Kennedy, Bob Katter, to send a clear message to government, and it was an unusual message for politicians: keep the politics out of quarantine decisions and let the science decide the issues.

The draft import risk assessment—IRA—report prepared by Biosecurity Australia last June clearly stated that the science says that the disease risks from the importation of Filipino bananas from moko and black sigatoka cannot be minimised or managed. The imports of bananas from an industry rife with these diseases would be a disaster for the

Australian industry. The January edition of the *New Scientist* magazine highlighted the challenges facing banana growers from diseases like black sigatoka. This disease has devastated crops or forced massive spraying of fungicide to control it; so much fungicide, in fact, that reports show an increased rate of leukaemia and birth defects amongst workers, and in particular the large numbers of female workers in many countries. The article says:

A study by the UN's Pan-African Health Organization found that a fifth of the country's male banana workers are sterile.

It says that the number of fungal sprayings per year means that:

... the Cavendish [is] the most heavily sprayed major food crop in the world.

The problem is that the diseases black sigatoka and moko are throughout Filipino banana crop plantations and they have had to resort to the use of significant numbers of sprays to manage this problem. Bananas are, in some respects, a genetic dinosaur: the limitation on their genetics means that bananas find it difficult to fight against diseases.

The Australian banana industry has spent hundreds of thousands of dollars destroying crops in areas where diseases have been found. The industry is worth \$350 million to banana growers, but over \$870 million to the broader economy in the form of ancillary services and employment. We produce approximately 250,000 tonnes of bananas in Australia, 85 per cent of those in North Queensland. Over 5,000 people are employed directly in the banana industry, with many more employed in supporting industries.

It is now over 18 months since Biosecurity Australia released the draft import risk assessment report on the importation of bananas from the Philippines. For 18 months

the industry and towns like Tully and Innisfail have lived under the uncertainty of not knowing what the final result will be. That uncertainty has fed into investment and spending in those regional towns. That draft report recommended that Australia continue to maintain its current ban on the importation of bananas from the Philippines. During that 18-month period, there was a six-month gap between the risk assessment panel—RAP—meetings stretching from December 2002 to June 2003. The banana growers say they have not been provided with a satisfactory explanation for why this delay has occurred.

The delay did allow for the Philippines to produce research results on experiments they were conducting on moko disease, which were received by Biosecurity Australia in August. Serious questions have been raised about the veracity even of this research by a CSIRO report commissioned by the Banana Growers Council. The research suggests that the interval between moko infection of a banana plant and the expression of symptoms is between 11 to 13 weeks, well above the figure of two weeks originally supplied by the Philippines. This could prove to be crucial in the context of the overall risk assessment.

In the draft IRA, the risk assessment panel estimated that the interval between moko infection of a banana plant and the expression of symptoms to be only two weeks. Consequently, in our view and the view of many banana growers, this underestimated the risk of the entry of moko disease. The Philippines research is the only new information I am aware of that has been provided to Biosecurity Australia. In the absence of any new science and supportable science, any recommendations from the panel to allow the importation of bananas from the Philippines would be based not upon scientific considerations but rather upon other, inappropriate, considerations.

In the draft IRA, the panel relied upon information in relation to the incidence in the Philippines of each of the quarantine pests which was provided by the Philippines government. Accurate information in relation to the incidence of each of the pests in the Philippines is critically important for properly assessing the risks of the entry of each of the pests. From what we have seen thus far, Biosecurity Australia has not taken any steps to verify the accuracy of the incidence data provided by the Philippines.

As I understand it, the Banana Growers Council has very serious reservations about the accuracy and completeness of the incidence data provided by the Philippines. The council believes that the incidence data understates the incidence of each pest in the Philippines. For example, in the draft IRA, based on information provided by the Philippines government, the panel assumed an incidence rate of moko disease of one case per hectare per year in their export plantations. According to the public file this figure has not been verified by Biosecurity Australia despite Australian authorities having asked the Philippines several times to provide a retrospective survey of the incidence of moko infection in Cavendish plantations over a five- to 10-year period. The Australian industry has anecdotal information suggesting that the incidence of moko is significantly higher than that reported by the Philippines and that therefore the panel cannot properly assess the risk of the entry of moko disease. Moko incidence levels may also prove to be crucial to the overall risk assessment because if the incidence level is determined to be low enough then moko may well sneak in under Australia's acceptable level of protection.

To touch on fumigation, Senator Hill recently responded to a question on notice regarding the importation of Philippine pineapples into Australia by stating that the

highly toxic chemical hydrogen cyanide was being considered as an arrival fumigant for Philippine pineapples. It is therefore likely that if registration for use of this chemical was approved then it could also be considered for use on bananas.

With regard to the joint agricultural forum proposed by the Prime Minister at a press conference in Manila on 14 July 2003, Senator Hill indicated recently:

... it is anticipated that the Forum will be discussed during Philippine's Agriculture Secretary Lorenzo's proposed visit to Australia later this year.

What are the terms of reference for this forum? What will be on the table? Will the IRA remain a draft until these negotiations are undertaken? If in fact the Australian government through the trade minister is negotiating on Filipino banana imports or any other aspects of our quarantine system, what will become of the volumes and volumes of science known across the world showing why disease infested goods should not enter countries that are thus far free of them? Our bananas will be susceptible to each of the quarantine pests from the Philippines that were identified in the earlier report and, therefore, the continued survival of those species could be threatened by the entry of those pests with Philippine bananas.

Although the IRA process is supposed to be strictly science based I am increasingly concerned that it is being leaned on by this government and the Filipino government to produce the correct political outcome. The industry is also concerned that this process is in danger of being compromised because the federal government is under substantial pressure to effect solutions to the following related issues: threats by the Philippines to retaliate against our dairy and live cattle exports to their country if their bananas are not allowed access to our market; international

challenges to our quarantine regime currently being brought before the WTO by the European Union and the Philippines; and threats by the Philippines of a magnified risk of terrorism in the Pacific region if more jobs are not created in their banana industry.

The recent decision by Biosecurity Australia on pineapple imports has only deepened this concern. The proposal to change from offshore to onshore fumigation was first circulated in June and was vigorously opposed by the pineapple industry in my home state of Queensland on the basis that it contradicted the import risk analysis covering fresh pineapple imports finalised only a year ago and posed an unnecessary pest risk to the Australian pineapple industry. Biosecurity Australia argued that under the World Trade Organisation regulations covering free trade, Australia had no option but to change the policy. They argued that there was ample evidence to show that onshore and offshore fumigation are equivalent and insistence that fumigation take place offshore would be viewed as a barrier to free trade by the WTO.

Australia is the only banana producing country in the world that is completely free of the diseases we are talking about in the Philippines. The scientific evidence has concluded that it will not be possible to keep these devastating diseases out of Australia if the importation of Philippine bananas is allowed to proceed. Therefore, clearly, it is in the national interest for the imports not to proceed. The science must win out over the politics.

#### Economy: Interest Rates

**Senator WATSON (Tasmania) (11.19 p.m.)**—I rise to talk tonight about the recent interest rate rise of 0.25 per cent by the Reserve Bank of Australia. I am a little perplexed by the bank's decision to raise the rate at this time, given that the main charter focus for the bank is really directed to main-

taining a controlling brief over inflation. A new focus has emerged from the bank on just one asset class—housing stock. Its consequent decision to raise interest rates because of that will have an adverse effect on exporters.

According to the Reserve Bank's charter, its main objective has been, since 1993, to keep consumer price inflation within the range of two to three per cent per annum. The bank's view is that controlling inflation preserves the value of money and this is the primary way in which monetary policy can help to form a sound basis for long-term growth in the economy. However, it seems that the bank is presently very worried about the housing market. The bank stated in its annual report this year:

Looking ahead, the main potential source of risk to financial stability would be a substantial correction in the housing market, impacting on the balance sheets of authorised deposit-taking institutions through mortgage defaults ... The concern would be a sharp jump in mortgage defaults which triggered a more substantial market correction—a scenario more likely to be associated with a deterioration in employment conditions or a sharp rise in interest rates.

It also noted that lending to the household sector, the bulk of which is secured against housing, has been growing at double digit annual rates for some time. This has led in part to substantial and far-reaching increases in house prices and, consequently, a high level of household debt. The Reserve Bank expressed concern about the resulting increased financial risk to households with housing debt, but noted that there were no obvious signs of financial stress in the household sector, with interest rates remaining at historically low levels. However, in his statement on monetary policy on 5 November 2003, the Governor of the Reserve Bank cites as one of the contributing factors for the interest rate rise:

The housing market continues to be buoyant. The effect of the rise in house prices over recent years is likely to be expansionary for the economy in the period ahead, as higher wealth is accessed to support household spending.

The Reserve Bank seems to have taken a particular interest in deflating the housing bubble. This is despite the fact that the Australian Prudential Regulation Authority has conducted a rigorous stress test to help it gauge the resilience of authorised deposit-taking institution housing loan portfolios in the event that there would be a substantial housing market correction. After conducting such stress testing, APRA found:

...the results are reassuring. They demonstrate that the ADI sector—

that is, authorised deposit-taking institutions—

even though heavily exposed to Australia's very buoyant housing market at present remains well capitalised and could withstand a substantial housing market correction, if one were to eventuate, without putting depositors at undue risk.

It seems, therefore, that the Reserve Bank has acted to slow or deflate the housing bubble, even though APRA has stated that the banking sector could withstand even an unexpected and sharp decline in the housing market. The Reserve Bank Governor has justified the interest rate increase by saying there was a risk that inflation would rise in the longer term. But, judging from economic forecasts, it does not appear that the inflation rate is about to soar at any time soon or, indeed, in the medium term.

The inflation rate currently sits at 2.6 per cent, which is well within the Reserve Bank's target range. In its most recent statement on monetary policy, the Reserve Bank predicted that the inflation rate for the first half of 2004 will be a trough lower than previously predicted. Although it is expected to pick up by 2005, the Reserve Bank still expect it to be at around 2.5 per cent by the

second half of 2005. I fail to see how inflation can be on the rise when the Australian dollar has now climbed to more than 72c against the US dollar. I would have thought that the rise in the dollar would have the effect of pushing inflation down as the price of imported goods and services fall. In addition, raising the interest rate would be likely to further strengthen the dollar—in fact, when interest rates went up, the dollar went up. This would have a significantly adverse impact on export commodity prices—and indeed it has had—and on our ability to compete in overseas markets.

This all begs the question: why did the Reserve Bank lift the interest rate? There is not much evidence of inflationary pressures, and the effect of it is to push up the value of the dollar, which will have a major and detrimental impact on exporters. What other reason can there be if not to prick the housing bubble? Some economists have said that monetary policy has been too relaxed in this country and that it needs to be around five per cent to achieve what is known as a neutral setting. It has also been said that it was easy for Australia to adopt a relaxed monetary policy while countries such as the US and Japan were in recession. However, now that those economies are recovering, our monetary policy should be tightened up. The point is that, if it were clear that these economies were improving, it would have been expected that they would have increased their cash interest rates before we increased ours. But they have not. The Reserve Bank has been keen to raise the interest rate in order to deflate the housing bubble and has been looking for very good reasons to do so. However, this will have the flow-on effects of slowing the economy, pushing inflation down and capping growth.

Sustained growth in credit has been cited by the Reserve Bank as another reason for the interest rate rise, as it believes this could

be detrimental to economic stability over the long term. This is, however, inconsistent with statements made by it in another of its publications, where it stated that household debt was high but not worrying. It is true that the level of debt in the household sector has increased at the rate of 14 per cent per annum over the last decade. However, if you analyse the composition of household debt, it is interesting to note that mortgage debt, combining owner occupation and borrowing for investment purposes, makes up over 80 per cent of the total. The remaining percentage of household debt is made up of personal debt—that is, loans to purchase cars, boats and other durables, and also credit card debt. Although credit card debt has grown rapidly over the last decade, it still accounts for only four per cent of the total household debt. Further, the data show that the majority of credit card holders pay no interest, and defaults and debt write-offs were reduced by 40 per cent between 1998 and 2002.

When you further examine why household debt has grown by 14 per cent per annum, there are a number of contributing factors. There have been historically low interest rates as a result of lower inflation rates, thus enabling people to borrow substantially more while still bearing the same servicing cost. Financial deregulation and increased competition among financial institutions have also contributed to the growth in household debt. Lending margins have been reduced and major lenders have encouraged lending for investment purposes. New products have also been developed, for example home equity loans and mortgages with redraw facilities. These have given households greater spending power and have resulted in borrowers increasing their mortgages rather than reducing them, as has traditionally been the case.

Another contributing factor has been the progressive change in the nature of financial transactions. For example, there is a ten-

dency now for people to use credit cards to pay for bills and day-to-day living expenses and then pay the credit card balance in full at the end of each month. The added incentives of frequent flyer and other rewards programs have also encouraged the increased use of credit cards. But, as I have mentioned previously, the majority of credit card holders are paying very little interest. It seems, therefore, that whilst household debt has increased, it is actually better managed or it is utilised in such a way as to build wealth. The Reserve Bank's current focus on the housing market is not in its charter. It has shifted its focus at a time when new construction has already begun to level off.

In summary, there appears to be no sound reason for the Reserve Bank to have moved to raise the interest rates at the time it did. Building construction has moved off its peak; inflation is low and within the bank's relevant range. International recovery is fragile. Raising the interest rate did not weaken the dollar; in fact, it strengthened it. Even during estimates the Treasury seemed to be perplexed by the bank's actions. Perhaps it is time to ask: why has the Reserve Bank really acted in this way and is it within its charter?

#### Asbestos Awareness Week

**Senator MARSHALL (Victoria) (11.29 p.m.)**—This evening I rise to bring to the Senate's attention the fact that this week throughout Australia we mark Asbestos Awareness Week. Asbestos Awareness Week is being held to highlight the health and social implications of and the political issues surrounding asbestos in Australia. Events during the week will also honour and remember all those who have died from asbestos related diseases. Of particular note in this regard is a commemoration service due to be held in Melbourne's City Square this Friday at 1 p.m.

Over the past 75 years, millions of Australians have been exposed to asbestos at work or through their jobs, at home, in schools and in many other public places around the country. Sadly, more than two and a half thousand asbestos caused deaths occur in Australia each year now. Despite popular belief, this number is on the steep incline rather than a decline. Due to the long latency period between the exposure to asbestos fibres and the manifestation of asbestos disease, which is often up to 30 years or more, the epidemic of asbestos disease is yet to peak in Australia. It is expected that this will occur around the year 2023. So, according to this figure, we have another 20 or so years until we hit the peak of the problem. It is expected that as many as 45,000 persons may die from asbestos related diseases in Australia over the next two decades if effective medical treatments are not found.

Asbestos is the known cause of numerous diseases which include but certainly cannot be limited to the following: lung diseases, including asbestosis, pleural plaques and lung cancer; mesothelioma; cancer of the gastrointestinal tract; cancer of the larynx; cancer of the bowel; and from time to time other organs and systems are believed to be the sites of malignant change due to asbestos as well. We have a very important obligation placed upon us to act diligently in the area of asbestos related disease education and health care and we must also ensure that those responsible for causing asbestos related diseases compensate those affected.

The history of asbestos used in Australia and in fact many of its serious health ramifications, some of which I have just mentioned, are widely unknown amongst many Australians. For the benefit of those who may be listening and for my colleagues here in the Senate who may be interested, I will take this short opportunity to highlight some

of the facts about asbestos and its uses over the years in Australia.

Asbestos is a generic term applied to some mineral silicates of the serpentine and amphibole groups whose characteristic feature is to crystallise in fibrous form. Until the late 1960s, Australian industry used both serpentine and amphibole asbestos at rates of 75 per cent and 25 per cent respectively. Subsequently the use of chrysotile increased to approximately 95 per cent while blue and grey asbestos declined to five per cent.

Asbestos is one of the most useful and versatile minerals known to man mainly because of its unique properties: flexibility, tensile strength, insulation from heat and electricity, and chemical inertness. It is the only natural mineral that can be spun and woven like cotton or wool into useful fibres and fabrics. The importation of asbestos will cease at the end of 2003. However, there will be limited exceptions for the approved use of asbestos products in highly specialised industries.

Over the years, more than 3,000 asbestos products and uses have been identified. Most Australian homes contain asbestos products in one form or another. Asbestos has been used in fencing, asbestos pipes, thermal insulation, fireproofing, paints and sealants, textiles such as felt and theatre curtains, gaskets and in friction products such as brake linings and clutches. During the peak of the building years, the fifties, sixties and seventies, asbestos found its way into most public buildings including hospitals, schools, libraries, office blocks and factories. Workplaces such as ships' engine rooms and power stations were heavily insulated with sprayed limpet asbestos.

As such, asbestos diseases can no longer be considered as a problem isolated to the miners of asbestos. Occupational exposure to lethal asbestos among former workers of the

asbestos manufacturing industry, government railways, electrical commissions, wharves, building industry and Defence personnel in the Navy, Army and Air Force is now producing lung cancers, mesothelioma, asbestosis and pleural disease of quite significant proportions. Tragically, asbestos diseases not connected to occupation are also now emerging among those in the broader community.

Companies like James Hardie, CSR and Wunderlich manufactured most of the asbestos products that have been used in thousands of commercial and private buildings in Australia and all knew about the effect these products would have on the health of employees and on wider members of the community. Unfortunately, these companies shirked their social and corporate responsibilities and continued to make massive profit from asbestos and its related products. In an advertising article about Asbestos Awareness Week on page 66 of the *Herald Sun* on Monday, 24 November, Peter Gordon from the law firm Slater and Gordon outlined one particular instance involving a James Hardie company. Mr Gordon wrote:

... the Hardie company dominated the asbestos industry in Australia in the 20th century. It was to asbestos what BHP is to steel ...

He went on to explain that Hardie defended its first asbestosis death case in Sydney in the 1930s. However it was not until 1978, years after other companies had done so, that Hardie put a warning on its asbestos products. Mr Gordon continued:

As the toll reaches unprecedented levels in Australia, what is Hardie's latest response? Is it expressing regret and condolences? Is it asking what it can do to ease their pain? Surprisingly no ... It has moved its operations to the Netherlands and set up a company with clearly inadequate funding to deal with compensation claims of its victims ... Such a move has been on the cards since Hardie's own product liability insurer sued Hardie for

fraudulent concealment of the dangers of asbestos from the insurer itself in the early 1980s ...

This company is an absolute disgrace and I understand that legal avenues are being explored to ensure that Hardie meets its social obligations and compensates all those affected here in Australia. I certainly hope that this comes to quick fruition.

In conclusion, I would just like to take this opportunity to pay special respect to Ms Nikki Diver and all those who work at the Asbestos Diseases Society of Australia and the Asbestos Diseases Advisory Service. These organisations provide the community with a number of much-needed and required services. Their work must be commended. The Asbestos Diseases Society of Australia was formed in 1979. Apart from a small annual grant from the Western Australian government, ADSA relies on public support and donations. ADSA is an independent organisation, free from public and private sector interests.

According to ADSA, since 1979 its activities have reflected the deep, community-wide concern over the growing incidence of asbestos induced diseases, the apparent callous indifference of industrial management to the health of employees and, most particularly, the complete lack of social responsibility of the asbestos industry, which indiscriminately mined, manufactured and disseminated a known carcinogen throughout the community.

The Asbestos Diseases Advisory Service, or ADAS, was established in 1984. ADAS was founded in response to an identified need for independent advice on and assistance with asbestos related issues. The ADAS provides free advice and assistance with regard to medical and legal matters, including workers compensation and common law damages claims, industrial and environmental hygiene, and the collation and

distribution of global medical and scientific research information on asbestos related issues. As I mentioned before, these organisations run on public support. As Ms Diver, the manager of ADSA, says, the organisation is run on the smell of an oily rag.

These organisations need our support and I encourage all who can to donate to this very worthy cause. People can contact the Asbestos Diseases Society of Australia by going to their website at [www.asbestosdiseases.org.au](http://www.asbestosdiseases.org.au). I finish tonight by reminding the Senate and those listening, particularly those in Victoria, that the commemoration service to remember those who have lost their lives to asbestos related diseases will be taking place this Friday at 1 p.m. in the City Square. I encourage anyone and everyone who can, to go along and learn more about this very serious and growing issue.

### Special Broadcasting Service

**Senator BOSWELL (Queensland—Leader of The Nationals in the Senate)**  
(11.39 p.m.)—I rise at this late hour to highlight the concerns of representatives of the Vietnamese community in relation to the screening in Australia of government censored news from VTV4 television in Vietnam. The Socialist Republic of Vietnam, a communist run command economy regime, has a policy which aims to send television programs to overseas Vietnamese communities as propaganda for the regime. Content of the VTV4 broadcasts, as with all media in Vietnam, is strictly controlled by the communist government. In fact, VTV4's website states that the station has the function of providing news and propaganda about the policies of the Vietnamese communist party and the government.

I was deeply concerned when I was informed by a Vietnamese friend of mine—and leader of the community—that SBS televi-

sion has been broadcasting a satellite feed of VTV4's news program, *Thoi Su*, from 6.50 a.m. to 7.25 a.m. each weekday morning, since October 6 this year. My Vietnamese friend, a representative of the Vietnamese community in Australia, could not understand why the decision had been made to broadcast this program to Vietnamese Australians, many of whom have fled the persecution of the Vietnamese communist regime to start new lives here. They find *Thoi Su* to be highly biased and, in many cases, offensive. I am making this speech today because I want some answers. Why has SBS television decided to put *Thoi Su* to air here in Australia? Why didn't they consult the Vietnamese community in Australia before doing so? How much is it costing the Australian taxpayer to screen *Thoi Su*? I know they get it for nothing but they still have costs in screening it for half an hour five times a week to a target audience that places little value in watching it. And many members of the presumed audience find it offensive.

I have written this week to the chairman of SBS to ask what reasoning is behind the screening of *Thoi Su* on an Australian taxpayer funded television free-to-air station and what the program is costing SBS. I have had a letter back from the chairman but I have not perused it as yet. I, for one, have a great deal of respect for SBS television. They provide an excellent service to many ethnic and minority groups and they also run some pretty good shows. They do it throughout the country and they provide a high-quality news and sports commentary service which appeals to a broad cross-section of the community. However, I am interested to find out why such a decision was made to broadcast what I understand constitutes communist propaganda to a limited target audience who recognise the program for what it is and who boycott it in droves—all at the expense of the Australian taxpayer. As I have said, I

have written to the chairman of SBS. I have some answers, but I think it is an offensive program to many Vietnamese who are trying to forget the horrors of what they went through many years ago.

**Cockatoo, Mr John**

**Senator McLUCAS (Queensland) (11.43 p.m.)**—Tonight I would like to take the opportunity in the chamber to pay tribute to the life of a man from North Queensland by the name of John Cockatoo. John was a well-respected Yipananji man who passed away earlier this month. John was born in Mapoon on Western Cape York Peninsula on 5 January 1929 and he lived there until he was 15 years old. Like all Indigenous people at that place, he had been in employment whilst at Mapoon. He had been a crocodile and a trochus shell diver at the then mission. Like nearly all Indigenous people of that time, his wages were not given to him. When he died on 4 November this year there was still no resolution to the issue of his stolen wages.

John left Mapoon at the age of 15 and returned to Normanton, where he worked on a number of cattle stations. Subsequently he moved to Doomadgee, where he met Doreen, who was to become his wife. Doreen had been taken from her mother by police when she was six years old, and had lived in the dormitories at Doomadgee in the subsequent years. At John's funeral—which was a true celebration of his wonderful life—we enjoyed the story of the very short courtship between John and Doreen. It was, so we heard, love at first sight.

We understand that Doreen was dressed in a bag dress—which, we were told, you wore when you had done something wrong—when John first met her. I think that John's acute sense of justice was pricked when he saw her in that outfit. So John arranged with the cook at the station he was working at to have some dresses sent up from Townsville, and it is

said that with those dresses and his wonderful smile he won Doreen's heart.

John and Doreen were married after—as John told me much later—he applied for and was granted a licence to do so from the Native Protector. This licence allowed John and Doreen first to marry and then to travel for work. Various they worked at sheep and cattle stations, then at the hospital on Thursday Island and then in the railways in western and coastal Queensland. After a number of transfers and promotions, John and Doreen established themselves in Cairns. In all, John worked for Queensland Rail for 36 years.

John and Doreen had eight children, all of whom were special in their own way. John cherished all of his children, grandchildren and great-grandchildren, who are all great achievers in their own special ways. His grandsons are known to many of us in Australia: the Cockatoo-Collins men are great Australian Rules football players. Jodie Cockatoo is an accomplished musician, who sings currently with Yothu Yindi and I believe will have a great future of her own. She sang at her grandfather's funeral.

As I said, the funeral itself was a great celebration of his life. It was a wonderful, positive recognition of his achievements and those of his wife, Doreen. But John Cockatoo's life was not an easy one. He, like Indigenous people still now, battled racism all of his life. He had a strong sense of justice and did not allow injustice to occur without a response. These principles guided and directed John Cockatoo's life, and that is something we could all learn from. However, when accommodating, generous and wonderful people like John Cockatoo pass away without justice being achieved for them I always feel a sense of enormous failure. John never achieved justice on the issue of his stolen wages but, more significantly, he al-

ways wanted to return to Mapoon, the place of his birth.

There is no time to detail here tonight the sad and sorry history of Mapoon, but senators will remember that the whole population of Mapoon were forcibly removed in the 1960s by the Queensland government. There is conjecture about the reasons for the wholesale removal of the community, but it is widely considered that access to the abundant bauxite in the area was the key. It was only in the early 1990s that the former people of Mapoon began their campaign to, firstly, return to Mapoon and re-establish their community and, secondly, gain recognition of their native title over their land. In his way, John was part of both of those campaigns.

It was only in the last few years of John's life that he was able to go back to Mapoon. This is a reality for many Indigenous people who move away from their traditional land, simply because of the costs involved. John travelled to Mapoon on many occasions with members of the Baha'i community, of which he was an active member. He had wanted to return to live there. Unfortunately for John, but also for us all, this never occurred. John Cockatoo gave much to our community. He gave leadership; a sense of justice; lots of great stories, jokes and cups of tea; and a roof over the heads of many who were in need. He will be missed by many in North Queensland, but his memory will linger long.

**Senate adjourned at 11.49 p.m.**

#### **DOCUMENTS**

##### **Tabling**

The following government documents were tabled:

Administrative Review Council—Report for 2002-03.

*Air Passenger Ticket Levy (Collection) Act 2001*—Report for the period 1 April 2002 to 31 March 2003.

Airservices Australia—Equity and diversity program—Report for 2002-03.

Alcohol Education and Rehabilitation Foundation Ltd—Report for 2002-03.

Army and Air Force Canteen Service Board of Management (trading as Frontline Defence Services)—Report for 2002-03.

Australia and the International Financial Institutions—Reports for 2002-03.

Australian Dairy Corporation—Report for 2002-03. [Final report]

Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2002-03.

Australian Landcare Council—Report for 2002-03.

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for period 1 April to 30 June 2003.

Australian Research Council—Report for 2002-03—Corrigendum.

Australian Securities and Investments Commission—Report for 2002-03.

Australian Sports Drug Agency—Report for 2002-03.

Australian Wine and Brandy Corporation—Report for 2002-03.

Bankstown Airport Limited—Report for 2002-03.

Camden Airport Limited—Report for 2002-03.

Civil Aviation Safety Authority—Report for 2002-03.

Coal Mining Industry (Long Service Leave Funding) Corporation—Report for 2002-03.

Department of Employment and Workplace Relations—Report for 2002-03—Corrigendum.

Director of Public Prosecutions—Report for 2002-03.

Financial Reporting Council and Australian Accounting Standards Board—Reports for 2002-03.

Forest and Wood Products Research and Development Corporation and Forest and Wood Products Research and Development Corporation Selection Committee—Reports for 2002-03.

Health Insurance Commission—Report for 2002-03.

Hoxton Park Airport Limited—Report for 2002-03.

Indigenous Education and Training—National report to Parliament 2002.

Inspector-General of Intelligence and Security—Report for 2002-03.

Migration Agents Registration Authority—Report for 2002-03.

National Standards Commission—Report for 2002-03.

Professional Services Review [Medical and pharmaceutical services]—Report for 2002-03.

Regional Forest Agreements between the Commonwealth and Victoria—Reports—2001.

2002.

Sugar Research and Development Corporation—Report for 2002-03.

*Sydney Airport Demand Management Act 1997*—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 July to 30 September 2003.

Telstra Corporation Limited—Equal employment opportunity program—Report for 2002-03.

United Nations—

International Covenant on Civil and Political Rights—Human Rights Committee—Communications—

No. 776/1997—Decision.

No. 937/2000—Decision.

No. 978/2001—Decision.

No. 983/2001—Views.

No. 1053/2002—Decision.

International Convention on the Elimination of all Forms of Racial Discrimination—Report of the Australian Government under Article 9—Combined 13th and 14th periodic report for the period 1 July 1998 to 30 June 2002.

### Tabling

The following document was tabled by the Clerk:

Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensation No. 11/03 [5 dispensations].

## QUESTIONS ON NOTICE

The following answers to questions were circulated:

### **Finance and Administration: Paper and Paper Products (Question Nos 2253 and 2267)**

**Senator O'Brien** asked the Minister for Finance and Administration, upon notice, 14 October 2003:

For each of the financial years 2001-02 and 2002-03 can the following details be provided in relation to paper and paper products:

- (1) How much has been spent by the department on these products.
- (2) From which countries of origin has the department sourced these products.
- (3) From which companies has the department sourced these products.
- (4) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by country.
- (5) What was the percentage of the total of paper and paper products in value (in AUD) sourced by the department by company.
- (6) What steps has the department taken to ensure that paper and paper products sourced by the department from other countries comply with the ISO 14001 environmental management system standard.

**Senator Minchin**—The answer to the honourable senator's question is as follows:

- (1) (a) Financial year 2001-02: I am advised by my department that the information sought by the honourable senator is not held centrally, and is not readily available. The work required to answer the honourable senator's question would involve a significant diversion of resources within the department and I am not prepared to authorise the use of those resources. (b) Financial year 2002-03: \$140,000.00 excluding GST.
- (2) (a) Financial year 2001-02: I am advised by my department that the information sought by the honourable senator is not held centrally, and is not readily available. The work required to answer the honourable senator's question would involve a significant diversion of resources within the department and I am not prepared to authorise the use of those resources. (b) Financial year 2002-03. (i) 94% of these products were sourced from Australia. (ii) 6% of these products were sourced from China, USA, Austria, Indonesia and Singapore
- (3) (a) Financial year 2001-02 Corporate Express. (b) Financial year 2002-03 Corporate Express.
- (4) (a) and (b) I am advised by my department that the information sought by the honourable senator is not held centrally, and is thus not readily available. The work required to answer the honourable senator's question would involve a significant diversion of resources within the department and I am not prepared to authorise the use of those resources.
- (5) (a) Financial year 2001-2002: 100% by Corporate Express. (b) Financial year 2001-2002: 100% by Corporate Express.
- (6) (a) Financial year 2001-02: Nil as the Environmental Management System (EMS) was in its infancy during this period and paper and its use was nominated as a resource that could be targeted in the EMS. (b) Financial year 2002-03: The Department was working to comply with ISO 14001. The Department's draft Environmental Management Plan listed the use of recycled paper in lieu of bleached white paper as one of the 18 proposed action areas.

**Environment: Listed Species**  
**(Question No. 2316)**

**Senator Bartlett** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 22 October 2003:

- (1) Can a copy be provided of any correspondence between the Minister or the department and the Director of Public Prosecutions or the Commonwealth Attorney-General concerning the prosecution of fishers under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).
- (2) With reference to the answer to question on notice no. 1599 (Senate *Hansard*, 21 August 2003, p. 14204), in which the Minister advised that no formal notifications of incidents have been forwarded to the Secretary of the Department of the Environment and Heritage (the “Secretary”) under sections 199, 214, 232 or 256 and provided a table showing reports of interactions provided to the Department of the Environment and Heritage: Have any investigations been carried out into why the Secretary was not formally notified of the reported incidents; if not, why not.
- (3) Given that fishers operating in the Commonwealth marine area under fishing concessions issued under the Fisheries Management Act 1999 are required to keep information on bycatch of non-target species and that reports prepared by the Australian Fisheries Management Authority (AFMA) indicate that fishers have recorded incidents that should have been reported to the Secretary under sections 199, 214, 232 and/or 256 (see, for example, the Antarctic Fisheries Bycatch Action Plan 2003-2004, which states that there have already been eight deaths of seals and seabirds in 2003 in Australia’s Sub-Antarctic Fisheries):
  - (a) has the Minister or the Secretary or any employee of the department checked the logbook data prepared for Commonwealth fisheries to determine the level of compliance with the requirements in Part 13 of the EPBC Act; if not, why not;
  - (b) has the Commonwealth taken any enforcement action against any fisher for failing to comply with the notification requirements in Part 13 of the EPBC Act; if not, why not; and
  - (c) has the Commonwealth done anything to raise the level of compliance amongst fishers with the requirements in Part 13 of the EPBC Act; if not, why not.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) No. Correspondence between me or my department and the Director of Public Prosecutions is not able to be provided due to legal professional privilege considerations.
- (2) The interactions referred to in the answer to question on notice No. 1599 were not incidents under sections 199, 214, 232 or 256 of the EPBC Act that needed to be investigated.
- (3) (a) No. Commonwealth fisheries logbooks belong to the Australian Fisheries Management Authority (AFMA). The department is working with AFMA to establish mechanisms whereby reporting data can be collated in an efficient and streamlined manner and provided to the department.  
(b) No. The Government is currently working with State and Commonwealth fisheries management agencies to improve reporting systems for protected species interaction. The aim is to streamline reporting systems for both State and Commonwealth reporting requirements to reduce duplication. It is anticipated that streamlined reporting will encourage greater compliance with reporting requirements.  
(c) Yes. The department has undertaken a range of activities to improve awareness of protected species interaction reporting requirements. Reporting requirements have been highlighted through

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the fishery assessment process under Parts 13 and 13A of the EPBC Act. The requirements have been highlighted in an information sheet available on the web and a bimonthly stakeholder newsletter 'Catch up'. The protected species reporting phone number and email address have been supplied to fishery management agencies for inclusion on mandatory fishing logbooks.

**Fuel: Oil**

**(Question No. 2329)**

**Senator Brown** asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 27 October 2003:

- (1) (a) Is the Minister aware of predicted declines in oil supplies from Australian oil fields; and (b) what will the expected impacts be, and when will this occur.
- (2) What planning or risk assessment is the Commonwealth undertaking in relation to this matter.
- (3) What measures are being taken to reduce Australia's dependence on oil.

**Senator Minchin**—The Minister representing the Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator's question:

- (1) (a) Yes. (b) Australia's oil production is forecast to decline unless new discoveries are made.
- (2) Each year the Government releases new offshore areas for petroleum exploration.

The Government has also recently dedicated \$61 million in geoscience funding to foster additional exploration investment.

- (3) The Government is actively encouraging the production and uptake of alternatives such as biofuels and shale oil.