



COMMONWEALTH OF AUSTRALIA

SENATE

Hansard

THURSDAY, 26 JUNE 2003

CORRECTIONS

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Thursday, 3 July 2003

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SITTING DAYS—2003

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

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<i>HOBART</i>	729 AM
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Thursday, 26 June 2003

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

PETITIONS

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

Defence: Australian Involvement in Overseas Conflict

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 261 citizens)

Petition received.

NOTICES

Presentation

Senator Brown to move on the next day of sitting:

That the Senate—

- (a) notes the Australian Broadcasting Corporation's 7.30 Report investigation into the planned field trials of a genetically-modified herpes virus to sterilise mice; and
- (b) calls on the Government to ban the use of genetically-modified organism material to sterilise pest species until the Parliament is sure that other species, including native fauna and humans, are safe from their effects.

Senator TCHEN (Victoria) (9.31 a.m.)—I give notice that at the giving of notices on the next day of sitting I shall withdraw Business of the Senate Notice of Motion No.1 standing in my name for seven sitting days after today for the disallowance of the Workplace Relations Amendment Regulations 2002 (No.3), as contained in Statutory Rules 2002 No.337 and made under the Workplace Relations Act 1996. I seek leave to incorporate in *Hansard* the committee's correspondence concerning these regulations.

Leave granted.

The correspondence read as follows—

Workplace Relations Amendment Regulations 2002 (No.3), Statutory Rules 2003 No.337

6 February 2003

The Hon Tony Abbott MP

Minister for Employment and Workplace Relations
Parliament House

CANBERRA ACT 2600

Dear Minister

I refer to the Workplace Relations Amendment Regulations 2002 (No. 3), Statutory Rules 2002 No. 337, that confer on the Employment Advocate the function of providing free legal representation to a party under specified circumstances.

The Committee notes that new paragraph 8AA(a) states that free legal representation may be provided by the Employment Advocate if the proceedings relate to the application or operation of Part VID or XA of the Act. In comparison, the Explanatory Statement states that free legal representation may only be provided if the Employment Advocate considers that this would 'promote' the enforcement of provisions of Part VID and Part XA of the Act. It is not clear whether there is an intended difference between proceedings that 'promote the enforcement' of the relevant provisions and proceedings that 'relate to the application or operation' of those provisions.

Further, paragraph 8AA(b) requires the Employment Advocate to form an opinion that 'it is appropriate' to give assistance in the form of free legal representation. This criterion is additional to that described in paragraph 8AA(a). It is not clear what factors are to be considered in determining the appropriateness of giving this assistance.

The Committee would appreciate your advice on the above matters as soon as possible, but before 14 March 2003, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen

Chairman

27 MAR 2003

Senator Tsebin Tchen Chairman

Senate Standing Committee on Regulations and Ordinances

Room SG49

Parliament House

CANBERRA ACT 2600

Dear Senator Tchen

Thank you for your letter of 6 February 2003 concerning the Workplace Relations Amendment Regulations 2002 (No.3), Statutory Rules 2002 No.337. These regulations allow the Employment Advocate to provide free legal representation to a party to a proceeding in specified circumstances.

Your letter suggests that new paragraph 8AA(a) allows legal representation to be provided by the Employment Advocate if the proceedings relate to the application or operation of Part VID or XA of the Workplace Relations Act 1996 (WR Act). This is how the Explanatory Statement describes the new Regulations. In your letter you query whether there is a discrepancy between the regulations and

how they are described in the Explanatory Statement, noting the reference in the Explanatory Statement to free legal representation being provided only if the Employment Advocate considers that this would promote the enforcement of Part VID and XA. This reference, however, relates to the existing power of the Employment Advocate to provide free legal representation under paragraph 83BB(1)(g) of the WR Act, rather than new Regulation 8AA(a).

Paragraph 8AA(b) of the new Regulations requires the Employment Advocate to be of the opinion that it is appropriate to provide free legal representation. You have sought clarification on the factors, that the Employment Advocate will consider in determining whether it is appropriate to give assistance.

Pursuant to paragraph 83BB(1)(g) of the WR Act, the Employment Advocate has the power to provide free legal representation in some circumstances. The Office of the Employment Advocate has developed a set of principles to assist in determining whether to provide free legal representation. A copy of these principles is attached. The principles include merit issues (such as seriousness of the alleged conduct), financial issues (likely expense against likelihood of success, and financial status of the complainant) and policy considerations (such as whether the action would promote broader compliance with the WR Act). These principles are also considered within the constraints of the Office of the Employment Advocate's budget for such activities. I expect that similar principles to those utilised for 83BB(1)(g) would govern the provision of free legal representation contemplated by new Regulation 8AA.

I trust this information addresses your concerns.

Yours sincerely

(signed)

Tony Abbot

Attachment A

OFFICE OF THE EMPLOYMENT ADVOCATE

PRINCIPLES RELATING TO THE PROVISION OF LEGAL ADVICE, ASSISTANCE AND REPRESENTATION TO EMPLOYEES AND EMPLOYERS

General Legal Advice and Assistance

The OEA provides general advice and assistance to employees and employers about their rights and obligations under the Workplace Relations Act 1996 (the Act) as required by paragraphs 83BB(1)(a), (b) and (c) of the Act. General advice is, in practice, an initial response by a legal or compliance officer to an enquiry which does not require detailed research nor a written response.

Assistance is, in practice, a response to an enquiry by a legal or compliance officer requiring a detailed response or commitment of resources, or the preparation of a matter for hearing.

Legal Representation

The OEA provides free legal representation, which could, where appropriate, take the form of financial assistance, to a complainant to obtain legal representation in a proceeding under Part VID or Part XA of the Act, if the Employment Advocate considers this would promote the enforcement of the provisions of those Parts, as required by paragraph 83BB(1)(g) of the Act, and in accordance with the following criteria:

1. Merit of claim

- (a) reasonable prospects of success - usually based on Counsel's advice;

- (b) availability and appropriateness of alternatives to court proceedings;
- (c) seriousness of the alleged conduct; and
- (d) staleness of the alleged conduct.

2. Policy considerations

- (a) the likelihood of the relevant provision(s) being enforced in a particular case if free representation was not provided;
- (b) the extent to which the action would promote broader compliance with the Act;
- (c) needs of workers in a disadvantaged bargaining position;
- (d) assisting workers to balance work and family responsibilities;
- (e) promoting better work and management practices through AWAs; and
- (f) that the cost of the legal representation / financial assistance given falls within the constraints of the OEA's budget for such activities.

3. Financial viability

- (a) the likely expense, and benefits, of a contested hearing weighted against the likelihood of success; and
- (b) the financial situation of the complainant, in particular where, in all the circumstances, the Employment Advocate believes that the complainant's financial situation would inhibit the progress of a claim which met the other criteria.

Financial Assistance

Financial assistance may be provided to complainants on the following basis:

- (a) the complaint satisfies the test for legal representation set out above; and
- (b) a salaried OEA solicitor is unable or unavailable to conduct the matter, or it is appropriate for the OEA to engage an external solicitor, or there are special circumstances.

Financial assistance can be provided to a private legal practitioner to conduct a matter on the following bases:

- (a) there is no right to financial assistance, nor any presumption that the Employment Advocate will provide financial assistance to a complainant in any particular matter;
- (b) the complainant is to nominate a private legal practitioner, who should lodge with the Employment Advocate a schedule of proposed professional fees and disbursements (including Counsel fees if necessary);
- (c) the Employment Advocate will assess the private legal practitioner's legal fees on the basis of the equivalent salary rate of an Australian Public Service legal officer grade two, and the OEA will assess the proposed disbursements (including Counsel fees) on the basis of disbursements incurred in comparable matters conducted by the OEA;

- (d) the Employment Advocate will either approve or not approve a grant of financial assistance to a complainant;
- (e) where financial assistance is approved, the Employment Advocate will, on the basis of agreed professional rates, approve the provision of financial assistance up to a maximum amount. additional funding beyond that amount will require a fresh application;
- (f) the Employment Advocate may at any time exercise his discretion to approve financial assistance in special circumstances or where he believes it is necessary to fulfil his duties under the Act; and
- (g) any financial assistance must be directly related to the costs actually incurred in conduct of proceedings.

15 May 2003

The Hon Tony Abbott MP

Minister for Employment and Workplace Relations

Parliament House

CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 27 March 2003 concerning the Workplace Relations Amendment Regulations 2002 (No 3), Statutory Rules 2002 No 337. These regulations confer on the Employment Advocate the function of providing free legal representation to a party in specified circumstances.

In your letter you note that the Employment Advocate has developed a set of principles to assist in determining whether general advice, assistance and representation should be provided under paragraph 83BB(1)(g) of the Act. These principles seem appropriate and comprehensive.

You then go on to state that you "expect" that similar principles will govern the provision of free legal representation under new regulation 8AA. The Committee considers that these principles are of significance and their application should be more than a matter of 'expectation'. The Committee, therefore, seeks your assurance that principles such as those applied under paragraph 83BB(1)(g) will also be applied under regulation 8AA, and seeks your confirmation that these principles will be made publicly available to potential applicants for assistance under that regulation.

On 15 May 2003, on the Committee's behalf, I gave notice in the Senate of a motion to disallow these regulations in order to preserve the Committee's opportunity to adequately consider them.

The Committee would appreciate your advice on the above matters as soon as possible, but before 4 July 2003, to enable it to finalise its deliberations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen

Chairman

THE HON TONY ABBOTT MP

MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS Leader of the House of Representatives Minister Assisting the Prime Minister for the Public Service

PARLIAMENT HOUSE CANBERRA ACT 2600

23 JUN 2003

Senator Tsebin Tchen Chairman

Senate Standing Committee on Regulations and Ordinances

Parliament House

CANBERRA ACT 2600

Dear Senator Tchen

Thank you for your letter of 15 May 2003 concerning Workplace Relations Amendment Regulations 2002 (No3), Statutory Rules 2002 No. 337. Your letter seeks assurance from me that the principles such as those developed by the Office of the Employment Advocate to assist in determining whether to provide free legal representation, provided to the Committee in my correspondence of 27 March 2003, will be applied to new regulation 8AA. Your letter also seeks confirmation that these principles will be made publicly available to potential applicants for assistance under that regulation.

As you would be aware, the independent office of the Employment Advocate was established in December 1996 by the Workplace Relations Act 1996 (WR Act). Since that time, the Employment Advocate has been appropriately using the principles it has developed when determining whether to provide free legal representation to a party in a proceeding in certain circumstances. As an independent statutory office holder, the Employment Advocate needs flexibility in undertaking the functions required by the WR Act and regulations. This flexibility could be unduly hampered by requiring a particular set of principles to be applied to regulation 8AA. In addition, although regulation 8AA expands the circumstances that the Employment Advocate might approve free legal representation, I do not consider that these changes necessitate that I impose a set of principles on the Employment Advocate.

To address the Committee's concerns, I have written to the Employment Advocate requesting that principles such as those provided to the Committee in my previous correspondence will be applied to regulation 8AA. I have also requested that these principles be placed on the Office of the Employment Advocate's website.

I trust that this approach will enable the Committee to finalise its deliberations and, if appropriate, withdraw the notice of motion to disallow the regulations.

Yours sincerely

(signed)

Tony Abbott

Senator Brown to move on the next day of sitting:

That the Senate calls on the Government to implement urgent measures to assist the complementary healthcare industry to recover from the effects of the Pan Pharmaceuticals affair, including streamlining of approvals to replace products.

Senator Brown to move on the next day of sitting:

That the Senate—

- (a) notes, with alarm, the dangerous imprisonment of Daw Aung San Suu Kyi; and

- (b) calls on the Minister for Foreign Affairs (Mr Downer) to urgently increase action against the military regime in Burma to release Daw Aung San Suu Kyi and restore democracy, including consideration of trade sanctions, diplomatic restrictions and a ban on senior Burmese officials' travel in Australia.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—by leave—I move the motion as amended:

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

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

No. 13 Governor-General Amendment Bill 2003.

No. 14 HIH Royal Commission (Transfer of Records) Bill 2003.

No. 15 Australian Film Commission Amendment Bill 2003.

No. 16 National Health Amendment (Private Health Insurance Levies) Bill 2003 and four related bills.

No. 17 Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003.

Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003.

Civil Aviation Legislation Amendment Bill 2003.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Brown for today, relating to the disallowance of Space Activities Amendment Regulations 2003 (No. 1), postponed till 11 August 2003.

Business of the Senate notice of motion no. 4 standing in the name of the Leader of the Australian Democrats (Senator Bartlett) for today, relating to the disallowance of items [2] to [6] of Schedule 1 of the Migration Agents Amendment Regulations 2003 (No. 1), postponed till 11 August 2003.

Business of the Senate notice of motion no. 8 standing in the name of Senator Tierney for today, relating to the reference of a matter to the Employment, Workplace Relations and Education References Committee, postponed till 11 August 2003.

General business notice of motion no. 491 standing in the name of Senator Bartlett for today, relating to the welfare of cattle transported from Australia to Egypt, postponed till 11 August 2003.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Reference

Senator CARR (Victoria) (9.37 a.m.)—by leave—I move the motion as amended:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 30 October 2003:

The Government's proposed budget changes to higher education, with particular reference to:

- (a) the principles of the Government's higher education package;
- (b) the effect of these proposals upon sustainability, quality, equity and diversity in teaching and research at universities, with particular reference to:
 - (i) the financial impact on students, including merit selection, income support and international comparisons,
 - (ii) the financial impact on universities, including the impact of the Commonwealth Grants Scheme, the differential impact of fee deregulation, the expansion of full fee places and comparable international levels of government investment, and
 - (iii) the provision of fully funded university places, including provision for labour market needs, skill shortages and regional equity, and the impact of the 'learning entitlement';
- (c) the implications of such proposals on the sustainability of research and research training in public research agencies;
- (d) the effect of this package on the relationship between the Commonwealth, the States and universities, including issues of institutional autonomy, governance, academic freedom and industrial relations; and
- (e) alternative policy and funding options for the higher education and public research sectors.

Question put:

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

The Senate divided. [9.41 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	34
Noes.....	<u>32</u>
Majority.....	2

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Buckland, G.	Campbell, G.
Carr, K.J.	Cherry, J.C.
Conroy, S.M.	Cook, P.F.S.
Denman, K.J.	Evans, C.V.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Hogg, J.J.

Hutchins, S.P.	Kirk, L.
Lees, M.H.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M. *
Marshall, G.	McLucas, J.E.
Moore, C.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Sherry, N.J.
Stott Despoja, N.	Webber, R.

NOES

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

PAIRS

Collins, J.M.A.	Payne, M.A.
Crossin, P.M.	Alston, R.K.R.
Stephens, U.	Troeth, J.M.
Wong, P.	Hill, R.M.
Bolkus, N.	Eggleston, A.

* denotes teller

Question agreed to.

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

Reference

Senator LUNDY (Australian Capital Territory)
(9.45 a.m.)—I move:

That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by the last sitting day in March 2004:

- (a) the current and prospective levels of competition in broadband services, including interconnection and pricing in both the wholesale and retail markets;
- (b) any impediments to competition and to the uptake of broadband technology;
- (c) the implications of communications technology convergence on competition in broadband and other emerging markets;
- (d) the impact and relationship between ownership of content and distribution of content on competition; and
- (e) any opportunities to maximise the capacity and use of existing broadband infrastructure.

Question put.

The Senate divided. [9.50 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	34
Noes.....	<u>33</u>
Majority.....	1

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Buckland, G.	Campbell, G.
Carr, K.J.	Cherry, J.C.
Conroy, S.M.	Cook, P.F.S.
Denman, K.J.	Evans, C.V.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Hogg, J.J.
Hutchins, S.P.	Kirk, L.
Lees, M.H.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	McLucas, J.E.
Moore, C.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Sherry, N.J.
Stott Despoja, N.	Webber, R.

NOES

Abetz, E.	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.
Harris, L.	Heffernan, W.
Humphries, G.	Johnston, D.
Kemp, C.R.	Knowles, S.C.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Patterson, K.C.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	Vanstone, A.E.
Watson, J.O.W.	

PAIRS

Collins, J.M.A.	Payne, M.A.
Crossin, P.M.	Alston, R.K.R.
Stephens, U.	Troeth, J.M.
Wong, P.	Hill, R.M.

* denotes teller

Question agreed to.

PAN PHARMACEUTICALS

Senator BROWN (Tasmania) (9.53 a.m.)—by leave—I move the motion as amended:

That the Senate—

- (a) notes that the Pan Pharmaceuticals affair has had a devastating effect on the complementary healthcare industry in Australia; and
- (b) calls on the Government to begin an independent investigation into all aspects of the Pan Pharmaceuticals affair, including the actions of the Therapeutic Goods Administration.

Question agreed to.

DEPARTMENTAL AND AGENCY CONTRACTS

Senator FORSHAW (New South Wales) (9.53 a.m.)—I move:

That the order of the Senate of 20 June 2001, as amended on 27 September 2001 and 18 June 2003 relating to departmental and agency contracts—order for production of documents, be amended as follows:

Omit paragraph (9), substitute:

(9) In this order:

“**agency**” means an agency within the meaning of the *Financial Management and Accountability Act 1997*; and

“**previous 12 months**” means the period of 12 months ending on either 31 December or 30 June in any year, as the case may be.

Question agreed to.

TAIL DOCKING OF DOGS

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.54 a.m.)—I move:

That the Senate—

- (a) notes that the Primary Industries Ministerial Council (PIMC) meeting has repeatedly considered a national position on banning tail docking of dogs without reaching a consensus, as recently as December 2002 and April 2003;
- (b) notes that, although PIMC failed to reach a consensus at its April 2003 meeting, it resolved to finalise a national position on the issue of tail docking of dogs for cosmetic purposes by 30 June 2003;
- (c) notes that after the April 2003 PIMC meeting the Australian Capital Territory and Western Australia proceeded with the banning of tail docking of dogs for cosmetic reasons, while Queensland put similar regulations in place to be automatically enacted in October 2003; and
- (d) calls on the Federal Minister for Agriculture, Fisheries and Forestry (Mr Truss) to obtain consensus by 30 June 2003 on the implementation of a national ban on tail docking of dogs for cosmetic purposes.

Question agreed to.

DRUG ACTION WEEK

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

That the Senate—

- (a) notes that:
 - (i) 23 June to 28 June 2003 is Drug Action Week, aimed at generating community awareness about drug and alcohol abuse and the solutions being used to tackle these issues,
 - (ii) each day of Drug Action Week highlights a different theme, and the theme for 26 June 2003 is Indigenous issues,

- (iii) the misuse of alcohol and other drugs has long been linked to the deep levels of emotional and physical harm suffered by Indigenous communities since the colonisation of Australia,

- (iv) alcohol and tobacco consumption rates continue to remain high in the Indigenous population, against declining rates in the general population, and the increasing use of heroin in urban, regional and rural Indigenous communities is of particular concern,

- (v) substance misuse is probably the biggest challenge facing Indigenous communities today as it affects almost everybody either directly or indirectly and is now the cause as well as the symptom of much grief and loss experienced by Indigenous communities, and

- (vi) the demand for the services of existing Indigenous-controlled drug and alcohol rehabilitation centres far exceeds the current level of supply;

- (b) acknowledges that Indigenous communities have been tackling substance abuse for many years through a range of different approaches such as family and individual treatment programs, night patrols, harm minimisation, alcohol restrictions, and direct action against the sale and promotion of alcohol; and

- (c) calls on the Government to:

- (i) immediately fund the recently completed National Aboriginal and Torres Strait Islander Illicit Drug and Alcohol Strategy so it can be implemented before the next budget, and

- (ii) improve co-ordination between Commonwealth, state, territory and local governments on these issues and ensure this facilitates greater Indigenous control over the development and implementation of all health programs.

Question agreed to.

COMMITTEES

Select Committee on Superannuation

Extension of Time

Senator FERRIS (South Australia) (9.56 a.m.)—by leave—At the request of Senator Watson, I move the motion as amended:

That the time for the presentation of the report of the Select Committee on Superannuation on planning for retirement be extended to 11 August 2003.

Question agreed to.

SOCIAL SECURITY AMENDMENT (SUPPORTING YOUNG CARERS) BILL 2003

First Reading

Senator LEES (South Australia) (9.56 a.m.)—I move:

That the following bill be introduced: A Bill for an Act to amend the *Social Security Act 1991* to provide for young

students' eligibility for the carer payment, and for related purposes.

Question agreed to.

Senator LEES (South Australia) (9.57 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator LEES (South Australia) (9.57 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

Today I am introducing a Private Senators' Bill aimed at supporting young people who play an important role as carers in our community.

The bill will amend the Social Security Act 1991 and will allow young people on the carer's payment to continue to study. Currently young people under the age of 25 who receive a Carer's Payment are not allowed to work or study for more than 20 hours per week. This restriction severely limits the ability of young carers to improve their prospects or to provide some financial security for themselves while fulfilling their caring responsibilities.

It may surprise other senators of this chamber to learn that across Australia there are 2.3 million Australians providing care for family members or friends with a disability, mental illness, chronic condition or who are frail aged. This represents one in every five households. Nearly 20% of these are primary carers - that is they are the main source of unpaid informal support.

It is difficult for anyone who is a primary carer to fulfil the responsibilities required of paid work - so much so that 59% are not attached to the workforce. Many carers are among the poorest, most disadvantaged people in our community. Over 50% of all full time carers recently reported incomes of less than \$200 per week.

While every one of these people is carrying out a vital role, the economic cost of which is conservatively estimated at \$16 billion per year, my main concern in introducing this Private Senator's Bill today is for those carers under the age of 25.

I think the overwhelming community perception of carers is of adults caring for their elderly parents or perhaps for their terminally ill partners or maybe adults caring for children.

But the reality is, a significant number of carers are young people. There are 388,800 carers under 26 years of age in Australia - that's 17% of all carers. 18,800 of these (about 5%) are primary carers.

For the convenience of my fellow senators I have broken that number down by state so that each of you is aware of the positive impact this bill could have on your constituents. The number of young primary carers in each state is as follows:

NSW - 6,200

VIC - 4,500

QLD - 5,000

SA - 1,000

WA - 1,100

TAS - 600

My concern is for their futures. They have obviously made the decision (or sometimes the decision has been made for them) to sacrifice their own needs by taking on the role of carer. But they should not have to put their own lives completely on hold or sacrifice their futures.

According to the Carers Association of Australia, young carers rarely have a choice about fulfilling their role; they often provide care because they are the only ones available. They are most likely to be providing care to their mother, often in a sole-parent household.

Young carers often spend most of their time thinking about the person they support or undertaking caring tasks.

The sort of care they provide can involve providing emotional support, assisting with mobility, administering medications, cooking and housework. Often they assist with more intimate tasks such as bathing and dressing which can be inappropriate for their age or relationship.

Currently those young people who are in receipt of the carers payment are not allowed to undertake any more than 20 hours per week of study or paid work. Which no doubt means there are many young carers not currently accessing the payment because of this restriction.

I want to change that with my Private Senator's Bill.

The 20 hour limit may be appropriate for older carers - people who have raised a family and enjoyed a successful career.

But it is not appropriate for 15 year olds who should be at school from 8.30am until 3.30pm five days a week and are caring for a parent for the rest of the time (and often missing school to keep up with their caring duties). It is also not appropriate for an 18 year old or 22 year old who is trying to do full time university study, perhaps with 5-6 hours stacking shelves or cleaning at night for some extra income. It is not appropriate for a 20 year old TAFE student who is studying part time and trying to do a few hours in the area of employment in which they are hoping to become better qualified.

Young people should be encouraged to complete further study because it will help improve their future employment prospects.

The Social Security Act must be amended to allow for Carers under 25 who are in full time or part time study at school, TAFE or University, to access the Carers Allowance. We also must allow them to do a few hours work each week.

The Carers Association Federal Budget submission 2003/2004 specifically asked for this issue to be addressed.

They asked, and I quote from that submission, that:

"...Where children and young people have primary care responsibilities in their families, adequate financial support measures be made available to them. This should include removing current restrictions that discourage young people from combining paid work or study with their caring responsibilities. Currently the small number receiving a Carer Payment cannot work or study for more than 20 hours per week, which severely limits the ability of young carers to improve their prospects, and have some financial security while fulfilling their caring responsibilities".

The following case study has been supplied to me by the Carers Association. It comes from a young person, aged 20, who for the past 9 years has been their mother's only Carer. The mother suffers from Lupus, Cerebral Vascular Disease, C R E S T and Diabetes.

I quote from the letter sent to me:

"In my earlier years gaining a good education was hard because it lacked the flexibility I needed, and eventually unable to cope at 13 years I left the school and undertook distance education from the end of year 8. I was able to complete my High school education to year 10 through distance education by the Open Access College.

Today, however, no matter how much I have tried or how much I might yearn for a better understanding of things, I cannot go to any educational program. You see I live in Loxton, 2.5 hours out of Adelaide city.

At 15 years I received the Carer Payment because I cared for my mother and I got the Carers Allowance at 17 years.

As a pensioner (I receive the Carer's pension and allowance), I am only allowed 20 hours for relaxation, work, whether paid or unpaid and "study". I may want to learn; for example, I would love to study Interior Design at Douglas Mawson Institute of TAFE in Marsden, but I would need to travel to Adelaide and stay overnight, that would exceed the 20 hours per week limit and even though my best friend is a qualified nurse willing to care for my mum, whilst I am at study, I would still need to pay her and it's not covered by respite, I can not afford it and \$1,500.00 TAFE bills.

If I choose to return to High School and get my High School Diploma here in Loxton, I would still have to spend more than 20 hours per week at school. Home schooling is an option, but not a great one, having already done home schooling. I already know how hard it is to remain disciplined enough to finish all your assignments, to focus properly and get a good understanding of the material without a one-on-one teacher's support.

If I study a TAFE course in a neighbouring town, it's worse because it's a minimum of 25 mins away from the closest fully operation TAFE campus, that only offers Mechanical Agricultural and office study course with NO flexibility.

Here in Australia and especially South Australia, we pride ourselves on each person's equal right to an education. Every day youth are encouraged to pursue a better education for the betterment of ourselves and our economy. But in the case of myself and thousands like me, despite our desire and willingness to learn, we are forced to settle for second or even third best.

If this situation is left as it is, the life of myself, my children and thousands like me will be dramatically affected. In today's lifestyle, it is generally accepted, that to get anywhere, you must be prepared to work hard and study hard. Hence in today's competitive job market, how am I supposed to compete with talented youths with my work and education history. What happens if like so many people, I find myself raising children on my own? Will I be able to provide for them, or be forced to rely on the single parent pension, as my mother did?

For my part, all I want is to study my greatest passion, Interior Decoration/Design, yet I am forced by my station or position in life to work some 15 hours per week as a supervisor in my local Woolworths supermarket."

Another case study has been sent to me about a 17-year old student in NSW who has had to spread her Higher School Certificate studies over two years in order to have

time to care for her father, and to fulfil the eligibility criteria for Carer Payment.

Until April Sally's mother received the payment and Sally was free to attend school full time. This would indicate the Department has already acknowledged that Sally's father's disabilities meet the eligibility criteria for Carer Payment.

After the breakdown of her parents' marriage, Sally was left to care for her father as her mother was no longer living in the family home. Sally's father's disabilities did not disappear when his wife left. In fact, his need for care is increasing as his arthritic condition deteriorates. A recent assessment by the ACAT team indicates that his condition warrants hostel type care, which he would have to take up if Sally was not there to support him.

Sally is finding it more difficult to care for her father and balance school and study demands.

I sincerely hope that all senators who read this letter have a clearer understanding of how our welfare system is failing a significant number of young people – young people who are making a big sacrifice – young people who are saving the government significant amounts of money on institutional care and improving the lives of those they love.

Young carers deserve the opportunity to reach their full potential. They must have the same level of access to economic and social opportunities as their peers do.

I urge all senators to consider the positive influence the changes in this Private Senator's Bill could have on these young lives.

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

Leave granted; debate adjourned.

COMMITTEES

Select Committee on Medicare

Extension of Time

Senator McLUCAS (Queensland) (9.58 a.m.)—by leave—I move the motion as amended:

That the time for the presentation of the report of the Select Committee on Medicare be extended to 9 September 2003.

Question agreed to.

UNITED STATES OF AMERICA MILITARY BASES IN AUSTRALIA

Senator NETTLE (New South Wales) (9.58 a.m.)—I move:

That the Senate—

(a) calls on the Government to:

- (i) rule out the establishment of any new United States (US) military bases in Australia,
- (ii) rule out future use of Australian territory for US military training exercises,
- (iii) rule out the transformation of any Australian ports into regular US military 'transit points',
- (iv) inform the Senate of any formal or informal approaches made by the US Government to the Australian Government or Department of Defence in relation to any further deployment of US troops to Australia, or the establishment of any US military bases in Australia, and
- (v) close the US military spy base at Pine Gap; and

- (b) condemns the Government's ill-considered pursuit of closer military ties with the US, without Parliamentary consultation or debate and despite the threat to Australia's national interest that this policy poses.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.59 a.m.)—I indicate the reasons for the Democrat position on this. We support the components ruling out the establishment of US bases, but we believe that military training exercises do have a worthwhile component. They have been useful in skilling up the Australian Defence Force to enable things such as cooperation in regional activities, most notably in the East Timor actions of the Australian Defence Force. We think military training exercises play a valuable role. But we support the component ruling out US bases.

Question negatived.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.00 a.m.)—I seek leave to amend government business notice of motion No. 1 before I seek to have the motion taken as formal.

Leave granted.

Senator IAN CAMPBELL—I amend the motion by omitting the Health and Ageing Legislation Amendment Bill 2003 and the Health Legislation Amendment Bill (No. 1) 2003, and I now ask that the motion, as amended, be taken as formal.

Senator BROWN (Tasmania) (10.00 a.m.)—by leave—I would like to make a brief statement on this, before granting formality. I have an amendment to this motion which puts a lid on the sitting to 1 a.m. tomorrow. The Greens are very concerned about this repeated—

Senator Bolkus—Stop talking and we'll get out at midnight.

Senator BROWN—Senator Bolkus says, 'Stop talking,' but I have been in here a good deal more, and so has Senator Nettle, than he has this week. We have said consistently—

Senator Faulkner—Unfortunately, I have been in here as much as you.

Senator BROWN—Yes. I think it is fortunate that I have been here while you have been here, Senator Faulkner! This is a serious matter. We should not be facing a list of 30 bills to deal with tonight. The Senate simply cannot adequately give consideration to those bills and expect not to be here at this time tomorrow morning. This is no way to run a house which is reviewing, having input to, amending and sometimes rejecting such important legislation. The Senate sittings are far too few. We should have been

sitting at least another week in the last six months and ditto for the coming six months. It is almost becoming a habit now that we find ourselves on the last sitting day of the financial year stacked with a list of bills like this. It is torture for those who have to deal with that legislation right through to the dawn of the following morning.

The government is not managing the business adequately. I think the Senate is not sitting enough, and I think that is a deliberated decision. The penalty we pay for that is a list of bills like this. We should not be accepting that. I believe we should be putting a lid on this. There are pieces of legislation here which can wait until we resume in August. We should expect better business management than this from the government. I have heard no objection to the Senate sitting longer hours. We have been helpful to the government in dealing with very urgent and important pieces of legislation as expeditiously as possible. But the sitting arrangements are falling down. Look at that list, Mr President: it is just not acceptable. I expect, without any indication from the opposition to the contrary, that a 1 a.m. amendment to this legislation is not going to prevail, so I am not going to draw it out. But I register very serious objection to what is happening here.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.04 a.m.)—I move the motion as amended:

That on Thursday, 26 June 2003:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) not be proceeded with;
- (c) the routine of business from not later than 4.30 pm shall be government business only;
- (d) divisions may take place after 6 pm; and
- (e) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]

Broadcasting Services Amendment (Media Ownership) Bill 2002

Export Market Development Grants Amendment Bill 2003

Taxation Laws Amendment Bill (No. 4) 2003

Taxation Laws Amendment Bill (No. 6) 2003

National Handgun Buyback Bill 2003

Industrial Chemicals (Notification and Assessment) Amendment Bill 2003

Wheat Marketing Amendment Bill 2002

Migration Amendment (Duration of Detention) Bill 2003

Migration Legislation Amendment (Protected Information) Bill 2003

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

Customs Amendment Bill (No. 1) 2003

Customs Tariff Amendment Bill (No. 1) 2003

Superannuation (Government Co-contribution for Low Income Earners) Bill 2003

Superannuation (Government Co-contribution for Low Income Earners) (Consequential Amendments) Bill 2003

Appropriation (Parliamentary Departments) Bill (No. 1) 2003-2004

Appropriation Bill (No. 1) 2003-2004

Appropriation Bill (No. 2) 2003-2004

Governor-General Amendment Bill 2003

HIH Royal Commission (Transfer of Records) Bill 2003

Australian Film Commission Amendment Bill 2003

Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003

National Health Amendment (Private Health Insurance Levies) Bill 2003

Private Health Insurance (ACAC Review Levy) Bill 2003

Private Health Insurance (Collapsed Organization Levy) Bill 2003

Private Health Insurance (Council Administration Levy) Bill 2003

Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003

Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003

Civil Aviation Amendment Bill 2003.

Before I place on record an explanation about the Taxation Laws Amendment Bill (No. 4) 2003, I would like to say that, over recent years, the process for reaching this motion, with a lot of goodwill and cooperation from right around the chamber, generally starts with the government producing a list of bills that it would like to have passed during the sittings. We hold a leaders and whips meeting for all parties to represent their views. The government refines its list and gets down to the absolute 'must have, must do' sort of list, which generally gets agreed. We have virtual agreement on that now, and I thank all senators for being a part of that process.

In relation to Taxation Laws Amendment Bill (No. 4) 2003, I want to make this explanation. We did concede that bill earlier in the week, with the agreement of the Treasurer and the Assistant Treasurer. It was brought to our attention by the Commissioner of Taxation, however, after we made that concession, that for reasons of sound tax administration there are measures in that bill they would like. We held nego-

tiations with the opposition, who have been very constructive on this.

Senator Faulkner—As always.

Senator IAN CAMPBELL—Yes. So I am seeking to have it put back on to the list. I indicate, however, that, if the agreement that I have been told about that has occurred between the shadow spokesman on this issue, the office of the Treasurer and my office was not as sound as I imagined it to be, I would certainly not proceed with it, because it is a breach of the process that we entered into to get this final list. I am trying to reinstate something that I took off earlier in the week. I hope that thoroughly explains that. In relation to the program, as generally occurs, the Senate makes a decision about how long it spends on certain bills. We have in the last few weeks spent an enormous amount of time on the ASIO bill, which of course was a very big and important debate. We have also spent an enormous amount of time on the media ownership bill. The Senate is the ultimate determiner of how much time it allocates to legislation.

I might say that, in comparison to a number of final day programs in recent years, this to me looks like a very doable program. Senator Brown, I think, referred to 30 bills. If you take away the bills deemed noncontroversial that will be dealt with—usually in a matter of minutes—at lunch time, you are only left with about a dozen packages of legislation to deal with over the next few hours. Many of these pieces of legislation have been to Senate committees for detailed consideration, where many of the issues have been worked out between senators who have an interest and the government. For example, the appropriation bills were given consideration over a two-week period by the estimates committees—and that is how the Senate committee processes can work to the benefit of the Senate and Australian democracy. We have been accused of having far too much legislation to deal with on the final day on some occasions, but I really think the program we are looking at today is very reasonable and achievable. I commend the motion to the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.08 a.m.)—by leave—I appreciate the Manager of Government Business placing on the record the situation on Taxation Laws Amendment Bill (No. 4) 2003 because it is important, when all parties—all senators—come together and make agreements about the Senate's legislation program, that those agreements are honoured and honoured around the chamber. Of course the ways of the Senate are not well understood on the other side of the building, so I expect the Manager of Government Business to discipline Mr Costello—a public flogging will be fine, as far as I am concerned! As for Mr Cox, we will deal with him

in our own mysterious ways, I can assure you! That obviously can be sorted out.

The substantive point that Senator Brown made is, I think, a reasonable point. At this stage I do not support agreeing to the proposition that the Senate adjourn at 1 a.m., but what I will say to the chamber is that later this evening we will certainly be looking seriously at what progress we have made. There needs to be a balance here about what makes good sense—whether it makes sense to sit through the wee small hours of the morning or whether it makes better sense to come back tomorrow and do this in a more civilised way. I think that is the spirit in which Senator Brown made his contribution. That decision needs to be made with full knowledge of what progress has been made with the legislation program.

I will not commit the opposition to agreeing to a time of adjournment at this point, because I think that would be silly, but I do think it would be sensible for us later tonight to make a cold, hard, objective assessment of the progress that has been made and determine at that time whether it is sensible to complete the program without an adjournment or to come back tomorrow. That is an approach that might find favour generally around the chamber. So we will not agree at this stage to any formal amendment to the Senate's sitting hours today, but we will look seriously at the progress that has been made later this evening and then make an assessment as to which of those two options is going to best suit senators, given progress in the legislation program and the amount of time, frankly, that we would still have before us to deal with whatever remains.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.11 a.m.)—by leave—As all senators would know, I have spoken repeatedly of the Democrats' dissatisfaction with processes such as this, which occur far too often—sufficiently so that we moved a motion towards the end of last year to ensure the Senate had extra sitting days this year to enable us to better deal with the amount of legislation. Unfortunately that was not supported by either of the larger parties, but it is a call that I once again repeat. In the 15 months since the parliament first met under this government term, the Senate has passed well over 200 pieces of legislation—about 210 or 220—and by the end of tonight that number will be getting up towards 250. That is an enormous amount of legislation to deal with in what is a very small number of sitting days by recent standards. This year we have the least number of sitting days in a non-election year for about two decades, with the exception of last year, when we had even fewer days. That is not acceptable from the Democrats' point of view.

Recently the Prime Minister has been railing about how obstructionist the Senate is and how he wants to get rid of the powers of the Senate. I think the government is trying to do the same by default—by reducing the number of days that we sit and can scrutinise legislation, although there has been a continual increase in the amount of legislation that we have to deal with, not to mention all the regulations and ordinances, which go into the thousands in the course of a government term. I believe it is simply inadequate. I very much concur with the comments of Senator Brown earlier. With the removal of the two health bills, I think there are now 29 bills that we have to consider in less than 24 hours—I hope. It is inappropriate and no way for any chamber of parliament to operate, particularly one as crucial as the Senate. The House of Reps can get away with it because they do not have any real role in scrutinising legislation or amending it, but this Senate is the only house that is a check on government and we should not let ourselves operate in a way that does not allow proper scrutiny.

I have a couple of comments or questions about the list of bills. Firstly, is the Manager of Government Business able to indicate why the two health bills have been removed from the list and why they are not urgent but the others are? Secondly, and more importantly, I seek guidance either from the manager or the President about a bill on this list, the Migration Amendment (Duration of Detention) Bill 2003, which I think still requires an exemption from the cut-off. Could I have that confirmed? If we pass the motion with that bill on the list then technically we cannot rise until it is dealt with, even if it is not exempted from the cut-off. It is my understanding that it would automatically be deleted, but I would like to have that confirmed.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.15 a.m.)—My advice on a bill that the government is expecting to have defeated in relation to an exemption from standing order 111 is that it simply will not be available for the Senate to deal with. Therefore, it will be effectively taken off that list. It is a chicken and egg situation—I had to decide whether to leave it on the list then get it defeated. I could, contemplating the vote of the Senate in a couple of minutes time, take it off now. I am assured by my advisers, whose judgment I trust more than I trust my own, that the same effect will be achieved.

In relation to the health bills, we are seeking to have them dealt with. The minister's office have advised that they can leave them to the next session, although they would have preferred to have them this session. With all of these bills, there is toing and froing and negotiating, but we are advised that they can live without them until 11 August.

Senator MACKAY (Tasmania) (10.16 p.m.)—by leave—I am not going to repeat what Senator Brown said, but I agree with him entirely. I personally have a strong view that yesterday we should have scheduled a dinner break. I do not really care about us, but I do care about the people who work in this place. The Senate sat yesterday from 9.30 a.m. through to about 10.15 p.m., without any break for the people who work and assist us. We can cope and we are paid to cope, but it is not fair on them. We were advised there would be a dinner break at some point—I do not know what happened with that and I really do not want to get onto that issue at the moment—but we do have to be a little more responsible and caring of the people who work in this building.

Question agreed to.

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

First Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.19 a.m.)—I move:

That the following bill be introduced: a Bill for an Act to amend the Australian Protective Service Act 1987, and for related purposes

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.19 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.19 a.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted

The speech read as follows—

This Bill, the Australian Protective Service Amendment Bill 2003, contains amendments to the Australian Protective Service Act 1987. The Bill represents an important part of the Government's efforts to protect the safety of all Australians following the horrific terrorist attacks of 11 September 2001 and in Bali last year.

It addresses the need for enhanced security for persons and places for which the Commonwealth has security responsibility, including, but not limited to, the aviation industry.

Australia has an obligation under international law to protect the premises of foreign diplomatic and consular mis-

sions against intrusion or damage, to prevent any disturbance of the peace of foreign missions or the impairment of dignity, and to prevent any attack on the person, freedom or dignity of a diplomatic or consular official.

The Australian Protective Service provides a first response security role at airports, diplomatic and consular premises, Defence establishments and other Commonwealth buildings.

Protective service officers currently have the power to arrest without warrant in relation to certain Commonwealth offences, and to search and seize certain items from arrested persons.

The Government has decided to confer three additional powers on protective service officers to ensure they are equipped to deal with threats to Australia's security.

The powers will authorise protective service officers, in appropriately limited circumstances, to request a person's name, address and reason for being in or in the vicinity of a place or person, and to stop and detain a person for the purposes of conducting a search and seizing items that could be used to harm people.

The enhanced powers will permit a graduated response by protective service officers in circumstances that may arise when performing protective service functions.

The powers will provide protective service officers with the flexibility to act quickly in suspicious circumstances where the exercise of the arrest power is not immediately necessary.

The powers are proactive, rather than reactive or investigative.

Consistent with the proactive aim of the enhanced powers, they are not as intrusive as the existing arrest power.

The power to request information can only be exercised where a protective security officer suspects on reasonable grounds that the person poses a threat to security.

The power will enable protective service officers to ascertain the identity of persons acting suspiciously in places where the Australian Protective Service is performing its functions.

The Bill includes an offence for failing to provide the information requested, or for providing false information.

There is a defence where the person has a reasonable excuse.

The power to stop, detain and search a person will permit protective service officers to take action where they have security concerns, particularly where the circumstances might not be sufficient to justify the use of the existing arrest power in the Act.

The seizure power will permit a protective service officer to seize an item located during a lawful search that poses a serious security threat.

Currently, where a protective service officer locates an item during a search which has not been used in the commission of an offence and where the possession of the item is not unlawful, the protective service officer has no authority to act.

For instance, the Act would not necessarily authorise a protective service officer to seize an item that has been modified for the purpose of stabbing someone.

The new seizure power will permit the protective service officer to seize such an item to prevent a person using the item to cause serious harm or death.

The powers will only be exercised where protective service officers are performing functions under the Act.

The powers take personal privacy considerations into account.

For instance, a search will only be performed by a person of the same sex as the person being searched.

The powers also incorporate safeguards to ensure they are not abused.

For instance, the Bill does not authorise more than the minimum amount of force necessary to conduct a search.

In addition, a seized item must be handed into the custody of the police as soon as practicable, and must be returned to its owner unless returning the item will create a security risk.

The exercise of the powers will rely on an objective test.

The protective service officer will need to have 'reasonable grounds to suspect' before exercising any of the powers.

This standard does not require proof of a matter, but requires that there are sufficient facts to induce the suspicion in the mind of a reasonable person.

The powers are intermediary and are designed to be preventative.

They do not confer police investigatory powers on protective service officers.

The powers conferred by the Bill will allow the Australian Protective Service to act quickly and effectively in suspicious circumstances.

This Bill represents a significant step in the Government's commitment to the protection of all Australians and the fight against terrorism.

Ordered that further consideration of the second reading of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

COMMITTEES

Legal and Constitutional References Committee Reference

Senator STOTT DESPOJA (South Australia) (10.19 a.m.)—I, and also on behalf of Senator Bolkus, move:

- (1) That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report:
 - (a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and
 - (b) alternative models for an Australian republic, with specific reference to:
 - (i) the functions and powers of the Head of State,
 - (ii) the method of selection and removal of the Head of State, and

- (iii) the relationship of the Head of State with the executive, the parliament and the judiciary.

- (2) That the committee facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas.

Question agreed to.

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

Senator CHERRY (Queensland) (10.20 a.m.)—by leave—I move the motion as amended:

- (1) That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by the last sitting day in March 2004:

The regulation, control and management of invasive species, being non-native flora and fauna that may threaten biodiversity, with particular reference to:

- (a) the nature and extent of the threat that invasive species pose to the Australian environment and economy;
- (b) the estimated cost of different responses to the environmental issues associated with invasive species, including early eradication, containment, damage mitigation and inaction, with particular focus on:
 - (i) the following pests:
 - (A) European fox (*vulpes vulpes*),
 - (B) yellow crazy ant (*anoplolepis gracilipes*),
 - (C) fire ant (*solenopsis invicta*), and
 - (D) cane toad (*bufo marinus*), and
 - (E) feral cats and pigs and
 - (ii) the following weeds:
 - (A) mimosa pigra;
 - (B) serrated tussock (*nasella trichotoma*),
 - (C) willows (*salix* spp.),
 - (D) lantana (*lantana camera*),
 - (E) blackberry (*rubus fruticosus* agg.), and
 - (F) parkinsonian aculeata;
- (c) the adequacy and effectiveness of the current Commonwealth, state and territory statutory and administrative arrangements for the regulation and control of invasive species;
- (d) the effectiveness of Commonwealth-funded measures to control invasive species; and
- (e) whether the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 could assist in improving the current statutory and administrative arrangements for the regulation, control and management of invasive species.

- (2) That the order of the Senate adopting Report No. 4 of 2003 of the Selection of Bills Committee be varied to provide that the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 be referred to the Environment, Communications, Information Technology and the Arts References Committee instead of the Environment, Communications, Information Technology and the Arts Legislation Committee.

Senator MURPHY (Tasmania) (10.20 a.m.)—by leave—I congratulate Senator Cherry for picking up the suggestion that I put to him with regard to feral cats. They probably pose one of the most significant threats to the native wildlife in this country of any of the pests or feral animals that exist.

Question agreed to.

NORTH KOREA

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.21 a.m.)—I move:

That the Senate—

(a) notes:

- (i) the United States of America and Russia's decision to partition the Korean peninsula in 1945,
- (ii) the involvement of several countries, including Australia, in the 1950-1953 Korean War which ended in an armistice and the stationing of around a million troops on the North Korean/South Korean border to this day, and
- (iii) Australia's political and financial support for the 1994 Korean Peninsula Energy Development Organisation (KEDO) Agreement with aid being given to the Democratic People's Republic of Korea (North Korea) in return for the dismantling of any potential North Korean nuclear weapons program;

(b) expresses concern:

- (i) at the North Korean decision to withdraw from the Nuclear Non-Proliferation Treaty (NPT) announced on 10 January 2003,
- (ii) that the proliferation of nuclear and other weapons of mass destruction represents a growing threat to Australian and regional security,
- (iii) at the effect that a North Korean nuclear arsenal may have on regional governments' compliance with the NPT,
- (iv) at the catastrophic effect that an exchange of nuclear weapons, or even a conventional military exchange on the Korean peninsula, would have on the region and Australia's interests in it, and
- (v) at the humanitarian crisis in North Korea due to a lack of food and medical supplies and previous problems of aid being diverted to the North Korean military; and

(c) calls on the Government to:

- (i) increase aid to non-government organisations and United Nations agencies providing food and medical supplies to the North Korean people,
- (ii) support the use of multilateral diplomatic means to arrive at a peaceful solution without military action, and
- (iii) express Australia's hopes for the eventual peaceful reunification of Korea.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.22 a.m.)—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Civil Aviation Legislation Amendment Bill 2003

Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.23 a.m.)—I move:

That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Migration Amendment (Duration of Detention) Bill 2003, allowing it to be considered during this period of sittings.

Question negated.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Meeting

Senator EGGLESTON (Western Australia) (10.24 a.m.)—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 26 June 2003, from 7 pm, to take evidence for the committee's inquiry into the application and expenditure of funds by Australian Wool Innovation Ltd.

Question agreed to.

PARLIAMENTARY ZONE

Old Parliament House

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.25 a.m.)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being additional works connected with the reconstruction of the Old Parliament House gardens.

Question agreed to.

CROKE, MS MYRA

The PRESIDENT (10.26 a.m.)—I draw the Senate's attention to the fact that this is the last sitting day for the Parliamentary Liaison Officer, Myra Croke, who has been working diligently as the Parliamentary Liaison Officer for the last three years. Normally, as President, I would not make these comments, but I just make these comments, Myra, because we worked together for such a long time when I was Government Whip. We all have a great respect for you. You have a great sense of humour and great professionalism, and I did appreciate your help. We wish you all the best in your new position, and we look forward to your replacement. Thank you very much, on behalf of all senators, for the wonderful work you do behind the scenes. A lot of work goes on that people do not know about, but I know how hard you work and the professional way in which you approach your position.

Honourable senators—Hear, hear!

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (10.26 a.m.)—by leave—Mr President, I would like to support your remarks. Usually these thank-yous are done at an absurd hour of the morning and they are usually not listened to as people rush home to pack their bags to get to the airport. We do lose Myra's services today. She has been an extraordinary person in what is, I think, probably one of the toughest jobs in the parliament, at the absolute interface of the government with the parliament, liaising with all of the ministers' offices and all of the parties and the whips. The fact that this place does run very efficiently and very effectively is because we have someone as capable as Myra in the job.

Mr President, you referred to her sense of humour. As the Manager of Opposition Business and other senators know, if you do not have a sense of humour in that job you would not last three minutes. Myra is incredibly professional, very skilled, very diligent, incredibly capable, and has a fine sense of humour—which she needs to deal with all of us and particularly to deal with my office. I thank Myra for her efforts. She had some huge shoes to fill in replacing Gail Bansemar, but she filled them very effectively. I have now worked with three parliamentary liaison officers in my time and I can say that Myra is an extraordinary achiever. I do not want to denigrate either Nhan Vo Van or Gail Bansemar because they both did a

fantastic job—I do not think Nhan has yet recovered from his time in the position—and, of course, next session we will welcome to the job Tracy Pateman, who will have even bigger shoes to fill. Thank you, Myra, for your incredible work. You have made my job much easier, and I join the President in wishing you very well in whatever field you move to. Your service to the parliament, to the government of Australia and, therefore, to the people of Australia has been extraordinary, and you should be very proud of your achievements.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate (10.28 a.m.)—by leave—From the opposition's perspective, we associate ourselves with the remarks of both the President and the Manager of Government Business. We put on record our thanks to Myra. She has been a wonderful person to deal with and has assisted the program admirably through the years that I have been associated with opposition business. We wish her well for the future.

COMMITTEES

Publications Committee

Report

Senator COLBECK (Tasmania) (10.29 a.m.)—I present the ninth report of the Publications Committee.

Ordered that the report be adopted.

Finance and Public Administration References Committee

Report

Senator FORSHAW (New South Wales) (10.29 a.m.)—On behalf of the Senate Finance and Public Administration References Committee, I present a report on a funding matter under the Dairy Regional Assistance Program, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator FORSHAW—I move:

That the Senate take note of the report.

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

Leave granted.

The statement read as follows—

This report has its origins in concerns raised in the media during the middle of 2002 about the use of funds from the Dairy Regional Assistance Program (Dairy RAP) for a project in Moruya on the New South Wales coast.

The project in question involved a Dairy RAP grant of \$339,000 to Moruya Decking and Cladding Pty Ltd, trading as Mordek, for the construction and fit out of a new steel profiling plant at the North Moruya Industrial Estate. The grant was announced publicly by the Member for Eden-Monaro, Mr Gary Nairn MP, on 31 January 2002.

In July 2002, the Coastal Sun newspaper ran an article alleging that this grant had breached a number of Dairy RAP guidelines. It suggested that the project had been funded retrospectively, as the steel profiling plant had been built by the time the grant was made. It also suggested that the Dairy RAP money was not used for the steel profiling plant, but in fact transferred to the Eurobodalla Shire Council as part payment for the cost of sewerage the North Moruya Industrial Estate.

This article attracted the attention of Senator Kerry O'Brien, who raised this matter with the Department of Transport and Regional Services (DoTARS) both through questions on notice in the chamber and at Senate estimates hearings. Finding that his questions received unsatisfactory and inconclusive answers, and that a promised departmental review was a long time coming, Senator O'Brien moved on 27 March 2003 that this matter be referred to this Committee for inquiry and report by 30 June 2003.

In the course of this inquiry, the Committee has sought to establish the actual sequence of events in the application and assessment process of Mordek's grant, and the role of the various government and non-government parties involved.

Mordek lodged its initial application for Dairy RAP funding in June 2001. The program delegate in the then Department of Employment, Workplace Relations and Small Business (DEWRSB) approved the Mordek application some six months later, on 17 December 2001. In the intervening period, the application was revised no less than six times in consultation with departmental officials. This was done as various stages of the assessment process identified issues that could preclude the proposed project from being eligible under the Dairy RAP guidelines.

Mr John and Mrs Annette Nader own both Mordek and the North Moruya Industrial Estate where Mordek's new steel profiling plant is located. The Naders' company, Mordek, lodged an application for Dairy RAP funds after an officer of the Eurobodalla Shire Council suggested that Dairy RAP money could be used to cover part of the cost of sewerage the North Moruya Industrial Estate.

Mordek's initial application explicitly sought Dairy RAP funds as a contribution to Eurobodalla Shire Council for the sewer project, and noted that Mordek was able to bear the entire cost of the steel profiling plant.

This application was approved by the South East NSW Area Consultative Committee, which did not see a problem with endorsing an application for a sewer project despite a Dairy RAP guideline prohibiting funding in cases where this could be perceived as duplicating funding from another responsible government.

Departmental staff at the DEWRSB regional office likewise did not identify funding duplication as an issue, and it was not until a meeting with national office staff in August that this issue was raised. Rather than declining to fund the application on those grounds, however, the department simply asked the proponents to revise their application to remove the sewer component from the Dairy RAP funded element of the project budget.

In its assessment of a later version of the application, PricewaterhouseCoopers identified a further problem with providing funding for the sewerage works element of the project. PricewaterhouseCoopers determined that funding the sewerage works may give the proponent a competitive advantage, which was against Dairy RAP practice, if not explicitly proscribed in the guidelines.

Having received this report, departmental officials revised Mordek's application to exclude the sewer component from the project budget altogether. It was this version of the application which received funding approval.

Departmental officers recommended Mordek's application for funding approval despite knowing that Mordek was capable of funding the steel profiling plant itself and that the Dairy RAP funding would enable the Naders to make a contribution to the Eurobodalla Shire Council for sewerage the industrial estate, an objective found to be ineligible during the assessment process.

The department had also received a report suggesting that work on the steel profiling plant had commenced as early as September 2001. This could have made the project ineligible, as Dairy RAP guidelines prohibit retrospective funding. However, departmental staff do not appear to have investigated the state of construction on receiving this report, and did not consider retrospectivity an issue in making their recommendation to the program delegate.

The Committee has found a number of irregularities in the assessment and approval of Mordek's eligibility for Dairy RAP funding as outlined above. Issues which should have precluded Mordek from receiving a grant were not identified in the first instance, and the minor changes to the application once these issues were identified were not enough to remove the grounds for rejecting it. Ultimately, a grant was approved which in certain respects did not meet the funding criteria.

The evidence demonstrates that there a number of systemic weaknesses in the administration of Dairy RAP which risk undermining the integrity of program.

Briefly, these are: a lack of clarity in the program guidelines, which results in discrepancies in the way they are interpreted and applied; a low level of understanding of the guidelines and policy rationale of the program among departmental officers and the broader community; insufficient investigation and monitoring of projects 'on the ground', both prior and subsequent to approval; and insufficient record keeping, in particular of the rationale for decision making on funding applications.

Based on its examination of the Mordek case, this report has made six recommendations to improve administration of regional funding programs generally.

The Committee's key recommendation is that the Australian National Audit Office conduct an audit of the administration of the Dairy Regional Assistance Program, including the particular case examined in this report. This audit should address all components of program administration, including the method used to determine regional need; the application process; the provision of information to the community; and the respective roles and responsibilities of Area Consultative Committees and the relevant government departments.

Noting the ambiguous role of the Area Consultative Committee in this case, the Committee recommends that the Department of Transport and Regional Services define the role and responsibilities of Area Consultative Committees in the implementation of Commonwealth funding programs.

In light of concerns that funding under Dairy RAP is not necessarily targeted to areas most severely impacted by dairy deregulation, the Committee recommends that mechanisms be put in place to ensure funding under this and like programs is distributed on the basis of objective criteria.

Other recommendations arising from problems identified in this case are: that Commonwealth grant program guidelines should clearly outline all criteria to be used in the assessment of applications; that assessment procedures for regional program grants should be transparent and systematic, with appropriate records maintained; and that Commonwealth regional funding programs should incorporate a 'best value' principle to maximise the benefit of public expenditure.

The Committee hopes that these recommendations will be acted on in order to improve the future administration of regional grant programs.

Finally, on behalf of the Committee, I express our appreciation to the staff of the Committee Secretariat for their diligence and hard work during the course of the inquiry.

I commend the report to the Senate.

Senator O'BRIEN (Tasmania) (10.30 a.m.)—This report represents the outcome of an examination by the Senate Finance and Public Administration References Committee of a grant made to a steel profiling company in the small town of Moruya on the South Coast of New South Wales. The grant of \$339,000 was made to Mordek, under the Dairy Regional Assistance Program, in January 2001. Like all Dairy RAP grants, it is funded by a tax on drinking milk.

As outlined in the introduction to the report, the reference followed my attempts, through parliamentary questions on notice and Senate estimates, to seek a government response to serious allegations about the misuse of public money in relation to this grant. Those allegations were first aired on the front page of the *Coastal Sun* newspaper on 11 July 2002. Under the headline 'Dairy RAP Dilemma', the article said that money granted to Mordek for the construction of a steel profiling plant was instead paid to Eurobodalla Shire Council for the installation of sewerage at the North Moruya Industrial Estate. Further, the article said that the grant was awarded after the building was constructed, and constituted a clear contravention of the Dairy RAP guidelines.

Following publication of the *Coastal Sun* story, I asked a considerable number of questions on notice over the following months. Additionally, I sought advice from the Eurobodalla Shire Council on the progress of the building approval. At the same time, I made a careful study of records maintained by the council to establish the council's role, if any, in this matter. Regrettably, it was not possible to reconcile the answers to my questions on notice with advice from the Eurobodalla Shire Council and the council's own documentary record.

In February I used the Senate's estimates process to seek advice about the grant from the Department of Transport and Regional Services. Senator Ian Macdonald gave an undertaking to the Regional and Rural Affairs and Transport References Committee that the department would investigate the allegations concerning the Mordek grant and provide a report

within days. No report was forthcoming, and I sought the agreement of the Senate to refer the matter to the Finance and Public Administration References Committee on 27 March. I sought to initiate the reference of this matter because I think that the people who paid for the Mordek grant deserve to know that their money was spent appropriately—that is, according to the rules that govern the Dairy Regional Assistance Program. That is the sole predisposition I carried into this inquiry.

All members of the committee agreed that the inquiry highlighted serious flaws in the administration of the program. It is regrettable that the administration of the grant was so poor that the committee was not able to conclusively determine whether the money should be paid back. Because the committee was reluctant to make an assessment based on the inconsistent evidence and incomplete documentary record presented to it, the committee has recommended that the assessment and approval of the Mordek grant be subjected to an independent audit by the Australian National Audit Office.

It is clear that the steel profiling plant was under construction a long time before the grant of \$339,000 was approved—a clear breach of program rules. It is clear that many applications for funding in the same assessment round as Mordek, including two applications from the Eurobodalla region, were rejected because they did not meet the funding guidelines. It is also clear that the original purpose of the grant, sewerage funding, was barely affected by the matter of its ineligibility. It defies belief to suggest that the Mordek grant was unique in relation to the quality of its administration. Indeed, the committee concludes that there was an unfortunate lack of clarity in the Dairy RAP guidelines and no clear direction to officers about how these guidelines should be interpreted. It is clear that the committee's observations about deficient guidelines and administration do not just apply to the Mordek grant, and that is why the committee has recommended a wider audit of the administration of the \$65 million Dairy Regional Assistance Program.

Some might wonder whether the government's resistance to a wider examination of Dairy RAP administration has something to do with the pattern of grants made under the program. In January I revealed that about 20 per cent of total Dairy RAP funds had found their way into the electorates of the minister for agriculture and the Minister for Trade. It is a peculiar characteristic of Dairy RAP that the minister for agriculture is responsible for the program despite its administration by the Department of Transport and Regional Services. I use the word 'responsible' in a guarded way because nobody—not Mr Truss and

certainly not Mr Anderson—has taken responsibility for the administration of the Mordek grant.

In relation to ministerial responsibility, I note that at least three answers provided to the Senate by Mr Anderson to questions on notice related to Mordek were shown to be false by his department's evidence to the committee's inquiry. I am awaiting an apology to the Senate from Mr Anderson or his representative in this chamber, but I fear that they are content to let the Department of Transport and Regional Services wear the responsibility for the repeated errors, and to further diminish the government's already poor record of accountability to this parliament.

During its one-day hearing, the committee heard from a number of witnesses from the Eurobodalla region, including the project proponents. For these witnesses, appearance before a Senate committee was an unfamiliar experience. I want to thank them for attending and for answering the committee's questions. I want to note the fact that a request for submissions to the inquiry was advertised in the *Australian* and published on the committee's web page. Additionally, the committee wrote to the Eurobodalla Shire Council, and the inquiry was the subject of extensive reporting in the South Coast media. I regret that Councillor David Laughher of the Eurobodalla Shire Council did not avail himself of the opportunity to participate in the inquiry. He has seen fit to make extensive comments about the nature and conduct of the inquiry but did not see fit to contribute to its work. I think the people of Eurobodalla shire are entitled to speculate on why Councillor Laughher did not avail himself of the opportunity to present his point of view to the committee.

According to the local newspaper reports, Councillor Laughher is himself a beneficiary of a Dairy RAP grant used to facilitate the expansion of a lolly packing factory. As such, the committee would have been grateful for his personal insight into the administration of the program. I would have been particularly grateful for his explanation of the mayor's report to the council on 11 September 2001 about the sewerage funding for the North Moruya Industrial Estate, because that report said:

The Federal funds are being sourced through the Dairy Regional Assistance Program and being channelled through the owner of the North Moruya Industrial Estate ...

That passage, one that corresponds with the substance of the report in the *Coastal Sun* nine months later, supports my original contention that this was an investigation into alleged money laundering. The member for Eden-Monaro, Gary Nairn, Councillor Laughher and some other councillors of the Eurobodalla Shire Council have been unable to understand why the Senate chose to inquire into the Mordek grant. I regret that elected office holders and public

officials have been unable to understand why the guardians of public money must observe guidelines in the expenditure of that money and properly account for that expenditure. It is a matter of great concern to me that some councillors from the Eurobodalla Shire think that in relation to the expenditure of public money the end justifies the means. The South Coast of New South Wales is a lovely part of the world, but I am glad I am not a resident of the shire relying on the same councillors and public officials to look after my rate funds.

I urge senators to read the report to gain an understanding of the matters contained within it. It contains important recommendations that relate not just to the administration of the Mordek grant under Dairy RAP but the overall administration of Commonwealth grant programs. The committee made key recommendations related to the allocation of funds designed to address regional disadvantage, the clarity of grant program guidelines and the transparent assessment of grant applications. I believe the committee's thorough examination of this matter reflects the high standards of the Senate committee system. I want to thank the committee secretariat for its work on this matter, particularly the committee secretary, Alistair Sands, and the senior research officer, Peta Leemen. I commend this report to the Senate and seek leave to continue my remarks later.

Leave granted; debate adjourned.

Treaties Committee

Report

Senator KIRK (South Australia) (10.39 a.m.)—On behalf of the Joint Standing Committee on Treaties, I present report No. 52, entitled *Treaties tabled in March 2003*, together with the *Hansard* record and minutes of proceedings. I move:

That the Senate take note of the report.

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

Leave granted.

The statement read as follows—

Report 52: *Treaties tabled in March 2003*:

Singapore-Australia Free Trade Agreement

Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Regulations for the Prevention of Pollution by Sewage from Ships (revised)

Convention on the control of Harmful Anti-fouling Systems on Ships

Report 52 contains the results of the inquiry conducted by the Joint Standing Committee on Treaties into four treaty actions tabled in the Parliament on 4 March 2003, concerning endangered species, pollution from ships, and anti-fouling systems on ships and the Singapore-Australia Free Trade Agreement.

Mr President, the Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide for the strict regulation of trade in species threatened with extinction, either by prohibiting trade altogether or by monitoring international trade in species such as the Madagascan chameleon, the Black Sea bottlenose dolphin and the Seahorse. The Committee found that the amendments are consistent with Australia's commitment to international cooperation for the protection and conservation of wildlife that may be adversely affected by trade.

Also in relation to the environment, the Regulations for the Prevention of Pollution by Sewage from Ships - generally referred to as MARPOL - defines and sets standards for sewage management systems on ships and in ports. There are currently no enforceable international standards relating to the discharge of sewage from commercial vessels. The Committee supports MARPOL and recommends that binding treaty action be taken as it will enable Australia to enforce the full range of controls on sewage systems on foreign and Australian flagged vessels and ensure that consistent national and international standards can be applied to foreign ships, thereby protecting the Australian marine and coastal environments.

Mr President, recognising the harmful effects of organotin-based compounds in anti-fouling paints on ships, the International Convention on the Control of Harmful Anti-fouling Systems on Ships was developed by the International Maritime Organization.

This treaty action enables Australia to enforce a full range of controls on such paints on foreign and Australian flagged vessels. The Convention provides for inspection of ships and detention for violations. The Committee therefore recommends that binding treaty action be taken.

Mr President, among the proposed treaty actions tabled on 4 March was the Singapore - Australia Free Trade Agreement, and associated exchange of notes

This treaty is the first bilateral free trade agreement that Australia has signed in twenty years. The Committee is aware that there are significant concerns in the Australian community, especially given its widely accepted status as a 'template' treaty for future free trade agreements. For this reason, Mr President, the Committee sought the views of a broad range of interested parties, including State Governments, peak industry organisations, academics and finance and commercial bodies. The Committee believes that the scope of issues addressed in this report should answer most concerns effectively, and that concerns about any future agreement should be considered by assessing each proposed FTA on its own merit.

Mr President, the Committee considers that the main advantages under SAFTA appear to be increased transparency and predictability for service providers; and decreased input costs for industry using components from Singapore as a result of the reduction in tariffs.

The removal of tariffs on Singapore imports to Australia should improve the competitive position of Australian manufacturing industry by allowing access to duty free industrial inputs.

The report, Mr President, addresses a wide range of issues and as a result of its deliberations, the Committee supports the Singapore-Australia Free Trade Agreement, and recommends that binding treaty action be taken.

Before I conclude, Mr President, I wish to raise a matter of considerable concern to the Committee. In the case of the Singapore-Australia Free Trade Agreement and MARPOL

the relevant legislation was introduced and passed through the House of Representatives prior to the Committee reviewing the proposed treaty action and tabling its report.

While the Committee accepts that binding action has not been taken in a strict sense, the introduction of enabling legislation to implement treaty obligations before the Committee has completed its review and reported to Parliament could undermine the workings of the Committee over time. It is, at least, in contravention of the spirit of the Committee's terms of reference.

In conclusion, Mr President, it is the view of the Committee that it is in the interest of Australia for all the treaties considered in Report 52 to be ratified (where treaty actions had not already entered into force), and the Committee has made its recommendations accordingly.

I commend the report to the Senate.

Senator KIRK—Among the proposed treaty actions that were tabled on 4 March were the Singapore-Australia Free Trade Agreement, Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Regulations for the Prevention of Pollution by Sewage from Ships and the Convention on the Control of Harmful Anti-fouling Systems on Ships. Today I wish to make a few comments in relation to the Singapore-Australia Free Trade Agreement and associated exchange of notes.

The Singapore-Australia Free Trade Agreement is the first bilateral free trade agreement that Australia has signed in 20 years. The committee is aware that there are significant concerns about it in the Australian community, especially given its widely accepted status as a template treaty for future free trade agreements. For this reason the committee sought the views of a broad range of interested parties, including state governments, peak industry organisations, academics and finance and commercial bodies. The committee believes that the scope of issues addressed in this report should answer most concerns effectively and that concerns about any future agreement should be considered by assessing each proposed FTA on its own merit.

The committee considers that the main advantages under SAFTA appear to be increased transparency and predictability for service providers and decreased input costs for industry using components from Singapore as a result of the reduction in tariffs. The removal of tariffs on Singapore imports to Australia should improve the competitive position of Australian manufacturing industry by allowing access to duty-free industrial inputs. The report addresses a wide range of issues. As a result of its deliberations, the committee supports the Singapore-Australia Free Trade Agreement and recommends that binding treaty action be taken.

However, before I conclude I wish to raise a matter of considerable concern to the committee. In the case of the Singapore-Australia Free Trade Agreement and

another treaty, MARPOL, the relevant legislation was introduced and passed through the House of Representatives prior to the committee reviewing the proposed treaty action and tabling its report today. While the committee accepts that binding action has not been taken in a strict sense, the introduction of enabling legislation to implement treaty obligations before the committee has completed its review and reported to parliament could potentially undermine the workings of the committee over time. It is at least in contravention of the spirit of the committee's terms of reference. In conclusion, it is the view of the committee that it is in the interests of Australia for all the treaties considered in report 52 to be ratified where treaty actions have not already entered into force, and the committee has made its recommendations accordingly. I commend the report to the Senate.

Senator MARSHALL (Victoria) (10.43 a.m.)—I rise to speak on report 52, *Treaties Tabled in March 2003*, tabled by my colleague Senator Kirk. I am unable to support recommendation 2 in this report, which effectively supports the ratification of this treaty, for two reasons. Firstly, I have some very serious concerns about the level of public consultation that took place throughout the committee's investigation. There is a high level of public discourse about trade agreements at the moment. I encourage that, because these sorts of trade agreements do have a serious and real impact on ordinary Australians. I encourage more and more involvement in that process. But I was not satisfied that the committee paid enough attention to concerns raised by the public, nor did they go through a process of public hearings.

I also have some very serious concerns about the level of consultation with the states. Agreements of this nature have the ability to impact upon some of the constitutional areas where states and territories have rights. I have some serious concerns that the states have not been made aware of the specific implications of the making of these treaties and how they may in fact impact upon their rights as states under the Constitution. One of my main criticisms is that the committee should have specifically drawn these matters to the states' attention and specifically requested comments from the states effectively consenting or objecting to the making of the treaty which would have enabled the committee to take those views into consideration.

A lot of those concerns go to chapter 8, which contains the investment provisions. The chapter 8 investment provisions of SAFTA apply to all measures used by government, including laws, regulations, procedures, decisions and administrative actions by central, regional and local governments and authorities. It also covers non-government bodies exercising

powers delegated by central, regional or local governments or authorities. The dispute settlement provisions in chapter 8 are broadly based on the North American Free Trade Agreement—NAFTA. United States and Canadian corporations have used NAFTA provisions to sue US, Canadian and Mexican governments—including provincial governments—over changes in regulations.

I want to give a couple of examples where this has occurred. Even though the provisions in NAFTA are slightly different to those in SAFTA, they can be easily transposed, and it involves the same sorts of issues that our states and local governments and the federal government, for that matter, could find themselves in litigation about. In the first example, the US Metalclad Corporation was awarded damages because a Mexican local council refused permission for Metalclad to build a hazardous waste facility on land already heavily contaminated. In the second example, the US chemical company Ethyl Corporation successfully sued the Canadian government for damages after the Canadian parliament imposed a ban on the importation and trade of a fuel additive made by Ethyl. In the third example, Sunbelt Water, a US based company, is suing Canada because the Canadian province of British Columbia interfered with Sunbelt Water's plans to export water to California. In the fourth example, in 1999 the American company United Parcel Service—UPS—filed a suit against the public owned Canadian postal service for using its monopoly on standard postal services to subsidise its parcel courier services. Finally, in 2002, Philip Morris threatened to sue the Canadian government under the NAFTA provisions for proposed changes to health warnings on cigarettes sold in Canada. All those issues give me some significant concerns about the impact of trade agreements in relation to removing the sovereignty that states and territories may have in determining standards that may apply to their constituencies.

SAFTA will also have a direct impact upon the Australian state and territory governments one year after SAFTA enters into force, largely through the chapter 7 provisions on trading services and the chapter 8 provisions on investment. In that interim one year, states and territories will be required to submit areas that they wish to have reserved or protected from the SAFTA provisions. The federal government says it will be consulting with the states and territories closely to develop lists of reservations or exclusions in relation to the investment services chapters. SAFTA will have important implications in its own right for the ability of future Australian federal, state and local governments to regulate. Australia already has about 20 bilateral agreements that establish rules on how the investments of companies are regulated in the countries concerned. However, to date, these have

been made with the developing countries, which, arguably, would not be home to many large corporations that could invest in Australia.

Just as importantly, however, the manner in which SAFTA is negotiated and completed will set precedents for how other free trade agreements, such as that currently being negotiated with the United States, will be progressed into the future. The Minister for Trade, Mark Vaile, has already said that SAFTA is a 'test case' for the US-Australia free trade agreement. He said that in the *Courier-Mail* of 4 November 2002. Moreover, other FTAs negotiated by the United States, such as the US-Singapore Free Trade Agreement and the US-Chile Free Trade Agreement have included similar investment chapters modelled on the investment provisions contained in NAFTA.

I have some concerns about that, and in my additional comments I certainly consider that in the best interests of transparency and for the best consultative practice the committee should have conducted public hearings regarding this treaty, and I strongly recommend that when future treaties of this nature are being considered by the committee they should conduct public hearings and take submissions from all interested parties. I also believe that states and territories should have been directly advised by the committee of the specific impact that the proposed treaty would have upon states and territories and, in future, when the committee is considering treaties of this nature, states and territories should have a direct response specifically requested of them, thereby assuring the committee that they have effectively consented to the making of the treaty. I believe similar provisions should apply to representatives of local government.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.50 a.m.)—I would also like to speak to report No. 52 prepared by the Joint Standing Committee on Treaties. I should admit upfront that although I am a member of the committee I am a member who, due to the other responsibilities I now hold, finds it very difficult to get to meetings and hearings—but I do try to keep across the issues before the committee and read the transcripts and submissions and the like. As always, it should be noted how valuable this committee is.

I want to comment specifically on the Singapore-Australia Free Trade Agreement but, before I do, I note that there are other treaties covered in this report. There are some measures to do with the Regulations for the Prevention of Pollution by Sewage from Ships and the International Convention on the Control of Harmful Anti-fouling Systems on Ships. Those measures are welcome. Any actions that are taken by the government that are positive should be acknowledged. Particularly with the Democrats' ongoing concern about protection of the Great Barrier Reef Ma-

rine Park, those measures provide some mechanisms to address one of the many threats to the marine park—the discharge of waste from ships. It is something that needs greater attention, not just from container vessels and large ships but indeed from some of the other, smaller, vessels that occupy the marine park. There are many thousands of small vessels of various sizes—tourist cruisers and the like—that are in the marine park every day and there is an ongoing issue in terms of the discharge of waste from some of those vessels as well which needs greater attention.

The report also deals with amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES. I think attention should be drawn to this convention at every possible opportunity. It is a living, breathing example of why the arguments made by some people about how to protect wildlife are incredibly wrong. There is a viewpoint amongst some people that a good way to protect wildlife is to commercialise it, give it some economic value, and that will provide people with an incentive to protect and preserve those species. This convention is a clear example of how that does not work. It highlights the many species, both plant and animal, that are endangered, either partially or fully, because of trade in those species and it seeks to regulate, or in some cases prohibit, trade in various species because of the direct threat that trade poses to the survival of those species. That needs to be continually reinforced as part of this debate. One of the amendments proposed to this convention was a negative one—even though the Australian government opposed it—proposing the freeing up, to a limited extent, of the trade in ivory. I think the proof is very clear that that would increase the threat to the survival of various species of elephant. Any freeing up of that trade, even in a limited way, is something that I am very concerned about and is certainly something that needs to be monitored closely.

I turn now to the main issue of this report—and certainly something that occupied a lot of the committee's time; not my time because I did not go to any of the meetings—and that is the Singapore-Australia Free Trade Agreement. I do think this needs more scrutiny than it has had. I concur with the remarks of Senator Marshall, and indeed I signed on to his remarks in the additional comments in this report. I do not support recommendation No. 2, which suggests ratifying the free trade agreement. I think there are still many issues of concern that have not been properly addressed by the government or by government departments. The point has been made that, whilst there were a couple of hearings, the witnesses were all from government departments—the Attorney General's Department, the Maritime Safety Authority, the Department of Agriculture, Fisheries and Forestry, the Department of the Environment and Heri-

tage, the Department of Foreign Affairs and Trade and the Department of Transport and Regional Services. Nobody from the broader public appeared before the committee for questioning, although there were obviously some submissions. I think that is a shortcoming for an agreement as significant as this.

I think a lot of the focus of late has been on the US-Australia Free Trade Agreement and what is proposed there. To some extent, the Singapore agreement has slipped through without much public attention. I think that is because people feel that Singapore is a minor nation—compared with the US anyway—and that this agreement is therefore not of such significance. But this agreement is significant. It has been made clear that the Singapore free trade agreement is seen as a form of template for further bilateral free trade agreements. Significant concerns have been raised that I do not believe were fully addressed in relation to the freeing up of trade in services and in relation to investment.

There is a broader Senate inquiry happening at the moment being conducted by the Senate Foreign Affairs, Defence and Trade Committee, which is looking at the General Agreement on Trade in Services and the proposed US free trade agreement. That inquiry has already highlighted some significant concerns present in the community. Many of those concerns mirror issues raised about the Singapore-Australia Free Trade Agreement. The GATS concerns many people. Senator Marshall outlined some of the reasons why its long-term consequences for public services are very concerning. One of the officials giving evidence said that the services component of this agreement was actually even better than GATS. So I think there are some real concerns that have not been properly exposed to adequate public scrutiny.

Similarly with aspects relating to investment, senators would be aware of the serious concerns raised a few years back about the proposed Multilateral Agreement on Investments, the MAI, which was examined by this committee. That inquiry helped persuade the government of the day not to go down that path. It was certainly successful in getting broad public scrutiny of that proposed agreement and in highlighting some of the dangers in it. The same dangers and concerns are relevant to the free trade agreement with Singapore, and I think it is unfortunate that they were not given as much scrutiny as the MAI was a few years ago.

The Democrats' concerns remain over aspects of this agreement. We are certainly not saying that we are against trade—or, indeed, potentially, the liberalisation of trade—but we have to look at the protection surrounding that and ensure the ongoing ability of sovereign nations to appropriately oversee, manage and regulate services and investment criteria, envi-

ronmental protections, labour standards and other issues is not curtailed by these broader agreements, and that is something we remain concerned about. I do think the scrutiny given to the Singapore-Australia Free Trade Agreement needs to be greater. Over the course of this year and onwards there will be debate about the US free trade agreement, but this free trade agreement with Singapore has already been signed up to by the Australian government. I do not support the committee's recommendation that we ratify this agreement—and I think this recommendation magnifies concern over this agreement. I think there is still some implementing legislation required, and that will obviously be a cause for further debate in the Senate.

So, whilst the committee's examination of this free trade agreement is welcome, I agree with Senator Marshall that it was not as extensive or wide ranging as it should have been. The issues contained within this free trade agreement still have legitimate public concerns surrounding them. It should be noted that, in addition to the comments from Senator Marshall and me, there were some comments from Mr Dick Adams, the Labor member for Lyons in Tasmania, who also expressed some concerns. Whilst I know the committee has put a fair bit of effort into trying to get a consensus position, it should be noted that those concerns remain and that further public scrutiny is desirable.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (PROTECTION FOR EMERGENCY MANAGEMENT VOLUNTEERS) BILL 2003

First Reading

Bill received from the House of Representatives.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.00 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.00 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill amends the Workplace Relations Act 1996 to make it unlawful to dismiss an employee who is temporar-

ily absent from work on voluntary emergency management duty.

Volunteer fire-fighters and other emergency management personnel demonstrated their exceptional contribution towards protecting lives and property during the recent bush-fires around Australia. At present, there is no specific federal legislation protecting volunteers who are temporarily absent from work undertaking emergency management activities. While there is some legislative protection in some states and territories, not all workers are covered, and the protections differ. This bill will protect all workers who are absent from work on legitimate volunteer emergency management duties.

It will cover not only fire-fighters and those on the front line, but volunteers who contribute to the management of emergencies and natural disasters. These volunteers receive no financial reward for their efforts, many forego paid leave to undertake these activities, and sometimes their lives are at risk. They do this because they want to support their community and the community is greatly in their debt for it.

Equally the Government extends its thanks to the employers who contribute by supporting the emergency service work of their employees. We recognise that many businesses choose to accept management and financial challenges in providing leave to their employees for volunteer duties. Indeed, many volunteers are themselves employers. Emergency management organisations know the contribution that employers make and try to recognise this in various ways at the local level. These sometimes seem small gestures, but they emphasise the important role employers have to play in supporting volunteer efforts in this country.

This legislation will enshrine in law the proposition that employees, whose temporary absence from work is reasonable in all the circumstances, should not lose their jobs for being away from work to protect the community.

In developing this bill, the Government has been aware of the need to minimise disruption to an employer's business. The bill tries to balance the needs of employees attending emergencies and the needs of employers running their businesses. That is why the protection provided covers the volunteer's temporary absence only if it is reasonable in all the circumstances.

Many emergency management organisations have a rule that the volunteer's first duty is to his or her employer. They require that the volunteer obtain the permission of the employer before leaving the workplace to attend an emergency. The protection in this bill is not limited to cases where employer consent was expressly given, as this may not always be possible given the nature of emergencies. However, it is not intended to disturb such policies of emergency management organisations, which are to be encouraged.

For protection to apply, the duration of the absence will also have to be reasonable in all the circumstances. For example, it would arguably not be reasonable for an employee of a small business to be away from work for a longer period than the employer could manage.

The protection will only apply if the recognised emergency management organisation requests the volunteer to carry out the activity, or if, having regard to all the circumstances, there is a reasonable expectation that the volunteer will carry out the activity in his or her capacity as a member of the emergency management organisation. This will cover those situations where volunteers are not individually requested to attend an emergency but may hear of an emergency and attend on their own initiative. The protection

will not extend to people who have no association with an emergency management organisation, but who may take it upon themselves to turn up at an emergency.

The bill will insert in the Act a statement that section 170CK of the Act, as amended, is intended to assist in giving effect to the International Labour Organisation's Recommendation No. 166 concerning Termination of Employment. That Recommendation provides, among other things, that absence from work due to civic obligation should not constitute a valid reason for termination. This reference does not represent a wider endorsement of the Recommendation for any other purposes of the Workplace Relations Act.

The Government does not envisage that this provision will be the subject of much litigation. However, the amendment is a public statement that the efforts of emergency volunteers are highly valued, and that they should not be dismissed because they were temporarily performing a great community service.

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

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

WORKPLACE RELATIONS AMENDMENT (TRANSMISSION OF BUSINESS) BILL 2002

First Reading

Bill received from the House of Representatives.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.01 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.02 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Government's record in workplace relations reform is substantial. The Australian labour market has been transformed into an environment where co-operative enterprise based bargaining has become the primary determinant of wages and conditions of employment. This has in turn produced social and economic benefits - including increased productivity, higher living standards for workers, historically low dispute levels and around 950,000 jobs since the Government was first elected in 1996. These positive results have strengthened the Government's resolve to implement further useful reform.

This bill will provide a mechanism for resolving complexities which may arise due to the existence of multiple or

inappropriate certified agreements following a transmission of business. At best, these complexities can lengthen the transmission process. At worst, they can deter the parties from undertaking it. In other words, they cost jobs.

The Government has previously sought to amend the relevant provisions, most recently with the Workplace Relations Amendment (Transmission of Business) Bill 2001, which was introduced into the House of Representatives on 4 April 2001, but lapsed with the Parliament.

The bill I introduce today has the same objective as the previous bills. However, the current bill includes measures specifically designed to ensure that all parties affected by a transmission are treated fairly, and that all those who will work under the agreement if it transmits, are able to have their views heard before an order is made.

Under the existing provisions of the Workplace Relations Act 1996, if a business transmits to an incoming employer, then a certified agreement covering it will also transmit so as to bind the incoming employer. As a result, a new employer and its employees may be bound by a certified agreement that is not suited to their circumstances – and which is not their negotiated agreement. Further, certified agreements that apply as a result of a transmission of business can override existing certified agreements in the new workplace and disrupt established work practices. There may also be practical difficulties in terminating or varying a transmitted agreement.

In order to remedy this situation, this bill will allow the Commission to decide, on application and on a case by case basis, whether it should make an order that a certified agreement will not transmit to an incoming employer, or will only transmit to a specified extent or for a specified period.

The order may be sought before or after transmission. Only the outgoing employer may apply before transmission. However, employees who will work in the business if the transmission occurs, and specified employee organisations, are entitled to make submissions if an order is sought.

After transmission, a different and wider category may apply, including the incoming employer (but not the outgoing employer), employees who have come over from the old business to the new, existing employees of the new employer who have become subject to the agreement, and specified employee organisations. The same individuals and organisations are also entitled to make submissions once an application is on foot.

Providing the Commission with a power of this nature is not a novel concept. The Commission already has the power to order that awards do not bind a new employer upon transmission of business. The Commission has used this power on a number of occasions.

Given the pivotal role certified agreements now have in the industrial relations system, the Commission should have a similar discretionary power in relation to the transmission of certified agreements.

This bill is a sensible technical measure which will improve the operation of the workplace relations system. The amendments will continue to give workers and employers more opportunities to manage their relationships at their workplace, and give the Commission an important specific power to enable them to do so.

In introducing the bill the Government is reactivating a legislative proposal in an area where the current Act is technically deficient and requires remedial action. The Government is determined to address this deficiency and will continue to assess the policy issues relating to trans-

mission of business, ensuring that where necessary, further legislative initiatives are developed.

Ordered that further consideration of the second reading of this bill be adjourned to the first day of the next period of sittings, in accordance with standing order 111.

MIGRATION AMENDMENT REGULATIONS 2003 (NO. 3)

Motion for Disallowance

Senator STOTT DESPOJA (South Australia) (11.03 a.m.)—At the request of Senator Bartlett, I move:

That item [2197] of Schedule 2 to the Migration Amendment Regulations 2003 (No. 3), as contained in Statutory Rules 2003 No. 106 and made under the *Migration Act 1958*, be disallowed.

The intent of this motion moved by the Australian Democrats is to prevent the government from increasing the student visa application charges from \$315 to \$400. On budget night, as we all know, the government introduced a package of measures designed to reform the higher education sector. Among those was a package of initiatives that dealt with international education alongside its higher education package, *Our Universities: Backing Australia's Future*. The total value of the international package over four years is \$113 million. This will primarily be funded through increased student visa charges of around \$69.9 million, increased charges to the CRICOS providers of \$19.8 million and professional development and student guardian visas of around \$16.4 million.

In short, we are doing this because we think, firstly, it is inequitable that international students should substantially foot the bill for measures that should quite rightly be funded by the Commonwealth. Some measures are of little or no relevance to international students. It also sends a strong message that the government simply views international students as cash cows. It has long considered international students as a revenue-raising mechanism. Mind you, I might add that it seems to be doing that with domestic students these days. These measures do look as though they are designed to be a net revenue raiser. Finally, the sector opposes the package. According to the AVCC, they were not consulted in developing a number of the items. So one of the peak bodies on which the government has relied in crafting its proposed higher educational reforms—the Australian Vice-Chancellors Committee—claim not to have been consulted on this package or on the fee increase.

Before discussing the actual package, it is worth noting that international education is of extraordinary value to this nation. In financial or dollar terms, it is worth \$5 billion per annum. It is the third largest services export and the eighth largest sector overall.

Moreover, this sector has grown primarily as an initiative of universities, with relatively little Commonwealth assistance. So the universities have really provided a lot of the initiative and done a lot of the work, both in resource and other terms, when it has come to increasing our share of export education.

Australia has a proud history of international education, with the Colombo Plan, established after the Second World War, having very deep-reaching effects in building cultural, strategic and political relations, notably in our local South-East Asian region. In 1985, the Australian Labor Party commenced the shift to treating international students as a market by opening the fee-paying arrangements. Since then, but particularly since 1996, when the Howard government got into power, international students have become an increasingly important source of revenue for universities, partly because this government has reduced in real terms its higher education spending on students and institutions.

Senators will recall that recommendation 6 of the Democrat initiated Senate inquiry report into the higher education sector, *Universities in crisis*, recommended that a MCEETYA review of the costs of international education take place. This is one area where the Democrats parted ways with the opposition members on that committee when it came to the recommendations. We did not accept the premise that the direct and indirect costs of international education should necessarily lead to a fee-paying regime to ensure no public subsidy of international students. While the Democrats are not necessarily advocating public subsidy of international student fees, we do believe that internationalisation of education provides a considerable, albeit sometimes hard to quantify, public benefit and as such it warrants direct Commonwealth investment, perhaps along the lines of the industry assistance packages that we see in so many other sectors.

As labour markets become more global, there is a strong argument that all students benefit from international education. At a deeper level, the Australian Democrats believe that all students benefit from engagement with different forms of knowledge intrinsic to different cultures. We passionately value diversity, which view is reflected in a number of our views on legislation before the Senate, including the Broadcasting Services Amendment (Media Ownership) Bill 2002. It also helps to explain why we are moving this disallowance motion, because we do not see international students as a mere cash cow. They are not merely a revenue-raising avenue or measure for this government.

I want to place on the record the view of the Democrats that the international package announced on budget night does contain a number of measures

which we consider worth while: for example, the increased funding of the Endeavour program scholarship, the four centres of excellence and increased focus on compliance and quality. We have no issue with these measures. In fact, we commend the government. The question, though, is: why should the international students have to fund them by yet another visa application hike? So let us call a spade a spade in this debate. The package is fundamentally a net revenue-raising exercise. It is not a long-term investment in the quality of international education. This is borne out by the fact that from 2005-06 revenue will outweigh expenditure on the package. According to the government's own budget figures, in 2006-07 the revenues will be \$32.4 million but the expenditures will be only \$22.5 million. That is clearly a \$10 million profit for the Commonwealth government. That seems to be at the heart of what this government and this package is about. It is another form of taxation on education.

The Minister for Education, Science and Training, Dr Nelson, in his press release insinuated that these funds were effectively hypothecated for international education, but that is simply not borne out by the government's education papers once we get to the out years. While clearly international students may benefit from some of the measures in the package, it is hard to justify, for instance, that at least three of the four centres of excellence—water resources management, sports science and administration, and mathematics education—are directly related to international education; yet the centres of excellence are the second largest element of the expenditure items at \$35.5 million over four years. Of course they are all worthy of support—the Democrats are not denying that those centres of excellence perform a valuable and important role—and they should be funded by the Commonwealth as part of an increased investment package in higher education and research. It should come from Commonwealth revenue.

The largest expenditure item in the package is for the promotion of international education; that is at \$41.7 million. Universities, state governments and IDP Education Australia already run a plethora of marketing activities. This government is forever harping on about small government and leaving activities that belong to the market to the market. However, it seems to think that it needs to give DEST millions of dollars to be a promoter in the international education market. That inconsistency I am sure would surprise nobody. But why should international students be paying for DEST's promotional activities? Why should DEST even be adding to the plethora of promotional activities or marketing activities that are already taking place by those other bodies or governments to which I referred?

It is worth getting a bit of perspective on the proposed increased visa charges. In 1998 student visa charges, including work rights, were \$285. If this latest visa hike is supported by a majority in the Senate, the charges will be \$455, including work rights—an astonishing 60 per cent increase in just five years. That is an extraordinary impost and quite a large jump. By way of comparison, in 2001 a study of the costs of higher education courses for international students in Australia, New Zealand, the United Kingdom, Canada and the United States by IDP Education Australia found that Australia was significantly higher than our main competitors in the international education market. If you look at a comparison of the rates from that survey, you will see that Australia was the equivalent of \$US156; New Zealand was between zero US dollars and \$US70; Canada, \$US82; the UK, \$US48; and the USA, \$US45. It should also be noted that the Australian dollar has increased from below US50c to a near US70c in recent years. That is a 2001 study. So you can imagine the subsequent increases in the costs of Australian education for international students.

It is true that visas are only a minor part of the cost. They are a minor cost in the total outlay of education for international students. The increase is arguably and likely to make a significant impact on the level of demand. But the Democrats' concern is that this fee slug signals mere greed from this government and, if it is supported by the ALP, from the opposition as well. It sends an unfortunate message that Australia simply sees students as purchasers of commodities. Perhaps that is not an inconsistent line if you look at the pattern of education or higher education reform in particular over the last decade where we have viewed students as consumers and we have viewed education as a commodity. But shouldn't we be viewing education as people engaging in a richer international education experience that has long-term benefits and flow-on effects for our country—and I do not just mean in economic terms?

I make a brief comment on the increased expenditure on compliance of \$5.1 million. There is no doubt that the passing of the ESOS Act in 2000 and the acceptance of the MCEETYA National Protocol have provided for a more rigorous regulatory quality assurance regime. We recognise that the ESOS Act is due for a thorough review—that is before the end of this year—and I certainly hope that we can introduce some extra territoriality into the compliance regime to ensure that offshore provision is properly examined.

This is one area where the Commonwealth government have an important part to play. They have been a bit tardy, a bit sloppy, in the past and I am sure Senator Carr would use the Greenwich University

example as an example of that. But if this disallowance motion is successful there is nothing to prevent this measure continuing. There are revenues we are not seeking to disallow.

By way of closing, I want to point out that the package is not supported by the sector. I said that in my opening remarks and I think it is worth remembering the issues to do with a lack of consultation as well as a lack of support from the sector. The Australian Vice-Chancellors Committee, the AVCC; the National Liaison Committee, the NLC, of the National Union of Students; and the Council of Australian Postgraduate Associations, CAPA, have all indicated their opposition to the increase in student visa charges. According to the AVCC, as I mentioned, there has been a lack of consultation. That is not just in relation to this specific measure but in determining the international education package. In its response to the government's higher education package, the AVCC stated:

On balance, the AVCC is unable to support the international package. It would be better not to have the initiatives, some of which have value, than to have the additional charges ...

The AVCC recommends:

... the Government to work with the AVCC to develop a better package of international initiatives, funded through direct Government support for a major export industry.

Similarly, the NLC argues:

International Students should not be the ones who should be shouldering the burden of strengthening the quality of education and future growth of the industry.

Quite so. I hope that a majority of senators will agree with those comments. Given the government's purported commitment to consultation over the Crossroads review and certainly their close working relationship with the Australian Vice-Chancellors Committee over the last year or so in particular, surely they would want to go back to the drawing board and get this right, instead of rushing through these changes that potentially will have a deleterious impact on the sector.

As I have said, arguably it may not have an impact on demand; certainly I hope it does not, given the extent of the benefits Australia derives from export education and also the 'public and community good' element—something that I think is often lacking in the determination of education policy by this government. I hope that senators will support this disallowance motion. We have heard rhetoric about equity from a number of members, senators and indeed parties who have opposed the proposed fee hike in the Crossroads package. Remember that those fee hikes will make us one of the most privatised university systems in the world, so comparatively we will have HECS hikes and fee hikes that will obviously terribly

disadvantage Australian domestic students, particularly those students who are from traditionally disadvantaged backgrounds. Let us not forget that. The level of participation in higher education by groups such as people from Indigenous, regional and poorer backgrounds has not improved over the last decade.

That is why the Democrats have made very clear our concerns about the proposals to increase HECS, to further deregulate undergraduate and postgraduate places—that is, the doubling of full-fee-paying places at a domestic undergraduate level. I hope that all that equity rhetoric we have heard from, I think, a majority in this place—and a majority, I believe, in the community—was not simply confined to domestic students. I hope the opposition will be supporting the disallowance motion before us today, not only for equity reasons but for those other reasons that I put on record.

Senator MURPHY (Tasmania) (11.19 a.m.)—I rise to support the Democrat proposal, because of the basically outrageous approach taken by the government to dealing with a matter that, insofar as a quality assurance program is concerned, the government should fund. To lump this sort of increase into visa fees for overseas students is just outrageous. If you have quality assurance problems, I can tell you that they are problems that have existed for some time, primarily through the processes that have been set up to manage them. As I understand it, the department have been working on those quality assurance problems and changing the processes and, I think, are now centralising the processes back here in Australia. The processes themselves were an outrageous problem, and I do congratulate the government if it has initiated this, but certainly I congratulate the department with regard to the changes that they have been making for the purposes of getting some efficiencies into dealing with student visa applications.

But to do this is just outrageous. I say to the opposition—that is, if the opposition is going to support the government in allowing this ridiculous increase to go through—how they can do that in light of all of the other arguments that they would present in respect of the higher education funding proposals from the government in other areas is beyond me. I would really urge the opposition to seriously consider supporting this disallowance motion, because it is the fair and right thing to do.

Senator McGauran—What is your problem?

Senator MURPHY—Good question from Senator McGauran, in his position!

Senator McGauran—You're just not articulating yourself.

Senator MURPHY—I am sure a lot of foreign students, who make a significant contribution to this

country and also to the education system and the economy of this country, would certainly like you to stand up in front of them and make that particular remark! This is an outrageous approach from the government. I urge the opposition and every other non-government senator to support the disallowance motion, because what is proposed by the government is outrageous and should not be allowed to happen.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.22 a.m.)—If the increase to the student visa application charge is disallowed, we will not be able to fund the scholarships, centres of excellence, teaching fellowships and improvements to the scope and quality of information supplied to students and the industry. Critically, without this student contribution our capacity to provide quality assurance and to protect and enhance the reputation of Australia's education system both onshore and offshore will be reduced. The education industry, if I can put it that way, has generated over \$5 billion in national income for Australia in 2002, creating at least 43,000 jobs for Australians. That is a very clear message that the educational system we have in Australia is one that people overseas want to have the benefit of and, of course, there is a benefit to the Australian community through the money that it brings. If the increase to the student visa application charge is disallowed, the impact of the international education package will be severely hampered. Some 30 new scholarships and 140 teaching fellowships would be at risk, at least three centres of excellence would not go ahead and our ability to attract the best students will be compromised without the funding for promotion and new overseas education counsellors in Europe, the United States, Latin America and the Middle East. In addition, our capacity to provide quality assurance onshore and offshore will be adversely affected. The loss of these funds will undermine the ability of the government to help build a more diverse industry that will attract the best students and thereby ensure the social and economic benefits of our engagement.

The government's international education package is essential to underpin sustainable growth of this industry through quality and diversity. Without these measures we will compromise the quality of our institutions and students, and risk a narrow position in the market. Currently, nearly 80 per cent of students studying with Australian institutions come from Asia. We all know the benefits of that. While this helps build relationships between Australia and countries such as China, Australia's narrow positioning in the market could expose it to risks of overreliance on a few source countries and areas of activity. We need more students from other regions to complement this welcome interest from Asia. I have recently seen in Perth, my home town, overseas students coming from

places like Europe—Switzerland, for instance. We should not be too narrow in our approach. With the educational system that we offer, we are internationally competitive and we can afford to look to a broader market.

With a steady growth in demand for international education there is potential for the industry to move into other markets. This will provide the basis for diversification over the longer term, enriching the educational experience for Australian students, broadening our cultural base and providing greater sustainability. The package provides the support needed by the industry to move in a new direction. The cost of supporting the international education industry should not be borne by Australian taxpayers alone. Their government already makes a major contribution to the sector and therefore international students need to make a contribution also. Students gain a significant private benefit from the government frameworks which support international education. They benefit personally from consumer protection, quality standards and greater recognition of their qualifications in overseas labour markets.

The cost of student visa applications is being increased by \$85, comprising an \$8 indexation component and a \$77 international education contribution. This provides a contribution by international students to improving the quality of the services available to them, and the information that we provide about study options and the Australian education and training system. So the benefits go back to the students themselves. This is significant when compared with the average cost paid by international students for their qualification.

With steady growth in demand for international education it is highly unlikely this fee increase will dampen demand for Australian education. Australian course fees and living expenses are significantly lower than those in our competitor countries. Any student considering the full costs of studying in various countries will consider this to be a very small element of their cost. The increased cost will account for 0.5 per cent of total first-year costs for the average higher education course to 0.7 per cent for VET and ELICOS courses. That gives you an idea of the minute size of this cost compared with the overall cost to overseas students.

Feedback from students indicates that they support the activities proposed, particularly in relation to quality assurance. International students will gain significant benefits from this contribution, including better information about study options; more accessible information services, including online; higher education and training; enhanced government to government activities that provide more effective frameworks for international recognition of qualifications

and educational exchanges and cooperation; and activities designed to raise international recognition of Australia's excellence in providing education and training services.

With some regional areas seeking stronger engagement in international education, the package includes measures to further support diversification of the industry outside the major metropolitan areas. The value of this industry to smaller states, such as Tasmania, can be significant. In 2002, \$47 million was spent by international students on fees and goods and services. This is just one aspect of the benefits we get from overseas students studying in Australia.

The level of the international education contribution and the use of the funds will be reviewed in future years to ensure that it remains relevant to changing market conditions and student needs. This provides the necessary scrutiny of the industry which all would expect. But what the government says here is that we have a very good educational system, one which earns a great deal of money for this country and also gives us social benefits. The government puts a great deal of resources and money into this and it is only fair that international students should contribute in some small way to this. Therefore, the government opposes this disallowance motion which would be a retrograde step in the education of international students in Australia.

Senator CARR (Victoria) (11.30 a.m.)—I rise to express the opposition's views on the matters related to this disallowance motion. This issue is being dealt with through migration amendments, so it is a little different from our normal educational responses. However, it is essentially an educational issue, and I will put my views in that context. The question of international education is one that, as the Senate would only be too aware, we have a deep interest in and one that I have been pursuing for some time—in particular, the concerns about what is now our fourth largest export industry being able to operate on a sustainable basis.

My concern over many years is that there has been a profound failure of government in this regard. By allowing the bottom feeders in the education industry to have too great an influence, we are in fact endangering the industry as a whole. I have named 30-odd colleges that have basically operated as visa shops, that have operated as procurers of women for the sex trade, that have used student visas to encourage people to work illegally on building sites, in the hospitality industry and in a range of other industries—in other words, a group of people operating in the industry who have put as their primary purpose the objective of making money, at the expense of people. The inevitable argument will be put that this is a small group of people, and I agree with that. But a minority

of people have, in my judgment, seriously eroded the credibility of the overwhelming majority of reputable operators in this industry. As I say, I have named 30-odd colleges, most of which are now out of business. I have done that to draw attention to the failure of our regulatory regime.

It is said that we should not have the same concerns about other sections of the industry, because universities and the like would never be involved in those sorts of activities—that is a mistake. In recent times we have seen that this industry operates like a tax avoidance industry. No sooner do you clamp down and clean up one aspect of the trade than the corrupt elements—the shysters, the crooks—move into another area. What has really worried me in recent times is the tendency for universities to undertake partnerships with bodgie operators. I have mentioned Lloyds as one of those colleges—a company run by Caprock. I was able to draw attention to this through Senate estimates. The vice-chancellor of the university, who was named, rang me up and said: ‘What’s all this about? I didn’t know anything about it.’ I said, ‘Advertisements have been placed in newspapers distributed through this country and overseas which have your logo and this particular company’s logo side by side.’ And there have been other occasions where that has occurred. At universities in Queensland, New South Wales and South Australia we have seen circumstances where their partnership arrangements, through various franchising, have led to disreputable elements seriously undermining the reputation of those universities and the sector as a whole.

Our country is being traded in international arenas on the basis of our name as a country. We do not go into the international market and ask people to distinguish between providers, the way some other countries do. We have sought to brand name Australian international exports through our marketing arrangements as ‘Australia’. People have built on that. Governments in China, Malaysia and Korea have put to our officials that there are people operating who are doing huge damage to our international trade and diplomatic relations. This matter, if it is not attended to, will undermine the credibility and the sustainability of the industry as a whole.

There appears to be developing within the Department of Education, Science and Training a change in philosophy—a change that I welcome. It is under pressure, as a result of the opposition. The changes to the ESOS Act, in my opinion, would not have been made unless we had got up here for month after month pointing out the sorts of shysters that are operating. A number of the amendments to the ESOS Act that we put up at the time were not accepted by the government; they are now revisiting that—for

instance, on the question of extraterritoriality—and they are saying, ‘We should do this.’ These are all positions that the opposition put forward a couple of years ago.

Now we have a situation where the government is saying, ‘We need to clean up our act.’ I say it is too little, too late. Nonetheless, it is better than nothing. It is not just a question of whether institutions are disadvantaged—which they will be, if these sorts of corrupt practices are allowed to continue—but also a question of the impact on students in terms of the quality of the education they are provided with. People come to this country with an expectation that we will in fact provide them with an education of substance and quality—that they can go home with a ticket that actually means something.

The information that has been coming to me is that there is great dissatisfaction among international students with the quality of services they are provided with when they get here. They are sick of being ripped off and they are sick of being used as cash cows by the universities and by these private operators who seek to exploit them only for their wallets. They want an education that means something. They do not want to be corralled into ghettos where they meet no Australian students. They do not want bodgie course arrangements where the qualifications they receive are based on the fees that they pay, not on the basis of the work that they have completed. In my judgment, there is a real demand from the students themselves for improvement in the quality assurance regime.

We have here a proposition that the fees for students be increased by 30 per cent. I think the government has failed in this area. There is a substantive argument about failure of consultation. I do not mean the veto—I am not saying that you talk to people on the basis that they can veto you but that the government should have talked to the industry about how these programs would be funded. That did not happen, and that is something I strongly resent. There was no discussion with the opposition about this, and there should have been—because I think we have demonstrated our bona fides on these issues over many years. What really troubles me is that this comes at a time when we have had war—that disaster in Iraq—the huge impact of terrorism on the downturn in the tourism industry and we have had SARS. We have a serious problem. Some of the information coming to me from some markets is that student demand from some countries may well have declined by 40 per cent. Is this the appropriate time for the government to be proposing changes to student fee structures?

That aside, we are entitled to come back to this point: how do we change the culture in this country

to make sure that the industry will be here for the long term? How do we ensure that we do not feed off the bottom, which is easy pickings but always short term—that is, until the police knock on the door and throw someone in jail (if we can find police that can do a little better than track a bleeding elephant through snow)? How do we ensure that the industry moves up-market? How do we ensure that we get the best students from foreign countries? How do we ensure that the quality of the programs we offer is such that people want to come here—not because it is the cheapest but because it is the best?

We are not just talking about the question of a ticket here; we are talking about the long-term relations of this country with other countries. The very people who come to this country as students may well end up being senior officials and decision makers in their home countries. They ought to come away from this country with a positive view of us as a nation. They ought to be able to come away saying, 'I actually enjoyed my experience meeting Australians and understanding Australians.' It is a very important question for our long-term national interest. This is not just a question of who can make a buck quickly.

So I think the debate on this so far on this issue has been misguided, notwithstanding that the government has fundamentally failed in its approach to this issue. It is misguided in so far as we now have to think about how we change the culture of our international education. I want to see it grow and prosper but not just for financial reasons. Therefore I would suggest, given that there has been no alternative proposed for trying to strengthen that international compliance, that we have somewhat reluctantly opposed this proposition today.

The universities cannot turn away from their obligations here. For too long, they have been only too happy to let people like me have a crack at some of the private providers. I am saying that the universities are failing in their obligations and they now have to take more responsibility for what they do in international education. They cannot simply get the marketing department to run their international program; they need educators to run the programs. They need to understand that they have responsibilities not just to their balance sheet but to the future of this country.

Senator STOTT DESPOJA (South Australia) (11.43 a.m.)—I am happy to waive my right of reply so that we can vote on this issue.

Question put:

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

The Senate divided. [11.48 a.m.]

(The Acting Deputy President—Senator J.C. Cherry)

Ayes.....

12

Noes..... 37

Majority..... 25

AYES

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

NOES

Barnett, G.	Bishop, T.M.
Brandis, G.H.	Buckland, G.
Campbell, G.	Carr, K.J.
Colbeck, R.	Collins, J.M.A.
Conroy, S.M.	Cook, P.F.S.
Coonan, H.L.	Crossin, P.M. *
Denman, K.J.	Eggleston, A.
Ellison, C.M.	Evans, C.V.
Ferguson, A.B.	Forshaw, M.G.
Hogg, J.J.	Humphries, G.
Johnston, D.	Kirk, L.
Knowles, S.C.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	McGauran, J.J.J.
McLucas, J.E.	Moore, C.
Patterson, K.C.	Sherry, N.J.
Stephens, U.	Tchen, T.
Tierney, J.W.	Webber, R.
Wong, P.	

* denotes teller

Question negated.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

In Committee

Consideration resumed from 25 June.

Bill—by leave—taken as a whole.

The CHAIRMAN—The committee is considering Democrat amendment (1) on sheet 3000, moved by Senator Murray. The question is that the amendment be agreed to.

Senator CHERRY (Queensland) (11.53 a.m.)—Democrat amendment (1) on sheet 3000 is to ensure that the Senate instructs the Minister for Communications, Information Technology and the Arts, through this act, that the ABC network be expanded, as the ABC has requested, to all centres with a population of more than 10,000 where there is available spectrum. That is the first part of the amendment. The second part of the amendment requires a review to be conducted by the ABA of radio broadcasting of local news. The chamber would be aware that the ABA has already conducted a review of local news by television broadcasters, and I think that has produced a reasonably good outcome. I would have preferred to see the mandating of the standards to be a little bit better than the ABA recommendation. In fact, the Democrat recommendation was for twice the mini-

mum requirement that the ABA came out with. But there has not been a similar inquiry in respect of radio news. That is a real difficulty because, as has been evidenced by the regular surveys by the ABA of the provision of local news and information—local programming—on commercial radio in regional areas, it has become increasingly clear that the amount of networked programs is growing and the amount of locally produced news is falling. I think I gave figures earlier in the debate that the number of journalists employed in commercial radio in Australia has dropped from about 650 to about 250 over the course of the last 10 years as a result of networking. So I think it is appropriate that the Senate ask the ABA to conduct that review of the provision of local news on radio, and I think that is a worthy amendment.

The other part of the amendment is equally worthy—and I hope Senator Murray has spoken to it—and that requires the minister to push out the five ABC networks to all centres with a population of over 10,000. The ABC to date—and I have to acknowledge that the government has been supporting the ABC in doing this—has been progressively pushing out its networks to this 10,000 benchmark. Local news and Radio National have been pushed out pretty much everywhere. I think Classic FM is one million listeners short, Triple J is about 1.2 million people short and NewsRadio is about 3.4 million people short. I think it is very disappointing that across Australia so many people in regional Australia are still not getting the diversity of views provided by the public broadcasters. This is particularly important, given that in so many parts of regional Australia there is probably only one commercial radio broadcaster, or maybe two owned by the same company, whereas in a lot of other centres there might be only two commercial broadcasters doing radio. So the importance of getting the ABC out into the country areas needs to be emphasised, and I think we need to make the point that we want the government to actually achieve this. That is what this amendment is about. I commend the amendment to the chamber, and I certainly hope it gets some support.

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (11.56 a.m.)—On behalf of the ALP, I indicate that we believe these amendments have much merit and should actually be part of a much more broad-ranging discussion than we have been able to have today. I appreciate that this debate has been very freewheeling. A lot of things have been brought up and tossed in everyone's laps at the last minute. That is making it very difficult, from our perspective, to try and pull together and have a look at a lot of these amendments—many of which, as I said, we do believe are worth while and have merit. I regret I am going to disappoint Senator Cherry, because it is not his fault that these issues

have been brought up at the last minute, but given some of their importance we will be voting against them. However, we do believe there is much merit in them and would welcome an opportunity through another Senate process—perhaps after the government accepts the will of the Senate—to sit down and work through some of these issues with the minor parties, the Democrats and even the government if they are willing to enter into discussions. So, unfortunately, despite the merit in those amendments, we will be voting against them.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.58 a.m.)—I would like to put the government's position on the record. The facts are that all ABC radio services, other than the Parliamentary and News Network or NewsRadio, reach more than 94 per cent of the Australian community. We are considering a proposal in the context of a cross-media bill which is all about ensuring diversity of opinion, which means predominantly news and current affairs. Senator Cherry, however, is opportunistically trying to commit the government to an open-ended funding of the extension of two predominantly music services, being Triple J and Classic FM. I can understand why Senator Conroy was very reluctant to support this, because it would immediately mean that the Labor Party had an open-ended commitment to provide funds—they would not know how much, but quite substantial funds. As always occurs, we will roll out new services progressively as funds become available. We have already—

Senator Conroy interjecting—

Senator ALSTON—We have got to 94 per cent, which is a pretty good effort, I would have thought. But, in this context, by far the higher priority has to be NewsRadio, and that is something that we are seriously prepared to contemplate. If Senator Conroy wants to commit to predominantly music programs, then do not do it in the context of cross-media legislation.

Senator BROWN (Tasmania) (11.59 p.m.)—I congratulate Senator Cherry. I think this is an effort to make sure that the drying up of local services for the regions is offset. It is a good amendment. I note that yesterday the government, supported by the opposition, had no difficulty in allocating \$3,000 million per annum to the Diesel Fuel Rebate Scheme. The expenditure for ensuring that access to broadcasting in rural and rural Australia is equal to that in the capital cities is excellent, but the expenditure is going to be nowhere near the pollution rebate—or promoter rebate—that the government passed yesterday. The government needs to get a sense of the priorities. I commend the Democrats amendment and I will be supporting it.

Senator CHERRY (Queensland) (12.00 p.m.)—Minister, what would be the actual cost of extending these services? This was included in the ABC's triennial funding proposal which, as we know, the government has totally rejected. What would be the cost of extending the networks, as the ABC had asked, and how does that differ from what the minister announced on Friday, which was extending only NewsRadio out to those areas?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.01 p.m.)—As I explained at the start of this debate, in relation to NewsRadio the government is very much opposed to putting a figure in the marketplace, because it would remove all competitive tension. These rollouts are conducted by specialist infrastructure companies and hopefully they will bid competitively for the right to conduct those rollouts. We are not in the business of telling them what the figure is. We can give them a commitment to paying for that work. You may be able to go back and look at the costs for the rollouts that have already occurred during the time that we have been in government. If there is anything on the public record that might be of assistance, I am happy to provide it. But, again, to move an amendment, say that it is tremendously important and then say, 'By the way, how much would it cost?' is a classic example of policy-making on the run. It is the essence of irresponsibility, and we do not operate that way.

Senator BROWN (Tasmania) (12.02 p.m.)—To put that another way, the government is saying, 'We do not support this amendment, and we do not know how much it would cost even though we have all the access to that information.'

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.03 p.m.)—Even if we have a figure, we are not prepared to put it on the public record. We do have a pretty good idea, just as we have a pretty good idea of what it would cost to roll out the Parliamentary and News Network, but we do not believe that it is appropriate to put those figure in the marketplace.

Senator BROWN (Tasmania) (12.03 p.m.)—We disagree. The committee is debating this measure and should be given that information.

Question negated.

Senator CHERRY (Queensland) (12.03 p.m.)—I seek leave to withdraw Democrat amendment (1) on sheet 2987.

Leave granted.

Senator CHERRY (Queensland) (12.04 p.m.)—I move Democrat amendment (R1) on sheet 2987 (Revised 2).

(R1) Schedule 2, page 37 (after line 8), after item 8, insert:

8AA Before section 150

Insert:

150A Action by ABA in relation to a broadcasting service where complaint justified

- (1) If, having investigated a complaint, the ABA is satisfied that:
 - (a) the complaint was justified; and
 - (b) the ABA should take action under this section to encourage a provider of a broadcasting service to comply with the relevant code of practice;

the ABA may, by notice in writing given to a provider of a broadcasting service, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.
- (2) That other action may include broadcasting or otherwise publishing an apology or retraction or providing a right of reply.
- (3) The ABA must notify the complainant of the results of such an investigation.

150B ABA may report to Minister on results of recommendation

- (1) If:
 - (a) the ABA has made a recommendation to a provider of a broadcasting service under section 150A; and
 - (b) the provider of a broadcasting service has not, within 30 days after the recommendation was given take action that the ABA considers to be appropriate;

the ABA may give the Minister a written report on the matter.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which he or she received the report.

- (2) Schedule 2, page 37 (after line 8), after item 8, insert:

8AB At the end of subsection 152(2)

Add "or providing a right of reply".

I have put up this revised amendment because there was an omission in the earlier draft. Yesterday, we were trying to make sure that the ability of the ABA to require retractions or apologies is identical for commercial and public broadcasters. My proposed section 150A was identical to section 152 of the Broadcasting Services Act. I had omitted to put in a second section, relating to section 153, which was that, where a broadcaster has refused to publish the retraction or apology, it would be reported to the parliament. This amendment differs from amendment (1) yesterday only in the addition of section 150B, which is identical to section 153, to ensure that we have completely equal treatment of commercial and public broadcasters with respect to the outcomes of ABA investigations.

Senator CONROY (Victoria) (12.05 p.m.)—This amendment ensures that certain ABA complaints procedures which currently apply to the ABC and SBS will also apply to commercial television broadcasters. Labor believes that this amendment is worthy of support and that it would be worthwhile for the ABA to have a few teeth instead of the toothless tiger—except when it comes to the monarchy—that currently resides there. We think that this is very simple, very straightforward and a worthwhile public policy initiative.

Senator BROWN (Tasmania) (12.06 p.m.)—I repeat that the Greens support the amendment. There is a right of reply, even in this chamber, to aggrieved people under certain conditions. I think the Democrats amendment is very logical and deserves full support.

Question agreed to.

Senator CHERRY (Queensland) (12.06 p.m.)—I seek leave to withdraw Democrat amendment (3) on sheet 2987.

Leave granted.

Senator CHERRY—I move Democrat amendment (R3) on revised sheet 2987:

(R3) Schedule 2, item 4, page 14 (after line 6), at the end of subsection 61F(2), add:

- ; and (d) the entities, or parts of the entities, that run those media operations, where those media operations involve a television station and one or more daily newspapers in the same market, have established an editorial board for the news and current affairs operation of the television station which will:
 - (i) have complete editorial control over the news and current affairs output of the television station, subject only to a right of veto by the entity over any story which is likely to expose the entity to a successful legal action for damages; and
 - (ii) consist of three members, one appointed by the entity, one elected by the staff of the news and current affairs operation, and an independent chair appointed by agreement between the entity and the Authority; and
 - (iii) have the power to appoint or dismiss the news editor, who in turn shall have the power to appoint or dismiss all staff of the news and current affairs operation within the budget set by the entity; and
 - (iv) abide by any commercial objectives set by the entity and approved by the Authority consistent with the objectives of this Act and this section.

We debated this amendment yesterday. As a result of discussions with Senator Murphy and Senator Lees I have put this revision in. The first change I have made is in subparagraph (ii) to make it clear that with

this editorial board the three members would consist of one appointed by the entity—that is, the media proprietor; one elected by the staff—that is, the journalists; and an independent chair appointed by agreement between the entity and the authority. This was to try to get around the concern that people, including the minister, expressed yesterday that the government itself would be appointing an independent chair. I think it is reasonable to expect—and, as I said, I have great confidence in the authority to ensure that a genuinely independent person is put into that chair position—that the proprietor should probably be part of that process. So I have made that change at the request of Senator Lees and Senator Murphy.

The second change that I made was to clarify in subparagraph (iii) that the board's role in staff management will cease with the appointment of a news editor. I should have put that in the original draft. I thank Senator Murphy for pointing that out. It makes it clear that the news editor is appointed by the board and the editor is then the person who has the independence to appoint staff. But obviously the board would set a broad code of editorial independence for television newsrooms in a cross-media situation. With those changes, I think this amendment is much better than it was yesterday. I commend it to the chamber.

Senator CONROY (Victoria) (12.09 p.m.)—While welcoming the initiative that Senator Cherry is attempting to introduce, Labor is of the belief that there is such a fundamental flaw in the whole design of this part of the legislation that even Senator Cherry's worthwhile and well-intentioned attempt cannot possibly make this particular part of the regime work. I am afraid that we do not share your faith, Senator Cherry, in some of the issues you raise in terms of independence and those sorts of things. We believe that this would produce a fig leaf—and nothing more—to try and justify what is a very, very flawed piece of legislation in this particular area. I indicate that Labor will not be supporting this amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.09 p.m.)—I have only just seen this amendment. It has certainly been revised, and I think it is generally still unacceptable, but there is at least one other aspect of it that I think should be further explored. I ask that we defer this for later consideration.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Senator Cherry, are you happy to defer it for later consideration?

Senator Cherry—If that helps the minister.

The TEMPORARY CHAIRMAN—If that is the case, we will defer that amendment and move on to the next amendment.

Senator LEES (South Australia) (12.10 p.m.)—I move amendment (1) on sheet QP205:

- (1) Schedule 2, page 38 (after line 26), at the end of the Schedule, add:

17 Subclause 2(1) of Schedule 6

Insert:

local sports news bulletin has the meaning given by clause 5A.

18 Subclause 2(1) of Schedule 6

Insert:

local sports program has the meaning given by clause 5A.

19 After clause 5 of Schedule 6

Insert:

5A Local sports programs and local sports news bulletins

Local sports program

- (1) For the purposes of this Schedule, a *local sports program* is a sports program the sole purpose of which is to provide:

- (a) coverage of one or more local sporting events; or
- (b) analysis, commentary or discussion in relation to one or more local sporting events; or both, but does not include a local sports news bulletin.

Local sports news bulletin

- (2) For the purposes of this Schedule, a *local sports news bulletin* is a sports news bulletin the sole purpose of which is to provide news about one or more local sporting events.

Local sporting event

- (3) For the purposes of the application of this clause to a datacasting licence, a sporting event is a *local sporting event* if, and only if:

- (a) the event takes place wholly within the relevant transmitter licence area; or
- (b) the event is a team event, and at least one competing team represents a location within, or an organisation based within, the relevant transmitter licence area.

- (4) However, none of the following is a local sporting event:

- (a) a sporting event that is, or is part of, an international sporting competition;
- (b) a sporting event that is, or is part of, a national sporting competition;
- (c) a sporting event that is, or is part of, the highest level competition for a particular sport within a particular State or Territory;
- (d) a sporting event specified in a notice under subsection 115(1).

Relevant transmitter licence area

- (5) For the purposes of the application of this clause to a datacasting licence, if a transmitter licence authorises the operation of a transmitter or transmitters for transmitting the datacasting service concerned in a particular area, that area is the *relevant transmitter licence area*.

Definitions

- (6) In this clause:

foreign location means a location in a foreign country.

foreign organisation means an organisation based in a foreign country.

foreign resident means an individual whose ordinary place of residence is in a foreign country.

international sporting competition includes (but is not limited to):

- (a) a sporting competition (at any level) that is part of an international circuit or series; or
- (b) a sporting competition (at any level) that is an individual competition, where 50% or more of the competitors are foreign residents; or
- (c) a sporting competition (at any level) that is a team competition, where 50% or more of the competing teams represent a foreign location or foreign organisation.

national sporting competition means:

- (a) a sporting competition (at any level) that is part of an Australian circuit or series; or
- (b) a sporting competition (at any level) that:
 - (i) is an individual competition; and
 - (ii) operates as a single competition in Australia;
 even if:
 - (iii) a small proportion of the competitors are foreign residents; or
 - (iv) a small proportion of the events take place in a foreign country; or
- (c) a sporting competition (at any level) that:
 - (i) is a team competition; and
 - (ii) operates as a single competition in Australia;
 even if:
 - (iii) a small proportion of the competing teams represent a foreign location or foreign organisation; or
 - (iv) a small proportion of the events take place in a foreign country.

20 After subclause 14(4) of Schedule 6

Insert:

- (4A) The condition set out in subclause (1) does not prevent the licensee from transmitting a local sports program.

21 Subclause 14(5) of Schedule 6

After “(2)”, insert “or (4A)”.

22 After subclause 16(3) of Schedule 6

Insert:

- (3A) The condition set out in subclause (1) does not prevent the licensee from transmitting a local sports news bulletin.

23 Subclause 16(5) of Schedule 6

Omit “(2) or (3)”, substitute “(2), (3) or (3A)”.

This amendment further gives opportunities for datacasting and extends it into local sports and local sports news programs. I am very pleased to say that, as discussions with the minister have gone on over this piece of legislation, datacasting trials have got some new impetus with some changes already to what was permissible. This is a further change that will not in any way impact on free-to-air stations or on pay TV. The sorts of programs that this will enable to be put through the datacasting system are programs that normally would get no TV airing whatsoever. I commend this amendment to the chamber.

Senator CONROY (Victoria) (12.11 p.m.)—I welcome Senator Lees’s effort to try and improve datacasting in regional areas. I think it is a very worthwhile initiative. Unfortunately the datacasting regime that this government has put in place is a complete disaster. I may be being unkind, but I think perhaps you are erring on the side of generosity, Senator Lees. The existing datacasting regime is certainly not something I would want to stand next to and proudly declare, ‘It’s mine.’ I believe the concepts you put forward are worth exploring. It is an amendment that has come at relatively the last moment. I am not comfortable intertwining cross-media ownership laws and datacasting. I believe the datacasting regime is something that deserves serious consideration separate to this piece of legislation to try and make a workable regime from the dog’s breakfast that this government has served up to us. While I think it is a very worthwhile initiative and should certainly be part of a future government agenda on datacasting—and hopefully you can rescue it before you are off to Wellington, Auckland or whichever exotic regime you are getting the posting to, Senator Alston—we would hope that we can progress the datacasting debate in parliament. I indicate that Labor does not believe that this is the place to try and fix what is fundamentally a dog’s breakfast.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.13 p.m.)—It sounds as though what Senator Conroy is really saying is that he does not have a clue what the datacasting regime is all about, but when he becomes the shadow minister in a week or two he is hoping he will have an opportunity to get his head around the issue. It is a noble aspiration, but I would have thought it is probably just a bit too big an ask at

this stage of his career. Maybe Senator Mackay can consider it a bit further.

Senator Conroy—Would I be able to stay with you?

Senator ALSTON—You are more than welcome to visit our home at any time. You can find me in the office most of the time. Feel free to drop in.

Senator Conroy—Spare room, is there?

The TEMPORARY CHAIRMAN—Order! Let us conduct this in a more orderly fashion, Senator Conroy.

Senator ALSTON—The government supports this amendment. Senator Lees has certainly identified an area where we can make some amendments to the datacasting regime which will be of particular benefit to people in non-metropolitan areas without infringing upon the basic framework of the datacasting regime. I am sure everyone well understands that the regime is primarily to ensure that people are not backdoor or de facto commercial free-to-air television operators. If we are able to see more local programs available via datacasting then that is very much in the public interest. The government will support this amendment. The change does have the potential to allow sport not previously broadcast on free-to-air television to be televised under a datacasting licence. It has the potential to increase coverage of local sporting events and assist in promoting local sport.

Question agreed to.

Senator LEES (South Australia) (12.15 p.m.)—Perhaps it would be wise to do as the minister has suggested and report progress. Looking at amendment (R3) on revised sheet 2987 that Senator Cherry has amended this morning, I think we have a form of words that those of us—I am not speaking for Senator Brown—who have discussed this are comfortable with. But it may be wise to leave Senator Cherry’s amendment until we can actually get something that all people in the chamber can have a look at. I would like to recommend on the record that what we look at is in subparagraph (iii) which states:

... have the power to appoint or dismiss the news editor, who in turn ...

The rest of the wording is the same as in the original amendment. I will raise another issue after our consideration of the amendment. I see that Senator Cherry still has another amendment, which perhaps we can deal with now.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.17 p.m.)—I am a bit nervous about reporting progress; I do not know where that might take us in terms of someone else coming in ahead of us in the queue. On that basis, and given the very strong reser-

vations I have already expressed, this clearly requires a lot more consideration, but I think we can give that consideration at a later point. Therefore, I allow it to go forward with the government's support on the understanding that the House of Representatives will almost certainly reject it in this form.

Senator LEES (South Australia) (12.17 p.m.)—I am happy to pass this amendment to the clerks in the form that we now have it in and I ask the Minister for Communications, Information Technology and the Arts if he is confirming that this bill will be bounced back—in other words, that if we give it its third reading today we will be revisiting a number of these issues, including the ongoing debate about funding for the ABC, SBS and community radio at a later stage today.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.18 p.m.)—That is certainly my intention. I do not see any reason why the House of Representatives should take too long. They have that nice clear excision process to be undertaken but, given that we will be sitting all night, I am sure we will have plenty of time to deal with these matters.

Senator LEES (South Australia) (12.18 p.m.)—On that basis, to keep the debate alive and keep the discussions going I formally move an amendment to Senator Cherry's amendment:

Subparagraph (iii), omit "appoint of dismiss", substitute "ratify the appointment or dismissal of".

Senator CHERRY (Queensland) (12.18 p.m.)—I am happy to accept Senator Lees's amendment, if that helps the chamber.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that Senator Lees's amendment be agreed to.

Question agreed to.

Senator CHERRY (Queensland) (12.18 p.m.)—I move the amendment, as amended:

(R3) Schedule 2, item 4, page 14 (after line 6), at the end of subsection 61F(2), add:

; and (d) the entities, or parts of the entities, that run those media operations, where those media operations involve a television station and one or more daily newspapers in the same market, have established an editorial board for the news and current affairs operation of the television station which will:

- (i) have complete editorial control over the news and current affairs output of the television station, subject only to a right of veto by the entity over any story which is likely to expose the entity to a successful legal action for damages; and
- (ii) consist of three members, one appointed by the entity, one elected by the staff of the

news and current affairs operation, and an independent chair appointed by agreement between the entity and the Authority; and

- (iii) have the power to ratify the appointment or dismissal of the news editor, who in turn shall have the power to ratify the appointment or dismissal of all staff of the news and current affairs operation within the budget set by the entity; and
- (iv) abide by any commercial objectives set by the entity and approved by the Authority consistent with the objectives of this Act and this section.

The TEMPORARY CHAIRMAN—The question is that the amended amendment moved by Senator Cherry be agreed to.

Question agreed to.

Senator CHERRY (Queensland) (12.19 p.m.)—I do not propose to speak on schedule 2 for very long at all, because we really do this at the third reading. This was an amendment to signal that the Democrats do oppose the cross-media rules as they currently stand. I want to place on the record that, whilst there have been some very good amendments made during the passage of this bill, particularly the one we have just agreed to from Senator Harradine—

Senator Lees—It is very different.

Senator CHERRY—It is a very different bill, and it shows what a very worthy place this chamber is—'magical', as my leader said earlier in this debate. I do not think that we have quite gotten to the point where the cross-media rules, even in this amended bill, adequately protect diversity of viewpoints. We should strike them out of the bill and the bill should proceed in a very different form. I will not speak for long, as I will save my comments for the third reading debate, but I formally oppose schedule 2 in the following terms:

- (5) Schedule 2, page 5 (line 2) to page 38 (line 27), **to be opposed.**

Senator CONROY (Victoria) (12.21 p.m.)—I indicate that Labor supports the Democrat amendment, although probably not quite for the same reasons. But in the interests of brevity I indicate that we will support this amendment.

The TEMPORARY CHAIRMAN—The question is that schedule 2, as amended, stand as printed.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.23 p.m.)—I move:

That this bill be now read a third time.

Senator CHERRY (Queensland) (12.23 p.m.)—I wish to note for the record that the Democrats will not be supporting the Broadcasting Services Amendment (Media Ownership) Bill 2002 on the third reading. We do this because we do think the bill, at this point, has sufficient safeguards in it to protect the diversity of viewpoints and we do it because we do not think the bill has sufficient safeguards to ensure the Australian control of major media outlets. I am very disappointed that this bill actually deletes that as an objective of the Broadcasting Services Act. We do not support this bill because it does not include a request to the government to push out the funding for the ABC. We do not support this bill because it does not ensure that we have adequate diversity, particularly in regional markets. I note that Senator Harradine's amendment applies to metropolitan markets but not to regional markets. I gave the chamber yesterday a great, long list of the markets where there will be significant further concentration of ownership as a result of this bill as it stands amended. From those points of view, this bill does not deserve the support of the Senate and the Democrats will be voting against it on the third reading.

Senator BROWN (Tasmania) (12.24 p.m.)—The Greens will also be opposing the Broadcasting Services Amendment (Media Ownership) Bill 2002 on the third reading. One of the major amendments to this bill has been to allow media proprietors in capital cities to now own a radio station as well as either a newspaper or a television outlet. That is a major step in the direction of allowing the concentration of media ownership to become even narrower in this country, and it is a retrograde step. The politics of the situation may well be that that move is not acceptable to the government; it wants a lot more. It is not acceptable to Mr Packer and Mr Murdoch; they want more. It is not even acceptable to the Fairfax ownership, as distinct from the staff, because it thinks it can get more.

As I said in the speech I gave last night echoing the ideas of former Prime Minister Keating, the problem here is that this concentration is at the expense of democracy. We already have the most concentrated media ownership of similar countries in the world, and even the amended bill goes another giant step in the direction of a duopoly of media ownership in this country. This is very dangerous, and it is just not good legislation. It needs to be reiterated on the third reading that we are talking about the fourth estate here; we are talking about the people's right to have

uncensored information as well as opinion. That right is not being improved by this amended legislation. We will be opposing the third reading.

Senator CONROY (Victoria) (12.26 p.m.)—Labor will be voting against the Broadcasting Services Amendment (Media Ownership) Bill 2002 on its third reading. Labor have a longstanding commitment to media diversity in this country. It is hard to fathom the logic of those who have tried to argue that having a greater concentration, particularly in the metropolitan areas, will lead to greater diversity. I think we have seen some worthwhile discussion in the chamber about possible other models. I think there is a lot of merit to some of the proposals that have been put up and some of the safeguards proposed. Like Senator Cherry, we believe that this bill is fundamentally flawed. Labor do not believe that this bill, even as it stands now, will provide the sort of diversity and opportunity for many voices to flourish. So we do not believe this bill should be supported; we do believe it should be defeated.

The interesting politics here is that we get the opportunity in a few moments to see whether the government is actually serious about what it said it was trying to achieve in the bill. The government made a great show of saying that it might just be an accident that there could be a further concentration in the metropolitan markets but that there are lots of benefits, possibly for the ABC, possibly for regional media and possibly for radio stations, which might be strengthened by becoming part of networks and those sorts of things. Senator Harradine's amendment is the key test for this government about whether it really believes this or whether this has all just been an elaborate charade and a waste of the Senate's time as this government tries to deliver for a few of its mates. So the real test here is whether the government will accept Senator Harradine's amendments. All the indications are that it will not.

Senator Alston—The very bill you were in favour of prior to the last election.

Senator CONROY—I appreciate Senator Alston's participation in my contribution, as always. The key test is whether this sham is going to be exposed now. If this government is serious about all the things it said it wants to achieve in this bill, it should accept Senator Harradine's amendment and pass the bill. That will be the test when we are back here later this afternoon. Even with the safeguards in these amendments, we do not believe that this bill delivers a better outcome than the existing regime. It is possible that there may be better outcomes than the existing regime, but this bill will certainly not deliver those.

Question put.

The Senate divided. [12.34 p.m.]

(The Acting Deputy President—Senator A.B. Ferguson)

Ayes.....	35
Noes.....	<u>33</u>
Majority.....	2

AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.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.
Harris, L.	Heffernan, W.
Humphries, G.	Johnston, D.
Kemp, C.R.	Knowles, S.C.
Lees, M.H.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Murphy, S.M.
Patterson, K.C.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	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.	Conroy, S.M.
Cook, P.F.S.	Crossin, P.M.
Denman, K.J.	Evans, C.V.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Hogg, J.J.
Kirk, L.	Ludwig, J.W.
Mackay, S.M.	Marshall, G.
McLucas, J.E.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ridgeway, A.D.
Sherry, N.J.	Stephens, U.
Stott Despoja, N.	Webber, R.
Wong, P.	

PAIRS

Calvert, P.H.	Hutchins, S.P.
Hill, R.M.	Collins, J.M.A.
Payne, M.A.	Lundy, K.A.
Troeth, J.M.	Ray, R.F.

* denotes teller

Question agreed to.

Bill read a third time.

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2003

Second Reading

Debate resumed from 18 June, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (12.37 p.m.)—The Australian Labor Party is oppos-

ing the Export Market Development Grants Amendment Bill 2003. We see it as a continuation of the Howard government's constant whittling away of what has traditionally been a great scheme for Australian exporters. The Export Market Development Grants Scheme has been a mainstay of Australian exporting performance since Labor was in government. Under Labor, expenditure under the scheme reached \$202 million—that is \$202 million going to assist Australian businesses exporting overseas; a good result, I am sure everyone will agree.

Unfortunately the coalition did not see it that way. After becoming elected, one of its first acts was to cut the EMDG Scheme to \$150 million and then to cap it at that amount for evermore. In fact, the coalition has made about half a dozen changes to the EMDG Scheme, yet it has never been quite as effective as it was under Labor. In real terms the EMDG Scheme has declined in value to exporters by 36 per cent since Labor was in office. And so it continues with this amendment bill. Under this bill, the coalition is seeking to further whittle away the scheme. It will cut the maximum grant amount from \$200,000 to \$150,000, it will drop the income ceiling for applicants by \$20 million to \$30 million, it will reduce the maximum number of grants from eight to seven and it will remove the provision of additional grants for entering new markets.

As weakened as it has been by the coalition, the EMDG Scheme is still a very important one to Australian exporters. In fact, they could not do without it in many circumstances. According to the June 2000 Austrade review, for every dollar of the grant paid, \$35 in exports were generated by EMDG applicants. The Australian Tourism Export Council, while calling for the \$150 million cap to be increased, nonetheless applauded the scheme in its submission to the Senate committee looking into this bill. Labor does not want to see this scheme weakened any further, as it would be if this bill were passed. The government will tell us that this bill will enable it to double the number of exporters. However, you have to ask this question: what good does this mean if overall and into the future the total value of Australian exports is less?

Let us look at Australian exports. It is not a particularly pretty sight if you look at the trends under the coalition. In April it was the job of the Minister for Trade to tell Australians that we had racked up a trade deficit of \$3.1 billion under his watchful eye. In December it was \$3 billion. In fact, Australia has recorded 17 trade deficits in a row, and it goes on and on. As a result, Australia's total foreign debt is about \$360 billion.

A typical example of this situation is Australia's ICT industry. Under the coalition, ICT foreign debt has grown to disturbing proportions. In 2001-02,

Australia's ICT foreign debt was \$14.4 billion—and that is not cumulative. That was for 2001-02. This amount was equivalent to 65 per cent of the current account deficit. There is a statistic you do not hear the Minister for Communications, Information Technology and the Arts crowing about in his self-congratulatory press releases. With such a colossal annual drain on our economy, any sensible government would stop and think, 'How can we address this? What steps can we take to develop our local ICT industry and reduce this deficit?' Unfortunately for our ICT exporters, this has not been the response from the Howard government. Happy with our status as a quarry and a farm, the Howard government has shown no interest in committing to a long-term strategy to build our ICT industries. In fact, when these figures were released you could have knocked me down with a feather when the minister for IT said:

We shouldn't be overly concerned about it so we shouldn't put a great deal of effort into reversing it.

He was talking about the ICT deficit. Australia must be one of the few countries where the IT minister acts more like a minister for primary resources and primary industries.

I suppose I should not have been surprised, because this government is one of the worst offenders when it comes to supporting foreign companies over Australian ICT firms. For example, when the government could have been outsourcing its ICT needs to Australian firms for years, it chose a model that structurally favoured the larger multinational companies. This model lent itself to Australian companies being able to participate in government work as only subcontractors. When this problem became clear, the government's shift was to remove or dilute considerably any requirements for Australian companies to be involved. More opportunities to prime government contracts need to be created for Australian companies. We are still waiting for a response from the Howard government to the work of the committee looking at reducing SME barriers to government contracts, which committee has been very focused and very diligent in putting forward and preparing ideas and propositions to government to achieve that goal.

I have previously expressed my concern about how the renegotiations of various contracts in the government departments have been taking place. We know that the ATO has spent some \$860 million over five years on a contract with a company called EDS, and now the ATO is focusing very much on greater expenditure with Microsoft. I have previously expressed my concern about the renegotiation of the contract with CSC, the Cluster 3 group, with Australian small business participation in that particular contract falling from 24 per cent to 11.8 per cent. This is a huge reduction and it is less than the gov-

ernment's own standard of 17.6 per cent, which is still too small. The Howard government seems to be so unconcerned about the poor ICT deficit that it does not even enforce its own industry development standards.

What do we hear from the government to explain our poor trade situation? Do we hear them say, 'Let's beef up our export programs like the EMDG scheme'? No. We hear them say that the problem is the Australian dollar is gaining value or it is the drought. We know that that has caused a serious issue, but it certainly has not caused the \$14.4 billion trade deficit in ICT. The real culprit is the coalition's active industry policy of supporting everything else and putting in ad hoc programs to focus on IT. To top it all off, they then take a knife to the very important generic schemes, such as the Export Market Development Grants Scheme, and whittle them away.

Debate interrupted.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.45 p.m.)—I move:

That the order of the Senate agreed to earlier today relating to bills to be considered from 12.45 pm to 2 pm, be varied to provide that the following bills be considered from 12.45 pm till not later than 2 pm:

No. 14—HIH Royal Commission (Transfer of Records) Bill 2003,

No. 16—National Health Amendment (Private Health Insurance Levies) Bill 2003 and related bills,

No. 13—Governor-General Amendment Bill 2003, Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003,

No. 15—Australian Film Commission Amendment Bill 2003,

No. 22—Health and Ageing Legislation Amendment Bill 2003,

No. 23—Health Legislation Amendment Bill (No. 1) 2003.

The Civil Aviation Legislation Amendment Bill 2003 has not arrived in the Senate as yet and we do not expect it before two o'clock, so we will not be dealing with it.

Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Cherry)—Order! I remind honourable senators that, under a sessional order agreed to on 20 June 2002, after the second reading of each of the bills listed today—other than those for which amendments have first been circulated—I shall call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole.

HHH ROYAL COMMISSION (TRANSFER OF RECORDS) BILL 2003

Second Reading

Debate resumed from 24 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NATIONAL HEALTH AMENDMENT (PRIVATE HEALTH INSURANCE LEVIES) BILL 2003

PRIVATE HEALTH INSURANCE (ACAC REVIEW LEVY) BILL 2003

PRIVATE HEALTH INSURANCE (COLLAPSED ORGANIZATION LEVY) BILL 2003

PRIVATE HEALTH INSURANCE (COUNCIL ADMINISTRATION LEVY) BILL 2003

PRIVATE HEALTH INSURANCE (REINSURANCE TRUST FUND LEVY) BILL 2003

Second Reading

Debate resumed from 23 June, on motion by **Senator Alston**:

That these bills be now read a second time.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

GOVERNOR-GENERAL AMENDMENT BILL 2003

Second Reading

Debate resumed from 25 June, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

Senator BROWN (Tasmania) (12.49 p.m.)—The Governor-General Amendment Bill 2003 provides for a very substantial increase in the payment to the Governor-General. It is an increase that is above CPI and is certainly way out of comparison with the average wage increase that we have seen for ordinary Australians. When you compare it with the increases that are going to MPs and chief justices, it seems to be somewhat in order, but my concern here is that the whole process of wage increases not just for the Governor-General but for MPs, ministers and chief justices is increasingly getting out of kilter with what average Australians are earning.

I note that the Remuneration Tribunal, which determines these wage increases, takes into account such things as the CPI, but for the first time I recently noticed that it also takes into account increases in salaries for CEOs. We all know that, since the 1980s, the increase in remuneration to CEOs has been outrageous. It is totally out of kilter. It has increased in leaps and bounds, way ahead of the wages of average people. It is a purloining of the pockets of the average people for CEOs, some of whom have been total failures and have not delivered but actually lost for shareholders millions of dollars, and yet they get these extraordinary salaries, packages and so on.

Here we have the Remuneration Tribunal taking into account that unsupportable breakaway of self-declared wages for CEOs in determining what the elected and non-elected senior public officers in the nation will get. The Remuneration Tribunal need taking to task. I do not know when and how they took it on themselves to start taking into account CEOs' salary increases, but they have allowed a haemorrhaging of taxpayers' money into this salary determination process which should not be there. I do not know whether the Auditor-General should not have his attention drawn to the Remuneration Tribunal's deliberations, because I do not think that the Remuneration Tribunal are doing the right thing by anybody in this process.

I do note that the new Governor-General, bless him, has said that he will be giving his military pension to charity. That will be warmly applauded. Governor-General Deane did that, and that is a very fine gesture. My argument here is in no way with Governor-General designate Jeffery but with this wage system. A new wage for the Governor-General is voted by parliament each time a new Governor-General comes into office, but my problem here is that the whole process is out of kilter and it needs bringing back into kilter. This taking into consideration the increase in CEO salaries in the private sector has to be stopped. It is the worst index to look at. We should be indexing ourselves to the payment that Australians who work extraordinarily hard out there are getting and taking home. I draw the Senate's attention to that. It is an important matter and I will be coming back to it.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (12.53 p.m.)—I will constrain my remarks, given the weight of other legislation before the chamber. This legislation sets the salary for the incoming Governor-General, and there are some issues relating to it that do need to be commented on. I should emphasise at the start that none of them should in any way be construed as a reflection on the incoming Governor-General. There are

some generic issues that apply regardless of who the appointee is.

The increase in salary that the bill contains is about 18 per cent since it was last set two years ago. This is significantly above the wage and salary increases for the vast majority of Australians, particularly given that there is also accommodation and other substantial allowances as well. The Democrats are not opposing the salary increase on this occasion but we do think that that point needs to be made. Linked to that is the broader principle of more open justification for the level of payments not just for the Governor-General but for other public offices as well. I gather there is a general convention that the Governor-General's salary be a little bit above that of the Chief Justice. That in itself might be a nice guiding principle, but it does not go far enough in terms of a proper work value assessment to justify the wages and conditions. The Democrats believe that there should be more openness in this and a range of public offices in terms of a more clear and public review and assessment of the particular value of specific roles, and criteria to justify why the salary should be at that particular level.

The issue of the appointment process has been one that has been commented on for quite a period of time. It is one that many members of parliament and others in the community raised again when this most recent appointment was made. That debate needs to continue to occur. We should have a broader appointment process for the Governor-General. I do not particularly want to advocate any single model, but I do think there is scope for much wider involvement of people in the political sphere and in the broader public sphere. I note the innovation by the Queensland Premier, Peter Beattie, to involve the entire parliament in ratifying the appointment of the state Governor. He did that with the recently announced incoming state Governor, Quentin Bryce. I think that was a valuable process. It gives broader endorsement to the incoming Governor and makes it easier for them to portray themselves as representing a broad spectrum of opinion rather than just being a personal favourite of one individual. That is a desirable advance. There are other suggestions around that involve further public input into the process that also need to be considered.

The Democrats also have views about the role of the head of state and about moving to a republic. Whilst that is not the topic of this bill, it is appropriate to reinforce that. The Senate has just initiated an inquiry into possible processes for moving that, on the motion of my colleague Senator Stott Despoja. It is an initiative that the Democrats proposed some six months ago. We are sure that process will be useful.

There is, however, a broader debate than just how the head of state—in this case, the Queen's representative—is elected or appointed. Although that debate itself is important, we do need a broader consensus on the role of that position. The role of the Governor-General has very much evolved over the last century. In the initial periods of our nationhood it was a position filled by people from the UK, usually royalty of some form or other, and it was only in the second half of the century that we started to have Australian appointments consistently.

Even over my own lifetime, the public now expects more from the Governor-General in representing the people than was previously the case—much less of a ribbon cutter and rubber stamp and more of a person who speaks on behalf of the Australian people. Sir William Deane was seen as a good example of evolving that role into a more positive one, particularly in the role he played with the canyoning tragedy when Australians were lost in the accident in Switzerland. Australian people broadly very much welcomed his display there on behalf of the Australian people. I think those sorts of roles are very important, and we need to ensure that whoever holds that role has the ability to know that they have the broad support of the Australian public. It will make it much easier to perform that role.

The Democrats have moved a second reading amendment simply to express some views about this issue, particularly about the process that needs to be adopted and the need to strengthen the role of the Australian head of state and codify that so that there is no power for the government or the Prime Minister of the day to arbitrarily dismiss the head of state. There does need to be better strengthening of this position. I do not think it is enough to say that it has served us well for 100 years so we do not need to change it. We are an evolving nation and we do need to recognise that fact and act accordingly. I move:

At the end of the motion, add:

“but the Senate advises that:

- (a) an 18% increase in the salary level for the Governor-General is significantly above inflation and wage increases for ordinary Australians;
- (b) a broad based and open process should be adopted to determine the most appropriate models for an Australian republic;
- (c) the separation of powers and the rule of law should be strengthened by creating an Australian Head of State with codified powers that adequately describe his or her relationship with the Executive, Legislature, Judiciary and the People;
- (d) under any future constitutional arrangements the Government should not have the power to arbitrarily dismiss the head of state”.

Senator BUCKLAND (South Australia) (12.59 p.m.)—I rise to speak on the Governor-General Amendment Bill 2003. Echoing the sentiments of the Leader of the Opposition, I congratulate Major General Jeffery on his appointment as Australia's 24th Governor-General and wish him all the very best in carrying out the office. When former Prime Minister Gough Whitlam introduced the Governor-General Bill in 1974, he said:

It is important ... that a matter such as the Governor-General's salary should be dealt with in a non party way. Also, it is necessary that the salary arrangements for Governors-General should clearly recognise the importance and place of this high office. Appointment to the position of Governor-General should not be made to depend on personal wealth or the availability of other income.

Consistent with this bipartisan approach which has governed the setting of the Governor-General's salary, the opposition supports this bill and has been prepared to facilitate its passage through the parliament this week. It is important to remember that section 3 of the Constitution provides that the salary of the Governor-General shall not be altered during his continuance in office. Major General Jeffery will be sworn in on 11 August, the day parliament next sits after this week, hence the need to deal with the legislation expeditiously.

The Governor-General Act 1974 initially provided for a salary of \$30,000. It was amended in 1977 to increase the salary to \$37,000, in 1982 to increase it to \$70,000, and in 1988 to increase it to \$95,000. In 1995 it was reduced to \$58,000 at the request of the former Governor-General Sir William Deane, to take account of the non-contributory pension Sir William received under the Judges' Pensions Act after retiring from the High Court. To that point, the Governor-General's salary was exempt from income tax. In 2001, prior to the commencement of Dr Hollingworth's appointment, the parliament increased the taxable salary of the Governor-General to \$310,000 and abolished the income tax exemption. This was appropriate; even Her Majesty Queen Elizabeth II had paid income tax since 1993. By convention, the Governor-General's remuneration has been set at a level which moderately exceeds the estimated average after-tax salary of the Chief Justice of the High Court over the notional term of the Governor-General's appointment—currently five years.

In November 2002, the Remuneration Tribunal released its determination for the major review of judicial remuneration commenced in 2001. As a result, the salary of the Chief Justice increased by seven per cent from 1 July 2002, and will further increase by five per cent in July 2003 and five per cent in July 2004. These increases are independent of the tribunal's annual review of judicial remuneration, which is based on relevant economic indices. According to the

Remuneration Tribunal's determination, the Chief Justice's current salary is \$308,100 and, from 1 July this year, will rise to \$336,450. On 1 July 2004, it is due to rise further to just over \$353,000. The Governor-General Amendment Bill 2003 amends the Governor-General Act 1974 to increase the Governor-General's gross salary from \$310,000 to \$365,000. It is therefore reasonable to assume that, on current trends, at the end of a notional term of five years, the Governor-General's salary will approximate that of the Chief Justice of Australia. A salary of \$365,000 corresponds to an after-tax income of just over \$201,000.

Before concluding, it is important to record our disappointment and, I believe, the disappointment of the Australian people that the Prime Minister chose not to consult with the community before making this appointment. There is no doubt that the Prime Minister's appointment of Dr Hollingworth was a serious error of judgment which badly damaged the office of Governor-General and caused great distress to the nation. It was for that reason that the Leader of the Opposition and my colleagues in the other place proposed a new method for appointing the Governor-General in the interim, and sought the support of the Prime Minister to establish a joint select committee to inquire into the long-term arrangements for appointing Australia's head of state. The opposition believed it was time to modernise the process for selecting the Governor-General to restore the standing of the office and to ensure that the suffering which followed the ill-advised appointment of Dr Hollingworth is not repeated.

The member for Grayndler has also moved a private member's bill to enhance the accountability of the office of Governor-General, and referred to this in his address, as I understand it. It is, as I say, regrettable that the Prime Minister has refused to acknowledge the need for reform of the process of appointment, to support the establishment of a joint select committee or to debate the opposition's private member's bill. I draw to the Senate's attention the fact that the opposition moved a second reading amendment in the other place which reads:

... (1) on 26 May the Leader of the Opposition and the Shadow Attorney-General proposed a new method for appointing Australia's Governor-General, consisting of the following steps:

- (a) a Consultative Committee be established consisting of the Head of the Department of Prime Minister and Cabinet, the most recent retired Chief Justice of the High Court of Australia, and a community representative appointed by the Prime Minister;
- (b) the position of Governor-General be advertised nationally and nominations called for;
- (c) the Committee prepare a short list of candidates for Governor-General; and

(d) the Prime Minister appoint a candidate from the short list; or

(e) if the Prime Minister appoints a candidate who is not from the short list, he or she must make a statement explaining why the short list was rejected.

(2) the method proposed by the Opposition would have ensured that the Prime Minister retains ultimate responsibility for choosing the Governor-General, but would also have ensured that the appointment is made on fuller information following consultation with the Australian community;

(3) this method was proposed on an interim basis while the support of the Prime Minister was sought to establish a Joint Select Committee to inquire into the longer term arrangements for appointing Australia's Head of State and other matters;

(4) notwithstanding his serious error of judgment in appointing Dr Hollingworth, the Prime Minister refused to consult with either the Australian people or the Opposition before appointing Dr Hollingworth's successor, and refused to support the establishment of a Joint Select Committee to review the process of appointment.

For constitutional reasons the legislation must pass this week. It is for that reason we will not move the amendment I have just read out, but the opposition certainly stands by the statements made in it.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.08 p.m.)—I commend the bill to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Cherry)—The question is that the amendment moved by Senator Bartlett be agreed to.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

WORKPLACE RELATIONS AMENDMENT (PROTECTION FOR EMERGENCY MANAGEMENT VOLUNTEERS) BILL 2003

Second Reading

Debate resumed.

The ACTING DEPUTY PRESIDENT (Senator Cherry)—The question is that the bill be now read a second time.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (1.10 p.m.)—by leave—I move opposition amendments (1) and (2) on sheet 3012:

(1) Schedule 1, page 3 (after line 4), before item 1, insert:

1A After paragraph 89A(1)(g)

Insert:

(ga) emergency services leave;

(2) Schedule 1, page 4 (after line 32), after item 5, insert:

5A After Part XA

Insert:

PART XB—VICTIMISATION OF EMPLOYEES ENGAGED IN EMERGENCY SERVICE ACTIVITIES

Insert:

298ZA Object

This Part has the object of ensuring that employees are not subjected to victimisation by their employer for the reason of the employees being absent from work without leave or being unavailable for work because the employees are taking part in emergency operations as members of an emergency services organisation.

298ZB Application

This Part applies to the employment of employees if the employee concerned is:

- (a) a Commonwealth public sector employee; or
- (b) a Territory employee; or
- (c) a Federal award employee who was employed by a constitutional corporation; or
- (d) a Federal award employee who was a waterside worker, maritime employee or flight crew officer, employed in the course of, or in relation to, trade or commerce between Australia and a place outside Australia, between the States, within a Territory, between a State and a Territory, or between 2 Territories.

298ZC Victimisation

- (1) An employer must not victimise an employee of the employer for the reason of being absent from work without leave or unavailable for work if the absence or unavailability was due to the employee taking part in emergency operations as a member of an emergency services organisation.
- (2) An employer victimises an employee if the employer:
 - (a) dismisses the employee from employment with the employer or terminates the engagement of the employee by the employer; or
 - (b) alters the employee's position in her or his employment with the employer, or alters the circumstances of the employee's engagement by the employer, to the employee's prejudice; or
 - (c) otherwise injures the employee in her or his employment with, or engagement by, the employer.

298ZD Applications to the Court

- (1) An application may be made to the Court for orders under section 298ZE in respect of conduct in contravention of this Part.
- (2) An application may be made by:
 - (a) an employee against whom the conduct has been, is being or would be carried out; or
 - (b) an organisation of which an employee is a member; or
 - (c) the Minister or a person authorised by the Minister.

298ZE Orders that the Court may make

In respect of conduct in contravention of this Part, the Court may, if the Court considers it appropriate in all the circumstances of the case, make one or more of the following orders:

- (a) an order imposing on an employer whose conduct contravened or is contravening the provision in question a penalty of not more than 10 penalty units;
- (b) injunctions (including interim injunctions) and any other orders that the Court thinks necessary to stop the conduct or remedy its effects;
- (c) any other consequential orders.

298ZF Proof not required of the reason for, or the intention of, conduct

If in an application under this Part relating to an employer's conduct, it is alleged that the conduct was, or is being, carried out for the reason set out in subsection 298ZC(i) constitutes a contravention of this Part, it is presumed, in proceedings under this Part arising from the application, that the conduct was, or is, being carried out for that reason, unless the employer proves otherwise.

Senator MURRAY (Western Australia) (1.10 p.m.)—As you would have recognised, these amendments have just reached us. We are sympathetic to the title and the intention but we would quite like to see perhaps a different form of these to another bill at another time. We do not think we are able to deal with these at this time and therefore we will vote against them.

Senator LUDWIG (Queensland) (1.11 p.m.)—Perhaps to explain to or to assist Senator Murray, the matter, as I understand it, has only just been circulated in the chamber. We apologise for that. The first amendment gives the commission the power to be able to deal with emergency services leave, so in fact it assists the commission in its deliberative task. That may assist Senator Murray in understanding the import of the amendment. The second amendment augments the current bill to allow for addressing victimisation of employees engaged in emergency services activities by adding object and application provisions to the bill. That ensures that they are not subject to victimisation, so there is assistance that effectively

augments the position that the government has put. I am sure that if Senator Murray were able to reflect upon that he might find that he could agree at least with the sentiments that are attached to both of those two amendments.

Senator MURRAY (Western Australia) (1.12 p.m.)—Let me be clear on this. I have now had a little longer to look at the matter as Senator Ludwig spoke. We are clearly sympathetic to the broad intent. We are aware that all parties support the passage of this bill, that all parties agree that this bill is a good bill. We do not think that the bill should be delayed by the potential for the government to reject in the House amendments such as these, and we would prefer to deal with these same sorts of amendments attached to another workplace relations bill. As you know, you can move these again to any bill that deals with the Workplace Relations Act and has an interest in award matters, so I think there will be another opportunity.

Senator BROWN (Tasmania) (1.13 p.m.)—The Greens support the amendments.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.14 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**AUSTRALIAN FILM COMMISSION
AMENDMENT BILL 2003**

Second Reading

Debate resumed from 19 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (1.14 p.m.)—The Australian Film Commission Amendment Bill 2003 aims to implement a decision announced as part of the budget, and follows the review of national cultural institutions, to amalgamate the Australian Film Commission and ScreenSound Australia. The amendments aim to give relevant functions and powers to the Australian Film Commission to enable it to properly manage, maintain and exhibit the national film and sound collection, provide the Australian Film Commission with the power to employ staff under the Public Service Act 1999, make other consequential changes to the administrative structure of the Australian Film Commission and facilitate the transfer of relevant Commonwealth assets to the Australian Film Commission.

The government's argument for amalgamation is that there will be a synergy in integrating the Australian Film Commission and ScreenSound. The amalgamation will expand screen culture activities and enhance coordination, as well as provide a national focus. The government also argues that the amalgamated institution is intended to improve links with the broader sound, film and television industry, expand educational exhibition activities and provide national leadership in enhancing access to, and understanding of, audiovisual culture. We are also told that the amendments will give a legislative base to the function of collecting and preserving Australia's screen and sound heritage. These arguments are not entirely convincing. Part of the reason for this is that the two organisations do have distinctly separate roles and perform an important function in their own separate fields. I do not want to see these functions diminished in any way.

I want to talk briefly about the separate identities of both the Australian Film Commission and ScreenSound before I illustrate my concern with this amalgamation. The Australian Film Commission is a statutory authority established in 1975. The Australian Film Commission is a development agency for the screen production sector in Australia. The Australian Film Commission provides industry support through project development, particularly with pre-production and post-production assistance, as well as low budget funding. The Australian Film Commission assists with the marketing, advice and promotion of Australian productions within Australia and internationally. It also assists with the development of Indigenous film and television program makers. It monitors the performance of the film, television and multimedia industry.

The work that ScreenSound Australia undertakes dates back to the National Historical Film and Speaking Record Library, part of the then Commonwealth National Library, which was established by a cabinet decision on 11 December 1935. The National Film and Sound Archive was created as a separate Commonwealth collecting institution in 1984. In 1999 the organisation changed its name to ScreenSound Australia, the National Screen and Sound Archive. ScreenSound Australia currently functions as an operational group within the Department of Communications, Information Technology and the Arts, and is a leader in scientific archival research. Its more than 40,000 items of film, video, television stills and recorded sound are available to industry for production purposes. ScreenSound Australia also provides an online collection database.

My main concern is that, when ScreenSound amalgamates with the Australian Film Commission, this very important preservation function that this

organisation provides will be reduced. The proposal to amalgamate these two institutions was a result of the review of the national cultural institutions, which was undertaken within the Department of Communications, Information Technology and the Arts. This review has not been made public. During Senate estimates hearings the Minister for the Arts and Sport, Senator Kemp, refused to release the report on the grounds that it was an internal review. I again call on the minister to release the report, or at least to release the sections of the report related to this bill. The minister should also release the parts of the review that impact upon the parties involved, which include the staff, the unions and the patrons of these institutions, so that they can be fully informed about the reasons for this amalgamation and be able to participate in a constructive debate, which would benefit both the Australian Film Commission and, more importantly, ScreenSound.

I note that evidence at Senate estimates hearings has confirmed that the decision to proceed with the amalgamation was taken without consultation with staff or unions. In fact, it was not until the end of the process that the CEO of the Australian Film Commission and the Director of ScreenSound Australia were consulted at all. The minister asserted that this amalgamation was not a cost-cutting exercise, that no jobs would be lost and that this new arrangement would in fact lay the basis for further growth for ScreenSound. Despite the minister's assurances, the Community and Public Sector Union still has concerns about the employment conditions of staff under these new arrangements.

New certified agreements have just been separately negotiated for both the Australian Film Commission and ScreenSound, and one can only presume that the existing staff will continue under these agreements. The negotiation of two separate certified agreements is an obvious lack of planning and foresight on the government's behalf when it is now clear that the government's intention was to amalgamate the agencies. So the staff who fall under these two certified agreements are now left in murky waters. They are placed in a situation where it is very unclear under what conditions new staff will be appointed and unclear about what happens when staff are transferred or promoted and whether it is a condition of transfer or promotion under the Australian Film Commission Act and the related certified agreement, which, ultimately, will cause the so-called ScreenSound staff to be reduced through attrition.

The guidelines concerning these processes are still awaited from the Department of Employment and Workplace Relations. This is clearly an unsatisfactory situation. I seek further assurances from the minister that the conditions for ScreenSound staff and the

functions of ScreenSound in Canberra will not be eroded over time. During the Senate estimates hearings, the minister did not confirm that the identity, independence and character of ScreenSound Australia would be preserved. He did say that the name ScreenSound would continue as a trading name, but there is no reference to the continuation of this name or ScreenSound's former name, the National Film and Sound Archive, in the bill or in the second reading speech.

Both the Australian Film Commission and ScreenSound have offices in Sydney and Melbourne. The Australian Film Commission's head office is in Sydney and, although there may not be short-term plans to move the entire operations to Sydney, it may be a distinct possibility in the future. As a senator for the ACT, I do have a concern that ScreenSound, the National Screen and Sound Archive, will eventually have all or part of its operation shifted to Sydney. I can also say, from a national perspective, that it is entirely appropriate that it is in the nation's capital—it belongs here in Canberra. I know that the CEO as well as the minister are keen on sharing the IT section, the facilities and the corporate services of the two organisations.

Labor seeks an assurance from the minister that the ScreenSound head office will remain here in Canberra and that no section of the Canberra operations will be removed to Sydney, or Melbourne for that matter. I am also concerned about the apparent lack of expertise in the field of audio programs in the Australian Film Commission. I seek an assurance that the sound part of ScreenSound will not be neglected. I support the recognition in legislation of the new body's role in collecting and preserving film and sound works.

In summary, Labor will be supporting this bill, but I seek these specific assurances from the minister: (1) that staff will not be disadvantaged by this amalgamation; (2) that jobs will not be lost; (3) that the separate identity and name of ScreenSound will be preserved; (4) that the sound and audio section will not be neglected as a result of this amalgamation; and (5) that the activities in the ScreenSound building in Canberra will be continued and indeed expanded.

I would like to make a couple of comments now with respect to the amendments proposed by the Greens. The first Greens amendment appears aimed at requiring the government to properly account for the activities of the Australian Film Commission after it is amalgamated with ScreenSound Australia. In particular, it is important that the government is required to explain that it has fulfilled its promise to maintain the distinctive role of ScreenSound Australia. The opposition will be supporting this first Greens amendment. The second amendment pro-

posed by the Greens appears to have a similar motive to the first—that is, to ensure that the unique and valuable role of ScreenSound Australia is maintained after the amalgamation. However, Labor is not persuaded that the second Greens amendment, requiring at least three members of the commission to have knowledge of or experience in film and sound archival requirements and processes, will achieve the desired result or will not unduly circumscribe membership requirements for this commission. It may be quite difficult to find three commission members with the stated qualifications. Even if they could be found, they may not be the most appropriate commissioners from the broader perspective of the whole organisation.

In conclusion, I would stress that the opposition supports the motive behind this second amendment, but we are not persuaded that it is an effective way of delivering the outcome. Labor will not be supporting the second Greens amendment.

Senator RIDGEWAY (New South Wales) (1.25 p.m.)—I also rise to speak on the Australian Film Commission Amendment Bill 2003. The bill amalgamates ScreenSound Australia and the National Screen and Sound Archive with the Australian Film Commission. The effect of the move will be to create a single national organisation for the Australian film industry—one that will be responsible for both the promotion and funding of new Australian film projects and also to function as a repository for the collection of film and sound archives. ScreenSound will benefit from becoming part of the larger Film Commission organisation, particularly through the greater scope of the AFC and their programs. In my view, that will improve the accessibility of ScreenSound collections to the general public. ScreenSound performs a vitally important function in preserving our rich cultural history. Its collections preserve and share Australia's moving images and sound recordings from the first film images of our country to popular modern classic films, such as *Shine* and *Strictly Ballroom*, and together with the various television programs and Australian music, this wonderful collection is made available for all Australians to share through its exhibitions, screenings, travelling shows and education programs.

I note that this measure was announced in the 2003-04 federal budget as an outcome of an internal DCITA arts review into national cultural institutions. While this review was supposedly directed at finding efficiencies in the management of national institutions, several public assurances have been made to the effect that the amalgamation of ScreenSound with the AFC will not result in any reductions in funding or staffing levels. I also want to emphasise the importance of these assurances and say that, whilst the

Australian Democrats are happy to support this bill, it is essential that there be no direct reduction in either the scope or the size of ScreenSound itself.

One of the most significant aspects of the bill is that it introduces a legislative imperative to develop and maintain a national collection of film and sound archives that have never existed previously in Australian law. Previously, it existed merely as an extended program within the Department of Communications, Information Technology and the Arts. ScreenSound will now have an independently legislated identity for the first time, and the Commonwealth is now compelled to maintain and develop a national collection of film and sound archives as an important part of Australia's cultural identity, which in my view is an important step forward. The Australian Democrats support national cultural institutions because access to information and cultural experiences for all Australians through these institutions is vital to our education and cultural development. It is imperative that we maintain adequate funding to collecting institutions and continue to expand programs that are designed to improve community access to the collections. ScreenSound itself is a vitally important institution and one that has made a very important contribution to the making of the cultural identity of the nation. We do look forward to it being able to thrive and expand in its new forms.

I am also aware of the amendments in a revised form that have been put forward by the Greens, and I want to make some comments about those. Amendment (1) seeks to mandate that there be separate reporting of ScreenSound in the annual reports, and I understand that the government are prepared to accept that. The Australian Democrats have no difficulties with that and we will also support that amendment. Amendment (2) requires that the board's composition includes three members with specific knowledge of or experience in film and sound archiving requirements and processes, and I want to make a few comments about that.

It is a little difficult to be able to give full support to this amendment, particularly in terms of the number that is proposed, given that the board of the Australian Film Commission has only nine places. While the amendment bill talks about creating the position of deputy chair, and having looked at the latest print-out of the AFC's web site, I wonder whether the Minister for the Arts and Sport might be able to provide some further information about whether there are any current vacancies or some coming up. Certainly, it appears from the AFC web site that there is the possibility that the minister may consider at some time soon—if that has not already been done—the appointment or reappointment of people onto the commission board itself. Perhaps the minister could give

an undertaking to look seriously at the intent of what the Greens are seeking to do through their second amendment—that someone with experience in both archive and film processes be considered as part of any appointment—and take it on board.

I also note that the composition of the AFC board, as it currently stands, is made up of producers, directors and writers through to people in the film and television industry, as well as well-known people like Rolf de Heer and John Polson—although I understand he might have resigned in April last year, and I am not sure whether he has been reappointed. Again, I have confidence in the people that have been appointed and will not be supporting the second amendment by the Greens for those reasons. But I would encourage the minister to take up the intent of what is sought by that amendment.

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.31 p.m.)—I thank Senator Lundy and Senator Ridgeway for their remarks. I think Senator Ridgeway summed it up rather nicely. He wants assurances that ScreenSound will thrive and expand, and that is what the Australian Film Commission Amendment Bill 2003 is actually about. It is about how we can build on the very strong foundation that is ScreenSound and how we can continue to grow ScreenSound. I share the passion that senators have for the national archive, for what is contained there and for the important work they do in protecting our cultural heritage. So we are all at one on that particular basis.

Senator Lundy raised a number of issues with me—of course, these were carefully probed by Senator Lundy in the estimates processes—and I wish to make some comments on them. First of all, staff will not be disadvantaged. There are protections in this bill, and the truth is that we have thought very carefully about that. It is important that staff feel that this merger will be to their advantage, and my understanding is that there is very strong support among staff for what the government is doing in this area. In relation to job losses, there was a very extensive debate in the Senate estimates hearings on this matter. The CEO of ScreenSound, Kim Dalton, has already made some comments on that, which I think gave a high degree of comfort.

There is no doubt, Senator Lundy, that ScreenSound will remain in Canberra. You and I have had some difficulties before with institutions in Canberra. I know that there was an attempt at one stage to put a four-lane highway right past the front door of the Australian Institute of Sport. If you can give me an assurance that the Labor government in this town will not perform the same stunt, I have no reason to doubt that ScreenSound will remain in Canberra. It is a wonderful building. A great deal of money has been

invested in that building. We are as proud of that building as you are, Senator Lundy.

The screen and audio archives will not be neglected—I can give you that assurance. In fact, everything I have said in relation to this merger shows that we are going to build on the very strong work that has already been done in this area. So I think that gives Senator Lundy the assurances that she seeks. This is an important bill. I only differ from Senator Lundy on the point that this proposal has been very widely welcomed—it has received very strong support. We welcome the support from the Labor Party. We welcome the support from the Greens and we welcome support from the Democrats and the independents. When the history of the National Screen and Sound Archive is written for this period, this bill will be seen to be a very important development. I thank senators for their contributions.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (1.34 p.m.)—The Greens wish to move two amendments to this bill, and I note that we are alone on the second amendment. I move Greens amendment (R1) on sheet 3001 Revised:

(R1) Schedule 1, item 11, page 5 (after line 6), after subsection 6(5), add:

- (6) The annual report of the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997*, in respect of a financial year, must include a report of the operations relating to the national collection.

This amendment states that the annual report on the commission should include a summary of the operations of the National Screen and Sound Archive. Senator Lundy has covered this, and I think she made a remarkable contribution to the fact that the Senate is re-emerging as a states house—and members opposite might have signalled that to the Prime Minister's office, while she was doing so. I am pleased to hear that there is general agreement on this amendment. It does mean that there will be reporting on the Screen and Sound Archive. I agree with those who have said that the name should be restored. There are difficulties with 'ScreenSound' in a number of ways, not least for the person in private enterprise, I understand, who has lots of extra work diverting mail that comes to him because his business has the same name. The name is one of those that you would get from a consultancy, through spending lots of money. It does not say what the archive is, and the name should be restored. I would like to hear from the minister that the name will be restored; that would be a

great reassurance. I commend the amendment to the committee.

Question agreed to.

Senator BROWN (Tasmania) (1.37 p.m.)—I move Greens amendment (2) on sheet 3001:

- (2) Schedule 1, page 5 (after line 9), after item 12, insert:

12A After subsection 15(3)

Insert:

- (3A) At least three members of the Commission shall be persons who have knowledge of, or experience in, film and sound archival requirements and processes.

This amendment seeks to have representation on the board of people who have experience in the film and sound archival requirements. I have heard the arguments; they do not stand. It is important. You cannot have a minister just saying, 'Yes, I will give you a commitment.' We are dealing here with legislation and it would be very healthy for the long-term interests of the archive if there were such representation on the board.

I thank the member for Cunningham, Michael Organ, for the work he has done on this, enabling me to put this contribution in the Senate. The challenge from the Greens here is: where is the alternative process for ensuring that the archive is not subsumed and lost under the amalgamated arrangement? But I hear the debate and the Greens stand by the amendment which we put to the committee.

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.38 p.m.)—Just briefly, we have looked very closely at the amendment. We have had discussions with the Greens and the other parties. The point that we make is that of course we want to appoint people to the board that have expertise in sound and in screen. I think that our record shows that this is what we do, Senator. We look very carefully at these appointments and we appoint appropriately qualified people to the boards.

The intention of what you are seeking will certainly be delivered. As the minister responsible, the first thing I look at is that these people have appropriate qualifications. Now there is a merged organisation we would want to make sure of course that the expertise existed on the board to provide the vital input to board decisions. I think I can give you the assurance that people with the expertise will be appointed, and I think that was the assurance that Senator Ridgeway was seeking from me in his remarks during the second reading debate. I think we can achieve the intention of what this amendment is seeking. But we do not feel that the way the amendment is worded is appropriate and so the government will not be supporting the amendment.

Senator BROWN (Tasmania) (1.39 p.m.)—Good intentions can sometimes make bad pavements. I ask the minister about restoring the name to the archive and doing away with the ‘Screen Sound’ appellation, putting that loss on the sideboard and getting back to calling the archive what it is, giving it identity.

Senator Ian Campbell—You old conservative you!

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.40 p.m.)—Thank you, Senator Campbell. It is amazing how things change in the Senate, isn’t it, over the years? Senator Brown, there is a debate about the appropriate name—we are aware of that and you are aware of that. Some people are strong supporters of the name ‘Screen Sound’; some would prefer to revert to the earlier name. I think this is something we should leave to the board as it goes through its processes and consults widely with the community. The marketing of the national archive will be done in a separate and effective fashion so that people will know whether we are talking about ‘Screen Sound’ or the National Screen and Sound Archive. People will know what we are talking about and that is the assurance that I can give you.

Senator BROWN (Tasmania) (1.40 p.m.)—We do not call the National Library ‘Book Case’ and we do not call the Museum ‘History Box’. These great institutions should be called what they are.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.42 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

HEALTH AND AGEING LEGISLATION AMENDMENT BILL 2003

Second Reading

Debate resumed from 27 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator ALLISON (Victoria) (1.42 p.m.)—In relation to the Health and Ageing Legislation Amendment Bill 2003, the Democrats will be moving an amendment about ministerial discretion and jobs for the boys, which is still rampant in our federal administration. We are increasingly seeing the corruption of expert knowledge by the injection of political cronies who will give the government the answers they want under the guise of independent expert advice. I noted this most recently in the ATAGI—the Australian

Technical Advisory Group on Immunisation—report on vaccinations. This report is a weighty document advising public health experts and clinicians on the best available evidence on infectious diseases and their treatment.

Despite the eminence of the people involved in providing the scientific and clinical advice, the draft document released for public discussion had clearly been tampered with. Suddenly we see that political considerations determined by the level of media interest at the time have infected the clinical features description of meningococcus. I would ask: is it appropriate that a GP or a clinician looks up a medical text and is advised about the level of media interest in describing the clinical features of a disease? Despite this most obvious manifestation of political interference, there have been some real issues about integrity and transparency in the health portfolio that leave us to wonder why so many independent experts continue to be involved.

The political interference in the Pharmaceutical Benefits Scheme is the most obvious and most expensive to the taxpayer. I suspect that something approaching the savings wanted by the government through the increased copayments from sick people, under the Pharmaceutical Benefits Scheme, could have been realised by proper evidence based decisions rather than by knee-jerk, politically motivated decisions. We saw the role that the previous minister played in the Pharmaceutical Benefits Advisory Committee and in the listing of such items as Celebrex against advice. Earlier, we saw the appointment by the minister of a pharmaceutical industry representative. At that time, we did see some integrity, with some members of the PBAC resigning in protest at the political interference. We then saw a decision, around the time of the election, to list Glivec, a drug for late-stage leukaemia. The further announcement by the Prime Minister on 10 September last year that it would be listed for early-stage chronic myeloid leukaemia was evidently premature. Again, it was an announcement that was made by the Prime Minister for political reasons.

We are all aware of the horrendous results of meningococcal infection. It can cause terrible disfigurement, loss of limbs and meningitis, but they are not good reasons to more than double the national vaccination budget through the inclusion of a vaccine that will prevent only a third of meningococcal infections and will do nothing for the more common and more harmful pneumococcal infections which more frequently cause meningitis. We are told by some experts who were consulted by the government that the government’s decision to extend the vaccine to all ages under 19 across Australia is a terrible waste of money. The decision was made at a time of media

interest in a normal seasonal cycle of meningococcal infections but was made contrary to the advice of experts. This, I would argue, is an expensive way of promoting the Prime Minister as a man of action. Perhaps the \$40,000 that was spent on coming up with the title A Fairer Medicare should have been spent on marketing the Prime Minister, rather than using the millions of dollars that have been spent on unnecessary vaccines to the exclusion of necessary ones.

I refer again to the ATAGI report. To be given formal status, that report needs to be endorsed by the NHMRC. To date, the Minister for Health and Ageing has not released the endorsed report. I will be interested to see whether those scientists involved in the process will endorse the government's approach to meningococcal vaccines. A more recent example is Pan Pharmaceuticals. Suddenly, a high-level task force has been established to investigate the regulatory regime for complimentary health products. To the extent that the task force consists of experts outside the Public Service, one has to wonder about the rationale of having an independent task force that does not contain any representative of the complimentary health industry itself. I believe this is indicative of a government that fails to take a thriving industry seriously—one which challenges some vested interests and which many in traditional medicine would like to see dismissed.

My colleague Senator Murray stated the view that political governance remains an area of reform priority. The major parties must not continue to shy away from dealing with these issues. The mere fact that political parties wield so much influence over all Australians demonstrates the need for stronger regulatory controls. Since political parties control the legislature, the consequence is that the regulation of political parties is largely perfunctory—which is in marked contrast to the much stronger legislation for corporations or unions. The Democrats believe that reforms are vital to bring political parties under the necessary regulatory regimes that befit their role under our system of democracy and accountability. Public interest demands this. As such, the Democrats are introducing for the 22nd time an amendment that will make appointments to the Pharmaceutical Benefits Advisory Committee transparent, thus inspiring greater confidence in the decision making of that body.

I have noted that certain newspapers have given coverage to the views of the federal member for Werriwa, Mr Mark Latham, on greater transparency in government and fewer jobs for the boys. I would ask why his party continues to oppose any amendments that the Democrats propose that would in fact give effect to his view. It is only an independent thinker,

perhaps a maverick, in the Labor Party who can agree that true democracy means breaking rather than indulging in political leverage on independent boards.

As I have said before in this place, the Pharmaceutical Benefits Scheme is an effective and cost-effective mechanism that serves Australia very well. The costs of medicines should not be counted without consideration of the costs foregone by giving people back their health. I note that the National Aged Care Alliance has estimated that keeping people healthy and working after they turn 65 would more than pay for the medicines used. As a nation we must move from the narrow, bean-counting model so much in favour at present and take a wider view. Of course, there are limits to the public purse, and governments have the job of juggling competing priorities in a manner that will serve myriad objectives. Nevertheless, this task is made all the more easy when there is confidence that government policy is evidence based and when all can see the rationale for certain decisions. Ministerial appointments to boards based on favours and shared philosophies erode public confidence and make governments prime targets for cynicism and mistrust. I therefore commend this important amendment for consideration.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ALLISON (Victoria) (1.51 p.m.)—I move amendment (1) standing in my name on sheet 2973:

- (1) Schedule 1, page 5 (after line 19), after item 4, insert:

4A At the end of subsection 100B(1)

Add “on the basis of merit in accordance with section 100BA”.

4B After section 100B

Insert:

100BA Procedures for merit selection of committee members

- (1) The Minister must by writing determine a code of practice for selecting and appointing members and acting members of the Pharmaceutical Benefits Advisory Committee that sets out general principles on which the selection and appointment is to be made, including but not limited to:
 - (a) merit;
 - (b) independent scrutiny of appointments;
 - (c) probity;
 - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.

- (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
- (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
- (5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Senator NETTLE (New South Wales) (1.51 p.m.)—I rise to indicate that the Australian Greens are supporting this amendment. We believe it brings a greater level of transparency to the appointments to the Pharmaceutical Benefits Advisory Committee.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.52 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

HEALTH LEGISLATION AMENDMENT BILL (No. 1) 2003

Second Reading

Debate resumed from 27 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.52 p.m. to 2.00 p.m.

QUESTIONS WITHOUT NOTICE

The PRESIDENT—Order! Before I call on questions today, I would like to draw to the attention of the Senate that next Tuesday Senator John Watson will mark 25 years as a senator in this place. I am sure all honourable senators would wish him well on his silver jubilee.

Honourable senators—Hear, hear!

Medicare: Bulk-Billing

Senator ROBERT RAY (2.01 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Can the minister confirm that in April this year a confidential government directive was issued which confirmed that maintaining bulk-billing was no longer an objective of the government and ordered that government documents should no

longer contain any reference to the word ‘bulk-billing’? Can the minister confirm that this directive said, ‘We have moved away from the discussion of bulk-billing,’ and, ‘Words not to be included in the lexicon include bulk-billing’? Given the minister’s many claims this week that the Labor Party is fixated with bulk-billing, isn’t it the case that the government is so fixated on getting rid of bulk-billing that it wants to strike the word ‘bulk-billing’ out of the government vocabulary absolutely?

Senator PATTERSON—I have said over and over that the Labor Party is fixated on bulk-billing, fixated on headline measures on bulk-billing, which do not actually show the underlying inequities that exist in headline bulk-billing figures. You can have a headline bulk-billing figure of 80 per cent and have people who are earning significantly less than Senator Ray—he would not know how to live on what some people are living on—who never see a bulk-billing doctor, but where Senator Ray lives he can most probably walk to a bulk-billing doctor.

I believe it is unfair that we have a system that focuses totally on bulk-billing but not on the equity of the system. Labor totally ignored the fact that we had too few doctors in outer metropolitan areas, rural areas and remote areas. There were very high levels of bulk-billing in the inner city areas, disguising and distorting the fact that there were people living in remote and rural areas who had never seen a bulk-billing doctor and who since the inception of Medicare had paid a gap.

I believe it is appropriate that we should try to put incentives in place to ensure that the poorest—the people who have the most difficulty in making ends meet—have an increased chance of seeing a doctor who does not charge a gap. But Labor does not care about that, because where are those people located? They are located in rural electorates. How many Labor members represent rural electorates? None. These people are located in outer metropolitan areas. How many Labor members represent outer metropolitan areas? Almost none. The people who were affected were the people who never see a Labor member. They might see Senator Ray when he floats out as a senator around Victoria, but I do not think he spends much time in rural Victoria.

Our package—half a billion dollars—is designed to make it fairer, to increase access and to increase the number of medical school students. That half a billion dollar package will include 150 new medical registrars on the ground next year delivering services, because it is also about access. Patients who cannot get to see a doctor are more concerned about seeing a doctor than they are about a gap. They want a doctor, and Labor did nothing. There were no incentives. We have half a billion dollars—\$562 million—worth of

incentives to get doctors into rural areas. We have seen a 4.7 per cent increase last year and an over 11 per cent increase over the last five years in estimated full-time doctors in rural areas. But Labor do not care about access or equity. It is about a headline figure that they will feel comfortable with but which reflects an underlying inequity in that a large number of people get treated very differently, depending on where they live.

Senator ROBERT RAY—Mr President, I ask a supplementary question. Can the minister confirm that that confidential April directive which ordered the words ‘bulk-billing’ be deleted from the government’s vocabulary included the instruction: ‘Please review all our question time briefs for these offending words. Monitor this strictly and ensure nothing slips through’?

Senator PATTERSON—This is really about the big issues. It is not about equity; it is about focusing on the fact that bulk-billing was never meant to cover every single person who goes to a doctor. Labor would like people to think that that is the case, but we have had inequities within the system where there have been people who have never seen a bulk-billing doctor, a doctor who does not charge a gap. You on the other side know very well that you deserted the people of rural Australia. You deserted the people of outer metropolitan areas. You did nothing to improve access. You did nothing to ensure that, particularly, people on very low incomes do not pay a gap when they visit a general practitioner.

Telstra: Privatisation

Senator TCHEN (2.06 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Is the minister aware of claims that a fully privatised Telstra would neglect its community service obligations in the bush? Are these claims true? Is the minister aware of any alternative policies in this important area?

Senator ALSTON—I am concerned that that sort of line is peddled. You can understand it from independents, who are desperate to come up with a point of distinction.

Opposition senators interjecting—

Senator ALSTON—No, Senator Boswell is a very good supporter of sensible public policy. But when I read a reputable journalist like Tony Walker in today’s *Financial Review* talking about ‘legitimate concerns that a completely commercialised telecommunications company would neglect its community service obligations’, you really have to wonder whether the media are not falling for the Labor line on this issue—because quite clearly it is absolutely untrue in every respect.

Let us look at what are colloquially described as the consumer or community service obligations—that term does not actually exist, but nevertheless. By law Telstra is required to provide all Australians with access to a standard telephone service under the universal service obligation, irrespective of who owns Telstra. By law Telstra is required to provide all Australians with access upon request to a digital data service, irrespective of who owns it. By law Telstra and other carriers are required to install and repair the phones of all Australians within a fixed time period or pay compensation, irrespective of who owns it. By law Telstra is required to provide interim phone services to all Australians if it cannot install or repair phones within a fixed time period, irrespective of who owns it. By law Telstra is required to maintain a mobile phone network that provides reasonably equivalent coverage to the old AMPS network, irrespective of who owns it.

These provisions are all contained in the Telecommunications Consumer Protection and Service Standards Act. That act is not altered in any respect whatsoever by the bill that has been introduced into the parliament, the Telstra (Transition to Full Private Ownership) Bill 2003, and Labor knows that—and that is the big lie. They go around pretending that somehow this bill will alter those obligations. It clearly will not and it never will. The fact is that no-one in this parliament for a moment would favour weakening those obligations. Does Labor seriously want to weaken them? We do not. We would have a riot, even from someone as mild-mannered as Senator Boswell, if you proposed to water down some of those protections. The fact is that there is no-one in the parliament nor, I suspect, in Australia, who is in favour of watering down those obligations—and the privatisation bill does not even attempt to do that. It does not even think about it.

Labor’s approach on this whole issue is built on a lie. They continue to put out press releases almost every day of the week saying, ‘Australians know that services will decline, that people will leave town quicker than the banks and that no amount of future-proofing will match service guarantees provided by Telstra remaining in public ownership.’ There is not one service guarantee provided by Telstra now, as a result of being in public ownership—not one. In fact Telstra has been required to operate commercially since 1991, when the minister of the day, Mr Beazley, required it to do that, and of course the board have obligations to do just that as well.

So all these protections are enshrined in separate legislation which cannot possibly be affected by this. Yet we are going to have this crowd running around, for the fourth election running, presumably, alleging that the sky is going to fall in because of privatisa-

tion. It is a tragedy. They will not explain how you resolve that conflict of interest—it is a \$30 billion conflict of interest—with the government as regulator on the one hand and owner on the other. It is almost as big a conflict of interest as being preselected by the trade unions and then coming in here and pretending that somehow you are representing the community. *(Time expired)*

Medicare: Bulk-billing

Senator MARK BISHOP (2.11 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Does the minister recall the Prime Minister telling Australians in 1995, ‘We absolutely guarantee the retention of Medicare. We guarantee the retention of bulk-billing’? Now that the government has directed that the word ‘bulk-billing’ is to be purged from the government’s vocabulary, where does the Prime Minister’s absolute guarantee to retain bulk-billing stand? Isn’t it the case that the government wants to strip the word ‘bulk-billing’ from its vocabulary, because its unfair Medicare package will put an end to bulk-billing for Australian families?

Senator PATTERSON—The Labor Party is determined to mislead the public. I am happy to have a robust debate about the Medicare package, but to mislead the public is, I think, disgraceful. The coalition is committed to a universal rebate for all Australians when they visit a general practitioner. The coalition is committed to anybody who goes to a doctor, and the doctor chooses not to charge more than 85 per cent of that rebate, being able to do so without paying a gap. We are committed to that. That is what Medicare is all about. Since the inception of Medicare, it has never been the case that 100 per cent of people visit a GP and do not pay a gap. It has been the case—it was the case under Labor—that you had a headline value of bulk-billing of 80 per cent—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator PATTERSON—and you had people who had never in their whole lives visited a doctor who did not charge them a gap. They always saw doctors who charged them a gap. There was an inequity in the system, particularly for those people on very low incomes—people who had never seen a doctor who bulk-billed them.

Let me say that Labor did nothing, because these people lived mainly in rural areas, mainly in remote areas and mainly in outer metropolitan areas. One of the things that affects whether or not doctors charge a gap is the number of doctors practising in those areas. As I have told you over and over and over again, we inherited an absolute maldistribution of doctors: doctors clustered in inner city areas who were bulk-billing people and who did not charge a gap. It was

around 92 per cent in some electorates in some areas. Out in rural and regional areas there were people who had never seen a doctor who bulk-billed them; they were charged a gap by everyone, irrespective of their income. I believe that we should have incentives to increase the likelihood of people on very low incomes having access to a doctor who bulk-billed.

The Labor Party package, \$1 billion in unfunded additional funding, will do nothing to ensure that we get rid of those inequities. So the Labor Party is throwing a billion dollars at it. They will not drive any improved outcomes in asthma, diabetes and immunisation which we have used to pay incentives to doctors. The Labor Party has no plan other than a funding plan. It does not drive outcomes. It is not focused on getting doctors into outer metropolitan areas and into rural areas; on ensuring that young people train in rural areas—nine clinical schools of rural health and 10 university departments of rural health established under the Howard government to encourage young people to do medicine and other allied health professions in rural areas; and on putting down and planting into the future, especially in rural areas, facilities and infrastructure to ensure long-term outcomes—not band aid solutions—so that people have fair access to doctors. Labor never did anything about that—never did anything about access. It focused on a headline figure of bulk-billing, behind which were hidden inequities of people on very low incomes who had never seen a bulk-billing doctor. So Labor has form: nothing for people in rural areas, an appalling immunisation rate—53 per cent of our kids vaccinated. We have used rebates to doctors to actually drive outcomes—outcomes in improving vaccination. *(Time expired)*

Senator MARK BISHOP—Mr President, I ask a supplementary question. I ask whether the minister is aware that the outgoing President of the Australian Medical Association, Dr Phelps, told the AMA national conference on 30 May:

There is a strong move in the profession to delete the expression ‘bulk-billing’ from our lexicon.

Minister, when did the government first advise the Australian Medical Association that the government was preparing to delete the words ‘bulk-billing’ from its lexicon? Minister, why haven’t you been as up-front with the Australian people as you have with the Australian Medical Association about your plans to get rid of bulk-billing for Australian families?

Senator PATTERSON—Another misleading question. Let me just say that two Labor premiers have actually used taxpayers’ money to mislead the Australian public about this issue. We are not getting rid of bulk-billing. People will still be eligible to go to a doctor who bulk-bills and there will be some doctors, as now, who always bulk-bill. I do not know

how secret it was. On 20 June 2003, I issued a press release entitled 'Fairer Deal for Health Card Holders in Rural and Outer-Metro' which said:

The Federal Government's A Fairer Medicare package would help low-income earners, particularly those on health care cards, to gain greater access to bulk-billing GP services.

The fourth paragraph said:

Senator Patterson said it is unfair that people living in the cities have enjoyed higher levels of bulk billing while concession card holders in regional and outer-metropolitan areas had been denied access to bulk billing.

So here is this person who is supposed to not talk about bulk-billing issuing a press release on 20 June mentioning bulk-billing three times in the one press release.

Political Parties: Donations

Senator SCULLION (2.18 p.m.)—My question is to the Special Minister of State, Senator Abetz. Is the minister aware of press statements by Senator Bolkus that the \$9,880 he received from Philippines fugitive Dante Tan was for a raffle in Labor's 2001 Hindmarsh election campaign? Is the minister aware of press reports which indicate that the campaign manager, the campaign treasurer and the candidate in Labor's campaign for Hindmarsh were not aware of any such raffle or any such \$9,880 donation? Is the minister aware of any returns that may contain false or misleading material?

Senator Lightfoot—It is all about Bolkus billing.

Senator ABETZ—I thank Senator Scullion for his question, and I will take Senator Lightfoot's interjection and say that this is all about Bolkus billing. Yesterday I informed the Senate that Senator Bolkus had submitted another return to the Electoral Commission. I also indicated that he should seriously reconsider the accuracy of the information in his amended return. I will once again ask that Senator Bolkus reconsider when he received the \$9,880 cash donation from Philippines fugitive Dante Tan. Was it in September-October, as he originally certified, or on 11 July, as now certified, or in November, which I believe to be the real date of the donation—or was that just another undisclosed donation?

One wonders whether Mr Crean has instructed his supporter, flatmate and numbers man, Senator Bolkus, to try to get away with this, just as he turns a blind eye to the slush funds run by his union mate and factional backer, Greg Sword. I note that Senator Wong has finally broken her silence. As the campaign manager, she has finally admitted that she too knew nothing about any \$9,880 donation to the Hindmarsh campaign or anything about the raffle. So Labor's campaign manager, the campaign treasurer and their candidate in Hindmarsh knew nothing about the donation. Someone is not telling the truth.

And the question remains: was there even a raffle? In today's *Adelaide Advertiser*, Senator Bolkus maintains not only that there was a Hindmarsh raffle but in fact that it was for fine wine. Last night on the *PM* program the donor said that a prize could have been a picture of Bob Hawke or a picture of Gough Whitlam—a portrait of some sort. So the question now to be asked is: was it for fine wine or for a failed former Labor Prime Minister? Senator Bolkus also claimed in his original press release:

The campaign conducted a number of major raffles in accordance with SA law.

I would like to know how that is possible given that South Australian law requires the registration of raffles, and there is no record of such a raffle having been registered.

Yesterday I suggested that the matter might well be something which the Labor Minister for Gambling in South Australia could look into. I am pleased to see press reports today which indicate that the Acting Premier and the gambling minister both gave assurances that they would check to see if any laws had been breached. But I remain concerned about exactly who will be conducting the inquiries, given that the adviser on gambling in the Labor minister's office is—as you said, Senator Kemp—none other than Steve Georganas, the failed Labor candidate for Hindmarsh, former Bolkus staffer and the intended recipient of the Tan donation. It seems that the only tickets that existed are the ones that Senator Bolkus has on himself. It is time for Mr Crean to come clean, reveal the truth about this rort and show that there is some integrity in his leadership.

Defence: Brighton Barracks

Senator O'BRIEN (2.23 p.m.)—My question is to the Minister for Defence, Senator Hill. Can the minister confirm that the Brighton Barracks in Tasmania was recently sold for \$150,000? Can the minister confirm his advice to the Senate in answer to a question on notice that around \$250,000 worth of remediation work needs to be undertaken on the property before the purchaser can use it? In light of this advice, why has the Special Minister of State claimed in the Tasmanian media on at least three separate occasions that this same work would cost at least \$800,000? Doesn't this prove that Senator Abetz is misrepresenting the facts to the people of Tasmania in trying to justify the fire sale of the Brighton site to a mainland developer? Minister, who is right: you with your claim of \$250,000 or Senator Abetz with his inflated claim of \$800,000?

Senator HILL—At least now we know the real crime. The real crime is that it was sold to a mainlander, that a mainlander participated in this open tender process subsequent to sales by private treaty, had offered the highest price and had been

successful. That is what it is all about, is it? That is what it is all about.

Senator Mackay—What do you have against Tasmania?

Senator HILL—I have nothing against Tasmania. I am pleased that mainlanders are investing in Tasmania, and I hope that this mainlander makes good use of the Brighton Barracks. I am pleased that this mainlander apparently offered the highest price, and I am pleased that the Commonwealth got a good return on its asset. Apart from the fact that it was sold to a mainlander, I do not think there is anything in the question other than what has already been said. The Commonwealth sought to dispose of that property because it was no longer needed for defence purposes. It was a property with some difficulty because of the—

Senator Carr—You don't want to defend Tasmania, do you?

Senator HILL—Sorry? There was some difficulty in relation to remediation work that had to be done on the property. It was not easy to sell. Apparently no Tasmanian was interested in paying the right price. I am pleased in such circumstances that a mainlander stepped in and helped us all out.

Senator O'BRIEN—Mr President, I ask a supplementary question. I note that the Minister for Defence describes this as a good return for the government on its asset. Didn't the pitiful sale price for the Brighton property fall well short of the 1998 valuation, which estimated the site to be worth nearly \$2.8 million? Didn't the government spend over \$600,000 to upgrade the site after this valuation was made? Doesn't this explain why Senator Abetz is becoming increasingly desperate in his attempts to justify the sale of the Brighton Barracks for the equivalent rate of \$250 per quarter acre block of land?

Senator HILL—Never let the truth get in the way of a good story.

Senator O'Brien—That is the truth.

Senator HILL—No; the truth is that the Commonwealth obtained a market valuation of the property—I think we said this at estimates—and from memory the market valuation was \$200,000. So we did not quite achieve the market value that had been put on it by the valuer. The figure that was referred to by the honourable senator was a figure applied by the state government for purposes of its rates. It had nothing to do with market value at all. We said that at the estimates, we say it again now and we respectfully request the honourable senator to stop misleading the Australian people.

Telecommunications: Internet Services

Senator CHERRY (2.27 p.m.)—My question is directed to the Minister for Communications, Infor-

mation Technology and the Arts, Senator Alston. In response to Estens recommendation 4.1 the government has stated it will impose a licence condition on Telstra to provide a minimum dial-up Internet speed for all Australians of 19.2 kilobits per second or equivalent. Can the minister confirm that 19.2 kilobits per second is way short of consumer and small business expectations for Internet dial-up speed? Can the minister also confirm that 19.2 kilobits per second is too slow to permit farmers, small businesses and consumers in regional Australia from engaging in standard commercial practices, such as monitoring share markets in real time?

Senator ALSTON—I do not know where you start with expectations. It is a pretty ludicrous question to ask: do I think that a minimum standard is below expectations? Some people have inflated expectations on all ranges of fronts. They do not do anything about it, and you cannot help that. The fact is that we are not in the business of meeting everyone's wish list. What we are about is providing—

Opposition senators—That's for sure!

Honourable senators—Oh!

The PRESIDENT—Order!

Senator ALSTON—The purpose of providing a minimum standard—which in fact in practice has already been in place now for many months; this is just effectively legislating—is to ensure that people have access to Internet browsing, chat and email, which are the three most popular services on the Internet. That does not mean in any shape or form that it is the maximum. In fact, it is quite the opposite by definition, isn't it? The minimum is the opposite.

If people are able to receive a minimum level of service, there is nothing to stop them seeking a higher standard if they want it, and it will be available commercially. If you look at some of the other elements of the package, including the higher bandwidth incentive scheme, you will see there \$107 million, which is designed to encourage a take-up rate, and people can get hopefully whatever speeds meet their needs. Businesses vary enormously. Some may find that they do not need the highest level data rates, but they are available commercially, they are available on satellite and hopefully they will be available on wireless and other platform technologies as well.

It is a bit like the standard telephone service: to say that we have mandated that as a minimum requirement does not in any shape or form mean that we have somehow satisfied the expectations of all users of telephones. It is a completely contradictory proposition. That is what minimum levels are all about, and that is why we have done it. If people want higher rates, then they can get them.

Senator CHERRY—Mr President, I ask a supplementary question. The minister has referred to the fact that this could support the Internet, chat and email. Can the minister advise the Senate exactly what Internet applications and uses that sort of speed will not deliver, in addition to broadband, graphics and video files and many other standard business applications? How is regional Australia supposed to be part of the new global information economy if it cannot get online?

Senator ALSTON—I have already explained. Unfortunately, I suppose, Senator Cherry has been too busy dreaming up mickey mouse amendments in the cross-media debate to actually have a look at the higher bandwidth incentive scheme. The scheme is based on Telstra's current reach of about 71 per cent for DSL coverage, which they expect to increase to about 80 per cent. All those who cannot get DSL or cable will be able to obtain the benefit of the higher bandwidth incentive scheme, which is effectively a one-off capital subsidy to the carrier on a per customer basis in exchange for the carrier providing affordable access rates. That removes in one fell swoop, hopefully, the cost differential which may well inhibit a number of people in regional Australia from accessing broadband services. They will now be available to all Australians, wherever they live, at affordable prices.

Medicare: Bulk-Billing

Senator HOGG (2.31 p.m.)—My question is to the Minister for Health and Ageing, Senator Patterson. Can the minister confirm that the confidential April 2003 government directive ordering the deletion of the words 'bulk-billing' from the government's vocabulary was authorised by the Minister for Health and Ageing, the Secretary to the Department of Health and Ageing and the Prime Minister's own department? The directive states:

This form of words has been discussed with the Secretary and the Office.

Is it not the case that the government is so committed to getting rid of bulk-billing for Australian families that this secret directive has come from the very top of the Public Service and from the minister herself?

Senator PATTERSON—As I said, if we were not going to use the words 'bulk-billing', why on earth would we use the words 'bulk-billing' throughout A Fairer Medicare package? Why would we have used them three times in my 20 June 2003 press release? The Labor Party is fixated on bulk-billing. We are focused on getting doctors into areas where people need them and on improving access. We are spending \$80 million to make sure there are doctors in outer metropolitan areas. We are spending \$562 million to get doctors into rural areas. In addition, money is being spent, or committed in A Fairer Medicare pack-

age, to have nurses assisting doctors—800 nurses assisting doctors in outer metropolitan areas—to reduce the load and increase access. Our \$562 million package—the half a billion dollars that we have committed to getting doctors into rural areas—includes nurses in areas of need.

Labor never focused on that. They never delivered outcomes. They had an immunisation rate for children of 53 per cent, because they were focused on funding. We fund it in a way that actually delivers outcomes, which raised our immunisation levels to 93 per cent. We were running at 68th in the world in immunisation, under Labor's fixation on funding. When you are delivering health outcomes—making sure that people have access to doctors—you look a bit further than a headline bulk-billing figure, which hides inequities, as I have said before, particularly for people in rural and outer metropolitan areas who could not access a general practitioner, let alone find one that bulk-billed.

As health minister, I was concerned that we needed to redress that imbalance. That is why we have a \$1 billion package—\$917 million—to increase the number of GPs in training. There will be 150 new registrars on the ground practising out there in January next year. There will be 234 more medical students to add to the ones that we have already put in place—the 400 additional medical students every year—to ensure long-term provision of doctors to Australians. Labor did not care. We have opened a new medical school in Queensland—James Cook Medical School—a new medical school in Canberra, a new medical school for the Gold Coast, a new medical school for Western Australia. What did Labor do? They were fixated on funding, not on outcomes.

We have improved immunisation. We have improved services for people with mental illness—when they go to general practitioners they can have longer consultations and more consultations. We have improved the outcomes for people with asthma and diabetes—by driving outcomes. We have increased general practitioners rebates by 20 per cent. In the same period of time, Labor increased them by nine per cent. With the practice incentive payments, the increase in income to GPs has been 30 per cent compared with Labor's nine per cent. But we did not just increase their rebates, we increased them to get outcomes—outcomes in diabetes, outcomes in mental health, outcomes in immunisation. We were not just fixated on funding.

Senator HOGG—Mr President, I ask a supplementary question. Would the minister seek assistance from one of her colleagues to get a copy of the email to assist in answering my question and my supplementary question. I refer to the minister's role in ex-

punging the term 'bulk-billing' from health department usage, and the role of the departmental secretary, Ms Jane Halton. Is it the usual practice for the minister and her departmental secretary to have such central roles in defining the lexicon of acceptable words to be used by public servants in the Department of Health and Ageing? Isn't this secret directive on acceptable words just another sign of the Howard government's version of Orwellian newspeak?

Senator PATTERSON—I am sure that the Australian public that happen to be watching question time today will be absolutely fascinated that the Labor Party are focused on a word. I will go through A Fairer Medicare package and count how many times 'bulk-billing' is mentioned. In a press release on 20 June 2003 I mentioned the words 'greater access to bulk-billing.' Labor are absolutely devoid of policy and fixated on funding, not on outcomes such as getting children immunised. They sat there and presided over a 53 per cent rate of immunisation. Fifty-three per cent! They did nothing about it. What we did was increase rebates and incentives for doctors to get better outcomes in those areas. I have mentioned bulk-billing. I am sure the Australian public will be just fascinated that you are fascinated with semantic arguments and not with real outcomes. You are devoid of policies. (*Time expired*)

Foreign Affairs: Travel Advice

Senator BROWN (2.37 p.m.)—My question is to the Minister representing the Attorney-General, Senator Ellison. The Office of National Assessments has said that Imam Samudra, the alleged ringleader of the terrorists who committed the Bali bombing, was drawn to the attention of the Australian authorities before that event. When was ASIO or any of the other intelligence agencies first aware of the activities of Imam Samudra, what tracking had taken place and when were his activities first brought to the attention of the Prime Minister and/or the Minister for Foreign Affairs?

Senator ELLISON—I am advised that media reports that the Office of National Assessments advised the government on 10 October 2002 that accused Bali bomber Imam Samudra was at large in Indonesia are incorrect. ONA issued a statement denying these reports on Friday, 20 June this year. The ONA report of 10 October 2002 did refer to key JI leaders being at large, but there was no reference to Samudra. To suggest the ONA reference to JI leaders being at large implied some advance knowledge of the Bali bombing is incorrect and absurd. We all knew on 10 September 2001 that Osama bin Laden was still at large, but that did not mean we knew what he had planned for the following day. The government was aware of the risk of terrorist attack at the time and had been issuing very clear warnings about it in all South-East

Asian advisories for some time, including—importantly—the travel advice for Indonesia. Senator Brown has asked about ONA. He also mentions ASIO. Of course, anything pertaining to the investigation of the Bali bombings is an operational matter, and I cannot comment on those. I am not aware of ASIO making any prior statements in relation to this, but I will check and, if necessary, get back to the Senate.

Senator BROWN—Mr President, I ask a supplementary question. The Office of National Assessments did respond to a question in the relevant committee two weeks ago that Imam Samudra had been drawn to the attention of the authorities.

Senator Ian Macdonald—What did they actually say?

Senator BROWN—You can check the transcript of that, Senator. Is the minister saying that the Office of National Assessments had had no reference to Imam Samudra before the Bali bombing? Will he get back to the Senate today to give information about when ASIO first became aware of or interested in Imam Samudra and/or acquainted the government with that interest?

Senator ELLISON—In *Hansard* there is a reference to questioning about the report that Senator Brown talks of. He asked whether the report 'included any of those who eventually have been implicated in the Bali bombing'. The answer from Dr O'Malley was:

My recollection is that, yes, we did know that some of the people who we later found out were implicated in the Bali bombings we were strongly inclined to believe were in Indonesia at that time.

But there was no reference to Samudra as such. I have not been able to find that, if it is there. I will take that on notice, but that is the relevant extract that has been brought to my attention. As I have said, media reports that suggested that the ONA advised the government on 10 October 2002 that accused Bali bomber Imam Samudra was at large in Indonesia were incorrect. Those reports were corrected by ONA.

Foreign Affairs: Solomon Islands

Senator COOK (2.42 p.m.)—My question is to the Minister for Defence in his own capacity, the Prime Minister and the Minister for Foreign Affairs. Can the minister confirm that the government is planning to send a significant contingent of ADF personnel to the Solomon Islands? Are the reports that the total contingent is likely to be in the order of 2,000 personnel accurate? Isn't a deployment of that size comparable to Australia's contribution to the war on Iraq? What is the likely composition of those forces, how many will be combat troops and what is the government's assessment of the threats they face?

Why is the government proposing such a large military force given that the recent ASPI report recommended an international force of 150 police and judicial and correctional personnel for up to a year?

Senator HILL—As honourable senators know, the Prime Minister of the Solomon Islands and other ministers approached the Australian government seeking support with a problem that they believed they were unable to deal with without such support. The problem clearly relates to the breakdown of law and order. As a result of that breakdown of law and order there have been significant breakdowns in other critical institutions within the country as well. The Australian government indicated that it might be prepared to support such a request, provided that it was made constitutionally by the government of the Solomons and with proper protection for any force element that was sent to assist. In other words, we would require parliamentary approval in the Solomons, legislative support from the Solomons and a formal letter of request from the Governor-General of the Solomon Islands. We would also require a number of other matters relating to remedial action concerning other institutions such as the Reserve Bank and the economy, the judiciary and the like.

In relation to appropriate force structure, it would be intended that it be led by police. It would basically be a police operation to restore law and order at the request of the Solomon Islands. We would like it to be a Pacific force, and there are meetings next Monday of Pacific ministers for foreign affairs to discuss the matter further. We believe that as a result of the weapons that are available to the principal criminals in the Solomon Islands—who might in some ways be described as militia—it might be a task beyond traditional policing. Therefore, Australian or other police that are sent should be supported and protected by a military element.

We are discussing that force structure. The principal part of it would be a combat force, obviously on the ground. We would not expect it to be extremely large, bearing in mind the number of police that it would need to support. But we would have to take into account the fact that those police, over time, might be dispersed across the Solomon Islands and, therefore, there would have to be sufficient troops to do the job. The combat force will obviously have to be supported by logistics—transport capabilities, hospital facilities and the like—and that logistic and support tail may well work out to be a considerable number of military personnel. But those numbers are still being worked on. As I said, the formal request has not yet been forthcoming and, whilst there is discussion about possible numbers, I have not seen it appropriate to contribute to that discussion.

Senator COOK—Mr President, I ask a supplementary question. Can the Minister for Defence confirm that Australia supplies two patrol boats to the Solomon Islands as part of the Pacific patrol boat fleet? Can the minister also inform the Senate whether those boats have been involved in the violent unrest on the islands? Where are those boats now and who controls them?

Senator HILL—I understand that we provided two patrol boats. I think they are both back in the Solomons now. One has recently gone through a mid-life refurbishment. There have been some issues in the past as to their use in law and order matters and whether it has been appropriate. I have seen no recent suggestion that they are being used inappropriately. They are operated by Solomon Islanders with support from Australian military personnel.

Taxation: Policy

Senator HEFFERNAN (2.47 p.m.)—My question is addressed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister inform the Senate of the government's approach to taxation policy and its ongoing policy of tax reform? Is the minister aware of any alternate policy approaches? And when do you think it is going to rain?

Senator COONAN—I thank Senator Heffernan for his keen interest in tax reform and the weather. Australian taxpayers have only now five more days to wait until this government will deliver a \$2.4 billion tax cut for every taxpayer. These tax cuts really are l-a-w law. They are tangible evidence of the Howard government's approach that money should be returned to taxpayers once vital expenditure for our defence, health and education needs are met. This \$2.4 billion tax cut adds to the \$12 billion in personal income tax cuts that are a central part of the government's tax reform package.

Also, 1 July 2003 is the third birthday of the Howard government's new tax system, which has enabled the government to abolish wholesale sales tax and state and territories to abolish such impositions as financial institutions duty, stamp duty on shares and bed taxes. Within just three years, the states are better off under the federal government's new tax system and in 2003-04 Queensland, Western Australia, Tasmania, the ACT and the Northern Territory will receive more revenue than they would have under the previous system.

But, while this government has delivered the largest tax cuts in Australian history, the state Labor governments are raising taxes. The New South Wales budget, announced on Tuesday, continues the trend of state Labor governments of spending up big and slugging taxpayers with increased taxes. While this government is cutting taxes, state Labor governments are putting up taxes and clawing the money back.

New South Wales in particular is ripping money out of average Australians on the back of the property boom. Total stamp duty revenue on property in the New South Wales budget totalled \$3.6 billion—an extra \$830 million above last year's forecast. Has any of this money been put into affordable housing? Has any of this windfall been returned to struggling families or young couples trying to buy a home in Western Sydney?

Sadly, the New South Wales Labor government has no intention of damming the rivers of gold in stamp duties to help young home seekers. Between 1999 and 2002, the Carr Labor government increased stamp duty tax in New South Wales by 46 per cent. This means stamp duty paid on an average home in Sydney in 1995 was \$5,420; in 2003, the stamp duty on the same house in Sydney was \$16,190. More than 100 suburbs around Sydney now have an average stamp duty level exceeding \$20,000. It is pushing home affordability beyond many people's reach. How can that possibly be justified?

So when you hear the Labor Party talk about taxes, watch out. The Labor Party has one policy on tax and that is to put it up. The Labor Party has one policy in relation to houses, and that is to keep the rates sane and profit from price increases. Shamefully, not one state Labor government has cut stamp duty to help home buyers—not one. This is why the coalition is seen as the party of low interest rates, assistance for home buyers and tax cuts—the only party with real commitment to relieving the tax burden of Australian families, under the courageous leadership of the Howard government.

Defence: Patrol Boat Contract

Senator FAULKNER (2.52 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister explain why the government has knocked ADI out of the contest for the \$450 million contract for the replacement patrol boats? Can the minister confirm that ADI recently delivered the coastal minehunters on time and on budget? Doesn't the government's shipbuilding sector plan state that ADI's Newcastle site would close down next year if it missed out on the patrol boats but would have remained operating through to the year 2017 if the contract had been awarded to that site? What does this decision mean for the future of shipbuilding in Newcastle?

Senator HILL—The Defence panel that is assessing tenders for the government's patrol boat project determined that ADI should be eliminated on the basis that it was uncompetitive in a value for money assessment. On that basis, there was no appropriate reason for ADI to continue within the tender process. This leaves two tenders from which the winner will be chosen. When Senator Faulkner says that the gov-

ernment chose to make that decision, I want to stress that this was the professional assessment of the government's advisers, reached after quite some months of very detailed assessment of the bids by each of the three parties that had been short-listed. We always knew that this was going to be a very competitive process because it is for boats to be constructed under commercial standards, and there are a number of shipyards around Australia that could fulfil this contract very capably and very cost effectively. Therefore, there had to be disappointed parties. For example, the Australian Submarine Corporation in South Australia was a disappointed party after the first assessment because it missed out—as did NQEA from Cairns, and that was very important for the Cairns regional economy.

Senator Boswell—I'll say!

Senator HILL—'I'll say!' says Senator Boswell. It is tough, but the government holds the view that when it is spending taxpayers' money on these projects it must properly take into account value for money assessments and, unfortunately, ADI proved in this bid to be uncompetitive against the other two short-listed parties. Yes, it did a very good job in relation to the coastal minehunters. It has also won a contract to construct barges that is being fulfilled at the moment, as I understand it, out of Newcastle. So in other instances it has proved to be the best value for money competitor, but in this instance it was not.

Senator FAULKNER—Mr President, I ask a supplementary question. Didn't the minister announce the original short list for the patrol boat contract 12 months ago and, at that time, indicate that the contract would be signed in the first months of this year? Minister, haven't the delays in finalising the preferred tenderer now all but ruled out the delivery of the first boat in the latter half of next year, as was promised by the minister and the white paper? I ask again what the decision means for the future of shipbuilding in Newcastle. I think this is an important matter, certainly given the information available in the government's own shipbuilding sector plan in relation to the Newcastle site closing down next year if it missed out on the patrol boat contract. If the minister does not know the answer, I would appreciate him finding out quickly and reporting back to the Senate.

Senator HILL—The Armidale class patrol boats, as they will be known, are to enter service with the Navy from financial year 2004-05, which is in accordance with the Defence white paper. In relation to the consequences to shipbuilding within Newcastle, that is of course a commercial matter. But what it does mean is that, unfortunately for Newcastle, it was unable to win this particular naval tender.

Taxation: Pooled Mortgages

Senator HARRIS (2.57 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Is it true that a Perth retired couple have lost an appeal in the AAT relating to the tax assessment on money repaid to them by a mortgagee in a pooled mortgage scheme after the ATO deemed it interest, not return of capital, even though in many of these pooled mortgages the mortgager repaid the first year's interest from the capital contributed? Minister, is it also true that these pooled mortgages fell under the prescribed interest requirements of the managed investment scheme, preceding the 1988 reform of the law, which were supposed to be policed by ASIC, which required a trustee to be appointed and the offerer of the public company to hold a dealers licence?

Senator COONAN—I will give you the best answer I can to what is a detailed question without notice. The reason I say that is that you would have to know exactly what comprised the transaction to give a full answer. Broadly speaking, the generic transaction involves investors' money being pooled and then let out on first mortgage, but it would depend on whether it was over the threshold that would have put it into the managed investment scheme and under the control of ASIC or whether it was under the relevant mortgage brokers supervisory board in each state. Clearly, regulation of this type of transaction can be largely a matter for the states. If I can give you any better information about the specific transaction you refer to, I will.

Perhaps for the benefit of the Senate I should just mention what has been proposed by the Consumer Credit Legal Centre in regard to mortgage brokers. Its report provides information to the financial services regulator, ASIC, on the finance and mortgage-broking industry. The report has made certain recommendations as to how this particular activity might be addressed. In particular, it recommends uniform regulation of the Australian mortgage-broking industry. The report does not recommend which government jurisdiction is favoured for regulation, but it does list some of the advantages and disadvantages of regulation under each of the jurisdictions.

The situation is being progressed by my colleague Senator Ian Campbell at the ministerial meeting on consumer affairs, where this August there will be consideration given to how this matter should be further addressed; the so-called mezzanine financing, which is probably the scheme that Senator Harris is referring to; and a uniform approach to mortgage financing. I can inform the Senate that Senator Campbell supports in principle the fact that the Financial Services Reform Act principles can probably also be applied in respect of these kinds of transactions. I hope that that has been helpful.

Senator HARRIS—Mr President, I ask a supplementary question. Could the Minister for Revenue and Assistant Treasurer advise the Senate when ASIC was first advised by organisations like the Real Estate Consumer Association that pooled investments were apparently operating in breach of corporate law? Is it true that ASIC failed to act against these schemes until there were failures and that the Commonwealth has refused to accept any responsibility for the losses suffered by the retirees involved?

Senator COONAN—Thank you for the supplementary question, Senator Harris. Obviously, as I said before, without knowing precisely where it comes under, whether it is a managed investment scheme or a state regulated body, it is a bit difficult to know when or if ASIC was informed. What I can say is that, if it relates to mezzanine financing, the government is undertaking a thorough investigation into the regulatory status of property-financing schemes such as mezzanine financing. The schemes are very complex and they need to be carefully assessed on a case-by-case basis. But the government has put in place a robust regulatory framework that balances the needs of businesses and consumers. Those matters are being progressed, as I have said, by my colleague Senator Campbell in the ministerial meetings.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Therapeutic Goods Administration

Senator PATTERSON (Victoria—Minister for Health and Ageing) (3.02 p.m.)—Senator Forshaw yesterday made some statements about the Therapeutic Goods Administration and its handling of the Pan Pharmaceuticals recall. I would like to provide further answers to the questions he raised. I would also like to refute some of the errors in the ABC radio program *Background Briefing*, on which Senator Forshaw seemed to be basing his questions and accusations.

Senator Forshaw asked why the terms of reference to the government's Expert Committee on Complementary Medicines inquiry does not mention the TGA. I remind Senator Forshaw that he asked the same question at the Senate estimates committee hearings and he was advised then that, in fact, the very first term of reference for the committee states that the committee will examine and provide advice on 'the national system of regulatory controls required to ensure that complementary medicines meet appropriate standards of quality, safety and efficacy'. This, of course, means that the role of the medicines regulator, the TGA, will be fully reviewed during the inquiry. The committee, chaired by Dr Michael Bollen, comprises a range of experts across the comple-

mentary medicines field. I look forward to this inquiry reporting to the government. The committee was initially asked to report back by 15 August 2003 but, due to the size of the task, the committee has requested, and Ms Worth has agreed, to a six-week extension if required.

Senator Forshaw also raised the question at the Senate estimates committee of how many times the TGA audited Pan Pharmaceuticals and how many unscheduled audits had been conducted of Pan Pharmaceuticals between 1994 and January of this year. He also suggested that there were no unscheduled audits of Pan Pharmaceuticals after the coalition government came to office in 1996 until earlier this year. I believe he was clutching at straws. I am pleased to give once again the details of the audit processes of Pan Pharmaceuticals and general audit information that he sought. Senator Forshaw made a virtue of the fact that the TGA had undertaken two unscheduled audits of Pan during the last four years of the Labor government. Senator Forshaw was implying that the TGA was much more active under the Labor government than under the Howard government and, by implication, undertook more unscheduled audits. If we take the unscheduled audits undertaken by the TGA in the last five years of the Labor government and compare them with the last five years of the Howard government to date, from March 1991 to 1996 during the period of the Labor government the TGA undertook five unscheduled audits—that is, general audits across the board. If you ask what it has been for the last five years of the Howard government, it might interest Senator Forshaw to know that the TGA has undertaken 27 unscheduled audits in the same period of time. These include three unscheduled audits of Pan Pharmaceuticals.

I think these figures speak for themselves. The implication was that the TGA was not doing its job and it was not doing unscheduled audits. What I am showing is that, under the last five years of Labor, it did five and, in an equivalent period, it did 27 unscheduled audits. Senator Forshaw also implied that because the TGA did not undertake an unscheduled audit of Pan—

Senator Chris Evans—Mr President, I raise a point of order. As I understand it, this period allows ministers to provide responses. They are usually incorporated and tabled. The Minister for Health and Ageing is not just providing information; she is wanting to have an argument. While we are happy to argue the question, it seems to me that it is unduly delaying the Senate. I suggest that she incorporates her responses and allows the Senate to proceed.

The PRESIDENT—Normally, ministers do incorporate further information, Senator Patterson. Do

you have much more to say or do you wish to incorporate the remainder?

Senator PATTERSON—I have more to say and I would like to say it. I have every right to say it.

The PRESIDENT—I do not believe that you do have the right, at this time of the day, to engage in a debate—

Senator PATTERSON—I am not engaging in a debate; I am actually giving facts.

The PRESIDENT—At this particular time, the normal practice is for ministers to provide additional information and/or answers and seek leave to incorporate them. It has not been a time, since I have been President anyway, when ministers make very long speeches.

Senator Hill—Mr President, on the point of order: can I suggest that, whether or not it might be the practice of some senators to seek to incorporate, there is no obligation on them to do so. In fact, it is a courtesy to the Senate that ministers come back with additional information for the Senate. On the other side of the coin, if they fail to do so, they get criticised for not doing so. So, if the minister has come in with further information for the benefit of the Senate, the Senate should be given that benefit.

The PRESIDENT—I agree with that proposition that the minister can provide additional information, but it seemed to me that it was going a bit further than providing additional information. Senator Patterson, if you wish to continue, I will listen carefully, but it would be in the interest of the Senate if you incorporated the rest of your answer.

Senator PATTERSON—I spent a lot of time getting this information because I thought Senator Forshaw would be interested in it.

Senator Hill—That's the problem, you can't win, whatever you do.

Senator PATTERSON—I do not know where I was up to.

Senator Hill—You bend over backwards to help Senator Forshaw and there is no appreciation.

Senator PATTERSON—It was implied that the TGA did not undertake an unscheduled audit of Pan prior to travacalm recalls in January 2003. It was implied that, because the TGA did not do that, it was not being as vigilant as it should have been with Pan. Again I refer Senator Forshaw to the Senate estimates committee where it was explained in great detail that scheduled and unscheduled audits are only one small part of the TGA's source of information about compliance with the regulations. The TGA has a sophisticated system for monitoring manufacturers which draws upon adverse reaction reports, where Australia is acknowledged as having perhaps the best system in

the world; previous audit history; targeted and random laboratory testing of products in the marketplace; and results from surveillance activities, including investigation of complaints and tip-offs from competitors, consumers and employees.

A lot of those answers were given. In order to be cooperative with the Senate—and I thought I was doing the right thing, as Senator Hill has said—if I have not been able to give a full answer in question time, and I usually can, then I try to be as helpful as possible and come back to inform the Senate. Apart from a few small changes which I may have to make, I seek leave to incorporate the rest of my answer. I am sure Senator Forshaw will avail himself of that, read the *Hansard*, be more fully informed on the issue and in future refrain from making allegations or imputations against the TGA which are not absolutely substantiated.

Leave granted.

The document read as follows—

TGA audits of Pan

Since the 1991 implementation of the national regulatory framework for therapeutic goods, the TEA has undertaken 14 audits of Pan, including five (5) that were unscheduled.

If Pan had been receiving the standard audit focus from the TGA it would have received perhaps five (5) or six (6) audits in this time. These figures demonstrate the TGA was auditing Pan at least annually on average. The TGA was active, it was vigilant, and it was firm. Besides this audit oversight, it took court action against Pan Laboratories from 1994-1999, right through to the High Court, with Pan Laboratories eventually going into liquidation to avoid finalisation of the litigation.

TGA's standing as a Regulator meeting world's best practice in GMP auditing.

I would like to point out to the Senate that the TGA is recognised as a world leader in the auditing of manufacturers to Good Manufacturing Practice (GMP) standards.

Allegations in Background Briefing- re: former employee claiming TGA was "soft" on audits:

Yesterday Senator Forshaw made much of the allegations by an unnamed former employee of the TGA who claimed, among other things, that some auditors at the TGA were soft and weak.

Briefing program where this unnamed former employee set out his grievances against his former boss, but I note from the transcripts that, in fact, even this former worker had some very nice things to say about the TGA.

Prompted by, the reporter to savage the TGA to liven up what, on reading, was a pretty boring program, the informant was asked: "Is there any evidence or suggestion that the TGA was prone to corruption?"

The answer from this former employee, who says he worked at the TGA for five years, was quick and decisive, and I quote: "I don't think there's ever been any corruption allegations, and I think the TGA, all of the TGA, is squeaky clean on all that."

In another case, the co-founder of a herbal company tells the program that while different TGA auditors have different approaches, his company welcomed tough auditors from the TGA.

I quote from the program: "The last person to inspect MediHerb is a long time auditor from the TGA. Some companies -don't like dealing with this inspector because they say he's draconian and pedantic. Yet in MediHerb's case, this person was welcomed and regarded as doing a thorough job over a three-day audit."

The program continued: "What this highlights is the disparity with the natural health industry over what the standards should be and nowhere is this burning brighter than over the issue of quality."

Before the program went to air, the reporter was keen to show that the government had run down the resources of the TGA, which inhibited its ability to be an effective regulator.

When given figures that completely disputed this, the program dropped this line of questioning. Instead it showcased an array of people within the complementary medicines industry who all had differing views on how this multimillion industry should be managed.

I would put to Senator Forshaw that continual sniping at the TGA in order to by to damage the government is doing a real disservice to the complementary medicines industry which needs to work closely with the regulator to ensure that consumers feel confident that their products are safe to use.

I can assure you that the TGA has managed probably the biggest medicines recall in the world well. I think the key issue that has arisen out of the Pan Pharmaceutical safety recall is that Australian consumers and its exporting partners can have confidence that Australia's medicines industry is oversighted by one of the world's leading regulators, the TGA.

Defence: Australian Army

Senator HILL (South Australia—Minister for Defence) (3.09 p.m.)—I have further information in response to a question asked of me yesterday by Senator Chris Evans relating to the tragic death of a young soldier. In view of the length of the response, I seek leave to have it incorporated in *Hansard*.

Leave granted.

The document read as follows—

Senator Evans asked the Minister for Defence on 25 June 2003:

- (1) Is the Minister aware of the operations within Army of the Recuperation and Discharge Platoon, which receives injured soldiers taken out of their regular units and off training due to injury?
- (2) Can the Minister inform the senate whether there are particular measures in place to identify and protect young soldiers and others in the platoon who are at high risk of developing depression while they are attempting to recover from their injuries?
- (3) What are those measures?
- (4) Will the Minister also inform the Senate when the inquiry being undertaken by the Army into the treatment of Private Jeremy Williams, an injured 20-year-old who tragically took his own life due to his uncorrected apprehension that he would be discharged, will be finalised?
- (5) what procedures are in place to assist families which have concerns about the welfare of a serving ADF

member to get confidential assistance for that ADF member, without exposing their loved one to any adverse commentary or pressure within their units?

Minister—The answers to Senator Evan's questions are as follows:

- (1) At the time of Private Jeremy William's death, soldiers at the School of Infantry that received injuries preventing them from continuing infantry training were placed in the Rehabilitation and Discharge Platoon. The role of this platoon was to administer soldiers while they received professional health attention for the purpose of rehabilitating them as quickly as possible back into infantry training, other employment category training or discharge from the Australian Army. There has recently been a separation of the Rehabilitation and Discharge functions at the School of Infantry, with now two separate platoons administering soldiers unable to continue with infantry training- a Rehabilitation Platoon and a Transfer and Discharge Platoon. This separation was a direct result of the Quick Assessment that followed Private Williams' death and enables the soldiers' individual circumstances to be managed and administered more effectively.
- (2) Yes, there is a range of measures in place.
- (3) The measures are as follows:
 - (a) Dedicated supervision and counselling. Soldiers in the Rehabilitation Platoon and the Transfer and Discharge Platoon are supervised directly by a Section Commander (Corporal) on a ratio of one Section Commander to every 10 soldiers. In addition, both platoons are managed by a Platoon Commander (Lieutenant) and a Platoon Sergeant. The School of Infantry has a full-time Padre to whom the soldiers have unfettered access at all times. A Regional Defence Community Organisation social worker is resident at the School of Infantry and devotes 60 per cent of her time to the training wing at the School. An Army Physical Training Instructor is dedicated to the development and supervision of physical training programs for members of the Rehabilitation Platoon. Members of the School of Infantry have access to regional psychological support services on an as required basis. A dedicated medical officer at the School of Infantry provides ongoing medical management and support to members of the School of Infantry. All members of the School of Infantry are instructed on the Army's Fair Go Principles and the number for the Army's Fair Go Hotline, which is available to all members of the Australian Army and their families to report incidents of unacceptable behaviour.
 - (b) Suicide Prevention Training. All uniformed members of the School of Infantry, and the Padre and Defence Community Organisation social worker, have received instruction on suicide prevention as part of the Army's Suicide Prevention Program. This instruction targets instructors and students separately and focuses on risk and prevention factors.

- (c) Uniform Entitlements. All members of the Rehabilitation Platoon and the Transfer and Discharge Platoon receive the same entitlements to local leave and amenities as other trainees at the School of Infantry.
 - (d) Strong Personnel Management Focus. The leadership at the School of Infantry has a strong focus on personnel management within the Rehabilitation Platoon and the Transfer and Discharge Platoon so that future employment and career options for soldiers can be developed and managed as quickly as possible. Army's Medical Classification and Review Board, which is a strategic level Board that recommends to Army's career managers the suitability of soldiers for future employment, convenes as required at the School of Infantry and interviews every affected soldier before making a determination.
 - (e) Transition Management. Soldiers in the Transfer and Discharge Platoon identified for discharge from the Army receive a Transition Management Package and individual case management services from the regional Defence Transition Management Office.
- (4) The Inquiry Officer's Report is due to be presented to the Appointing Authority, Commander Training Command - Army, on 4 July 2003. As is normal procedure, the Report will be the subject of independent legal review before the Appointing Authority considers its recommendations.
 - (5) Families have a range of options available to them to get confidential assistance should they be concerned about the welfare of loved ones who are serving members of the ADF. In the first instance, the Commanding Officer of the ADF member is always available and generally best placed to provide this assistance to families. There is a range of further options available to families should they decide for whatever reason that the Commanding Officer is not best placed to provide this assistance. The three Service Chiefs and their respective Personnel staff in Canberra are always available to provide assistance to families of serving ADF members. A number of hotlines are also available to provide immediate assistance to members and their families such as Army's Fair Go Hotline (1800100 064) and the Defence Equity Advice Line (1800 803 831).

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

Medicare: Bulk-Billing

Senator CHRIS EVANS (Western Australia) (3.10 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Health and Ageing (Senator Patterson) to questions without notice asked today.

I draw the Senate's attention in particular to the questions that went to this secret leaked Health memo which seeks to instruct public servants to cut from their lexicon a range of words—words that shall not pass their lips, words that have been described as of-

fending, words that will no longer be allowed in department documents but will be rewritten and cut out from department documents. These are such evil words as 'bulk-billing', 'copayment' and—the best of all—'free'. 'Free' will be a word no longer allowed in the Department of Health and Ageing because, as it says, nothing is free. This is an official health department document: 'We will not have the word "copayment", we will not have the word "bulk-billing" and we will certainly not have the word "free" uttered in health department documents.'

The Prime Minister made his career in opposing political correctness. He has obviously lost control of the government because there is no-one more politically correct than the Minister for Health and Ageing. She has issued instructions to public servants about which words they are allowed to use. At the top of her list is a ban on the word 'bulk-billing'. We know she is dissembling the evidence that bulk-billing in this country is collapsing as she drives Medicare into the ground. Australians are being denied bulk-billing services and they are angry about it. They are angry that they cannot access bulk-billing. But, rather than defending the government's record, the minister seeks first of all to say that we have some sort of fetish, because she thinks we concentrate on it too much.

How does she deal with it? Does she defend the appalling statistics that show that Australians cannot access a bulk-billing doctor? No. She instructs her public servants to be sure that the word does not pass their lips, that the word is regarded as offensive—it is the unspeakable word and must not be spoken by public servants and must not be written by public servants—and that from now on those words are not allowed to be used. Someone in the ministry has the job of rewriting all the government documents to strike these words out. So public servants are going through all the documents and making sure that 'bulk-billing' is replaced by some new phrase.

Senator Mackay—I raise a point of order, Mr Deputy President. I ask Senator Evans to withdraw the word 'bulk-billing'.

The DEPUTY PRESIDENT—There is no point of order, Senator Mackay.

Senator CHRIS EVANS—I am not sure whose side she is on. When I first heard this I thought, 'It is a mistake; it is some sort of joke.' But, no, we have the document. It is an authoritative document from the health department. It refers to both the secretary of the department, Ms Jane Halton, and the office of the minister and makes it clear that they have authorised this process. The first thing that occurred to me—a literary illusion—was George Orwell's *Nineteen Eighty-Four*. There they were at the ministry of truth making sure that troublesome and rebellious

words were expunged from the language of the people. At that time we thought it was quite a frightening book. But under this minister the secretary of the department, Jane Halton, who was famous for the 'children overboard' task force, is setting up a new ministry of truth inside the ministry of health, expunging words from our language, ensuring that these words are not spoken, ensuring that the unspeakable is not uttered by public servants. We are not allowed to use the word 'bulk-bill', we are not allowed to use the word 'copayment' and we are not allowed to use the word 'free'—this from the Liberal Party. It is amazing.

I was chatting to someone else. I thought George Orwell was a bit dated. Who came to mind? None other than Harry Potter. Harry Potter is the new world. I thought: there is the minister, Senator Kay Patterson, our answer to Harry Potter. Do you note the resemblance? Harry Potter's great quest was fighting evil. The minister's great quest is to destroy Medicare. She is determined to destroy Medicare. But in *Harry Potter* they were not allowed to utter the name of the famous evil character Lord Voldemort. But in the minister's world, in the world of the Harry Potter of Australia, Senator Patterson, we are not allowed to utter the word 'bulk-billing'. 'Bulk-billing' has become the Lord Voldemort of Australian health department language—'He who must not be named'. This is what we have got to: 'bulk-billing' may not be spoken, it is the unspeakable word, because bulk-billing under this government is disappearing as they set about fulfilling John Howard's promise to dismantle Medicare and to destroy bulk-billing. As part of that, the politically correct thing to do is to destroy the language. (*Time expired*)

Senator MASON (Queensland) (3.15 p.m.)—The winter recess is upon us and some of us, particularly those in the Labor Party, need a break. Senator Evans mentioned that we want to forget about bulk-billing. In a far more serious vein, I think the Labor Party wants to forget about war and moral courage. Senator Patterson mentioned the A Fairer Medicare package. She explained it eloquently and has been doing so for the last few weeks. The equation is very simple. It is between two points. The government believes that the community's taxes, their money, should be spent on increasing access to medical care for all members of that community. It is as simple as that. That is what Senator Patterson is saying. The Labor Party, however, believes that the community's taxes, their money, should be spent on guaranteeing free medical care for some. That is the difference.

We believe in spending the community's taxes to increase access for all; the Labor Party believes in spending the community's taxes to guarantee medical care for some. We believe in spending money on

nurses, on student doctors, on encouraging doctors to go out to rural and regional and outer suburban areas. We believe in that. We also believe in focusing on what the World Health Organisation says are the growing problems of the Western world in terms of health. They are obesity, diabetes and, as the minister mentioned, immunisation. Of course we believe that at the bottom some people have to be looked after and, of course, health care card holders and pensioners will be looked after. The Labor Party believes—it is the old Labor Party adage; here we go again—in using the community's taxes, their money, to guarantee free medical care for some: those who just happen to live near a bulk-billing doctor, generally in the inner cities, often in the leafy suburbs and certainly in the inner-city, swinging suburbs, where the Labor Party still gets a few votes.

I remember, back in the early eighties, an analogous situation in higher education. The Labor Party then—the Left of the Labor Party in particular—believed that social justice was found in providing free tertiary education for some. Remember that, Senator Ferris? They believed that the middle-class school leavers and those lucky enough to get in should be provided with free tertiary education. Finally they came around to the Liberal view. We believe in social justice—that tertiary education should not be just for a few, that instead there should be increased access for all, and everyone can pay a few dollars. That is the fundamental difference between the Labor Party and the Liberal Party. That analogy holds true in this debate. In the end, the community's money, the community's taxes, can be spent either on giving just some people a free ride or on giving all people increased access. That is the difference between the Labor Party and the Liberal Party.

Let me conclude on this point: there was a mention of George Orwell before by Senator Evans, who said that we do not want to mention 'bulk-billing' or 'free'. I just mentioned both and I am not ashamed of it. The big failure of the Left in the 20th century, as I have said so many times, was not their economic failure, though that was disgraceful, but their moral failure. We saw that again this year and it is a good time to remind the Labor Party of it, in the lead-up to the winter recess. The inquiries into the Bali bombing and weapons of mass destruction and intelligence are simply a way to cover up the lack of moral courage on that side. They will not serve as moral enemas for this parliament or the Labor Party. The greatest failure in my time in parliament was when that side of parliament said, 'We won't go in and take out a dictator.' That is Orwellian, and that is a disgrace.

Senator MARK BISHOP (Western Australia) (3.20 p.m.)—Big Brother has left TV and found a new home in the Department of Health and Ageing;

nineteen years after 1984, he has hit the big time, courtesy of the Minister for Health and Ageing, Dr Kay Patterson! One is reminded of the famous phrases of George Orwell in *Nineteen Eighty-Four*, which Senator Evans referred to: 'War is peace', 'Love is hate', 'Freedom is slavery'. When you do not like an issue, when an issue will not go away, when you cannot win the debate with the use of argument, what do you do? What do you say when those sorts of things occur? You change the context and the substance of the issue. You change the use of language in its most illiberal form. You no longer use particular words in discussion and debate. The party of freedom—the party that advocates freedom—becomes 'the party of control'. The party of choice—the party which advocates choice on every issue—becomes 'the party of direction'.

Now it is plain and clear: as Senator Evans mentioned and Minister Patterson refused to comment on in the three questions put to her, the government hates the idea of bulk-billing, loathes the concept of universality, detests the practice of subsidised medicine. Under those circumstances, in that debate, what does the government do? They remove the words 'bulk-billing' from everyday usage. 'Bulk-billing', according to the government's own memo, will not be used in memos, policy papers, correspondence, questions on notice, ministerial directions. But here there is no substitute; no alternative word or phrase is suggested should be used. 'Bulk-billing' is to be expunged, removed, not used in Australia.

What is the next step? Taking it out of dictionaries? Taking it out of spellcheckers on the computer? Having removed words, ideas and concepts from common usage, the idea and the concept no longer exist and no longer have any purpose or relevance in the discussion. It is just like the war in Iraq. When you cannot find any weapons of mass destruction, after the event you invent a new reason for going in. The reason becomes a 'war of liberation', a 'war of freedom'. The original justification, the original words, are no longer there.

What other terms should not be used in common parlance? What other ideas are so offensive to this government? We know some of them: asylum seekers, refugees, trade unions, disability pensioners, the Greens, the Senate—all of these institutions, words and ideas offend the government. Let us call a spade a spade. All of these attributes that are manifest in this memo are the attributes of a government in power too long, becoming corrupted, becoming too used to the idea of being in government—control is essential; more power in those circumstances accrues to the day-to-day leadership. How does it manifest itself? In a memo that says:

We have agreed to standardise—

our use of words—
as follows:

-
- 'at no cost to the patient' or
 - 'without paying a gap'.

...

Words *not* to be in the lexicon include:

- copayment (sounds like a government imposed and uniform charge)
- bulk-billing—

not to be used under any circumstances—

(combines the issues of direct billing and 'no gap', which are now going to be separate)

- free (nothing—

they say—

is free, and the government in any case pays the rebate ...

That is the idea behind the memo: get rid of the idea of bulk-billing, get rid of the idea of using the phrase and get rid of the idea that it is to be used in common usage and common language. When the idea is no longer there, when it can no longer be discussed, the practice behind it is no longer worthy of mention. As the directive, marked 'in confidence' and distributed by email amongst senior officers of the Department of Health and Ageing, stated:

We have agreed we have moved away from discussion of 'bulk billing'.

...

Words *not* to be included in the lexicon include:

-
- bulk billing.

It also says:

pls review all our QTBs—

question time briefs—

for those offending words

... monitor this strictly and ensure nothing slips through and find all the offending QTBs and send them back to branches for rewrite ...

(*Time expired*)

Senator KNOWLES (Western Australia) (3.25 p.m.)—The other day a colleague of mine said to me: 'If you have a constituent come in to your office who has not been able to see a doctor when they need one or when their child needs one, you end up having a pretty bad day. But if a constituent comes into your office and says that they have had to pay \$10 to see a doctor and they have got their medication, every one ends up with a pretty good day.' I thought that was pretty accurate, that it summed it up pretty well. But the problem we have is that we have too many areas in Australia where there are clumps of doctors—as my colleague Senator Mason said, invariably in green, leafy suburbs—who might bulk-bill—

Senator Mark Bishop—They do not bulk-bill in Subiaco and Nedlands.

Senator KNOWLES—Oh, don't they? That is interesting. Isn't that interesting that they do not bulk-bill in Subiaco?

The DEPUTY PRESIDENT—Senator Knowles, ignore the interjections and refer your comments to me.

Senator Mark Bishop interjecting—

The DEPUTY PRESIDENT—Senator Bishop, leave Senator Knowles to speak. I would like to hear what she has to say.

Senator KNOWLES—Senator Evans, for whom I have some considerable respect, made what I thought to be a very inane, childish contribution today. I do not know what had got into him, but he has obviously just read a Harry Potter book. And Senator Bishop has just made a contribution that simply did not make sense. But both of them happen to be Western Australians, as I am. Isn't it interesting that at no stage did they talk about the problems of getting doctors to places like Ellenbrook? Do you know what the problems are in places like Ellenbrook, Senator Bishop? I guarantee you do not, because you would not care. The problem with places like Ellenbrook, Merriwa and others is that they are very fast-developing outer-metropolitan sites, with communities as large as 10,000 who want doctors, instead of having 20, 30, 40 or 50 of them in the Nedlands-Subiaco area. It is about getting access. That is the story. Isn't it amazing that neither Senator Evans nor Senator Bishop talked about access? It will be interesting to see whether Senator Webber is going to talk about the importance of access, instead of talking about who can get free service.

If a constituent from Ellenbrook or Merriwa, or any of those other places that are not serviced by doctors in abundance, went to Senator Webber's office and said, 'My child is sick and I can't get a doctor,' what would be your choice, Senator Webber? You would have to make a choice for that constituent. Would you say, 'I want you to have free service, Medicare bulk-billing, in preference to having a doctor that you can access for your sick child'? That is the story the Labor Party would have to give in all conscience to a constituent faced with a choice. Does that constituent have a right to access a doctor, or does that constituent have a greater right to get a free service miles and miles away from their home? My choice is for a constituent to have a doctor near to their home with whom they can build up a relationship and have contact.

I am absolutely astounded that the Labor Party are fixated on getting a free ride, as opposed to saying, 'I want my constituents to have the greatest availability

of doctors.' If I continue to hear the Labor Party talking about not caring about what access people have in these new and developing areas, then that will be an answer to a prayer that we could not have hoped for in any greater detail. Those people deserve doctors; they do not necessarily want bulk-billing. Go and ask the constituents, because they are the ones who say: 'Give me a doctor. I don't care whether they bulk-bill or not. I want a doctor who is close to my home for my welfare and that of my children.' Forget the issue of bulk-billing; it is all about access. The sooner the Labor Party come to that realisation the better. (*Time expired*)

Senator WEBBER (Western Australia) (3.30 p.m.)—I am very pleased to hear that Senator Knowles and her colleagues want to debate the issue of access to medical services, because the Labor Party's priority is access to health care services regardless of your ability to pay. It is very interesting to listen to the likes of Senator Knowles and Senator Mason, who come in here and describe low-income families who want access to a bulk-billing doctor as wanting a free ride. Low-income families wanting access to a bulk-billing doctor to look after their children are supposedly after a free ride! Isn't it interesting? That is all part of their package. The Labor Party's priority with health care policy is access for all, regardless of their ability to pay. Obviously, the provision of bulk-billing services in this nation is just a bit too hard for this government. Rather than address the real issue of access to medical services for low-income families that can only access them through bulk-billing—otherwise they end up in accident and emergency departments at our hospitals—their choice is to remove the term 'bulk-billing' from our language, in the hope that we will all go away and forget that the system ever actually existed.

The quest of the Liberal Party to get rid of bulk-billing has been around for quite some time. When the current Prime Minister was the Leader of the Opposition in the 1980s, he said that Medicare was 'miserable', 'a cruel fraud', 'a scandal', 'a total and complete failure', 'a quagmire', 'a total disaster', 'a financial monster' and 'a human nightmare'. They are just some of the terms of endearment that he had for the Medicare system—and those opposite keep trying to preach to us about their A Fairer Medicare system! He subsequently threatened to 'pull Medicare right apart'—and aren't we seeing that happen now?—and 'get rid of the bulk-billing system'. Obviously, the first priority in getting rid of the bulk-billing system is to get rid of the term 'bulk-billing' from common usage.

Obviously, the Secretary of the Department of Health and Ageing, Jane Halton, is doing a very good job at the behest of her political masters. A memo that

has gone out—and my colleagues quoted it earlier—said:

We have agreed we have moved away from discussion of 'bulk billing'.

However, instead we have been using different forms of words in different places.

We have agreed to standardise as follows:

1. concessional patients will be guaranteed to receive care from participating GP practices

- 'at no cost to the patient' or
- 'without paying a gap'.

If this is not true, why is it that every time the minister comes in here we now have this prattle about 'without paying a gap' and 'at no cost to the patient'? If this is not a political and departmental directive, why is the minister also following it? The memo continues:

2. doctors may choose to provide other patients with care 'at no cost to the patient' or 'without charging a gap'—

that is bulk-billing; why can't we actually use the term 'bulk-billing'—

but equally remain free to set their own billing policy for these patients, and may 'charge a gap payment'.

This form of words has been discussed with the Secretary and the Office.

Words *not* to be in the lexicon include—

and we heard Senator Evans discuss them before—

- copayment ...
- bulk billing ...
- free ...

Then we get:

I hope this is helpful.

I am sure everyone is very clear: you are not allowed to use the term 'bulk-billing'. Let us cast our minds back to when the Medicare system was first created. It was created to give all Australians the opportunity to visit their local GP of choice—and the government should like that term—whenever they were sick, regardless of their financial circumstances. That is the key to bulk-billing. It is about accessing medical services regardless of your financial circumstances. But this current government would have us believe that the health system they are creating—or, more correctly, destroying—is about choice. It is about choice only if you have got the money; otherwise, you have to queue up at an accident and emergency department. (*Time expired*)

Question agreed to.

PERSONAL EXPLANATIONS

Senator ABETZ (Tasmania—Special Minister of State) (3.35 p.m.)—I seek leave to make a personal explanation as I claim to have been misrepresented.

Leave granted.

Senator ABETZ—During question time today an assertion was made that I had indicated that the cost of rehabilitation works at the Brighton Army Barracks would be at a cost of \$250,000 and that I had been reported three times in the media as having stated that. I have here three separate media items relating to this, which I will table. I will read out the relevant paragraph that is, in fact, in each of those media items:

The sale price does reflect the significant cost of rehabilitation works that must be undertaken to remove rubbish sites, oil, lead and asbestos contamination.

It is estimated that the rehabilitation works and the new entry from the Midland Highway—

something deliberately missed out by Senator O'Brien—

will cost around \$800,000.

I table these documents. The opposition can look at them if they want to, but they know what was in the media, they know the truth—the \$800,000 referred not only to rehabilitation but to the road works as well.

Senator MACKAY (Tasmania) (3.37 p.m.)—by leave—I want to make the point that there is absolutely no problem at all with Senator Abetz doing what he just he did, which was to seek leave to make a short statement about being misrepresented. That is fine. But I would point out that we do have general protocols and it would have been handy if the minister had let us know that that was going to happen.

Senator Abetz—Point taken.

Senator MACKAY—That is fine. Thank you.

COMMITTEES

Reports: Government Responses

The DEPUTY PRESIDENT—On behalf of the President, and in accordance with the usual practice, I table a report of parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in *Hansard*.

The report read as follows—

PRESIDENT'S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS

AS AT 26 JUNE 2003

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion.

On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators' Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of tabling of a report. The committee monitors the provision of such responses.

The entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

A guide to the legend used in the 'Date response presented/made to the Senate' column

- * See document tabled in the Senate on 25 June 2003, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 12 December 2002, for Government interim/final response.
- ** Report contains administrative recommendations only – response is to be provided direct to the committee in the form of an executive minute.

Committee and Title of report	Date tabled	report	Date response presented/made to the Senate	Response made within specified period (3 months)
A Certain Maritime Incident (Select)				
Report on a Certain Maritime Incident	23.10.02		*(interim)	No
ASIO, ASIS and DSD (Joint Statutory)				
Annual Report 2001-02	2.12.02		*(interim)	No
Community Affairs References				
The patient profession: Time for action—Report on nursing	26.6.02		*(interim)	No
Participation requirements and penalties in the social security system [Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002]	25.9.02		*(final)	No
Corporations and Securities (Joint Statutory)				
Report on aspects of the regulation of proprietary companies	8.3.01		*(interim)	No
Corporations and Financial Services (Joint Statutory)				
Report on the regulations and ASIC policy statements made under the <i>Financial Services Reform Act 2001</i>	23.10.02		*(interim)	No
Review of the Managed Investments Act 1998	12.12.02		*(interim)	No
Report on the review of the Australian Securities and Investment Commission	26.3.03		Not required	-
Inquiry into the Corporations Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 31	24.6.03		Not required	-
Inquiry into Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85	26.6.03		-	Time not expired
Economics References				
Report on the operation of the Australian Taxation Office	9.3.00		*(interim)	No
Report on the provisions of the Fair Prices and Better Access for All (Petroleum) Bill 1999 and the practice of multi-site franchising by oil companies	8.3.01		5.2.03 (pre-sented 17.12.02)	No
Inquiry into mass marketed tax effective schemes and investor protection—Interim report	25.6.01		*(interim)	No
Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement	27.9.01		*(interim)	No
Inquiry into mass marketed tax effective schemes and investor protection—Final report	12.2.02 (pre-sented 11.2.02)		*(interim)	No
Economics References (continued)				
A review of public liability and professional indemnity insurance	21.10.02		*(interim)	No
Electoral Matters (Joint Standing)				
The integrity of the electoral roll: Review of ANAO report no. 42, 2001-02	11.11.02		*(interim)	No
The 2001 Federal Election: Report of the inquiry into the conduct of the 2001 federal election, and matters related thereto	23.6.03		-	Time not expired
Employment, Workplace Relations and Education Legislation				
Workplace Relations Amendment (Paid Maternity Leave) Bill 2002	18.9.02		*(final)	No
Employment, Workplace Relations and Education References				
Education of students with disabilities	10.12.02		*(interim)	No
Small business employment	6.2.03		-	No
Environment, Communications, Information Technology and the Arts References				

Committee and Title of report	Date tabled	report	Date response presented/made to the Senate	Response made within specified period (3 months)
Report on the powers of the Commonwealth in environment protection and ecologically-sustainable development in Australia (Commonwealth Environment Powers)	27.5.99		15.5.03	No
Inquiry into Gulf State Vincent	5.6.00		*(interim)	No
Inquiry into electromagnetic radiation	22.5.01	(pre- sented 4.5.01)	6.2.03	No
The value of water: Inquiry into Australia's urban water management	5.12.02		*(interim)	No
Finance and Public Administration Legislation				
Report on the Charter of Political Honesty Bill 2000 [2002] and 3 related bills	29.8.02		*(final)	No
Finance and Public Administration References				
Re-booting the IT agenda in the Australian Public Service—Final report on the government's information technology outsourcing initiative	28.8.01		19.6.03	No
Finance and Public Administration References (continued)				
Departmental and agency contracts: Report on the first year of operation of the Senate order for the production of lists of departmental and agency contracts	12.12.02		19.6.03	No
A funding matter under the Dairy Regional Assistance Program	26.6.03	-		Time not expired
Foreign Affairs, Defence and Trade (Joint Standing)				
From phantom to force – Towards a more efficient and effective army	4.9.00		19.6.03	No
Australia's role in United Nations reform	25.6.01		27.3.03	No
A model for a new army: Community comments on the 'From phantom to force' parliamentary report into the Army	24.9.01		19.6.03	No
Review of Foreign Affairs, Trade and Defence annual reports 2000-01	23.9.02		27.3.03	No
Visit to Australian forces deployed to the international coalition against terrorism	23.10.02		*(interim)	No
2003 New Zealand parliamentary committee exchange	23.6.03		-	Time not expired
Foreign Affairs, Defence and Trade References				
Japan: Politics and society	27.9.01		*(interim)	No
Recruitment and retention of ADF personnel	12.2.02	(pre- sented 4.10.01)	13.5.03 (pre- sented 15.4.03)	No
Materiel acquisition and management in Defence	27.3.03		-	No
Information Technologies (Select)				
In the public interest: Monitoring Australia's media	13.4.00		*(interim)	No
Legal and Constitutional Legislation				
Statutory powers and functions of the Australian Law Reform Commission—Final report	20.3.03		Not required	-
Provisions of the Australian Human Rights Commission Legislation Bill 2003	16.6.03	(pre- sented 29.5.03)	-	Time not expired
Legal and Constitutional References				
Inquiry into the Commonwealth's actions in relation to <i>Ryker (Faulkner) v The Commonwealth and Flint</i>	30.4.96	(pre- sented 29.4.96)	15.5.03	No
Inquiry into sexuality discrimination	2.12.97		*(interim)	No
Migration zone excision: An examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters	21.10.02		*(final)	No
Australian Security Intelligence Organisation Legislation	3.12.02		*(final)	No

Committee and Title of report	Date tabled	report	Date response presented/made to the Senate	Response made within specified period (3 months)
Amendment (Terrorism) Bill 2002 and related matters				
Migration (Joint Standing)				
Not the Hilton—Immigration detention centres: Inspection report	4.9.00		3.3.03 (pre-sented 27.2.03)	No
2003 Review of Migration Regulation 4.31B	13.5.03 (pre-sented 29.4.03)	-		Time not expired
National Capital and External Territories (Joint Statutory)				
In the pink or in the red? Health services on Norfolk Island	6.8.01 (pre-sented 9.7.01)		*(interim)	No
Risky business: Inquiry into the tender process followed in the sale of the Christmas Island Casino and Resort	20.9.01		6.2.03	No
Norfolk Island electoral matters	26.8.02		*(interim)	No
Striking the right balance: Draft amendment 39, National Capital Plan	21.10.02		16.6.03 (pre-sented 11.6.03)	No
National Crime Authority (Joint Statutory)				
The law enforcement implications of new technology	27.8.01		*(interim)	No
Australian Crime Commission Establishment Bill 2002	11.11.02		5.2.03 (pre-sented 3.2.03)	Yes
Native Title and the Aboriginal and Torres Strait Islander Land Fund (Joint Statutory)				
Second interim report for the s.206 inquiry: Indigenous land use agreements (19 th report)	26.9.01		*(interim)	No
Examination of annual reports for 2001-02	25.6.03		Not required	-
Public Accounts and Audit (Joint Statutory)				
Corporate governance and accountability arrangements for Commonwealth government business enterprises, December 1999 (Report No. 372)	16.2.00		*(interim)	No
Review of the accrual budget documentation (Report No. 388)	19.6.02		13.5.03 (pre-sented 6.5.03)	No
Review of independent auditing by registered company auditors (Report No. 391)	18.9.02		*(interim)	No
Public Accounts and Audit (Joint Statutory) (continued)				
Review of Auditor-General's Reports 2001-2002, Fourth quarter (Report No. 393)	3.3.03		**	No
Review of Australia's quarantine function (Report No. 394)	5.3.03		-	No
Rural and Regional Affairs and Transport Legislation				
An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements	7.6.00		*(interim)	No
The proposed importation of fresh apple fruit from New Zealand—Interim report	6.8.01 (pre-sented 18.7.01)		20.3.03	No
Quota management control on Australian beef exports to the United States	26.6.02		*(interim)	No
The Australian meat industry consultative structure and quota allocation—Interim report: Allocation of the US beef quota	24.9.02		*(interim)	No
Australian meat industry and export quotas	12.12.02		*(interim)	No
Provisions of the Wheat Marketing Amendment Bill 2002	18.6.03		-	Time not expired
Rural and Regional Affairs and Transport References				
Airspace 2000 and related issues	5.4.01		*(interim)	No
The incidence of Ovine Johne's Disease in the Australian	6.8.01	(pre-	19.6.03	No

Committee and Title of report	Date tabled	report	Date response presented/made to the Senate	Response made within specified period (3 months)
sheep flock—Second report		sented 25.7.01)		
Scrutiny of Bills				
Fourth report of 2000: Entry and search provisions in Commonwealth legislation	6.4.00		*(interim)	No
Sixth report of 2002: Application of absolute and strict liability provisions in Commonwealth legislation	26.6.02		*(interim)	No
Superannuation and Financial Services (Select)				
A 'reasonable and secure' retirement?: The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes	5.4.01		5.2.03 (pre-sented 13.12.02)	No
Prudential supervision and consumer protection for superannuation, banking and financial services: Third report—Auditing of superannuation funds	24.9.01		20.3.03	No
Report on early access to superannuation benefits	12.2.02	(pre-sented 31.1.02)	*(interim)	No
Superannuation (Select)				
Taxation treatment of overseas superannuation transfers	19.8.02	(pre-sented 25.7.02)	*(interim)	No
Provisions of Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002	12.11.02		*(final)	No
Tax arrangements for superannuation and related policy	12.12.02		*(interim)	No
Provisions of the Superannuation Industry (Supervision) Amendment Bill 2002 and the Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002	19.3.03		-	No
Treaties (Joint Standing)				
UN Convention on the Rights of the Child (17th report)	10.11.98	(pre-sented 28.8.98)	6.3.03	No
Extradition—a review of Australia's law and policy (40th report)	6.8.01		*(interim)	No
The Statue of the International Criminal Court (45th report)	15.5.02		*(interim)	No
Treaties tabled in August and September 2002 (48th report)	21.10.02		19.6.03	No
The Timor Sea Treaty (49th report)	12.11.02		*(interim)	No
Treaties tabled 15 October 2002 (50th report)	10.12.02		19.6.03	No
Treaties tabled on 12 November and 3 December 2002 (51st report)	19.3.03		Not required	-
Treaties tabled in March 2003 (52nd report)	26.6.03		-	Time not expired

DOCUMENTS

Association of Former Members of Parliament

The DEPUTY PRESIDENT—On behalf of the President, I table the annual report of the Association of Former Members of Parliament for 2002-03.

Auditor-General's Reports**Report No. 58 of 2002-03**

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 58 of 2002-03—*Performance Audit – Veterans' Appeals Against Disability Compensation Decisions Follow-up Audit*.

Tabling

The Special Minister of State (Senator Abetz) tabled the following documents:

Parliamentarians' travel paid by the Department of Finance and Administration for the period July to December 2002,

Former parliamentarians' travel paid by the Department of Finance and Administration for the period July to December 2002,

Schedule of special purpose flights for the period July to December 2002, and

Expenditure on travel by former Governors-General for the period 1 July to 31 December 2002.

COMMITTEES

Corporations and Financial Services Committee**Report**

Senator CHAPMAN (South Australia) (3.40 p.m.)—I present the report of the Parliamentary Joint Statutory Committee on Corporations and Financial Services on Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85, together with a document presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the report.

In presenting the report of the Parliamentary Joint Statutory Committee on Corporations and Financial Services on Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85, I point out that the *Hansard* transcript of the committee's proceedings and submissions relating to this particular inquiry were tabled on 24 June 2003 with the committee's report on the Corporations Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 31.

Under the Corporations Act 2001, a person who carries on a financial services business must hold an Australian financial services licence to cover the provision of the financial services. Regulation 7.1.29 of the Corporations Amendment Regulations specifies the circumstances in which a person is taken not to provide a financial service and is therefore not required to be licensed. This regulation has provoked strong objections from the accounting profession. The major concern is that the regulation will not allow accountants, unless they hold a licence, to advise their clients about what superannuation fund structure will be best for them. Accountants said this limitation would be most keenly felt in the self-managed superannuation funds area. They queried why they should have to be licensed to advise on superannuation structures when, arguably, they are dispensing tax advice, not financial product advice. Apart from this, accountants said licensing would ultimately produce undesirable anticonsumer outcomes.

Firstly, licensing costs too much. The problem for many accountants is that the up-front and ongoing licensing costs are too high. CPA Australia has estimated that a restricted licence could cost between \$10,000 and \$12,000 per accountant each year. This would rise to about \$25,000 per accountant per year for a licence if they were deemed to be giving full financial product advice. Many small accountancy practices simply cannot afford this. But if accountants are not licensed they will have to refer clients to licensees for advice on superannuation structures which they themselves are well qualified to give. These referrals will result in duplication of work, toing and froing between the accountant and the licensee, and higher costs for the client. Advice will become fragmented and suffer in quality. This will be of no benefit to the client whatsoever.

Secondly, authorised representatives will be forced to flog products—that is, financial products. Accountants who want to continue advising their clients as they have always done and without the limitations imposed by the legislation will have to become authorised representatives if they cannot afford to become licensees. This brings its own set of problems. Accountants have told the committee that, more often than not, they will have to become product pushers if they are to find a licensee willing to take them on as an authorised representative.

At the hearing, the Department of the Treasury said there was nothing in the legislation requiring an authorised representative to sell financial products. The reality is, however, that many accountants, in order to maintain their status as authorised representatives, will have to meet sales targets set by their sponsoring licensees. In other words, accountants will have to compromise their independence and sell

products to pay their way. This is far from the pro-consumer outcomes envisaged by the financial services reform regime. The committee heard evidence that one of the executive directors of Taxpayers Australia Inc. has had her authorised representative status cancelled twice for not meeting sales targets.

Furthermore, CPA Australia told the committee that COUNT, the largest dealer group for accountants, had advised them that it will not sponsor authorised representatives unless they give specific product advice to clients, because it is not worth their while to take someone on who does not pay their way. CPA Australia also said they had been unable to find a licensee who would take on accountants as authorised representatives without requiring them to become product marketers.

Another problem is that not all accountants practise in areas that lend themselves to product pushing. So, even if they were willing to push products for a sponsoring licensee, the opportunity might not be there for them to do so. What happens to accountants in this position? They cannot afford to become licensed, and no-one will take them on as an authorised representative. What happens to accountants who have their authorised representative status cancelled because they have not met some predetermined sales target? Is it reasonable or in the interests of consumers to force accountants into this situation? Of course not.

I will summarise by saying that it seems to the members of the committee that licensing will not result in better advice, lower costs or better protection for consumers. Accountants are well qualified to advise their clients. The majority hold postgraduate qualifications. Many have met the stringent requirements of the Income Tax Assessment Act to become registered tax agents. No-one has presented evidence to the committee to show that licensing will raise training standards for accountants.

Accountants must meet the ongoing training requirements, quality control and ethical standards of their professional associations. Again, no-one has presented evidence to the committee to show that licensing will improve existing standards set by accountants' professional associations. Accountants must hold professional indemnity insurance. No-one has suggested that licensing will offer consumers better protection in this regard.

The committee believes that urgent amendment of regulation 7.1.29 is required so that accountants will be able to advise their clients about the relative merits of superannuation fund structures without having to obtain a licence or authorised representative status. As a longer term measure, the committee has recommended that the government should consider a wider licensing carve-out for accountants. Such a carve-out

should be consistent with recommendation 17 of the Wallis inquiry, which says:

Professional advisers, such as lawyers and accountants, should not be required to hold a financial advisory licence if they provide investment advice only incidentally to their other business and rebate any commissions to clients.

The committee recommended this in its earlier report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001, tabled in October last year. Evidence to the current inquiry builds on the arguments raised in the earlier inquiry and establishes a compelling case for not bringing accountants into the FSR licensing regime. The committee, therefore, strongly urges the government to provide accountants with a licensing exemption consistent with the Wallis inquiry's recommendation.

Before ending, I wish to make two incidental points. Firstly, the committee was disturbed that the Department of the Treasury was able to satisfy itself that licensing, except in the limited circumstances specified in the legislation, was necessary for accountants. This is notwithstanding that the Treasury has been liaising with accountants for some time and presumably has had the opportunity to consider much of the evidence which accountants presented to the committee. It appeared to the committee that Treasury had failed to give serious consideration to accountants' concerns. For instance, the committee questions how the department was able to dismiss accountants' claims about licensing costs when it had made no attempt to calculate what these might be.

The committee also notes that the department seemed to be unaware or unwilling to accept that many accountants, who have no alternative but to become authorised representatives because they cannot afford to be licensees in their own right, will have to flog products for their sponsoring licensee. This is something that should be of the utmost concern to the department as it directly conflicts with the consumer protection objectives of the financial services reform regime.

As I said earlier, Treasury's response was simply that the legislation does not require accountants to flog financial products. Such a theoretical, ivory tower response from Treasury is disturbing. It completely ignores real world practice. I suggest to the Treasurer that some of his departmental officers would benefit from work exchange experience in this segment of the private sector, to gain some real world experience. The one size fits all ideal of the financial services reform legislation is a noble approach to the regulation of financial services and is applicable in practice in most instances. However, it is not applicable without any exceptions and it is quite unrealistic to expect it to be so. Accountancy practitioners are one of those exceptions.

Secondly, the committee has noticed an increasing trend towards the preparation of explanatory statements that provide very little guidance on the purpose, meaning and application of the regulations. We have made this point in our report earlier this week, and I reinforce it and urge those responsible for preparing explanatory statements to ensure that they actually help parliamentarians and members of the public to understand their meaning and purpose. In conclusion, on behalf of the committee, I thank Kathleen Dermody, Bronwyn Meredith and the rest of the Joint Statutory Committee on Corporations and Financial Services secretariat staff for their hard work and support in the conduct of this inquiry. I commend the report to the Senate.

Question agreed to.

DELEGATION REPORTS

Parliamentary Delegation to Nigeria and South Africa

Senator TIERNEY (New South Wales) (3.50 p.m.)—by leave—I present the report of the Australian parliamentary delegation to Nigeria and South Africa, which took place from 27 October to 8 November 2002. I seek leave to have my tabling speech incorporated in *Hansard*.

Leave granted.

The statement read as follows—

Mr President, it is my pleasure to present the report of the Australian Parliamentary Delegation to Nigeria and South Africa. A delegation to which I had the honour of leading.

It had been 20 years since an Australian parliamentary delegation had visited Nigeria. One of the aims of the delegation was to establish links with the National Assembly in Nigeria and we were welcomed warmly by the Nigerian parliamentarians from our arrival.

Our delegation visit to Nigeria followed on closely from a visit by our Prime Minister just a few weeks prior. The purpose of the Prime Minister's visit to Nigeria was to meet with the President of the Republic of Nigeria, President Obasanjo and the President of the Republic of South Africa, President Mbeki to discuss the situation in Zimbabwe. At the CHOGM meeting in Australia in 2001, a troika of Commonwealth leaders from our three countries was formed to address the issue of the fraudulent elections in Zimbabwe and their resulting suspension from the Commonwealth. Discussion on this topic showed differing opinions on how the situation should be handled but we were grateful for the frankness and openness that we were able to discuss about the problem.

The delegation program for Nigeria was extremely busy. We met with a range of parliamentarians, government bodies and non-government organisations and discussed a wide variety of issues. It became evident that 2003 was going to be a challenging and eventful year for Nigeria, and a chance to demonstrate the positive aspects of Nigeria to the world.

Since our delegation visit the Nigerian elections have been held and the Obasanjo government has been returned. These elections were not held without some controversy and tragically not without bloodshed. However, Nigeria

remains without military rule and we remain hopeful that their continued strive for democracy will be successful.

Other challenges for Nigeria in 2003 include hosting the All Africa Games in October and hosting CHOGM in December.

Some particular issues in Nigeria that have had a great deal of worldwide public interest are their internal reputation for corruption and also human rights. We were grateful for the open and honest discussions we had on these sensitive topics.

Nigerian parliamentarians have long recognised that their country is renowned for corruption and fraudulent practices and this poor reputation has been a barrier to gaining investment from overseas companies. They were passionate about trying to eradicate corruption and described to us how they have been attempting to address this issue through various legislation and also by involvement with GOPAC, the Global Organisation of Parliamentarians Against Corruption.

The particular area of human rights that was discussed was the implementation of Sharia law and the sentencing to death by stoning of two women, Safiya Hussani and Amina Lawal, for committing adultery. The complexity of the issues was conveyed at length to the delegation and we have begun to understand the difficulties of the interaction of the Nigerian constitutional law and Sharia law. We were also interested to hear from some of the non government organisations that have been involved in the legal advice and support.

The report contains recommendations to assist Nigeria in a number of areas where the Nigerians looked to Australia to provide advice and guidance predominantly through facilitating ongoing contact with the relevant bodies. Areas where Australia can assist Nigeria are in providing technical advice on mining issues, in particular to enhance their knowledge of exploration, development and extraction techniques. Nigeria, whilst predominantly an exporter of petroleum products has enormous potential for minerals. Other areas when Australia can assist Nigeria are in providing advice on firefighting and fire prevention techniques, development of legislation in the parliament, funding arrangements for educational institutions, advice on organising large scale sporting events (for their All Africa Games) and to form closer ties on arts and culture.

As recommended in the report, we will be further discussing these areas with the official delegation from Nigeria when they visit Australia later this year.

Our visit to South Africa was also very informative. The program was similarly busy with many meetings and visits with a wide range of parliamentarians, government bodies, non-government organisations and AUSAID projects.

It was wonderfully impressive to hear about the history of South Africa, to meet some of the people who have been involved in the changes, from the struggle through the Apartheid years to developing a new constitution from a blank page, negotiating some very difficult areas in order to provide an equitable and workable framework for their parliament and then to the resulting strong democracy they are today.

I was pleased to provide the keynote address at the inaugural conference for the Australia- South Africa Local Government Partnership in Bloemfontein. This is an AusAID funded project that is aimed to strengthen the ties between our countries. Whilst its main aim is to strengthen the local government capacity of South Africa, especially during their transformation process, there is much that Australia

can learn from South Africa in this area. The delegation was particularly interested in the concept of the co-equal spheres of government and how the constitution enumerates which services are provided by which sphere.

We were able to visit the very impressive campus of Monash University that opened Johannesburg in 2001. It is one of two overseas campuses to be opened of the Australian-based institution. It has excellent facilities for 1,500 students and has room for expansion. As well as catering for students in South Africa and other African countries, they are also gearing themselves for distance education and currently seeking research business partnerships across Southern Africa.

We were also able to visit the Institute for Wine Biotechnology and were given a briefing on the work of the Institute and the developing wine industry in South Africa. The aim of the Institute is to be a leading centre of excellence in wine and grapevine biotechnology and research.

Tragically there is a HIV/AIDS pandemic in South Africa that is of overwhelming proportions and will take a great deal of assistance from the rest of the world to even begin to minimise the impact. Gender violence is also an issue of great concern in South Africa and some of the delegation had the chance to visit another AusAID funded project in place, the Addressing Gender Violence Fund. This was reported to be an impressive illustration of aid money well spent.

Although there are many enormous challenges ahead for the two countries, we could also see evidence of many great successes.

Both of these countries play a significant role in leading Africa, particularly in terms of cooperation and integration amongst African countries. We were fortunate enough to meet with some of the parliamentarians and the secretariat of ECOWAS. ECOWAS is the Economic Community of West African States, promoting trade, cooperation and self-reliance in the region. We were also given a number of briefings on the African Union initiative, NePAD, which is the New Partnership for Africa's Development, which sees African leaders working together cooperatively to provide a common African platform to make it easier for overseas countries to deal with African countries and therefore attract investment.

During the visits, I presented invitations to the Presiding Officers in both countries from our Presiding Officers, to visit the Australian parliament sometime in the coming year. We all look forward to the reciprocal visits, where we can further discuss some of the issues that we had begun to explore, especially those that have been highlighted in this delegation report.

On behalf of the delegation and myself, I would like to thank the Australian High Commissions in Nigeria and South Africa for doing a highly professional job in coordinating the visits and providing excellent support and advice.

Finally I would like to thank the other members of the delegation; the deputy leader and Member for Canberra Annette Ellis, the Member for Canning Don Randall, the Member for Barker Patrick Secker, the Member for Bradon Sid Sidebottom and the Senator for South Australia Senator Natasha Stott Despoja for their cooperation and hard work. It was a very successful delegation. We have established direct relationships with the parliaments of these countries and gained valuable insight into differing points of view.

I commend the report to the Senate.

Parliamentary Delegation to the Eleventh Annual Meeting of the Asia Pacific Parliamentary Forum

Senator FERRIS (South Australia) (3.51 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the eleventh annual meeting of the Asia Pacific Parliamentary Forum, which took place in Kuala Lumpur, Malaysia from 13 to 16 January 2003. I seek leave to move a motion in relation to the report.

Leave granted.

Senator FERRIS—I move:

That the Senate take note of the document.

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

Leave granted.

The statement read as follows—

The Asia Pacific Parliamentary Forum – the APPF – is an organisation which, each January, brings together members of Parliaments from throughout the Asia Pacific Region. Parliamentarians discuss matters of mutual interest and adopt formal resolutions. Australia has been an active participant in the Forum since it was established in 1993 and many Members and Senators have now attended the annual meetings.

The subject matter of the APPF is wide ranging, covering strategic, economic, environmental and socio/cultural aspects of our foreign relations. The Forum provides an important opportunity for Australian parliamentarians to press Australia's interests. This is done formally through our draft resolutions, through negotiations to achieve consolidated resolutions with other delegations, in presentations in the plenary and during bilateral meetings with other delegations. We also have the opportunity to ensure that other parliamentarians in our region understand Australian policies and priorities through the informal occasions which arise throughout the meeting.

The delegation to the 11th Annual Meeting continued the productive work of previous delegations. The delegation worked together as a very effective team and represented Australia's interests very well.

Highlights of the meeting included our substantial contributions to four of agreed resolutions of the meeting. These covered Terrorism; Trade Agreements and the World Trade Organisation, People Smuggling; and Environment and Development.

As the first APPF meeting following the Bali tragedy which so greatly affected the region in which the meeting was held, the issue of terrorism was more than just an important agenda item. It permeated all aspects of the meeting directly and indirectly.

The Australian delegation enjoyed two significant and successful bilateral meetings with the Indonesian and Malaysian delegations respectively. At these meetings issues such as the welfare of regional students in Australia, the role of the media, travel "advisories" and other sensitive issues were discussed in a positive way to the benefit of both delegations.

Again, organisational issues including an ongoing secretariat were raised and a detailed report by the Japanese delegation on proposals for structural change to the Forum, was circulated. Member countries were asked to respond to the proposals in this report by August. The report being

tabled today includes advice to the Presiding Officers on an Australian response to the proposals put forward by Japan.

The delegation wishes to thank the organisers of the meeting, especially the Presiding Officers of the Malaysian Parliament and their staff who did an excellent job of organising the conference.

We also thank those who supported the delegation in practical and policy advice matters. These included staff from the Parliamentary Library and the Department of Foreign Affairs and Trade for their assistance with drafting resolutions and with briefing material before the meeting. While in Kuala Lumpur the delegation was assisted by Mr Nick Brown, the acting High Commissioner. Our special thanks go to Mr Damien Miller, from the High Commission who attended throughout the conference as adviser. We also thank Mr Peter Hill from the Australian Federal Police who accompanied the delegation. Ms Brenda Herd from the Parliamentary Relations Office was characteristically efficient and helpful and we thank her also.

Finally, I thank my fellow delegates and the delegation secretary for making this another successful Australian contribution to the APPF.

Question agreed to.

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 2003

Second Reading

Debate resumed.

Senator ABETZ (Tasmania—Special Minister of State) (3.53 p.m.)—This gives me the opportunity to praise the federal government on its Export Market Development Grants Scheme and to indicate that, in my home state of Tasmania, a variety of groups and organisations have been the beneficiaries of these very good grants. It is a great scheme. The Tasmanian Symphony Orchestra has been the beneficiary of such a grant to allow it to go to South America. The Tasmanian apple and pear industry has also been a beneficiary. Those grants show the great diversity of industries and organisations that can benefit from this great federal Liberal government initiative.

Senator LUNDY (Australian Capital Territory) (3.54 p.m.)—by leave—Earlier today I was working through my second reading contribution to the Export Market Development Grants Amendment Bill 2003 before the Senate, and I would like to take a few minutes to conclude my remarks. The key point that needs to be made, of course, is that the coalition have not served Australian exporters well with the proposed changes in this bill to the Export Market Development Grants program. Indeed, their treatment of that program during their years of government has been unfortunate. With the government's stated policy of trying to double the number of Australian exporters, it is folly to think that you can limit the size of the export market development grants pie to a certain size and think that, by spreading it more thinly through more and more exporting companies, that will achieve the desired result. If the government's policy objective is achieved by doubling the number

of exporters, it certainly will keep the focus on far smaller grants and far smaller companies.

In the bigger scheme of industry policy, one of the most important things about the EMDG Scheme is that it helps Australian companies grow; it helps them expand their export capability and potential. More than anything else, this policy of limiting the export market development grants, spreading that money more thinly across more businesses, will only make it less relevant, less pertinent and less useful to those businesses. The ultimate effect of that will be, of course, to restrict the capacity of these small businesses to grow through their exports. The nature of the Australian business sector is such that we have a huge proportion of small businesses. We have the presence of very large, usually multinational, corporations and a very few very large Australian corporations, one of which of course is Telstra, but very few in between. We have very few businesses on a really important growth trend, or growth cycle, to make Australian businesses medium sized businesses in global terms—hopefully, one would think, with an opportunity to become very large Australian businesses operating in the global market.

These are really important outcomes to aspire to in Australian industry policy, but the changes under this bill will restrict the capacity of Australian exporting businesses to grow to the size that they need to to make a real impact for themselves and their ability as a company to create wealth but also the return that that will then provide to the Australian economy. Australia does need to grow its exports. I mentioned earlier the atrocious size of the trade deficit. I mentioned in particular the horrendous size of the trade deficit in ICT. I believe that this policy will only prevent Australian companies from growing and from having any hope of making an impact on those trade deficits—and no hope at all of reversing the trend of those deficits just getting bigger.

Labor will be supporting the Democrats' second reading amendment. The first paragraph of the amendment notes that the EMDG Scheme is an important means of support to Australian industry. That is absolutely true, and I have made that point consistently throughout my presentation on this bill today. The second paragraph calls on the government to maintain the real value of funding under the scheme by indexing it to inflation. That is an excellent sentiment to be expressing in the second reading of this debate, but the government have shown that not only have they not done that to date but also they have significantly limited companies receiving over the \$60,000 threshold. That is such a small proportion of that which the scheme formerly delivered that the support it offers is now quite marginal in many respects. It is a worthy sentiment. I do not expect the

government will listen to it; nonetheless, Labor is happy to provide its support to the Democrats' second reading amendment, although we will still be opposing the bill.

Senator RIDGEWAY (New South Wales) (4.00 p.m.)—The Australian Democrats will not prevent the passage of the Export Market Development Grants Amendment Bill 2003, but I do want to express some grave concerns about the way this very valuable scheme is operating in practice. As has already been indicated, I will be introducing a second reading amendment to try and go some way towards addressing this issue. The Export Market Development Grants Scheme is an important and vital means of support for Australian industry, particularly those trying to access foreign markets. It provides Australian businesses with critical support in expanding their activities and in establishing export markets, helping them to address the inherent risk involved in this type of endeavour. Encouraging an export culture of this nature within the Australian economy is vitally important. The scheme goes a long way towards creating new exporters, assisting with diversification of exporters into new markets, generating jobs within Australia and encouraging Australian businesses to innovate.

The fact that every dollar spent on export assistance generates an estimated \$12 of returns to the Australian economy further underlines the importance and economic efficiency of a scheme like this one. Each year, funding allocated under this scheme generates more than \$1 billion of incremental export earnings, which has a positive impact on our terms of trade and on jobs and small and medium sized businesses in this country. However, in practice, the Export Market Development Grants Scheme does not operate as well as it could. Essentially, there is not enough money to go around. The government announced in 1997 that a cap of \$150 million would be fixed to the amount of funding available under the scheme. As became obvious from comments made by representatives of industry, and from the very brief committee inquiry held last week, the real value of the program has decreased. The Australian Chamber of Commerce and Industry reports:

The real value of the program has fallen by around 16 per cent over the past six years, and is likely to fall by some 27 per cent by 2005-06 unless it is indexed for inflation (or unless new funding is allocated).

The Democrats support the restoration of full funding to the Export Market Development Grants Scheme to allow the scheme to operate to its full potential and to provide incentives for all businesses to export more. By leaving the \$150 million cap on the scheme and not indexing this amount to account for inflation, I think the government is making it far more difficult

for small businesses that have begun to export, with the assistance of the scheme, to continue to do so.

The scheme has been reported as being too successful for its own good. There are too many applicants and all of them are entitled to a share of an increasingly overcommitted pool of money. With an increase of 23 per cent in the number of firms applying for grants in the last financial year that payments were made under the scheme, many exporters received only 75 per cent of their grant entitlement. The government recently conceded that the payout rate for second tranche payments could be as low as 50 per cent. In fact, it has just this week been gazetted that it will be more like 33 cents in the dollar. That means that many of those that have put in applications and have been successful in their bids, in their second round payments are more than likely not going to receive the 100 per cent payment but just 33 cents in the dollar.

We have to ask how, with those changes, small and medium businesses will be encouraged to continue to engage in export activities, because I think those returns will affect the confidence of business to invest money up-front. The failings of the scheme in practice are having a significant impact on business's confidence in the scheme, particularly as it applies to small and medium enterprises. As the Austrade review of the scheme in 2000 conceded:

Once exporters begin to expect not to receive the full amount of the grant payment they will make adjustments to their export promotion expenditure. This [of course] is likely to reduce the amount of additional exports generated compared to what would have occurred if the grant was paid in full.

Firms will obviously be discouraged from entering into export activities because of the lack of certainty about the amount of reimbursement that they would get under the scheme. The impact on business confidence is a serious issue with this scheme as it currently operates because I think that this scheme, compared to any other support programs in industry, is probably one of the most popular and effective.

The government have made it clear that the \$150 million cap is all the money that will be available under this scheme. The question then is: what will be the best way to spend the moneys available? According to the government, by reducing the turnover ceiling and placing restrictions on previous recipients entering new markets, it will be targeting smaller businesses entering into export activities for the first time. All this is to achieve their stated aim of doubling the number of Australian exporters by 2006. The effect of the changes will be to take money away from exporters in already established markets. Aside from doubling the nominal number of export businesses, we would be achieving very little and might even be going backwards. It seems to me that it is not

an effective use of money, because not enough has been done to try and gauge what will be the likely impact of those changes.

However important it is to double the number of exporters, if already established successful exporting businesses are going to miss out on the scheme, that raises concerns. By changing the policy focus away from already established exporters that have a high propensity to diversify and enter into new markets, the government are allocating public money in a less effective way that will yield less efficient returns.

One industry that I want to mention in particular is the tourism industry. They are already reeling from the cumulative effects of the September 11 tragedy in New York, the Ansett collapse, the Bali bombings, the war in Iraq and now SARS. Indeed, this is an industry in crisis. They are crying out for support from the government and I would have thought that this scheme provides the best opportunity.

The tourism industry is one of Australia's most important export industries, and the tourism sector depends on programs such as the EMDG for its very survival. The Australian Tourism Export Council, ATEC, believe that the amendments to the bill will have a particularly detrimental impact on the tourism industry. That was something they stated at last week's committee hearing. Firstly, as I have said, the fact that the scheme is capped means that therefore exporters will miss out on their full entitlements. Further, the tourism industry already suffers under a heavy tax burden.

Figures from last year's World Travel and Tourism Council's tax barometer show that inbound tourists in Australia are among the most highly taxed in the world. When a tourist comes to Australia they pay ticket levies, the passenger movement charge, the noise levy and then the GST on top of their purchases. This is a tax burden that is not faced by any other industry in the export sector. It is important to keep in mind that the value of any assistance received by the tourism industry is counteracted by the fact that a large percentage of the export revenue generated is lost through tax. This is going to make it even more difficult for them to reap the returns that the scheme promises and to break into new markets when they have been through pretty tough times.

Finally, the removal of support for successful exporters entering new markets makes little sense given that established exporters are more likely to successfully develop new markets. Entering into new markets is, as we know, an inherently risky activity. Businesses depend on the measure of risk management that the grants scheme provides which allows them to invest in diversification and new market development with a higher degree of certainty and confidence. In many respects the bill can be criticised

because it undermines that confidence. New exporters have to contend with the fact that they may not receive their full entitlement under the scheme and more established exporters entering risky new markets will be prevented from accessing the support they require altogether. It does not sound like the smartest policy in the world.

In conclusion, the Democrats will not prevent the passage of the bill. There are a number of reasons for that. The basic reason is that none of the major problems that are currently undermining the efficiency of the scheme can be properly addressed by the bill itself. It would be nice to think that in this bill we could turn around and produce that miraculous outcome of increasing funding so that more applicants to the scheme for grants were able to get them. Of course that is not the case and, as we know, the government has capped it at \$150 million since 1997. What is needed is for the government to make a real commitment to the scheme and provide the funding necessary to make it effective. It is not enough to simply say you want to double the number of exporters. We have to get smarter than that. That means also looking at the rate of return and what it is that we yield, both in terms of being able to access foreign markets and what it means for jobs and the trade between Australia and other nations. There are better ways to target the funding to provide real assistance to new and existing Australian exporters.

For now, however, we must try to ensure that the value of the scheme does not disintegrate any further. If \$150 million is all the money that will be available under the scheme then the very least that the government should do is show real commitment to Australian exporters in ensuring that the value of the \$150 million scheme does not fall any further than it already has. As I have mentioned, the Australian Chamber of Commerce and Industry have estimated that the value of the scheme is likely to fall by some 27 per cent by the year 2005-06 unless it is indexed for inflation. We need to make sure that the value of the scheme does not decline any further. For that reason, I will move an amendment that has already been flagged. Before I do that, there are a few things that I want to say to sum up.

It seems to me that the scheme itself provides benefits to companies in being able to access foreign markets. In particular, this scheme is one in which there is unequivocal support from industry as compared to all other schemes. It is also one that retains its ability to deliver on doubling the number of exporters by the year 2006. There is an expectation amongst industry that the scheme will continue even in the modified form that is being proposed. Nowhere along the way—certainly not from the industry groups that I have spoken to or from the submissions

that were put in to the inquiry at very short notice last week—has anyone from industry said that they do not want this scheme to continue or even that they would oppose the bill outright.

Indeed, the fault of the scheme is in the fact that it has been too successful. The problem is that the government has not over time allocated enough money to deal with the growing demand. The question it raises in terms of being able to modify that scheme, even looking at putting a cap on it, is that there does need to be a review to look at whether the cap is appropriate under the circumstances and whether that is detracting from our capacity to go beyond simply doubling the number of exporters by 2006. In many respects it is just as important to talk about the quality of the regulation as it is to talk about the quantity of the things that we want as a result of more moneys or being able to deal with the demands that are being made of the scheme. It is for that reason that, on behalf of the Democrats, I move the second reading amendment in my name:

At the end of the motion, add:

‘but the Senate:

- (a) notes that the Export Market Development Grant scheme is an important and vital means of support to Australian industry and their export activities; and
- (b) calls on the Government to show a commitment to maintaining the real value of funding available under the Scheme, by indexing it to inflation”.

Senator COOK (Western Australia) (4.13 p.m.)—

I rise to speak on the Export Market Development Grants Amendment Bill 2003. I have to say that this bill is a disgrace. It should be rejected. This is another one of these bills that the government puts forward dressed up as doing something progressive while in actuality it does something regressive. This bill appears to deliver a benefit. It actually takes something away from business. This government that trumpets its concern for small business is poking it in the eye with this bill. Having said that, let me justify those statements. As a former Minister for Trade, I administered the scheme. It was then a genuine benefit to Australian business. Ever since the government came to office in 1996 it has targeted this scheme and made it more difficult for the scheme to deliver any real advantage to the Australian community. The fact that it has still managed to do so—despite being reduced, being capped and having hurdles placed in the way of access to it for Australian business—just shows the resilience of Australian business in the face of a mean-spirited government.

These are the facts. Australia has a record trade deficit. We have never had a trade deficit bigger than we have at the moment. We are a nation of small businesspeople in the main. Abroad, we sell big items

of agriculture, big items of mineral resources, big licks of services trade and a small but nonetheless very important section of manufactured goods. If we are going to increase our exports to lower the deficit and start to converge on the gap between exports and imports, what we need to do in this country is sell more value-added goods and command bigger volumes of goods exported and higher prices for the goods we sell. If you define the problem in those terms, as any economist does, then what you should be doing to try and lower the trade deficit in this country is energising small- and medium-sized business as well as big business to get into the world export market and take their share of it. This scheme hobbles the ability of small business and medium-sized business to achieve that result at a time, I repeat, when we have a record trade deficit.

The government’s formula in dealing with the trade deficit is to trumpet this mantra about doubling the number of exporters. But the truth in economic terms is that if you double the amount of exporters but you do not export very much more then the fact that there are more people exporting does not alter the deficit problem. While in theory if you doubled the number of exporters we now have you would solve the deficit, the target of this scheme is to simply increase the number of businesses exporting without going to the question of whether they are exporting higher value-added goods, whether they are exporting bigger volumes of those goods or whether they can command higher prices in the world market.

At the moment the global economy is running fairly flat and, from where we sit on the globe to where the markets are around the world, it is more difficult for our companies to crack those markets because of sluggish economic growth around the world. On top of that, the Australian dollar is appreciating against most global currencies. That, in effect, means that the prices for Australian goods in foreign markets are more expensive than they were when the dollar was lower against global currencies. So not only is world economic growth sluggish and opportunities therefore limited but the prices of our goods are higher because of the appreciation of the dollar, and in a limited market we are competing with higher prices to win a bigger share. In those circumstances, you would have thought that the government would have done something to try and encourage Australian business more than this bill does.

I did not hear all of what my colleague Senator Lundy said, but I am sure that when I read the *Hansard* I will sign on to everything she has said. I read the second reading contribution by Mr Emerson in the House. I must say to Senator Ridgeway, too, that I absolutely agree with a lot of the things he said—he has pinned the government on this as much as any

speaker in this debate is likely to do. In 1996, when this government came to power, they introduced the slash and burn budget of 1996, in which they cut government expenditure across the board. They actually almost induced a recession in the country in doing so by withdrawing public investment from the economy in the way which they did.

Senator McGauran—We had to! It's called a surplus!

Senator COOK—Go to the statistics. Do not argue slogans; look the figures. One of the things that they cut at that time was the Export Market Development Grants Scheme. They put a cap on it of \$150 million. That cap remains the same now as it was then; there is a bigger deficit in trade now but there is the same cap as there was in 1996. Inflation over the years has eroded the value of this scheme to business—that is Senator Ridgeway's point and it is a valid one. If the scheme had remained uncapped, as it was under Labor, then businesses seeking opportunities in the international marketplace, in whatever numbers they were seeking it, would have a scheme to ease them in to the international marketplace. But putting a cap on it means only a given number of businesses can access the scheme. The value of the scheme now is about 75 per cent of what it was before. So this government has capped it, reduced the number of businesses that can access it and, therefore, reduced the value in closing the deficit.

But they have not done just that; they have also introduced a number of hurdles that business has to surmount in order to qualify for a grant. So they have done it both ways: cap it and create hurdles. If you get through the hurdles and you are still within the cap you might get some incentive to export. I repeat: we have got a record trade deficit—the biggest trade deficit we have ever had—and this is the government's response to the situation.

One of the reasons for all of this, of course, is that this scheme is a scheme that the Department of Finance and Administration has been trying to eliminate. I know that—I sat in budget cabinet for a number of years and dealt with the submissions of the department of finance to eliminate the scheme. Why do they want to do it? They have this rational economic view of the world: they say that the global market, which represents the market, has a certain level of aggregate demand in the global economy, that Australian business has a certain amount of opportunity and that it is simply a matter of the market working and those with supply will find those that have demand. That is a great theory and it is certainly a theory that generally has a lot going for it. But bear this in mind—

Senator Boswell interjecting—

Senator COOK—I would not interject if I were you, Senator Boswell, because you will be embarrassed. Bear in mind this: most Australian companies are small businesses. For that theory of supply finding demand to work, you have to have transparency; that is to say, business has to know where the opportunity is. I defy anyone in this debate, even the most rigid economic rationalist, to come forward and explain how a small Australian company can have the intellectual network globally to find a market for its goods and services without some assistance. They just do not have the capacity. The feature of a small business in Australia is that they have very little time to do anything other than run their business.

To develop a new market requires a considerable effort; to develop a new global market requires a much bigger effort. Unless the government provides those companies with a bit of assistance to get into the market—to assess market opportunity offshore, to go back a couple of times to encourage clients, to prove reliability, to test their goods and services and then sell them—small businesses will not succeed because (a) they do not know and do not have the capacity to find out where all the opportunities are and (b) they cannot afford to travel offshore and look for themselves because they are small businesses. They require a scheme such as this to help them. What does the government do? It cuts it back—at a time, I repeat again, of a record trade deficit.

Let me go to what the government has said are the virtues of these amendments. The government, out of its own mouth, proves the lie to its own slogan. The devil is in the detail in this scheme. Forget the headlines that the government wants credulous journalists to write on its behalf and look at what the scheme actually does. Here is what the government says this scheme does. The amendments propose to reduce the income ceiling for applicants from \$50 million to \$30 million. That is a good change, and I applaud it. The government can rightfully take a bow, and I acknowledge that. The amendments propose to reduce the maximum grant from \$200,000 to \$150,000. That is a regressive change. You get less money now, in a tighter international marketplace in which the prices of Australian goods are higher, than you did before. How are Australian companies supposed to break through fierce international competition when you reduce the amount of incentive for them to do so?

The next point is that the amendments will reduce the maximum number of grants from eight to seven. These grants are, of course, refereed. That means that, under these amendments, you cannot go to the marketplace as frequently as you used to in the past—again at a time when the global market is tight and the prices of our goods are higher. That is not a very sensible change, where particularly in this re-

gion of the world our market is in Asia and Asia is the only section of the global marketplace growing at a rate anything like strongly. In that market the particular feature is to establish the human relationship between seller and buyer—to establish a business relationship but with a human dimension—because the Asian culture wants to know who it is that they buy from. Frequency of contract is an important element in landing big-ticket contracts in Asia. So we are reducing the ability of companies to do that.

The amendments will remove the \$25 million export earnings ceiling. I think that is a positive thing, and I acknowledge that to the government. They will remove the provision for additional grants for entering new markets. You would have thought that the government would be a bit more lenient about providing incentives to companies to enter new markets and to establish a profile for Australia in new markets where Australian goods and services are not known but in which, for us to be a true export nation, they need to be known. But not under these amendments they're not.

So on the government's own proposals of what are allegedly the virtues of this scheme—and there are five of them—1½ ticks and three very heavy crosses. That is half a step forward and two backwards—and this is marketed as an advantage to small business. That is a joke. The truth about this scheme is that, from the date it was first introduced under the Whitlam government, it has been the most visible business program offered by the government, irrespective of who has been in government. The truth about this scheme is that, when the government does an assessment as to what are the most recognisable initiatives it provides to help Australian industry, it comes out as the most recognisable. The truth about this scheme is that, when the government does an assessment as to which schemes business regard as being user-friendly and meeting their needs most, it comes first, second or third at the top of the pops. Business like it, business know it, it is entirely visible and it is regarded by them as one of the best schemes—and we are nobbling it.

If you want to know what the advantage of this scheme is, it has been independently refereed. Governments have to be accountable to the people. We are spending taxpayers' money when we put money into a scheme like this. When we legislate to spend taxpayers' money, we have to stand up and ask whether we are getting value for that money or is it money down the drain. This scheme has been independently refereed to see whether or not we are getting value for money. The referee was Professor Ron Bewley, an econometrician from the University of New South Wales. He found, in his independent analysis, that for every one dollar spent on this

scheme \$12 was earned. I would not mind being an investor who got \$12 back for every dollar I put down. I would think that is not a bad deal. If I were a taxpayer looking at what this scheme does in the broad community for my money, I would say, 'Wow! That is not a bad investment.' If I were a taxpayer concerned about lower taxes and I thought about what the government was doing to close the trade deficit—because the wider the trade deficit is, and it is at record levels now, the more pressure there is on inflation and the more pressure there is on interest rates; so, if this deficit continues to widen, pressure goes on inflation and interest rates and they begin to rise—I and most taxpayers would say to the government, 'What are you doing to keep the pressure on inflation down and interest rates low?'

The government could say, if it ran the scheme properly, 'We are encouraging as much export as we can, hand on heart, truthfully, and the more we can get into the field through our export market development grant, which has got a one to 12 earning ratio, the less pressure there will be, the narrower will be the deficit.' I think most taxpayers will say, 'Well done, government. That means we don't have to pay higher interest rates. We don't have to pay higher prices, and we probably save more money because of the investment we make in the scheme.'

That is the true economics of the scheme. It is not the economics of the scheme that you will get from Treasury or from Finance—particularly not from Finance. Finance will try to monster trade ministers into making savings and trade ministers will capitulate and make savings and cut off their nose to spite their face, which is what these amendments do. Where trade ministers capitulate, that is a sign of a weak minister unable to stand up to an economic rationalist agenda from Finance or the so-called 'fiscal daleks' of Finance who insist on savings without any regard to whether the outlays that are being made generate growth. If they generate growth, they generate earnings to the government as well. Growth to the economy means bigger revenue for government and, of course, the daleks over there in Finance say, 'We've just got to cut expenditure.'

If you look at the justification for the scheme you can see the hand of Peter Costello. Even in the minister's second reading speech he speaks about 'fiscal rectitude'. Remember, according to an independent assessment of it, what he is cutting back on is a scheme for which, for every dollar outlaid by the government, \$12 is earned for the Australian economy. I think that is a pretty good deal.

I think that it is appropriate to clarify Labor's position on the second reading amendment moved by the Australian Democrats. Since Senator Lundy made her comments we have learnt that Labor was unable to

agree to a form of words so Labor will therefore be opposing the Democrat amendment. I said earlier—and I stand by these remarks—that I agree with a lot of what Senator Ridgeway said, and I do. I think he has pinned the government very well in his presentation to this chamber. But the question remains: what do we do about it? Do we vote to make the scheme worse or do we carry an amendment which implores the government to do the right thing—and I acknowledge that Senator Ridgeway's amendment, if carried, would do that—but with the government then able to say, 'Thank you very much, but we'll disregard your advice'?

In those circumstances, I think we should defeat this bill, frankly, and we should be able to say to the Australian business community, 'We do so honestly in your interest.' This is another attempt to shave yet a few more savings off export market development grants to hobble Australian industry at a time when there is a widening trade deficit and a trade deficit at record levels. At a time when international economic activity is sluggish, the market opportunity lower, and when the Australian dollar is appreciating, making the price of our exports higher in foreign markets, we should be doing much more than this bill does or, indeed—with the greatest respect to the positive amendment that Senator Ridgeway has put—much more than indexation of the scheme would do. It is about time in this country that we did not simply talk about flummery like doubling the number of exports, but we talked about solving the problem we face. We should not be pretending that a slogan does that; we should be putting in place programs that do it.

Senator GEORGE CAMPBELL (New South Wales) (4.34 p.m.)—The Export Market Development Grants Amendment Bill 2003 proposes the following changes to the grants scheme: (1) a reduction in the annual turnover ceiling from \$50 million to \$30 million; (2) a reduction in the maximum number of grants from eight to seven; (3) a reduction in the maximum grant amount from \$200,000 to \$150,000; and perhaps the most puzzling of all the proposals in this bill, (4) a removal of additional grants for entering new markets. I do not want to repeat a lot of what my colleague Senator Cook has said in respect of that matter, but that last proposal is just incomprehensible. Here we are in a global economy where exporting, we are told, is the lifeblood for sustaining our economy, and our businesses are told they cannot get any assistance to get into new markets to expand our opportunity for trade. It is a totally incomprehensible proposal.

The Export Market Development Grants Amendment Bill reduces the resources available for exporters. It is a piece of legislation that is born out of a necessity created by the government's cut to the ac-

tual scheme. In government, Labor was very successful in promoting exports, particularly in the area of elaborately transformed manufactures, to a point where Labor's Export Market Development Grants Scheme reached a total of \$202 million before we lost office.

What happened when the coalition won government in 1996? They did two things: firstly, they cut the Export Market Development Grants Scheme and, secondly, they reduced the 150 per cent R&D tax concession—two crucial policy instruments for taking Australia on the high road to high skills and higher wages. They cut the Export Market Development Grants Scheme from \$202 million back to \$150 million and, to worsen the situation, capped the EMDG scheme at \$150 million. The operation of the combination of that cut from \$202 million to \$150 million and the capping of the scheme at \$150 million has meant that there has been a 36 per cent cut in the real value of the Export Market Development Grants Scheme under this government. Under the pretence of increasing access to the scheme for small business, the government is dishing out an ever-smaller EMDG pie to more applicants. This is typical of the Orwellian approach this government takes to dealing with most issues. It is a government that claims that less is in fact more.

The Export Market Development Grants Scheme is the most significant policy instrument for encouraging exports. The coalition government could hardly have chosen a worse time to cut export incentives. In 2002 Australia experienced its biggest trade deficit ever. It was no one-off event. Already, Australia has recorded 17 successive trade deficits, with no end to the succession of trade deficits in sight. But the government is in denial about this problem. It attributes the continuing deficits to the worst drought in 100 years. The worst drought in 100 years could not be responsible for each and every one of those 17 successive deficits because there was not a drought when that succession of deficits commenced. It has been pointed out that, even during the worst drought in 100 years, primary commodities account for 63 per cent of Australia's merchandise exports, up from 59 per cent in the last year of the previous Labor government.

This government has failed miserably to continue the diversification of Australia's export base which was embarked upon by the previous Labor government and which was going so well. This government has failed to transform this economy into one concentrating on the export of elaborately transformed manufactures. Despite strong manufacturing export growth over the decade to 1995, ETM exports still account for less than 25 per cent of Australia's total export income, compared to an average of almost

two-thirds for the APEC countries. This is due to this government's failure to encourage ETMs, and a total lack of a coherent industry development policy.

Saul Eslake, of the ANZ Bank, has highlighted this alarming slowdown in the growth of Australian exports of sophisticated manufactured goods and has partly attributed it to a failure to institute industry plans and export encouragement on the part of this present government. Of the sophisticated manufactured exports that are doing well, each and every one of them has been the subject of some form of industry plan. Let us look at them. The automotive industry—sembled vehicles and components—has benefited from Labor's industry plan for that industry, which was the so-called Button plan and the predecessor to the current plans that have been put in place. Similarly, the pharmaceutical industry has been a strong exporter for Australia and there has been substantial growth in exports from that industry. Again, it was the subject of a Labor plan: factor F. Positive industry policy makes a real difference for these industries and can do so in the future.

The second excuse that the government uses in trying to explain away Australia's appalling export performance under its stewardship is that there has been a global economic slowdown. The fact is that many of Australia's major customers are growing quite strongly. Certainly, if you analyse the import figures for many of our major trading partners, those imports are growing very strongly—the major exception being Japan. If the global economic slowdown is the cause, the government needs to answer this question: why is Australia losing market share in Asia, the European Union and the United States? If it is a global economic slowdown then that should affect the exports of all countries. There should not be a change in the relativities, but there has been a change in the relativities in terms of our trading partners. It is much to Australia's detriment, because we are losing market share in these countries.

The government has forecast a further, if smaller, decline in our trade performance. Those forecasts, yet again, are overly optimistic because they are based in the first instance on the assumption of an Australian dollar worth US60c. When the budget was brought down, the Australian dollar was worth US65c. It is now above that point, and there are no signs that the Australian dollar is going to fall back to US60c in the foreseeable future. There is no end in sight to the succession of trade deficits. There have been 17 already, and there are many more to come. With each and every monthly trade deficit, the current account deficit gets worse. Under this government, Australia has experienced both its worst ever and its second-worst current account deficit. But the government ignores the problem, preferring to leave everything to

the market. However, we need to pay attention to this problem, because when those current account deficit figures come in every three months, they in turn contribute to Australia's net foreign debt.

We all remember the then shadow Treasurer, Peter Costello, rolling out his 'debt truck' in 1995, accusing the Labor government of reckless economic management, and the present Prime Minister saying that no government had done more to denude the sovereignty of this country than the Labor government. Why? Because at that point they argued that net foreign debt was \$180 billion. It took decades for Australia's net foreign debt to accumulate to \$180 billion; it took seven years under this government to double it from \$180 billion to \$362 billion. They then promised to fix foreign debt. Prime Minister Howard said that one of the first priorities of his government would be to fix the current account deficit and to fix foreign debt. How effective has he been at fixing it? He has managed to double it in seven years. It is now \$362 billion, which is the equivalent of \$18,000 for every man, woman and child in Australia. This government has addicted Australia to foreign debt.

In writing this speech, I looked through *Hansard* to discover what the then shadow Treasurer, Peter Costello, had to say about foreign debt when he was in opposition. I found some very interesting comments. It is interesting to quote them, because they demonstrate the hypocrisy of this government. For example, in 1993, shadow Treasurer Peter Costello quoted the FitzGerald report in saying:

We cannot, on a sustainable basis, continue to finance the investment we need to grow over the 1990s, and into the new century, by going progressively further into foreign debt.

Peter Costello then asked:

Where are we now? We are \$172 billion in debt—more subject to the dictates of the international financial markets than ever.

What about now? With foreign debt at a colossal \$362 billion, are we twice as subject to the dictates of the international marketplace? On the basis of what Peter Costello said back in 1993, we are not just subject to the dictates, we are shackled to the dictates of the international marketplace. But do we hear a squeak out of the Treasurer about how he is going to fix the situation? No. All we hear are excuses that it is the drought or that it is someone else's fault et cetera. Mr. Costello had this to say in 1994:

Australia is mortgaging its prospects of future wealth and prosperity on a mounting foreign debt. With every extra dollar of foreign debt which accumulates, the economic sovereignty, the ability of Australians to choose freely and openly from every possible alternative which is before them, is diminished just that little bit more.

You have to ask the question: how far is it diminished now? In another speech he made that year, he said:

This government has made Australia a debt junkie, borrowing from overseas to try to fund deficits, investments and infrastructure because it has not put in place a policy to create domestic savings.

He said it was a 'let the children pay policy of the Labor Party to rack up foreign debt and interest servicing costs'. Thanks to the efforts of this government over the past seven years, we now have the policy of 'let the children's children pay' because the debt is growing at such a rapid rate that the next generation will not be able to pay the debt. It is going to take several generations to be able to deal with that issue. And it is mainly attributable to this government's abysmal performance with respect to promoting our exports and our export opportunities. You have to ask the question: where is the debt truck now? Surely the government cannot find a garage big enough to hide it. I suggest that they probably very quickly had it scrapped when they saw the rate at which it was growing after they came to power in 1996. To cap it all off, the current Treasurer said in 1995:

We want to make sure that we can break down for Australia a policy of this government which has been to put the country into hock in relation to debt and foreign equity, because that has been the policy of this government over the last 12 years.

Well, he certainly broke down a policy. That was a policy to support exporters and transform this economy into an economy specialising in elaborately transformed manufactures. Instead we have policies, as demonstrated by this bill, that put the country simply further into hock. This is the climate in which the government is cutting support for exporters.

During the last round of estimates hearings, Australia trade officials revealed that exporters eligible for more than \$60,000 in export market development grants will receive only 33 per cent of their entitlements above \$60,000. This is drastically down from the 75 per cent they received last year. It is difficult to understand how the government intends to double the number of exporters by 2006 if it is cutting the assistance packages that are available to those exporters. Planning for overseas promotional activities involves long lead times. Existing exporters, currently in the promotional planning stage, will be significantly disadvantaged by the cuts to this scheme. Their plans will have been based on the existing grant provisions. The rationing of grants has also provoked significant dissent from the industry. The media has reported quite extensively on the disastrous impact this will have on the IT industry, for example. It should be noted that this problem is not just limited to the IT industry or recipients of this specific program.

Whenever this government gets into financial trouble, it simply rations the industry programs. We have seen it do it with this program; we have seen it do it with the R&D Start funds; we saw it do it with the SIPS program in respect of TCF industries; we have seen it do it with others. People are sick and tired of a government which over the past seven years has paid lip service to the needs of industry but when it comes to making the real decisions—when it comes to supporting programs that make a real difference in our capacity to expand our industrial base—what does it do? It cuts, slashes and burns. This government has cut one of its chief policy instruments for encouraging exports and, at the same time, it has cut a chief policy instrument for promoting innovation and high-value manufactured exports in this country, which was the R&D tax concession.

The reality is that it has no view about the future of this country. It has no concern about our vulnerability again to primary commodity export price fluctuations and bad seasonal conditions. It has no support in the slightest for a policy strategy which is about looking at developing high skills, high wages and sustainable jobs into the future. In fact, since it came to power in 1996, it has engaged in promoting Australia in a race to the bottom. That is the government's real agenda and we will not have a bar of an agenda that allows the wages and working conditions of workers in this country to be driven down to try and maintain the competitive nature of our businesses. It has to be done through developing high skills, high wages and industries that are sustainable into the future. It is for all of these reasons that Labor will oppose this bill.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.52 p.m.)—I have been asked by the minister to sum up on the Export Market Development Grants Amendment Bill 2003 and one of the reasons he asked me to do this is because I have had some experience in exporting, when I used to export kangaroo meat to Japan, and in importing, when I imported tools and equipment. I ran a small business for 20 years before I came to this place. This bill puts the emphasis on small business.

May I say in response to Senator Cook and to Senator George Campbell that of course everyone would like to spend more money on many projects. We would like to spend more on health, education and drought. If you were to ask any minister in this place, he would have a shopping list on which to spend more money.

Senator Coonan—The cow is dry, Senator Boswell.

Senator BOSWELL—I am told the cow is dry and it won't be coming in until next season. If you were to give every minister an open chequebook so they could spend what they liked, you would get the problem we faced when we came to power in 1996. I remember speaking to John Anderson when he was told that the debt for the government was \$96 billion. He was so concerned about the debt that the government had to take drastic action and cut many of its programs. Don't blame us for doing that; don't blame us for having to cut our programs. I do not think anyone in the Senate on this side of politics would want to restrict any program that promotes exports or growth, but the fact is we have \$150.4 million; that is the allocation.

We can debate whether the figure should be more or less and I think we would be in happy agreement with all of you that it could be more, but it is not. You have to be responsible or you run up debts of \$96 billion. Then, to get that debt under control, you have to have a credit squeeze and you then shoot interest rates for small business up to 23 per cent—that is the level interest rates were at for small business—and then you shoot up inflation to cover inflation rates. If you want to destroy small business, exporters and manufacturers, just go down that track again; that is inevitable and that is what will happen. That is what we have had to battle against.

It is all very well to come in here with no responsibilities and no care and say: 'There should be more money. If you don't give us more money, we'll vote against the bill.' That is totally irresponsible because, if you vote against the bill, the scheme will run as it does at the moment. Larger businesses and experienced exporters will keep getting grants. Therefore, there will be less money for the new guys who are coming in. Small business and the emerging exporters will not get much of a slice of the cake. Small business will suffer and big business keeps its share.

No-one would deny that big business and the big end of town make a tremendous contribution to this nation. However, I did a little exercise the other day because a friend of mine got into exporting by sheer accident. He started to make domes for astronomy. One thing led to another and he began to export those domes. I thought, 'Well, if he can do that, I wonder what's happening out there in the small business community.' I did a little exercise on this and I found that about 9,000 small businesses were exporting around \$3 billion worth of products a year. Those are the people we want to encourage. Those are the little guys employing between one and five employees who we want to encourage to grow. That is what this bill is focused on—to give someone a go; to give someone a leg-up into exporting to get them going. The bill is about encouraging small business. It says

to the guys, 'You got a hand six, seven or eight years ago and we continued it and now we've got to reduce you a bit to give the smaller ones a leg up.' That is where this bill is coming from. I regret that there cannot be more and that we cannot give everyone what they want. But to say that exports are falling, the bill is not working and that the export market development grants are not working is nonsense. We lifted our exports from \$99 billion in 1996, when we came to government, to \$151 billion in 2002. That is a huge growth.

The proposed change for the scheme will mean that the existing funding level is applied to greater effect. That is, we will get better value for money in terms of making sure that small business is encouraged to export. Labor's decision to oppose the bill demonstrates that they do not really understand the problems facing small business in the growing export markets. I remind the Labor Party that small business is the fastest growing sector of the exporter community. Austrade estimates that 97 per cent of all Australian exporting firms are small to medium companies. The refinements outlined in the legislation will serve to increase the focus on small and emerging exporters, providing increased assistance to the emerging powerhouse of the exporting community. If this bill is not passed in the Senate, not only will it be disastrous for small companies in Australia but it will also be extremely detrimental for Australia's overall export effort—and it will have the Labor Party to thank for that.

As the measures proposed in the bill are intended to apply from 1 July 2003, it is essential that the bill be passed in this sitting. If Labor blocks the legislation, many small Australian companies will be faced with considerable uncertainty regarding their export endeavours in coming years. My colleagues across the floor in the Labor Party have spoken at length of the second tranche payout factor announced recently by Austrade but have contributed little to the debate on the legislation before the chamber. In truth, only 25 per cent of successful applicants for 2002 and 2003 grants were affected by the payout factor. Indeed, 75 per cent of all recipients received their full grant, and the two-tranche payment mechanism ensured that 100 per cent of companies received a grant. We will not apologise for trying to maximise the number of small businesses benefiting from this grant. So it is surprising to hear Senator Lundy criticise the support provided by the government for information technology.

In closing, I would like to take this opportunity to acknowledge the tabled report of the Foreign Affairs, Defence and Trade Legislation Committee recognising the importance of providing industry stakeholders with the opportunity to comment on this proposed

change. I note with interest the committee's recommendation that the bill be passed by the Senate in its current form.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NOTICES

Presentation

Senator Lees to move on the next day of sitting:

That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 31 December 2003:

The issue of corporate governance, with particular reference to:

- (a) the decline in the share price of some iconic Australian companies, including those majority-owned by the Commonwealth, such as Telstra, and possible reasons for this decline;
- (b) corporate competence and accountability demonstrated by the boards of these companies;
- (c) payment and benefits to directors and executives, including the rewarding of non-performing and exiting senior executives with 'Golden Parachutes', and possible future taxation of such benefits;
- (d) the provision of share options as a form of payment;
- (e) the conduct of company annual general meetings, including necessary changes to their guidelines to allow for effective action on the part of shareholder-activists;
- (f) the need for independent directors on company boards;
- (g) the role of fund managers, including whether or not fund managers should sit on boards of companies in which they have invested, and the disclosure of votes by funds at company meetings or on boards;
- (h) the oversight and regulation of superannuation funds, particularly those jointly established by unions and employers, and the role of administrators of these funds;
- (i) the relationship between Government majority-owned companies and the Executive and Parliament, including the use of company resources to monitor and lobby members of the Government and the Parliament, and the level of accountability of these companies to the Parliament, in relation to all items of expenditure, including sponsorship and hospitality; and
- (j) any other relevant matters.

TAXATION LAWS AMENDMENT BILL (No. 4) 2003

Second Reading

Debate resumed from 19 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator MARSHALL (Victoria) (5.02 p.m.)—I rise to speak on Taxation Laws Amendment Bill (No. 4) 2003. I did have a lot to say about this bill, but there have been some very constructive discussions this morning with Senator Coonan's staff, and I want to put on the record my thanks to Senator Coonan and her staff for those constructive discussions. I think we now have general agreement about the changes the ALP would like to see made to this bill. Looking at the schedule that we have before us today which indicates that we may be sitting until 4.30 or 5.30 tomorrow morning, I will dispense with what I was going to say and just draw the Senate's attention to the two issues of major concern.

The first issue goes to the matter of industrial instruments and the way the actual benefit needs to be identified within existing industrial agreements for it to comply with the bill and therefore be eligible for fringe benefits tax exemption. The existing practice is that, when an industrial instrument wishes to make arrangements for leave payments to be provided by a fund, it is simply mentioned as an obligation for an employer to contribute to that particular fund. The benefit itself is not actually an obligation specified within those industrial instruments. This act will require the actual leave benefit to be specified in the industrial instruments and, as I said, that is not the current practice. I will be moving an amendment in committee which in effect allows existing arrangements to continue until the end of the fringe benefits tax financial year as they are so as to enable all the parties to have adequate time to make the necessary adjustments to their industrial instruments to enable them to comply with the act.

The second area of concern to the ALP was the issue around income of the funds and how it may be spent. We were of the view that the act was in fact unclear and somewhat ambiguous. Treasury did not hold that view. In fact, in a letter from the Treasury to a senior associate of Blake Dawson Waldron regarding FBT exemption to approved worker entitlement funds and preliminary answers to questions raised in consultation, the specific question was asked:

Can the funds use the net income (ie income after tax) for any purpose they choose if they have paid tax on the income?

And the answer was:

The fund may retain net income, pay tax on it (being undistributed net income) and apply the balance as it wishes, subject to the deed governing the fund. The Bill does not

place any restrictions on how the trustee applies these funds.

If this view is correct, we do not have a problem with the act itself in that regard. I understand that the government has indicated that was the government's policy intent, and the act should in fact be interpreted in the way that I have just mentioned being the terms of the Treasury advice, dated 6 June 2003. I seek leave to table that advice from Treasury. I note that I have circulated that advice to the Government Whip.

Leave granted.

Senator MARSHALL—On that basis, I will leave my comments there. I have flagged that I have an amendment to move in committee. I thank the Senate.

Senator MURRAY (Western Australia) (5.06 p.m.)—I am not going to speak at any length on the Taxation Laws Amendment Bill (No. 4) 2003. It is one of those circumstances where we have had an inquiry into a field I knew very little about and I am a bit better informed as a result of the inquiry. That is the benefit of the Senate system. As we well know, the Prime Minister seems to think that this is not sufficiently a house of review or accountability. I think this is another instance where one of the one-third of all bills that come to this place has been reviewed. As result, we have a far clearer understanding of the areas on which we should exercise care or have some concerns.

The key issue with the area we are examining, which is the question of applying fringe benefits tax in schedule 7 of the bill, is that up to 30 April 2003 fringe benefits tax had not applied and then a tax ruling using existing law indicated that it should apply. To the credit of the tax office, they did not say 'retrospectively', which they could do; they said 'prospectively'. Schedule 7 is designed to alleviate some of the consequences of that. The difficulty for us was establishing the moneys at stake. All parties—the Treasury, the tax office, the funds, the witnesses—seemed uncertain of the total financial consequence of the bill. The best I could get to in understanding the financial consequences was that, up to 30 April 2003, no FBT applied but, prospectively forward, as much as \$40 million worth of FBT could be applicable—to which this bill was giving relief for about \$15 million worth.

The amount that it is giving relief to is where those funds affected are tied back into being registered industrial instruments. The question then is: if that is the policy intent of the government—to give relief where workers and employers have a formal relationship as expressed through the Workplace Relations Act—should we then provide the opportunity for others who carry out the same functions and have exactly the same employee-employer relationship but

not exactly the same legal relationship to access that relief? That will be a subject for committee debate. Let me say at the outset that the Australian Democrats will be supporting the bill as a whole and we expect the committee debate to be short and to the point.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.11 p.m.)—I thank honourable senators for their contribution and their cooperation in relation to these matters on the Taxation Laws Amendment Bill (No. 4) 2003. It is appreciated. Given the time of day and the constraints on time and, no doubt, everybody's patience, I will not reply in detail to the comments made in the speeches in the second reading debate, other than to say that I do think we now have a very good bill. What we have agreed to will ensure that employer payments will provide protection and portability of workers' entitlements and make sure they are not inappropriately taxed. In those circumstances, I again thank senators and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MARSHALL (Victoria) (5.12 p.m.)—I move opposition amendment (1):

- (1) Schedule 7, item 1, page 69 (after line 38), after section 58PB, insert:

58PC Exempt benefits—existing worker entitlement funds

- (1) If:

- (a) a person makes a contribution to an existing worker entitlement fund; and
- (b) the contribution is made in accordance with existing industrial practice; and
- (c) the contribution is either:
 - (i) made for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
 - (ii) for the reasonable administrative costs of the fund; and
- (d) the contribution is made during the FBT year beginning on 1 April 2003;

the contribution is an exempt benefit.

- (2) A fund is an *existing worker entitlement fund* if the fund accepted contributions during the FBT year beginning on 1 April 2002 for the purposes of ensuring that obligations to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment are met.

- (3) A contribution is made in accordance with *existing industrial practice* if the taxpayer or another person in the taxpayer's industry made payments in the FBT year beginning on 1 April 2002 to an existing worker entitlement fund for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met.

I have indicated the intention of this amendment in my speech in the second reading debate. I do have one issue on which I will ask the minister a specific question. Can the funds use the net income—that is, income after tax—for any purpose they choose if they have paid tax on the income?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.13 p.m.)—I thank Senator Marshall for raising the matter. Under the bill, in order to be prescribed as an approved worker entitlement fund, the fund will need to comply with criteria on payments from the income of the fund. The government considers the requirements on income to be appropriate, given the policy intent of ensuring that the FBT exemption is only available for the protection and the portability of workers' entitlements, not for industry-wide programs.

In addressing the concerns raised by Senator Marshall, I can confirm that, where the earnings of a fund have been taxed, they can be used to provide services such as training, insurance and counselling to members without affecting the eligibility of contributions to the fund for the FBT exemption. In making this statement and giving this answer to Senator Marshall, I note the Labor Party's acceptance that it is an appropriate tax design that the income of the funds is subject to taxation at the top marginal tax rate of 48.5 per cent—that is, any income retained in the fund is subject to the tax at 48.5 per cent and there are no restrictions imposed on the way the fund spends the post tax income. Accordingly, the government does not believe that any change in this provision is warranted and, on that basis, does not see the necessity for this amendment. I trust that that has clarified the matter for Senator Marshall.

Senator MARSHALL (Victoria) (5.15 p.m.)—Did I correctly hear the minister say that she does not see a need for the amendment that I have moved?

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.15 p.m.)—There is some confusion as to what amendments have come and gone during the course of the afternoon but we are agreeing to the amendment.

Senator MURRAY (Western Australia) (5.15 p.m.)—I was amusing myself by having a look at the schedules and realising that in this bill of nearly a couple of hundred pages we have ended up focusing on just one amendment out of one schedule. The list

of other things would make a tax person salivate. I should have said in my speech in the second reading debate that there are some very good changes to the law which are pretty helpful: superannuation benefits, uniform capital allowances, tax offsets and so on.

However, to return to the matter at hand, the amendment before us, we do not as a party and I do not as a senator profess to be expert at designing tax law—in fact, far from it—but our instinct was that the early draft advised to us by Senator Marshall looked a little less restrictive than what we have before us. Whilst we are happy to accept something which the mover of the amendment will accept and the government indicates that it will accept, and which has been refashioned after consultation between the two, it does strike us that we are still uncertain as to the final consequences in this area. If this is too tightly constructed it may well be employers, not employees, who end up with an FBT liability which they otherwise would prefer not to have attracted and it might well be relative to payments they have already made.

The cautionary note is that we should recognise that this is new law in an area where we need to keep an eye on its effects. I ask the minister, through her department, in their busy lives, to appraise this as it goes along and to keep an open mind to further reform if the act and the amendment do not work out to the benefit of the policy position which the government has taken—namely, that people who operate under certain industrial instruments should get appropriate relief.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.19 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

TAXATION LAWS AMENDMENT BILL (No. 6) 2003

Second Reading

Debate resumed from 23 June, on motion by **Senator Alston**:

That this bill be now read a second time.

Senator MARSHALL (Victoria) (5.19 p.m.)—The Taxation Laws Amendment Bill (No. 6) 2003 contains a number of measures that are time critical. In particular, increases in the Medicare levy thresholds are to apply from the 2002-03 financial year. As people who may be affected by this measure will be

gin doing their tax returns next week, this measure is urgent. Similarly, the arrangements for GST on compulsory third-party insurance are scheduled to come into effect on 1 July 2003. The trans-Tasman triangular imputation arrangements will have implications for New Zealand companies and for their income year that begins on 1 April 2003. Labor supports these three sets of measures.

It is irritating that the government did not introduce this bill until only a few weeks before it needed these measures passed. The bill also contains worthwhile measures to provide new arrangements for giving relief from hardship as a result of tax liabilities and to provide a register of harm prevention charities to put on an orderly administrative basis tax deductibility for gifts to those organisations. Labor will support both measures.

The bill also provides some refinements to the consolidation regime, in particular to provide an appropriate cost base for partnerships that wish to operate as part of a consolidated group, as well as a number of technical amendments to the consolidation legislation. Labor will support those measures. However, there is one measure that Labor is not prepared to support without further scrutiny, and that is the transitional arrangement for the consolidation regime with respect to value shifting. That transitional arrangement relieves companies that are consolidating from complying with some aspects of the value shifting rules. This is intended to reduce compliance costs but it means that the tax office will have to rely on the general anti-avoidance provisions of part IVA to deal with any abuse in this area.

Value shifting provides particular opportunities for tax avoidance in the area of services. These transitional arrangements will increase that risk. Labor wanted to refer the bill to the Senate Economics Legislation Committee to examine the extent of that risk. However, because there are other measures contained in the bill that are time sensitive, Labor has reached agreement with the government to delete the transitional value shifting provisions and pass the rest of the bill. The government will bring them back in another bill, presumably in the next session. During the committee stage I will move my amendment opposing schedule 2.

Senator MURRAY (Western Australia) (5.23 p.m.)—It is my practice to indicate how many pages there are in tax bills because we politicians get whacked all the time about the size of the tax act. I would just like to remind those officials who helped construct the stuff to keep it down as far as they can. Anyway, here are another 107 pages of tax bill amendments. I rise to speak on the Taxation Laws Amendment Bill (No. 6) 2003. Despite being reluctant to put more tax law on the table, we will actually

be supporting it—so there we are. The bill deals with a range of measures that I will discuss separately. The first schedule increases the income thresholds for the Medicare levy and the Medicare levy surcharge. These movements are in line with CPI and reduce the tax burden on low-income individuals and families. The Democrats support those amendments.

The second schedule involves the complicated area of value shifting within corporate groups. I note that the provision is a recommendation of the Ralph Review of Business Taxation. It seems that this provision is essentially overcoming some technical deficiencies in the original general value shifting rules. These rules technically apply to services, which was not the intention of the original provisions. I must indicate that, despite the fact that I have no obvious reason to object to these, I have heard Labor's suggestion that they be removed at this stage for further review so that the rest of the bill can go through today. I would be happy for that further review to take place, subject to what I hear the minister say during the committee stage, but in accepting that the schedule be deleted from the bill for review it does not, in any way, prejudice the possibility of us supporting it at a later date.

Schedules 3 to 8 deal with consolidation legislation. I think this is the sixth time we have had consolidation legislation before the Senate and hopefully it will be the last of the major items that we have in this field, but we will have to see. The measures are essentially technical improvements dealing with linked assets and liabilities, foreign ownership structures and other general technical corrections. I still have—you might recall me using the phrase before—a small shiver of legislative fear running down my spine because of the complexity of the consolidation laws and the unknown cost consequences. If anybody on the other side of the chamber looking at me intently as I explore this area really can tell me that they know absolutely what the outcome will be, I will be surprised.

I will be watching with interest the level of corporate tax collections over the next few years and seeking to ascertain from the tax commissioner in estimates whether the anticipated \$1 billion cost over the projected four years to the end of the 2006 financial year is realised or realistic. I think we are all, especially the government, taking a leap of faith and, as I said earlier, I do not believe anyone can properly predict the consequences of the consolidation measures. But that does not imply any opposition to them. We have supported the intent and we believe the principle is right. From the time of the first Ralph report, the Australian Democrats and I have supported the concept of consolidation consistently, and the Senate has done its job of approval. The Senate has played

an excellent part in the review of these particular measures. The Senate reviewed the Ralph tax proposals not only when they originally came through but also, through the Selection of Bills Committee, in the appropriate Senate committees. The result has been the exposure of elements of complexity, of concern and of greyness, many of which still require attention. That review process has been valuable. These schedules are going to move forward without amendment. They do wrap up the legislation.

I think this whole process has been a very good example of government, parliament, committees and non-government bodies—professionals and representative organisations—working together through consultation, review and examination to meet a legislative deadline which is necessary for implementation in the financial year starting 1 July 2003 and to ensure, as far as possible, that the legislation will be effective and will work as planned. If the government were truthful and honest, and they looked back to their original proposals for business tax reform and looked to where they are now, they would have to admit that the Senate, after review, has given them pretty well everything that they have proposed to it.

Schedule 9 amends the tax acts and the Administrative Appeals Tribunal Act to streamline the procedures under which an individual taxpayer can be released from a tax liability where the payment would result in serious hardship. We are not talking about the much publicised barristers who have used the bankruptcy rules to avoid their tax debts. This provision is intended to improve the administrative process for those who will face genuine hardship as a result of a tax liability. It removes the need to convene the unduly resource intensive and inflexible tax relief boards. Those boards were poorly structured and seemed to me to be virtually unworkable.

Schedule 10 allows New Zealand companies to enter the Australian imputation system. As someone with a New Zealand father, I saw the other day that New Zealand has finally reached a population of four million—one-fifth of our population size. It is essential that our economic and other ties are as close as possible. The proposal is designed to further strengthen the bilateral relationship between Australia and New Zealand, formalised under the Closer Economic Relations agreement. It resolves what is known as the triangular tax problem. The Australian dividend imputation system was introduced in 1986 to remove the double taxation of company earnings. Prior to this, corporate profits were taxed in the company and then again in the hands of the shareholder, which always struck me as odd since, effectively in law, a company is merely a throughput mechanism and it is the end shareholder who should carry the liability.

These new rules extend the operation of imputation to situations where corporate profits are earned in either Australia or New Zealand and the head office is in the other country but the shareholders are in residence in the country where the profits were originally earned. In these circumstances, the profits should not be taxed twice. The explanatory memorandum estimates that between 500 and 1,000 New Zealand companies will enter the Australian imputation system, while about 50 to 100 large Australian companies will benefit from the reciprocal New Zealand reforms. The cost of this measure is estimated to be \$70 million over four years, but essentially this represents the removal of the double taxation that is currently occurring. I return sometimes to the basic principles of taxation: when you talk about whether something is an equity issue, an efficiency issue or a simplicity issue, this is undoubtedly an equity issue, and the Democrats therefore support this schedule.

Schedule 11 introduces new GST rules that will apply to compulsory third party insurance premiums from 1 July 2003. It also ensures that the settlement of insurance claims, particularly the sharing of claims between insurance companies, operates effectively. A range of new divisions and subdivisions have been introduced into the GST act. The complexity of the amendments highlights our preferred option to treat compulsory third party insurance premiums like an input taxed financial supply. Alternatively, as compulsory third party does cover personal injury, it could have been GST-free, like health insurance. For compliance and simplicity reasons, the various state governments that are responsible for the administration of the various compulsory third party schemes would have preferred this. However, I understand Treasury's desire to try to make the GST as far reaching as possible. This schedule results from several years of extensive consultation involving state governments, insurance companies, the tax office and Treasury, and my understanding is that all are now comfortable with this proposal. Accordingly, the Democrats will support the amendments.

Whilst I am talking about the GST, I noticed that the minister had some fun today remarking on the GST. As one of the principal negotiators with the government on the GST and the reason that we now have the GST established in this country, I took particular pleasure in Ross Gittins's recent article and I take particular pleasure in rubbing Labor's nose in the fact that the GST has been extremely successful and will deliver great outcomes for the states and territories. I hope all of those who opposed it will eventually have the good grace to recognise its benefits to the country as whole.

A new category of tax deductible gift recipient has been created. The new category applies to charities

whose principal activities promote the prevention and control of harmful and abusive behaviour. This is a very welcome development and is a consequence of the government response to the Democrat negotiated inquiry into the definition of charities and related organisations. Sometimes I find that our friends up on the second floor and many in the community forget just how much work the Democrats have done and do with both previous governments and this government to achieve advances in good policy. This is one example. Charities that aim to prevent emotional abuse, sexual abuse, child abuse, suicide, substance abuse and gambling, for instance, have a vital role to play in repairing the damage of the past and improving our society. For decades the issues of child abuse and the criminal sexual assault of children were in our media far too little. There was a massive cover-up. With exceptions, it is only in the last decade that media coverage has picked up, helped by high-profile cases. Hopefully it will pick up even more so that the campaign for a national cleansing can be realised.

A lack of adequate media coverage was long the case in other areas of harmful and abusive behaviour too, such as violence in the home. Thankfully, that too has changed. But with this good initiative, how ironic is it, Minister, that at the time the government are introducing this—a very good tax policy—into the Senate, they are appealing to the High Court to keep children locked up behind razor wire, despite all the reports of the physical and physiological harm that it causes. You cannot have double standards here. Those individuals in the government who are rightly concerned to help prevent and control harmful and abusive behaviour need to carry the torch a lot stronger and more consistently. It is no good giving tax concessions to help charities who will have to deal with this area while at the same time contributing to causes.

Turning back to more mundane matters. The bill introduces a range of individual measures. As I have mentioned previously in this house, the range of the measures indicates the complexity of the Australian tax system. It is a tax system that, due to its complexity, allows clever tax planning for high-wealth individuals and companies to try to avoid their obligations. Ultimately, because of the range of tax planning that can be conducted by businesses and high-wealth individuals, the tax burden falls on salary and wage earners. This makes ordinary Australians feel like they are paying too much tax. The Labor Party has accused this government of being a high-tax government and, by extension, this being a high-tax country. This is just not true, but the rhetoric does make many Australians want more tax cuts. It is contradictory because they know the government is not providing adequate resources for the health and education systems, amongst other needs. To reduce our

revenue take and our tax rates would mean that we would have to cut services so, as I have endlessly remarked, you have to have the balance between the revenue our tax system delivers and the rate that people have to pay. What we need is more revenue and not less. What we need is a fairer tax system too. I will keep making this point until I can see some progress in this area. The problem is not the taxes, although we can always improve the rates; the problem principally lies in tax expenditures where government has wasteful expenditure and where there is unnecessary corporate welfare and welfare for the wealthy. What the Democrats are pushing for are fewer tax concessions for the wealthy and more money for essential government services. If on the way you can deliver tax cuts or tax relief to low-income Australians, you will undoubtedly get our support.

Tax concessions like the ones we have in law may be legal, but that does mean the law needs to change. Fortunately, something is being done about tax avoidance. In estimates questioning in the Senate Economics Legislation Committee, the leader of the ATO's high wealth individual task force, First Assistant Commissioner Mr Kevin Fitzpatrick, advised the committee that his group looks at people who control around \$30 million or more. At present there are about 600 to 650 such individuals.

In the last six years, collections by the task force were reported to be around \$750 million. That is \$750 million from 600 individuals, on average, over \$1 million each. They did not get it out of them because what they were doing was legal; they got it out of them because what they were doing was avoiding paying their taxes. This is a blight that we must fix, and I compliment the tax office on that kind of crack-down. In the last 12 months they have collected about \$250 million, which is a phenomenal amount of additional revenue, and I have congratulated Mr Fitzpatrick and his team. Mr Fitzpatrick also stated:

Also, I would expect—and there is some evidence of this—that, because of our actions, taxpayers are voluntarily improving their compliance. That continues to occur. There will be fewer high-risk issues and cases involved and the audit collections may well not be as great as each year goes on.

He means, of course, as great from the high wealth task force. The activities of the task force highlight the complexity of the tax laws and the scale of tax avoidance and minimisation within the high-wealth community. But the problem for the government is that, in many respects, it has allowed legitimate tax minimisation to continue—tax minimisation that the community would generally find not acceptable if they knew how much it cost. Examples are excessive tax concessions on company cars, the use of trusts, the capital gains tax discount, government private

health insurance and first home owners handouts to the wealthy.

The government has made an art form of allowing the well off to legitimately reduce their effective tax rates, but they continue to complain about the nominal 47 per cent marginal tax rate. I note the editorial in the *Australian Financial Review* of 24 June 2003. In complaining about the Senate's failure to pass the government's surcharge reduction, which was another tax cut for the wealthy, the editorial stated:

... the latest research has shown that taxpayers on only \$60,000 can attract the surcharge, even though it is supposed to cut in from around \$90,500. The researchers found that someone who, typically, used salary sacrifice ... could be hit with high marginal tax rates well above the 48.5 per cent top rate.

What they did not know in writing that was the inconsistency they identified, because you cannot be hit with that surcharge unless you are earning \$90,500, and for them to have worked it all the way back to \$60,000 shows exactly the tax minimisation rorts being undertaken. So what the editorial is saying is that we should feel sorry for someone who earns nearly \$100,000 and who has legitimately reduced their taxable income to \$60,000. They might have salary sacrificed their car, been provided with fringe benefits by their employer, claimed a heap of deductions—maybe an overseas holiday to go to a conference—entered into a negatively geared investment or reduced their tax by increasing super contributions. So what they have done is say, 'My assessable income is only \$60,000.' Well, it should not be. That is the problem.

The government also pays an un-means-tested 30 per cent rebate on private health insurance and subsidises private school fees. ACOSS in its 'Info 347' paper says that the average tax rate for someone on \$100,000 is 34 per cent, but still the propaganda concentrates on the 47 per cent marginal rate—or should we refer to it as the 48½ per cent, because you have to add the 1½ per cent Medicare rebate. Minister, whilst I am giving you a serve, I do acknowledge that the government has clamped down in many areas; I am just telling you that you need to clamp down a lot more. With the government still providing so many tax concessions for the well-off and the ALP suggesting that Australians are overtaxed, ordinary Australians feel gullible when paying tax. We need to stop that. They start looking at negatively geared investments, mass-marketed schemes and salary sacrificing of cars, and start driving cars as much as possible to reduce the fringe benefits tax.

What we need is a tax system with fewer concessions for the well-off—a cleaner and fairer tax system. If this could be achieved, the government might well be able to save Medicare or the environment or our universities. They would get more revenue and

they then might be able to provide some really large tax cuts, starting perhaps with raising the tax threshold. The Democrats will support the bill and, subject to the minister's advice in the committee stage, we are likely to support excising the schedule.

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.41 p.m.)—I thank colleagues for their contributions. Senator Murray, I will have to leave it to another day to debate some of the matters you have raised, in what I might characterise as your usual comments. What we, hopefully, will pass very soon is the Taxation Laws Amendment Bill (No. 6) 2003. I want to place on record my appreciation to senators for the sensitivity to the legislative deadlines contained in this bill. The bill contains a variety of measures that show the government's commitment to continuous improvements to the tax system by promoting equity, by easing some of the compliance costs and by introducing some much-needed structural reforms that will support a robust economy. There is no necessity to detail all of the measures.

In my remarks I wish to move to the amendment and make these comments to save time. I want to place on record that it is a matter of regret, but the government will accept the amendment to omit the general value-shifting measure from the bill. This measure would have modified the general value-shifting regime so that, as a transitional measure, the consequences arising from operating under this regime do not apply to most indirect value shifts involving services. It would have ensured that groups that consolidate during a transitional period do not incur compliance costs associated with setting up systems to identify service related indirect value shifts when those systems will not be needed after consolidation, so it is a very sensible measure. The measure would have helped to reduce the compliance costs for business during the transition to consolidation, which Senator Murray has just identified. The measure would also have allowed groups that do not consolidate extra time to establish systems to track service related indirect value shifts that may require adjustments under the general value-shifting regime.

As it stands, the government accepts that these sensible further refinements to the consolidations regime are now to be held up. This is very unfortunate for the business community trying to come to grips with the scope and complexity of the consolidations regime. However, with a view to gaining passage of this important bill in these sittings that are, as I have said, time sensitive, the government will accede to this amendment. But I do want to say that we will introduce the general value-shifting regime measure at the earliest opportunity.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The CHAIRMAN—The question is that schedule 2 stand as printed.

Question negatived.

Senator MARSHALL (Victoria) (5.46 p.m.)—I move amendment (1) on sheet 2997:

- (1) Clause 2, page 2 (table item 2, column 1), omit “Schedules 1 and 2”, substitute “Schedule 1”.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.46 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (5.47 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day No. 6 National Handgun Buyback Bill 2003.

Question agreed to.

NATIONAL HANDGUN BUYBACK BILL 2003

Second Reading

Debate resumed from 16 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (5.47 p.m.)—The National Handgun Buyback Bill 2003 appropriates money for the Commonwealth's contribution to the national hand gun buyback. The buyback was announced after last December's meeting of the Council of Australian Government here in Canberra. When that particular COAG meeting ended on 6 December, the Prime Minister appeared at a press conference with the state premiers and announced that the 'most important area of agreement had been in relation to a very significant strengthening of laws across Australia in relation to handguns'. The meeting endorsed the 28 resolutions made by an earlier meeting of the Australasian Police Ministers Council and there was a commitment to put the legislative and administrative measures in place by 30 June of this year. In two areas the COAG decision went a little further than the respective state police ministers.

COAG agreed that handguns would be limited to a maximum of .38 calibre, except for the special accredited sporting events where handguns up to .45 calibre would be permitted. The Prime Minister promised that 'details of this would be worked out quickly'.

The second area where COAG went further than the police ministers was to agree that semiautomatic handguns with a barrel length of less than 120 millimetres and revolvers and single shot handguns with a barrel length of less than 100 millimetres would be prohibited. However, highly specialised target pistols, some of which have a barrel length of less than 120 millimetres, would still be allowed. The Prime Minister went on to say that this was 'a very important step to making the streets of Australia safer'.

Overall, about 20 per cent of illegal hand guns in Australia will be removed from the community. So here we are in late June and there are now very few days left before the Prime Minister's deadline for the introduction of these measures to remove dangerous hand guns from the Australian community—very few indeed. Yet the community is still in the dark about how this buyback scheme will work on the ground. State and federal Labor MPs are now being contacted every day by their constituents to find out how the scheme will in fact operate. In turn, the MPs have contacted the shadow minister for justice to shed some light on the buyback and other arrangements to remove hand guns from the community. On the basis of what we have seen so far, the whole system is shaping up to be a total shambles. So much for the government's commitment to making the streets safer. It is exactly because Labor are committed to fighting crime that we will support this bill. At the same time, we will continue to work with our state and territory colleagues and with the government to tackle hand guns.

Let me turn to the detail of this bill. The buyback will be jointly funded by the Commonwealth and the states with the Commonwealth meeting two-thirds of the cost. The total cost of the hand gun buyback to the Commonwealth is expected to be around \$96 million. The money will come out of the consolidated revenue fund. States will meet all the costs upfront and will then seek reimbursements from the Commonwealth. By comparison, the 1996 gun buyback after the Port Arthur shootings required the Commonwealth to raise around \$500 million with a total of \$15 million of that money remaining unspent. The COAG agreement specifies that the hand gun buyback will be funded from the \$15 million left unspent, with the balance met on a two-thirds/one-third basis between the Commonwealth and each state. The remaining payments made by the states will be funded on a cost-sharing basis with the Common-

wealth reimbursing two-thirds of the payments made by the states. The majority of payments are expected to be made in the 2003-04 financial year.

The hand gun buyback will run—as I said, notwithstanding the problems with getting the ducks all in a row—from 1 July 2003 to 31 December 2003. The appropriation is for two main purposes: firstly, to reimburse states for payments made by them to compensate persons for their surrender of hand guns, hand gun parts and accessories during the hand gun buyback; and secondly, to reimburse states for payments made in connection with the hand gun buyback or with the Council of Australian Government hand gun reforms. This bill also provides appropriation for the Commonwealth to make payments in relation to the implementation of the COAG hand gun reforms. As stated, the opposition will support the bill, notwithstanding our comments about the arrangements.

Senator GREIG (Western Australia) (5.52 p.m.)—The National Handgun Buyback Bill 2003 comprises part of the package of reforms negotiated by the Commonwealth, states and territories in the wake of Monash University and Margaret Tobin shootings last year. An initial set of reforms was agreed to at the Australian Police Ministers Council meeting held in November and that plan was amended and agreed to by the Prime Minister, state premiers and chief ministers at the COAG meeting in December. In the aftermath of these shootings, the government came out and said it would act decisively to reduce the number of semiautomatic hand guns in the Australian community. Unfortunately, the government has been anything but decisively in its endeavours to implement a national crackdown on hand guns. This agreed set of reforms is almost farcical. Of course, most of the reforms will be implemented at a state level due to the constitutional restrictions on the Commonwealth's power to legislate with respect to firearms. The bill before us will ensure that the Commonwealth meets two-thirds of the total cost of the buyback scheme.

This legislation cannot be considered in isolation from the rest of the package of reforms, and I take this opportunity to highlight the Democrats' very serious concerns regarding those reforms. Firstly, I think it is important for us to consider the history of the proposed reforms. Following the COAG meeting in December, the Prime Minister triumphantly announced that an agreement had been reached regarding 'a very significant strengthening of laws across Australia in relation to hand guns'. He stated that the Commonwealth was very keen to see the tightest possible laws and gave an undertaking that he would do everything he humanly could to make sure that American gun culture would never spread to the

streets of Australia. In fact, in one interview, more than a year ago, the Prime Minister even said:

We do not want the American disease imported into Australia.

If this buyback scheme and the ban to be implemented by the states and territories are the final product of the Prime Minister's efforts to make Australian streets safer then he has failed.

The proposed reforms are based on a fundamentally flawed approach to firearm regulation. By identifying hand guns with reference to their barrel length, the government has created a great deal of confusion over which models will, and which will not, be banned. It is somewhat baffling why government would adopt such an approach when there is no agreed method for measuring barrel length and when the national firearms registry does not record specific models in relation to barrel length. While this level of confusion reigns, it is hardly surprising that some states have delayed the commencement of the buyback.

The Minister for Justice and Customs released late last year a preliminary list of models to be banned, but we have been waiting since then for a final list, which will also include a valuation of each model for the purpose of compensation. Here we are—just a few days before the buyback is set to commence—and that list has not yet been released. The minister's office has only just confirmed that a draft list has now been compiled and will soon be provided to the states and territories for their consideration. That is not good enough. Not only has that list emerged at the eleventh hour, but it is seen by the minister's office as 'organic', which is a clear acknowledgment that additional models are likely to be added if and when they are identified. This situation highlights the underlying flaw with the government's approach to gun law reform. Clearly, the decision to ban hand guns according to their barrel length was not carefully thought through, as it has proven to be an administrative difficulty ever since. The package of reforms is unworkable and quite shambolic.

Another result of this approach is that only a very limited number of guns will come within the scope of the ban. Some reports estimate that the ban will only apply to 20 per cent, or one in five, hand guns while the National Coalition for Gun Control suggests that it is more like 10 per cent. In other words, there is every possibility that these reforms will not touch 90 per cent of the total number of hand guns currently in Australia. On the estimate of the National Coalition for Gun Control, the buyback will leave an astonishing 270,000 hand guns in the Australian community—and that is just hand guns. The total number of licensed firearms in Australia is in excess of two million. Hand guns remaining legal will be the nine-

millimetre Browning pistols, which Thomas Hamilton used to tragically murder 16 schoolchildren and a teacher before shooting himself at Dunblane, Scotland in March 1996. From the Monash shooting, the guns that will remain legal are the Beretta 0.32 Tomcat, the Beretta 0.22 model 89, the CZ nine millimetre and the Smith and Wesson 0.357.

While the proposed legislation will ban some hand guns, many semiautomatic hand guns will remain legal. In fact, as we debate the merits of this buyback scheme, we still do not know just how many of these weapons will escape the ban because we are still waiting for the list of models and their compensation value from the minister. And this is what we get when the Prime Minister promises to do everything that he humanly can and to leave no stone unturned to reduce the number of hand guns in Australia. This does not look like a prime minister who is serious about gun control; in fact, it looks a whole lot more like a prime minister who is prepared to sacrifice the safety of Australians for the sake of keeping the gun lobby happy.

We must also consider whether a buyback scheme attached to such severely limited reforms is really a good investment of taxpayers' money. Buyback schemes can be very effective, but they must operate in conjunction with a comprehensive ban. If, as we have here, the buyback accompanies a token ban on a limited number of firearms, you create a system in which gun owners can simply sell their illegal firearms to the government and use the money they receive to purchase new firearms—which might be legal but which are just as dangerous. So what the government has effectively created is a national hand gun trash and treasure, where you can get rid of your old guns and use the cash to buy new ones. The problem is that not only will this fail to significantly reduce the number of hand guns in the community but also the whole exercise is going to cost the Australian taxpayers \$69 million. We Democrats believe that spending money to reduce the number of guns in the community is a good investment. But spending \$69 million on a flawed initiative that will only marginally reduce the number of hand guns could well be criticised as a dubious investment of taxpayers' money.

It is the second of the issues that the Democrats have sought to highlight in our second reading amendment, which has been circulated. Of course we are keen to support any initiative that will ensure that even a few guns are removed from the Australian community, but we want to make it very clear that we believe the government efforts in this case have not been courageous or wise.

The reforms are founded on a flawed approach to firearm regulation and they do not go far enough.

This initiative is barely the first step towards protecting the Australian community from firearm-related violence. In fact, the whole exercise is little more than a very expensive public relations stunt by the government which, at the very best, will remove one in five hand guns from the community. This is without any guarantee that the owners of those guns will not go straight out and use their compensation to purchase more hand guns from the extensive range that will remain legal. In April last year the Prime Minister declared:

I hate guns. I don't think people should have guns unless they're police or in the military or in security industry.

Well, Prime Minister, the Democrats could not agree more. And this is exactly what the Prime Minister should have set out to achieve with these reforms. But somewhere along the line—no doubt soon after some serious lobbying by the gun lobby itself—the Prime Minister softened his position and now the government is bending over backwards to make it very clear that these reforms were devised following wide consultation with sporting shooters.

The Democrats acknowledge that the vast majority of firearm-related crimes are committed with illegal firearms. Evidence shows that genuine, licensed sporting shooters rarely use their weapons for criminal purposes. But it should be highlighted that the perpetrator of the Monash shootings was, in fact, a licensed gun owner and a member of a sports shooting club. It is also important to highlight that suicide, crimes of passion and extreme domestic violence can be facilitated through access to legal guns in the home.

But perhaps more importantly, we need to make it very clear that the vast majority of illegal guns in the community have been stolen from licensed sporting shooters, collectors and dealers rather than illegally imported. As the recent *Small arms in the Pacific* study says:

Firearms seized at crime scenes and in routine policing can commonly be traced back to licensed Australian owners and arms importers.

So the huge array of guns in the community, while being kept by reasonable people, all too often find themselves in the hands of the wrong people. It is for this reason that the Democrats believe there is a very strong case for reducing the number of guns in the community, even those used for sporting purposes. Given the potential of such weapons to kill and maim when in the wrong hands, we must make every effort to radically reduce their availability. Guns are weapons of death—let us be clear about this. They are designed to kill. They are not toys and were never originally intended to be sporting tools.

This year we have heard the Prime Minister talk ad nauseam about the threat of weapons of mass de-

struction, but he is failing to protect the Australian community from the real weapons of mass destruction. As of this morning, almost 240,000 people around the world have been killed by small arms since the beginning of this year. In fact, every minute someone is killed with a gun. Eighty per cent of these victims are women and children.

One of the most effective ways for Australia to help stop the global spread of firearms is to restrict their availability within our own borders. This was confirmed by the recent *Small arms in the Pacific* study. That study identified Australia as one of the more well-armed countries in the world when it comes to unlawful, private ownership. But of more concern, it found that Australia and Papua New Guinea were the key Asia Pacific centres for illicit trade in firearms for the purposes of armed crime. This needs to be rectified and it seems clear that the bill will achieve very little in that respect.

It will be interesting to see how the United Nations responds to this effort when the Australian government is asked to report our progress in two weeks time in New York at the biennial meeting of the states on illicit trade in small arms and light weapons in all its aspects. The government should be embarrassed by its half-hearted approach to this issue of global significance, and the Democrats take this opportunity to express our disappointment at this toothless package of reforms. We call on the Minister for Justice and Customs to go back to the states and initiate talks on how we can really reduce the number of guns in the Australian community. I move:

At the end of the motion, add:

“but the Senate expresses its concern that:

- (a) the details of the proposed ban on certain handguns have not been finalised;
- (b) the final list of models to be banned has not yet been released;
- (c) this is causing confusion for the States, which are responsible for implementing the buyback;
- (d) the proposed ban only applies to a small percentage of handguns, leaving the vast majority of handguns in the Australian community; and
- (e) because of the large number of handguns that will escape the ban, the buyback will effectively enable gun-owners to trade in their banned handguns and use Government funds to purchase legal handguns.”

Senator HARRIS (Queensland) (6.04 p.m.)—I rise to speak on the National Handgun Buyback Bill 2003. The Australian government brought in sweeping changes to firearm ownership in 1997 when almost 600,000 semiautomatic firearms were confiscated—or, as the government euphemistically described it, ‘bought back’—from the licensed owners. Today the government wants to enact legislation to

confiscate hand guns from law-abiding citizens. One Nation believes that decent, law-abiding citizens should have reasonable access to hand guns for legitimate reasons. Australians have a long and for the most part successful association with firearms. One Nation does not believe that a national hand gun buy-back is the correct action to deal with an increasingly violent, divided and amoral society.

Disarmament of the civilian population comes in many forms: registration of gun owners; licensing of guns; owners having to justify the need for a gun; and, inevitably, a total ban on the private ownership of firearms. Clearly, we have not learnt the lessons of modern history. Every totalitarian government from the Soviet Union, to Idi Amin in Uganda, and Cambodia under Pol Pot, have disarmed its civilians. In every form anti-gun legislation has helped tyrants to work against innocent people. History shows us that it is not only criminals that kill innocent people.

A disarmed Australia is not a free country but a frightened country. Disarmed people become the criminals’ prey and the bullies’ plaything. It seems to be this government’s view that it would be better if only law-enforcement agencies and the military had the right to possess firearms. This sort of concentrated political power is a danger to our society. It is dangerous for innocent, law-abiding Australians to be disarmed. History shows us that there must be a balance.

The National Handgun Buyback Bill 2003 provides funding of only \$69 million for the gun buyback scheme. As Senator Greig’s amendment notes, this legislation does not detail exactly which hand guns and which models will be banned; nor do we know how the program will be administered. The bill is akin to giving the government a blank cheque. Imagine that the Senate passes a bill, say, for education allocating \$69 million for the sector but senators are not told where the money goes. Will the funding go to private schools or to universities? I put it to you that the principle is the same with this bill. The Senate is writing a blank cheque for the Prime Minister to spend how he pleases.

The government claims that \$15 million is left over from the previous gun buyback in 1997. The previous gun buyback has been crippling small family businesses for many months. The main concern is that the businesses have still not been paid for the last buyback. Some businesses are still in the process of suing the government to try to get that money for the goods that were taken from them. So the \$15 million left over is likely to disappear in the current legal actions before the Federal Court and the Supreme Court. If the government has not paid their debts so far, how will it pay them for this buyback? The fact is that this legislation is going to impact severely on

gun shops—small businesses doing nothing but struggling to earn a living. The range of firearms that they can sell to licensed sporting shooters is to be reduced. Once again, with this legislation we see that gun shops will be compensated for stock but not for the loss of business which occurs on a long-term basis. The buyback scheme will only take guns away from licensed people and will only compensate licensed shop owners. This legislation will harm only the people who are already working and struggling to meet all the impositions of current laws. Ordinary citizens have complied with the law, they have observed all the rules and regulations, and now the trust that they have placed in the political system is to be betrayed.

Guns captured by buyback programs such as this are not likely to be associated with gun deaths. A review of Commonwealth countries, conducted in 2003, highlights the fact that introduced firearms legislation has failed to reduce either the violent crime rate or the suicide rate in any of those countries. I want to quote from a paper entitled 'National experiences with firearms regulation: evaluating the implications for public safety' by Professor Gary A. Mauser, from the Institute for Canadian Urban Research Studies at Simon Fraser University in Canada. Professor Mauser's paper was presented at the Tower of London symposium on the Legal, Economic and Human Rights Implications of Civilian Firearms Ownership and Regulation, on 2 May 2003. He says:

Unfortunately, the recent firearm regulations do not appear to have had much impact on making the streets of Australia safer. Consider homicide rates. Homicide involving firearms is declining, but the total homicide rates have remained basically flat from 1995 through to 2001. However, early reports show that the national homicide rate may have begun climbing again.

Professor Mauser goes on to provide some recent statistics, including from a 2003 report from the Australian Institute of Criminology, that homicide victimisation in 2001-02 increased by 20 per cent from 2000-01. He says:

... despite the declining firearm homicides, there is an increase in multiple victim incidents. Homicide rates remain at a historic high. Shortly after World War II, the Australian homicide rate was around 1 per 100,000. Since then, it has climbed until it peaked at 2.4 in 1988.

... ..

Over the past 6 years, the overall Australian violent crime rate continues to increase. Both assault and robbery show no signs of decreasing. It is too early to tell whether the gun ban has exacerbated the problem or simply not had any effect.

Recent changes in the firearm law appear to have had no impact upon the suicide rate.

Mauser says that ABS figures from 2001 show that, despite the new prohibitions and firearm buyback, the

suicide rate in Australia continues to increase. The destruction of confiscated firearms cost Australian taxpayers an estimated \$600 million. I put it to the chamber that there have been no visible impacts on violent crime. Mauser also says:

Armed robbery has increased 166% nationwide—jumping from 30 per 100,000 in 1996 to 50 per 100,000 in 1999. The homicide rate has not declined, and the share of firearm homicide involving handguns has doubled in the past five years.

The experience in Canada and Britain is that public disarmament is ineffective, expensive and more than irritating to those who are victimised. In all cases, it has involved setting up expensive bureaucracies that produce scant improvement to public safety. Disarming the public greatly increases the cynicism about government amongst much of the population, and it diminishes their willingness to comply with its laws. Future regulations that might be more sensible are viewed with scepticism. The sense of alienation grows with the severity of the restrictions and with their resulting ineffectiveness.

Unfortunately, policy dictates that the current directions will continue and, more importantly, will not be examined critically. This last is a guarantee of the increase of that future alienation. It will only worsen as the mass media become slowly aware that their bias towards the banning of guns has been misdirected and they begin shifting their attention to the large quantity of money—like the \$69 million that is proposed today and the previous \$600 million that came from the Medicare gun buyback levy—that has been wasted in pursuit of a social engineering dream that was doomed from the start to anyone who wanted to look at the facts. Gun laws may not reduce violent crime, but criminal violence causes gun laws. At least, well-publicised crimes do. The loser in this drama is the right of all human beings to be safe. The winner is bureaucracy and the government, which seek to have control.

Since it is a truism that only law-abiding citizens obey gun laws—or any other kind of law for that matter—it is an illusion that further tinkering with the law will protect the public. No law, no matter how restrictive it is, can protect us from people who decide to commit violent crimes. Let me cite another study from a media release issued by the Medical College of Wisconsin entitled 'Gun Buyback Programs May Have Less Impact on Gun-related Fatalities than Expected'. Their release states:

Guns captured by buyback programs generally are not those associated with gun deaths, according to a study of Milwaukee-area buybacks by the Medical College of Wisconsin Firearm Injury Center. "Our results indicate that buybacks don't remove the most lethal guns from circulation," said Stephen W. Hartgarten, MD, MPH, Director of the Center and Chairman of Emergency Medicine. "Poli-

cymakers need to look closely at whether the resources and effort consumed by these programs might be better spent elsewhere.

Legitimate firearms owners are involved in safety training and teach themselves responsible use. They teach safe handling and storage. They are involved in many recreational and competitive shooting disciplines from local club to Olympic level. Gun collectors organisations can and do play a very useful role in helping law enforcement to solve crimes by identifying unusual firearms or ammunition. They work closely with the police and maintain a web site that helps locate stolen firearms. And these responsible, law-abiding citizens are the ones who are most likely to be affected by these new laws.

The bill fails to target the real problem—gun smuggling. Illegal firearm trafficking is a major problem. The states are still crying out for more funding to be made available to top investigators tackling the highest tier of black market gun smuggling in Australia. More than 2,600 guns were seized by New South Wales police last year, but now we are to have special vans which will travel around collecting handguns from law-abiding citizens, disabling the guns, destroying them and paying compensation to the owners. Before I conclude, I want to read for senators a media article from B&T Marketing and Media issued on 14 June 2002, entitled 'Is that a gun in your pocket?' It says:

Lunchtime office workers in Sydney's Martin Place were subjected to high security metal detectors and armed guards last week as part of a marketing stunt from the National Coalition for Gun Control (NCGC).

The event, developed by Saatchi & Saatchi, aimed to bring the public's attention to the need to ban semi-automatic handguns.

High security metal detectors, such as those used for the Sydney 2000 Olympics, were positioned in Martin Place with members of the public invited to walk through them. During the lunchtime rush, actors set off alarms as they walked through the metal detectors and security guards descended upon them.

"Saatchi & Saatchi is committed to helping the National Coalition for Gun Control draw the public's attention to the issue. Semi-automatic handguns are just as deadly as semi-automatic long arms, if not more so as they are more easily concealed," Saatchi & Saatchi account director, Tim Bullock said.

"The concept is quite confrontational but it needs to be if that is what it takes to have people think about the issue," Bullock said.

A spokesperson for Saatchi & Saatchi said the campaign aimed to have more impact than an ad alone, despite the limited budget.

Saatchi & Saatchi has worked with the NCGC since the Port Arthur Massacre in 1996.

I want to place it clearly on the record that I have no issue with Saatchi and Saatchi. The point I am mak-

ing is that there are some very clever advertising executives helping to shape the minds of people about the need for gun control. Saatchi and Saatchi is one of the world's leading creative organisations with annual billings of more than \$US7 billion and currently works for 60 of the world's top 100 advertisers.

In conclusion, the antigun lobby can promise all they like that tightening up firearm ownership will make society safer by reducing criminal violence and even suicide, but the evidence I have cited today suggests otherwise. The methods and the mentality of those who are controlling and developing this kind of policy of domination are such that they have no willingness to accommodate their adversaries. We should not give up freedom in exchange for a little security because, ultimately, we will have neither. The gun buyback program does not reach guns commonly involved in crime, and this program—that is, this legislation—does not address the trafficking of illegal guns. If the goal is to improve public safety, then One Nation urges the government to seek more appropriate approaches like targeting criminals rather than innocent, law-abiding citizens.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.22 p.m.)—I thank senators for their contribution to the debate on the National Handgun Buyback Bill 2003. At the outset, may I say that the Commonwealth maintains as its first priority the targeting of illegal guns, especially illegal hand guns, and as a result of that we have seen the Australian Crime Commission newly set up and its first reference or determination—

Senator Brown—I rise on a point of order, Mr Acting Deputy President. I was going to make a speech in the second reading debate. I will make it in committee.

Senator ELLISON—Senator Brown was not on the list of speakers. I am sorry.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—My apologies; Senator Brown did speak to me.

Senator ELLISON—I was not aware of that, but I think we can accommodate Senator Brown in committee. It would certainly be good if we could reach the committee stage before the dinner break because we could then deal with an amendment that I know Senator Brown has and we could also deal with other issues.

At the outset, let me say that the Australian Crime Commission is looking at the subject of illegal hand guns and at illegal guns generally. In fact, the Commonwealth has brought in legislation to deal with firearms trafficking for which there will be a 10-year jail sentence. We are very serious about dealing with

illegal firearms. We have brought in the legislation and we are resourcing the Australian Crime Commission and the Australian Federal Police to work with the state and territory law enforcement agencies to deal with this very issue.

But of course it does not stop there. We have to achieve a balance between public safety and the legitimate interests of legitimate sporting shooters. We have done that with extensive consultation via the Sporting Shooters Advisory Council. We have also taken on board the views of the states and territories. I reject totally any comment that this is in any way a shambolic scheme or that it is falling apart. The states and territories have their legislation in place or are putting it in place as we speak. We intend this scheme to operate from 1 July. It is only appropriate that we provide for the compensation of property that is acquired from individuals as a result of these changes. New South Wales and South Australia will start their schemes in three months time. That will not affect the national buyback scheme; we can start on 1 July and they can join the scheme in three months time. However, we have had to rely on the states and territories for their cooperation and that has taken some time. Some states have been slow in getting back to us. We have put to them proposals in relation to a list of guns that would be included in the buyback and the various events that would be covered between a .38 calibre and a .45 calibre gun and this is being hammered out with the states as we speak. The Council of Australian Governments will deal with this issue.

We have a draft list, which has been put to the states and territories, which involves 4,000 models of hand guns. I can tell you that this change is the most significant reform in relation to hand gun law in this country.

Senator Brown—Where is that list?

Senator ELLISON—It is with the states and territories. They are free to make it publicly available. I can tell you right now that it was inappropriate for the Commonwealth to make that list available whilst we were dealing with the states and territories. That is not how you deal with other governments when you are embarking on an agreement.

This package is extensive. It does not deal just with the purchase and buyback of hand guns. Everyone has conveniently forgotten that the Australian Police Ministers Council resolved things such as participation rates. That means that to be a legitimate sporting shooter you have to have a level of participation in the sport which requires you to be involved with the club you belong to. You cannot be just a passive member and use that as an excuse to own a hand gun. We also have restrictions on novices who are joining the sport in terms of their access to firearms. Sporting shooters clubs will have the ability to expel

a member who was not legitimate. That is something the sporting shooters clubs wanted.

We have worked closely with the sporting shooters sector and they have been very responsible in putting to us restrictions which they believe can deal with the issues that have presented themselves. I want to thank the Sporting Shooters Advisory Council, and in particular Gary Fleetwood, for presenting the views of their sector very well and in a constructive manner. We do not support the second reading amendment moved by the Democrats for the reasons that I have outlined.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.28 p.m.)—I move:

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

I would like to inform the Senate that it is anticipated that we will deal with the ASIO message at 7.30 p.m. after the dinner break. I envisage that we will deal with the ASIO message and then return to the National Handgun Buyback Bill 2003 and its committee stage and deal with amendments of which I know Senator Brown has one.

Senator BROWN (Tasmania) (6.28 p.m.)—I can see the clock ticking and I will make sure we finish on time. The list of 4,000 prohibited hand guns must come before the committee. How can this parliament—this Senate—be dealing with this issue when we do not know what is on the list and what is off it? It is in the bureaucracy. It has gone to state authorities, state parliaments and to state ministers, but we as senators do not get it. I will not accept that for a minute. By the time we reach the committee stage, I expect the minister to be in a position to present the committee with that list for consideration.

Question agreed to.

Sitting suspended from 6.29 p.m. to 7.30 p.m.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002 [NO. 2]

Consideration of House of Representatives Mes- sage

Message received from the House of Representatives returning the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2], acquainting the Senate that the House has agreed to amendments (1) to (15), (17) to (22), (24) to (29), (31), (35), (36), (38) to (56) and (59) to (77) made by the Senate; disagreed to amendments (30), (33), (34), (37), (57) and (58); and

made amendments in place of amendments (16), (23) and (32), and requesting the reconsideration of the bill in respect of the amendments disagreed to and the concurrence of the Senate in the amendments made by the House.

Ordered that the message be considered in Committee of the Whole immediately.

House of Representatives message—

- (1) Schedule 1, item 24, page 10 (lines 19 to 23), omit paragraph (3)(d).
- (2) Schedule 1, item 24, page 12 (lines 17 to 21), omit paragraph (c).
- (3) Schedule 1, item 24, page 16 (lines 18 to 24), omit paragraphs (4)(a) and (aa), substitute:
 - (a) a person being detained after the end of the questioning period described in section 34D for the warrant; or

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.31 p.m.)—I move:

That the committee does not insist on Senate amendments Nos 30, 33, 34, 37, 57 and 58 not agreed to by the House of Representatives, and agrees to the amendments made by the House in place of Senate amendments Nos 16, 23 and 32.

Senator BROWN (Tasmania) (7.32 p.m.)—I wonder if the minister would briefly explain that to the committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.32 p.m.)—The government moved amendments in the House as a result of the House rejecting a number of opposition amendments passed by the Senate yesterday. The government is doing so to ensure that provisions amended by the Senate are reinstated in a form acceptable to the government. These amendments related to the time period for questioning under a warrant and the evidential burden under particular offences which has erroneously been referred to time and time again as the reversal of the onus of proof. The government's position on these issues has been extensively debated in both houses of parliament, so I propose to make only brief comments.

The government is insisting on its proposals in relation to the total length of time a person can be continuously detained under a warrant being 168 continuous hours. We do this for a good reason. We do not accept opposition amendments that seek to reduce the questioning period to three days—or, in other words, 72 hours. The opposition's proposal does not afford any greater protection to the person being questioned under the bill; it simply reduces the period of time in which important information can be obtained. We do not support amendments that seek to reduce the effectiveness of the questioning regime.

In proposing these amendments, the opposition appear to have had little regard for how this may im-

pact on an investigation. This figure seems to have been plucked out of the air and decided upon as the time that our intelligence agencies need to do their job. The advice we have received from our intelligence agencies, however, is quite different. Perhaps even more so, the opposition are now seeking to introduce further limitations which go beyond those they were prepared to accept last year. Let us not forget that last December the opposition moved amendments to the detention and questioning regime that provided for a maximum possible period of detention of seven continuous days. They accepted this time period then, but again seem have changed their minds.

The government has also rejected opposition amendments that relate to the evidential burden of proof. In debate on this point it was repeatedly and erroneously contended that this amounts to reversal of the onus of proof in relation to those offences. As the government has repeatedly made clear, this is simply not the case. These provisions relate to the evidential burden of proof. This is not the same as reversing the onus of proof. This does not remove the legal burden from the prosecution to prove an offence beyond reasonable doubt. It is an evidential burden only. The person merely needs to adduce evidence that there is a reasonable possibility that he or she does not have the information, record or thing being requested. If the person fails to produce the information or record and the prosecuting authorities decide to press charges on this point, the prosecution still has to prove its case beyond a reasonable doubt. These notes merely reflect Commonwealth criminal law policy on this point, as reflected in section 13.3 of the Criminal Code.

Certainly the government welcomes the opposition's indication that they will be accepting the government's amendments and not insisting upon opposition amendments that conflict with these amendments. This makes good the public commitment made by the opposition. I note, however, the comments of the Leader of the Opposition in the other place earlier today that the opposition would move to reinstate the opposition's amendments that relate to the questioning period and the evidential burden of proof, should they be elected to office.

The Australian community demands that our counter-terrorism laws be strong and certain. That is why the government is rejecting these amendments. These amendments do not make the legislation stronger or more certain; in fact, they do the opposite. Statements of a future roll-back to do nothing in fact provide no reassurance or certainty for the Australian community. It is surprising that the opposition continue to indicate that they will move on these issues regardless of the outcomes of the review of the legis-

lation and before there is any tangible experience of how these provisions will operate in practice. Of course, there has been debate on this question of a review.

I also take this opportunity to refer again to the misinformation that has been disseminated about the effect of the provisions in the bill as they relate to second and subsequent warrants. The opposition continues to contend that the bill would have allowed warrants to be rolled over indefinitely. This is simply not the case. The opposition's position on this point appears to be an attempt to cover up a misunderstanding of how the bill operates. The political wrangling within the opposition on this issue that has been played out over the past few days makes this clear.

The government has always been clear that, while the length of time under one warrant period is limited to a continuous period of no longer than 168 hours, we have never said that a new warrant could not be sought or issued, provided the strict criteria of the bill are satisfied. A new warrant, not a rolling warrant, is what we are talking about. The two things are completely different. As we have made abundantly clear, we do not accept that a person who has been the subject of a warrant should then be immune from being the subject of further warrants for any period of time. Indeed, the government has always maintained that to give any immunity would potentially play into the hands of terrorists. The government's position on this bill has always been emphatically clear. We need this legislation to give our intelligence agency vital tools to deter and prevent terrorism. We have never wavered from this position, nor will we. Thanks to the government, ASIO will finally get the tools it needs to help it identify and, more importantly, prevent planned terrorist attacks.

I welcome the opposition's decision to finally put aside any political game playing in favour of national security and to support the passage of this important counter-terrorism legislation. ASIO will now have important powers to assist with the job of protecting Australians and Australian interests against terrorism and other threats to our security. That, I think, outlines both the government's position and the action taken in relation to these amendments in the other place.

Senator NETTLE (New South Wales) (7.39 p.m.)—I have a question for the minister relating to a submission made by the Attorney-General's Department to the joint committee that looked into this legislation last year. This submission went to the constitutionality of the ASIO legislation before us and it outlined the factors on which the Attorney-General's Department had received advice that the bill was constitutional. There was a range of factors, including intelligence gathering, purpose of conferral of pow-

ers, process to obtain further warrants, rights and protections, and the obligation to desist under a warrant where the grounds on which it was issued had ceased to exist. I will read for the minister part of that letter submitted by the Attorney-General's Department. The fifth point that the department gave for the constitutionality of the ASIO legislation was 'the short period of detention under a warrant'.

Let us remember that when this constitutional advice was received we were talking about 48-hour warrants. We are now talking about 168-hour warrants being what the government is proposing. Can the minister inform the committee whether additional constitutional advice has been received in relation to the warrant period the government is now proposing being 168 hours, not the 48 hours—the 'short period'—on which the advice was given to say that the ASIO bill was constitutional? Has the government had any further constitutional advice on this issue? If so, what is that advice; if not, is the minister asking the Senate to vote on legislation without being able to inform the Senate whether the bill is constitutional or not?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.41 p.m.)—We have received advice from AGS that the bill is constitutionally sound—that is, the bill as it stands in its current form.

Senator Robert Ray—When did you table that advice?

Senator ELLISON—We have not tabled that advice. As you know, Senator Ray, it is an old chestnut, that question of advice to the government. For the record, we have advice from AGS that this bill is constitutionally sound.

Senator NETTLE (New South Wales) (7.42 p.m.)—The advice on which one presumes this letter, dated May 2002, was written of course refers to the 48 hours. Can the minister inform the committee when the most recent constitutional advice in relation to the ASIO legislation was received by the government since May 2002?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.42 p.m.)—That advice has remained extant for the period that we have had this bill drafted. When you draft these bills you get advice from AGS, and that is an ongoing process of advice. That remains the position; it is constitutionally sound—that is the advice we have.

Senator NETTLE (New South Wales) (7.43 p.m.)—Just to outline the situation again, in May 2002, constitutional advice was received based on a warrant of 48 hours. One of the factors determining that the legislation was constitutional, as stated in the Attorney-General's Department letter, was 'the short

period of detention under a warrant'. The minister is now saying that a warrant of 168 hours, for which there has been no additional constitutional advice received, is constitutional on what basis?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.44 p.m.)—The original advice was given by AGS. The Office of Parliamentary Counsel has continued to advise the government—I want to make that clear. I think previously I said that AGS was providing ongoing advice; it is OPC that is providing ongoing advice—that is, advice that we receive in the course of drafting this legislation. As to when and where we receive advice, that is something we do not table. We do not table the advice that we receive. But I can advise the Senate that the advice that we have received is that this bill is constitutionally sound, and that covers the bill with all its provisions.

Senator NETTLE (New South Wales) (7.44 p.m.)—At this point I am not asking the minister to table the advice—we can get to that. At the moment I am asking: what is the date of the latest advice relating to the constitutionality of this bill? The minister has explained that the constitutionality of the bill was continually advised. What is the latest date? At this stage all we have is 'sometime before May 2002'.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.45 p.m.)—I do not think I can take it any further than that. The question is: does the government believe that this bill is constitutional? It does. Has it received advice that this bill is constitutionally sound? Yes, it has. I do not think that we can take it any further than that.

Senator ROBERT RAY (Victoria) (7.45 p.m.)—Just following that up, Minister, are you saying that, throughout, that legal justified having chapter III appointments act as a prescribed authority—something you have now eliminated from the act? Secondly, was it constitutional to have AAT members—that is, non-chapter III appointments—to issue the warrants? You have dropped both of those. Why have you done so? Is it on the basis of constitutionality or not?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.46 p.m.)—I will take that on notice—that point has been canvassed—and we can deal with other matters while the information is obtained.

Senator GREIG (Western Australia) (7.46 p.m.)—I would like to ask the minister about Democrat amendment (4), which was passed last night. It dealt with ensuring that people who were detained were advised of their right to a lawyer. The bill provides access to a lawyer but it does not provide, in my view, in an explicit way that people are advised of that right, hence Democrat amendment (4), which won the support of the Senate. I draw your attention,

Minister, to *Hansard* of 19 June this year. At 12.13 p.m. you were discussing this issue—I gather from *Hansard* that that is when the Democrat amendment was moved—and you said:

I will quickly deal with that aspect of legal representation. Of course the person has access to a lawyer of choice. Of course, if that person does not have a lawyer or an idea of whom to contact, the prescribed authority can arrange that, as I have indicated. What I have said—and Senator Brown has chosen to ignore it—is that the prescribed authority advises the person when that person appears before the prescribed authority as to the right to a lawyer ...

You went on to say:

That is something that is essential.

Minister, could you point me specifically, please, to where in the bill it is unambiguously printed that when people are brought before a prescribed authority they are advised of their right to a lawyer?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.48 p.m.)—That is proposed section 34E, which I referred to yesterday. The prescribed authority must explain the warrant. There are a number of things that the prescribed authority has to explain. There are remedies. I missed proposed subsection (1)(g), which says:

whether there is any limit on the person contacting others and, if the warrant permits the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant, who the identified persons are and what the specified times are.

We had some debate about the warrant mentioning lawyers. On the advice that I have, that would include reference to the lawyer. That is where the specification is in relation to the contact of another person or a lawyer.

But there was another aspect. Senator Nettle asked me at length about the identity of the lawyer. Proposed subsection (4) states that the warrant 'may identify someone whom the person is permitted to contact by reference to the fact that he or she is a lawyer' of the person's choice 'or has a particular legal or familial relationship with the person'. That is under 'Warrants for questioning etc'. That is the one that Senator Nettle and I had some discussion about. It deals with the specific reference to a lawyer. The warrant must identify that person. When you couple it with the prescribed authority going through the warrant, as I have just mentioned, in 34E—the reading of the warrant to the person and the explaining of it to the person—that encompasses where the prescribed authority details to the person the choice of lawyer.

Senator BROWN (Tasmania) (7.52 p.m.)—Senator Nettle has been pursuing the minister on a very important point—that is, the constitutionality of the legislation. The committee has a right to be con-

cerned about the matter because the advice that went to the government was that, specifically in relation to the ASIO bill, 'the power to detain for punitive purposes exists only as an incident of the judicial function of adjudging and punishing guilt'. That is, you cannot detain for punitive purposes. A big question arises between the Senate's decision to limit the detention period to three days because questioning of three blocks of eight hours would fit into those three days and the government's insistence that it be seven days, which adds an extra four days in which no questioning can take place if those three blocks of questions have been taken up. It means that, in effect, the majority of the time in which the person is held is without the capability of ASIO, or anybody else for that matter, to get information. The person is not being detained for punitive purposes as quoted in the advice or for adjudging and punishing guilt. Remember, this person is being detained to be questioned for information, but there are four days in which that cannot be done. Therefore, the only way in which we could describe the majority of this detention of seven days under the government's own provision of restricting questioning to 24 hours is by it is being used as a punitive or arbitrary detention without purpose. Under the implication of this advice, that renders the legislation unconstitutional.

The advice says that the conclusion that the original bill may have been constitutional includes the fact that it had a short period of detention—but that was when it was 48 hours. It is now 168 hours, so that particular factor can be struck out. It is very proper of Senator Nettle to require the minister to address the specific point that she is concerned about and to specifically say that the advice that was given a little over 12 months ago has been superseded by different advice. One can only imagine that the minister now has advice that it is okay to hold somebody for 168 hours when for majority of that time nothing is done. There is no judgment involved here; there is no question of whether this is a process to adjudge and punish guilt, because nobody is guilty in the process. The person is being held to gain information. Under those circumstances, the minister's own advice was that you cannot do that. You cannot hold a person in detention with no function, and yet the majority of the seven days is obviously going to have no function because it is time in which ASIO cannot question the person. You do not even have the function of questioning, let alone of adjudging guilt.

It is, on the face of it, unconstitutional for this seven-day arbitrary detention period to be put into this legislation and insisted upon by the House of Representatives. I asked the minister if the Attorney in the House produced any evidence that could assuage the concern that arises from advice given by his own department which would indicate that this

legislation is in breach of the Constitution and ought not to be proceeding in this form. If you take Senator Nettle's argument, you end up with this very strong injunction to the Senate—to stand firm on this amendment. We should not accept the government coming back to us and saying, 'You have to give way,' when the government cannot even produce legal advice which says the standard it is making—which is patently unconstitutional—is constitutional. The Senate must stand firm on this point.

Senator ELLISON (Western Australia—minister for Justice and Customs) (7.57 p.m.)—I am not aware of the Attorney referring to any legal advice in the other place, nor do I think it was a point of debate. I think it was accepted in the other place that the bill is constitutional. It certainly was not debated.

Senator GREIG (Western Australia) (7.58 p.m.)—I would just like to make the point clearly to the minister that I do not entirely accept his argument that the implied notion—and it is implied rather than stated, in my view—that people are specifically advised of their right to a lawyer is clear in the legislation. It ought to be. The legislation is unambiguous in terms of letting people know of their right to complain to IGIS or to the Ombudsman, it is unambiguous in letting people know that they can seek a remedy from the Federal Court in terms of the lawfulness of their detention and it is unambiguous in terms of letting people know that they can contact family members. It is, in my and the Democrats' view, ambiguous and unclear in terms of the specifics of letting people know that they have a right to a lawyer.

For that reason and others—but given that this particular amendment to which the government is objecting was one of the successful Democrat amendments—we would still very much insist that the amendment remain and that it form part of the bill. I really do not understand the logic of the government in refusing this when it is complementary to many other aspects of the legislation which do specifically state the right of people to various facilities and opportunities under the legislation. We Democrats will be insisting on the amendments, and particularly amendment (4), which was passed by the Senate last night.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.00 p.m.)—Since the introduction of the original ASIO bill in March 2002, this Senate and many people in the community have worked tirelessly to ensure the bill is massively improved. Tonight I want to thank those people because this bill is an infinitely better piece of legislation than the utterly draconian bill of March 2002. Its amended provisions are a triumph of Senate and joint committee process and of the exhaustive committee stage consideration that this bill has re-

ceived in this chamber. The original bill was rotten and brutal; even now it is only barely acceptable.

The Attorney-General, the Hon. Daryl Williams AM QC MP, should never live down the fact that he was the Attorney-General who introduced that bill and drafted that bill. The original ASIO bill is Mr Williams's badge of shame. I do not think he will ever live down the fact, and neither will the Prime Minister, of those screeching protests that we heard in late night debates before Christmas last year that Labor was 'wrecking the bill', that Labor was making it 'unworkable' and that Labor was 'threatening national security'. At that time we argued that the Attorney-General was wrong in principle and wrong in law, but of course it was so much worse than that. Mr Williams and Mr Howard chose to incite fear amongst Australians as to the level of threat they were exposed to. I cannot accept that they did that by accident. It was a clear and deliberate ploy by the Attorney-General and the Prime Minister to play politics with national security. As a result of the government tactics, the bill was left in limbo for 15 weeks over summer and was delayed seven weeks, to be reintroduced after parliament recommenced this year. Why? To chalk up the three months required for a double dissolution trigger.

The bill before us tonight is almost the same as the one that they rejected last December. The one thing I can say is that it has not been plain sailing for Mr Williams. In debate over the bill since last year, the Attorney-General has copped it from his own party. He has copped it from the backbench. He has copped it from every parliamentary committee that has examined this legislation. He has copped it in spades from the legal profession. He has copped it from respected and independent academics. He has copped it from the Senate. Frankly, he has deserved every single last drop of criticism that he has received over that period of time.

The threshold issue in the view of the opposition is: does the threat of terrorism in our community warrant the passage of this bill? We say that there is an ugly and growing pattern of extremism across the globe. There have been wars waged with the Taliban and al-Qaeda in Afghanistan. There is a guerrilla struggle in the Philippines. There are terrorist outfits like Jemaah Islamiyah that are operating in Indonesia, Thailand, Singapore and Malaysia. We know that JI are attempting to operate in Australia. We know that you cannot be too careful. We know you cannot afford to drop your guard. We know that the targets of these terrorists are mostly westerners because they are mainly soft targets. The perpetrators of those crimes, we know, are not just terrorists; they are criminals and they are cowards. So we do not say that there is any argument at all; we must protect Australia

and we must stand up to the terrorists. In the view of the opposition, there is also no argument that the government's own actions, the government's actions in Iraq, have heightened the threat, even though Mr Howard and the government continually deny that that is the case.

The opposition, and I believe for that matter every member of this parliament, take our responsibilities for the safety of Australians seriously. Throughout this debate the opposition have always supported stronger intelligence gathering powers for ASIO. We also wanted to ensure that strong and appropriate safeguards are in place. Even if the Attorney-General will not do so, the parliament does have to think very carefully about how it responds to the threat of terrorism. We say that we must respond in a manner that accepts the limits of the capacity of our law enforcement and justice system, that responds effectively to the demands of victims and a frightened community, that prevents terrorism and related crimes from occurring wherever and whenever we can and, of course, that minimises the harm done by the available systems of justice and punishment. We must also protect our civil liberties and freedoms.

The Senate has passed many amendments to strengthen the protection of civil liberties and our democratic values in this bill and, at the same time, has increased the effectiveness of ASIO in its job to track down terrorists. The challenge has always been to get the balance right. I genuinely believe that we have done that. I genuinely believe that we have got the balance right, but I also say only just. I heard the Attorney-General, Mr Williams, on the radio this morning, puffing himself up—well, it was a pretty bumbling performance, actually. He said:

I'm confident now that when the bill is finally enacted, Australia will be a safer place.

That is what Mr Williams said. I hope and I am sure every person inside this chamber and outside hopes that he is right. I will not resile one inch from that. I hope he is right. I want to say—and Mr Williams did not say it—that Australia is safer not only because ASIO has more power to do their job but also because of the safeguards now in the bill to protect Australians from abuse by the executive or by any agency. That was never Mr Williams's intention.

It is also true that this bill has come light years since it was first presented to parliament in March 2002. It is always worth remembering in the debate about this ASIO legislation what the main features of that original bill were: they were indefinite detention; they were incommunicado detention; they were detention without access to lawyers; there was no age limit for detention; there were strip searches for children as young as 10; there was no sunset clause; there was detention and questioning supervised by low-

level legal officers; there were no protocols covering interrogation; and there was a reversal of the onus of proof for certain provisions. We believed that this bill was essentially the toolbox for a secret police force in Australia.

We now have a situation where the legislation is loaded with significant safeguards surrounding the warrant and questioning processes, and I would like to go through them: ASIO must satisfy both the Attorney-General and a judge acting as the issuing authority that the warrant will substantially assist the collection of intelligence in relation to a terrorism offence, and that relying on other methods of collecting intelligence would be ineffective; a person gets their lawyer of choice to represent them; a person retains every legal right to take immediate action in the Federal Court in relation to their custody or any alleged abuses of the warrant; questioning is supervised by a prescribed authority who is a senior judge or a retired judge; the Inspector-General of Intelligence and Security may be present during questioning, with the power to intervene in questioning; and, as an ultimate safeguard, this bill has a sunset clause that will kick in after three years.

These provisions will cease to be law in three years time. These safeguards mean, for example, that two independent senior judges are involved in the process: one to issue the warrant and one to supervise the questioning. It means the IGIS will automatically review any procedures under this law as a check on whether ASIO is abusing its powers. It means, of course, that in this parliament in three years time there will also be a substantive review.

At a later stage in this committee debate I will address some of the other issues that have been raised by others speakers. I intend to talk a little later also about the process of achieving this outcome. But I do want to stress to the committee that the challenge faced by the opposition in relation to this legislation, from day one, has been the attempt to achieve a balanced outcome. It has been a tortuous process to try to fix up that original, draconian bill introduced by the Attorney-General, Mr Williams. I still cannot believe that Mr Williams AM QC MP actually read that legislation before it was introduced into the parliament. But we know that he has taken responsibility for drafting it.

We have spent six days fixing the issue of a repeat warrant regime. But it was worth doing; the effort has been worth while. This committee can be proud of the fact that it would never accept a piece of legislation that would have stripped citizens who have not been suspected of terrorism or any other offence of all their fundamental legal rights. That fundamental change has been made.

Senator ROBERT RAY (Victoria) (8.15 p.m.)—It is required to answer two or three of the points made by the Minister for Justice and Customs here tonight because again they reflect the standard lines of propaganda that come from this government. First of all, Senator Ellison makes the point: ‘We were willing to accept seven days some months ago; why would we be insisting on 72 hours?’ Has it not occurred to him that the seven-day regime required four warrants? In other words, the Attorney-General had to determine on four occasions over a seven-day period that this needed to be extended. Has it not occurred to him that in fact an issuing authority would have to do this on four occasions? Indeed, the Director-General would have to give proper consideration to these issues over that period of time. In fact, the opposition has argued to extend the one warrant from 48 to 72 hours. So it is an absolute erroneous point that the minister at the table makes when he comes in and trots out these tired old lines of government propaganda.

He did so again with rolling warrants. We read the bill, we read the explanatory memorandum and then we heard the minister’s explanation last Thursday. You could draw no conclusion other than what we were talking about then were rolling warrants. Worse than the very first proposition that this government came up with, which was 48-hour rolling warrants, suddenly they became 168 hours. Then we got the subtle changes. Then the Attorney-General on *AM* mentioned something quite different—I think it was last Tuesday morning. He said in answer to a question:

There may be new information come to light, there may be other circumstances occur that mean that there is a justification or a new justification for a warrant.

This was a major change in ground by the Attorney-General—a welcome one. So what evolved over those five days was a complete change. Now you needed additional information or materially different grounds to issue a second warrant. Of course the odds of that ever happening a third time are pretty remote—we know that. So the whole concept of rolling warrants went down the drain through those particular changes. Senator Ellison says he is glad the opposition have come to see sense and that we have stopped playing politics on the issue. The Attorney-General last Tuesday said the following:

If Labor doesn’t pass the bill because they can’t accept that as a satisfactory amendment, then the question will be raised whether they’re really genuine about national security.

We did have control of national security for 13 years in this country, and I do not recall anyone opposite challenging our credentials then, or impugning our loyalty or anything else, nor can they point to any incidents in which we let this country down in the

security area. So to have the Attorney-General parading out on *AM*, impugning our loyalty or our integrity on these issues is quite galling, because I will tell you something: thank heavens for adversarial politics, thank heavens for the Senate applying itself in this and thank heavens that if we ever return to government we will amend this bill.

I ask this question of the minister at the table—and he does not like the fact that we would amend this bill—will the minister say whether they will amend the bill into the future to return it to what it once was or are they no longer proud of their original bill? Does the minister at the table really expect us to believe that the lack of a clause in the bill about self-incrimination was an intelligent approach to this legislation? After all, they have legislation that says you could get five years in jail for refusing to answer a question but, if you are a terrorist and you do have information and you are not protected against self-incrimination, why would you say anything? You have a choice here: life under the terrorist legislation or five years under Mr Williams's flawed legislation. That was the choice at the time and everyone would take the five years unless they were particularly dumb. So the very scrutiny of this chamber, Senate committees and the joint intelligence committee has meant that there is a clause in this bill now to protect people against self-incrimination, which is the key to making this legislation work. But are they going to take that out if they get a Senate majority? I would like an answer to that.

Are they going to restore the bill to allow any child to be pulled in? The situation in the original bill was that a child could have been detained, questioned and their parents would not have known where they were because there was no notification, no legal representation. The parents would have rushed down to the state police and said, 'My child has been kidnapped or has disappeared.' There would have been a dragnet all over the state. Meanwhile, ASIO and the federal police were detaining the children. Are you going to restore that to the legislation? Are you proud that that was in the original legislation before you accuse us of a lack of integrity, a lack of patriotism and just being oppositionist or opportunist? It is absolute nonsense.

What about the lack of protocols? You introduced legislation, yet there were no protocols covering the behaviour of the interviewers—not one whatsoever. Meal breaks, where they were detained, how long the questioning could go—all these were missing and did not exist until we insisted upon them. Then, of course, there was another technical defect in the legislation: a person could be detained, but they did not then have to be immediately brought before the prescribed authority for questioning. No-one knew for how long—it could have been a week; it could have

been a month. Sure, when the government picked up that technical defect, it put the words 'immediately before for questioning'. I welcome that, but that was not in the original legislation. And of course in the original legislation, guess who could issue the warrant? Senior members of the AAT and not chapter 3 appointments. What a ridiculous position—probably unconstitutional, but we do not know for sure. What an absolutely ridiculous proposition to have people issuing warrants to an Attorney-General when he and others actually appointed them for short-term contracts and could reappoint them. What an absolutely foolish approach.

From the very beginning, this legislation did not allow legal representation for the people who would be picked up. This was intended so that the interviewers could intimidate those whom they picked up. I am pretty notorious for not particularly liking the legal profession at times, but I do recognise that they have some value, and protecting citizens' rights is part of that. Now the government says they will allow legal representation from the very first minute a person is detained. We say: 'Yes, that's great, but will you take that right away if you some time in the future get a Senate majority? We would like to know your intentions in that regard.' This is the same government and the same Attorney-General who authorised in legislation the strip search of 10-year-old girls. That is what they did. They are not recanting and they are not saying, 'I'm sorry'. They are just making their tired, old political points—that we are oppositionists, that we lack integrity and that we lack patriotism. That is a much better smokescreen than trying to protect their original stupidity.

This dramatic and necessary legislation did not have a sunset clause. Every committee that looked at this subject said, 'If you're going to properly increase the powers of ASIO, for heaven's sake put in a sunset clause, put in a review mechanism.' Again, the government have decided to include this in the bill. They have also decided under pressure—it was not in the original bill—to give a much higher role to IGIS. So, when the minister and the Attorney-General play politics on this and accuse us of being oppositionist or not concerned with national security, we point back to the original bill—a bill that they should have been absolutely ashamed to introduce into the legislature, a bill that has been improved by all the tortuous processes. We understand how frustrating those processes must have been. Had the government actually fronted up properly last December—instead of running out and doing dramatic press conferences and playing wedge politics—we may have had this particular piece of legislation well and truly entrenched before tonight.

The minister today said he would not table the legal opinion on whether this is constitutional or not. And this is where he and I diverge. I understand why government do not produce legal opinions on all occasions. I also understand that, when it is expedient for them to do so, they do so. The one exception that should always be made is that, if the legal opinion goes to the constitutionality of legislation, it should be tabled in this chamber for everyone to see. That is the exception to the rule. That is the exception that you should consider into the future. When legal opinions go to the constitutionality of the bill, we should all see those legal opinions and we should allow people to see them to make sure that they are well based and well argued. The worst thing that we could have here—the most undesirable thing from that side of the chamber and for most of us on this side of the chamber—would be to see, after 15 months of pain, this piece of legislation get knocked out in the High Court. That would be an absolute tragedy and a major setback in the fight against terrorism.

I was not impressed by some—not all, but some—of the arguments advanced by the minister here tonight. We have said—and we made it absolutely clear—where our bottom line is on this. We also moved several other amendments that we thought were desirable to give the government time to consider them. As the debate has worked out, they have had less than a day to consider them and they have rejected them. We always said in the argy-bargy about this bill that we needed balance—that we could not hold out for absolutely everything we wanted and we did not hold out for absolutely everything we wanted. What now has been achieved is a workable piece of legislation. If it fails to work, the sunset clause will extinguish it for all time.

I am looking forward to the fact that ASIO will report in its annual reports how many warrants are issued and how many second warrants are issued. This form of transparency will certainly mean that the government will approach these matters with responsibility. There is no motive on the part of the government to see these laws used either oppressively or stupidly. There is no motive for them to do so, because it will rebound directly on them. So I think we can now be confident that, with all the safeguards that have been put in, the bill once enacted will perform as we expect it to perform through ASIO and the government in the fight against terrorism.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.27 p.m.)—I need to answer a question that Senator Ray asked in relation to section 34B and other parts of the bill which provided for issuing authorities and prescribed authorities. If I recall correctly, originally we had the issuing authorities and prescribed authorities rolled into one. There

was a recommendation from the parliamentary joint committee which advocated that federal magistrates and federal judges make up the issuing authorities, and that the members of the AAT take up the responsibility of prescribed authorities. We responded to that by dividing the two classes: the prescribed authorities, which include Supreme Court judges, former Supreme Court judges of a state or territory and AAT members; and the issuing authorities, which include federal magistrates and federal judges. We thought it appropriate that, because they are two different roles, they be drawn from different pools of judicial personae if you like.

I have been advised that the position of a prescribed authority is one which is occupied not by virtue of the office but by virtue of the fact that they are appointed in a personal capacity. They are drawn from a pool of judicial people, but they are appointed in a personal capacity. An issuing authority is really not in a different position from those judges who issue telecommunication interception warrants. That is how the two authorities came to be separated, and the change was made to the original bill which was proposed by the government prior to May last year. So that deals with that situation and Senator Ray's question, and I think that covers the questions that were put to me.

Senator ROBERT RAY (Victoria) (8.29 p.m.)—I thank the minister for that answer. I do not dispute any of it. My point was that the original bill did not have those things and I was making the point that sometimes oppositionism and a bit of obduracy on this side can improve the bill. It should not be written off just as opportunism or lack of patriotism.

Senator BROWN (Tasmania) (8.30 p.m.)—It is important to stand back sometimes and look at what the overall process undertaken by the parliament and what public discussion have led to. That is what I shall try to do here. The opposition is talking about the draconian legislation that the government introduced last year and Senator Ray has outlined some of the extraordinary excesses of that legislation. All that said, we cannot get away from the fact that last year the government was proposing a detention period of two days in which a person could be questioned, with rolling warrants and with restrictions on legal representation. In the middle of 2003 we now have legislation agreed to by the government and the opposition which allows for arbitrary detention up to seven days and the ability for questioning during that period to be without legal representation and/or without the lawyer of the person being able to be present.

I remind the committee that the legislation which has now been brought back to us from the House of Representatives, acceptable to the Howard government under the authority of the Attorney-General, Mr

Williams, has been accepted by Labor here tonight. There were some headlines today which pointed to a cave-in by Labor in the earlier proceedings. As the day has gone on, that cave-in has become an avalanche. What we end up with tonight is Labor failing as an opposition, backing off, backing down, conceding on the major rotten heart of this legislation. Senator Faulkner said, 'I genuinely believe we have got the balance right.' That is what he said last night, and the balance is horribly different tonight. Suddenly the restriction to three days in which this 24-hour questioning in three blocks of eight hours can take place has been accepted as a seven-day questioning period. Suddenly there is a reversal—I will use that word even though the minister does not like it—where the burden, the onus, on a person to show their innocence has been acceded to by the opposition. It is a monumental cave-in. It was bad enough last night, but tonight it is an absolute rout of the opposition and its principles under the pressure of the government and the fear scenario that has been put forward by the Prime Minister and the government.

I agree with Senator Ray. We all have to accept that we are Australians good and true who want this country to be safe and secure, and we have different ways of reckoning where the law should stand in procuring maximum security while, at the same time, defending the freedoms and liberties which make this country the place we want to be and are proud of. But you cannot accede to legislation like this, as far as we Greens are concerned, and think that you are still maintaining those liberties. I reiterate that there are laws and guarantees which took 300 years to develop which are being cut right across by this legislation. Habeas corpus goes west! From the 1690s to the turn of this century, it has gone all of a sudden—and not for people who are suspected of some criminal activity but for people who are known to be innocent.

I am not going to go through all of this again. This is a terrible denouement for Labor, for oppositional politics. The two parties have come together once again, as they did on the *Tampa*, and there is an erosion of laws not this time for a section of people coming to the shores of Australia but for all Australians. That is the outcome. It is a terrible derogation of oppositional duty in a parliament such as ours, because we are charged here with defending the rights of Australians. Sure, we have to defend their security, but you do not cut across rights which have held strong during two world wars and many other wars in the last century in a circumstance like this where we have very strong laws to protect us from terrorists and potential terrorists already on the slate.

This is not an incremental increase in the power of ASIO to intrude into people's lives but a monumental jump forward, and we cannot from the crossbench

prevent that from happening. But with the Labor Party we can. Just last night they had struck the balance. But tonight the balance has been struck by the Hon. John Winston Howard, and Labor says, 'That is where we stand; that tonight is the new balance.' I recognise that, if Labor did not do that, the government is going to say, 'We will not pass this legislation and Australians are going to be more vulnerable.' But if you do not eyeball the government, which is so rapidly and seriously eroding liberties and rights in this country, if you do not eyeball the government and make a stand and stick to it, the next thing is that we will have another piece of legislation in this parliament further eroding liberties.

I have been here long enough to see that this is a serial process coming from the office of this Prime Minister. We have seen such things as the right of the Army to be brought in against civil protests. The excuse then was the Olympics. We are still vulnerable to that if some future government wants to abuse it. We have been told tonight by the opposition that there is a three-year sunset clause. We all know that the likelihood of that three-year sunset clause being levied on this legislation is somewhere between zero and nought. One might assume that there will be a different government, but one must not assume such things. We are dealing with this government now. You cannot say, as Senator Ray did, 'When we get in, we'll change it back.' The time to change this is here and now. We have the numbers. We have the power in the Senate. But the opposition has caved in.

To me, what is worse is that that signal was sent to the government not in this debate in the last 24 hours but last week some time. You have to ask yourself: was it a charade or did the opposition think: 'We're going to be faced with a position where the government will eyeball us. We're going to have to back down; it's better we signal that so that it won't seem so shocking when it occurs'? I am still shocked and, if the calls coming to my office are any indication, so are many Australians. We can only say we think differently. We can only say this is not the balance; this is a travesty. We can only say not only is this legislation an erosion of civil liberties but it is unconstitutional. I do not think an opposition should ever believe that such matters should be left to the courts.

We are here to make the laws and we are here to ensure that the laws are right for the people of Australia. These laws are not right for the people of Australia. These laws are a serious erosion of rights. They will cause harm down the line. People will be caught up, people will be treated wrongly, but this time, unlike in our court system, which has developed over hundreds of years, people will not have recourse because their rights will have been taken away. When their rights are taken away under laws

which we pass here, they are left vulnerable, without recourse. We will be opposing the intention of the government and the opposition to concede to the House of Representatives. It is not a concession to that other place as such; it is a concession to the office of Prime Minister Howard and to the executive, which has the numbers in the House of Representatives and tonight finds it has the numbers, with the Crean opposition, here in the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.40 p.m.)—To be clear, for the record, during this particular committee debate, what the opposition did, following a meeting of the federal parliamentary Labor Party on Tuesday last week, was to announce publicly the decision it had made. That was known to the government. It was known to the Australian Democrats. It was known to the Australian Greens. It was known to every member and senator in this parliament and to any interested person outside. This is true: we did state our position publicly. We stated it publicly, we stated it clearly and we stated it honestly. I think it is worth noting in this committee stage of the debate that anyone who cares to read the *Hansard* record of debate on the ASIO bill in this chamber over the past two weeks would be aware that it had been referred to by many speakers on many occasions. I do not think there is any news for Senator Brown in that or for any other senator or anyone who has taken a close interest in this legislation.

There are some issues outstanding that I want to address before this debate concludes—and I think it is nearing its end. I want to mention the issue that I flagged in relation to the concerns that this committee had on Thursday of last week about the ambiguous section of the legislation that could in the view of the opposition—and I think in the view of other members of this committee—lead to a situation of what is described as rolling warrants. Firstly, it is important for the record of this committee to point out that there is now, as a result of that debate in this committee a week ago, a new requirement that the Director-General of ASIO must provide the minister with a new statement of facts and other grounds to justify any new warrants. The statement must include details about the operation of previous warrants. The new information must be able to satisfy the minister that the issue of the new warrant is justified by materially different information or information additional to that known to the director-general at the time he sought the minister's consent to request the issue of the last warrant.

Secondly, there is a requirement that the minister must be satisfied of that matter, as well as the matters that applied to the first warrant. Thirdly, the issuing authority must also be satisfied that the issue of the

new warrant is justified by materially different information or information additional to that known to the director-general at the time he sought the minister's consent to request the issue of the last warrant. Very importantly, the issuing authority must be satisfied of an additional matter—that is, that the person in question is not being detained in connection with one of the earlier warrants.

Finally, there is a new section in the bill stating explicitly that a person may not be detained under this division for a continuous period of more than 168 hours. I remind the committee that the explanatory memorandum tabled by the minister yesterday in this committee states clearly that this means that a person must be released after the questioning period is completed. This does break the nexus of continued detention. It also puts paid to the scenario that a person can be tapped on the shoulder on the way out of a police station or wherever and wheeled back in. The person will have time to re-enter the community, if this situation ever applies, they will have time to check in with the family and they will have time to make phone calls. In the vernacular, it basically restricts ASIO from any impulse to keep someone in the cooler indefinitely. It is a very important change and it was worth the effort that went into ensuring that those new provisions are in the bill. It again demonstrates the effectiveness of the committee process.

In relation to the important issues that have just been raised by other speakers, it is the opposition's strong view that if ASIO used its new powers the information sought would be obtained long before the 24 hours of interview and the seven days of detention. In fact, we are certain that three days would be satisfactory. Of course, once the information was provided, the person would be free to go—long before the current 168-hour deadline. To that end, we have indicated very clearly that, if a Labor government is elected, we will ensure custody is limited to a maximum of 72 hours under any warrant.

I think those senators who engaged in this committee debate would be well aware of the fact that getting this bill right has been hard yakka. There is no doubt that the parliamentary processes that have been strongly defended in this chamber have been instrumental in achieving this. That goes for what has occurred not only in the committee stage debates in this chamber but also in the committees of the parliament, both the Joint Committee on ASIO, ASIS and DSD and the Senate Legal and Constitutional Affairs Committee, which have examined this legislation in great depth.

I do believe that the Senate has done its job very effectively in more than tempering the excesses of this executive. I also acknowledge that a future government will need to make changes. I have said that,

if elected, a Labor government will ensure custody is limited to a maximum of 72 hours under a warrant. A Labor government would also ensure that the reversal of the onus of proof for the elements of some of the offences would be removed. Mr Crean has made that clear in the House of Representatives. I wanted to make some comments on the process of this committee stage and parliamentary debate, but I think it would be appropriate to do so at the conclusion of the substantive debate on issues in the bill. As other senators are indicating they want to make a contribution, I will resume my seat and make those other comments later.

Senator GREIG (Western Australia) (8.50 p.m.)—There is one comment in particular that Senator Faulkner has raised—and Senator Ray before him—that I cannot let go unchallenged. Repeatedly tonight, mostly from Senator Faulkner, we have heard the claim that a future Labor government would reverse or change some of the elements of the legislation which tonight they are supporting and shepherding through. That assumes that a future Labor government will enjoy the support of the future Senate. That cannot be assured. Senator, you cannot assure the voters—you cannot assure the listeners—that your desire in this area will be supported by a future parliament. If there is one thing I have learnt as a Democrat in just four years in this place it is that, if you want to effect change, you have to seize the moment, you have to grab the window of opportunity, and the window of opportunity for this chamber to make the changes that you seek is now. But you close that window. You cannot assure the voters that a future Labor government will make these changes because you cannot be assured of the political dynamics of a future parliament.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.52 p.m.)—In part, I accept that Senator Greig has made a fair point, but he is well aware that all these provisions, including the two I have mentioned, are subject to a sunset clause. I do not have a crystal ball and I certainly do not know what the result of the next election will be either in relation to the election of members of the House of Representatives or of the Senate. I certainly do not know if I will necessarily be standing here, or the fate or future of any other person in this chamber. I accept that and I would be the first to acknowledge it. But I do know that the opposition, with the support of the Australian Democrats and the Australian Greens over what appeared to be implacable opposition from the government, have been able to ensure that the provisions we speak of will cease to be law in three years time. I do know that, I think you know that and every person listening to this debate that you talk about is aware that that is the case. In that circumstance, I think I can say with more confi-

dence that there will be a responsibility on all those who sit not only in this chamber but in the House of Representatives—on the government, on the opposition of the time and whatever the composition of the Senate might be at the time. We know that at least one parliamentary committee will have to revisit all the provisions of the bill. I make that substantive point and that point goes to all the provisions in this division of the bill.

Senator BROWN (Tasmania) (8.54 p.m.)—I want to ask the minister about a matter that arose in question time today which relates very much to ASIO and its functioning. I asked the minister when the activities of Imam Samudra had come to light as far as that intelligence agency was concerned because the Office of National Assessments had raised that name as one they were aware of before the Bali bombing. The minister indicated today that that was not the case. Is the minister acquainted with the Senate Foreign Affairs, Defence and Trade References Committee proceedings of 20 June? I asked Dr O'Malley from the Office of National Assessments whether he knew if any of those who have eventually been implicated in the Bali bombing were operatives in Indonesia who were being looked at before that time. Dr O'Malley responded:

My recollection is that, yes, we did know that some of the people who we later found out were implicated in the Bali bombings we were strongly inclined to believe were in Indonesia at that time.

I said:

I will not press you on this if you do not want to do so, but can you name those people?

And he said that he believed one was Imam Samudra. The Office of National Assessments are saying that they were strongly inclined to believe that some of the people they later found out were implicated in the Bali bombings were in Indonesia at the time. Can the minister clear the air on this and say that the Office of National Assessments or ASIO did know or did not know that Imam Samudra was in Indonesia at the time and that they were not aware of him as a person bearing that name?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.56 p.m.)—The answer I gave in question time still stands. You must appreciate the difference between ONA and ASIO. ONA had indicated that they had corrected their statement, as I indicated in question time. I said that in relation to ASIO, I was not aware of ASIO having indicated what knowledge it had in relation to the matter. I said that the matter of the Bali bombing investigation was operational and I could not touch on anything going to that. That of course relates to how Imam Samudra came to be arrested. But if there is anything that I can add further, I will take that on notice as I did today. I

have nothing further to add other than what I said in question time today.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (8.57 p.m.)—I just want to make some brief comments in relation to the process of this debate. This is not a substantive contribution in terms of the policy issues and if no-one else is seeking the call I will do that now. I want to indicate before the committee debate concludes that there are a number of people I want to thank and a couple of observations I want to make in relation to the conduct of this debate. Specifically I would like to thank, not only on behalf of the opposition but on behalf of many people who have been able to utilise this material, Nathan Hancock in the Parliamentary Library for the *Bills Digests* on the ASIO bill and the research assistance which was extraordinarily helpful to the Senate Legal and Constitutional References Committee. Nathan is one smart cookie. He has a very forensic mind and he was a great resource for all senators to draw on, as was Jennifer Norberry in the library who also has particular research expertise in criminal law. In relation to the drafting of amendments, I want to acknowledge the staff of the Senate who have been responsible, I think mainly under Cleaver Elliott's guidance, for bowling up draft amendments in very trying and difficult circumstances on very many occasions. I thank them for that.

For the opposition's part, I want to thank those Labor parliamentarians who served on committees inquiring into the bill. It was an enormous contribution. I specifically want to mention two of my colleagues, Daryl Melham and Robert Ray, who both came to this debate from very different perspectives. They both drew on very different experiences, but they were both incredibly invaluable sources of advice, and I want to thank them and thank my colleagues on the caucus committee and in the caucus. It has been a long and rough ride for every member of the federal parliamentary Labor Party, and as the responsible shadow minister I want to thank them sincerely for their support and confidence.

I also want to thank some people I do not intend to name. I want to thank a number of very learned legal advisers. For the opposition, their independent and critical advice was a source of comfort—and, I have to be honest, occasionally discomfort. But I never had any doubt that the concern of those legal advisers was always the wider public interest. Their counsel was always very wise, and it was always in confidence. I cannot say who they are; they know who they are. One of the reasons I cannot say who they are is not that our work was top secret—as everyone would appreciate, these are very public debates; and so many of us who do not have the advantage of

drawing on the expertise of agencies and departments do depend so much on our staff and experts outside this building—but that, frankly, I do not even trust the government not to exact some petty revenge against them. They know who they are—I am sure other senators have drawn on similar expertise—and I thank them.

I am going to do something that we do not often do in Senate debates, because I want to acknowledge the efforts of the minor parties in relation to this debate. The truth is that the work of representatives from the Australian Democrats and the Australian Greens on the parliamentary committees has made a dramatic difference to this bill. I also want to say that many constructive contributions were made. I think that has made a difference to this legislation, so I want to say in relation to this that those contributions are respected and appreciated.

I say—and some might argue—that massive changes have been made to this bill. I believe that this bill is light-years away from the one that was first introduced. I know not one of those changes—most of which have been proposed via the mechanism of opposition amendments, because that is really how it works in these sorts of committee stage debates—would have been achieved without the support of the minor parties in the Senate. Those senators who have contributed to this debate have had to provide that support—those numbers, if you like—to come on board with this, and it has made a huge difference. As I said, this bill is very different from the bill that was first introduced into this parliament, and it could not have been achieved without the majority support that has been forthcoming on so many of those amendments and so many of these important issues in this particular committee.

Finally, I want to thank our own opposition staff. I particularly mention Mr Melham's staff, who have been so supportive over a very long period of time, and my own staff. I acknowledge particularly Antony Sachs. He deserves a great deal of credit for seeing the massive improvements to this bill. Without his efforts, it would be an awful lot worse.

Question put:

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

The committee divided. [9.09 a.m.]

(The Chairman—Senator J.J. Hogg)

Ayes.....	51
Noes.....	<u>12</u>
Majority.....	39

AYES

Alston, R.K.R.	Barnett, G.
Bishop, T.M.	Bolkus, N.
Boswell, R.L.D.	Brandis, G.H.
Buckland, G.	Calvert, P.H.

Campbell, G.	Campbell, I.G.
Carr, K.J.	Chapman, H.G.P.
Colbeck, R.	Collins, J.M.A.
Conroy, S.M.	Denman, K.J.
Eggleston, A.	Ellison, C.M.
Evans, C.V.	Faulkner, J.P.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Harradine, B.
Hogg, J.J.	Humphries, G.
Johnston, D.	Kirk, L.
Knowles, S.C.	Lightfoot, P.R.
Ludwig, J.W.	Lundy, K.A.
Macdonald, I.	Mackay, S.M.
Marshall, G.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Moore, C.	O'Brien, K.W.K.
Patterson, K.C.	Ray, R.F.
Santoro, S.	Scullion, N.G.
Sherry, N.J.	Stephens, U.
Tchen, T.	Tierney, J.W.
Watson, J.O.W.	Webber, R.
Wong, P.	

NOES

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

* denotes teller

Question agreed to.

Senator BROWN (Tasmania) (9.13 p.m.)—I move the Australian Greens amendment (1) on sheet 3015:

(1) Schedule 1, item 24, page 18 (after line 14), after subsection (4), insert:

(4A) Where a person who is before a prescribed authority for questioning under a warrant in accordance with this Division is a:

- (a) medical practitioner, including a counsellor;
- (b) legal practitioner;
- (c) member of the clergy;

and the person is requested to disclose information obtained in the provision of their professional services as listed in paragraphs (a) to (c), the person does not bear the evidential burdens required by subsections 34G(4) and (7).

It is an amendment which prevents that reversal of the burden of proof from going onto professionals—at least some professionals—in a way that cuts across their relationships with clients. Those specifically named here are medical practitioners, legal practitioners and members of the clergy. It is to help protect that relationship. In other words, the burden will remain on ASIO to prove that information is being withheld and it will not be put on these professional people, who may be requested to disclose information obtained in the provision of their professional

services. If you like, it is a last effort to protect something from the extraordinary breach of so many norms in the way our society works. One of those right at the heart of that is the protection of the doctor-patient, priest-confessional, lawyer-client relationship which is so very important to our society. We are not saying that such people are outside the reach of this; we are simply saying that the reversal of the onus of proof should not extend to people in those professions.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.15 p.m.)—The government opposes the amendment on the basis that it does not agree that specified professions should be given special protection. We covered this issue in a previous debate in relation to journalists. Senator Ray put it very well in relation to that. The principles are the same. Certainly, we do not believe that those exemptions should be included. It would detract enormously from the operation of the bill.

Question negated.

Senator BROWN (Tasmania) (9.16 p.m.)—There is nothing further to move here, and of course nothing is going to move any further here, so I will not delay the committee. But I want to thank Senator Faulkner for the magnanimity of his words a while ago. It is true: it is hard yakka with a piece of legislation like this where one has to be as clear-headed as one can in a sea of competing and conflicting imperatives. I also want to pay my respects to all who have been involved, including the opposition, the government and fellow crossbenchers.

In particular I thank my colleague Senator Nettle. She has not been long in this place but on this legislation she has been able to give me good advice all the way through. She has had her head right over very complicated components of the legislation and has always been a source of information when I simply did not have it. I also want to thank the staff of our two offices, in particular Ben Oquist, who has done a terrific job as well, and the sources we have had in giving us advice in the matter. I also thank the staff of this place. I repeat what Senator Faulkner said: congratulations.

I am not happy with the outcome. I think it is a very black day for human rights and civil rights in this nation of ours. Nevertheless, we are part of a democracy. The vigour with which the crossbench have defended very important components of that eroding democracy is a compliment to the role the Senate plays in that democracy and of itself is a statement as to why this place should stay strong as a counterbalance to the executive of this nation.

Senator GREIG (Western Australia) (9.18 p.m.)—In closing, I too would like to acknowledge the kind words from Senator Faulkner. His acknowl-

edgement of the crossbench work is appreciated. I would also like to acknowledge, as have other senators tonight, the persistence, diligence and tremendous work of the Senate staff, the clerks, the Parliamentary Library staff and, from my own staff, my legal researcher Jo Pride. I would like also to acknowledge, as did Senator Faulkner, the myriad human rights lawyers who provided often unsolicited but nonetheless appreciated and useful advice. I think the entire exercise, as I said last night, has been a tremendous illustration of what an asset the Senate is to the parliamentary process.

Resolution reported.

Adoption of Report

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.20 p.m.)—I move:

That the report from the committee be adopted.

Senator HARRIS (Queensland) (9.20 p.m.)—I rise to make a contribution at the conclusion of consideration of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]. By way of explanation, I place on the record that, as the One Nation representative in this chamber, I chose not to participate in the proceedings on the bill, acknowledging the work that other senators have contributed in this place and in no way detracting from that at all.

The ASIO legislation amendment bill has been universally condemned by constituents, civil libertarians and legal scholars from across the political spectrum. The bill represents a right turn—a very far right turn—in Australian law. The bill is so extreme that three separate federal parliamentary committees, on which the government has a majority, have severely criticised it. The powers given to ASIO under this legislation are completely unacceptable in a democracy, whether or not those powers are used. The bill dilutes the rights of the people and dramatically enhances the power of the state security apparatus. It represents a return to barbarism in modern law. It represents and will become a yoke upon the necks of our descendants for years to come.

Furthermore, the bill is totally and absolutely unnecessary. ASIO has been operating normally for over a year without the new powers granted under this legislation. It has been business as usual without those laws, so why do we need them now? You have to wonder what Australia is going to be like in the future if the government and the opposition are anticipating the need for this type of law. Why would the coalition and Labor be interested in passing repressive legislation that stonkers civil liberties, human rights and fundamental democratic freedoms? Is it because a future government might want to withdraw those freedoms whenever they want? Is the vision for the future a foot stamping on the human face

forever? Is the terrorist threat a pretext for control? The Australian people are not so naive as to believe that totalitarian dictatorships are something that only existed in the past. History shows that the greatest potential source of terror is not small hate groups or religious fanatics but uncontrolled, unaccountable government.

The word 'terrorism' originated during the French Revolution when the government instituted the Reign of Terror to execute political opponents and seize their property, and to terrorise the rest of the population into submission. The passage of this legislation will mean that Australia is not safe from the worst kind of terrorism—that is, state terrorism. Who knows what the government will be like in 50 or 100 years time. The governments of the future will have the powers that we have granted them here tonight. We need to take a long-term view when considering bills like this ASIO bill. One Nation opposes the bill. We fought vehemently against it when it came into the chamber the first time, and we will vote against it again. We believe the bill ought to be thrown out of parliament. It is a disgrace to democracy and a disgrace to freedom. It is an affront to the people who fought and died for our liberties.

The opposition amendments to this bill are weak. The Australian Council of Civil Liberties says that the changes that have been made leave the bill in the category of the worst attack on civil liberties by a federal government since the Communist Party Dissolution Bill in the 1950s. Then, as now, bogus claims were made about the regrettable necessity to surrender civil liberties in the interests of confronting a common enemy. This legislation must be viewed along with the government's other antiterrorist laws. I am talking about instruments such as the Defence Legislation Aid to the Civilian Authorities Act, which gives the Prime Minister and other appointed members of the executive the power to call out the troops—even against striking workers and civilian protestors. The same act gives Australia's defence personnel the authority or the order to shoot to kill Australian citizens.

Amendments made to the ASIO act in 1999 ahead of the Sydney 2000 Olympics mean that ASIO already has some very powerful tools. Here are some of them. ASIO can use tracking devices to access data in computers and to open mail carried by private mail contractors. It can install and remove listening devices and collect and disseminate foreign intelligence. It can obtain a warrant—valid for 28 days—to search premises. It can access information held by AUSTRAC and the ATO. Furthermore, ASIO is able to obtain telecommunications interception warrants for a person rather than a phone service. This means that any phones routinely used by a particular person

under the warrant can be intercepted. I want to emphasise that point: the warrant is not to actually intercept a fixed phone; the warrant is for a person. Whether that person uses their own home telephone, a mobile phone or a public phone anywhere in Australia, the warrant covers that.

They are some of ASIO's existing powers, and this legislation will greatly enhance those powers. ASIO will have the ability to pick up any person off the street on a mere suspicion of knowledge about terrorism and detain them without charge. By reincorporating terrorism within the definition of 'politically motivated violence', the government might also sweep up industrial actions, protests and demonstrations. One Nation pointed out on 24 June to the other minor parties and to the ACTU that it is possible that a union leader or member could be detained and questioned under the suspicion that they might engage in politically motivated violence. It is possible that this legislation, at some time in the future—even 50 years down the track—could be used to gag activists for a few days by simply detaining them. I would like to point out that the budget produced a financial smorgasbord for ASIO. It is receiving more money and more power. In 1993-94, ASIO's budget was approximately \$47 million. This year, its appropriation is \$95 million. Its budget has more than doubled in a decade.

Let me highlight the fatal flaws that are inherent in this bill. I am going to give you an example of a day in the life of an ASIO detainee. A federal judge or magistrate issues a warrant for your detention because you are merely suspected of knowing information about a terrorist event or even an event that has occurred in the past. Your detention has to be implemented according to the wording laid down in the warrant by the Attorney-General. As the Australian Council for Civil Liberties has pointed out, this means that the judge or magistrate is effectively acting as a rubber stamp for the Attorney-General.

ASIO turn up at your office with the detention warrant and escort you off the premises on the basis that you could have information that could help them. You are not charged with any offence. You are shown to the back seat of a car and ASIO officers sit on either side of you. You are driven to a detention centre. If you refuse to cooperate or surrender information, you could be jailed for up to five years. You ask to see a lawyer but you are told that unless you know the lawyer's name they cannot tell you whether they are approved or not. You tell the agents you do not know the names of any lawyers off the top of your head because you have never been in trouble with the law before. They begin to question you and when the lawyer finally does come, hours later, she or he is not able to help much. As soon as your lawyer tries to

advise you or to ask why you are being detained, she is asked to leave the room, because passing information to her could be a breach of national security. You are kept in detention for seven days and you are not allowed to contact family or friends during that time. Your lawyer cannot afford the time to be constantly with you for a seven-day period. During the first day of detention, you are brought before a judge but for the remaining six days you are on your own with your interrogators. The inquisitors say that, although they are not permitted to hurt you, even if they did you would not be able to tell anyone who they were because their identity is secret.

In their media release of 19 June, Labor say the ASIO bill in its current form is abhorrent. Well, in its amended form it is abominable. ASIO can still knock on your door at 4 a.m. and detain you without proper legal representation. As Senator Brown and Senator Nettle pointed out earlier, this could become a rolling warrant; you could be detained indefinitely. It is on issues like this that the Australian people realise the important role of minor parties and Independents in the Senate, and I congratulate both the Greens and the Democrats for raising this important issue. Labor would have allowed this provision to sneak through. While the amendments moved in the debate today provide another hoop for ASIO to jump through before requesting another warrant, it remains up to the minister to be 'satisfied' that the issue of a warrant request is justified. As it stands now, a person could be detained for 168 hours, then let out for a few hours and picked up again on another warrant because the minister consents.

A very important point about Labor's amendments is in relation to the protocols for questioning periods, meal breaks and sleep breaks. These protocols are not enshrined in the bill; they will be a mere instrument which can be disallowed. Therefore, there is no protection; there is no legislative guarantee. The scientifically crafted tyranny contained in the legislation is petrifying. A person's right to silence is stifled and they are presumed guilty until proven innocent. This is turning common law on its head and turning the pages of legal history back to the Dark Ages. There is no security problem here in Australia that necessitates this sort of repressive, repulsive authoritarian legislation.

Labor also claim to have addressed the issues surrounding the detention of children. The fact of the matter is that a person as young as 16 can still be detained and questioned. I say to each senator in this chamber: if your 16-year-old daughter went missing for seven days, it would not matter whether she was 14 or 16, you would still be worried. Labor's claim that they have secured an amendment that will give continuous access to a lawyer is spurious. Under the

bill, the role of the lawyer during the questioning process is severely restricted. ASIO has the right to veto any lawyer. The lawyer might not even get through the door. Even before that stage, the person detained must ask for the lawyer by name. If they do not know a name, then they do not get a lawyer. The lawyer is prohibited from being given any information relating to 'national security' so, in effect, the lawyer could be turned away at the door. During the questioning of the detainee, the lawyer cannot interject or object to questioning, nor can he or she actively advise the client during the questioning process. Rather, they must wait until after an eight-hour questioning block has finished. If the lawyer 'disrupts proceedings' by doing anything other than requesting clarification of a question, he or she can be ejected. Further, if a lawyer communicates any information about the client's detention or questioning to any entity other than the Federal Court, the lawyer has committed an offence punishable by up to five years imprisonment. Let me read to you what the Law Institute of Victoria, the professional association of Victorian solicitors, has said about this bill, as it stands, in relation to legal representation:

ASIO has no obligation to inform the arrested person of the grounds on which they are being detained, so it will be very difficult for a lawyer to object to the detention."

And Labor are telling us that they are still protecting the rights of Australians! The government has introduced the worst possible legislation and, like a fire truck hosing down protesters, Labor have merely watered it down. Labor's amendments have turned Big Brother into 'Soft Sister'. You can think of the Labor Party in terms of providing 'feigned dissent', manufactured dissent. They represent a supposed alternative but in fact they are not really threatening to any important power holders. It is awfully easy to construct a pattern of justification for things you do out of some kind of self-interest, and the ALP's self-interest is in the fact that eventually they will become government and they might want to use some of these appalling powers.

Let me remind the chamber of what Senator Ray said about the antiterrorism bills, including the security legislation bill. He said:

The way we must approach these matters is to look at them as if we were in government. We must strip everything away and assume for the moment that we are in government: what would we think was the most appropriate legislation then?

One Nation opposes the development of this parallel legal system in which terrorism suspects, including innocent Australian citizens, can be investigated and interrogated without proper legal protections guaranteed by the ordinary system. We will be carefully monitoring the use of this legislation, which is to be reviewed within 30 months of royal assent. Let us

hope that the review does not present an opportunity for ASIO to make a case for even more powers, such as the power of arrest.

This legislation is bone chilling in its straightforwardness. It allows a person's rights to be ignored in certain cases because of 'need'. History shows that the greatest potential source of terror is not small hate groups or religious fanatics but uncontrolled, unaccountable government itself. I remind the chamber that those who give up any freedom in exchange for a little security will ultimately have neither.

Question agreed to.

Report adopted.

NATIONAL HANDGUN BUYBACK BILL 2003

In Committee

Consideration resumed.

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (9.39 p.m.)—Before the break I asked the Minister for Justice and Customs if he would furnish the committee with the list of hand guns to be prohibited as a consequence of this legislation in conjunction with the states, and I wonder if he would acquaint the committee with that list.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.39 p.m.)—Just to correct Senator Brown, it is not the list of hand guns to be prohibited, because it still requires agreement by the states and territories. What we have is a draft list that has been compiled by the Victorian firearms registry. It is being circulated to the states and territories and they no doubt will have some comment on it. Therefore, it is inappropriate for me to provide that list to the committee. It would not be helpful in any event, because it is by no means a final list and it requires the consent of eight other governments. At this stage it is still a working document.

Senator BROWN (Tasmania) (9.40 p.m.)—I do not need Senator Ellison to tell me as a senator, or any other senator in here, that a document that is being circulated to the states and going through the bureaucracies of those states is not helpful to us making a decision in here. That is very patronising nonsense from Senator Ellison. The failure of the government to present this committee with that draft list, as he would have it, of guns is insulting to the committee. The list should be here, we should be able to see it and we should be able to take that into deliberation.

It is very arrogant of the government to treat a Senate committee in this fashion. I do not know what the minister thinks the government will gain out of it, but it is arrogant and very petty. It is an obvious trammelling of the right of this committee to determine these matters on the basis of all the information

available. I suppose one must take from this that the government is embarrassed by that list in some fashion. What we would also like to see, of course, is the list of guns that will not be prohibited. There are hundreds and hundreds and hundreds of them.

The problem with this legislation is that it is not a prohibition on the availability of hand guns, except for those people who have a very strong reason indeed. This legislation will allow for the continued circulation of thousands of hand guns, including those with the semiautomatic capacity to fire 10 bullets. The legislation, extraordinarily enough, is that they have to have a barrel length that makes the gun both more powerful and more accurate than those on the prohibited list. We are in the position where the statistics show—and Senator Harris in his submission to the Senate earlier tonight said this, whether he was aware of it or not—that the death rate from hand guns in Australia is rising.

The process we have where people who have a banned hand gun can go and get monetary compensation from the state authority, partly funded by the Commonwealth, and then go and buy an unbanned hand gun that is more powerful is a failed process. We have just dealt with law to try to contain terrorism in this country and here is the government failing to ban hand guns, which create massive terror for people on the wrong end of those hand guns when they are misused in the home and in the streets in this country of ours. We know from the buyback of the semiautomatic rifles that it is effective in decreasing the abuse and the death rate from the misuse of such guns.

The fact is that 600 of these hand guns are stolen each year and there are 10,000 to 20,000 illegal hand guns in Australia. Those are the estimates and of course we do not have an upper figure on how many are bought altogether. We do know that in 1992-93, less than 17 per cent of firearm homicides in Australia were from hand guns. The death rate then was about 600 a year, but by 2001-02, 56 per cent of firearm homicides in Australia were from hand guns. The latest statistics show that there are about 400 deaths per annum. Because of the buyback of semiautomatic rifles, there has been a big drop in the deaths from long guns but, at the same time, there has been a commensurate and overtaking increase in the death rate from hand guns.

As Senator Greig has said, this is permitting hand guns which were available and they are what were used in the mass murder at Dunblane in Scotland in the mid-nineties. This legislation is not going to prevent that possibility. Why should a person without a darned good reason have a semiautomatic hand gun available to them? It should be very restrictive in-

deed. Therefore, we have an amendment to this legislation and I move Greens amendment (1):

- (1) Clause 4, page 3 (line 17), at the end of subclause (2), add:
 - ; and (d) the Minister is satisfied that the State has banned all self-loading pistols or revolvers except for those:
 - (i) to be used for military, police or other government purposes; or
 - (ii) to be used for legitimate employment purposes; or
 - (iii) to be traded and owned by firearms collectors licensed under appropriate State and Territory legislation; or
 - (iv) to be used by members of the Olympic and Commonwealth Games sporting teams, or people training for those teams as determined by an Olympic Shooting Regulation Committee convened by the Minister as defined by regulation subject to the following provisions:
 - (A) the Committee is to consist of representatives of the Australian Olympic Committee, the Minister for Sport, the National Coalition for Gun Control, the Australian Medical Association, the Australian College of Psychiatrists, the Teachers Federation, the Domestic Violence Advocacy Centre, and the Australian Shooting Association;
 - (B) the Committee is to develop a policy for the basis of developing a list of approved weapons within guidelines defined by regulation;
 - (C) individuals must apply to the Committee for accreditation to use weapons from an approved list within guidelines defined by regulation.

This amendment would require the minister to be satisfied, before giving money to the states for this buyback scheme, that all self-loading pistols or revolvers had been banned except for those who had legitimate uses—the military, the police, other government purposes, legitimate employment purposes, for trade and ownership by firearm collectors, or for use by Olympic and Commonwealth Games teams who have conditions placed on them.

This is the legislation we should have here. It should not be left again to the Greens to do Prime Minister Howard's work for him. But what a different situation this is from the one in 1996 when he responded to the massacre at Port Arthur, in the wake of huge public support, with a ban on semiautomatic rifles. But here we are in 2003 with the Prime Minister and the government failing to ban semiautomatic hand guns, even though we can see the death rate going up. All members of this committee should

think about that, and the restrictions placed on these guns should be at least as tight as those that were placed on semiautomatic rifles. But that is not evident in this legislation.

Senator GREIG (Western Australia) (9.47 p.m.)—We Democrats agree entirely with the principle that is underlying Senator Brown's amendment—that is, that self-loading pistols or revolvers should be banned, with the limited exceptions that relate to Commonwealth and Olympic Games weapons. The Democrats agree entirely with the principle that we should be committed to achieving a ban of that scale within Australia. But I think it is important to recognise that, in this particular instance, the Commonwealth has already entered into an agreement with the states. The states have to date relied upon that agreement and a number of them have already passed state legislation in that regard. So that would mean that they will, or already have, determined their budgets, taking into account the reimbursement that they would receive from the Commonwealth under this legislation. The Democrats believe that this legislation ought to be passed. We have expressed our grave concerns in relation to the package of reforms. But I think if we pursue change through other avenues and not cause the Commonwealth to break a six-month old agreement which the states have relied upon, then that might be a better course of action.

Senator LUDWIG (Queensland) (9.49 p.m.)—The amendment proposed by Senator Brown does in fact, as I think Senator Greig rightly points out, take the operation of the buyback scheme outside the boundaries set up by the states and the Commonwealth government at the COAG meeting held in Canberra last December. The COAG meeting did agree that semiautomatic hand guns with a barrel length of less than 120 millimetres and revolvers and single shot hand guns with a barrel length of less than 100 millimetres will be prohibited. Highly specialised target pistols, some of which have a barrel length of less than 120 millimetres, will be allowed. There has been a significant movement in the limitation of firearms since Port Arthur up to now, including this scheme, and the path set by the state governments and the Commonwealth at COAG are on the right track. To that extent, Labor are not in a position to agree with the Greens' amendment and therefore we oppose it.

Senator HARRIS (Queensland) (9.50 p.m.)—I rise to clarify a comment Senator Brown made concerning whether I was aware of what I said in my contribution in the second reading debate on this bill. I was quite aware of what I was saying, and I would like to clearly place on record the basis of my statement that both homicides and deaths as a result of the use handguns are rising. In doing that, we actually

need to look at the absolute pivotal point in this whole debate—that is, who was using them? Were they being used by somebody who is going to have to surrender their hand gun or were they being used by a person who was using it illegally? That is the crux of the whole matter. Senator Brown went on to say that this legislation will not stop the types of massacres that we saw in Scotland. Of course it will not, because such actions will not be carried out by law abiding Australians. To emphasise the point, I would like to read into *Hansard* a media release by SSAA. It states:

The Sporting Shooters Association of Australia Inc. said today that the latest report from the Australian Institute of Criminology's National Homicide Monitoring Program showed that the Federal government's proposed buy-back of registered sporting handguns would have little impact on firearm-related murders.

SSAA spokesperson Mr Gary Fleetwood, said that the AIC report highlighted the fact that the overwhelming majority of firearm-related homicides were committed by unlicensed offenders using unregistered guns. "When more than 89% of offenders are unlicensed and more than 91% of firearms used in homicides are unregistered, you really have to question the wisdom of a buy-back directed exclusively at law-abiding gun owners." Mr Fleetwood said.

Mr Fleetwood said that despite the Prime Minister's assurances that sporting shooter's activities at the international level would not be "compromised", the up-coming handgun buy-back program would see Australians stripped of any chance of winning several major international championships. "I attended the International Practical Shooting Confederation National Titles on the weekend and if the government pushes ahead with some of the restrictions it has proposed, over half of the competitors present will no longer be able to represent Australia overseas in their particular division. When the government's own statistics indicate that a buy-back of registered sporting handguns is likely to be an expensive waste of taxpayers money you can understand why shooters are angry."

The references that have been used by the SSAA in putting out that media release are the Australian Institute of Criminology report, the Prime Minister's comments, an article entitled 'The 1996 Buyback—success?' and quotes on buyback successes internationally.

Here we have the peak body that is representing the sporting shooters of Australia clearly setting out statistically that 91 per cent of the firearms that are used in homicides are unregistered. So I put it to the minister: does the minister believe for one moment that the people who own those unregistered hand guns are going to walk in and surrender them? Think about it: (a) they have an unregistered hand gun and (b) they are unlicensed. Do we think that they are going to walk in and say to the government, 'Here is my hand gun'? Of course, they are not. What this bill is going to do, again, is to restrict the ability of law-abiding Australians to protect themselves.

One Nation have clearly said from the start of this whole process that you do not license the legitimate users of guns; you create a register of any person who should not have them. If any person is involved in supplying anybody on that register with any form of firearm, that person should lose their license to sell if they work in a legitimate gun shop. And if they are selling illegal guns, the penalties in existing law should apply to them. Here, again, we have a situation where, with the greatest of intent, the government are setting out to make this country a safer place—I guarantee that they are: they are making it safer for criminals.

Senator MURPHY (Tasmania) (9.57 p.m.)—Firstly, I must say that I am not able to support the amendment moved by Senator Brown because it takes such a restrictive approach towards people who may well be able to use the types of hand guns that he is referring to. There are many sporting shooters who attend their clubs on a regular basis and participate in sporting events, and many of them have done so for many years of their life. I want to make the point—and I will use the argument that Senator Brown put in respect of the ASIO bill—despite the view that some people may have that they want to make this country a safer place in respect of gun control, there are many genuine people out there who deserve the right to participate in the sporting events that they have pursued for a long period of time. So that is one of the reasons why I will not support the amendment.

In respect of the bill per se, I have to say that the government has essentially taken nothing more than a populist approach in trying to fix a problem that could have been fixed through other means. This hand gun buyback will prove to be essentially a failure at great expense to the taxpayer. It is not unlike the other gun buyback scheme. I agree entirely with the removal of certain weapons from the public domain, but that could have been solved in another way. We did not need to spend close to \$300 million, or whatever it was, to achieve that outcome; it could have been achieved through other means. Again, we have this knee-jerk reaction—what is seen to be popular with the public—directing the policy of the country in respect of people who own firearms.

Firearms for many people in this country have been a traditional way of life. I own firearms. I have participated in hunting and fishing for as long as I can remember. I see that as a traditional part of my way of life, as did my grandparents and probably their grandparents. So I do take some objection to the reflection that seems to be drawn through speeches that somehow everybody who owns a firearm is a bad person. I really find that a little bit hard to swallow because that is simply not the case.

I suppose—and this might sound a bit ridiculous—you could say that in North America the Red Indians had bows and arrows and they killed people with them. Are we going to go around and have a buyback of bows and arrows? If the will were there for the government, and for some stupid state governments, I have to say, to take a proper approach to addressing these things from a sound policy point of view, these things could have been achieved. Unfortunately, that is not the case. But I have to say that I get a little disappointed when people speaking in this place seem to reflect on people that have a genuine approach to something that has been a part of their life, and in fact was part of the European settlement culture of this country.

People go on with a lot of nonsense sometimes in respect of the handgun buyback. They talk about having to buy back firearms, for God's sake, that you cannot even buy ammunition for and, indeed, you could not even manufacture ammunition for. That is part of the stupidity of the whole process. We will part with tens of thousands, hundreds of thousands and millions of dollars of taxpayers' money because of the value that many of those weapons have. I do not own any like that, but a lot of people who collect antique firearms have weapons that, in some cases, are worth in excess of half a million a piece. It is just sheer stupidity for any government, state or federal, to be parting with taxpayers' money for firearms that are of no consequence.

Many of these firearms were manufactured in the days of gunpowder. Can you buy gunpowder today? No. Indeed, in respect of some of them you could actually manufacture ammunition—and I will make this point—but you would use a different form of firing powder. That firing powder would have the potential to blow them apart. I raise this question: who would, in their right mind, owning a half-million dollar handgun, want to see whether or not it might work by loading it with ammunition that would potentially—in fact, highly likely—blow it apart? It just does not make sense.

I am all for logical policy approaches that achieve outcomes and improve safety within the community and, indeed, I am actually for having laws that might apply some penalties to people that commit these crimes instead of the nonsensical judicial system approach that we have at the moment where most criminals rarely serve a penalty that fits the crime that they have committed. If there were a reasonable policy we might have in this place, it would be to try to get in place some penalties that might fit the crime committed—and I bet I will not hear too much argument from the Greens and the Democrats with regard to this sort of proposition. But they will not support that. No. What about civil liberties? We will not get

up some penalties that might fit the crime that some of these people commit. No, we will not see too much of that. I would suggest that, if the Prime Minister wants to have a referendum about anything, he ought to have a referendum to see whether people think that the penalties that apply to crimes such as the terrible murders that we often hear have been committed fit the bill.

I noticed an answer that the Prime Minister gave to a question that was put to him about Hicks, the guy who has been accused of being an al-Qaeda participant. When the Prime Minister was asked about this bloke facing the death penalty in Pakistan or somewhere, the Prime Minister said, 'So be it.' I have to say to the Prime Minister: it is a pity that you do not take the same view in respect of some of the people that commit terrible crimes against humanity in this country. But, no, we will not see that debated. But I will tell you this: put it to a referendum and see what the people think.

Question put:

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

The committee divided. [10.10 p.m.]

(The Chairman—**Senator J.J. Hogg**)

Ayes.....	2
Noes.....	49
Majority.....	47

AYES

Brown, B.J. *

Nettle, K.

NOES

Abetz, E.	Allison, L.F.
Barnett, G.	Bartlett, A.J.J.
Bishop, T.M.	Brandis, G.H.
Buckland, G.	Campbell, G.
Carr, K.J.	Chapman, H.G.P.
Cherry, J.C.	Colbeck, R.
Collins, J.M.A.	Conroy, S.M.
Ellison, C.M.	Evans, C.V.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Greig, B.
Harris, L.	Hogg, J.J.
Humphries, G.	Johnston, D.
Kirk, L.	Knowles, S.C.
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.	Moore, C.
Murphy, S.M.	Murray, A.J.M.
O'Brien, K.W.K.	Ridgeway, A.D.
Santoro, S.	Scullion, N.G.
Sherry, N.J.	Stephens, U.
Stott Despoja, N.	Tchen, T.
Watson, J.O.W.	Webber, R.
Wong, P.	

* denotes teller

Question negatived.

Senator HARRIS (Queensland) (10.14 p.m.)—I would like to direct a question to the minister relating to a situation where a person owns a revolver that is registered, and that revolver is a hand gun that has come back from the Second World War and is of historical value to that person. I will use an example: it may be a Luger that has been brought back to Australia as a keepsake or memento from the First or Second World War. Is it the intention of the government to actually take back that revolver that is kept for no reason other than for its intrinsic value to that person? Does the National Handgun Buyback Bill capture all of those hand guns that are, at present, in the possession of people who keep them for no reason other than for their intrinsic value as a relic from a past war?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.16 p.m.)—The question, as I understand it, relates to a gun that is pre-1946. It is registered, I assume, as an historical collector piece. On that basis, the gun would not be retrieved.

Senator HARRIS (Queensland) (10.16 p.m.)—I thank the Minister for Justice and Customs for that answer. I would like to put another scenario to the minister in relation to a property owner who operates a cattle or sheep property in a rural area and who, as a normal means of carrying out their activities on the property, has been accustomed to carrying a side-arm for two purposes: firstly, for their own personal safety and, secondly, for putting down injured stock or a distressed feral animal which may be bogged in a dam. They use that hand gun in their normal activity. What provision is there, under the government's proposal, for that person to be able to continue to carry out that activity? For the benefit of the minister, there is a safety issue for the person on that property. The minister would be aware that a lot of property owners now use four-wheel motorcycles to get around their properties. If they do not have the authority to use their hand gun as a side-arm, we are now going to require them to carry with them a long rifle. Where do you carry a long rifle on a four-wheel motorbike? Yes, we know that on a horse it can be carried in a sheath, but there is a danger in that for the person carrying out the activity. I am looking for some clarification for these property owners who have in the past been able to protect themselves and have the use of a hand gun when they are carrying out their duties on their property.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.19 p.m.)—We have made it very clear that the people in the category that Senator Harris has outlined have nothing to worry about. The National Handgun Buyback Bill does not affect them. It will not affect primary producers, security guards or persons in any other occupation that

continues to have a genuine need for a hand gun. We have made it very clear that, in a rural situation where a person has a licence for a firearm, this bill will have no effect on them.

Senator HARRIS (Queensland) (10.20 p.m.)—I thank the minister for that clarification, because it will remove a considerable amount of anxiety for people in rural areas.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.21 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Senator Harris—I request that the Senate record my vote against the bill.

Senator Murphy—I ask that my vote against the bill also be recorded.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2002

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Broadcasting Services Amendment (Media Ownership) Bill 2002, acquainting the Senate that the House has agreed to amendments (1) to (15), (17) to (19), (21), (22), (25) to (41), (44) to (48) made by the Senate, disagreed to amendments (16), (20), (23), (24), (42) and (43), and requesting the reconsideration of the bill in respect of the amendments disagreed to.

Ordered that the message be considered in Committee of the Whole immediately.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.23 p.m.)—I move:

That the committee does not insist on Senate amendments (16), (20), (23), (24), (42) and (43) disagreed to by the House of Representatives.

Senator MURPHY (Tasmania) (10.23 p.m.)—Mr Chairman, I seek a little guidance. I have circulated amendments that I want to move. Am I required at the moment just to speak to the motion moved by the minister or can I move my amendments now?

The CHAIRMAN—There are two ways you can do this: you can move them as amendments to this motion or you can move your amendments separately after the motion. The second way is probably a cleaner way to do it, according to the advice I have received.

Senator MURPHY—In that respect, it would seem to be pointless for me to move my amendments after the Senate has insisted upon its amendments.

Senator Ian Campbell—I suggest that we test the first vote on the minister's motion as potentially that would make Senator Murphy's amendments redundant.

Senator MURPHY—To save a bit of time, I will move my amendments as amendments to the minister's motion.

The CHAIRMAN—That is what I was just about to recommend to you.

Senator MURPHY—by leave—I move my amendments on sheets 2996, 2992 and 2994:

Sheet 2996—

- (1) Schedule 2, page 5 (after line 8), after item 1, insert:

1AA After section 36

Insert:

36A Disaggregation and transfer of commercial television licences for metropolitan areas where an application for a cross media exemption certificate has been made

Where a person applies for a cross media exemption certificate that includes the transfer of a metropolitan commercial television licence or licences and the transfer includes a metropolitan commercial television licence held by a person who holds another metropolitan commercial television licence or licences, then the second mentioned licence or licences may only be transferred collectively with the first mentioned licence and only to one other person.

Sheet 2992—

- (1) Schedule 2, item 4, page 12 (line 30), omit "if", substitute "provided".
- (2) Schedule 1, item 4, page 13 (after line 4), at the end of subsection 61E(1), add:
 - ; and (c) the application is not one which would provide an applicant for an exemption certificate in a metropolitan licence area with more than 35% of the total advertising revenue of commercial television and commercial radio broadcasting licensees and newspapers generated through those operations in that metropolitan licence area.
- (3) Schedule 2, item 4, page 13 (after line 5), after subsection 61E(1), insert:
 - (1A) The ABA must refuse to issue a cross-media exemption certificate if it relates to an applicant for an exemption certificate in a metropolitan licence area which has more than 35% of the total advertising revenue of commercial television and commercial radio broadcasting licensees and newspapers generated through those operations in that metropolitan licence area.

- (1B) In taking action under subsection (1A), the ABA must obtain a consumer and market impact report from the ACCC in accordance with section 61DA.

- (4) Schedule 2, item 4, page 13 (after line 7), after section 61E, insert:

4A After section 61P

Insert:

61EA Cessation of operation

Paragraphs 61E(1)(c) and subsection 61E(1A) cease to have effect 3 years after they commence.

- (5) Schedule 2, page 18 (after line 12), at the end of Subdivision B, add:

61PA Review of effect of Subdivision

The Minister must:

- (a) initiate, as soon as possible after the third anniversary of the day on which this subdivision commences, a review of the operation, effectiveness and implications of that Subdivision; and
- (b) cause to be tabled in both Houses of the Parliament a copy of the report of the review within 15 sitting days of receiving the report.

Sheet 2994—

- (1) Schedule 2, item 4, page 12 (after line 26), after section 61D, insert:

61DA Australian Competition and Consumer Commission to provide a consumer and market impact report

- (1) At least 30 days before a cross-media exemption certificate is issued to a person, the ABA must request the Australian Competition and Consumer Commission to provide a consumer and market impact report under this section.
- (2) The report is to advise whether, in the opinion of the Australian Competition and Consumer Commission, the entering into or carrying out of one or more associated transactions or associated agreements in relation to the certificate:
 - (a) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the entering into or carrying out of those associated transactions or associated agreements were the acquisition by a person (the *acquirer*) of an asset of a body corporate; and
 - (b) would not be authorised under section 88 of that Act if the acquirer had applied for such an authorisation; or
 - (c) would provide an applicant for an exemption certificate in a metropolitan licence area with more than 35% of the total advertising revenue of all commercial television and commercial radio broadcasting licensees and newspapers generated through those operations in that metropolitan licence area.

Note: For associated transaction and associated agreement, see subsection (7).

- (3) In preparing the report, the Australian Competition and Consumer Commission must take into account the matters set out in subsection 50(3) of the *Trade Practices Act 1974* (including those matters relating to the interests of consumers).
 - (4) Subsection (3) does not limit the matters that may be taken into account.
 - (5) The ABA must not make a decision on the application for the certificate until the Australian Competition and Consumer Commission reports under this section.
 - (6) For the purposes of the consideration of a request by the Australian Competition and Consumer Commission, section 155 of the *Trade Practices Act 1974* applies as if the entering into or carrying out of one or more associated transactions or associated agreements in relation to a cross-media exemption certificate were a matter referred to in subsection (1) of that section.
 - (7) For the purposes of this section, if, in the event that a cross-media exemption certificate were to be issued, a transaction or agreement would (either alone or together with any other transactions or agreements) result in the certificate becoming active, the first-mentioned transaction or agreement is an *associated transaction* or *associated agreement*, as the case may be, in relation to the certificate.
 - (8) For the purposes of this section, a viewer of a commercial television broadcasting service, or a listener to a commercial radio broadcasting service, is taken to be a consumer of that service.
- (2) Schedule 2, item 4, page 13 (after line 7), at the end of section 61E, add:
- (3) Despite subsection (1), the ABA must not issue a cross-media exemption certificate if:
 - (a) the Australian Competition and Consumer Commission has reported under section 61DA in relation to the certificate; and
 - (b) the report is to the effect that, in the opinion of the Australian Competition and Consumer Commission, the entering into or carrying out of one or more associated transactions or associated agreements in relation to the certificate:
 - (i) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the entering into or carrying out of those associated transactions or associated agreements were the acquisition by a person (the *acquirer*) of an asset of a body corporate; and
 - (ii) would not be authorised under section 88 of that Act if the acquirer had applied for such an authorisation; or

- (iii) would result in an applicant for an exemption certificate in a metropolitan licence area obtaining more than 35% of the total advertising revenue of commercial television and commercial radio broadcasting licensees and newspapers generated through those operations in that metropolitan licence area.

Note: For *associated transaction* and *associated agreement*, see subsection (5).

- (4) If the Australian Competition and Consumer Commission has not provided the report within 30 days after being given a request for the report:
 - (a) the Australian Competition and Consumer Commission must notify the ABA that the Australian Competition and Consumer Commission has been unable to provide the report within that 30-day period; and
 - (b) subsection 61D(5) has effect, in relation to a decision on the application for the certificate, as if the 60-day period mentioned in that subsection were extended by one day for each day in the period:
 - (i) beginning at the end of that 30-day period; and
 - (ii) ending when the Australian Competition and Consumer Commission provides the report.
- (5) For the purposes of subsection (3), if, in the event that a cross-media exemption certificate were to be issued, a transaction or agreement would (either alone or together with any other transactions or agreements) result in the certificate becoming active, the first-mentioned transaction or agreement is an *associated transaction* or *associated agreement*, as the case may be, in relation to the certificate.

With regard to this whole process, we have, over a long period of time, sought to bring about changes to cross-media ownership rules and media ownership laws in this country because I think it is recognised by most people that the current laws are inadequate. As I said earlier, technology changes and the nature of services provided by the media industry, and the potential services out there to provide an even broader cross-section of services to the general public, have fast moved past our existing media ownership laws. It is reasonable that we should proceed to try to design laws that would accommodate the nature of the industry today.

I participated in the discussions with the government on that basis, but I have always said that it is important in this country to have competition within the media industry. With all the amendments on which we sought to reach agreement with the government, and I speak from the point of view of the four Independent senators, we sought to ensure that

diversity was maintained from the news point of view, to enhance the ability of the national broadcasters to provide more services from the general public's point of view, to ensure that community broadcasters were to receive greater funding to enable them to meet what have been extraordinarily increased transmission access fees and, at the same time, to ensure that there was some diversity of ownership, particularly within the more significant media assets within Australia.

We went a long way down the road. I acknowledge that the minister did ring me to tell me that the government was unable to accept these amendments, but I want to put them on the record to make my point as to why some people in the media industry will be provided with an opportunity here to do some things that the House of Representatives says Senator Harradine's amendments do not allow for. I have to say that I disagree with their view about Senator Harradine's amendments in respect of small and new players when they say that the amendments will curtail the competitiveness of smaller sized media firms and new entrants. I do not know how they concluded that, but that is what they say. They say that they will not be able to attain the necessary economies of scale and scope to compete effectively against the larger incumbents. Let me tell you that without some form of cross-media ownership restriction, it is a deadset certainty that these small and medium sized players would not have been able to proceed to be competitive anyway, and that is the reality.

My amendments on sheet 2992 go to the question of the percentage of advertising market revenue share. They place a 35 per cent level with respect to the collective market revenue from advertising in a particular metropolitan licence area. That restriction would allow for amalgamations or mergers between Fairfax and Ten and it would allow all the network owners to participate in mergers or takeovers within certain radio areas, and it would do so in all the capital cities where the capital city licences operate. What it does not allow is for News Corporation to actually buy into a network and really develop a very significant asset base from the point of view of media assets in any of the capital cities and in particular in Melbourne and Sydney.

If you are really genuinely arguing about competition, you have to acknowledge that we want new entrants and we want some of the smaller players to be able to get bigger, to be more competitive. I think people acknowledge that that has some positive sides to it. It can lead to a greater provision of services, but if you just allow some very big players to get bigger, it simply does not. It will make it harder for small players and new entrants. If you were considering an example in which News Corporation bought the Nine

Network or the Ten Network and you went to Adelaide, Brisbane or Perth—but particularly Adelaide and Brisbane, where News Corporation owns the only two metropolitan newspapers—it is difficult to see, following the issuing of an exemption certificate to allow that to happen, how any new starter could get a look-in. That is just the reality.

Sheet 2994 has amendments which go to the role of the Australian Competition and Consumer Commission. The government had agreed with the great bulk of it. In fact, the government drafted the amendments, with the exception of the additions that I have put in there at both paragraph (2)(c) in amendment (1) and paragraph (3)(b)(iii) in amendment (2). These again deal with the issue of putting a bar at the level of 35 per cent of the total advertising revenue of commercial television and commercial radio broadcasting licensees and newspapers generated through those operations in that metropolitan area.

In addition to that, on sheet 2996 I have an amendment which goes to the disaggregation and transfer of commercial television licences for metropolitan areas where an application for a cross-media exemption certificate has been made. The very point of this is to ensure that, where an exemption is applied for by, for instance, News Corporation, they are unable to complete an arrangement in any of the metropolitan cities because a person who has more than one metropolitan commercial television licence is not able to split them, to actually disaggregate those licences for the purposes of avoiding the requirement on the 35 per cent market share application. The reality is that this offers a significant degree of flexibility. It allows a whole range of mergers to take place. It even allows for those people who have been coming to my office and saying that they want to be players in the game, that they want to grow their business. I say to them: 'If you want to grow your business, here's your chance. You should have been lobbying the government to get this type of amendment up, because if you don't then all you're telling me is that you're a seller and all you're on about is ensuring that the bidders with the biggest pockets are going to be there to buy you up.' And that is not in the public interest in respect of media services in this country.

The other amendment that I had, which is on sheet 2992, goes to the sunset of this provision in respect of 35 per cent. It is sunset at three years. I did that for two reasons. One is to ensure that we get an injection of competition to start with. If there are people out there who want to start new newspapers or indeed who want to buy a part of a network, as they can right now, this does not stop anyone from buying part of a network or buying all of a network and operating it in whatever form they may choose. We

have to make the playing field as level as we possibly can. At the same time we have to make sure that we do the things that the objects of the Broadcasting Services Act say we should do and that we take note of the reports that have been prepared by the Productivity Commission and the views that have been expressed by the ACCC because they have more expertise and a greater capacity to make assessments about the value of what you do with respect to changing laws in this particular application. We know that they have both expressed a view that this should have been a phased process.

Can I say again to those who argue about competition: if you want to have competition, have it. Have it in the broadest possible sense, have open slather—no restrictions on television licences—but I will tell you what: you will not hear too many out there in the media industry that support that, particularly those with television networks. Whenever I have asked them, 'What type of competition do we want? Why don't we have more television licences?' They say, 'No, don't talk about that.' I respect that view because I can see, to some degree, that it is important to protect the investments they have been making in respect of digitisation et cetera. I accept that point of view but I will tell you what I am not going to accept: the point of view of Murdoch and others, who seem to think that somehow, by taking the approach of putting in some restrictions in respect of cross-media ownership, it is a bad thing.

We have another responsibility here, and that is the consumer interest, the public interest. We have an obligation to ensure that there is a public interest test for whatever laws we put through this place. That is what is proposed here. The government has an opportunity to at least bring this debate and policy agenda forward some way—maybe not as far as the government might like, but they can bring it forward some way. This is not the be-all and end-all. I am not saying that somehow I have thought up the best idea, because I have not. But the other option, for those who think they have not really had the time to think about whether or not this is a workable proposal, is for the government to postpone this bill and bring it back in August or September.

If you are really genuine about changing the media laws of this country from a balanced point of view that will ensure that we deal with issues like third party access—and a whole range of other matters that will need to deal with in the future—then you can do that. You can postpone the bill and have further consideration, and maybe somebody else will come up with a whole range of ideas that might better fit the bill. I commend to the Senate the amendments that I have moved, despite the fact that I have a fair idea they will not be supported. I would urge the govern-

ment to think about the option of postponing the bill so that we can revisit this in the not too distant future. I do believe we need to do something for the media industry but we are not going to do what the government is requiring or requesting at the moment.

Senator LEES (South Australia) (10.40 p.m.)—I rise to support Senator Murphy's amendments, given that, as expected, the government had difficulty with Senator Harradine's amendments. I think this is an eminent compromise; I believe it is workable. If the government are serious about taking a step towards greater flexibility, I would advise them tonight to either, as Senator Murphy has suggested, postpone this and we can come back to it in August or to look again at what Senator Murphy is proposing.

I also want to object to what the House of Representatives thinks of Senator Harradine's amendments. To suggest, for example, that they will curtail competitiveness of small-sized media firms and new entrants is a nonsense. If you look at Senator Harradine's amendments, they will do the opposite; they will prevent some of the very big players getting even bigger and enable smaller players to either work with each other or work with one of the larger ones.

I can best sum up my comments—as we are going to run short of time tonight—by saying that the minister wanted to move in the direction of some relaxation of cross-media rules and the removal of foreign ownership restrictions. I stayed in that debate because, in my home state of South Australia, we do not have a choice of a local daily paper. We are running the risk of losing some of what we already have by way of news services in TV and radio, and one way of encouraging other players in is to either allow foreign ownership or to allow those who already have one outlet to become involved in another. It will be with great disappointment for me tonight if this goes down, but that does seem to be inevitable.

I just ask the minister, if he does want change, if he does want to facilitate some relaxation of the rules: can we revisit Senator Murphy's amendments? I wait with interest to see what the minister has to say. This would have taken a step in the direction he wanted—not a large stride but at least a step. I am very disappointed that the House of Representatives feels as it does about the Senate's amendments.

Senator CHERRY (Queensland) (10.42 p.m.)—I wish to note for the record that the Democrats will not be supporting these amendments but I do want to commend Senator Murphy for moving them. What we have seen for the first time, other than from the Democrats of course, is an analytical approach to media—an attempt to look at the figures, to look at the market and to look at the sectors and how they all interact. I do not think they work but it is really good to see a focus on what is there, what is happening and

what the impacts will be. From that point of view, they are commendable and could be worth exploring further.

But they do not work for a number of reasons. I think Senator Murphy has confused two key issues here. He has confused the economic side, the competition side, with the diversity of viewpoints side, which is the public comment side. When you look at media ownership laws around the world—in the US, in the UK and here—there is that notion that competition is covered by the competition authority and the diversity of viewpoint is covered by the media authority and by the law. This particular amendment confuses those and assumes, in a way that I am quite surprised about for a good ex-Labor man like Senator Murphy, that competition and the market are a substitute for diversity of viewpoint.

I have talked in this committee stage repeatedly about the importance of recognising that diversity of viewpoint is different from competition. In diversity of viewpoint, you should be looking at the importance of the media outlet itself in terms of its impact on news and current affairs. That is really what we should be looking at here. If you take the example of the Sydney market for newspapers, the *Daily Telegraph* gets 15 per cent of the advertising revenue and the *Sydney Morning Herald* gets 21 per cent. Yet the *Daily Telegraph* has nearly 2½ times the readership of the *Sydney Morning Herald*. From the point of view of diversity of viewpoint, the *Daily Telegraph* is much more powerful than the *Sydney Morning Herald*. That is picked up in the ABA survey of the most used source overall for news and current affairs. Nationally, the *Daily Telegraph* has 2.4 per cent of the total national audience for reliance on news and opinion; the *Sydney Morning Herald* has 1.9 per cent.

In my view, trying to substitute an economic instrument for what is diversity does not quite work. And it does not work for a second reason: the disaggregation clause. I can see ways around the disaggregation clause and I am not even a stockbroker. Because Sydney and Melbourne are such a huge part of the advertising market and because so many of our economic decision makers think that our country is made up of Sydney and Melbourne, I think it is possible and quite feasible to get maximum value out of selling a television network—just split it up first and then sell it. Split it up into the Sydney and Melbourne stations—sell them as a pigeon pair, as they were pre-1987—and sell the other—

Honourable senators interjecting—

Senator CHERRY—You can, because the disaggregation clause comes into play only when you are seeking a cross-media certificate. If you split up the network beforehand you can then sell it as two networks. That is not covered by your clause. I can see that. If you cannot see that, you have not read

that. If you cannot see that, you have not read your clause correctly. That is a concern that I have with these amendments—that it is not a good enough substitute for diversity as measured by what people are relying on for their news and current affairs.

I like Senator Murphy and Senator Lees, but there is a tad of arrogance about the amendments. It is senators from Tasmania and Adelaide whose media markets are completely protected by these amendments telling Sydney viewers what they are going to see and who is going to own their media. This is about allowing News Corporation and Fairfax to take out a television station in Sydney but in no other city in Australia. There is a degree of arrogance in playing favourites with the two most powerful and monetary markets and lead the other three away. If I can find holes in an amendment just by reading it twice tonight, I am sure that plenty of stockbrokers can as well. We will be opposing Senator Murphy's amendments, although there are aspects that I quite like. The analytical approach is something we should explore further. We will be supporting Senator Harradine's foreshadowed amendment when we get to that debate.

Senator CONROY (Victoria) (10.47 p.m.)—Like my colleague Senator Cherry, I think that Senator Murphy has thrown into the mix a new and interesting option. He has proposed a share of advertising revenue test whereby no one media proprietor may control media assets which account for more than 35 per cent of media advertising revenue in a particular market. Senator Murphy's approach is, I believe, genuinely well intentioned. If, like Senator Lees, when I got up every morning I only had the *Adelaide Advertiser* and I had all my news piped in from Sydney, like you do nowadays, out of most of the commercial networks, I would probably feel that there really is a need to shake up the market. The Murphy-Lees proposition is well intentioned, but I think we can assume that, like Labor, they want to ensure that the media giants do not want to emerge in our major markets.

Senator Murphy does not want to see media diversity shrink in Australia. He recognises the importance of cross-media laws to ensure a diversity of news and opinion in our communities. We commend Senator Murphy on sharing those objectives. But Senator Cherry has already indicated a couple of problems with the detail of the amendments. I have one issue with Senator Murphy's amendments that allows something that I believe Senator Harradine's foreshadowed amendment does not allow. Senator Murphy's amendment allows in some instances the joint ownership of television stations and newspapers in some markets. A later amendment from Senator Murphy is said to partly offset such joint ownership. But

Labor is not convinced. We do have genuine concerns, like Senator Cherry, that the amendments, despite the intent, do not succeed in the intent. We would see a consolidation in perhaps the way Senator Cherry has described.

Another point to be made in regard to the Murphy amendments is that any share of voice approach to media ownership would need serious consideration and deliberation over a considerable period of time. Any share of voice approach would need to be put out for public discussion, and industry and interest groups would need to be carefully consulted for their feedback and input. A share of voice approach is a radical departure from our existing cross-media laws, which are based simply on the ownership of particular media. Such a departure does need careful consideration. I think Senator Murphy acknowledges that it cannot just be done in the last 48 hours on the floor of the Senate—it is too important an issue.

Labor believes that there is much merit in Senator Murphy's approach. However, the fact that it does not provide an ironclad guarantee against the joint ownership of television stations and newspapers in our major city means that we cannot vote for it. The fact that the amendments provide for a complicated and untested new approach to determine media ownership levels means that Labor cannot support Senator Murphy's amendments. For these reasons we will not be supporting them, but we again make the point that we made the other day: the government had a choice earlier today in the House of Representatives. It had a choice about whether it really believed in its rhetoric or it was really involved in just a bit of a scam to help out a couple of companies. I think we have seen tonight a very disappointing response from the government whereby it has taken the opportunity to turn its back on Senator Harradine's approach and Senator Murphy's approach because it was never really serious. When the debate comes back, as it no doubt will, senators should remember that this government was not serious in its stated intent in this bill. We should not forget that if this bill comes back.

Senator HARRIS (Queensland) (10.51 p.m.)—I also rise to speak on Senator Murphy's amendments. I understand the reason we are addressing them now, but had they been put at a later point in this debate they may have had a different weighting. In commenting on the amendments I am raising areas of concern, not criticising what Senator Murphy is setting out to do. The amendments consist basically of two parts: the 35 per cent rule and the network rule. The 35 per cent rule essentially provides that a cross-media deal would require approval of the ACCC before it could proceed. The ACCC would not be able to give approval if the proposed merger would result in the merger entity having a share of the advertising

revenue greater than 35 per cent in the relevant geographic market. The network rule seeks to provide that if a person owns commercial television licences in more than one metropolitan market that person could not dispose of a licence in one market unless they also sold their licences in all other markets. I understand the intent of what Senator Murphy is setting out to do; however, I believe that in actuality it does not capture two of the stations in the Channel 9 configuration because they are owned by a separate entity—but I will come to that later.

Sadly, I believe that the amendments should not be supported for the reasons that I am going to place on the record. The proposal seeks to allow some consolidation between smaller players while preventing players that are already large from growing larger through cross-media laws. That is a positive thing that Senator Murphy is setting out to do. However, I believe that the proposals contain some fundamental flaws that mean they are unlikely to achieve their aim. Instead, they may allow concentration of ownership, which the majority of the Senate earlier voted to prevent. I believe that Senator Harradine's amendments are much stronger, although they do in some ways restrict some of the smaller players. But I think that is a sacrifice we have to accept because of what would be achieved overall by Senator Harradine's amendments.

Speaking specifically about the 35 per cent rule, one of the major problems is that the amendment contradicts Senator Harradine's amendment by permitting ownership of a free-to-air television network and a newspaper in some metropolitan markets. Advertising revenue is not a reliable indicator of market share or influence. For example, it does not take into account other important factors, such as circulation levels of newspapers or revenue from other media outlets such as the Internet or pay TV. I will come back to that in a moment. The advertising revenue figures in Sydney and Melbourne would suggest that News Ltd is less influential than Fairfax in those markets. However, in Sydney the daily circulation of News Ltd's *Daily Telegraph* is 409,000 compared with 250,000 for Fairfax's *Sydney Morning Herald*. In Melbourne, News Ltd's *Herald Sun* has a daily circulation of 552,000 compared with 193,000 for the *Age*. The amendment does not take into account the cover price of the newspaper. In particular, Melbourne's *Herald Sun* on a daily basis has in excess of half a million dollars for its cover price whereas the *Age* has less than \$200,000.

Also, advertising revenue is an easily manipulated measure. It would be simple to run down advertising revenues in the 12 months preceding a proposed deal in order to get it approved. Afterwards, there would be no control on the combined entity in the market.

We need to look really closely at some of the revenue. The 35 per cent rule on its own would allow News Ltd to buy a free-to-air television licence in Sydney and Melbourne, which are the most influential and lucrative media markets. Potentially, News Ltd and PBL could do a deal in Sydney. On the figures before us, the combined advertising revenue of News and PBL is only 36 per cent in Sydney, and that is very close to the limit. That is what I am saying: they could choose to run down their revenue to achieve the amalgamation and then afterwards drive it back up. The figures used to generate the amendments have been prepared by industry analysts. They have not been prepared by any independent or government authority, which means they are not necessarily reliable measures of advertising revenue. There could be a margin of error, which means that we could not have certainty of the outcomes that the amendments may generate.

The network rule seeks to overcome some of the deficiencies in the 35 per cent rule identified above. However, it does not necessarily achieve this. We cannot be certain that the amendments have sufficient safeguards against excessive concentration in the media. If the network rule is effective, it will create market distortions. If the current network arrangements were frozen, as they are at present, by the requirement to sell all current licences in a network together, then the value of Channel 9's licences in Adelaide and Perth would be disproportionately increased as these licences could be sold individually while the Channel 7 and Channel 10 licences in those cities could not. So that is one of the problems if we went ahead with Senator Murphy's proposed amendment: we would be locking in channels 7 and 10 in Adelaide and Perth.

However, because those two Channel 9 licences are held by totally separate entities, they could be purchased, and the law of supply and demand is very clear that, if only one licence were available in each of those two cities, its market value would be greatly enhanced. For those reasons, I indicate to the committee that One Nation, while understanding where Senator Murphy is actually coming from, cannot support these amendments because, to some degree, they do not also take into account the power and the influence of the entities involved. As I said earlier, the revenue base that is being used in this example has been prepared by an industry analyst and there is difficulty in having surety with those figures. As for the other issue that I raised earlier, I believe that in actuality the 35 per cent rule is in conflict with Senator Harradine's amendment. For those reasons, One Nation will not be supporting Senator Murphy's amendments.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.01 p.m.)—I indicate that the government will oppose Senator Murphy's amendments. I think Senator Harris has very effectively highlighted the dangers of making on the run changes designed to achieve fundamental restructuring of the media landscape. The Broadcasting Services Amendment (Media Ownership) Bill 2002 was introduced in the parliament some 15 months ago. We have been having discussions on and off for the last 12 months. I have had these amendments for less than 24 hours. From what I have been able to assess of them, apart from having attached to them all of those uncertainties that others have identified, they do seem to me to be simply a cross-media straitjacket by another name and that they do not really advance the situation very much. In those circumstances the government is opposed to them. Senator Lee asked me why we could not go away and have another think about it. Having had 12 months or more to think about these things, it is pretty clear to me that the distance between the parties is such that there would be very little prospect of being able to achieve progress. All that would happen is that there would be endless discussions. I am sure a lot of lobbyists would benefit as a result, but I prefer to put the bill out of its misery and then we can all go home and have a good night's sleep.

Senator MURPHY (Tasmania) (11.03 p.m.)—I need to address some of the matters that have been raised because so many of them are totally inaccurate. If I first go to the Democrats and Senator Cherry's view of the world, Senator Cherry comments that I have confused diversity of viewpoint with competition. No, I have not done that. Diversity of viewpoint is covered in other amendments to the bill through the minimum of five voices test. I know he does not agree that that is sufficient, but the reality is that those matters are covered there. I said at the outset that I was endeavouring with these amendments to cover the issue of competition. I have some agreement with Senator Cherry that competition and diversity of viewpoint are somewhat separate matters, but we have in place at this point in time cross-media ownership restrictions that are based on what percentage you can own of another entity. I have heard Senator Cherry argue the very value of having such a system, so he can in some ways have competition and diversity of viewpoint mixed up. Indeed, that is what you have the Australian Competition and Consumer Commission for, and they make many judgments on market related matters involving a whole range of businesses in this country.

Senator Cherry raised the point about the potential to split up a network and leave the Sydney and/or Melbourne network stations in any of the networks. He said that, in the case of Seven and Ten who have

five licences, that you could sell three of them and then sell the Sydney and Melbourne licences together. No, you cannot, because the amendment on sheet 2996 says:

Where a person applies for a cross media exemption certificate—

which I will remind Senator Harris of in a minute—

that includes the transfer of a metropolitan commercial television licence or licences and the transfer includes a metropolitan commercial television licence held by a person who holds another metropolitan commercial television licence or licences ... the second mentioned licence ... may only be transferred collectively with the first mentioned ...

So it does not matter if you own two, you still have to do the same transfer. Of course, Senator Cherry's view is that a network would split up and flog off somehow three of its lowest revenue-earning licences in Brisbane, Adelaide and Perth and keep two. I suppose it is conceivably possible that Rupert or somebody might pay enough money for those two to compensate Izzy for flogging off three of his other licences to allow the merger to take place, but I doubt it, because the real value of those licences is in their being held collectively. In fact, the reality is that they could do that now: they could sell off singularly, or indeed collectively, any of those licences under the existing media ownership laws.

I will come to the points that Senator Harris raised. Firstly, I will deal with his comment that this revenue is an indicative thing. Yes it is, but it is a reasonably good indicative thing. Some of the smarties in the industry might run their revenue down for the purposes of falling under the bar of 35 per cent. That is a very significant step for any company to take. You have the application of competition law and trade practices law, and I suspect that a few shareholders of any of those companies would not be too happy if you started to run the revenue down in that way. The ACCC does have the right to make a judgment, and I suspect it has actually seen some of these sorts of things being attempted before. So I would suspect that, when you have a strong regulator with the proper application being given the right to make a judgment on the advertising revenues from particular quarters, they would be able to make a fairly good judgment.

Senator Harris raised the issue of the role of the ACCC. As I said, the ACCC has the potential to have a very strong role. I will address Senator Harris's question about the individual licences, particularly in the Perth and Adelaide situations. He raised the question about the value of those being increased because the others could not sell. The others can sell. Nobody is precluded from selling individual licences in individual metropolitan areas by what I have proposed. Nothing in the amendments I have proposed pre-

cludes that; indeed, they allow for it. But what my amendments do say is that, where a company or a person has applied for a cross-media exemption certificate—and this is to form a merger between two companies—they have to pass a particular test, otherwise, under current laws and under the amendments I have proposed, they could proceed to sell off separate licences in any of the metropolitan areas with no questions asked, provided there was not a requirement for them to have to apply for a media exemption certificate.

It has to be clearly understood that, rather than having a fixed barrier in place—and as we have supported Senator Harradine's amendment, because we really had little option—this is another option whereby you can put something in place. As I said at the outset, it is not the perfect solution. I am not claiming it to be the best idea. I am just saying that you can have a measure and that there have been measures used, as they are used right now in respect of the 15 per cent up to 49 per cent ownership in another media company. You can have an application. That is all I am proposing. I do not accept that there are fundamental holes. There probably are some, but that is a matter for the parliament to rectify in the longer term. All I can say is that I cannot accept the criticisms that have been made about running revenue down in terms of the exemption certificate and the jacking up of prices.

The Seven Network could sell its metropolitan licence in Adelaide and so could the Ten Network—the Nine Network does not have one; it is owned by Southern Cross Television. Likewise, in Perth, the Seven Network and the Ten Network could sell their metropolitan licences for that city under what I am proposing. Nothing precludes that from happening, so I do not think it is fair to say that there would be a significant price increase for Southern Cross Television for their licence. Really, what would the increase be for? Has it suddenly got a significant increase in its advertising revenue? No.

There are always swings and roundabouts with these things, and the real objective of what I am proposing is to provide some flexibility for some of these people who have been running around the place, knocking on everybody's door and saying that they need to get changes through on cross-media ownership. We have agreed with the government on a significant number of issues, yet we are going to see this bill lost because they simply are not prepared to go part of the way at the outset. I think it is unfortunate but that is the government's decision and, of course, it is supported by some others here. So be it. One can only try to do what one can try to do.

Senator HARRADINE (Tasmania) (11.12 p.m.)—I want to briefly say, as some other senators

have said, that I congratulate Senator Murphy for bringing this forward and working on it. He has certainly done a lot of homework in this particular area. I just have to agree with what has been said by at least one other, I think it was Senator Cherry: this does confuse the social aspects with the economic aspects. Ultimately that is the problem. I could go into that a bit more and ask questions about how firm is the base of the advertising revenue for that base to be used, but I think you—

Senator Murphy—We've been collecting it since 1970.

Senator HARRADINE—Through you, Mr Temporary Chairman, I say to Senator Murphy: I can see the numbers around this place and I do not think you have got it just yet, but keep on trying.

Question negatived.

Original question put:

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

The committee divided. [11.18 p.m.]

(The Chairman—Senator J.J. Hogg)

Ayes.....	29
Noes.....	<u>36</u>
Majority.....	7

AYES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Calvert, P.H.	Campbell, I.G.
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.
Knowles, S.C.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Patterson, K.C.	Santoro, S.
Scullion, N.G.	Tchen, T.
Tierney, J.W.	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.
Conroy, S.M.	Cook, P.F.S.
Crossin, P.M.	Evans, C.V.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Harradine, B.
Harris, L.	Hogg, J.J.
Lees, M.H.	Ludwig, J.W.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	McLucas, J.E.
Moore, C.	Murphy, S.M.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Stott Despoja, N.

Webber, R.

Wong, P.

PAIRS

Brandis, G.H.
Ellison, C.M.
Minchin, N.H.
Payne, M.A.
Troeth, J.M.

Kirk, L.
Stephens, U.
Sherry, N.J.
Denman, K.J.
Hutchins, S.P.

* denotes teller

Question negatived.

Resolution reported.

Adoption of Report

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.23 p.m.)—I move:

That the report from the committee be adopted.

Senator HARRADINE (Tasmania) (11.23 p.m.)—The time is very late. I will seek leave to incorporate my speech in *Hansard*. It is really an appeal to the government, when this matter goes back to the House of Representatives, to reconsider and not to throw the baby out with the bathwater. The Broadcasting Services Amendment (Media Ownership) Bill 2002 has some very substantial reforms in it, and in itself it deserves to be supported with the amendments that I and other senators have moved. The decision was overwhelming tonight—I think it was 36 to 29—and that is a message that the people of Australia are giving the government in this matter. The people do not want further concentration of power in the major players in the media. I seek leave to have my speech incorporated into *Hansard*.

Leave granted.

The speech read as follows—

I am disappointed that the Government has not accepted the amended Broadcasting Services Amendment (Media Ownership) Bill 2002.

It seems that the Government is willing to risk sacrificing the whole bill and all the benefits the bill provides, just because it doesn't like one or two of the amendments the Senate has made.

The Government has the chance to facilitate substantial reform of the Australian media industry by accepting this bill as amended.

I am aware of course that the amendments I moved last night have caused the Government some concern. My amendments, as senators would recall, prevent a media owner from owning a television station and a newspaper in the same mainland state capital city.

The Government has argued that because it cannot accept my amendment and therefore will reject the bill in the current form, and that we are playing into the hands of the big media players who will continue to do well under the current laws. It has argued that the losers will be the small to medium size media owners who will continue to be restricted by the current law.

Well the obvious answer to the Government is to support the amended bill. The bill will allow the small to medium sized media owners room to move and grow. The restrictions of my amendment only really impact on the big media owners. The big media moguls wouldn't have won and the Government could rest easy.

So why doesn't the Government pass the amended bill? Possibly because it is a bit more concerned about the effect it would have on the big media owners than they care to admit. Perhaps the real aim of this bill was to allow the big owners to get even bigger?

But lets look at the large number of benefits this amended bill offers to reform the Australian media market place. These are the benefits that the Government wants to throw away. These are the benefits that the Government wants to reject rather than threaten the growth of the media moguls.

Benefits of the amended bill include:

- It allows newspapers to merge with radio;
- It allows television to merge with radio;
- It allows a media proprietor to own a newspaper in one city and a television licence in another city;
- It allows a media proprietor to own a number of television licences and a number of newspaper licences—as long as they are not in the same city;
- It allows regional media owners to own a television station and two radio stations in the same market, or a television station and a newspaper, or a newspaper and two radio stations;
- It protects the public by a 'minimum voices' rule so that cross-media mergers can only be approved if there are a minimum of five independently owned commercial media outlets in cities and a minimum of four in regional markets;
- It protects the public by ensuring that someone can only own one TV licence in a licence area;
- It establishes a requirement for an independent editorial board in a cross-media company, to protect editorial independence;
- It extends the two out of three rule to include small regional newspapers;
- It requires commercial TV operators to provide a minimum level of local news and information.

These are just some of the provisions of the amended bill—and the Government wants to throw them all away.

That's not to say that I like all the provisions of this bill. But I was prepared to work with my colleagues and the Government to come to a compromise position. For example, I have voted to reduce foreign ownership restrictions—something I was not entirely comfortable with, but I think on balance is the correct decision.

But I have come to the decision that it is overwhelmingly in the public interest to ensure some basic restrictions on the ownership of television stations and newspapers in the same city.

I urge the Government not to reject this amended bill just because it does not allow for media moguls to create a cross-media company which could dominate a particular city's media or which could be a dominant national force.

Question agreed to.
Report adopted.

WHEAT MARKETING AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

Senator O'BRIEN (Tasmania) (11.25 p.m.)—What a delightful hour it is to commence speaking on this very important piece of legislation. The passage of the Wheat Marketing Amendment Bill 2002 through the parliament has triggered a national debate on the performance of the Wheat Export Authority, AWB International and the Minister for Agriculture, Fisheries and Forestry, Mr Truss. Mr Truss's performance is regularly subjected to withering criticism, so his part in this debate is of no surprise. The WEA and AWB International have, however, been subject to intense scrutiny—a scrutiny neither organisation has enjoyed.

The outcome of this national debate will have significant consequences for the Australian wheat industry and the future of the National Party. The Australian Labor Party and the Liberal Party have driven this debate. Labor referred the amendment bill to the Senate Rural and Regional Affairs and Transport Legislation Committee, and Labor and Liberal members of that committee participated in its inquiry.

Senator Bartlett—What about the Democrats?

Senator O'BRIEN—There was the occasional presence.

The ACTING DEPUTY PRESIDENT (Senator Bolkus)—Senator O'Brien, I would not be provoked if I were you.

Senator O'BRIEN—I am not provoked; it is an interesting point, and I must concede that there was the presence of Senator Cherry from time to time in the inquiry. We took the inquiry seriously and produced recommendations that reflected the body of evidence presented to us. That body of evidence demonstrated a gross lack of confidence in the Wheat Export Authority's performance as a watchdog of the single desk on behalf of growers and the Australian community.

The National Party—this self-proclaimed defender of rural interests—demonstrated no interest at all in the matter. The National Party Whip, Senator McGauran, failed to attend the hearings and failed to make any contribution to the committee's work. I do not know whether any of the hearings conflicted with Senator McGauran's complimentary attendance at opera opening nights in Melbourne, but frankly I

would not be surprised if they had. The National Party went missing on this issue just as it always goes missing on issues that matter to rural Australia. There is one statement that should cause supporters of the single desk to quiver in their boots and that is: 'the National Party supports the single desk'. The last time the National Party stuck by a principle, Larry Anthony was running around his dad's farm in short pants.

It is apposite that this week the National Party rolled over on the full sale of Telstra, clearly prepared to trade the interests of its constituency for a few crumbs off the table. I hope Mr Costello bought National Party senators a round of drinks, because it is only fair that someone gets some benefit from the decision—and I can see that some have already had a round of drinks. Senators Boswell, McGauran and Sandy Macdonald will certainly get no thanks from their branch membership or their local communities. Once again the traditional party of rural and regional Australia—the Australian Labor Party—will be left to defend rural Australians in the wake of the Nationals' sell-out.

Many witnesses told the inquiry that the performance of the Wheat Export Authority has been inadequate. As I told the Senate last week, that fact has been clear to me for some time based on my own questioning at Senate estimates hearings. The threshold issue at the heart of this debate is the actual value of the single desk to growers. The wheat industry is one of Australia's most important industries. It is worth a lot of money, so it is not surprising that participants in the debate on this bill have used it to push their own commercial barrows and have presented different views on the benefits of the single desk. Some have argued that the single desk costs growers, while others have argued it provides real and significant benefit. That is why the performance of the Wheat Export Authority is so critical—it is the authority charged with the responsibility for reporting to growers on the benefits of the single desk.

During the committee inquiry, I questioned the chair of the authority on this very matter. I referred him to his most recent reports to growers, just the second in four years. The report estimates that the benefit of the single desk can be quantified to the order of \$14 to \$32 a tonne. I sought confirmation of that advantage. Mr Walter, the Wheat Export Authority chair, said:

I counsel against too much reliance on the \$14 to \$32 differential, as such. It is fairly crude ...

I put it to Mr Walter that the real number could be \$5, \$14 or, in fact, above \$32. Mr Walter said that it could. So after the expenditure of \$6 million and the passing of four years, all the Wheat Export Authority could tell the Senate inquiry was that the benefit to

growers, if any, is unknown. That is entirely unsatisfactory. The primary role of the Wheat Export Authority is the public oversight of the export monopoly power and its exercise by AWB International. Such oversight is necessary because the parliament has vested powerful monopoly rights in a company.

I think there are some important points not entirely understood by some participants in the discussion on the single desk. AWB International is not a benevolent organisation. It is not some sort of pale imitation of the Australian Wheat Board but a Corporations Law company with a significant non-grower shareholding. The export monopoly it exercises is a public, and not a private, good. That monopoly is in the gift of this parliament and not a matter of private preference. Growers, the community and the parliament deserve to know what benefits we derive from the operation of the single desk. Regrettably, the Wheat Export Authority has failed in its task.

One of the matters addressed in the committee's inquiry was the apparent failure of the Wheat Export Authority by design. The Wheat Export Authority, the Department of Agriculture, Fisheries and Forestry and, critically, the minister have known about the legal restrictions on the ability of the authority to monitor AWB International since early 2000. We know this is the case because the Wheat Export Authority provided the committee with legal advice confirming it had limited powers and told the committee it wrote to Mr Truss about this matter in March 2000. Mr Truss's department was aware of this problem in January or early February 2000 and the minister was advised accordingly. But he took no action. Not only is this incomprehensible, it is unforgivable.

Mr Truss has a well-developed trade record of inaction. In relation to the wool industry we know growers gave the minister a written warning on 4 February last year that there were major problems with the management of Australian Wool Innovation. He has not responded to that warning, let alone taken action to protect grower funds and millions of dollars of taxpayers' money. When his inaction on the powers of the Wheat Export Authority is considered alongside his inaction on AWI and the US beef quota disaster, one wonders whether he should not start to consider his future. As able as the members of the Rural and Regional Affairs and Transport Legislation Committee have proven to be, it is not the job of the committee to keep fixing up Mr Truss's mess. There are those on the other side of this parliament with a much firmer grasp on rural affairs than Mr Truss, and I know they are frustrated by his incapacity to manage the agriculture portfolio. More importantly, rural Australians are frustrated by their inferior representation at the cabinet table by a minister and junior coalition partner just happy to muddle along.

It is obvious to everyone in Australia except Mr Truss that considerable change has occurred in Australia's domestic wheat industry in recent years. Domestic grain trading was deregulated in 1989 but the export monopoly enjoyed by AWB International has given the AWB group a significant advantage in the domestic market. This advantage has been enhanced as the AWB group has expanded the size and nature of its business. But rather than adjust the regulatory regime to effectively monitor these changes, the minister has stuck doggedly to his original plan. It is clear to everyone that changes in the wheat market, along with the authority's manifest deficiencies, has left Australia with an inadequate and ineffective regulatory regime. It is my view that the current structure of the wheat industry has made the existing regulatory regime all but redundant. I am therefore pleased that the Labor Party and the Democrats—with the thinly veiled support of the Prime Minister and his Liberal Party colleagues—are about to create a broad, independent review of Australia's wheat marketing arrangements.

A problem in the broad debate on this bill is the misapprehension by the National Party about its meaning. Mr Truss and his dwindling number of National Party colleagues think this debate is about the best interests of the National Party. That is why the minister and his party have been pushed to the side while non-National Party members of the parliament have got on with the hard work of focusing on the growers' best interests. That is why the government majority of the Rural and Regional Affairs Committee rejected Mr Truss's plea to allow his amendment bill through the parliament without further amendment. And it is the reason why the Minister for Regional Services, Territories and Local Government, Mr Tuckey, wrote to the *Weekly Times* slating the performance of the Wheat Export Authority and orchestrating the combined support of Liberal MPs from Western Australia to overturn Mr Truss's position on this bill.

The interests of rural Australia would be enhanced, not diminished, by the demise of the National Party, let me say. It is hard to see how growers' interests are protected under the current arrangements. At best, Mr Truss has treated them as mere interested observers. While the minister has been regularly and comprehensively briefed by the Wheat Export Authority, the authority has provided just two reports to growers in four years. Both were very general and represent little value for money. They certainly were not worth the \$6 million that growers have spent funding the authority's work. Some people have expressed disbelief that a National Party minister could allow such arrangements to continue, but I am afraid those people have not been following the performance of the Na-

tional Party for some years or paying much attention to Mr Truss.

The current arrangements for the export of other than bulk wheat require the exporter to apply to the Wheat Export Authority for a permit. The Wheat Export Authority is then required to consult with AWB International before determining whether to issue a permit. The effect of this arrangement appears to be protection of AWB International's single desk marketing power rather than promoting an expanded export effort and therefore better returns to growers. It is our view that this arrangement is not in the best interests of growers. We believe this arrangement should be abolished and a simplified system of permits should operate through the Department of Agriculture, Fisheries and Forestry. I will move an amendment to this effect during tonight's debate. Such a reformed arrangement will facilitate the expansion of export markets without posing any threat to the single desk—and I know that proposition has significant support within this parliament. Whether it is supported or not on the other side may be a different question.

Because Labor lacks confidence in the capacity of the Wheat Export Authority to look after anyone's interests, I will also move an amendment to transfer the permit system for bulk wheat exports to the Secretary to the Department of Agriculture, Fisheries and Forestry. Importantly, Labor will propose that the existing controls on the bulk export of wheat, including the right of AWB International to deny consent for bulk exports, be maintained.

Labor support the continuation of the single desk for wheat, but we do so on the basis that the single desk delivers real and demonstrated benefits to growers and the wider community. Current arrangements should not be left in place until 2010 because they make some people feel good or serve the National Party's political interests. If the current export single desk arrangements provide the best means of maximising returns to growers then those returns need to be quantified and they need to be transparent. But if there is a better way of doing business, building returns to growers and regional communities and improving the Australian economy, we need to know about it so that we have an opportunity to facilitate a better outcome.

The key outcome of this debate should be an independent review that considers the management of the single desk by AWB International and the actual or potential returns to growers that flow from the single desk marketing system. The review should advise on how best to monitor the use of the monopoly export power in the future. The Wheat Marketing Act requires the Wheat Export Authority to review the management of the single desk marketing powers by

AWB International by the end of 2004. The minister has requested that that report be provided to him by 30 June 2004. So the issue before us is not whether or not a review should take place but the nature and objectives of that review. It is important to note that, while the minister has adopted a narrow interpretation of the nature of this review, the Wheat Export Authority has legal advice that suggests a much wider review is possible under the current legislation. So the real impediment to a proper and appropriate review is Mr Truss.

Labor does not consider that the Wheat Export Authority is competent to carry out this review. It is essential that this review be comprehensive and independent if it is to gain acceptance from all stakeholders. Labor proposes that the review be truly independent. If it is not, growers will be faced with a version of the sham Estens inquiry into telecommunications—a set-up designed to engineer a predetermined outcome. The independent inquiry should consider matters beyond just the management of the export monopoly powers by AWB International. Labor believes the review should address the performance of AWB International as the holder of the wheat export monopoly; the impact of export marketing arrangements on Australia's domestic wheat market, including related competition issues; benefits and detriments for the Australian wheat industry and the Australian community in maintaining the current statutory export monopoly beyond 2004; recommended changes, if any, to export monopoly arrangements; and options for future monitoring arrangements.

Australia's monopoly export arrangements for wheat are the subject of increasing criticism from the United States in international trade negotiations. This criticism will intensify as the free trade agreement negotiations with the United States progress. It is important to note—

Senator McGauran—We do not sell any wheat to the United States.

Senator O'BRIEN—They just happen to be a major competitor in the international market, but I would not expect Senator McGauran to know anything about rural Australia or the wheat industry. Frankly, his contribution to this debate is interjections in this chamber. I did not see him attend any of the hearings on this matter that is supposedly so important to the industry and the people he represents—or purports to.

It is important to note that the United States is currently taking action against the Canadian Wheat Board because it operates a single desk marketing system for its grain exports. Any defence of the single desk in Australia is hampered by the current inadequate regulatory and monitoring arrangements.

Labor believes a comprehensive and independent review of the single desk, including monitoring arrangements, offers the best means of defending these arrangements against such attacks. Labor believes industries that benefit from arrangements like the single desk should be required to shoulder the funding burden. But the management of the wheat export arrangements by Mr Truss is nothing short of a shambles. Labor will therefore oppose the imposition of a wheat export levy until this mess is fixed.

It is clear that most senators on the other side with a genuine interest in this important industry share some of the concerns that I have expressed this evening. Certainly most senators in this chamber share my concern about Mr Truss's dismal performance. I urge the Senate to do what Labor has done and to give due consideration to the interests of grain growers when it considers matters in this debate. Those interests are best served by the immediate commencement of an independent and comprehensive review. This bill provides the parliament with an opportunity to get the settings right. I urge senators to support Labor's amendments to the bill to help secure the future of this very important industry, the wheat industry.

Senator CHERRY (Queensland) (11.43 p.m.)—The Democrats will be supporting the Wheat Marketing Amendment Bill 2002 tonight, but we will be moving a significant number of amendments in the committee stage. The Democrats want to place on record quite clearly our continuing support for well-run single desk marketing arrangements on exports. We believe this is the best means of guaranteeing maximum returns to growers and to Australia. Indeed, my predecessor Senator Woodley made this quite clear when the Wheat Marketing Act was considered in 1998 and again when this act was subject to review under the national competition policy, under the current minister, in 2000.

Over the course of this inquiry I attended a significant number of hearings, but, as Senator O'Brien noted, not all of them. In my view, the Senate Standing Committee on Rural and Regional Affairs and Transport has managed to really get to the bottom of some very significant issues regarding the somewhat cosy wheat marketing arrangements in Australia. I think the committee has done its job very well. The Senate should be very proud when its committee system operates to its maximum potential. The work that the Senate rural affairs committee has done on this bill and on other bills shows the power and effectiveness of a Senate committee at its best.

I wish to commend the entire committee on the work they have done on this bill over the course of the last six months. Senator O'Brien has been a very important part of that committee, along with Senator

Heffernan, Senator Ferris and Senator Colbeck, and it has been a very constructive inquiry. We delivered a report to the Senate last week, which found common conclusions that there would be a need to ensure that the Wheat Export Authority was made more accountable with better powers. There was a desperate need, as Senator O'Brien has pointed out, for a genuinely independent review of the current arrangements. There needs to be a much more robust approach to ensuring that the effective export monopoly of what is now a private company is properly assessed to ensure it is delivering benefits to growers. The amendments we will be moving in the committee stage seek to achieve those objectives.

I should note, however, that, whilst agreeing with the broad conclusions we have reached on the evidence resulting from this inquiry, the Democrats have a slightly different viewpoint from that of the Labor Party. We acknowledge that the Wheat Export Authority needs to do better, but we also know the Wheat Export Authority has been acting to do better. In its most recent action reports, it is now dealing with the issues that growers want to be seen with. We recognise that the Wheat Export Authority's performance monitoring system is a work in progress. Indeed, it is worth noting that the subject matter of the performance monitoring framework covers the key issues raised by grower organisations during our review—specifically, the wheat export arrangements, pooling operations, the supply chain, the operating environment and growers' services, products and benefits. But it has taken the Wheat Export Authority too long, in the view of many people in this place, to get its act together. From that point of view, to ensure there is confidence in the wheat marketing arrangements, the Wheat Export Authority needs to be taken out of the job of reviewing the arrangements with AWBL.

In the committee stage, I will be moving a series of amendments to establish such a review. I will also be moving amendments to give the WEA the powers it needs to do its job properly. The committee reported, quite significantly, on the fact that the WEA does not have adequate powers under its act to collect information. Mr Acting Deputy President, I am having trouble hearing myself with my failing voice and the gaggle in the corner.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—I apologise, Senator Cherry, I should be affording you more protection from the chair. Would senators do Senator Cherry the courtesy of being heard in silence.

Senator Boswell—You're getting a bit precious, aren't you!

Senator CHERRY—I am getting very faint actually, Senator Boswell. The amendments we are mov-

ing will be very important and I will discuss them in the committee stage, but we need to ensure the WEA has the powers to do its job. We need to ensure that there is confidence amongst growers in the review we will be doing next year. We need to ensure that the review is expanded to cover not just the wheat export arrangements but the performance of the WEA. We need to ensure that the review also covers whether the current arrangements are delivering benefits to growers, which must be the benchmark test. We also need to ensure that the Senate stays in the picture—that is very important because, as I highlighted at the beginning of my speech, the Senate Rural and Regional Affairs and Transport Legislation Committee has been doing its job very effectively in terms of holding the government to account for the performance of its agricultural marketing arrangements. I think the wheat marketing arrangements will be improved over time if the Senate keeps that role in place.

In my view, the levy we are creating under this bill needs to be sunsetted, and we will be discussing that in the committee stage. That will ensure that, when this review is delivered next year and the government responds to it, the Senate will get another chance to look at whether the review was effective, independent, genuine and has actually fixed the problems identified during our inquiry. At that point in time, the Senate will have the information to make the sorts of decisions which Senator O'Brien has been talking about in his speech.

Before I sit down, I want to express disappointment with some of the reaction to our inquiry. I was very disappointed to see a letter from the Grains Council, sent out to its grower groups last week, which has created a bit of friction around the place. I note that the Grains Council wrote to its members criticising our report, stating that our report and recommendations indicate a lack of understanding of the grains industry and the work of the WEA. I emphatically disagree with that view of the Grains Council. It is very disappointing that the key commodity body took the approach of sending that sort of material to its members about a Senate committee report when, in my view, the committee did its job well, did its job effectively and has come up with a very positive outcome.

Senator CROSSIN (Northern Territory) (11.49 p.m.)—Mr Acting Deputy President, I seek leave to incorporate Senator Buckland's speech on the Wheat Marketing Amendment Bill 2002.

Leave granted.

The speech read as follows—

The essential purpose of this Bill is to amend the Wheat Marketing Act 1989 in order to provide for the continued

funding of the Wheat Export Authority (WEA) by the wheat industry.

This Bill establishes a funding mechanism that holds the wheat industry accountable to the running costs of the Wheat Export Authority (WEA).

This Bill also endeavours to devise changes to the functions of the WEA and to elucidate the aims of its export control functions. This will be achieved under proposed new sections 5A and 513 into the Act whereby 5A clarifies the WEA's wheat export control functions and 5B allows the WEA Board to delegate its functions and powers, except those relating to employment and terms and conditions of staff, to the Chief Executive Officer of the WEA.

This Bill was referred to the Rural & Regional Affairs & Transport Committee for inquiry and report on the 5th February 2003. The report was subsequently tabled on 18th June 2003.

In his second reading speech on 12th December 02, Minister Truss stated “it is appropriate that the wheat industry rather than the government should fund the WEA since wheat growers are the main beneficiaries of the WEA and the single desk.”

In April 2002 the Minister announced that the WEA would require an alternative funding arrangement if it

was to continue to undertake its statutory functions. He stated at that time, that it would be inappropriate for taxpayers to fund the WEA.

And yet, throughout the inquiry it was prevalent that the performance of the WEA in monitoring the single desk marketing arrangements has been inadequate. Witnesses told the committee that they were in doubt that the WEA had effectively guarded the interests of Australian wheat growers despite the outflow of \$6 million from grower reserves.

The WEA was established on 1 July 1991. It was created as part of the restructure of the former Australian Wheat Board.

This was set up after the transfer of the Government's wheat marketing and selling role to an independent, grower-owned company called AWB Ltd.

Evidently the WEA operates independently from AWB Ltd and its subsidiaries, including AWB (International) Ltd (AWBI).

The Bill outlines that as long as AWBI is the manager of the wheat single desk rights under section 57 of the Act, then the WEA must perform its export control functions so as to complement any aims of the AWBI to maximise net returns to growers selling wheat for industries in its pools.

This, however does not stop the WEA from exercising its export control functions so as to allow the development of niche or other markets by other exporters, where the WEA considers that they may benefit the growers and the wider community.

According to the explanatory memorandum the aim of this particular amendment is to allow for a flexible approach to allow exporters to take advantage of market opportunities, and to capture the benefits from the single desk arrangements.

At Senate Estimates Committee on 27 May 2002, the Chairman of the WEA told the Committee that a key role of the Authority was to inform the Minister in detailed quarterly reports about the performance of the AWBI.

During the inquiry the WEA provided the committee with legal advice that established that it had limited power in monitoring the AWBI.

This information was given to Minister Truss and the Department for Agriculture, Fisheries and Forestry.

Although the WEA has provided reports on a frequent basis to Mr Truss it has provided only two reports to the growers despite its 'monitoring' of the single desk's operations since 1999.

South Australia's main bulk handler, Ausbulk has stated that AWB negotiated port costs and freight costs for its own sites as well as for its competitors, with little or no transparency regardless of the fact that these figures are crucial in influencing where farmers delivered grain.

Witnesses to the inquiry from Ausbulk said "we have investments at port and we have investments upcountry, and having someone else in the middle turning the tap off and on and sending it in different ways is just not acceptable."

An independent wheat grower in Victoria had traded hassle free with an overseas supplier for six years, until September 2001 when the AWBI banned him. Apparently the WEA refused to supply this grower with a permit to export his special brand of Rosella wheat. This wheat was eventually sold to the board for \$50 a tonne compared to the \$80 he would have got on the export market. He had also been advised by the AWB that they would never give him a permit to sell that type of wheat anywhere in the world.

This Bill will introduce a levy for growers to sustain the WEA, an authority that is supposed to monitor AWBI's export performance and report back to growers and the Federal Government and to Minister Truss.

This mechanism has two integral instruments.

The first will be a charge applied to all exports of wheat, to commence during the first half of 2003. This wheat export charge is defined in this Bill (Where) and will be forced by regulations to be made under the Primary Industries (Customs) Charges Act 1999.

The second instrument of the funding arrangements will be the obligation of fees for lodging applications with the WEA for export consents.

The Wheat Marketing Act 1989 already provides for regulations to enable the WEA to collect a fee for applications for export consents but to date, fees have not been changed.

Approximately 98 per cent of all wheat exported from Australia is exported by AWBI. Only about 2 per cent of wheat is exported using consents issued by the WEA.

Numerous wheat growers question the existing system of wheat marketing, particularly the export monopoly and the legal process by which traders must request permission from the WEA if they wish to export.

One of the directors of the Australian Grain Exporters Association had this to say, "the permit system is just not working, the fact that the WEA needs to confer with AWB on [export of containers] and is subject to AWB veto on bulk exports illustrates the flaws in the system."

What we are seeing is not a very clear separation of the regulatory and commercial functions of the AWB. The overruling powers and the legislation grant AWB more control over exports. AWB becomes the ultimate arbiter who can and who can't export bulk wheat.

Labor proposes that the Bill be amended.

We recommend that the proposed levy on wheat growers to fund the ongoing operation of the Wheat Export Authority be discarded.

We also recommend that the permit system for the export of containerised and bagged wheat be reassigned from the

WEA to the Secretary of the Department of Agriculture, Fisheries and Forestry, and that permit applications, are not made subject to

discussion with the AWB(I) or deliberation of AWB(I)'s commercial interests.

The permit system for bulk wheat exports should be transferred from the WEA to the Secretary of the Department of Agriculture, Fisheries and Forestry, and that existing controls on the export of wheat be maintained.

We feel that in light of the committees' findings the only basis for continuing the single desk marketing arrangements for wheat is if there is an obvious advantage to the wheat industry and the Australian community. In other words distinctively of assistance separate to the benefits of the AWB group.

An independent review of single desk marketing arrangements for wheat should be established and reported to the Minister for Agriculture, Fisheries and Forestry on or before 1 July 2004.

Areas that would need to be addressed are:

- The performance of AWB (International) Limited as holder of the wheat export monopoly;

- The impacts of export marketing arrangements on Australia's domestic wheat market, including related competition issues;

- Benefits and detriments for the Australian wheat industry and the Australian community in maintaining the current statutory export monopoly beyond 2004;

- Recommended changes, if any, to export monopoly arrangements;

- And Options for future monitoring arrangements

In addition, the Minister should table this report in each House of Parliament within fourteen days of its receipt.

I implore that the Minister actively address these very pressing issues for the sake of a \$4 billion wheat industry managed by AWB(I).

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.50 p.m.)—I have, with Mr Truss, had a look at some of the amendments that have been circulated by Labor and the Democrats. In closing the second reading debate, I want to make some comments on those amendments so that perhaps what I have to say during the committee stage will be much restricted. But before I get onto that, I want to comment briefly on some of the matters mentioned by other speakers. For those who might choose to read anything about this debate, I indicate—for those who do not know—that I am a Liberal member of this parliament. I take issue with Senator O'Brien on a couple of things. He said that the Labor Party was the traditional party of the bush, amongst much laughter—right around the chamber, I might say. It is a pity that most people in the bush do not understand that. There is a temporary aberration in Tasmania, I do acknowledge, but, apart from that, I cannot think of one electorate throughout Australia where the Labor Party represents the bush.

Senator O'Brien is a relatively hardworking senator. He has a very good speech writer, or a speech

writer who is very good some of the time—he is very good all of the time; some of his material is not terribly good all of the time. When you compare Senator O'Brien, a union official from Tasmania living in the capital city down there, with our Minister for Agriculture, Fisheries and Forestry, Mr Truss, there really is no comparison whatsoever. Mr Truss is a most capable minister. He is a third generation primary producer. He served in Queensland on Grainco, the grain growers council.

Senator Boswell—He was the president.

Senator IAN MACDONALD—Thank you for that, Senator Boswell. He has devoted his life to the country areas of Queensland and of Australia, and to primary industries and all that goes with that. He has very carefully administered a very complex portfolio. He has done that very well and he is one of the best primary industries ministers that we have had in the past 20 years. He would be on a par with the previous two we have had since 1996, but head and shoulders above any of the primary industries ministers we had during the late 1980s and 1990s. He deals with primary producers throughout Australia who, as we all know, are very strong willed and intelligent. They always have very robust arguments about issues that are put before them. In the end, it is left to the minister to make the decisions that are right for primary producers generally and right for the nation as a whole. Mr Truss has the absolute confidence of all of us on this side of the chamber. In this parliament, where the Liberal and National parties are in a clear majority, that is where the confidence is needed.

I agree with Senator O'Brien on one thing—or it may have been Senator Cherry—that the members of the committee on this side of the chamber did their committee work assiduously although the government does not necessarily agree with every aspect of the committee's report—or perhaps any aspect of the committee's report. But we do acknowledge that the people on the committee from this side of the chamber are experienced people who very clearly understand the issues involved.

I confirm, as we all know in the chamber, that the main purpose of the Wheat Marketing Amendment Bill 2002 is to provide a means to appropriate to the Wheat Export Authority moneys collected as a wheat export charge. The introduction by regulations of an export charge on wheat and fees for applications for consent to the WEA will provide a secure funding mechanism to enable the Wheat Export Authority to continue its functions as an integral part of the wheat single desk arrangements. The bill generated much debate during the inquiry by the Senate Rural and Regional Affairs and Transport Legislation Committee. This debate has been about issues considerably broader than the funding mechanism for the Wheat

Export Authority, including the operation of the single desk, the relationship between AWB Ltd and AWB International and the Wheat Export Authority's ability to effectively monitor the export performance of AWB International, which I will refer to as AWBI, and the report to growers.

The majority Senate committee report recommended that funding for WEA only be provided for one year; that the monitoring and review powers of the WEA be strengthened; that alternative arrangements for conducting the 2004 review be considered and that wheat exports in bags and containers be further deregulated. The government has clearly indicated that it has no intention of adopting changes to the bill which would weaken the wheat single desk or the benefits it provides. The bill is not intended to fundamentally change the arrangements agreed between industry and government and implemented from 1999, despite this being what some parties have sought. It is aimed at providing adequate funding for the ongoing operations of the Wheat Export Authority. Nonetheless, the government has agreed to address issues which will strengthen the arrangements and ensure greater transparency so that growers can better evaluate the benefits they receive from the single desk.

I note from the Senate committee's report that there has not been an incident where AWBI has denied the Wheat Export Authority access to necessary information. Nonetheless, the government has agreed to accept amendments to strengthen the powers of the Wheat Export Authority so that it can compel AWBI and through it Australian Wheat Board Ltd and other companies in the group to provide it with information it reasonably needs to perform its functions. It is important that these powers apply to all companies because of the service relationship which exists between the single desk subsidiary, AWBI, and its parent AWB Ltd. Provision will also be made to protect commercially sensitive information so that neither the AWB group nor the pools will be disadvantaged in the marketplace. These changes will go a long way to increasing industry confidence over the Wheat Export Authority's capacity to effectively do its job. In particular, it will increase confidence in the 2004 review.

I am also aware of the general industry support for the Wheat Export Authority to have these powers expressed in the legislation. Furthermore, the government has recognised the importance to industry of legislative provisions to enforce the current practice whereby the Wheat Export Authority reports to growers as well as to government on the monitoring of AWBI's export performance. Of course the Wheat Export Authority will not publish information which

may commercially disadvantage AWBI or which could impact negatively on pool returns.

The government has already made it clear that the 2004 review is about the performance of AWBI as the commercial manager of the wheat single desk. The review is not about the existence of the single desk nor will it incorporate national competition policy principles. The government accepts that a review by an independent committee, appointed by the minister on a skills basis with appropriate consultation, would improve the transparency of the review and provide greater confidence to growers and other stakeholders. The government will be able to specify the scope of the review in consultation with the Grains Council and, if appropriate, any other industry stakeholders.

The review will cover the following broad areas: firstly, the wheat export arrangements, which include niche marketing, AWBI's export rights and its role in export consents; secondly, pooling operations, which include market analysis, pool management and any other matters relating to the pools; thirdly, pricing performance, which includes gross sales revenue and commodity hedging; fourthly, supply chains, which includes transport and storage costs; and, fifthly, the operating environment, which is concerned with corporate governance, the service level agreement and delivery issues. Finally, the review will cover the performance of the authority in undertaking its functions.

The Wheat Export Authority has a considerable body of information on the operation of the export monopoly and therefore will be required to cooperate with the review committee to ensure the committee has access to all the relevant information it needs to complete its task. It would be impossible to contemplate reviewing AWBI's operation without drawing on this wealth of material. The relationship between AWB Ltd and AWBI is already examined in the annual monitoring process conducted by the authority. A performance report on AWBI is due later this year and will be an essential part of the 2004 review. Similarly, supply chain issues are part of the current monitoring process. The review will also report on the benefits to growers from the management of the single desk.

Recommendations from the committee to restrict levy funding to only one year and to further deregulate exports in bags and containers are totally rejected by the government. This could be seen as a first step in eroding the effectiveness of the single-desk selling arrangements. To sunset the export charge after one year is impractical as it would not adequately fund the Wheat Export Authority. Such an arrangement could also result in a significantly higher export charge than would otherwise be the case. Including a sunset provision in the export charge regulations is

not something the government embraces, given the uncertainty that it generates. However, it will be necessary to include a sunset provision to facilitate the passage of the regulations when they are put before the Senate. We have agreed that the sunset will be 30 June 2006. The charge rate will be reassessed on a regular basis in consultation with industry and, where necessary, changed through regulations—which are, of course, a disallowable instrument.

In addition to its main purpose, the bill also contains a provision to clarify the objective of the WEA's export control functions. This reflects the government's expressed view, in its response to the NCP review, that the authority should complement the role of the single-desk arrangements in maximising net pool returns through the AWBI while at the same time facilitating the development of niche and other markets where this can benefit both growers and the wider Australian community. Incorporating the objective in the Wheat Marketing Amendment Bill 2002 at this time will remove any ambiguity which may exist in regard to the government's policy and its commitment to the single desk. A recent judgment of the High Court clarified the actions of AWBI in the export consent process and in its management of the single desk to maximise net returns to growers delivering to the pools.

The bill also amends the Wheat Marketing Act to improve the operational efficiency of the Wheat Export Authority, which should benefit exporters seeking a consent and allow the authority to better manage its compliance procedures. It is essential that the WEA has adequate financial resources to continue its role and the passage of this bill, including the amendments that have been circulated, is a vital element in achieving this. If the legislation is not passed, the Wheat Export Authority will not have the resources to continue its operations and there will be no processes to permit any exports outside the bulk single-desk system; nor could the Wheat Export Authority complete its 2003 performance report or assist in the 2004 review. I thank other parties for their contributions to the debate insofar as they related to the substantive matter before us. I urge the Senate to support the bill.

Question agreed to.

Bill read a second time.

Friday, 27 June 2003

In Committee

Bill—by leave—taken as a whole.

Senator CHERRY (Queensland) (12.05 a.m.)—I move Democrat amendment (2) on sheet RC210:

- (2) Schedule 1, item 1, page 3 (after line 12), at the end of the definition of *wheat export charge amounts*, add:

Note: The charge mentioned in paragraph (a) is to be imposed by regulations that specify the period for which the charge is to apply.

This amendment is moved to put a note into the act to make it quite clear that the export charge which will fund the WEA under this act will specify a period within which that charge is to apply. In moving this amendment, I make it quite clear, as I said in my speech for the second reading, that it is essential that the Senate stay in this debate over the course of this review process. I would ask the Minister for Fisheries, Forestry and Conservation exactly what the expiry date is that he is proposing for this levy regulation.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.05 a.m.)—The date is the one I mentioned in my closing address, which was 30 June 2006.

Senator O'BRIEN (Tasmania) (12.05 a.m.)—I am confused. In terms of this amendment, Labor believes that the Wheat Export Authority should be the subject of a comprehensive review and the authority's future and additional powers, if any, should be the subject of review recommendation. In other words, we do not think it has a significant role at this time. Nevertheless, as I understand the way things are moving, if growers are forced to cop the continuation of the authority in the absence of a review of its role or a proper one, Labor supports the additional reporting requirements and additional power to obtain the cooperation proposed in this and other amendments before the chamber.

I understand that this amendment generally reflects recommendations contained in the majority report of the Senate Rural and Regional Affairs and Transport Legislation Committee report on this bill. It is apparent that Minister Truss lacked the good sense to adopt the recommendations of his own coalition colleagues on the committee and it, instead, fell to the Democrats to introduce the reforms proposed by Liberal senators in the committee report.

Let me say to Senator Ian Macdonald—I understand that he again suggested that I live in the capital city of Tasmania—I live outside the city of Launceston. I know he has been there. I know he knows that Launceston is a fair way from Hobart, but perhaps, if he chooses to represent me as living in the capital city, he will do so knowing that that is not so.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.08 a.m.)—The government supports the amendment. I also reinforce that, because of the hour, although this is a very important bill, I will be confining my remarks to the absolute minimum. I should also explain that a number of my colleagues on this

side of the chamber—Senator Boswell, Senator McGauran, Senator Sandy Macdonald, Senator Ferris and Senator Heffernan—would have all liked to have participated in this debate, but time and pressures of other legislation have meant that they have very generously given up their speaking opportunities. I will honour those commitments by confining my remarks to the very minimum.

Question agreed to.

The TEMPORARY CHAIRMAN (**Senator Brandis**)—The question now is that item 1, as amended, be agreed to.

Question agreed to.

Senator O'BRIEN (Tasmania) (12.09 a.m.)—I think there is a bit of confusion about the running sheet and the amendments are mislaid out. If you will give me a little leave, I will double-check.

The TEMPORARY CHAIRMAN—As far as I can tell from my running sheet, we are up to opposition amendment (2) on sheet 2944 revised.

Senator O'BRIEN—Is it appropriate to seek leave to move opposition amendments (1), (2) and (3) together?

The TEMPORARY CHAIRMAN—I am advised by the Deputy Clerk that it is not, because of the character of those amendments. We have dealt with opposition amendment (1), which was consequential on the Democrat amendment, and we are up to opposition amendment (2).

Senator O'BRIEN—The opposition opposes section 5A in the following terms:

(2) Schedule 1, item 2, page 3 (lines 15 to 24), section 5A, **TO BE OPPOSED**.

I think it is fair to say that we do not support the imposition of a levy at this time. As I outlined in my remarks at the second reading stage of this debate, Labor do not oppose contributions from industry to regulatory arrangements to assist industry members, but Labor do not believe the Wheat Export Authority currently serves the interests of growers. Accordingly, Labor will not support the imposition of the wheat export levy at this time. We do, however, reserve judgment on the imposition of a future levy to fund the monitoring of the single desk by the Wheat Export Authority or another statutory authority.

The wheat export levy proposed was developed by the Minister for Agriculture, Fisheries and Forestry, Mr Truss, without effective communication with wheat growers. When asked, the Department of Agriculture, Fisheries and Forestry was unable to tell the Senate Rural and Regional Affairs and Transport Committee inquiry into the bill at what rate it would be struck and how it would be applied. The chamber, like growers, is none the wiser today. Mr Truss has failed to provide the opposition with a copy of the

draft regulations introducing the new charge. This is despite his department's advice to the Senate Rural and Regional Affairs and Transport Committee that drafting instructions were issued in December last year. For these reasons, Labor will not support the provisions of the Wheat Marketing Amendment Bill 2002 relating to the imposition of the proposed wheat export charge.

Senator CHERRY (Queensland) (12.13 a.m.)—The Australian Democrats will not be supporting this Labor amendment, although we make it quite clear that we believe the Wheat Export Authority is on probation. We will review our position after the review.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.13 a.m.)—The government opposes the amendment.

The TEMPORARY CHAIRMAN—The question is that schedule 1, item 2, section 5A stand as printed.

Question agreed to.

Senator CHERRY (Queensland) (12.13 a.m.)—by leave—I move Democrat amendments (1), (3) and (4) on sheet RC210:

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

4 Application

The Authority must prepare and publish the first reports under section 5C of the *Wheat Marketing Act 1989* as amended by this Act for the financial year ending on 30 June 2003. However, the Authority is not required to publish a report under section 5C earlier than 4 months after the commencement of this Act.

- (3) Schedule 1, page 3 (after line 12), after item 1, insert:

1A Section 3

Insert:

related body corporate has the same meaning as in the Corporations Act 2001.

- (4) Schedule 1, item 2, page 3 (after line 32), after section 5B, insert:

5C Reports about nominated company B's performance

Report for Minister

- (1) The Authority must prepare and give to the Minister each financial year a report in relation to:
- (a) nominated company B's performance in relation to the export of wheat for the year; and
 - (b) the benefits to growers that resulted from that performance.
- (2) The Authority must give the report for a financial year to the Minister on or before 31 December in the next financial year.

Report for growers

- (3) The Authority must prepare and publish a report for growers each financial year in relation to:
- (a) nominated company B's performance in relation to the export of wheat for the year; and
 - (b) the benefits to growers that resulted from that performance.
- (4) The Authority must publish the report for a financial year on or before 31 December in the next financial year.

Note: Information that is protected from disclosure by subsection 5E(2) must not be included in a report for growers.

5D Power to obtain information

- (1) The Authority may direct nominated company B, or a related body corporate of nominated company B, to give to the Authority:
- (a) information; or
 - (b) documents, or copies of documents, in the custody or under the control of nominated company B or the related body corporate; that the Authority considers relevant to the operation of pools mentioned in section 84 (including the costs of operating the pools and the returns to growers that result from the pools).
- (2) A direction must:
- (a) be in writing; and
 - (b) specify the information that is, or documents that are, to be given; and
 - (c) specify the date by which the information is, or documents are, to be given.
- (3) A direction may specify the manner and form in which the information is, or documents are, to be given.
- (4) The directed company must comply with a direction.
- (5) If the directed company does not comply with a direction by the specified date, the Authority may apply to the Federal Court for an order under subsection (6).
- (6) If the Federal Court is satisfied that:
- (a) the directed company has not complied with the direction; and
 - (b) if information is specified in the direction—the information is relevant to the operation of pools mentioned in section 84 (which may include the costs of operating the pools and the returns to growers that result from the pools); and
 - (c) if documents are specified in the direction—the documents are in the custody or under the control of the directed company and are relevant to the operation of pools mentioned in section 84 (which may include the costs of operating the pools and the returns to growers that result from the pools);

the Federal Court may make the following orders:

- (d) an order granting an injunction requiring the directed company to comply with the direction;
- (e) any other order that the Court considers appropriate.
- (7) The Federal Court may exercise powers under subsection (6) whether or not:
 - (a) it appears to the Court that the directed company intends to continue to fail to comply with the direction; or
 - (b) the directed company has previously failed to comply with a direction.
- (8) The Federal Court may discharge or vary an injunction granted under this section.

5E Dealing with confidential information

- (1) This section applies to a person who is or has been:
 - (a) a member of the Authority; or
 - (b) a member of the staff of the Authority; or
 - (c) a person who performs services in connection with the functions of the Authority; or
 - (d) the Minister; or
 - (e) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
 - (f) a person appointed by the Minister to conduct the review under subsection 57(7); or
 - (g) a person who assists a person mentioned in paragraph (f) in the conduct of the review.
- (2) The person must not disclose information if:
 - (a) either:
 - (i) it is information given to the Authority under section 5D and the company that gave the information claims it is commercial-in-confidence information; or
 - (ii) it is information contained in a document given to the Authority under section 5D and the company that gave the document claims that the information is commercial-in-confidence information; and
 - (b) the disclosure of the information could reasonably be expected:
 - (i) to cause financial loss or detriment to the directed company or a related body corporate of the directed company; or
 - (ii) to directly benefit a competitor of the directed company or of a related body corporate of the directed company; or
 - (iii) to reduce the return for a pool mentioned in section 84.

Penalty: Imprisonment for 1 year.

- (3) Subsection (2) does not prevent the person from disclosing information:

- (a) with the consent of the company that gave the information; or
- (b) in accordance with an order of a court; or
- (c) to any of the following persons, for a purpose in connection with the performance of the functions of the Authority:
 - (i) a member of the Authority;
 - (ii) a member of the staff of the Authority;
 - (iii) a person who performs services in connection with the functions of the Authority; or
- (d) to the Minister; or
- (e) to a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
- (f) to any of the following persons, for a purpose in connection with the conduct of the review under subsection 57(7):
 - (i) a person appointed by the Minister to conduct the review;
 - (ii) a person who assists a person mentioned in subparagraph (i) in the conduct of the review.

Note: The defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

These amendments flow directly out of the recommendations of the report of the Senate Rural and Regional Affairs and Transport Legislation Committee. They seek to give the Wheat Export Authority the power to compel information from AWBI and related companies—that is, AWBL—for the purposes of the act. They also make it clear that a claim of commercial-in-confidence cannot be justified if the authority under 5E is of the view that it would be in the interests of growers to have that information released. Given the lateness of the hour and the state of my voice, I will not say any more.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.15 a.m.)—The government supports the amendments. It is, in fact, simply confirming in legislation what I am instructed occurs at the present time, so we have no objection to the amendments.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that amendments Nos 1, 3 and 4 standing in the name of the Australian Democrats be agreed to.

Question agreed to.

Senator O'BRIEN (Tasmania) (12.15 a.m.)—We oppose schedule 1 in the following terms:

- (3) Schedule 1, item 3, page 4 (lines 1 to 21), **TO BE OPPOSED.**

This is the opposition's amendment to oppose another levy related item in the bill. I will not address that in-depth other than to say, as I said before, we do not believe that it can be justified for growers who have already paid \$6 million to an authority that has achieved very little. I understand that the numbers are not with us tonight to allow that position to succeed. I regret that. It will be interesting in the subsequent stages in this debate to talk about other issues which I think the Democrats believe justify their position. I hope that their position is correct; I fear it is not. I fear that growers will pay another significant amount of money for the Wheat Export Authority without the outcomes that we would hope that those moneys would leverage.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.16 a.m.)—The government opposes the opposition's amendment on this occasion and all of the other amendments that the opposition might move. I say that now so I do not have to get up every other time. I say that also notwithstanding that Senator O'Brien has moved them and the fact that he comes from Launceston and not Hobart.

Senator O'Brien—Just outside of it, actually.

Senator IAN MACDONALD—I have no hesitation in acknowledging that if I was wrong before. My point was that when you compare Mr Truss, who is a genuine primary producer, as has been his family for generations, with Senator O'Brien—competent no doubt that Senator O'Brien is—I am afraid Mr Truss wins hands down every time, regardless of where you live, Senator O'Brien.

Senator HARRIS (Queensland) (12.17 a.m.)—I would like to put on the record One Nation's support for the government's proposal and the Democrats amendments. The government is proposing that the Wheat Export Authority be funded from a levy placed on exports and this places the funds that are set aside from the wheat industry funds. These funds are about to expire, which places great uncertainty over the wheat exporting arrangements. The new levy is fair and will not impose a significant burden on our exports. The members of the WEA have clearly stated that they will accept the levy. The only difference between what the WEA is basically asking for and Senator Cherry's amendments is that the Democrat amendments are for only 2½ years and the WEA would prefer them to be for the term of the existence of the board.

The other important issue is that we must not forget why we have a single desk. At times during the public debate it has been forgotten why it is so important to have that single desk. Australian growers are the most efficient in the world but the international marketplace is not fair and our growers have to com-

pete with growers from other countries who receive huge support and assistance from their governments. The Australian single desk system of marketing helps protect our growers by giving them collective bargaining in the international marketplace and ensuring the quality of Australian wheat remains the best in the world. It is not just the growers who benefit, it is the community in rural and regional Australia that are dependent on a fair price for the wheat we export.

There is a need for that certainty because wheat growers are otherwise exposed to too much doubt and uncertainty. The drought experienced by the rural sector has been devastating and the current season is looking somewhat patchy. On top of this, the EU and America are constantly trying to undermine Australia's wheat exports arrangements whilst maintaining support for their farmers. Their agenda is to make Australian farmers weaker in world markets and make their own farmers stronger. The Australian wheat industry needs a commitment from this parliament—from the government and from this chamber—that we will make sure that it can move forward with certainty. We can show this commitment this evening by approving funding for the Wheat Export Authority for the period that the board is in existence. One Nation would like to place on record its support for the government's bill and the Democrats' amendments.

Senator O'BRIEN (Tasmania) (12.21 a.m.)—I am confused.

Senator Ferris—That is confusing.

Senator O'BRIEN—I take the sotto voce interjection from Senator Ferris, because this is a very confusing position. Senator Harris is supporting the imposition of another tax, a levy, on grain growers to fund a body that apparently he does not know much about, that have not achieved very much and that have cost growers about \$6 million over the last four years. Their role has very little, if anything, to do with the returns growers achieve, and they certainly cannot tell growers whether the single desk arrangements have got them any benefit at all.

I am quite happy for Senator Harris to make a contribution to the debate—I accept that it is late and that the way the amendments are coming forward is somewhat confusing—but this amendment is simply to do with the fact that the opposition does not believe that taxing growers on their wheat exports, to fund a body that has achieved nothing, is in the interests of growers. That is the basis on which we have moved the amendment. It has nothing at all to do with whether the single desk achieves an outcome. There are other amendments that go to the review of the arrangements which we believe ought to be designed to demonstrate in the most authoritative way possible that the single desk delivers benefits, what

they are, what the deficiencies are in the system that apply to it and what steps, if any, need to be taken to improve the current situation.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that schedule 1, item 3, stand as printed.

Question agreed to.

Senator O'BRIEN (Tasmania) (12.23 a.m.)—by leave—I move the following amendments on sheet 2944 (Revised):

(4) Schedule 1, page 4 (after line 23), after item 4, insert:

4A Subsection 57(7)

Repeal the subsection, substitute:

- (7) Before 1 July 2004, the Minister must cause an independent review to be conducted of the following matters:
- (a) the operation of subsection (1A) in relation to nominated company B;
 - (b) the conduct of nominated company B in relation to:
 - (i) consultations for the purposes of repealed subsection (3A); and
 - (ii) the granting or withholding of approvals for the purposes of subsection (3B); and
 - (iii) returns to growers; and
 - (c) the economic impact of export wheat control arrangements on Australia's domestic wheat market; and
 - (d) the benefit of maintaining export wheat control arrangements; and
 - (e) recommended changes to export wheat control arrangements; and
 - (f) recommended changes to monitoring and reporting arrangements.
- (8) The review conducted in accordance with subsection (7) is to have the same powers, procedures and protections of an inquiry conducted by the Productivity Commission in accordance with the *Productivity Commission Act 1998*.
- (9) A review initiated under with subsection (7) is to be conducted by a panel nominated by the Minister by a written instrument.
- (10) An instrument prepared under subsection (9) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (11) The Minister must cause a copy of the report of the review prepared in accordance with subsection (7) to be tabled in each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

(4) Schedule 1, page 4 (after line 23), after item 4, insert:

4A Subsection 57(7)

Repeal the subsection, substitute:

- (7) Before 1 July 2004, the Minister must cause an independent review to be conducted of the following matters:
- (a) the operation of subsection (1A) in relation to nominated company B;
 - (b) the conduct of nominated company B in relation to:
 - (i) consultations for the purposes of repealed subsection (3A); and
 - (ii) the granting or withholding of approvals for the purposes of subsection (3B); and
 - (iii) returns to growers; and
 - (c) the economic impact of export wheat control arrangements on Australia's domestic wheat market; and
 - (d) the benefit of maintaining export wheat control arrangements; and
 - (e) recommended changes to export wheat control arrangements; and
 - (f) recommended changes to monitoring and reporting arrangements.
- (8) The review conducted in accordance with subsection (7) is to have the same powers, procedures and protections of an inquiry conducted by the Productivity Commission in accordance with the *Productivity Commission Act 1998*.
- (9) A review initiated under with subsection (7) is to be conducted by a panel nominated by the Minister by a written instrument.
- (10) An instrument prepared under subsection (9) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (11) The Minister must cause a copy of the report of the review prepared in accordance with subsection (7) to be tabled in each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.
- (6) Schedule 1, page 5 (after line 31), at the end of the Schedule, add:

6 Paragraph 5(1)(b)

Omit "and examine and report on the benefits to growers that result from that performance".

These amendments relate to the key recommendation of the Rural and Regional Affairs and Transport Committee inquiry into the bill—that is, that the Wheat Export Authority lacks the capacity to undertake the review in the performance of AWB International mandated in existing section 57(7) of the act. Labor proposes a truly comprehensive and independent review. We think the review should not be restricted to looking through the rear vision mirror either. As well as looking at past performance, the review should be asked to glance through the wind-screen and make recommendations for the future.

The review proposed by this amendment would examine: the performance of AWB International as holder of the wheat export monopoly; the impact of export marketing arrangements on Australia's domestic wheat market, including related competition issues; benefits and detriments for the Australian wheat industry and the Australian community in maintaining the current statutory export monopoly beyond 2004; and recommended changes, if any, to export monopoly arrangements and options for future monitoring arrangements. The appointment of the review team will be the subject of a disallowable instrument, so it cannot become an Estens mark 2 and deny growers an independent analysis. Labor proposes a review with teeth, one with all the powers, procedures and protections of the productivity review. Finally, Labor's amendment provides for the tabling of the report of the review so that the minister cannot hide it from growers.

I would have thought that the most comprehensive review possible is in fact in the interest of growers. It may not be perceived by members of the grain-growing establishment to be in their best interests, but I believe it is in the best interests of growers to get the best known outcome possible—that is, to ascertain just what is going on in the changing environment of Australia's wheat market to understand how that relates to its domestic marketing arrangements. There are significant criticisms by major players in the domestic market about how the export marketing arrangements—or perhaps more appropriately the operations of AWB Ltd in the domestic market—impact on their businesses and whether the export marketing arrangements and monopoly granted to AWB International are in fact impacting on their ability to operate their businesses and to pay dividends to the growers who hold shares in their businesses as well as others and to pay for grain and support the domestic market arrangements that currently exist.

I understand the Democrats have a view that there ought to be a lesser test in this inquiry. I think that is unfortunate. The reality is that a lesser test, the sort of test that I understand is contained in their amendment, will lead to a much less authoritative outcome and will not examine the issues which I believe need to be examined to make sure that when we do have a review report—and it should be tabled in parliament—the parliament, growers and the community generally can gain an understanding of what is happening in the market and the views, self-interested as they would have to be, of the businesses that operate in that market can be tested against the findings of a truly independent and authoritative review. I commend the amendments to the Senate.

Question negatived.

Senator CHERRY (Queensland) (12.27 a.m.)—as amended, by leave—I move amendment (5) on sheet RC210:

(5) Schedule 1, page 4 (after line 23), after item 4, insert:

4A Subsection 57(7)

Repeal the subsection, substitute:

- (7) Before the end of 2004, the Minister must cause an independent review to be conducted of the following matters:
 - (a) the operation of subsection (1A) in relation to nominated company B;
 - (b) the conduct of nominated company B in relation to:
 - (i) consultations for the purposes of subsection (3A); and
 - (ii) the granting or withholding of approvals for the purposes of subsection (3B);
 - (c) whether benefits to growers have resulted from the performance of nominated company B in relation to the export of wheat;
 - (d) the Authority's performance of its functions under this Act.
- (8) The persons who are to conduct the review are to be appointed by the Minister.
- (9) The persons who conduct the review must:
 - (a) be assisted by the Authority; and
 - (b) make use of reports under section 5C and other information collected by the Authority.
- (10) The persons who conduct the review must give the Minister a report of the review before the end of 2004.
- (11) The persons who conduct the review must publish a report of the review for growers before the end of 2004.

Note: Information that is protected from disclosure by subsection 5E(2) must not be included in a report for growers.

This amendment arises directly out of the recommendations of the Senate Rural and Regional Affairs and Transport Legislation Committee, and it sets up an independent review. It makes it quite clear that the review of the operations of AWBI should be carried out not by the Wheat Export Authority but by an independent review. It also expands the terms of reference for that review to add two new terms of reference:

- (c) whether benefits to growers have resulted from the performance of nominated company B in relation to the export of wheat;
- (d) the Authority's performance of its functions under this Act.

It does make this review somewhat wider than was originally intended by the government. I note the very important points which Senator O'Brien has made about the importance of this review. As we have said before, in the Democrats' view the Wheat

Export Authority is on probation and we believe the onus is on the government, the Wheat Export Authority and AWBI to prove that they are providing a benefit to growers. The Democrats continue to support the single-desk arrangements in the absence of proof to the contrary, but we think that the growing clamour of concern within the wheat industry about current arrangements means that the onus is on the proponents of the current arrangements to prove the benefit is clearly there. I think that is an important part of the review in 2004. I commend this amendment to the committee.

It is also important to note that subclause (10) of proposed subsection 57(7) makes it clear that the review will be assisted by the Wheat Export Authority. I put that in quite deliberately because I noted in the evidence to the committee that the Wheat Export Authority has done a lot of work collecting information from the various growers' reports it has done to date which will be an important part of this particular review. I think it is very important that that work not be wasted or that we not start from scratch—although I do believe it is important that somebody independent make the decisions about what that information means.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.30 a.m.)—We support the amendment, although I am having some difficulty understanding Senator Cherry's withdrawal of subclause (9) in his amendment. Quite frankly, if you want to withdraw it, that is fine by the government. But, as I understand it, subclause (9) sets out what the minister has to do before specifying the matters to be addressed in the review. It indicates that the minister must consult the Wheat Export Authority and the Grains Council and may, if he considers it appropriate, consult other representatives of the grain industry. I mentioned this briefly in my speech, anticipating this would come forward. We think it adds to your case for the amendment. If you do not want to insist on it, that is fine by us, but I am just a fraction confused, because it indicates in the legislation some of the things that the minister must do.

Senator O'BRIEN (Tasmania) (12.32 a.m.)—The opposition will be supporting this amendment, particularly with the removal of subclause (9). We will be moving some additional amendments which will impact on these amendments.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—I understand you should move them now, Senator O'Brien.

Senator O'BRIEN—by leave—I move opposition amendments (1), (2) and (3) on sheet 3016:

(1) At the end of subsection 57(7), add:

- ; and (e) the economic impact of export wheat control arrangements on Australia's domestic wheat market;
- (f) the benefit of maintaining export wheat control arrangements;
- (g) recommended changes to export wheat control arrangements;
- (h) recommended changes to monitoring and reporting arrangements.

(2) At the end of subsection 57(8) add "by a written instrument".

(3) After subsection 57(8), insert:

- (8A) An instrument prepared under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

While we support in general terms the amendment moved by Senator Cherry, it does not in our view specify the scope of the review. We accept that, insofar as it establishes criteria to be reviewed, that is a good thing and that is consistent with the views of the committee. It specifies that the review look at the operations of nominated company B—that is, AWB International—to determine 'whether benefits to growers have resulted from the performance of nominated company B in relation to the export of wheat', and the authority's performance of its functions under the act, which I suspect will be an interesting review. But it does not, for example, require a review of the economic impact of export wheat control arrangements on Australia's domestic wheat market—that is a matter that I have previously addressed in the debate on this legislation—because we should know if the export wheat control arrangements are having a negative impact on the market and we should know why as the system may need some tinkering to address those issues.

It is not in the interests of Australia's grain industry to have one sector of the market negatively impacting on another and therefore impacting on the returns of some growers who choose or are forced to sell their grain on the domestic market rather than on the export market. To wait until 2010 to look at that issue, as the minister and the government would suggest we do, is to close one's eyes to significant concerns which are being discussed in the grain growing community.

To look at the benefit of maintaining export wheat control arrangements is simply to say, 'Are we getting the best system that we can for growers and for the community?' The opposition support the concept of the single desk but we do so on the basis that we want to be assured that it is in the interests of growers and the community. We do not understand why there is a problem with looking at what the benefit of maintaining the export wheat control arrangements will be. We would like some recommendations, from

a truly independent and authoritative review, on changes to export wheat control arrangements. We do not want a report which comes down and tells us what has happened; we want a report, as I said earlier, which looks forward and suggests the changes that might be beneficial. I do not believe that the proposed section 57(7) will necessarily allow us to do that. We will be forced to wait until 2010.

A fundamental issue, which I suppose follows from the Democrats' proposed section 57(7)(d), is what changes we need to make to the monitoring and reporting arrangements. The authority's performance and the role it plays certainly should be reviewed—if there is to be an authority in future, what it should do with the information it gathers, what information should be given to growers and how it should be given to them. To date, the arrangement for the presentation of the information gathered at the expense of growers has been entirely unsatisfactory. The minister has received that information and the growers have received a very slim volume indeed which has been restricted on the basis, it is said, of commercial-in-confidence issues. I would like someone to look at that issue and say what should be provided to growers—because they pay for it and they are going to pay for it under this model—and what might be held back because of genuine commercial-in-confidence issues. Remember we are dealing with Corporations Law companies here and so officers of the company have to pursue the interests of the Corporations Law company before they pursue the interests of grain growers. That is the reality of the responsibility of officers of Corporations Law companies. That is why we need this additional benefit.

We think that the persons who are to conduct a review—who, according to the Democrats' amendment, are to be appointed by the minister in section 57(8)—should be appointed by a written instrument and we think that that should be a disallowable instrument. I am reminded of the problem with the Senate making a decision to give powers to a minister to do certain things and then finding that perhaps they are not being carried out in the way we thought they were intended to be carried out. Senator Bartlett said in *Hansard* on 24 June, in a debate about the conduct of a general business item:

If some ministers wish to blatantly breach agreements about negotiations that are under way on other pieces of legislation and to completely go back on agreements—the energy grants scheme is a perfect example of where there have been four years of breached agreements and breached pledges ... Perhaps Senator Ian Campbell, who I know has a very difficult job, might like to talk to those of his colleagues who are quite happy to breach written agreements and undertakings regularly.

That is the Leader of the Democrats' view about some of the ministers of the government. Without

wishing to necessarily reflect on any particular minister, I think the Senate ought have the power to look at the appointments in this case, because I think it is very important that we get an authoritative, independent review. We do not want, for example, a series of National Party hacks appointed to this inquiry, designed to give an outcome which is suitable to part of the establishment but not to grain growers generally. So we would prefer—

Senator Ian Macdonald—Cabinet appoints them.

Senator O'BRIEN—The minister interjects that they are cabinet appointments. But the legislation says they are appointed by the minister.

Senator Ian Macdonald—Yes, you are quite right.

Senator O'BRIEN—So we believe there should be created a written instrument of appointment which ought be a disallowable instrument. If the minister has the intention of appointing a representative, qualified review panel—when I say 'representative', I mean representative of the skills necessary to conduct such a review—he ought have no concerns about it being a disallowable instrument.

Senator CHERRY (Queensland) (12.41 a.m.)—I am very sympathetic to these amendments, but on balance I probably will not be able to support them tonight. Amendment (1) moved by the Labor Party proposes a number of extra terms of reference for the review. In some respects, these issues are picked up in the proposed new terms of reference (c) and (d), which we have added into 57(7), which look at:

(c) whether benefits to growers have resulted from the performance of nominated company B ...

(d) the Authority's performance of its functions under this Act.

I am somewhat concerned that the terms of reference proposed by Senator O'Brien might go somewhat further than I think the Democrats would feel comfortable in going. We do not want to open up in this review the issue of the single desk at this point. We want to ensure that this review produces the material on benefits to growers in a better way. But we do not think the industry is at a point where it wants the single desk opened up, and I am concerned that Senator O'Brien's proposed criteria would do that.

As for the issue of who should be on the review and how they should be appointed, as I indicated I am very sympathetic to what Senator O'Brien has proposed. I would ask the minister whether he could give a commitment to the Senate that, at the very least, the Senate Rural and Regional Affairs and Transport Legislation Committee will be fully consulted on the skills criteria for review members and the review membership. I also ask under what time frame that would occur.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.43 a.m.)—As I indicated in my second reading speech, I am advised that I can give that assurance. The minister will consult with the relevant committee that you mention, Senator Cherry. I think the minister has indicated, and I think I said this in my second reading speech, that we would welcome any suggestions that the committee might put forward.

Senator CHERRY (Queensland) (12.43 p.m.)—The minister asked me a question about the removal of subclause (9). This followed from discussions between me and Senator O'Brien. There was a concern, particularly with the Labor Party, that this provision may have the effect of reducing the scope of the review. At this late hour I do not have time to fix the amendment, which is why I was happy to take it out. I would also note that when this amendment was drafted I was a bit more comfortable and relaxed with the Grains Council, but since then I have seen their letter to growers. This independent review comes out of the recommendations of the Senate Rural and Regional Affairs and Transport Legislation Committee report, and the grain growers have written to all of their members saying that we do not understand what we are talking about. I do not think they should be consulted at all.

Senator O'BRIEN (Tasmania) (12.44 a.m.)—I would like to ask the minister a question. There is a little confusion in my mind over the proposed new section 57(8) under Democrat amendment (5), which says:

- (8) The persons who are to conduct the review are to be appointed by the Minister.

Is it the practice of government that that would be an appointment made by cabinet?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.45 a.m.)—The legislation requires it to be appointed by the minister.

Question negatived.

Senator O'BRIEN (Tasmania) (12.45 a.m.)—by leave—I move opposition amendment (4) on sheet 3016:

- (4) At the end of section 57, add:

- (12) The Minister must cause a copy of the report of the review prepared in accordance with subsection (7) to be tabled in each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

At the very least, following the conduct of a review into the operation of nominated company B, as set out in the Democrats' amendment (5), growers should know what their money is paying for. Growers should know what has been happening with the regulatory

model for the single desk, which apparently has grower support and the support of the coalition. There is no good reason to deny growers access to the outcome of this review. It is the opposition's view, then, that the minister be compelled to cause a copy of the report of the review, prepared in accordance with the proposed subsection (7) of section 57, to be tabled in each house of parliament within 25 sitting days of the minister receiving the report. I cannot understand why anyone would oppose that.

The government and the Democrats have imposed the cost of this review on growers. I fear that if this amendment is not passed then growers will not see what they have paid for and the parliament will not see what has been paid for, and that will mean that the debate on the single desk will continue to operate in an environment where the self-interest arguments of the participants will potentially obscure the facts. As I have said in relation to this debate on a number of occasions, we need an independent but authoritative review with findings which will have the respect of the community. If there is a review and its findings are kept secret, but some of them are sought to be used for the purposes of future legislative change, that will diminish the whole purpose of this amendment. So I suggest that, for fear that it not happen—and I do not know what the minister's intention is or even who the minister will be at the time—it is imperative that opposition amendment (4) be carried.

Senator CHERRY (Queensland) (12.48 a.m.)—The Democrats will be supporting the Labor Party's amendment, but I would point out to Senator O'Brien that subclause (11) of the amendment which I have moved does require a report of the review to be published before growers before the end of 2004. I am supporting this amendment not because the report could be hidden from growers—I think that is picked up in the amendment I have moved—but rather because I think it is fundamentally important that the circle of accountability back to parliament is closed. I have made it clear in my contribution that I believe this review will be reviewed by the rural affairs committee. I think it is important that we recognise that and close the circle of accountability. From that point of view, I will be supporting Senator O'Brien's amendment. Senator O'Brien did raise a question which I would like to put to the minister, and that was the question of the actual funding for this review. My understanding from discussions with Minister Truss is that, as the review is now an independent review outside of the WEA, it would not come out of their budget. I would like the minister to confirm that.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.50 a.m.)—I am instructed that the review will be funded by the levy. In relation to the other point,

Senator Cherry, as you rightly pointed out, proposed subclause (11) does require the review to be published, and, having been published, no doubt it will be available on the web site or physically sent to the growers. So that is there. The concern of the government—which is a concern I think you might share, Senator Cherry, if I understand my instructions correctly—is that Senator O'Brien's amendment (4) would require the report to the minister, which will contain commercial-in-confidence information, to be made available publicly. As I understand my instructions, that is why the government opposes Senator O'Brien's amendment.

Were you to proceed with your support for Senator O'Brien's amendment, it would mean that material that could impact on the commercial operations of, I assume, the authority and AWBI—material that is commercial and could impact upon their commercial activities and which is for commercial reasons kept confidential—would be available to all and sundry, including their world competitors. It just seems wrong and inappropriate for that to happen. Were this to go ahead, I would suspect—I think most people in the chamber at the present time would know that wheat marketing is not one of my fortes—that people would be very hesitant to provide commercial-in-confidence information to any inquiry, even though they may be obliged to do so.

I think it is being suggested to me by my advisers that, if Senator O'Brien's proposed amendment were to read 'in accordance with subsection 7(12) to be tabled in each house of parliament within 25 sitting days', that would be acceptable. That would mean that, if the non-commercial-in-confidence information that the growers are going to get under your proposal in subparagraph (12) were to be tabled in the parliament, that is fine. But if it is not amended in that way, you would have commercial-in-confidence material being tabled in the parliament, and you cannot get much more public than that. It would really put Australian organisations at a great disadvantage in the world market if commercial-in-confidence materials were to be tabled in this chamber.

Senator O'BRIEN (Tasmania) (12.54 a.m.)—It seems to me that the solution is to append to the end of my amendment (4), the new subclause (13), a note which would read: 'Note: information that is protected from disclosure by subsection 5E(2) must not be included in a report tabled in the parliament'. That may be what you just said, Minister. If it is, there will be thunderous agreement and it will be simple to resolve this matter.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.55 a.m.)—It would be much easier to amend your amendment to say that the minister must cause a copy

of the report of the review prepared in accordance with subsection 7(12) to be tabled in each house of parliament. That would tie it directly to subsection (12), which is the report that is going to go to the growers, and that is what you are seeking, I think.

Senator O'Brien interjecting—

Senator IAN MACDONALD—No, it is not what you are seeking. Well, what are you seeking?

Senator O'BRIEN (Tasmania) (12.55 a.m.)—I am seeking that the report of the review that we are putting in place be tabled in the parliament. I am accepting that if there is commercial-in-confidence information contained in that report it should not be tabled in the parliament. That is what I am seeking. I think that that addresses the concern that the minister put before the committee as a justification for not supporting the amendment. I think that that deals with the concern expressed about the publication of commercial-in-confidence information which was detrimental to the interests not just of AWB International but of growers in our trading arrangements with other nations.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Senator O'Brien, are you seeking leave to make an amendment to your amendment?

Senator O'BRIEN—I seek leave to do so.

The TEMPORARY CHAIRMAN—Is leave granted?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (12.56 a.m.)—Not just at the moment, in case we can circumvent it. Senator O'Brien, you would then have the report that is tabled in the parliament being perhaps different from the report that the growers are going to get. Surely all that you are seeking and all that Senator Cherry is seeking is that the report that goes to the growers is the one that is tabled in the parliament. I am advised by my officials that your suggestion means that yet a third report would have to be prepared, with the attendant costs and scope for confusion. If your goal and Senator Cherry's goal is simply to make sure that the report that the growers get, which has that note to it, is the one that is tabled in parliament, why not just say that, rather than confuse the issue with perhaps yet a third report to be prepared which could be different from the report that the growers would get?

Senator O'BRIEN (Tasmania) (12.58 a.m.)—I must say that it is unclear to me what 'a report of the review'—the terminology used in 57(12), as proposed in the Democrat amendment—means. What I want is the report—I am not sure what 'a report' means—which emanates from the review. Publishing 'a report' of the review could mean something much

less than the substantial report, even with the excision of commercial-in-confidence material. I am not sure what the publication of 'a report of the review' really does mean. If we have a review and we have 'a report' of the review, what does that really mean? I am concerned that the report of the review—that is, the findings of the review—be published in the parliament, but I am prepared to concede that it may not be in the public interest that important commercial-in-confidence information be contained in that report. So I am prepared to add a note to the proposed new subclause (13) which would say, 'Information that is protected from disclosure by subsection 5E(2) must not be included in the report of the review tabled in each house of the parliament.'

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.00 a.m.)—Then perhaps paragraph (11) should say, 'The persons who conduct the review must give the Minister the report of the review'. We are really becoming pedantic. There is going to be a report of the review. You are saying that you are not sure which report it would be. There will effectively only be two reports: one report which contains commercial-in-confidence material and one that does not. That is a report of the review. But, if by saying 'the report of the review' in paragraph (11) meant that persons who conducted the review must publish the report of the review for growers before 2004, that would enable you to put paragraph (12) after that.

But I really do not think paragraph (11) needs to be amended in that way. It is really an exercise in English usage. Is it 'a report' of the review or 'the report' of the review? I urge both you and Senator Cherry that, if you do insist on a new paragraph (13), you simply change 7(12) so that it is quite clear that what is tabled in this parliament would be what the growers are getting. If you are saying that you are not sure which report is referred to in paragraph (12), you are bringing into question the whole purpose of reporting to the growers in any case.

Senator O'BRIEN (Tasmania) (1.02 a.m.)—Is the minister saying that it is the intention to publish the report of the review—not an analysis of it but the report? That is the question that I am asking. There is a concern because of the history of this. We have not seen the report that has gone to the minister, but I understand that a fairly constrained and limited report has been provided by the Wheat Export Authority to growers twice in the last four years. In this case, we are talking about a substantial review. The opposition does not want to see this legislation passed with the government understanding that they can continue the practice of limiting in a substantial way the information which goes to growers.

I am concerned, for example, that there may be undue caution used in holding back information on the basis that it is suspected that it may be commercial-in-confidence. If something is or is not commercial-in-confidence, I would suspect that there ought to be good reasons to withhold it from growers in the circumstances, particularly as the minister has indicated they will be paying for this review.

I am confident that, if the words 'the' and 'a' are interchangeable, we will not have done any harm by passing this amendment. On the other hand, if the minister is wrong, then I will have put in a protection for the parliament that should be there. From my point of view, it is preferable to put in something which is unnecessary and makes sure that the tabling of the review report comes before parliament than to find that we have a legislative mechanism which means something other than what we thought it meant. When the original legislation was passed, I am sure senators in this chamber thought we had equipped the Wheat Export Authority with ample power to perform its task, but we have found in the course of this inquiry that that has not been the case.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.05 a.m.)—Let us start at the beginning. Democrat amendment (5) says:

(7) Before the end of 2004, the Minister must cause an independent review to be conducted of the following matters ...

We have been through those. Paragraph (8) says:

The persons who are to conduct the review are to be appointed by the Minister.

We have agreed with that. Paragraph (10) says:

The persons who conduct the review must:

- (a) be assisted by the Authority; and
- (b) make use of reports ...

And paragraph (11) says:

The persons who conduct the review must give the Minister a report of the review before the end of 2004.

What is the point of having a review if nobody is going to get a report of it? The legislation makes it clear that those who are conducting the review have to give the minister a report of the review before the end of 2004. The Democrat amendment then says that the persons who conduct the review must also publish a report of the review for the growers. But then the note says that the difference between the report the growers get and the report that the minister gets is that the minister may get a report that has information that is commercial-in-confidence, whereas that will not go to the growers. What you are then saying is that you want the report that is going to growers—which is appropriate—to be tabled in the parliament.

Senator O'BRIEN (Tasmania) (1.06 a.m.)—Is the minister able to assure the committee that the report the minister receives from the review will be the same report that growers receive, with only the information protected from disclosure by subsection 5E(2) removed?

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.07 a.m.)—I am instructed that I can give that assurance. That is the intention, as I just said while you were all talking a minute ago. Under your amendment, if it is amended as we would like, the minister will get a report, but it will contain some commercial-in-confidence material; the same report will go to the growers except that, according to the note, information that is protected from disclosure is not to go to the growers. The growers will get the same report as the minister, less the commercial-in-confidence material. With your amendment, if it is amended correctly, the growers' report will get tabled in parliament.

Going back to what I said before as well, if you do not want to use the term 'a report'—I would question the necessity of this in English usage—you could say in paragraph (11), 'The persons who conduct the review must give the Minister the report of the review before the end of 2004.' And in paragraph (12) you could say, 'The persons who conduct the review must publish the report of the review for growers before the end of 2004,' and note that information that is protected does not go in that. Rather than having a new paragraph (13), just looking at it on my feet, it would be easier in paragraph (12) to say, 'The persons who conduct the review must publish a report of the review for growers before the end of 2004 and that report shall be tabled in each house of parliament within 25 sitting days of that house after the day on which the minister receives the report.' That would seem to be the easiest way to do it.

Senator Cherry—It might be appropriate to report progress and come back to this in about half an hour, when we have sorted out this wording. I think we are very close. I will be guided by Senator O'Brien.

Senator IAN MACDONALD—I understand that there is furious agreement now to go back to my original proposal that we just put (12) after (7) in paragraph 13—if that makes sense—or (12) instead of (7) in paragraph 13, and everybody is happy. I think there is furious agreement about what we all want to do; it is just a question of doing it. Perhaps Senator Cherry's suggestion to report progress is the most relevant. My advisers are advising me—and it is a bit late to think clearly on these things—but I would still go back to my original point that 13 should talk about subsection 7(12). It clearly refers to

it. You have the assurance that I have been authorised to give that they are the same report, with the deletion of the commercial-in-confidence material. In the interests of trying to get home some time tonight, we perhaps should report progress and come back. It is a relatively minor thing. I think everything else is okay with this amendment.

Senator O'BRIEN (Tasmania) (1.12 a.m.)—I am happy with the minister's assurance that the substantial report, minus those subsection 5E(2) matters, will be given to growers. I think it also should be tabled in the parliament. If it would assist, the minister must cause a copy of the report referred to in subsection (12) to be tabled in each house of the parliament.

Senator Ian Macdonald—I am happy with that, except I do not think it is subsection (12); it is paragraph 12, isn't it?

Senator O'BRIEN—It is subsection 12.

Senator Ian Macdonald—Yes, it is. That is a deal then.

The TEMPORARY CHAIRMAN (**Senator Sandy Macdonald**)—Senator O'Brien, do you seek leave to amend your amendment?

Senator O'BRIEN—by leave—I move an amendment to opposition amendment (4):

Omit "of the review prepared in accordance with subsection (7)", substitute "referred to in subsection (11)".

The TEMPORARY CHAIRMAN—So that we can get this perfectly clear, the amendment would read:

The minister must cause a copy of the report referred to in subsection (11) to be tabled in each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

Senator O'BRIEN—Yes.

The TEMPORARY CHAIRMAN—The question is that opposition amendment (4), as amended, to Democrat amendment (5) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that Democrat amendment (5), as amended, be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that item 5 stand as printed..

Senator O'BRIEN (Tasmania) (1.16 a.m.)—Schedule 1, item 5 is opposed in the following terms:

(5) Schedule 1, item 5, page 4 (line 24) to page 5 (line 31), **TO BE OPPOSED**.

Labor supports the recommendation of the Rural and Regional Affairs and Transport Legislation Committee that AWB International be removed from involvement in the consent of non-bulk export wheat.

Unlike the government majority on the committee, Labor contends that the Wheat Export Authority is not a competent organisation to undertake this task. Accordingly, Labor opposes item 5 relating to the variation of consents and the sharing of information.

Question agreed to.

Senator O'Brien—I seek leave, if it is needed, to withdraw opposition amendment (6).

The TEMPORARY CHAIRMAN—You do not need leave; you just do not move the amendment.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.18 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.19 a.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 8 (Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002).

Question agreed to.

SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 2002

Second Reading

Debate resumed.

Senator SHERRY (Tasmania) (1.21 a.m.)—The Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002 contains a number of minor amendments to the entitlements of Commonwealth employees. However, for those who are impacted by these amendments, they represent an important consideration and improvement—specifically, for spouses pensions that are payable in respect of a relationship that exists for less than three years before the pensioner's death and where a marital relationship has commenced after age 60 and the principal recipient dies within five years of that relationship commencing. Secondly, there are some changes to provisions for benefits payable to children after the death of the retiree.

The Labor Party supports these changes. I note that the financial impact is estimated to be nil. I am not sure that is correct, but the financial impact will be very minor, particularly given that the small num-

ber of people who would be caught in these unfortunate circumstances would, I think, in many of those circumstances, be provided for under act of grace arrangements. The impact on the budget would be very minor. The Labor Party supports the bill.

The second reading amendment to be moved by Senator Cherry on behalf of the Australian Democrats is a relatively standard amendment that we have become used to from the Australian Democrats for reasons that have been put forward on previous occasions. The Labor Party will not be supporting the amendment that Senator Cherry will be moving on behalf of the Democrats.

Senator Cherry—Mr Acting Deputy President, Senator Greig will make some comments on my behalf on account of my failing voice.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—He might incorporate your speech!

Senator GREIG (Western Australia) (1.24 a.m.)—Mr Acting Deputy President, I was just observing the protocol. I checked with the major party whips that Senator Cherry could incorporate his second reading. I have that consent from the opposition. I did not get the opportunity to check with Senator Eggleston but, on the understanding that it is okay, I seek leave to table Senator Cherry's second reading speech on the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002.

Leave granted.

The speech read as follows—

The main purpose of the bill is to make amendments to several acts including the Superannuation Act 1976 (the 1976 Act) and the Superannuation Act 1990 (the 1990 Act). These acts respectively provide the rules for the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS), which provides superannuation for Commonwealth civilian employees.

I make it clear that the Democrats support the bill. Nevertheless, we believe it requires amendments in a couple of respects, and I will be calling for a division on these amendments later in the debate.

My colleague Senator Greig will be speaking to the Democrats' same-sex/de-facto couple amendments.

MERIT APPOINTMENTS

Every Democrat senator has at one time or another called for an end to jobs for the boys.

Wherever appointments are made to the governing organs of public authorities, whether they are institutions set up by legislation, independent statutory authorities or quasi-government agencies, the processes by which these appointments are made should be transparent, accountable, open and honest.

One of the main failings of the present system is that there is no empirical evidence to determine whether the public perception of jobs for the boys is correct, as these appointments are not open to sufficient public scrutiny and analysis. It is still the case that appointments to statutory

authorities are left largely to the discretion of ministers with the relevant portfolio responsibility.

There is no umbrella legislation that sets out a standard procedure regulating the procedures for the making of appointments. Perhaps most importantly there is no external scrutiny of the procedure and merits of appointments by an independent body.

Democrats have put up amendments designed to compel ministers to make appointments on merit on well over 23 occasions over the last few years and every single time Labor and the coalition have combined to block reform.

So why do we keep doing it? We do it because it is a principle that should be accepted. We are committed to ensuring that appointments to the governing organs or public authorities are based on merit and that the processes by which these appointments are made are transparent, accountable, open and honest.

An independent body should be given the responsibility of scrutinising government appointments against a set of established criteria. This system works well in the United Kingdom after Lord Nolan headed the 1995 Nolan commission and managed to persuade the UK government to accept that appointments should be based on merit. This process will go a long way to ending the privilege and patronage associated with government appointments.

Lord Nolan set out key principles to guide and inform the making of such appointments:

- a minister should not be involved in an appointment whether he or she has a financial or personal interest;
- ministers must act within the law, including the safeguards against discrimination on grounds of gender or race;
- all public appointments should be governed by the overriding principle of appointment on merit; except in limited circumstances,
- political affiliation should not be a criterion for appointment;
- selections on merit should take account of the need to appoint boards that include a balance of skills and backgrounds;
- the basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and the range of skills and backgrounds that are sought should be clearly specified.

In response to the committee's recommendations, the United Kingdom government subsequently created the office of Commissioner for Public Appointments, which has a similar level of independence from the government as the Auditor-General, to provide an effective avenue of external scrutiny.

We have in fact used the Nolan committee's recommendations in our amendments for the last five years because they are tried and tested. Meritorious appointments are the essence of accountability. Until this notion of jobs for the boys or girls is nipped in the bud, there is not that much moral difference between our system and the political patronage that is prevalent in countries where nepotism and favouritism run rife.

We seek to insert sections requiring that:

1. the process for appointment by the Governor General for the Commissioner of Superannuation must be made on merit. It is recommended that the process of appointments be based on merit, including but not limited to appropriate

superannuation industry knowledge, and have independent scrutiny, transparency, openness and probity. The bill in its current form has no provision at all for this process;

2. the process for appointments made by the Minister in relation to vacancies in the Commissioner's mirror the process set out above;
3. in appointing members for membership on the CSS Board the Minister must make selections based on merit. We have recommended that the Minister must employ independent scrutiny of the appointments, probity, openness and transparency;
4. subsection 27F(5) which gives Ministerial discretion to terminate appointments without showing cause be omitted altogether; and
5. acting appointments made by the Minister due to vacancies of members also be made on merit as described above.

We do need to establish a workable system to ensure that appointments on merit always occur. This amendment does that. The public needs to be reassured that there is an adequate system of transparency and independence where favours are not exploited and mates are not rewarded. In making those remarks, of course I cast no aspersions on the likely people who are going to be appointed and cast no aspersions on the ministers who will make those judgments. I trust that they will exercise the care they should. Nevertheless, I am arguing that the process needs to be transparent on its face. We all know that political patronage is corrupt and corrupting. In another minister's hands you might not get the same outcome you may get in the hands of somebody who is trustworthy.

Senator ABETZ (Tasmania—Special Minister of State) (1.25 a.m.)—The Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002 includes a range of changes to the superannuation arrangements for Commonwealth employees and their families. These amendments will give additional benefit options to members who must leave the Commonwealth Superannuation Scheme because of the sale of an asset or outsourcing. It will also allow scheme members to provide additional reversionary benefits for eligible spouses and children. The changes will give scheme members the opportunity to consolidate certain other superannuation amounts with their CSS entitlements. They will also provide other flexibilities to scheme members and will make a number of changes to simplify provisions of the CSS. Where appropriate, it is proposed that similar changes will be made to the Public Sector Superannuation Scheme through a trust deed amending the rules of that scheme. The Democrats have moved on a number of occasions similar amendments to those proposed by them today. The government's position is well known on this subject, and the government will not be supporting the amendments. I table an additional explanatory memorandum relating to this bill.

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—The Clerk has advised that there was some reference to a second reading amendment, which we have no advice of. Do the Democrats propose to move a second reading amendment?

Senator CHERRY (Queensland) (1.29 a.m.)—Mr Acting Deputy President, the Democrats do not propose to move a second reading amendment.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ABETZ (Tasmania—Special Minister of State) (1.30 a.m.)—The government opposes items 1, 8, 10 and 12 to 15 of schedule 1 and part 1 of schedule 2 in the following terms:

- (3) Schedule 1, item 1, page 4 (lines 6 to 8), **to be opposed.**
- (4) Schedule 1, item 8, page 5 (lines 10 to 13), **to be opposed.**
- (6) Schedule 1, item 10, page 6 (lines 32 and 33), **to be opposed.**
- (7) Schedule 1, item 12, page 7 (line 1) to page 8 (line 32), **to be opposed.**
- (8) Schedule 1, item 13, page 8 (lines 33 to 35), **to be opposed.**
- (9) Schedule 1, item 14, page 9 (lines 1 and 2), **to be opposed.**
- (10) Schedule 1, item 15, page 9 (lines 3 to 17), **to be opposed.**
- (21) Schedule 2, Part 1, page 69 (line 4) to page 72 (line 7), **to be opposed.**

I can move the other two lots of amendments together, by leave, later, but I think there is a separate question to be asked in relation to the amendments now before the chair.

Senator SHERRY (Tasmania) (1.03 a.m.)—I have not seen a copy of the amendments. I was not even aware that there were government amendments. I am seeking a copy of them at the present time.

Senator ABETZ (Tasmania—Special Minister of State) (1.31 a.m.)—I understand they were circulated on the last occasion. They deal with approved authorities being deleted from the bill. I understand there was some disagreement on that and therefore we have taken the course of simply deleting those references to try to ease the passage of the bill.

Senator Sherry—I am happy.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that items 1, 8, 10 and 12 to 15 of schedule 1 and part 1 of schedule 2 stand as printed.

Question negated.

Senator ABETZ (Tasmania—Special Minister of State) (1.32 a.m.)—by leave—I move government amendments (2) and (5), (11) to (20) and (1) on sheet QR202:

- (1) Clause 2, page 2 (table item 2), omit “1 July 2002”, substitute “1 July 2003”.
- (2) Clause 2, page 2 (table item 15), omit the table item.
- (5) Schedule 1, item 9, page 6 (line 9), omit “1 July 2002”, substitute “1 July 2003”.
- (11) Schedule 1, item 25, page 12 (lines 10 and 11), omit “30 June 2002”, substitute “30 June 2003”.
- (12) Schedule 1, item 27, page 12 (lines 23 and 24), omit “30 June 2002”, substitute “30 June 2003”.
- (13) Schedule 1, item 29, page 12 (line 31), omit “1 July 2002”, substitute “1 July 2003”.
- (14) Schedule 1, item 29, page 13 (line 5), omit “1 July 2002”, substitute “1 July 2003”.
- (15) Schedule 1, item 33, page 14 (line 7), omit “30 June 2002”, substitute “30 June 2003”.
- (16) Schedule 1, item 40, page 16 (line 11), omit “1 July 2002”, substitute “1 July 2003”.
- (17) Schedule 1, item 40, page 16 (line 20), omit “1 July 2002”, substitute “1 July 2003”.
- (18) Schedule 1, item 48, page 17 (lines 23 and 24), omit “30 June 2002”, substitute “30 June 2003”.
- (19) Schedule 1, item 48, page 17 (lines 27 and 28), omit “30 June 2002”, substitute “30 June 2003”.
- (20) Schedule 1, item 50, page 20 (lines 12 and 13), omit “30 June 2002”, substitute “30 June 2003”.

Question agreed to.

Senator GREIG (Western Australia) (1.34 a.m.)—by leave—I move Democrat amendments (1), (2) and (4) on sheet 2863:

- (1) Schedule 1, page 4 (after line 12), after item 2, insert:

2A Subsection 3(1)

Insert:

de facto partner, in relation to a person, means a person who, whether or not of the same sex as the person, lives with the person on a genuine domestic basis as a partner of the person.

- (2) Schedule 1, page 4 (after line 12), after item 2, insert:

2B Subsection 3(1)

Insert:

dependant, in relation to a person, includes the spouse, de facto partner, and any child of the person or of the person's spouse or de facto partner.

- (4) Schedule 1, page 10 (after line 37), after item 18, insert:

18A At the end of section 8A

Add:

- (6) For the purposes of this section, marital relationship includes a person defined as a de facto partner.

These amendments, as with the following amendment, go to the core of an ongoing issue of discrimination that exists within the Commonwealth Superannuation Act and Commonwealth superannuation issues—a topic on which I have spoken many times before, regrettably because it ought not to be something that we are still talking about in 2003 but we are. The situation is that for many superannuants, those in same-sex relationships, their relationship is not recognised by Commonwealth law although it is to varying degrees under all state and territory laws, with the exception of the Northern Territory, although I am given to understand that is soon to change.

Upon the death of a same-sex partner in a long-term relationship the surviving partner has no automatic entitlement to superannuation death benefits and is specifically denied reversionary pensions. This is grossly unacceptable. It has been commented on repeatedly by the superannuation industry, which has unanimously called for reform. It has been commented on repeatedly in Senate committees, and indeed the Senate Select Committee on Superannuation, in inquiring into this issue, made a strong recommendation in relation to the need for reform. It is not acceptable in this day and age that we should single out one section of the community and tell them that they are lesser beings or that their relationships ought to be deemed as lesser under law. It would be utterly unacceptable to the parliament if, for example, Aboriginal people could not leave their superannuation to their partner, if Jewish people could not leave their superannuation to their partner or if because of some other aspect of a person's innate biology they could not leave their superannuation to their partner. We are talking about their money and their funds.

Commonwealth superannuation or superannuation generally is compulsory, which means that gay and lesbian people are forced to subscribe to a system which then in turn discriminates against them. This legislation gives us an opportunity, yet again, to amend and repair the discrimination that exists. As it happens, I would argue that the majority of gay and lesbian superannuants fall within this particular ambit—that is, they come within the Commonwealth scheme—which means that we have an ideal opportunity before us to amend superannuation legislation in a way which will affect a significant number of same-sex couples, and we should do so. This amendment and the following amendment seek to do that. My plea, once again, to both the government and the opposition is to live up to the human rights expectations placed on the federal government and the opposition and show leadership on this and to acknowledge the fact that, overwhelmingly, the states and territories have already addressed this. It is embarrassing and unacceptable that the Commonwealth lags so far behind.

Senator BROWN (Tasmania) (1.37 a.m.)—I support this important amendment. It is sad to hear the government taking its homophobic attitude, which comes right from the Prime Minister's office, and continuing this discrimination. To a degree, it is worse to hear Labor, who support this legislation, using the usual get-out clause and saying, 'We want an omnibus; we won't support this; we have opposed it in the past,' while they have legislation in the House of Representatives which is aimed at achieving just what the Democrats' amendment would do. That is crass hypocrisy.

This is socially discriminatory. It is thieving people of their rights. It is totally unacceptable in 2003. It is a disgraceful way for both the government and the opposition to be behaving. As Senator Greig says, it is a case of the national parliament, held back by the government and the Labor Party, being way behind the several states and territories and every comparable country around the planet. And yet, time after time, we see Senator Greig or his Democrat colleagues bringing in amendments like this which would redress this gross injustice to thousands of Australians. It is a gross injustice—it is thievery by official fiat from the parties that support it. We will again tonight see Labor support this Howard government philosophy and vote down the amendment. It is time they woke up to themselves; it is time they stepped into the domain of supporting their own policies and ending discrimination on this basis. The excuses do not wash. I congratulate the Democrats on putting up the motion. I only wish that we had an opposition that was true enough to its own ethics to support it.

Senator SHERRY (Tasmania) (1.39 a.m.)—I need to respond to the comments of both Senator Brown and Senator Greig about this matter. This is the second occasion this week that we have had amendments of an identical nature presented to amend superannuation legislation. Let me make it perfectly clear that the Labor Party supports the ending of discrimination in respect of superannuation.

Senator Brown—You don't.

Senator SHERRY—Senator Brown, just hold on and you will find out why the approach that you and Senator Greig are taking on this bill—

Senator Brown—You just said you don't.

Senator SHERRY—You will find out why in a moment. Just hold your comments. I was not present when the Senate was presented with these amendments on Monday evening by Senator Greig. But on that occasion the amendments we were presented with were amendments to a bill to provide compensation in the event of theft and fraud. The amendments we are presented with tonight go to improving the provisions for some public servants in respect of their

superannuation benefits, reversionary benefits for widows or widowers and children—a relatively small number of people, but nonetheless important amendments to those individuals affected.

If the Labor Party were to support these amendments in the Senate, they obviously would be passed in this chamber, but they would not be passed in the House of Representatives. We know the government's position. The government would send the bill back with a message rejecting the amendments. If we were then to take the stand of the so-called principle that Senator Brown and Senator Greig insist on in this chamber on these particular bills and on the one we had earlier in the week, the end result would be that the government would pull the bill. There is no doubt about that. If we had supported the amendment on Monday night, we would have ended up with no compensation in the event of theft and fraud as a result of your so-called stand on principle. So don't lecture me about a lack of principles, Senator Brown. And we will be in exactly the same position this evening. If we were to support these amendments, the bill would go back to the House of Representatives and the message would come back. If we were to insist, the government would pull this bill. They would pull the bill so there would no outcome that you seek.

There are two ways to progress this matter. One is to move your amendments to a bill that the government cannot pull. There may be some superannuation legislation coming up where it will be very difficult for the government to knock back an amendment and pull the bill. Alternatively, help a Labor government get elected so an amendment cannot be knocked off in the House of Representatives. You know that is the factual position. You are the one who is a hypocrite, Senator Brown, by attempting to grandstand on these important matters, knowing that you can have absolutely no impact if the Labor Party supported these amendments tonight. So we will not be supporting an amendment on same sex-couples to this type of legislation.

Senator Greig—Or any others!

Senator SHERRY—No! You are a liar, Senator Greig.

The TEMPORARY CHAIRMAN (Senator Chapman)—Order!

Senator SHERRY—I am sorry. I withdraw that. Senator Greig well knows the hypocrisy and dishonesty of his approach on this matter. Move your amendments to a bill that you know the government cannot reject and pull, because if we support these amendments this bill will be pulled and the end result will be that the public servants who should benefit from this will suffer and get nothing and you will

have got nowhere. That is why we will not support these amendments.

Senator BROWN (Tasmania) (1.44 a.m.)—That was an absolutely disgraceful display by a senator who is caught out moving on behalf of his party against his own party's policy and principle yet again. I congratulate Senator Greig. He has been a terrier on this. He is ethically correct. He is standing for a simple principle that is supported by the great majority of Australians. The Labor Party comes in here time and again and turns it around and says, 'Not now; some future time.'

Senator Sherry says, 'We cannot put these Democrats' amendments into this bill because there might end up being no compensation in the case of theft or fraud.' In so doing, he aids and abets the government in committing theft and fraud through this legislation. It is a thieving and fraudulent way to treat those people in the community who deserve to have their rights protected in the same way as everybody else under legislation like this. As I said, the government is discriminatory, but the opposition has a policy that covers this and it simply refuses to act. It is not the first time tonight that we have heard the argument advanced by the opposition that, if the government is being strong about a piece of legislation, you back down on it. It does not matter what ethics are being used or what rights are being infringed, for the second time tonight we are seeing the opposition saying, 'We are cringing from this government. We cannot stand up to them. Give us the opportunity but please don't do it now—sometime later.' I do not accept that.

Senator GREIG (Western Australia) (1.46 a.m.)—It has long been my observation and experience, in what I would argue reasonably is nearly 15 years of campaigning on this and broader issues for lesbian and gay people, that the most angry responses, the most bitter responses and the most vitriolic responses are because people are confronted with their own homophobia and it angers them. What we are dealing with—

Senator Sherry—Come off it.

Senator GREIG—Senator Sherry says, 'Come off it.' Let us be clear about something, Senator Sherry: the Labor Party and the government have exactly the same negative voting record on antidiscrimination laws and partnership recognition for gay and lesbian people—exactly the same. Senator Ludwig tried valiantly last night to explain away Labor's position by saying—

Senator Ludwig—It was Monday night.

Senator GREIG—on Monday night that the Labor Party was good at a state level. I will acknowledge that—there is evidence of that. But federally

you are appalling; you are no different to the coalition. I expect antigay, homophobic vitriol from the coalition. That is where they sit. But I expect more from the opposition. Why? Because, for example, I recall just two federal elections ago that this full-page advertisement appeared in every gay and lesbian newspaper in the country. Under 'What Kim Beazley has to say to the gay and lesbian community', it states:

Labor is committed to eliminating discrimination on the grounds of sexuality in Australian society. Labor believes all people are entitled to respect, dignity and equitable access to participation in society, regardless of their sexual preference, and is committed to protecting and promoting the human rights of gay men and lesbian women.

Underneath that, it says, 'What John Howard has to say to the gay and lesbian community,' and there are inverted commas with nothing between them. The ad should have said, 'This is what Labor says to the gay and lesbian community,' and underneath, 'This is what they have done for it: nothing.' In the 13 years you were in government, you did nothing. In fact, you introduced the very antigay legislation that we are trying to fix. It is utterly shameful that you should sit there and say that, because the government will not like these amendments, you will not support them. You do not do that with other legislation. You are quite happy for other forms of legislation to be pulled if the government does not like them, particularly on IR, Telstra and some other areas, but with this legislation you think, 'No, faggots are different; we can ignore them.'

Senator Sherry, you have said on previous occasions—and Senator Ludwig said it on Monday night—that Labor wants a wholesale approach to this. The lie to that argument is the fact that you have never moved towards that. At one stage you introduced the so-called Albanese bill, which I note has long since fallen off the *Notice Paper*, and you argued that that was the great panacea. That was your thrust for reform within this particular area, but it did not apply to Commonwealth public servants. Were that bill on the *Notice Paper*, we could have passed these amendments tonight and attached the Albanese bill or something similar, and we would have had comprehensive reform.

Equally, we have seen three superannuation bills in the chamber this week dealing with the private sector fund, the SI(S) Act, public sector funds and the Income Tax Act. Had we your support to amend each of those bills separately but in a similar way, we would have achieved comprehensive reform. So don't give me this rubbish about you wanting a wholesale approach to this because it is not true. Furthermore, if you were serious about having a wholesale approach to this and you did not want to address just super but look at all the other areas of discrimination—and let's

remember the discrimination includes taxation, immigration, social security, veterans' affairs, the defence forces and more—then you would come up with some kind of comprehensive, more generic bill that dealt with all of those things. You have not done that. We Democrats have—and, do you know, it has been on the *Notice Paper* since 1995! Not only will Labor not support that bill; you will not even grant us Democrats the debating time to discuss it. I believe the reason is because you did not want to expose some of the very real views that sit on your side of the chamber and, more so, you do not want to vote on it.

We are talking about very basic human rights here. Comparable jurisdictions—UK, Canada, New Zealand—and even South Africa have dealt with this, but not the Labor Party in Australia. You say there would be absolutely no outcome if we were to persist with this tonight because the government would ultimately reject it. My argument to that is, no, we would have an outcome: we would have for the first time in years a Labor Party vote in favour of human rights for lesbian and gay people. You would have set the benchmark to which so many people are looking. But you keep shying away from it. Why? It is not acceptable. It frustrates the hell out of me that in 2003 we should have to be discussing this; more so, it makes me really angry. Every time we Democrats move these amendments—and believe me this is not the last time—we do so for a number of specific reasons. But one of the reasons I move these amendments repeatedly is because it is my objective to shame you and to embarrass you and to confront you with the intransigence of your own ridiculous position.

We have heard time and time again from Labor it is good on these issues, that it has good policies on these issues. It says, 'Look at what Labor has done at a state level.' That is one of Labor's many excuses when it dips into its grab bag of excuses. We have heard: 'Oh, we're good at a state level, therefore just ignore what we do at a federal level.' We have heard: 'Oh, this isn't the right bill.' As I said before, I have looked through the *Notice Paper* and I have not seen the gay and lesbian human rights bill there, but let me know when it comes along. We have heard the excuse that you want wholesale reform, not piecemeal reform. Where is your bill? At the very least, introduce a private member's bill to illustrate the relevance of your argument, to illustrate the benchmark you are coming from. Time and time again we have heard the argument that you want wholesale not piecemeal reform, but that is utterly contradicted by the fact that two of your House of Representatives colleagues have introduced private members' bills—only one of which, I think, is now on the *Notice Paper*—which are very narrow, discrete pieces of legislation. One deals with a small part of superannuation, the other

deals with a small part of immigration. That is piecemeal reform. So don't give me this rubbish about not wanting piecemeal reform because that is the only action you have taken.

The really embarrassing thing for the Labor Party in terms of its once on the *Notice Paper* Albanese bill was that that was introduced by a private member who was not even the spokesperson for super and it did not have the imprimatur of the leader. I will take Labor seriously, the lesbian and gay community will take Labor seriously, when you set the benchmark, commit yourself to one of the votes on these reforms and get on the record saying, 'Yes, we are serious.' All we are talking about here tonight is letting people have access to their own money and recognising the love, respect and integrity of their partners and their relationships.

Senator SHERRY (Tasmania) (1.54 a.m.)—We will take the matter seriously, Senator Greig, when you move an amendment to a bill knowing that the government will have to accept the amendment. As I have said earlier, you know that if this amendment is passed in this chamber the bill does not become law; it goes to the House of Representatives. The critical difference between us and the state Labor parties is that they are in government and we are not. We are not in government; we do not have the majority in the House of Representatives. You know very well that if this amendment were passed tonight the bill would go to the House of Representatives. If the bill were returned and we insisted on the amendment, the government would pull the bill. No outcome. What you have to find, Senator Greig—

Senator Brown—All too hard.

Senator SHERRY—It is not too hard. I have given a commitment on behalf of the Labor Party, and I can do that with respect to superannuation, that we will support an amendment that removes discrimination with respect to same-sex couples to a bill that we know the government cannot pull, that we know the government will not have the opportunity to reject.

Senator Murray—You turn it down every time. It is hypocritical.

Senator SHERRY—Senator Murray, I think you have a reasonably practical approach to politics. If the bill, to which this amendment was moved earlier in the week, had been passed it would have involved compensation in the event of theft and fraud. Senator Murray, if that amendment had been passed, the end result would have been no compensation in the event of theft and fraud. That would have been the end result. If this amendment is passed, the bill will bounce back to us from the House of Representatives and, if we insist on the amendment, the government will pull this bill. We know that is what will happen.

Senator Murray—There is never a right bill.

Senator SHERRY—This bill is not the correct one. The bill on Monday night was the correct one. I say to the Australian Greens and to the Australian Democrats that we have to find a bill on superannuation that we know the government will not pull. I think you have a pretty good idea what that bill is. I certainly do. That will be the choice bill, when we get it. We will seek to amend that bill in this area, and in a number of other areas. It is not the only objection and concern we have about that bill. That will be your opportunity. We will be supporting same-sex couple amendments, whether you move them or we move them, to that legislation. I can give you that guarantee here and now. We will be moving a considerable range of other amendments to deal with some other problems with that bill.

Senator GREIG (Western Australia) (1.57 a.m.)—Unless I misheard, I did not hear the government's articulated position on this and I would like to hear from the minister responsible or the representing minister.

The TEMPORARY CHAIRMAN (Senator Chapman)—It is any senator's choice as to whether they speak in the chamber, Senator Greig.

Senator HARRADINE (Tasmania) (1.58 a.m.)—I would be very interested to hear arguments in favour of the propositions that are being put here. I acknowledge what Senator Sherry said and the bind that the opposition are in in respect of that matter. To accuse him of homophobia or to accuse anybody of homophobia does not assist a debate such as this when you are attempting to see how certain pieces of legislation might affect the rights of a particular individual. With respect to a public servant who has been contributing to superannuation over a period, whose wife has been at home looking after the kids and who chooses to leave his wife and go into a homosexual relationship, where are the human rights of the wife in that situation?

Senator Brown—What about a heterosexual relationship?

Senator HARRADINE—I am talking about a homosexual relationship. I am talking about the rights of the woman at that time. I would be interested in that issue in due course. I would also be interested in the Senate's attitude to a woman who has been working as a public servant for, say, 30 years and has a sister living in the same household—maybe not a sister but somebody living in the same household—who is dependent upon her. Why shouldn't that person be eligible? All these things have to be discussed. I am happy to listen to the arguments and discuss them accordingly. I am not happy to do so at two o'clock in the morning but at some stage I would be interested in the argument if it comes before us.

Senator GREIG (Western Australia) (2.01 a.m.)—I would like to respond to Senator Harradine, who has argued that opposing this reform should not be seen as homophobia and that people who oppose this reform should not be regarded as homophobic. If we were looking at legislation which said, ‘You cannot leave your superannuation to a black person,’ you could rightly regard that as racist. If the legislation said, ‘You cannot leave your superannuation to a Jewish person,’ you could rightly regard that as anti-Semitic. What we are looking at is legislation that says, ‘You cannot leave your money to a homosexual person’—that is, if they are in a relationship. So yes, Senator, we are dealing with homophobia. Let’s not kid ourselves.

Senator HARRADINE (Tasmania) (2.02 a.m.)—That depends entirely upon what you mean by ‘human rights’. I would be interested also to know whether Senator Greig is saying that there is something built into one’s nature which makes one have a homosexual or lesbian approach or precondition, as it were. Again, I would like to hear that argument at length.

Senator BROWN (Tasmania) (2.03 a.m.)—Yes, it is built in—it is built in by God.

Senator GREIG (Western Australia) (2.03 a.m.)—This is the place for a debate about nature versus nurture but it is not the time. But let me paraphrase it by saying this: it is utterly irrelevant whether people are born with a particular sexual orientation or choose a particular sexual orientation. The fact is that we are dealing with citizens, taxpayers and voters and it is their money, and their choice of relationship must be respected. From my own personal experience, as I have said in this place before, I have known that I am gay since the age of 12. It deeply offends me that people such as Senator Harradine could suggest that it would be otherwise. That, in my view, is a religious argument not a secular argument. It is the defence by people who hold a particular religious view in order to justify their prejudice. If they can bring themselves to believe and bring others to believe that it is a question of choice, they can justify the discrimination by saying that those who choose not to be homosexual would not suffer the discrimination.

Senator HARRADINE (Tasmania) (2.04 a.m.)—I entirely reject that comment made by Senator Greig. I invite honourable senators to read in *Hansard* tomorrow what I just said and have just argued. Senator Greig is now labelling me as a religious bigot.

Senator Greig—I did not say bigot.

Senator HARRADINE—No, you did not say bigot, but that is what you meant. If you have a look at precisely what he meant, you would know that it was not an appropriate response to what I asked and

what I said. The question I raised was about a woman who is a public servant and who has had a sister living with her all those years and that person cannot share in the superannuation benefits of the person who is a member of the superannuation fund. Why? Because that person is not engaged in sexual acts with another person of the same sex. Is that proper? Is it just that it should be denied for that person because one person is not working and is being looked after by the other person is not in a lesbian relationship? These are matters that ought to be discussed.

Senator CHERRY (Queensland) (2.06 a.m.)—I want to raise two points. This is the right bill, Senator Sherry. We have been waiting for years to get the Commonwealth superannuation schemes in the Senate in a piece of legislation. It does not happen very often. This is the right bill because the discriminatory clauses in the Commonwealth Superannuation Scheme are even worse, as we both well know, than those in the Superannuation Industry (Supervision) Act. This was reported by HREOC some four or five years ago, and really this is one of the very first opportunities we have had since that report to have a piece of Commonwealth Superannuation Scheme legislation before us. This is the right bill and it is the right time. The way in which it has come before us is unfortunate, but it is rare that we get to touch the Commonwealth super scheme legislation and that is why I hope that we deal with this.

The discriminatory clauses in the Commonwealth super scheme are even worse than those in the private sector. In evidence to the Senator Superannuation Select Committee, trustees said that they had found some ways to squeeze some people through the financial dependency test to get benefits. But it is very difficult for trustees and they are potentially breaching the law in ensuring that they pick up same-sex couples.

Senator Harradine, the Democrats also acknowledge that there are a whole range of interpersonal relationships. We have put amendments to the government over many years—I have and I know Senator Allison has—to ensure that the Superannuation Scheme is responsive to all the different types of interpersonal relationships that make up a family. We are not obsessed with same-sex relationships, but we want to make sure that the bill is picking up some of those groups you are talking about. It is bizarre that, under our superannuation system, a mother can leave her superannuation to her son but a son cannot leave his superannuation to his mother. Those sorts of examples are there in cases before the Superannuation Complaints Tribunal. Senator Kemp and I—and I am pleased to have him in the chamber—discussed this at great length for many years and we never got there. Certainly these issues have to come back.

Senator Kemp—That's not true, we did get there.

Senator CHERRY—No, we did not get there, Senator Kemp. We got very close. On this particular occasion, this is the right bill. It is a good start. It was the right bill on Monday night as well, because the changes required to the SI(S) Act are at very little cost to the funds. I think this is the right time. I would urge the chamber to support Senator Greig's amendments.

Senator WONG (South Australia) (2.09 a.m.)—I just want to respond briefly to Senator Greig's comments earlier in this debate—and I appreciate that it is late and that might give rise to some intemperateness in people's remarks. I also want to place on the record that I do recognise his longstanding commitment to this issue in this place. I do think it is unfortunate that the suggestion of homophobia was levelled at the Labor Party shadow minister. Senator Sherry's position on this—internally in the party, in his work on the Senate Superannuation Select Committee and in his public statements—has been quite clear. He is arguing about not the objective but the means by which that objective should be achieved. He makes the very good tactical point that, if we amend this legislation in the manner that you are proposing, it will not succeed. So the only beneficial outcome from your perspective is that you would have succeeded in ensuring that the Labor Party voted the way you think is appropriate on this issue.

Senator Brown—Always another excuse.

Senator WONG—No, it is not. It is an issue about how to achieve outcomes for gays and lesbians in Australia; it is not an issue about who can outsound each other in the chamber. You have on record, Senator Brown, the shadow minister's commitment that one of the amendments to the choice legislation that the Labor Party envisages is precisely this issue. You have that commitment on that issue. What you seem to be failing to understand in this whole discussion is that we have a government that is quite happy to trumpet its discrimination of gays and lesbians, quite happy to continue to use that to its perceived political advantage—

Senator Brown—You were in government for 13 years and did nothing.

Senator WONG—We are talking about now, Senator Brown. If you want to talk about being in government, why don't we have a look at what the state Labor governments have done in recent times on these issues? Let us have a look at what the Labor Party's record is in state government on this issue.

Senator Hogg—We want to get out of here tonight.

Senator WONG—I will try to be brief, because Senator Hogg says he wants to get out of here. You

criticise us, for example, for not supporting this amendment in respect of the legislation which dealt with theft and fraud. What would that have done? It would have handed the government another wonderful wedge politics issue: Labor and the minor parties are denying Australians access to their superannuation in circumstances where theft and fraud occurs because we insisted on these amendments. We have to understand the circumstances in which we operate. We are in opposition. We are happy to seek to amend the choice legislation or any other bill in order to ensure that we actually achieve an outcome, because that at the end of the day is what is important.

Senator MURRAY (Western Australia) (2.12 a.m.)—I lived for many years in southern Africa, and for part of that time I was in South Africa when the National Party was at its height. That was a party and a regime which was racist, sexist, certainly homophobic, anti-Semitic—every form of vice and intolerance that you can imagine. They were even so intolerant in religion that they had two churches. The Afrikaner church excluded blacks altogether, and the other was really very good: it let blacks sit in the back benches and the whites could sit in the front—a bit like the buses. The problem with discrimination is that it is a denial of humanity and dignity. I am a white heterosexual male who has been married for 31 years, but I cannot stomach the sort of discrimination that women have experienced in the past, which has been corrected, that people who practise particular kinds of religion have experienced in the past—which is at least no longer a problem in our society—that people of colour have experienced, that Jewish people have experienced and that gay and lesbian people have experienced.

I am an odd person in that I accept that there are large communities in our country who are racist, sexist, homophobic and anti-Semitic, and it actually does not bother me that much provided it is not expressed in public behaviour or condoned by law. You cannot change people's nature or stop them having those particular views, but you cannot allow it to triumph and overcome our view of what is right.

The difficulty that you face, Senator Sherry—and I know you to be a good person; I do not intend to tag you with anything—in answering us in relation to the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002 is that you have given us the same or a similar answer five or seven times, although I exaggerated in an interjection when I said it was 20 times. At some stage you have to stand up and say, 'Okay, even if it is symbolic, because we know the government will reject it and it might not get through, today the Australian Labor Party will affirm that for Australia'—not for a state, not for a territory; for Australia—we are going

to acknowledge that we should give equal rights to people of a homosexual persuasion.' That is all we want.

The problem so far is there has been rhetoric, and the difficulty with Senator Wong's approach is (a) she does not know that history because she was not here and (b) this specific type of legislation does not often come before us and whatever other legislation we might address in terms of the private sector will not address the problem in relation to Commonwealth funding and Commonwealth employment. I can understand Senator Greig's passion and frustration about this matter. Frankly, without any disrespect at all, the focus has to be on the Labor Party. The Labor Party and the Australian Democrats carry the numbers in this place. The day you stand up on this issue is the day that the Senate says, 'That is the end of this form of discrimination.'

Senator Sherry—You get them through the other place.

Senator MURRAY—But you have the numbers in this place.

Senator Sherry—But you don't pass them into law in the Senate.

Senator MURRAY—It may not put it into law but it puts you on the record. So far all we have on the record is hypocrisy—nothing but hypocrisy. The Labor Party people stand up and say, 'This is what we believe in and this is what we say, but this is what we do.' What does Mr Howard, the Prime Minister of Australia, say is the major problem with the Labor Party? That what you say and what you do are two different things. The other day it was said that you want tax cuts, but when you are surveyed we find out you want more revenue for services. That is your actual belief, and I think that is right—and I am glad that that is how your people answered in a candid survey—but what you are actually saying is different to your belief. I believe the Labor Party people do want an end to discrimination against homosexual people, but for some peculiar political reason you will not cross that boundary in this place. That is what we want you to do. It is a matter of simple humanity and dignity.

Senator HARRIS (Queensland) (2.18 a.m.)—We have heard references to rhetoric and excuses that do not wash. In this debate on the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002 we have heard people make accusations against all types of people both here in Australia and overseas. I would like to very succinctly place on record the Christian view in relation to this issue. I will begin by reminding senators present in the chamber of the document that brought this Commonwealth into existence—our Constitution. At the start of the Constitution there is reference to the

various states of this Commonwealth and then the words 'humbly'—I stress the word 'humbly'—'relying on Almighty God'.

Christianity was and is the basis of our society and our law. If there is any doubt about that whatsoever, let us have a look at the prayer that is repeated in this place at the commencement of every day that this chamber sits. The President repeats:

Almighty God, we humbly beseech Thee to vouchsafe Thy special blessing upon this Parliament and that Thou would be pleased to direct and prosper the work of Thy servants to the advancement of Thy glory and to the true welfare of the people of Australia.

Every morning that prayer is repeated in this chamber. We then look at our Christian faith in relation to marriage. Marriage is an institution that is ordained by God. Its purpose is to bring together a family to nurture children. If we follow this through, this is the reason why we have our Christian ethics and the whole fundamental basis of Australian law. It is for exactly those reasons—not rhetoric, not excuses—that this amendment should be defeated.

Senator GREIG (Western Australia) (2.21 a.m.)—I regret that Senator Wong is no longer in the chamber, because I want to respond specifically to points that she raised. I thought it was a valiant effort, but she did fall flat. There are a few things I have say. Firstly, there has been considerable comment in this debate, and the debate we had on Monday, about how terrific Labor is at a state level and how state governments have changed the laws in WA, Tasmania, Queensland and so on.

Senator Ian Campbell—Mr Temporary Chairman, I want to alert the Senate to the fact that this is a very important debate. It is probably not a debate to have at 25 past two in the morning, but we are in a practical situation now that, if we do not pass this bill within the next few minutes, it will not pass into law and the government will be forced to come back here in August—I think, technically speaking—with a bill which would have to be retrospective to achieve what we want to achieve. I urge senators—we have had a good debate tonight, an important debate—that we do really need this. I implore and encourage all senators to seek to wind up the debate. Senator Greig obviously needs to make some more important points, but I encourage him to be succinct. If we can get this bill passed in the next few minutes for it to pass into law tonight, I would be deeply appreciative.

Senator GREIG—There has been much debate about how Labor have been really good at a state level and how they have changed laws in various states. Let us focus on something for a minute: Jim Bacon did not change the rules in Tasmania. Rodney Croome did that. Nick Toonen did that. Miranda Morris did that. It takes years of community cam-

paigns to get to the point where timid Labor governments finally feel courageous enough to actually change the laws. It is the community that changes attitudes and brings about change. Equally, in the chamber tonight, we are seeing—and will see again—community campaigning and reform to the point where Labor might support it. Senator Wong said that Senator Sherry's individual position was sound on this. I do not doubt that, but that is not what is in question. The question is the Labor Party's position. On 2 August 2002, Senator Sherry released a weighty document—I would say there are 50 or 60 pages there; it was the release of Labor's super policy paper—but there was not one single word on same-sex couples. Finally, Labor has argued repeatedly—

Senator Sherry—I haven't released our policy yet.

Senator GREIG—You sent me a copy.

The TEMPORARY CHAIRMAN (Senator Chapman)—Senator Sherry, do not provoke Senator Greig.

Senator GREIG—Finally, we have heard most repeatedly and consistently from Labor tonight that if this amendment is supported the bill would be defeated and it would not become law. I am aware of that. How stupid. How foolish. What a bunch of geese the government would look if they let this bill fail because of their stupid intransigence and homophobia, but you are doing exactly the same. Rather than expose them to that, you are allowing them to be shepherded from their own homophobia and you are facilitating it.

Question put:

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

A division having been called and the bells being rung—

Senator Ian Campbell—I raise a point of order, Mr Temporary Chairman Chapman. By leave, could I ask that those who want to vote for this record their vote because that will achieve exactly the same outcome in terms of the *Hansard* record of those who voted for the amendment but it will save many minutes of time. We are in a situation now where we have all the members of the House of Representatives, all the members of the Senate plus all the staff to consider—and not just ourselves. Could I make a passionate plea to those who want to vote for the amendment to stand in their places and record their vote?

The TEMPORARY CHAIRMAN—Senator Ian Campbell is seeking leave for the division to be withdrawn and for senators voting for the amendment to do so by standing in their places and having their names recorded.

Leave granted.

Question negatived.

The TEMPORARY CHAIRMAN—Would those senators wishing to record their vote for the amendment please stand? The following senators are standing: Senators Brown, Murray, Stott Despoja, Cherry, Ridgeway and Greig.

Senator Brown—I ask that Senator Nettle's vote also be noted.

Senator Murray—May I also record the votes of Senators Bartlett and Allison.

Senator Ian Campbell—I thank all senators for that leave and that courtesy. I am indebted to those senators who chose to record their votes in that way.

Senator GREIG (Western Australia) (2.28 a.m.)—I move Democrat amendment (3) on sheet 2863:

(3) Schedule 1, page 8 (after line 32), after item 12, insert:

12A At the end of section 4

Add:

- (2) This Act is to be applied so as not to discriminate, in relation to a beneficiary, on the basis of race, colour, sex, sexual preference, transgender status, marital status, family responsibilities, religion, political opinion or social origin.

This amendment also goes to the issue of same sex couples. I will not speak to it any further.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (2.29 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) AMENDMENT BILL 2003

Second Reading

Debate resumed from 19 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (2.29 a.m.)—The Industrial Chemicals (Notification and Assessment) Amendment Bill 2003 is very important. I am very pleased to say that the opposition intends to support the bill. We do have some comments to make about the way in which the bill should come into operation. Rather than take up the time of the Senate at this hour, I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows—

The Industrial Chemicals (Notification and Assessment) Amendment Bill 2003, seeks to amend the Industrial Chemicals (Notification and Assessment) Act 1989 in relation to:

The commercial evaluation permits system which, under the Bill, allows the introduction of increased volumes of new industrial chemicals to Australia; and

Also makes changes to the company registration provisions under the Act.

Labor supports this Bill as a means of encouraging research and development in the industry.

COMMERCIAL EVALUATION PERMIT SYSTEM

In 1999, the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) identified the need for reform of the Commercial Evaluation Permit provisions in response to representations made by members of the chemical industry. Members of the National Industrial Chemicals Notification and Assessment Scheme and its' Industry Government Consultative Committee identified regulatory barriers which were acting as obstacles to technical innovation within the industry.

Under the current Commercial Evaluation Permit system a company may introduce up to 2000kg of a new industrial chemical for up to two years if an application for an 'assessment certificate' is approved. Applications for assessment certificates involve a longer NICNAS assessment period, a more detailed notification package and a higher assessment fee.

This Bill seeks to increase the maximum quantity of a new industrial chemical covered in a Commercial Evaluation Permit application form – doubling the maximum volume for introduction of new industrial chemicals under the Commercial Evaluation Permit scheme to 4000 kg. NICNAS estimates that a new maximum volume of 4000 kg, will lead to an increase of 99% annually in industrial chemicals covered by Commercial Evaluation Permit applications and that 97% of potential Commercial Evaluation Permit users would be covered with an increased volume limit.

While we support this amendment as encouraging research and development in the industry, proper processes must be maintained.

In her second reading speech the Parliamentary Secretary to the Minister for Health and Ageing, Trish Worth said:

'A strong prerequisite for the reform was that worker and public health and environmental standards were not to be compromised'.

I note that in the House of Representatives concerns were raised by the Member for Calare, particularly the observation in the Bill's Digest, that the Bill does not prevent "the introduction of the additional quantities of industrial chemicals before the planned new safety measures are in place." Whilst we support passage of the bill we recognise there is merit in the concern raised. We support the following regulatory measures as a means of maintaining community standards for chemical introduction:

Applicants must provide a summary of health and environmental effects of the chemicals for use in risk assessment by the National Industrial Chemicals Notification and Assessment Scheme.

The National Industrial Chemicals Notification and Assessment Scheme will upgrade its guidance on the use of the commercial evaluation permit system.

The Government is introducing administrative changes to assist companies in understanding and complying with permit conditions, such as requiring they report on any adverse effects experienced during the commercial evaluation and the success or otherwise of the commercial evaluation process.

The National Industrial Chemicals Notification and Assessment Scheme is to compile this information and provide feedback to the public.

THE REGISTRATION PROCESS

Currently, a company must be registered under the Act in order to introduce new chemicals into Australia. While current provisions require registration to be renewed 30 days before it actually expires, compliance with the registration date has been consistently low (at around 50% each year) as companies are confused by a renewal deadline, which precedes expiry of registration by a month.

This Bill amends the registration system in three key areas:

It aligns the deadline for renewal of registration with the expiry date;

It introduces a late renewal penalty; and

It makes it an offence to introduce industrial chemicals without a current registration.

These amendments adequately address concerns relating to registration renewals and will lead to an increase in applications by streamlining the administration process, strengthening compliance and providing greater flexibility to the fee setting mechanism.

ENVIRONMENTAL AND SAFETY CONCERNS

Obviously environmental and safety concerns resulting from an increase in volume of new industrial chemicals must be taken into account at all times. Despite some concerns, we believe that while the current Commercial Evaluation Permit is the only National Industrial Chemicals Notification and Assessment Scheme new chemicals assessment category that does not require the applicant to provide some information, on the health and environmental effects of the chemical, we support the Government's intention to remedy this as soon as possible.

Labor supports this Bill in its current form, but urges the Government to introduce the proposed changes to safety measures as soon as possible to prevent potential Commercial Evaluation Permit seekers to introduce additional quantities of industrial chemicals before they are in place.

Senator HARRIS (Queensland) (2.30 a.m.)—I also seek leave to incorporate in *Hansard* my speech in the second reading debate on the Industrial Chemicals (Notification and Assessment) Amendment Bill 2003 and request that my opposition to the bill be recorded.

Leave granted.

The speech read as follows—

Every day we are exposed to many chemicals, known to cause serious harm to people and the environment.

Even the most trusting Australian consumers have become increasingly apprehensive about the loudly-proclaimed benefits of some 70,000 new chemicals introduced onto the market since World War II.

It is only relatively recently that we have become aware of the hidden ecological and health hazards inherent in the use of plastics, pesticides and other products touted by the chemical industry as valuable contributions to our way of life.

Many cancers, birth defects, malfunctioning immune systems and reproductive disorders - not to mention ecological disasters which have occurred or are in the making - can be traced directly to products of the chemical revolution in the last half century.

The Bill before us today loosens regulatory controls on chemicals in Australia. One Nation opposes this. If anything, we believe there should be a tightening of controls on industrial, medical and agricultural chemicals. All chemicals. We believe that the existing track record of the chemical industry is very poor in terms of health and environmental safety and that the amendments made by this Bill would provide a fig-leaf of legality for the major chemical companies to hide behind.

The amendments in this Bill establish a fast track mechanism to allow new industrial chemicals and larger quantities of them, to enter the Australian market without appropriate health and environmental safeguards.

Historical-perspective

I want to raise the issue of assessments for existing chemicals.

This goes back to 1989, when as long as pre-existing chemicals were notified to authorities by a certain date and placed on the Australian inventory of Chemical Substances, those chemicals would largely escape systematic assessment through NICNAS.

However, 'selected priority existing chemicals' would still have to be assessed. Moreover, the Minister could approve foreign assessment schemes in the case of some new chemicals.

NICNAS does have a small program for assessing existing chemicals. The 2001-2002 Annual Report stated that 32 existing chemicals were being assessed in that year. This is not a large number, considering the number of chemicals in use. Also, there are new concerns about old chemicals, such as their potentially harmful hormone analogues.

How the system works now.

In 1992, the Keating government introduced the Commercial Evaluation Permit system - the system allowed new industrial chemicals to be exempted from physical, chemical and toxicological assessments.

No more scrupulous assessments!

At present, a company that wants introduce up to 2000kg of a new industrial chemical submits limited data to NICNAS and -pays a fee of \$2,600. Their application is assessed within 14 days.

For volumes over 2000kg, a company must provide detailed test reports including toxicity and ecotoxicity test reports and pay a higher assessment fee of up to \$11,700.

The proposed amendments in this Bill will enable a company to introduce up to 4000kg of a new industrial chemical with applicants merely providing a summary of health

and environmental effects of the chemicals for NICNAS to use in its risk assessment. This summary is provided by the chemical company itself.

NICNAS estimates that with the new maximum volume limit, there will be an increase of 99 per cent per year in the quantity of industrial chemicals covered by the CEP applications.

Clearly, this is not sufficient. There must be independent evaluations of these chemicals. We cannot take the industry's word as to the safety of large volumes of new chemicals.

Anecdotal Evidence

What is worrying about this bill is that it seems to be based on anecdotal evidence. According to the EM:

"Anecdotal evidence suggests that the existing volume limit can be restrictive on industry."

It seems to be a very poor rationale for a bill to come before parliament. What about some factual evidence?

Current limit adequate

NICNAS admits that the needs of most current users are covered by the existing 2000kg limit. This was established in an internal analysis of current CEP users.

As the Explanatory Memorandum to this bill states:

"Most respondents did not nominate the volume increase they required and when taken as a whole, the responses did not provide clear direction for any specific percentage or volume increase that would satisfy most requirements"

Chemical industry

The main driver for these reforms are the chemical companies.

The NICNAS Industry Government Consultative Committee, claimed in 1999, that the present system was a

"barrier to technical innovation within the industry."

This Committee is heavily weighted in favour of the chemicals industry.

Then in 2001, NICNAS released a public discussion paper, seeking input about proposed changes to the system. And only three submissions were received.

But the EM says NICNAS consulted widely for this reform!

What a joke!

One submission was from the industry group, one was from WorkSafe Western Australia and the other submission was from DuPont (Australia) Ltd - the only company to make a submission. Not one submission was received from the public, the people we are here to represent.

This isn't consultation, it's notification.

Tougher regulations

As the excellent Digest on this Bill notes, NICNAS does intend that some additional safety measures that will be imposed through regulations. But there is nothing in this Bill that prevents the introduction of additional quantities of industrial chemicals before planned new safety measures are in place.

Harmonisation

I also want to raise concerns about harmonisation within the industry. The UN's International Programme on Chemical Safety (IPCS) has undertaken a project to harmonize approaches to the assessment of risk from exposure to chemicals. The overall goal of this project -is to globally harmonize approaches to risk assessment, and strive for agreement on basic principles. The director of NICNAS is

on the steering committee for harmonisation. We must ensure that international harmonisation does not lower our safeguards here in Australia.

No Justification

NICNAS has failed to provide the kind of specific justification for the 4,000kg limit you would think is necessary in the case of new untested chemicals.

In many respects, 4,000kg of a specialty chemicals would be regarded as fully commercial quantity.

Annual sales of a specialty chemical could well be below 4000kg in the sophisticated end of the market.

Commercial Evaluation

What does commercial evaluation mean actually mean? The Act defines commercial evaluation in relation to an industrial chemical, as meaning

“testing the chemical with a view to ascertaining its potential for commercial application. But this definition seems to be quite broad.”

There appears to be no stipulation regarding whether these chemicals, or the products made from them can be sold or not. If it is only laboratory work why not stipulate that you can't sell it?

What policing does NICNAS carry out on these allegedly commercial evaluations? What controls are in place?

Is it the case that for many chemicals the CEP scheme could be used to circumvent the normal evaluation process by allowing a company to bring in as much of a particular chemical as needed, not for commercial evaluation, but for commercial use?

Is it the case that there is an enormous backlog of compounds for which full hazard and toxicity data have never been produced?

Conclusion

Modern chemical analytical techniques show that sewage sludges and waters receiving industrial and domestic effluents contain cocktails of thousands of chemicals waste products, by-products and breakdown products of modern chemical goods - from fragrances to flame retardants.

Attempts to assess the risks and to introduce new controls on the use of chemicals in Australia have proved to be a lengthy and controversial process.

One Nation believes we must adopt a more precautionary approach to the release of chemicals and that chemical companies and their products must be more stringently regulated. Trends towards self regulation and self assessment within the chemical industry are a dangerous threat to our health and the environment.

One Nation rejects this bill and urges a tougher regulatory approach.

Senator ALLISON (Victoria) (2.31 a.m.)—The Democrats will not support the Industrial Chemicals (Notification and Assessment) Amendment Bill 2003. I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows—

This bill could have been passed as non-controversial as a bill that would enhance industry's capacity to innovate. But it appears from the Explanatory Memorandum that justification for this bill relies on anecdotal evidence from industry.

This bill seeks to double the volume of new industrial chemicals that can be imported under a streamlined admin-

istrative process, the Commercial Evaluation Plan (CEP). In other words, we are allowing 4000kg of new industrial chemicals to be imported bypassing the normal approval process and with no requirement for a detailed assessment of the chemical's physical and chemical properties and toxicology. Although a summary of the health and environment effects of the chemical are now to be provided as part of the CEP process.

(As is suggested by the Bills Digest, the Minister should explain why it is that until now the CEP system has not required this basic summary on the potential dangers of new chemicals to be provided.)

The CEP is faster and cheaper for industry to access than the normal notification and assessment process.

According to the Regulatory Impact Statement, two submissions were received from the chemical industry in response to a public consultation document put out by the area of Health responsible for regulating the Act.

The National Industrial Chemicals Notification and Assessment Scheme or NICNAS received only one other submission and that was from Worksafe WA. The regulatory impact statement suggests by implication that the Worksafe WA submission may have been critical of some of the measures proposed but does not elaborate.

Although the CEP obviously limits the volume of new chemicals because of possible environmental or hazardous concerns, there is very little information as to why doubling the volume of these chemicals will not lead to greater safety hazards or even if the increase in volume is actually needed.

In its Explanatory Memorandum, the Government acknowledges that the needs of most of the current users are covered by the existing 2000kg limit and NICNAS estimates that with the new maximum volume of 4000 kg there will be an increase of 99 percent per year in the quantity of industrial chemicals covered by CEP applications and 97 percent of potential CEP users would be covered with a volume limit of 4000 kg.

The Government acknowledges the need for a raft of legislative changes to tighten the environmental and safety concerns and foreshadows their development.

We know that this process of review of the CEP started in 1999. We are informed that the consultation period last year was just 6 weeks to what appears to be a narrow range of potential stakeholders. So then why do we have before us an apparently hastily cobbled together piece of legislation that doesn't address the safety issues that have been acknowledged as requiring regulatory change?

What does this bill do? I don't think we really know. It basically asks us to trust the government to put forward some associated regulation to protect environment and worker safety at a later date.

We don't know how effective the bill is without the associated regulations. Will the extra quantities be able to be imported before we have the new regulations in place? The regulatory impact statement provides little extra detail, and apparently there are very few independent voices who have scrutinised this bill.

For these reasons, the Democrats will not support the bill and suggest it be returned to the Department for a more thorough investigation into the need for its introduction and to make sure the safeguards are in place for any possible health or environmental implications in its implementation.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

MIGRATION LEGISLATION AMENDMENT (PROTECTED INFORMATION) BILL 2003

Second Reading

Debate resumed from 17 June, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (2.32 a.m.)—I seek leave to incorporate in *Hansard* my speech on the second reading debate of the Migration Legislation Amendment (Protected Information) Bill 2003.

Leave granted.

The speech read as follows—

I rise to outline Labor's view on the Migration Legislation Amendment (Protected Information) Bill 2002. Clearly, given we are dealing with this bill in this chamber, Labor supports the bill. However, Labor does have a suggestion about improving the function of the bill, which I will outline in this contribution. This suggestion is for future consideration by the Howard government and does not affect matters to do with the processing of this bill. I also seek to take the opportunity to make some more general comments on matters related to the migration field before coming to the specifics of this bill.

The heart of this bill deals with visa cancellation matters. Under the Migration Act 1958 a ground for visa refusal or cancellation is the character test. The character test is defined in section 501(6) of the act, and a person fails the character test if he or she has a substantial criminal record; he or she is associated with other persons or groups or organisations associated with criminal conduct; he or she has engaged in continuing criminal conduct; or there is a significant risk the person would engage in criminal conduct, harass or molest another person in Australia, vilify a segment of the community, or incite discord or represent a danger to the community. A person in Australia who has a visa cancelled as a result of failing the character test is entitled to challenge the cancellation in the Federal Court.

This bill deals with the question of what information will or will not be available and how it can be used in those Federal Court proceedings. I will come to the details of those matters in due course. This bill is squarely about visa processing, how we deal with visa cancellation matters and how we deal with information in the course of those visa cancellation matters.

As we know, the question of who is granted a visa to be in Australia is not an easy one in the public debate in this country. I would cite in that regard the recent Four Corners report, which I believe presented disturbing images and testimony from a number of former employees of Australian Correctional Management at the Woomera Detention Centre. As you would be aware, Mr President, clearly the purpose for detaining people is that they have sought to enter Australia unauthorised and they are seeking to make a visa application; in the ordinary course, the visa they are seeking is as a refugee.

I am sure that those who witnessed the Four Corners report would have been distressed by what they saw. The program raised important allegations that go beyond the perform-

ance of ACM, the detention centre management, and go to the heart of government. The program contended that there were overpayments to ACM and that the local Department of Immigration and Multicultural and Indigenous Affairs manager knew and passed that information on to DIMIA centrally. The program contended that the possibility of looming riots and escapes were raised with DIMIA centrally. The program contended that hundreds of incident reports dealing with suicide attempts, self-harm and, potentially, child abuse were lodged with DIMIA centrally.

If these allegations are true in whole or even in part, it means that the Howard government has provided what can only be seen as a management fiasco in relation to the Woomera Detention Centre and possibly more widely. It is no answer to these allegations for the Minister to say DIMIA will investigate itself; we need a full and independent judicial inquiry, and the Howard government must call one. If it continues to fail to do so, the only conclusion that can be reached is that the cover-up continues. If your record is clean and allegations are raised, the ordinary response would be to have those allegations investigated in the public domain because it gives you the opportunity to publicly clear your name. The fact that the government continues to refuse to hold an independent judicial inquiry can only lead to the assumption that it is afraid of what such an inquiry would find.

In coming clean, the Howard government does not even have to wait for an inquiry to start; it could have started that process at the recent round of Senate estimates by releasing details of every payment ever made by DIMIA to ACM, by releasing details of every incident of self-harm and by allowing DIMIA staff stationed at Woomera during the period mentioned on Four Corners to speak to the media to test the veracity of claims that they were involved in any cover-up. Having started with that down payment on some form of accountability, the Howard government should then call an inquiry. I note claims by Senator Bob Brown that the Australian Federal Police are investigating this matter. As verified at Senate estimates that is not true: the Australian Federal Police are having a preliminary investigation about having an investigation. That is not anywhere near good enough. We need the full and independent judicial inquiry for which Labor has called.

I note that, at the time of the Four Corners allegations, Minister Ruddock dismissed them as outdated. Nothing could be further from the truth. As we stand here today, ACM remains in control of Australian detention centres. Why is that? That is because, even though the Howard government re-tendered the contract to manage Australia's detention centres and selected another company, Group 4, to take over from ACM five months ago, the Howard government has been unable to conclude a contract with Group 4. This means that, at the moment, ACM is overholding the contract, knowing it will not be the contractor in the longer term.

What do staff do in circumstances where they rightly fear that the new contractor will come in and their employment will be terminated? Those staff obviously do the rational thing: they look for other jobs. One of the key allegations in the Four Corners program was that there were not sufficient staff in detention centres to provide the appropriate care for the people detained. As we stand here today, as a result of Howard government bungling of the tender round, the situation in Australian detention centres is as follows. At Baxter, there are approximately 40 staff positions vacant, which is putting pressure on the 90 existing staff to work overtime to cover the vacancies. Employees at Baxter have been working 60-hour weeks for some time because

of the lack of availability of staff. At the Perth detention centre, employees are also working large amounts of overtime. At Villawood, some new trainees were recruited by ACM, even though ACM are shortly to lose the contract, because staffing levels had reached crisis point. Therefore, whilst Villawood might not be technically understaffed, with all of the uncertainty many staff are resigning and searching for new jobs and many are on sick leave as they have been working large amounts of overtime. At one stage, 15 officers resigned from Villawood in one fortnight—that is, 10 per cent of the total number of staff. Villawood currently has a high number of casuals—in the vicinity of 50 per cent of the staff.

I do not blame ACM or the staff for this situation. They have been put in an impossible situation, overholding a contract month after month with no long-term security as the Howard government bungles the contract negotiations with Group 4. The short-staffing and any problems arising with the care of persons detained are squarely as a result of the actions of the relevant minister, who is here today, and the Howard government. I ask the parliament to note that, under the contract with ACM, it is the department, DIMIA, that retains the final responsibility for the safety and welfare of persons detained. Therefore, it squarely rests on DIMIA to reassure us that the safety and welfare of persons detained are being adequately catered for in circumstances of such staff shortage.

I now seek to raise another matter that fundamentally goes to transparency and truth telling. On 12 March 2003, the Minister for Immigration and Multicultural and Indigenous Affairs announced that he had signed a memorandum of understanding with the Iranian government in relation to immigration matters. Minister Ruddock's media release states:

Australia and Iran have agreed that their first priority is to work together to promote the voluntary repatriation of those Iranians currently in detention in Australia. However, arrangements for the handling of those who do not volunteer to return have also been established.

On 2 May 2003, a letter was sent to Iranians in detention detailing a voluntary repatriation package. The letter included the following statement about the agreement between Australia and Iran:

The agreement also allows for the involuntary removal of Iranians in detention who have no outstanding protection applications.

Labor is also aware that there are claims of a leaked department of immigration memorandum that details a strategy to create a credible threat of deportation for Iranians. In addition, a number of contradictory statements about the existence and terms of the memorandum of understanding have been made by members of the Iranian government. Labor believes that it is wrong for the Howard government to enter such an arrangement and then seek to keep its terms hidden. If you have nothing to hide, you have nothing to fear. I call on Minister Ruddock and the Howard government generally to release the memorandum of understanding publicly so that everyone can ascertain whether the memorandum deals with forced removals or whether the Howard government is engaging in a cruel strategy of pretending that it can effect forced removals.

The argument that has been put in the past about failing to put this agreement in the public domain is that the Iranian government might have something to say about that. I am sure they would have something to say about that; their consent should be sought. As a matter of course now, we have a process in this parliament where treaties entered

into by the Australian government are put before a relevant parliamentary committee and people are able to examine their terms. I do not see why an agreement of this nature should be dealt with differently. I would be calling on the Howard government to table that memorandum of understanding. If it says what they say it says, well and good—it will be there in the public domain for everybody to see. If it says something different then obviously we would have something to say about that, having seen it.

As I stated earlier, the bill that we have before us today deals with the protection of information when a visa cancellation is proceeding, the visa cancellation has been challenged in the Federal Court and the visa cancellation is founded on the failing of the character test under the Migration Act. Currently, the protection of information issue in these matters is dealt with in section 503A of the act, which was introduced in 1998. Labor supported the introduction of this section, which protects from disclosure information that is given to DIMIA by a gazetted agency on the basis that it is confidential. Gazetted agencies include Australian and overseas intelligence and policing agencies. Clearly, such agencies will cease to provide DIMIA with such information if it cannot be kept confidential. Such information may be supplied as confidential because its disclosure would put at risk the source of the information or prejudice law enforcement or intelligence-gathering operations.

As it currently stands, section 503A cannot protect confidential information given by gazetted agencies from disclosure in proceedings in the Federal Court or the Federal Magistrates Court. Such proceedings would arise where a noncitizen contests a visa cancellation. The Minister and the department assert that such proceedings have been prejudiced because there is no ability to bring before the court information supplied on a confidential basis by gazetted agencies and protect that information from disclosure to the noncitizen who is the subject of the visa cancellation. Indeed, it is suggested by the Minister and the department that some visa cancellations have been contested solely for the purpose of accessing the confidential information.

This bill enables the minister to approach the Federal Court or Federal Magistrates Court for a non-disclosure order in relation to information relevant to a visa cancellation matter that has been given to the minister or an authorised migration officer in the department by a gazetted agency on the basis that it is confidential. If the Federal Court or Federal Magistrates Court accepts the minister's submission and makes a nondisclosure order, then the court is permitted to rely on the information for the purposes of the visa cancellation proceeding but it is not able to disclose the information to anyone, including the noncitizen who is appealing the visa cancellation and that person's legal representatives.

This bill provides that, in making a determination about a non-disclosure order, the court needs to have regard to a number of considerations. They include the fact that the information was originally communicated to an authorised migration officer by a gazetted agency on condition that it is treated as confidential. Australia's relations with other countries are also a relevant factor. The need to avoid disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation and security intelligence are other factors.

In a case where the information was derived from an informant, the protection and safety of informants and of persons associated with informants is a factor. Australia's national security is a relevant factor. Another relevant factor is the fact that the disclosure of the information may

discourage gazetted agencies and informants from giving information in the future. The effectiveness of the investigations of official inquiries and royal commissions is relevant, as are the interests of the administration of justice.

If the court determines not to make the non-disclosure order, the minister has two options. The minister can still adduce the evidence in the visa cancellation proceedings and it can be supplied to the noncitizen applicant and their legal representatives. Alternatively, the minister can withdraw the information from further consideration by the court. In that case, the information will not be disclosed but also cannot be relied on by the court as evidence in the visa cancellation proceedings.

In addition to the introduction of this system of non-disclosure orders, the bill has been amended by the government to deal with two related matters. First, the bill provides that sufficient gazettal of an overseas agency applies if the country of origin is gazetted. This avoids technical difficulties arising from the misdescription of overseas agencies and also protects from disclosure the details of such agencies. Secondly, the bill amends the Freedom of Information Act to ensure that a noncitizen facing a visa cancellation matter cannot obtain through freedom of information the type of information he or she cannot obtain because it is subject to the amended section, 503A.

Clearly, in opposition Labor does not have access to the specific details of the sorts of visa cancellation matters with which this bill is designed to deal. It therefore becomes difficult to objectively assess the dimensions of any defects with the current legislative scheme. Even in the absence of such detailed information, it seems reasonable to assume that there would be a very limited number of matters in which information is so sensitive that it must be completely protected. However, denying an applicant and his or her legal representatives information on which a court will rely in making a decision is a very significant matter that warrants serious consideration. The bill ensures that the final decision on these two competing considerations is made by a court. If the court accepts that the security arguments are so serious that the information cannot be disclosed to the applicant or his or her legal representatives, it can make the nondisclosure order. If the court does not accept the security arguments, it can decline the nondisclosure order.

By the scheme described in the bill, the minister for immigration is also put under pressure to behave reasonably in relation to these matters. If the minister seeks to protect information that does not in truth need protection, it can be expected that the court will reject the minister's application for a nondisclosure order. If this occurs, the minister can only continue to protect the information by prejudicing the likely success of the case for visa cancellation. If the minister wants to rely on the information in the visa cancellation proceedings, then, in the face of the court determining that it is not worthy of a non-disclosure order, the minister will have to disclose it. If the minister fails to disclose it, the minister will be unlikely to succeed in the visa cancellation proceeding because the key information will not be available for the court to rely on.

All in all, the bill should be supported, given that, under this scheme, as contained in the bill, the court remains the ultimate arbiter.

As I said at the outset of my remarks, this bill is in this place because Labor is prepared to support it. It is prepared to support it because the court remains the ultimate arbiter of rights in this regard.

Senator ALLISON (Victoria) (2.33 a.m.)—I seek leave to incorporate in *Hansard* a speech by Senator Bartlett on the Migration Legislation Amendment (Protected Information) Bill 2003.

Leave granted.

The speech read as follows—

The Democrats will not be supporting this bill.

It amends the Act to provide more effective protection to confidential information given to the Minister when he is making a decision to refuse or cancel a visa on the basis of character or conduct of a non-citizen.

Currently the section of the Act that deals with confidential information (Section 503 A) says that this information cannot be disclosed unless the Minister makes a declaration in writing, after having consulted the gazetted agency from which the information originated.

This does not extend to protect the information from disclosure when it is before the court. The Minister can only use public interest immunity as reason not to release to the Courts.

The bill replaces public interest immunity, by extending the scheme of statutory protection to the Federal Court of Australia and the Federal Magistrates Court.

It does this by setting out specific criteria under which the Courts can make a non-disclosure order and clarifies that the decision by the Minister to release information is non-compellable and non-reviewable.

This bill prevents a Commonwealth officer from the requirement to divulge information to the Federal Court or Federal Magistrates Court.

Prevents tribunal members from the requirement to divulge information to the Federal Court or Federal Magistrates Court.

It enables the Minister to ultimately decide whether the information be released to the Courts.

Once again this is an attack on the independence of the courts and severely limits the scope of powers of the Court. In general the Courts will only order disclosure where on the balance there is a greater public interest in having the information disclosed. This judgement has traditionally been for the relevant Judge to make. The bill makes that decision the Minister's alone.

When a person appeals a rejection of a visa on character grounds, confidential information is often central to the case.

This attack on natural justice is part of an all too familiar pattern in immigration law. Unfortunately changes to migration law under this government have predominately restricted the Courts right to intervene in departmental and Ministerial decisions.

Since 2000 we have seen not only the legislation which totally removed asylum seekers from the purview of the court, but also the introduction of privative clauses, designed to restrict access to judicial review in all but exceptional circumstance and an increase in the areas the minister can utilise his non-compellable non-reviewable, discretion. This week the government tried to introduce into the Senate a bill designed to prevent the Courts ordering an interim release of people from mandatory detention.

The Australian Democrats do not believe that restricting the Courts ability to access information when making a judgement on administrative decisions will make Australia safer.

We believe that this is another bill aimed at protecting the Ministers decisions and the consequences of those decisions from independent judicial review.

We consider the bill is unnecessary. The courts are not frivolous in their release of information, indeed they have displayed a decided tendency to err on the side of public interest immunity.

It is difficult, therefore, to see any compelling reason for restricting such information from the scrutiny of the courts, unless you are a minister keen to cocoon your decisions from review.

Furthermore, the Minister already holds most of the trumps when it comes to deciding whether to withhold sensitive information from the courts.

It could also be argued that the bill, if passed, might prove counter-productive. By extending a blackout over this information to the courts, the bill risks provoking the courts to reconsider the tendency to side with public interest immunity considerations.

If denied information, the courts may seek to probe more closely the basis on which character decisions have been made by the Minister and department. For a government anxious about judicial activism, this bill could prove self-fulfilling.

Senator KEMP (Victoria—Minister for the Arts and Sport) (2.33 a.m.)—The protection provided by the Migration Legislation Amendment (Protected Information) Bill 2003 will ensure that we continue to receive valuable and important character related information. I believe these amendments will protect the national interest by ensuring that the intelligence and law enforcement agencies can continue to have confidence in Australia's ability and willingness to protect their information. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

CUSTOMS AMENDMENT BILL (No. 1) 2003 CUSTOMS TARIFF AMENDMENT BILL (No. 1) 2003

Second Reading

Debate resumed from 16 June, on motion by **Senator Kemp**:

That these bills be now read a second time.

Senator CROSSIN (Northern Territory) (2.34 a.m.)—I seek leave to have Senator Ludwig's speech on the second reading debate on the Customs Amendment Bill (No. 1) 2003 and the Customs Tariff Amendment Bill (No. 1) 2003 incorporated in *Hansard*.

Leave granted.

The speech read as follows—

Mr President

The Customs Tariff Amendment Bill (No. 1) 2003 contains amendments to the Customs Tariff Act 1995.

Those amendments include the addition of East Timor to the list of developing countries in Schedule 1 of the tariff. This will enable imports from East Timor to receive a five percentage point reduction on the general tariff rate. The Bill also amends the tariff to give duty free access to goods originating in least developed countries and in East Timor. The Bill also amends the tariff to allow goods originating in Singapore duty free access to Australia.

The Bill contains a number of other amendments to Schedule 1 of the tariff, which contains a list of countries and places to which preferential rates of duty apply under the Australian system of tariff preferences. These changes do not alter the treatment of imports from those countries to Australia but do improve the accuracy of the tariff. A number of minor related tariff amendments are also contained in the Bill.

The Customs Amendment Bill (No. 1) 2003 inserts rules for determining whether goods originate in LDC's (Least Developed Countries), in East Timor or in Singapore.

The Explanatory Memorandum points out that the purpose of the Customs Amendment Bill is to amend the Customs Act 7901 to:

- a) Introduce rules of origin for goods that are the produce or manufacture of a Least Developed Country (LDC) which will enable such goods to have duty-free access to Australia, and
- b) Introduce new rules of origin for goods that are the produce or manufacture of Singapore to give effect to the Singapore-Australia Free Trade Agreement (SAFTA). These amendments will also provide such goods to have duty-free access to Australia.

The Explanatory Memorandum of the Customs Amendment Bill also states on page 2:

The amendment contained in schedule 1 will operate from 1 July 2003.

These Bills, in part, result from formal talks between the governments of Australia and Singapore to establish a free trade agreement between the two countries. This process

began in November 2000 and the negotiations concluded in October 2002. The Singapore-Australia Free Trade Agreement was signed on 17 February 2003 and tabled in Parliament on 4 March 2003,

subject to Australia's treaty process and the exchange of diplomatic letters

In relation to those aspects of the legislation that deal with Least Developed Countries, and East Timor, Labor has no argument. It is right and proper that Australia provides favourable tariff treatment of less developed countries, including East Timor. It is laudable that reductions are being applied to some of the poorest countries in the world and to the newly independent nation of East Timor. We recognise that trade is an integral element of a growth strategy in developing countries. For East Timor particularly, it is important that Australia provide access free from tariffs, available to the Least Developed Countries.

The Opposition is supportive of those aspects of these Bills as they relate to East Timor and the LDC's.

There are other amendments to the Customs Act, Schedule 2 which give effect to Australia's agreement under the proposed Singapore-Australia Free Trade Agreement. Goods will be considered to originate in Singapore for purposes of duty-free entry if they are wholly obtained or manufactured in Singapore, or if they are partly manufactured in Singapore. This will include some particular "accumulation provisions" applicable to manufacture in Singapore.

The Customs Bill also provides for duty-free entry of goods originating in Singapore, should goods not meet the rules of origin requirements, these goods will continue to receive the preferential treatment that they now receive.

Mr President, Labor has raised a number of concerns in relation to the manner in which these Bills have been dealt with.

The Parliament has in place a system of scrutiny of trade deals and other treaties - that system of scrutiny is called the Joint Standing Committee on Treaties. The Government brought this legislation into the Parliament while the Committee was still examining it.

Labor's position has been that the Treaties Committee should not be treated with such contempt by this Government.

At the eleventh hour, the JSCOT Report on the Singapore Trade Agreement has been tabled today. As a result, parliamentary process has been observed - only just.

Given this tight timetable, I have not had the opportunity to peruse the Committee's Report in detail. However I do note the Chair commented specifically in respect of Recommendation 4, which states:

"The Committee recommends that the role of the Committee be recognised by ensuring that, unless notice or reasons are provided, the Committee conclude its review of proposed treaty actions prior to the introduction of any enabling legislation".

It is an indictment of this Government that the Chair of the JSCOT Committee has, in her tabling speech, effectively reprimanded her Government colleagues for its high handedness in dealing with Committee Reports. This is not a minority view, as might be expected, it is the view of the whole of Committee that introducing enabling legislation before JSCOT has had a chance to report is an appalling misuse of the parliamentary process.

Report (2.189, p 54)

Parliamentary Committees exist for good reason - to allow consultation and scrutiny, in this case of trade agreements and treaties. Committees are not to be taken for granted as has been the case here.

I wish to place on record that the Opposition will continue to ensure that the processes of the Parliament are adhered to and the travesty we have experienced in relation to these Bills will not re-occur.

The Opposition will support these Bills.

Senator RIDGEWAY (New South Wales) (2.34 a.m.)—I will also be seeking leave to incorporate my speech, but I want to say a few things first, on behalf of the Democrats. There are aspects of the Customs Amendment Bill (No. 1) 2003 and the Customs Tariff Amendment Bill (No. 1) 2003 that we are keen to

support, but we are concerned about the process by which the bills arrived here. Certainly we want to talk about the serious content of these bills, particularly as it relates to the question of free trade agreements. I also want to flag right from the very start that the Democrats will be opposing both of the bills, because of the way they have been rushed through the parliament. On principle and given the fact that these bills deal with many of the aspects of the Singapore-Australia free trade agreement, this seems to on the one hand deal with some very good things in relation to least developed countries and providing them with opportunities to be able to access Australian markets, particularly with provision being made for East Timor. I understand that this may also benefit countries like the Solomon Islands, Papua New Guinea and various other countries in the Pacific and South-East Asia.

Whilst we would welcome that, of course, the difficulty is the way the government have decided to couple these bills together, setting a precedent in terms of what the parliament—and, more particularly, the Senate—should do in relation to the review processes, particularly in scrutinising how treaties are dealt with in this place. It needs to be mentioned that the Joint Standing Committee on Treaties, quite frankly, has been ignored in the process in relation to its opportunity to talk about the Singapore-Australia free trade agreement. Most of all, I make the point that the role of the committee should be recognised by ensuring that, unless notice or reasons are provided, the committee concludes its review on proposed treaty actions prior to the introduction of any enabling legislation.

The other thing I want to say is that the Democrats have long believed that treaties entered into by executive government must be subject to parliamentary scrutiny. Indeed, this was the position staunchly taken by my colleague the former senator for New South Wales Vicki Bourne in her private senator's bill, the Parliamentary Approval of Treaties Bill 1995, which is one we continue to pursue. I have also circulated a second reading amendment, No. 3017. The effect of that is, really, to talk about the way that the bills have reached the Senate and the lack of time given. I am hoping that the Labor Party will see themselves able to support this amendment tonight. They have not been able to be forthcoming on many other things which are being dealt with here on this occasion.

The main thing we want to say is that, whilst we recognise the need to deal with greater access to the marketplace, that in itself should not alleviate the responsibilities we believe the government has in relation to commitments under our aid budget abroad. In closing, I move second reading amendment No. 3017 on behalf of the Australian Democrats:

At the end of the motion, add “but the Senate, while congratulating the Government for its decision to allow preferential duty treatment for Least Developed Countries in this bill:

- (a) condemns the manner in which debate on these bills was brought about, with insufficient time for consideration to be given to the findings of the report of the Joint Standing Committee on Treaties; and
- (b) calls on the Government to recognise the importance of proper Parliamentary scrutiny to enhance democratic governance of the process of entering into important international agreements”.

I seek leave to incorporate the remainder of my second reading speech.

Leave granted.

The speech read as follows—

But firstly, I would like to turn to the content of the Bills before us.

Part One - Least Developed Countries

Firstly, Schedule 1 of this Bill enables preferential duty free treatment for the importation of goods produced or manufactured in Least Developed Countries, East Timor and other categories. The Prime Minister announced in October last year that Australia will grant tariff and quota free access for 50 of the world's poorest countries, and this part of the Bill enacts this decision. East Timor has not yet been classified as an LDC, but Australia has included it in the Bill and we congratulate the Government for this initiative.

The elimination of tariffs for Least Developed Countries accords with the Australian Democrats' commitment to improving the situation of the world's developing countries but I want to also mention that the complementary strategies of market access, economic growth, and poverty reduction, should not become a substitute for continuing aid and other development assistance especially to other countries in our region such as PNG, the Solomon Islands, Samoa and Cambodia, who are likely to be beneficiaries of new arrangements.

It is an important first step to take in terms of achieving a real commitment from the Australian Government to fulfil its responsibilities as a first world citizen, by assisting developing countries as much as possible.

The Australian Democrats have consistently expressed concern that Australia's aid budget is the lowest it has been in 30 years at only 0.25% of GDP.

This is a central tenet of Democrats' policy and while we support the measures introduced in this Bill, once again we call on the Government to deliver a major increase in Australia's overseas aid budget. This is essential if Australia is committed

to achieving the UN Millennium Development goals, which require the international community to increase global aid, by \$70 billion dollars per year until 2015.

It is made more essential given the fact that Australia continues to fail to meet a United Nations quota of 0.7% of GNP for International Aid programs.

It is also important that this government recognise the role that human rights and the rule of law have to play in achieving sustainable development and the reduction of poverty and suffering and not just good governance alone.

While the Democrats fully support the measures contained in this part of the Bill, we, nonetheless, feel that it is a cynical and calculated move on the part of this Government to package this reform together with the implementation of the Singapore Free Trade Agreement - which was always likely to be more controversial.

If the Government is serious about achieving results for Least Developed Countries, then it should have had the courage of its convictions and implemented these measures separately in their own right.

As it stands, however, the issues we have with the Singapore Free Trade Agreement generally, coupled with the utter lack of any real opportunities to deal with these critically important matters in Parliament mean that, on balance, we have chosen in this instance to focus on the second part of the Bills.

I now want to turn to the provisions of these Bills relating to the Singapore-Australia Free Trade Agreement, to consider these in more detail.

SAFTA

We understand that the provisions of the Bills before us here concentrate specifically on those aspects of the SAFTA that have an application for Australian Customs. However, because we have no other opportunities to discuss the SAFTA in a Parliamentary context, I want to discuss our broader problems with this particular agreement.

The Australian Democrats are strongly opposed to any measures that potentially undermine the sovereignty of Australia to regulate in the best interests of its citizens.

Let me make this clear, we do not oppose free trade just for the sake of it. We support FAIR trade, and measures that support the national interest. It is important to place on the record the concerns we have in this respect with the Singapore Free Trade Agreement, given that it has been explicitly stated that this will be a template for future free trade agreements. This is particularly concerning in light of current attempts to negotiate an agreement with the USA, which has the potential to severely impact both on our national sovereignty and on the national interest of Australia.

I will outline the Australian Democrats' serious concerns with elements of the SAFTA shortly. Firstly, however, I would like to turn briefly to the Government's attitude more generally towards bilateral trade endeavours at the expense of efforts in the multilateral environment.

The Government's Foreign and Trade Policy White Paper, *Advancing the National Interest*, released in March of this year, states the importance of multilateral initiatives, but also clearly signals this Government's preference for bilateral initiatives. This is a fundamental problem given Australia's limited ability to devote resources to both labour intensive functions. The White Paper actually emphasises this division of resources:

‘The Government's pursuit of regional and, in particular, bilateral liberalisation will help set a high benchmark for the multilateral system. Liberalisation through these avenues can compete with and stimulate multilateral liberalisation.’

The White Paper also notes the potential that FTAs between other nations could harm our trade interests. The paper states:

‘Many other countries are in the process of negotiating or seeking free trade agreements with our trading partners. This could pose risks to our interests if our competitors were to gain preferential access to our export markets.’

The White Paper also makes inappropriate comparisons that reflect positively on its proposed free trade agreements. In consecutive paragraphs the paper notes the net economic welfare gains of a USFTA that removes all 'barriers and harmonises all standards' to be \$40 billion over 20 years and the completed Singapore-Australia Free Trade Agreement that reduced 'a number of barriers'.

The failure to remove all barriers with Singapore in the SAFTA, a country that has no agriculture, emphasises how difficult (in fact, impossible) it will be to negotiate the removal of all barriers in an AUSFTA. The net economic welfare gains estimate of \$40 billion is an extraordinarily optimistic estimate.

Trade Minister Mark Vaile has made it clear that the WTO process is not where Australia wants to be investing its energies. Given the lack of progress in current round of negotiations, he has decided to allocate resources into bilateral free trade agreements that go further than multilateral agreements, and potentially harm our interests with our other trading partners.

Specific Problems with SAFTA

I'd now like to turn to problems we have with the Singapore-Australia Free Trade Agreement more specifically. An analysis of SAFTA is extremely important because it is being used as a model for the Australia US Free trade agreement, and other bilateral agreements.

It has a "negative list" approach for both services and investment, which means that everything is considered to be included unless it specifically exempted. This goes a great deal further than the CATS approach, which allows governments to only make commitments to liberalise trade in those sectors that are explicitly listed in the agreement.

Using the SAFTA "negative list approach" as a model for the USFTA will have a significantly greater impact on essential services, given the size of the US economy.

Further, the SAFTA agreement provides that any additional outcomes achieved in the US FTA would also be extended to the Singapore-Australia trade relations.

While the services chapter of SAFTA states that it does not apply to public services, it uses the same definition of 'public services' as that used under CATS. The CATS definition is 'services applied in the exercise of governmental authority neither on a commercial basis nor in competition with one or more service providers.'

This definition is dangerously ambiguous, because as we all know many public services are now supplied on a commercial basis or in competition with other service providers. The health, education and postal sectors are familiar examples of public services being provided partially by private providers in Australia.

Another effect of the negative list approach is that anything unintentionally omitted from the list, or sectors that develop in the future but are not currently listed, will be subject to SAFTA. Future governments will not be able to implement any policy contrary to the agreement without facing a complaint under the disputes procedures.

Restriction of the right of governments to regulate

Further to that point, SAFTA uses the same language as CATS to restrict the right of governments to regulate even commercial services. The regulation of services must not be "more burdensome than necessary" and must not be a "barrier to trade". Because the two governments have agreed to include the outcome of the CATS negotiations on services regulation in the agreement, it is not inconceivable that the Singapore government could use the general disputes process to challenge regulation of services that are

not listed as exceptions on the grounds that such regulation was a barrier to trade.

SAFTA also restricts the ability of future governments to have any new regulation that is not consistent with the agreement. Exceptions currently listed in the agreement are bound to current levels of regulation. These 'standstill provisions' mean that future governments do not have the freedom to change any regulations to better protect a particular Australian service sector.

Dispute Settlement Procedures

These restrictions on the ability of future democratically elected governments to regulate as they see fit are particularly worrying when we consider the enforcement and dispute settlement provisions that have been negotiated in the SAFTA. There are two enforcement processes under this agreement: a specific one for investment, and a general one for the rest of the agreement. The investment process includes an 'investor to state' dispute settlement mechanism, which, like the NAFTA/MAI model, enables a corporation to take legal action if they can argue that any of our new laws or regulations are inconsistent with the free trade agreement. They will have the power to sue the Australian government for damages, either in national courts or in one of two international arbitration panels - UNCITRAL and ICSID, which do not provide the levels of openness of regular courts. This is a serious limitation on national sovereignty, and gives powerful multinational corporations an unacceptable right to interfere in Australian democratic processes.

US corporations have used NAFTA rules to sue Mexican and Canadian governments for hundreds of millions of dollars. Examples such as the US Metalclad Corporation case, and the Ethyl Corporation case are frightening examples of what can happen with investor to state dispute resolution mechanisms, such as those that will be in place under the SAFTA.

Other Issues - The Treaty Making Process

Given that SAFTA will now likely become the template agreement on which future bilateral trade agreements will be based, it is useful to also consider the process by which these agreements are entered into, and the level of public consultation and parliamentary scrutiny into international trade treaties.

Inadequate Public Consultation

Public consultations undertaken by the government regarding the SAFTA have been totally inadequate, considering the potential effects such an agreement can have on the public. The SAFTA consultations included industry, local and state government and departmental consultations. However, no consultations were undertaken directly with the public or with civic organisations. The Australia-United States Free Trade Agreement currently being negotiated has a potentially greater impact on the Australian public. To date consultation has been inadequate, marked by a reluctance to commence public consultations and the short time frame devoted to public consultations.

Parliamentary Scrutiny

This failure to undertake public consultations can be attributed to the Australian treaty making process, which under convention requires consultation only at the final JSCOT stage. This could be considered outdated, given the current level impact trade agreements (which nowadays cover much more than trade) can have. Current trade agreements such as SAFTA and AUSFTA that include domestic regulation of services, investment, and dispute settlement provisions allowing investor-state settlement affect a much

wider constituency than agreements such as the original Australia-New Zealand Closer Economic Relationship (ANZCER).

Other states have undertaken steps to ensure the public remains in the consultation process. An example of this is the US Trade Act 2002, or 'Fast Track' authority, which enforces strict conditions on the President including notification periods, negotiating requirements (such as labour and environment provisions) and oversight in return for expedited procedures for passage of required legislation.

This issue is topical due to the potential impact of an AUSFTA, undertaken with similarly low levels of public accountability.

The Australian Democrats firmly believe that the Australian Parliament should have the capacity to scrutinise and vote on trade agreements.

Conclusion

In conclusion, the Australian Democrats are not impressed with the tactics of this Government, in trying to rush measures through the Senate in the knowledge that the added pressure of time and the lack of opportunity to properly scrutinise will help in getting its way.

We would prefer to split these Bills, to congratulate the Government on its decision to allow preferential duty treatment for the world's poorest countries and support that part of the Bills.

However, the process by which this legislation was brought before this chamber, and the extremely serious nature of the problems we have with the Government's Singapore Free Trade Agreement, means we cannot support these Bills.

To this extent, I have circulated 2nd reading amendment No. 3017 on behalf of the Australian Democrats and I now move that amendment.

Senator LUDWIG (Queensland) (2.39 a.m.)—I can indicate that we will support the second reading amendment moved by Senator Ridgeway.

Senator ABETZ (Tasmania—Special Minister of State) (2.39 a.m.)—I thank senators for their contributions.

Question agreed to.

Bills, as amended, read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (2.41 a.m.)—I move:

That government business orders of the day Nos 11 (Superannuation (Government Co-contribution for Low Income Earners) Bill 2003 and a related bill) and 17 (Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003) be postponed till the next day of sitting.

Question agreed to.

APPROPRIATION BILL (No. 1) 2003-2004

APPROPRIATION BILL (No. 2) 2003-2004

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2003-2004

Second Reading

Debate resumed from 23 June, on motion by **Senator Alston**:

That these bills be now read a second time.

Senator CONROY (Victoria) (2.42 a.m.)—On Tuesday night, I raised one aspect of the past business dealings of the new acting chair of the ACCC, Graeme Samuel. I highlighted his role as a director and member of the audit committee of FAI. Evidence presented to the HIH Royal Commission suggests that FAI traded while insolvent for a number of years in the 1990s. Claims by a former director of FAI in today's papers that Mr Samuel was particularly diligent in trying to find out what was going on in FAI are just not credible. Mr Samuel was on the board and the audit committee for three years. How hard could he have been trying to get to the bottom of the FAI accounting scams? I repeat: the issue of insolvent trading by FAI and the knowledge of its directors must be investigated by ASIC.

Tonight, I would like to raise another incident from Mr Samuel's past business activities that once more demonstrates that he is not a fit and proper person to head up the ACCC. Mr Samuel has stated that the highlight of his career was his role in fending off the bid by Robert Holmes a Court's Bell Resources to take over BHP in 1986. He was the key adviser on defensive tactics to BHP at the time of its infamous cross-investments with Elders IXL. On 10 and 11 April 1986, Elders purchased shares in BHP representing 18.5 per cent of its capital at a cost of \$1.875 billion.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Conroy, resume your seat, please. Would those people who are standing please resume their seats, because we simply cannot hear what Senator Conroy is saying to us.

Senator CONROY—On the night of 10 April 1986, BHP purchased convertible bonds of Elders NV to the value of \$216 million, which when converted on 18 July 1986 represented 12.6 per cent of Elders. On 13 April, BHP entered into an agreement with Elders to subscribe for 1,000 preference shares in Elders, valued at \$1 billion. The then corporate regulator, the National Companies and Securities Commission, commenced investigations into the transactions, observing that there had been serious questioning of whether the market is honest, efficient and fair.

Given his key role, Mr Samuel was called as a witness. Following an FOI request, I have obtained a copy of a transcript of Mr Samuel's evidence that he gave over six days. It has to be said that Mr Samuel was not the most cooperative witness. Despite telling the NCSC, 'I am well known for having an almost photographic memory for events that are of significance,' his memory failed him time and again when questioned on key details of the transactions, which had occurred only months before. Counsel pointed out to Mr Samuel that there were at least 55 occasions when he failed to recall specific conversations or specific events.

I would like to give the Senate some examples of the type of disclosure and cooperation Mr Samuel gave the corporate regulator in relation to his role. On 28 May 1986, counsel questioned Samuel about whether he had reported back to BHP on discussions he had been involved in with Elders regarding an investment in BHP. The following exchange took place:

Q: Was any report ever made to the board about them—that is, these meetings—

A: Yes.

Q: Who made the report to the board when that happened?

A: I take you back to the beginning; I can't recall.

Q: Not you?

A: No—well, I'm sorry, I can't recall.

Q: You might have.

A: I might have.

Q: You cannot remember whether you ever reported to the board on the matter—all this only a few weeks ago and you cannot tell the commission whether you ever made a report to the board on these matters.

A: Well, if you ask me whether I ever made a report to the board on these matters, I would have to say I think so but I can't recall specifically.

Q: You think you did?

A: I say I think so, but I can't recall.

This is a man with a photographic memory! I can assure the Senate that this evasive approach goes on for page after page. Samuel could not recall whether he had attended key BHP board meetings discussing the takeover defence. He could not recall, in May 1986, investment proposals put to the BHP board in March. This was in May. He could not remember what happened in March. He could not recall whether other directors of Macquarie Bank were advising BHP on the takeover defence. He could not recall what commission would be payable on the purchase of the Elders bonds, even though he arranged it. He could not recall who told him where he would be able to lay his hands on 50 per cent of the Elders bonds. These bonds are famous in this chamber—they have been raised on a number of occasions. These are the

famous Swiss bonds that John Elliott said were owned by Belgian dentists and that they were unknown to John Elliott at the time. The key here is that Graeme Samuel knew where to find the owners of the bonds but he did not want to tell the commission where he got the information on how to find the owners of the bonds.

As has been revealed subsequently through court cases and information provided to the then National Crime Authority, the owners of these bonds were in fact John Elliott, Ken Jarrett, Wiesener, Cowper, Scanlon—all the Melbourne Club spivs together. For reasons best known to Mr Samuel, he sought to downplay his role in the negotiations between BHP and Elders. He denied knowledge of proposals involving Elders investing in BHP to block the Holmes a Court bid. Commissioner Greenwood raised this matter with him on page 1,398 of the transcript. I will read it. It states:

MR GREENWOOD: Q: Can I ask, are you telling us, Mr Samuel, that you were not aware, in the middle of March, of any proposal under which Elders would be instrumental in blocking the Holmes a Court bid?

MR SAMUEL: A: I'm sorry, you've got me—are we talking about this proposal, Mr Greenwood, or any proposal?

Q: Any proposal?

A: The answer to that has to be no.

But Samuel was caught out when presented with an internal document from Wardley, Elders' financiers. The following exchange took place in relation to the document between counsel assisting the commission, Mr Meagher, and Mr Samuel:

Q: Do you see the paragraph there—you have got your own copy in front of you—commencing 'Elliott has stressed the need for security?'

A: Yes.

Mr Samuel said, and the exchange continued:

Q: Do you read on 'and I am advised that the only persons who are aware of this proposal are Elliott, Blosfelds, Jarrett and Scanlon from Europe, Sir James Baulderstone, Loton, Gough and a director of Macquarie Bank from Elephant?'

'Elephant' was the code name for BHP. Mr Samuel answered:

A: Yes.

Q: Well, it is obviously not you, because you knew nothing of this proposal. Would that be right?

A: That's correct.

Q: Yes, well, who would be?

A: Well, I have no idea, I'm sorry, no idea.

That was Mr Samuel's answer. Mr Meagher continued:

Q: Well, was there any other director of Macquarie Bank who was involved in advising B.H.P. in mid-March of this year, apart from yourself. You are a director, are you not?

A: Yes, yes.

Q: Anyone else apart from you?

A: I'm just trying to recall—I can't recall. It's possible there may have been some—I just don't know.

Q: Who would it be—

he is asked again—

A: Well, the only other party that—I mean I just can't recall. I can't recall who else would have been involved.

Q: You cannot identify any other director of Macquarie Bank to whom that could possibly refer?

A: No.

Q: There is no possibility that it was you?

A: Well, there's always a possibility it's me; there has to be a possibility it's me.

Q: Yes, you know nothing of this proposal?

A: No, I said to you I was not familiar with this proposal.

Samuel could not name any other Macquarie Bank director who could have been involved in the proposal. Presumably, he declined to name anyone else at Macquarie Bank because they would deny his story. We can only conclude that Samuel was completely dishonest in his answer to the commission. He was the person referred to in the document, and he would not fess up. This is a bloke who has now been put in charge of the most powerful regulator in this country. He has lied his way through evidence to a former regulator, the NCSC—and he is a fit and proper person!

Evidence given to the commission demonstrated clearly that Samuel arranged for the purchase of the Elders bonds. In negotiating the cross-investment, Samuel was told by a person, whose name he could not recall, that Mr Wiesener could put his hands on 50 per cent of the bonds. However, in a letter of advice to the BHP board Samuel advised the board that the convertible bonds could be purchased on the open market—and key words here are 'on the open market'. On page 1,668 of the transcript, Commissioner Greenwood explored this issue. He asked:

Q: But so far as we have been able to ascertain, these bonds were not in fact acquired on any recognised market, were they?

A: Again, I can't tell you. I've—the only conversations I had were those that I relayed to the commission yesterday and they were the instructions given to Mr Wiesener to act as a broker to acquire the bonds. As to the methods or processes that he used to acquire them and whether he went through a recognised exchange as however described in any part of the world or whether he acquired them anywhere else, I am just not sure. But I would have thought the open market simply meant that they were acquired in a market sense from parties who had a free liberty to buy or sell and that's all that is implied and nothing more or less.

Q: Yes, I do not think that is the way we use open market in Australia, is it?

A: Well, the way than various expressions are used in Australia varies, Mr Greenwood, depending on whether you

are a regulated or member of the press—a party who is regulated or whatever—I'm not—I mean open market to me suggests a market of relatively free trades subject to such restrictions and regulations as every regulator deems fit to impose upon those who operate in the market. But concepts of recognised stock exchanges and the like are of course artificial concepts that are referred to in various pieces of legislation. I don't think anyone would for example suggest that if you wanted to acquire shares in a company in Australia on the open market that you had to acquire them through a recognised stock exchange.

Mr Williams, the Deputy Chairman of the NCSC, soon after that said:

Q: Mr Samuel, were we not shown a piece of paper at some stage which suggested that it would be very difficult to locate the holders of these bonds and that that had certain advantages? I have some difficulty in seeing how that squares with an open market by anybody's standards, but be that as it may.

Mr Samuel, being as helpful as he could to the commission, said:

A: Is that a question, Mr Williams, to which you want a response or ...

Q: No, it was a comment.

A: Okay.

Here is a bloke who has been pinged cold. He had just lied to the commission again about where he had been able to track the bonds down. He tried to pretend to the board that they were on the open market, he lied to the commissioner when he got caught out and he came up with the most outrageous definition of what constitutes a market to try and hide his lie. He told lie after lie to the commissioner.

In its report, and this is the damning part, the NCSC stated:

... Samuel had sufficient knowledge to appreciate that the bonds were not being acquired on the 'open' market. The Commission believes that the formal letter of advice from Macquarie Bank was misleading in that it stated the bonds were acquired on the open market and the Commission has no evidence that this impression was adequately corrected during the board meeting on 12 April.

Why did Samuel lie about how the bonds would be purchased?

The NCSC also reports that:

Substantial profits were made by the convertible bond holders from whom BHP purchased. Despite considerable efforts, the commission remains ignorant of the identity of the beneficial holders of the bonds.

As I have said before, it is now publicly known that it was Elliot, Scanlon, Wiesener, Jarrett and Cowper. That is why they were keeping it a secret. Samuel was the only person who knew where to find them. Thanks to the statement by Mr Jarret in 1994, we now know these bonds were owned by Elliot and Elliot, Scanlon, Wiesener and Jarrett shared in a

profit of \$78 million on the sale of those bonds. They were the beneficiaries.

Did Mr Samuel know who the beneficial owners of the bonds were? Of course he did. He was the only person who knew where to find the owners of the bonds to buy them in the first place. This deal was so bad that even Macquarie Bank could not stomach it. Mr Samuel resigned as a director of Macquarie Bank shortly after this transaction, he was interviewed and his evidence became public. That is how embarrassed Macquarie Bank were that one of its directors had so blatantly lied to a regulator.

The Treasurer says there is no-one better qualified to head up the ACCC than Mr Samuel. Let us review this bloke's form. This is a bloke who thinks insider trading is okay—something I know that Senator Campbell does not agree with—because it is inefficient to protect small shareholders. That is his view on insider trading. He has either breached the Corporations Law and been a director of a company trading while insolvent or he was utterly incompetent in the three years that he was on that board in knowing what was going on—and not just on the board but also on the audit committee.

He lied to the corporations regulator during its investigation of the infamously dodgy BHP-Elders cross-investments deal and he was found to have misled and lied to the BHP board in relation to the purchase of Elders bonds. In the light of this sort of corporate record, the government's claim that Mr Samuel is the best person qualified to head up the ACCC beggars belief and it is time Mr Costello accepted that his candidate is a fraud and a crock. Mr Costello should withdraw his name before he starts next week.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (2.58 a.m.)—What you have just heard are the ravings of a failed Labor frontbencher, a failed rooster who is quickly becoming a feather duster. It has been put on during the appropriation debate at 3 o'clock in the morning for one reason and one reason alone: it is because Senator Stephen Conroy can only say what he has said about Mr Samuel within the walls of this building. If he dared to say it outside—if he, as his great mentor Senator Robert Ray would say to others, walked the 10 yards to courage; walked through those doors and dared to say what he just said in public—he knows that he probably would not last longer than a few days in this place because he would be bankrupted by the court case that would be brought down on him.

This is probably the worst abuse of parliamentary privilege that I have seen in my time in this parliament. The allegations that Senator Conroy has made against Mr Samuel are outrageous. He is basically trying to resurrect his failing career after his role in

the disastrous attempt to resurrect Kim Beazley. He will find journalists who no doubt will have to look very carefully and take their own legal advice about what they reprint out of this. But to have this fellow opposite come into this chamber at three o'clock in the morning and not only seek to tarnish the reputation of a great Australian in Graeme Samuel but to effectively cast aspersions on those people who ran corporate law in Australia and who ran investigations—for Senator Conroy to effectively place himself in the role of investigator, judge, jury and executioner—shows just how silly, how stupid—

Senator Abetz—And boyish.

Senator IAN CAMPBELL—and boyish this senator opposite is. He clearly is not suitable material for the frontbench of the Labor Party. It is interesting to note that one of Labor's great leaders of the last century, Paul Keating—someone who played such a constructive role when he was Treasurer of Australia, who did so much to open up Australia, who was such a vigorous reformer and who has, and should, become an icon to thinking Labor people—actually made the decision to appoint Mr Samuel as the head of the then new National Competition Council. This is a Labor Prime Minister and Treasurer whose name will be long remembered while Senator Stephen Conroy's name is found scratched somewhere on a record of the people who passed through this place as yet another failed Labor senator from the dismal decade of Labor which we are in now.

I understand that three successful Labor premiers of this decade also regard Mr Samuel as not only a fit and proper person but the best person to fill this role. So not only is Senator Conroy offside with former Labor greats such as Mr Keating; he is also offside with successful Labor leaders who are successful at winning elections.

Senator Abetz—Yes, but he is offside with his current leader as well.

Senator IAN CAMPBELL—He is offside with most of the Australian Labor Party. What I suggest is that, if Senator Conroy has the courage of his convictions, if he believes the foul-mouthed language that he has used in this place to denigrate a citizen who cannot be in here to defend himself, he should indeed do what Senator Robert Ray does and walk the 10 yards to courage, show some courage and dare to say what he said outside. We know he will not do that, because we know him now to be a rather pathetic figure and he has displayed the pathetic nature of his political game. He is prepared to seek to abuse the privilege that he has been given by the Australian people to do that in here tonight. It is a very sad night for the Australian parliament, but let us hope that the senator who has sought to use this place for his disgraceful, cheap political purposes will indeed get

what is coming to him, as usually happens to people of his type.

Senator MURRAY (Western Australia) (3.04 a.m.)—I seek leave to make a two hour 37 minute speech! Instead I seek leave to incorporate the speech.

Leave granted.

The speech read as follows—

I rise tonight to speak to the Appropriation Bills (No.1) and (No.2).

My colleague Senator Lyn Allison will speak on the Appropriation Bill (Parliamentary Departments) Bill (No.1). The Parliamentary Departments Bill provides funding of approximately \$167m for the essential role of running the Parliament.

The first Bill appropriates \$40.5 billion from the Consolidated Revenue Fund for the ordinary annual services of Government.

The second Bill provides for the appropriation of money for items such as departmental capital, administered expenses for new agency outcomes and grants to the States and Territories.

The Democrats will not oppose these appropriation bills. We do not even contemplate blocking supply and never have.

When the Liberals complain about the 'obstructionist' Senate, they should remember that they are the only political party that has used the budget to bring down a democratically elected government.

As in other areas, they've never said sorry for that either.

One of the founding principles of the Democrats in 1977 was that we would not block supply. We would not do what the Liberal Party did—hold the government to ransom or hold the country to ransom.

But what the Senate must and does do is review legislation and policy—reject it if necessary, and hold the Government of the day to account.

The Prime Minister has told Australia that the Senate does not act as a house of review or as a states house. Taken to extremes that would mean committee review of all bills, not just one-third of bills, and would mean us asking all political parties and independents in each state and territory legislature their views on every bill.

Of course that's ridiculous. What the Prime Minister really dislikes is that the Senate is not his creature to bow to his will.

The Senate however is a representative chamber, where the majority rule, not a minority.

57% of voters do not give their primary vote to the Government in the House of Representatives (HoR). Conversely and disproportionately however, it holds 55% of the HoR seats.

The nearly proportional representation nature of the Senate (within States and Territories) provides a useful and desirable democratic counter to the distorted nature of HoR representation.

This better balance is reflected in the Government's share of votes and seats. In the Senate the Government had 42% of the national primary vote in 2001, and holds 46% of the seats.

The role of the Senate as a brake on the excesses of an unrepresentative HOR continues to be the subject of attack.

There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the HoR.

It is the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the HoR.

It is the Senate that protects the sovereignty of the people, not the HoR, which is dominated by representatives of the minority of voters with a majority of seats.

After the 2001 election 95% of Australians were represented by their party of choice in the Senate. In contrast, over 18% of the HoR were not.

It seems a long time since the 2003-04 budget was handed down on 13 May 2003 when the Treasurer surprised some with his 'sandwich and milkshake' tax cuts.

Since then we have had Budget estimates to further examine the budget papers, the Governor General has resigned, and generally the economic outlook is more positive with some rain across the country, and the SARS scare subsiding.

Since 13 May, I've also had a chance to glance back at the Treasurer's second reading speech at the time of introducing the Charter of Budget Honesty Bill back in 1996.

He stated at the time:

"The Charter of Budget Honesty Bill is major structural reform of the way in which this country presents and runs its fiscal policy. The bill fulfils an election promise by this government to make sure that the Australian accounts are presented in a fair and honest manner and to enshrine in legislation a requirement which will govern our government and any future government as to the way in which it will present and improve its financial performance."

This Government came to power promising to clean up the books and improve financial standards. They have done a great deal and the Charter of Budget Honesty was a significant innovation.

However, as time as gone on, they have dropped their standards, and in this, Treasurer Costello's eighth budget, the performance has been very disappointing.

Perhaps, the temptations of political advantage have led them inexorably to a situation where both their integrity and credibility are badly affected. Alternatively, the Treasurer's greater political aspirations have caused him to lose his budget honesty focus.

Labor's structural economic reforms under Hawke should not be regarded lightly, and set up a useful platform. In turn the Howard Government's economic reforms have been powerful.

In every one of those reforms the Democrats have played a major part, (crucially in IR and the New Tax Sys-

tem), in steering the policy home in the face of Labor opposition.

The Australian economy has been performing very well. We have relatively low inflation, interest rates and unemployment. The budget is in surplus and we have been experiencing GDP growth while other major economies are in recession.

The Australian Democrats are proud of their contribution, not only to the solid economy, but also in our quest for a fairer, more egalitarian Australian society.

But as I have stated, this budget is disappointing in a number of key respects. And those respects relate to budget honesty.

Firstly, the Government, against the advice of the Auditor-General and all other political parties, refuses to include the GST, which is a Commonwealth tax, in its Commonwealth financial statements.

This year, the GST will generate \$31 billion of revenue that the Treasurer, and these budget statements ignore. This is in clear contravention of Australian Accounting Standard (AAS) 31, and consequently, in contravention of the Charter of Budget Honesty.

Now I'm a great supporter of the GST. But I don't support it being 'disappeared'.

By the way, for anyone looking for a delightful resume of the GST, look no further than Ross Gittins piece in Wednesday's (25 June) Sydney Morning Herald.

As an aside, it is also worth noting that Chris Richardson of Access Economics estimates that the GST and the associated ABN and PAYG reporting is also pulling in an additional \$2.5 billion in income tax.

Secondly, although the Auditor-General, Labor and the Democrats believe that accrual accounting produces truer financial statements, the Government constantly switches between cash and accrual reporting and commentary depending on which one politically suits them, to create confusion for political advantage.

In next years budget 2004-05, the fiscal balance is forecast to be in deficit of \$1.1 billion. The Treasurer has conveniently ignored this.

Thirdly, the Government overstates its debt reductions. They should be justifiably proud of significantly reducing debt. But it is the 'net debt' reduction figure of under \$50bn which is the truer measure, rather than the over \$60bn 'gross debt' figure they have been using.

Fourthly, and perhaps, most embarrassing for the Government at the time of the budget, they have overvalued Telstra holdings by \$7 billion. In the face of questioning by Senator Conroy, Treasury tried to justify a valuation of \$5.25. With the share price of Telstra continuing to struggle to reach \$4.50 this year, this was optimistic at the very least.

Valuing assets can be a difficult business. Depending on the asset the accounting standard can allow historical cost, replacement cost, deprival value, fair value, market value.

Tricky businesses will sneak between these for what best serves their purpose.

But the one area that creative accounting doesn't work in is in shares in publicly listed companies. The one asset

that is dead easy to value are shares in a publicly listed company—because they must be priced at market value at close of business on the day of accounting.

The requirement is that the price of Telstra should be recorded at market value. So, these financial statements have not only defied the accounting standard, but they have deviated from the Government Finance Statistics (GFS) accounting guidelines as laid down by the International Monetary Fund.

Once again, these are the same rules that the Treasurer was so proud of when he introduced the Charter of Budget Honesty.

The fifth error is the failure to treat unfunded superannuation liabilities as a cost to the fiscal budget.

The total unfunded superannuation liability is now at \$82.4 billion. This is an increase of \$4.6 billion. If this was included, as it should be in the GFS, the 2002-03 fiscal balance flips from a \$1.5 billion surplus to a \$3.1 billion deficit.

Finally, there are a couple of fundamental assumptions that the Budget is based on that were clearly wrong. The forecast growth of three and a quarter percent was determined prior to the \$2.4 billion of tax cuts.

The 'sandwich and milkshake tax cuts' were devised by the Treasurer in such a hurry that the other budget assumptions could not be recalculated. Of course, it is possible that the tax cuts are seen as statistically minor, so that the Treasurer did not expect them to have any impact on GDP growth.

Another assumption, like the value of the Australian dollar being 60 US cents, on average through 03-04, was clearly incorrect at the date of the budget was handed down. The stronger dollar will impact favourably on inflation but adversely on Australian exporters.

What I have outlined above is unacceptable, inconsistent and financially devious.

If the Government Budget statements were those of a listed public company, the unreliable nature of their accounting and corporate governance regime would have hammered their share price.

The problem with being shifty, of being devious, deceitful or deceptive—whether it be children overboard, weapons of mass destruction, or denying the GST is a Commonwealth tax, is that it brings all else into question.

The Joint Committee of Public Accounts and Audit unanimously recommended that the Budget figures be audited. The Government have refused and that inevitably brings with it a suspicion of accounting slipperiness.

This refusal has cost them dearly. If the Budget had been audited, it is likely that the \$7bn Telstra overvaluation may have been discovered.

It is still possible for the Final Budget Outcome on 30 September to be audited as recommended by the JCPAA, "Review of the Accrual Budget Documentation", tabled June 2002, but it is unlikely.

The Government have stated that they don't have enough time to allow the Final Budget Outcome to be audited, but many listed public companies present their audited accounts in a much shorter period of time.

The Democrats urge the Government to return integrity and honesty to the presentation of our National Accounts. It is time the Government took the politics out of the figures.

Senator MACKAY (Tasmania) (3.04 a.m.)—On behalf of Senator George Campbell, I seek leave to incorporate his speech in the second reading debate on these bills.

Leave granted.

The speech read as follows—

These appropriation bills give us an opportunity to evaluate this government and its eighth budget. This is a dishonest government; this is a government that uses deception and obfuscation to maintain power. This is a government that lied about the children overboard scandal, and it is a government that has been less than frank about the supposed weapons of mass destruction Iraq had.

This dishonesty has always been present in its approach to the budget. This is the highest taxing government in Australia's history. We know this despite Treasurer Costello's refusal to include the GST revenue into his budget figures. This is contrary to the views of the government's two financial watchdogs, the Auditor-General and the Bureau of Statistics. With the GST added back in, the real tax take is a massive 198.6 billion dollars.

What has this government done with these massive revenues? It has delivered the smallest tax cut in history. The smallest tax cut in history delivered by the highest taxing government in history. According to Minister Vanstone, an average worker will be lucky to be able to buy a sandwich and a milkshake with the money handed back by the government. Not even the government's ministers believe the empty rhetoric offered by the treasurer.

As an aside, I was very interested in observing the infighting between the Treasurer and the Prime Minister as to who thought up these tax cuts. Frankly, it is hard to believe either of them on this or most issues. Peter Costello claims to have thought up the tax cuts when John Howard was visiting George W Bush's Texas ranch, a reward for the toadying efforts of the Prime Minister during the invasion of Iraq.

What else did the public get besides a sandwich and a milkshake? The public got a tripling of student debt. Australians have paid a heavy price for John Howard's \$5 billion cut to universities and his increase in HECS fees on students. According to the government's latest figures, student debt will have more than tripled under the Howard Government.

Under the later forecasts, student HECS debt is expected to reach a record \$11.5 billion by 2005-06.

This budget adds another \$800 million of debt onto Australian students.

What else does this government offer ordinary Australians? This mean and tricky Prime Minister offers funding cuts of \$918 million from our public hospitals. These cuts will lead to fewer nurses, fewer operations and longer waiting lists for elective surgery.

Where has this money gone?

It exactly offsets the budgetary impact of the government's \$917 million Medicare package, a package that will destroy Medicare and end to bulk-billing.

These are a few of the little nasties this budget has for ordinary Australians.

However, the area I wish to concentrate on in this evaluation of the government's economic credentials is industry development and promoting the competitiveness of industry.

Where do we start with this government?

Let us start with industry policy. Total budgetary assistance to industry by the Commonwealth was approximately \$3.9 billion in 2001-02. Despite this incredible level of expenditure, there are no discernable national industry policy objectives and no clear and accessible vision for industrial development in the future. We have 'Backing Australia's Ability', a massively back-ended program that is subject of financial mismanagement, amidst a general failure to understand the true nature of innovation.

We have the Strategic Incentives Investment Program, a program plagued by lack of transparency, no clear goals and an over-concentration on one specific industry sector. This program has offered investment incentives totalling \$663.8 million to particular projects since 1998. Yet the program has had mixed results. Despite offering \$85 million worth of incentives to the Methanex Corporate for the development of a methanol plant in West Australia, the projects future is still in the balance. Now the Australian Magnesium Corporation's Stanwell project is in doubt.

These are not isolated examples of this government's failings.

We can look at the freezing of the R&D Start program, the cuts to COMET, the cuts to EPICS and PICS etcetera...

Let's look at Research and Development and Innovation. Beside the attacks on universities that I discussed earlier, what else is this government doing in this area?

We have the R&D Start Freeze; the cuts to COMET and the slashing of the R&D tax concession in from 150% to 125%. Where has this led us?

We have a Business Expenditure on Research and Development rate of only 0.72 per cent of GDP compared with 0.87 per cent in 1996. Restoring Australia's R&D effort to the levels of the Labor Government would require an extra \$1 billion in private investment.

But even that would not be nearly enough to make Australia globally competitive, since the OECD as a whole has surged ahead. Australia lags behind most OECD countries, including Finland, the USA, Germany, Belgium, France, Canada and the Czech Republic.

Deliberate Government policies have contributed to Australia's long term slide including:

- A \$2 billion cut in the R&D tax concession in the 1996 Budget;
- The freezing of the R&D Start Program, with 115 companies being told to withdraw their applications;
- The back-end loading of the Government's innovation statement, Backing Australia's Ability; and
- A 30 per cent cut in industry department funding and a 10 per cent staffing cut.

Let us look at some other areas. Let us look at the issue of debt and foreign debt. Prime Minister Howard has had a long and chequered history with his performance scorecard. When he left government as Treasurer back in 1983 the current account deficit was minus 3.5 per cent and net foreign debt was 7.4 per cent. He had helped blow this debt out by increasing Commonwealth general government net debt in his years as Treasurer from one per cent of GDP up to 7.9 per cent of GDP when they were thrown out of office. And now foreign debt has hit an all-time record under the Howard government. It is \$362 billion and has doubled since Peter Costello became Treasurer.

And who can forget the debt truck? Who can forget the coalition partners, when they were in opposition, taking around this country the debt truck, parading it around the nation at that particular time? And what did Prime Minister Howard say about the debt truck at that time? In a speech to the Real Estate Institute on 17 October 1995 he had this to say:

“The debt truck has helped heighten in the eyes of the Australian community the link between our level of overseas debt and the high level of interest rates ... obviously if one has to borrow money from a situation where one is already in debt, when one is heavily mortgaged ... obviously one is going to be charged a premium ... The same thing applies for a nation.”

Under the Howard government's economic management that debt truck has become a road train and it is now parked in the driveway of every household in this nation.

This debt explosion is a direct result of this government's failure to support industry. The absence of an industry and export policy is returning Australia to a farm and a quarry. Growth in exports of sophisticated manufactured goods has slumped almost 60 per cent since the Howard government came to office.

I find it amazing that the highest taxing government in Australia's history has to constantly resort to cutting industry programs to prop up its fiscal record. This is destroying the confidence of industry in this government. This government has failed to grasp the many opportunities presented to this government to support industry.

I am especially disappointed that the government has failed to implement any of the recommendations arising from the bipartisan report by the Senate Economics References Committee on Promoting Australian Industry. This was released in July 1998 entitled ‘Creating Opportunities’. Two key recommendations coming out of this report was the need to focus on transparent, critical government support for high-value adding, high skill industries; and the need for policies that maximise private and public expenditure on research and development. It is clear that this government has failed on both counts.

Central to this failure is a failure to understand the role of government in industry policy, especially in promoting the manufacturing sector. This is something the present government never talks about. The government seems to be scared of industry policy; they may introduce some policy initiatives, but it is always ad hoc and often contradictory, representing policy formulation on the run. The ALP does not shy away from promoting a coherent industry policy

and the need for Australia to specialise in knowledge intensive industries.

The failure of Australia to specialise in knowledge-intensive industries is the failure to implement effective and active industry policy in a period when international sentiment for proactive industry policy is growing. This sentiment is partly driven by successes like Ireland, which experienced annual output growth of 8 percent and employment growth of 50 percent between 1990-2000. Now the biggest exporter of computer software in the world, Ireland's success follows from an effective, active industry policy. In contrast, Australia's export sector is still dominated by primary products and simply transformed manufactures. Our knowledge intensive goods sector is underdeveloped and innovation, research and development are well below OECD average.

The move towards knowledge intensive industries, for example the plastics and chemical industries, is stalled under the Howard government. The Coalition Government's dogmatic and contradictory policies have failed. In 1997 we got “Investing for Growth” and its trail of broken promises, now “Backing Australia's Ability” is looking shallow. From the beginning, this program was about public relations rather than public initiatives. The funding is massively back-ended. At the end of the 2nd year of the 5-year program, just under 20% of the 3 billion has been spent. The R&D Start fund was so badly mismanaged that the money for last year ran out in January, leaving a huge number of companies high and dry. This demonstrates the Government's real commitment to industry. Australia has dropped to 11th out of 15 OECD countries surveyed on the ratio of Business Expenditure on Research and Development (BERD) to GDP. Australia's BERD is just a third of Finland and the United States.

The Strategic Investment Program best demonstrates the failure of ‘Backing Australia Abilities’. I am not disputing the need for investment support to encourage large-scale projects from traditionally international footloose industries. However, I have severe reservations about the current program. The major flaw of this program is its lack of transparency. I appreciate the need for commercial confidence, but when AusIndustry is granting funding up to 100 million dollars, the process should be transparent and utilise cost-benefit analysis. Without this, industry as a whole can have little confidence in Industry Policy, and it is all too easy to perceive industry support as financial support for the big backers of the Liberal Party.

This is a tragedy. A tragedy that will condemn generations of young people to low wage, low skill jobs in declining industries; or no jobs at all. This will be the legacy of this government; a legacy that will stain future generations.

This is a tragedy that is avoidable. This is the highest taxing government in history, yet it has to slash funds from public hospitals, universities and industry support.

Senator MACKAY (Tasmania) (3.04 a.m.)—On behalf of Senator Crossin, I seek leave to incorporate her speech in the second reading debate on these bills.

Leave granted.

The speech read as follows—

I rise to speak tonight on the Appropriations Bill 2003 which provides the means by which funding is approved by the Parliament.

This year the Howard Government has delivered a number of reforms which impact on people in the Australian community unfavourably. Two of which are the Medicare and Higher Education reforms. Similarly the continuing demise of the Office of the Status of Women must be highlighted.

Higher Education

The budget statement announced by Treasurer Costello, and based on the Higher Education reform proposals of the Howard Government offers little hope to either universities or students.

Inadequate additional funding is offered to universities, much of this earmarked or tied by proposed conditions of eligibility; universities have little choice but to raise their fees at a cost to potential students, who can take up proposed government loans, but then have to pay them back at interest plus CPI.

It is a purely ideology driven statement of increased user pays which sees the better off with more chance of higher education, while at the same time proposing a tightening of the Workplace Relations Act and funding conditions that encourage universities to reduce staff unionism and have more staff on individual AWA's.

The budget statement was a real smoke and mirrors effort, within which the figures, on more detailed analysis simply are not standing up to scrutiny.

Of some 25000 claimed new places being funded, the great majority of these have been part funded over-enrolments taken on by universities as a desperate measure to get at least some additional funding from the government.

Of the genuine additional places, some are earmarked for nursing courses, and estimates are that there will in fact be only around 2000 new places for other courses, and these do not come into being until 2007!

The Howard Government budget does virtually nothing for the 20,000 young Australians a year who are qualified but cannot get a university place.

Under this funding regime, universities will be allowed, indeed forced to raise fees paid by students. The Minister claims that by 2005, students will on average be paying 26.8 per cent of their course cost.

However, various other calculations using real figures give a different picture—for example Peter Karmel in The Australian HES of 18th June shows that a far more realistic figure is that students will on average be paying almost 40 per cent !

Those who can afford to take up places will end their studies with debts of tens of thousands of dollars to repay with interest plus CPI indexing.

Again the Howard Government offers an inadequate solution—small scholarships of \$2000 for general expenses and \$4000 towards accommodation.

Many students will end up having to work whilst studying—the AVCC has called for a review of the Student Support Scheme saying it does not meet the needs of many students who are then forced to work longer hours while

they could be studying. So these “reforms” can hardly be seen as in any way equitable.

The budget is to provide a pot of \$122.6m for regional loading of funds—this to make some allowance for distance and higher costs in regional areas.

Depending on a set of factors regional universities could get a loading from 2.5 per cent up to 30 per cent for the Northern Territory University. However, further scrutiny and consideration of this is seeing increasing criticism.

Several institutions having done their figures have estimated they will be no better off under this scheme. Why is this??? It is because the government propose that this loading applies ONLY to student numbers ON CAMPUS.

There is nothing to cover the costs of the many students which our regional universities enrol as external or distance education students. For example the NT University has 50 per cent of students off campus.

Again we refer back to smoke and mirrors—the NT University will get a 30 per cent regional loading (for those students on campus only).

However, a study quoted by the VC, (HES 11/06/03) and done by KPMG showed that the actual extra cost of running NT University was up to 35 per cent.

Furthermore this university was already receiving a loading of approximately 17 per cent, so in real terms additional funding in the regional loading is only about 13 per cent and only for about half the enrolment! The VC concluded that “So we doubt that it will actually give us any financial relief as we understand it at the moment” (HES 11/06/03 P31).

And that really sums up this governments' Higher Education budget—it gives relief to nobody. It continues the ideology of user pays. It fails to see higher education as an investment in the future but rather considers it a burden—some cost.

It moves a little further to privatisation of everything, whilst at the same time the government cannot resist threatening the workers with tighter WRA changes and even possibly pushing for voluntary student union membership.

Medicare

The 2003 Federal Budget shows a withdrawal in funding to public hospitals already in the Forward Estimates to fund the so-called “A Fairer Medicare” package.

Instead of recognising the pressure that Emergency Departments face, the Howard Government is diminishing funding to public hospitals by \$918 million over four years.

Emergency Departments in private hospitals are over loaded, simply due to the fact that Australians, and in particular Territorians, are finding it harder to see a doctor who bulk bills.

The changes that the Howard Government is proposing will simply place further burden on our already over-worked public hospitals. Parents with sick children are waiting at the hospital for several hours at night simply because they cannot afford to see a doctor, or the few doctors who bulk bill are booked for several days in advance. The situation in the Territory is at crisis point.

I recently conducted a survey in Palmerston regarding the decline in bulk billing.

I was surprised at the time and effort a lot of people took in responding to my survey. Territorians feel strongly about this issue. I will take some time to read a few responses to my survey, from average Mums and Dads from the Territory.

Simon writes, "Medicare is, and should be, for everybody. Private Health cover is too expensive, even for the average family. Private Health cover is fine for those who want it and can afford it. Medicare is a fantastic service and should be kept in place and improved on."

Andrew writes, "Health care should be available to everyone, irrespective of a person's income. The Howard Government is trying to introduce an American Private Health Care system, which would be to the detriment of the majority in this country. The provision of health care is the responsibility of the federal Government, not the individual."

And Jane writes "It is getting more expensive to visit a doctor, with children and then have to pay out for medication on top of that. I recently had two sick children and couldn't afford to take both to the doctors, so I picked the sickest child."

Under John Howard, bulk billing has fallen to an unacceptable national rate of sixty-eight and a half percent.

The rate of doctors who bulk bill in the Solomon electorate is fifty-six percent. In John Howard's seat of Bennelong, the bulk-billing rate is over eighty percent.

The average cost to see a doctor in Solomon is thirty-eight dollars, and steadily climbing. If two children get sick, Mums and/or dads need to come up with seventy-six dollars up front to see the doctor, something that many parents simply cannot afford to do.

Territorians deserve better Mr Howard.

In prosing incentives for pensioners and low-income earners, but not for others, John Howard is turning his back on the majority of Territorians who pay for Medicare through the Medicare levy and through their taxes—and who will receive nothing under this proposal.

The fact that the package includes a new safety net for concession cardholders and a new capacity for others to insure privately for medical expenses over \$1000 is an admission that costs will rise.

It will no longer be an Australian Health Care System—it will be an Americanised health care system. Our Medicare is the envy of the Western World and John Howard is trying to change that.

The fundamental principle underlying Medicare is that health service should be available according to medical need, not a patient's capacity to pay.

Medicare had once removed financial barriers to Australians seeing their GP's. We are now headed in the opposite direction—where Territorians will have to have to ask themselves "Can I afford to go? Can I afford the payment up front?"

John Howard has always wanted to kill Medicare—this is his plan in action.

A Crean Labor Government will:

- Immediately lift the Medicare patient rebate for all bulk billed consultations to ninety-five percent of the scheduled fee—an average increase of \$3.35 per consultation; and
- Subsequently lift the Medicare patient rebate for all bulk billed consultations to one hundred percent of the scheduled fee—an average increase of five dollars per consultation.

In addition, Labor will offer powerful financial incentives to doctors to not only keep treating their patients without additional cost, but to extend bulk billing, especially in regional areas where the collapse of bulk billing is hurting families most.

Office of the Status of Women

I would like to move onto the Office of the Status of Women. This is an area, which has seen significant and detrimental changes since the Howard Government came to power in 1996.

The demise of this office, in turn has affected the progress of the equality of opportunity for women in Australia and the consideration that is given to women in policy making across the board.

Most importantly despite the Prime Minister's denial that money was taken from the Office of the Status of Women to fund the National Security Information Campaign, it was revealed in Senate Estimates that this was in fact the case.

Although disguised by the Department of Prime Minister and Cabinet, \$10.1 million dollars that had been allocated to the OSW was actually diverted to finance the National Security Public Information Campaign.

The \$10.1 million apparently unspent in the 2002-03 financial year under the programs of Partnerships Against Domestic Violence and the National Initiative to Combat Sexual Assault was diverted to the Fridge Magnet Campaign which has come under incredible scrutiny as being a waste of tax payers money. In fact, as many people may remember thousands of the fridge magnets were returned to Australia Post in protest!

Despite the Department of PM&C claiming the shift of the money was legitimate and legal, it must be said, firstly, the fact that the OSW cannot spend money on programs aimed at domestic violence, the Governments pride and joy, or combating sexual assault- is a serious concern for women in the community who live with the threat of domestic violence every single day of their lives and those who try to provide adequate services to victims of domestic violence and sexual assault with limited funding.

Secondly, the way the Government has gone about transferring money from two specific women's programs to a contentious and controversial campaign that does not have any benefit to women dealing with domestic violence is unconscionable.

Despite further claims that the money was not specifically allocated to programs, that no one would loose out, and that the money had been reallocated to the 2003-04 and 2004-05 years, it still demonstrates the disregard that the Howard Government has for women in this country.

The OSW has been reduced to a research body, not actually administering any long-term programs, to improve the status of women.

The Government has continually boasted the successes of its Partnerships Against Domestic Violence program. However, as revealed in Estimates, there actually has not been a survey conducted on the number of women who endure domestic violence in Australia since 1996, when the Howard Government was elected.

As this is the case, how then does the government applaud the success of the PADV program? The OSW conceded that the next survey would not be conducted till 2006 and would be conducted by telephone.

This seems extremely inadequate in any case but especially in the case of indigenous women in the Northern Territory. Surely this in itself exposes the lack of commitment and the disregard for the practicalities of women's lives in Australia by this Government.

It seems the OSW has become extremely ad hoc and staff can see the demise of the important role of the OSW in the Australian Government that it was formed to contribute. There is no longer comprehensive analysis of Government policy and no future commitment to a women's budget statement.

The departure of the Head of the Office of the Status of Women Ms Rosemary Calder recently on stress leave is proof of the unfortunate position this government has put the Office in and the pressure that those in the Office are dealing with.

The hundreds of women's organisations around the nation have also had to deal with the consequences of the Howard Governments disregard for women in this country.

There is now limited consultation with only a limited number of secretariats that must comply with orders prescribed by the Howard Government in order to receive vital funding.

Conclusion

In these three areas alone, the inadequacies of the Governments policies are obvious. They are obvious to those in the community who will be made to pay more for tertiary education and healthcare.

It is obvious to women in the community that the Howard Government is not taking them seriously and has failed to provide mechanisms for the promotion of equal opportunity for women.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (3.05 a.m.)—Over the last seven or eight years I have known Graeme Samuel and I have had some vigorous discussions with him and some vigorous disagreements. Some of the views he has I do not share, but I do want to associate myself with the remarks of Senator Ian Campbell tonight. I think that speech was a particularly vicious speech. I realise that it is 3 o'clock in the morning, and I do not want to go into a great deal of detail, but I will associate me and my colleagues in the National Party with the views put by Senator Ian Campbell.

Senator LUNDY (Australian Capital Territory) (3.06 a.m.)—I rise tonight to make a contribution to

the debate on the Appropriation (Parliamentary Departments) Bill (No. 1) 2003-2004, the Appropriation Bill (No. 1) 2003-2004 and the Appropriation Bill (No. 2) 2003-2004, and in particular the effect of the budget on women and families. Mr Howard has always been at such pains to represent himself as pro family. He has even used this so-called pro family stance to wind back the gains made by women during the Labor years. This year's budget again penalises families and is the culmination of Mr Howard's anti-women, antiquated attitudes. What a hypocritical and shameless government this Howard government is. Take, for example, the Prime Minister's posturing on maternity leave. Last September we were treated to happy pictures of the Howards with young mothers and told that John Howard had jumped the picket fence and put working women at the top of his reform agenda.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Lundy, you will refer to the Prime Minister by his proper title.

Senator LUNDY—This apparently indicated his desire for paid maternity leave to be included in any package designed to give extra choice to women. Senator Minchin was given the task of scuttling any real commitment to paid maternity leave, with Mr Howard pretending as late as March this year to still be in favour of the scheme. Now we are asked to believe that he is still considering it and even looking at an extension to cover all new mothers. We will see about that. I do not think it is going to happen.

The Sex Discrimination Commissioner, Pru Goward, has pointed out that the absence of a national scheme means that Australian women will continue to return to work early and leave their children early—hardly in step with a so-called family focused nation such as ours. Meanwhile, women in all other OECD countries except the United States are able to remain at home for at least those first precious months. In Australia, for low-income families the scrapping or delaying of the scheme means that new mothers have to return to work when the baby is only a few weeks old. That is not family friendly. The Sex Discrimination Commissioner says that it is the responsibility of the government to provide a comparable maternity leave scheme to those in other OECD countries and urges this government to commit to a national scheme of paid maternity leave as soon as possible.

The fact is that, in this budget, the government made no forward or future commitment to even a phasing-in of paid maternity leave. This demonstrates the depth of its cynicism towards women and families. So Australia's embarrassing reservation to the maternity leave provision of the Convention on the Elimination of all Forms of Discrimination against

Women, CEDAW, remains. Work and family measures that were expected in this budget were totally absent and the government has signalled its disdain of the importance of family friendly workplaces by cancelling the September 2003 work and family awards.

Let us look at how women and families are faring under this government and this budget specifically. More than one in every five families living in sole parent families are in poverty. Around 98 per cent of sole parent families are headed by women. Those living in families consisting of a couple with children have about a one in eight chance of being in poverty with the risk increasing steadily as the number of children in the family increases.

Under the Howard government, the gap between rich and poor has widened steadily. Women, of course, form the majority of those in the category of low-paid workers, partly because they are the majority of casual and part-time employees and partly because, after all these decades since the equal pay for women arbitration decisions, women still do not receive equal pay. Full-time, ordinary time women's wages were only 84.4 per cent of the equivalent men's earnings seasonally adjusted in November 2002. Yet the budget's much vaunted tax cuts return least to those on the lowest wages and maximum rates to high earners. Again, the government chooses to penalise women particularly and to favour the rich at the expense of the poor.

Among the coalition's new and recycled industrial relations bills is the cynically and cruelly titled Workplace Relations Amendment (Protecting the Low Paid) Bill 2003. The rationale for this bill seems to be that setting reasonable minimum wages is likely to price the low-paid and unemployed out of work. According to this government, a job with a poverty wage is better than no job at all. The 'Low Paid' bill hits women workers—overrepresented among low-paid workers—especially hard. Its effects on the provision of child-care services, for example, will be devastating. Firstly, low-paid workers are already finding that quality child care is increasingly not affordable for them. This bill, if passed, would also have the effect of further discouraging any ambition of people to work in child care. Child-care professionals are notoriously underpaid, earning as little as \$11.99 hourly full-time rate on commencement. Top level directors in charge of centres earn only \$23 per hour. The pay rates in no way reflect the responsibility or value of this work.

The Howard government's record on child care has been described as a trail of destruction. In its first four years, the Howard government stripped \$850 million from the child-care budget. As a result, thousands of children from low- and middle-income fami-

lies were denied what had then become unaffordable care, and centres in needier areas closed. Similarly, the Howard government cut the special needs subsidy, with the result that numbers of children with special needs or a disability—in other words, those most in need—were effectively denied child care. Nothing has been done by this government to promote and invest in accessible, quality child care. Under this government, child-care professionals have become an endangered species. Just ask someone who is trying to get a child-care place for a baby.

Australia's need to pay for the invasion and then the rebuilding of Iraq caused by the coalition's subservient eagerness to support George W. Bush in his still unjustified war adversely affected women, especially through health, welfare and education cuts. Let us have a look at health. The Howard government's dismantling of Medicare and its plan for first- and second-class health care will impact disproportionately and disastrously on women and families. Millions of low-income Australians who are not eligible for a concession card will have to choose between basic medical care for their family and financial hardship.

Funding of women's groups has become highly selective, with four national secretariats administering grants totalling \$150,000 each. Only about 35 women's groups are registered with these national secretariat organisations. Women's programs, funded and administered through the Office of the Status of Women, also receive scant respect from this government. At the recent estimates hearings at the end of May, officers representing the Office of the Status of Women revealed underspending totalling \$10.1 million on two important programs to combat violence against women: the Partnerships Against Domestic Violence program and the National Initiative to Combat Sexual Assault. This money was used by the Department of the Prime Minister and Cabinet to part fund their national security public information campaign, better known as the fridge magnets. Although the time frame for these programs has been extended and most of the funding reinstated to cover this extension until 2004-05, this does not compensate for the time lost. It is a telling example of this government's priorities and of its disregard of women.

The Office of the Status of Women has declined in influence under the Howard government. The Office of the Status of Women has been without a division head since March with the resignation of Rosemary Calder. Similarly, the Prime Minister does not understand the need for a sex discrimination commissioner. The government's rehashed Australian Human Rights Commission Legislation Bill 2003 seeks to abolish the specialist commissioners of the Human Rights and Equal Opportunity Commission, including the

Sex Discrimination Commissioner, and to replace them with three generalist human rights commissioners. Now the Legal and Constitutional Legislation Committee has reported on the provisions of the Human Rights Commission Legislation Bill 2003 and recommends, logically and unsurprisingly, that the three human rights commissioners each have a designated area of responsibility, such as—surprise, surprise—human rights and responsibilities, sex discrimination, and race discrimination and Aboriginal and Torres Strait Islander social justice. Indeed, the conclusion of the non-government senators is that the legislation is not worthy of a second reading, representing as it does ‘an ideological obsession of the Howard government at taxpayers’ expense’.

I turn now to education. The latest tertiary education funding cuts will also have a significant gender impact, as well as a likely 30 per cent increase in university fees. Although 54 per cent of higher education students are female, they are concentrated in courses such as education, health, society and culture, and the creative arts. Male students, by contrast, are concentrated in the fields of engineering, information technology, architecture and building—which later lead to higher-paying jobs. Raising the cost of traditionally male dominated courses is likely to make them more male dominated as female students are more debt averse.

Does the government realise that this selective fee increase will work against the aim of raising the number of women who enter non-traditional courses such as engineering and information technology? Does the government realise that its \$2.5 million increase in funding to the Higher Education Equity Program, or HEEP, is likely to be largely wasted because of its encouragement of the ‘ghettoisation’ of women into traditional female fields of teaching and nursing? The longer term flow-on effects are an increasingly sex-segregated labour market in these areas.

Again, women fare badly under the Howard government in their representation in, and their rights under, the law. Yet another symbolic door was slammed shut for women with the refusal to appoint another woman to the High Court when the only women judge, Justice Mary Gaudron, retired earlier this year. In line with the Howard government’s determined winding back of women’s rights, the High Court has reverted to an all-male preserve. With women making up 51 per cent of the Australian population and with approximately equal numbers of women and men graduating in law, it should reasonably be expected that the number of women judges, barristers and women at senior levels in this profession would be climbing towards parity. This is not so. The High Court has lost its only female justice and in

other jurisdictions—the Federal Court, the Family Court and Industrial Relations Commission—the number of female judges or commissioners has remained virtually the same since 1998. In 1999, 89.3 per cent of all barristers were male. Yet again the Prime Minister has not found a woman worthy to hold the office of Governor-General.

It is clear that the Howard government, for all its posturing, is indeed intent on winding back women’s rights in Australia to those applying in the pre-Whitlam government era and wiping away the gains made under the Hawke and Keating governments.

One of Australia’s obligations under the Convention of the Elimination of All Forms of Discrimination against Women is the making of periodic reports. These were submitted at four-yearly intervals as expected up until the third periodic report in 1995. Since the Howard government came to office, Australia has not submitted another periodic report. Now we are told that Australia’s next report, the combined fourth and fifth periodic reports, is currently with the minister and will be submitted in 2004. According to the UN web site, Australia’s fourth periodic report was due in August 1996. Clearly 1996 and the election of the Howard government was when the whole agenda for women changed. Refusal by the government to sign the optional protocol to CEDAW, despite being urged to do so by its own officers, who had a significant part in its development, should have caused Australians to be highly alert to the government’s agenda of winding back human rights generally and women’s rights in particular.

Additionally, this refusal to sign should have alerted and alarmed us then as to this government’s agenda of weakening of the United Nations treaty system. Contrast, for example, the government’s actions regarding the trafficking of women and girls for prostitution with its actions on refugees. Reactions by the government’s officials and departmental representatives on the allegation of the trafficking in women and girls have been shameful. We have seen inaction and a seeming lack of interest in arresting perpetrators or stopping the trafficking, combined with the harsh treatment or deportation of the victims as illegal immigrants.

To date, there have been no prosecutions of traffickers under the Commonwealth laws since their introduction in 1999. Priority is given to the enforcement of immigration law. Women working illegally in the Australian sex industry are detained and promptly deported. The government seems more keen to punish the victims rather than the criminals. Refugee women and children, too, are treated harshly and imprisoned in detention camps. This is not a proud record of achievement on women and families; it is an absolute disgrace.

Contrast this with what should be happening. We are in Australia in 2003 and women are seeking an alternative vision, and Labor will provide it. It is a world where women can stand up and know that a future Labor government will be working towards real equity, working towards an environment in which they can be proud, in which they will get equal pay and know that they have a government committed to providing genuine family friendly circumstances and will understand that there is a collective commitment to making that happen. That is the contrast. Under the coalition government, we have had this shameful record of growing discrimination and a lack of regard for the concerns facing families and women. Under a future Labor government, that will be a very different situation.

Senator ABETZ (Tasmania—Special Minister of State) (3.21 a.m.)—I thank those senators who incorporated their speeches. I would make some brief comments in relation to Senator Conroy's contribution. I think he demeaned himself and highlighted the deep divisions that currently exist within the Labor Party. In his attack on Mr Samuels, of course, he not only attacked the fact that the coalition government supports the nomination of Mr Samuels but also attacked—and I think this was the real purpose of his doing so—three Labor premiers who also support his nomination and believe that he is the best and a very proper person to fulfil the role.

Whilst Senator Conroy sought only to refer to the coalition's support of Mr Samuels, he of course knows that three of his Labor premiers do support the nomination of Mr Samuels and, therefore, in his undoubted factional way and the internal machinations within the Labor Party, he was also attacking those three Labor premiers. The simple fact is that Mr Samuels does enjoy bipartisan support, other than one or two of the Labor leaders who, for their own peculiar reasons, do not. Senator Conroy's speech, and indeed Senator Lundy's speech, were marked by the empty rhetoric that, unfortunately, parliamentarians descend into from time to time when they have no policies of their own to advance.

We heard the fantastic proposition from one of the quota girls from the other side, Senator Lundy. We heard from her that Mr Howard is anti women. I think that would come as a bit of a surprise to his wife, to his daughter, to all the female members of the coalition in this place and to the hundreds of thousands, indeed millions, of women who consistently vote for the coalition government and for the coalition parties. As a coalition we enjoy more support from Australian women than we do from Australian men. Undoubtedly that is because they have a somewhat sadistic pleasure in this anti-woman Prime Minister. What a fantastic proposition to serve up to

us. The only explanation is that it is a bit late in the day and we will forgive and overlook Senator Lundy's extravagant language.

The simple fact is that the appropriation bills we are discussing are part and parcel of the very sound economic management of this country, where we have seen the Labor debt that we inherited reduced substantially, about two-thirds of it has now been paid off—some \$60 billion. We are seeing ever-decreasing unemployment and a low-inflation environment in which people can now afford to buy their own home. They enjoy the 30 per cent health insurance rebate. They appreciate the fact that we have concentrated on good sound economic management that has delivered good, sound social policy. I commend the bills to the chamber.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Australian Film Commission Amendment Bill 2003

Taxation Laws Amendment Bill (No. 4) 2003

Taxation Laws Amendment Bill (No. 6) 2003

Wheat Marketing Amendment Bill 2002

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Letters have been received from party leaders seeking variations to the membership of certain committees.

Senator ABETZ (Tasmania—Special Minister of State) (3.26 a.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Economics Legislation and References Committees—

Appointed—Substitute member: Senator Barnett to replace Senator Brandis from 30 June to 8 August 2003

Employment, Workplace Relations and Education Legislation and References Committees—

Appointed—Participating member: Senator Bartlett

Finance and Public Administration References Committee—

Appointed—Substitute member: Senator Murray to replace Senator Ridgeway for the committee's inquiry into staff employed under the *Members of Parliament (Staff) Act 1984*

Legal and Constitutional References Committee—

Appointed—Substitute member: Senator Stott Despoja to replace Senator Greig for the committee's inquiry into the establishment of an Australian republic with an Australian Head of State

Rural and Regional Affairs and Transport References Committee—

Appointed—Substitute member: Senator Colbeck to replace Senator Heffernan for the committee's inquiry into forestry plantations to be held in Launceston on 6 August 2003.

Question agreed to.

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

Referral to Committee

Senator ABETZ (Tasmania—Special Minister of State) (3.27 a.m.)—I move:

That the Australian Protective Service Amendment Bill 2003 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 18 August 2003.

Question agreed to.

INSURANCE AND SUPERANNUATION COMMISSION

Return to Order

Senator ABETZ (Tasmania—Special Minister of State) (3.27 a.m.)—by leave—Mr Deputy President, I seek leave to incorporate in *Hansard* a statement in response to an order of the Senate relating to FAI Insurance.

Leave granted.

The statement read as follows—

On 19 November 2002, the Senate agreed to an order to table documents that essentially relate to companies related to FAI Insurance, which ultimately became part of the HIH Insurance Group.

The files requested relate to a period over 20 years ago. In response to the Senate's request, officials have identified 42 files that fall within the scope of the Senate's request. Officials estimate that there are over 6,300 pages of documents in these files.

The documents relate to period from 1974 to the early 1980s.

Given the elapse of time since the documents were created, I am advised that officials are not aware of anyone still working in the Treasury Portfolio who can provide the context in which the documents were created.

Since the Senate's request, the Government tabled Commissioner Owen's report on the "The Failure of HIH Insurance" on 16 April 2003.

The Commissioner concluded that the primary reason for the collapse of HIH was the failure of HIH to provide

properly for future claims. The failure was essentially due to mismanagement and an inadequate response to pressures emerging in insurance markets internationally.

It is important to note that the Commissioner did not make any adverse findings relating to the period covered in the files that have been requested by the Senate.

I am advised that tabling the files would require them to be copied to each Senator. Given that there appear to be around 6,300 pages of documents in the files, that would involve almost half a million pages of copying.

As I noted earlier, the documents relate to events that occurred over 20 years ago. The Royal Commission has also reached a conclusion that APRA did not cause the collapse of HIH. Furthermore, the Government (and I acknowledge the support of the Opposition) has reformed APRA's governance arrangements through the Australian Prudential Regulation Authority Amendment Bill 2003.

In the circumstances, I do not consider that I can justify the use of public resources to create the copies that would be required to table the files as requested.

However, if Senator Conroy remains interested in the documents despite the release of the Royal Commissioner's report and the passage of the APRA Amendment Bill, I am prepared to grant the Senator access to the relevant files which I am advised are all currently held in the Department of the Treasury.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! I now propose the question:

That the Senate do now adjourn.

Centenary Medals

Senator TCHEN (Victoria) (3.28 a.m.)—I rise tonight to clarify a matter that seemed an unnecessary exercise, in the mind of Senator Faulkner, during the recent budget estimates hearings. On Tuesday, 27 May 2003 at the Senate Finance and Public Administration Legislation Committee's budget estimates hearing, Senator Faulkner, showing his usual extraordinarily fine grasp of the irrelevant and incomprehensible, questioned officers of the Department of the Prime Minister and Cabinet on how I was able to send out letters of congratulations to the Victorian recipients of the Centenary Medal. The implication was that, for me to be able to do so, I must have received help from the department or in some other way abused the department's honours database. Senator Faulkner was particularly concerned—or so he said—that my letter amounted to highly political commentary, since it contained the postscript:

It is disappointing that the Bracks government has refused to allow participation by the Victorian Governor, preventing a formal celebration of the award of this medal to Victorians.

I find it highly amusing—and I think I can confidently say that all senators would find it so—that Senator Faulkner would be concerned about anything that is highly political. Clearly, Senator Faulkner does not understand irony at all, unlike Senator Ray who understands irony only too well. Not surprisingly, the

departmental officers were not able to throw any light on Senator Faulkner's concerns, and they were sent away with the task of providing a satisfactory answer. I hope they hear about what I am saying here, because it will make their search unnecessary. It was not surprising that a departmental officer could not provide an answer for Senator Faulkner, because they had nothing to do with it.

To set Senator Faulkner's mind at ease, let me inform him that, firstly, I did not send congratulatory letters to all Victorian recipients. I sent a letter to the publicly listed recipients in five Victorian electorates with which I have particular affinity—not 37 electorates, just five. It was a big enough task but not too big. I happen to have hardworking assistants who are prepared to do the hard yards and go through the public lists of recipients on the department's web site to get the information. There was no cheating, no surreptitious help and no underhanded trick—just old-fashioned hard work. In other words, Senator Faulkner should know we did not do it the Labor way; we did it the Liberal way. You can let the department off the hook.

Let me now deal with the question of the appropriateness of my 'highly political' comment that so upset Senator Faulkner. It was in fact a strictly factual statement. The Victorian Labor government knowingly denied Victorian Centenary Medal recipients the opportunity to receive public acknowledgement of the award, and I stated that. Senator Faulkner was quite right that it was a postscript. My letter would have only said, 'I would like to congratulate you on receiving the award of a Centenary Medal. It is a worthy tribute to your efforts in improving the quality of life for the people and the community you have worked for. As a Victorian senator, I wish to say on behalf of all Victorians that we are all proud of you and for you.' However, while signing the letters, I decided that, knowing that the Victorian Labor government had disowned the Centenary Medal and its Victorian recipients by its decision not to hold ceremonies for them in a blatant political attempt to embarrass the Commonwealth Government, to say nothing was to join the Bracks conspiracy to denigrate these centenary medallists in whom we should take great pride and whom we should not treat as people of no consequence who can be simply lied to at will. So I added my postscript, which was entirely factual.

I anticipated that Premier Bracks would not be happy with my 'highly political' act of calling a spade a spade, and he was not—obviously, he put Senator Faulkner on the job as well. On 29 April 2003, a week or so after I sent my letter, Premier Bracks went on Neil Mitchell's radio program in Melbourne and attacked me for putting out misinformation. He said that it was really the Commonwealth

government that had stopped the Victorian governor from participating in the conferring of the medal. I quote from the transcript of that program: Premier Bracks said, 'I wrote to Senator Tchen yesterday about this matter,' and he said that he had done so to put me right. That was on air on 29 April 2003. In due course, on 6 May 2003, I did receive in my Box Hill office a letter from Premier Bracks. Let me quote from the letter. Inter alia, Premier Bracks said:

The awarding process for the medal was then at the discretion of State Premiers and Chief Ministers. The Victorian Government decided ... that the cost and logistics involved in staging formal conferral functions could not be justified.

So it was a Victorian government decision. There was no misinformation from me—no surprise there. What was surprising was that the letter was dated 1 May 2003, two days after Premier Bracks said on air that he had written to me the day before. Presumably, Australia Post could be blamed for taking five days to deliver a letter from East Melbourne to Box Hill. I would not. I would not accept that the conscientious, effective and efficient Australia Post workers could be so negligent, although someone desperately searching for excuses might. But how does one explain the four-day gap between Premier Bracks signing a letter to me and that letter getting dated? Did it take that long for a letter in Premier Bracks' office to travel from the out-tray of the Premier to the out-tray of the post boy? Or did Premier Bracks have one of his favourite lapses of connectivity? After all, we do have many more famous instances of Premier Bracks saying one thing and meaning something entirely different, such as on the Scoresby 'definitely no toll' Freeway.

In September 2002, Premier Bracks was openly assuring Victorians by saying, 'We are not going to build projects with tolls. There will be no tolls on the Scoresby Freeway or the Eastern Freeway extension.' Of course, that was before the Victorian election, and Victorians have come to understand that a Bracks election promise is not a promise. But he was giving the same reassurance on 1 April 2003, two weeks before he announced—guess what—that due to new information there would be tolls on the Scoresby Freeway after all! A billion dollar project was turned on its head with less than two weeks of deliberation! Welcome to Victoria, the land of Bracks.

With such an ability to juxtapose fact and fiction, whether and when he sent a letter to a senator is a small thing indeed for Premier Bracks. What Premier Bracks said to me does not matter. I did not believe him anyway. But Victorians need to ask themselves whether what else they hear from Premier Bracks is fact or fiction. There is a description for people who conduct themselves in the manner of Premier Bracks—unfortunately, it is unparliamentary to call a

spade a spade. It is a pity that Senator Faulkner was taken in. Somebody should warn Senator Faulkner to beware of state colleagues bearing gift questions. If you have any questions for me, Senator Faulkner, please ask me. Don't go and ask somebody else.

Auslan: Funding

Senator GREIG (Western Australia) (3.36 a.m.)—I seek leave to incorporate my adjournment speech tonight which deals with Auslan funding needs. I have observed the protocols by showing a draft to the appropriate whips.

Leave granted.

The document read as follows—

AUSLAN stands for Australian Sign Language, which is a recognised non-English community language. It is used by an estimated sixteen thousand members of the Deaf community in all parts of the country. For many in Australia's Deaf community, Auslan is their first language and the language in which they are able to most fluently and easily communicate with the rest of the world.

Like other non-English speakers, Auslan communicators require interpreters in a variety of day-to-day settings including visits to the doctor, legal appointments, job interviews, participation in courses and seminars, and so on.

However, unlike other non-English speakers, the Deaf do not have the same access to interpreters, and have far fewer assurances of being able to access an interpreter at all. Public medical services and government appointments are resourced, but private consultations are not.

The end result is that many Deaf people are left to deal with complex and stressful situations without interpreters, compounding the difficulties many already routinely experience.

This lack of free interpreters often results in isolation and discrimination, and a reduced capacity to participate in decisions affecting their lives. At around \$165 for a two-hour minimum session, interpreter costs are prohibitive for most individuals and force many Deaf people to rely on volunteers or family members, which of course compromises confidentiality and impartiality.

The only other alternatives include using written notes or lip reading.

Let's think about this for a moment. Not all Deaf people can lip read. Even for those who can, how incredibly difficult would this be in stressful situations? How time consuming, energy draining, and open to error would these options be? If we take into account that many Deaf people also have limited literacy skills because education has failed to meet their learning needs, then these difficulties are further compounded.

This shameful set of circumstances should not be allowed to go on. Yet these problems continue to grow. Deaf Societies in each State have for years subsidised the provision of interpreters, but they are no longer able to do so without substantially impacting upon other areas of their service.

Funding for Auslan interpreters is currently provided to Deaf Societies in South Australia, Tasmania and my home state of WA through the Commonwealth State-Territory

Disability Agreement. This funding in 2002/03 totalled \$279,500.

Deaf Societies in other States and Territories do not receive any funding under the scheme. In the ACT, Deafness Resources receives \$10,000 recurrent funding from the Territory Government and in the Northern Territory, in-kind support is provided by the NT Department of Health.

When current funding is compared to actual subsidy expenditure, the enormity of the gap becomes truly apparent.

The Australian Federation of Deaf Societies estimates that for the \$279,500 dollars received by WA, SA and Tasmania, the actual national cost to the Societies is in the order of \$2.3m, almost ten times that for which they are actually funded.

The AFDS estimates that approximately 19,350 appointments, totalling 34,800 hours worth of interpreting services, were provided in 2001/2002.

Because funding is provided to Deaf Societies in some states and not in others, and to other organisations in some states and not in others, the result is a piecemeal approach to the provision of interpreter services with no consistency whatsoever.

For example, the level of service someone might receive in WA, could not be provided in Victoria. In Victoria, Vicdeaf ceased providing free interpreter services for private medical and legal appointments in 1994. In other states, one third to half of all subsidies is to ensure free interpreter services to private medical appointments.

In South Australia, the Royal South Australian Deaf Society has set the 30th June this year as the cut-off date for the provision of free interpreter services for private health and legal appointments. After that date, interpreters will only be provided to the limit of funding, and top-up subsidies will cease.

In the Northern Territory, interpreters are currently funded only for private appointments if the Deaf person first receives a referral from a recognised local welfare provider. In the Territory, if you're Deaf, you need to also be welfare dependent to access free interpreter services.

For other interpreter users, things are much better. DIMIA has long recognised the need for non-English speakers to have access to funded, accredited interpreters who are bound by professional codes of ethics. Accreditation ensures that professional standards - confidentiality, impartiality, sensitivity and accuracy - are maintained. Professional interpreters ensure that non-English speakers do not need to rely on second-language competence, something which is easily compromised in times of crisis, stress and complex subject matter.

Centrally managed Translation and Interpreting Services (TIS) provided through DIMIA, help to ensure comparable levels of service to non-English speaking Australians regardless of the State or Territory they live in. So highly does DIMIA value the work of its NESB interpreters, that TIS is funded to the tune of \$10m, with an additional \$441,000 appropriated in this year's budget for the National Accreditation Authority for Translators and Interpreters (NAATI).

TIS services ensure free access to non-English speaking Australians visiting doctors and specialists in private prac-

tice, non-government and not-for-profit community organisations providing settlement services, local government authorities, trade unions, and emergency services. And yet the same guarantees are not currently provided to Australia's Deaf.

The impact of insufficient or non-existent interpreter services for Deaf people can be devastating.

Consider for example, the case of a woman attending a private hospital to receive her cancer diagnosis and treatment plan. Because the hospital could not pinpoint the availability of her surgeon and anaesthetist, and therefore could not specify a set time for the appointment, and the woman did not have the benefit of an open chequebook, the only alternative available to her was to ask her mother who was not a fluent Auslan signer, to translate this traumatic situation.

Other medical examples I am aware of, highlight the lack of gender-appropriate interpreters which result in male interpreters being used for gynaecological procedures.

In employment, I have heard of one example involving a private sector employer who failed to provide an interpreter for a Deaf employee when it initiated a series of restructuring and enterprise bargaining meetings. The result was the employee was not even aware of the possibility of redundancies until he received his notice.

Countless other examples relate to employers objecting to interpreter fees when interviewing prospective employees. The employment discrimination implications of this are obvious.

Earlier this year the Australian Federation of Deaf Societies took their concerns to the Prime Minister. They wrote: "Such discriminatory practice has enormous implications for the country's Deaf community, effectively imposing a serious barrier to their full economic participation, and perpetuating a dependence on welfare."

Such is the discrimination, that two separate complaints have been taken to the Human Rights and Equal Opportunity Commission. Both cases highlighted the Government's failure to provide interpreters on par with those available to other non-English speaking Australians.

To its credit, the Government has not remained completely inactive in responding to these issues. Minister Vanstone's recent Estimates announcement that funding requested by the Australian Association for the Deaf to conduct a scoping exercise has been approved. This is of course welcome and is to be commended.

However, it does not go far enough.

The Australian Federation of Deaf Societies has also urgently requested funds for an immediate stop-gap while the scoping exercise is conducted.

The Minister is on the record as saying there is no money in the budget to meet this immediate need, and rather cynically attempted to divert attention by claiming poor communication and confusion between organisations representing the Deaf at state and national levels.

If, as Minister Vanstone herself has indicated, the Government knows what the problem is, and has done for some seven years, then lets do something about it now to ensure that acceptable standards, comparable access, and en-

hanced community participation is available for all our Deaf citizens.

The Australian Federation of Deaf Societies urgently needs an injection of \$767,000 to ensure minimum access to interpreters for the Deaf. I call on the Government, through The Minister for Family and Community Services to make these funds immediately available.

Health and Ageing: Community Care Programs

Senator HUMPHRIES (Australian Capital Territory) (3.36 a.m.)—I rise tonight to pay tribute to the outstanding work that carers carry out in the Canberra community and other communities all over Australia. The work of carers usually goes largely without notice in the economic life of the broader community, but the contribution that carers make—whether measured socially or economically—is an enormous one. Carers are unsung heroes, whose dedication and love for the people they care for often comes at a great cost to their own lives. Carers deserve the highest praise and recognition for their selfless dedication and care for others. Generally, carers are family members who understandably do not see their role as a job. But they provide a crucial service that often involves stresses and sacrifices no other job would demand.

I recently had the pleasure and privilege of meeting with a number of Canberra's carers. I had a very enjoyable morning tea with local carers organised through Respite Care ACT. I was very moved and inspired by listening to this small group. Every carer I spoke to had a story that stirred the emotions. Proper and adequate reward for their contribution is probably beyond the resources of this community. But that fact should not absolve us of the responsibility of doing what we can for them and their loved ones. On nights such as this, many of us in this place complain that we have to sit at unsociable hours. Of course, the work of a carer is often a 24-hour a day job. I have great admiration and respect for the sacrifice that entails. In the light of this, I am pleased to note that the federal government is committed to assisting carers to access the respite they need. A number of recent funding initiatives by the federal government underline that commitment.

In February this year the federal government provided \$100,449 to Anglican Retirement Community Services, which has a number of facilities in the Australian Capital Territory. This money will be used to provide day respite for carers of people with dementia in late afternoons and on Saturdays. The provision of \$16,575 to Hartley Lifecare in Hughes, a service for disabled people, will help to train volunteers to provide weekend respite for carers of young people with disabilities. These flexible and innovative projects help by providing support over weekends, enabling carers to enjoy some relaxing weekend time with family and friends. It gave me great pleasure to

announce in May of this year the \$420,000 in federal government funding provided to the ACT Carer Respite Centre. This investment will help the centre provide some more respite service to carers of the aged, people with disabilities and people in need of palliative care.

I also welcome the \$363,000 that the federal government committed earlier this month to establish a respite house with accommodation for up to five people with dementia. The home away from home pilot is a 12-month project that targets a group of carers who are under immense pressure by offering flexible respite care in a home-style cottage. The Howard government is providing \$263,000 through the Department of Health and Ageing and \$100,000 through the Department of Veterans' Affairs. The ACT government is also contributing \$20,000 to this project. In the 2002-03 federal budget, the Commonwealth government reinforced its national commitment to helping our carers by providing over \$80 million over four years for more support for carers. I do not pretend that measures such as these to elevate and support the work of carers are sufficient but I believe that the profile of caring, particularly voluntary caring, has grown enormously in recent years. The value and recognition afforded to carers is bound also to grow commensurately. I congratulate and commend Canberra's many carers on the immense contribution they make to our local community.

To come to a different matter but one that still very much applies to those in our community who help one another, it gave me great pleasure earlier this week to present a cheque for almost \$50,000 to the Arthritis Foundation of the ACT. This grant will help the Arthritis Foundation to conduct training for the veteran community in the self-management of chronic diseases such as arthritis, diabetes, asthma and osteoporosis. This funding comes from the Veteran and Community Grants program administered by the Commonwealth Department of Veterans' Affairs. It aims to develop projects that provide practical support to members of the veteran community.

The ACT Arthritis Foundation consulted with several ex-service organisations in the development of their grant application. It is therefore a project with wide backing in Canberra's veteran community. The ex-service organisations that were consulted by the Arthritis Foundation in the development of this grant application were the association of the wives of the totally and permanently incapacitated, the Totally and Permanently Incapacitated Ex-Servicemen's and Women's Association, Queanbeyan Legacy, the Vietnam Veterans Federation, the War Widows Guild, Canberra Legacy, the Kinder organisation and the Woden RSL sub-branch. I was very happy that a number of these organisations were able to attend the

presentation of the cheque to the Arthritis Foundation. It was very pleasing to see first-hand the cooperation that took place to develop this ultimately successful grant application.

In the 2003-04 budget the federal government allocated \$6.2 million over four years nationally to Veteran and Community Grants projects. Projects to be funded can be wide-ranging and can include promoting healthier lifestyles, reducing social isolation, providing support for carers and improving access to community care services. Many of these programs, particularly the one I mentioned, have the opportunity to provide people with self-help approaches to a range of problems affecting particularly people in veteran communities. As such, I welcome opportunities for those communities to be actively engaged in solutions to a range of health and other problems affecting them. These are measures which contribute enormously to the quality of our life. Whether we directly use such services or not, they contribute to the quality and social fabric of a community such as this. I am sure that the benefits of these grants are multiplied many times over by the enormous volunteer contribution which is added to them.

Human Rights: Vietnam

Senator WONG (South Australia) (3.43 a.m.)—I rise this evening to bring to the attention of the Senate the worsening human rights situation within the Socialist Republic of Vietnam—a matter that is of great concern to the over 300,000 Australians of Vietnamese origin who have made this country their home. This year marks the 30th anniversary of diplomatic relations between Australia and Vietnam. This anniversary offers an important opportunity for the Vietnamese government to affirm its commitment to human rights and its treaty obligations under the International Covenant on Civil and Political Rights.

I recently had the opportunity to meet with members of the South Australian branch of the Australia Vietnam Human Rights Committee, in particular Mr Le Van Hieu, Ms Christine Pham and Ms Tram Vu. They briefed me on current developments in Vietnam and presented me with a document entitled 'Voices of conscience: biographies of Vietnamese in jail, under house arrest or otherwise persecuted for their peaceful expression'. This highlights the cases of over 100 political prisoners who have suffered at the hands of the Hanoi regime.

Since entering the parliament, I have developed a better understanding of the issues that affect the Vietnamese Australian community, having attended many celebrations, including those marking events such as the Tet Lunar New Year festival and the anniversary of the birth of King Hung, as well as meeting with a range of members of the community. These Vietnamese Australians that I have met and to whom I refer

are good Australian citizens. They participate peacefully and enthusiastically in our democratic processes. Many belong to volunteer community organisations that assist the elderly, the young or those that need help with the resettlement process. They have contributed immeasurably to Australia's rich cultural heritage and have helped build our reputation as a harmonious multicultural nation. Many also continue to campaign for a peaceful transition to democracy in Vietnam.

Whatever differences exist between senators in this place, we all share the belief that that every person should be free—free to think what they like, free to speak their minds without fear and free to worship as their hearts dictate. We all hold these values as inalienable human rights. As a signatory to the International Covenant on Civil and Political Rights since 1982, Vietnam has a treaty obligation to protect and promote the rights set out in the covenant, including freedom of thought, conscience and religion; freedom of opinion and expression; and protection against arbitrary detention. Unfortunately, increasingly the Vietnamese government has shown itself unwilling to abide by these obligations. Vietnam's Penal Code lists numerous crimes against national security, some of which contain provisions that, on the face of it, appear to patently violate international human rights law. These include article 88 of the Penal Code, which contains the offence of 'conducting propaganda against The Socialist Republic of Vietnam'; article 87, which creates the offence of 'undermining the unity policy'; and article 79, 'carrying out activities aimed at overthrowing the People's Administration'. The penalty for conviction of these crimes is life imprisonment or the death penalty.

A number of United Nations bodies, including the working group on arbitrary detention and the UN Special Rapporteur on Religious Intolerance, have issued reports that are highly critical of the government's human rights performance. In December 1998, the UN special rapporteur found:

The government's performance continues to fall far short of the standards required under the International Covenant on Civil and Political Rights. Freedom of expression, free association and other basic rights are still severely constrained, and those who criticise the government, establish independent political organisations, adhere to particular religious groups, or seek to monitor and report on human rights continue to be imprisoned or subjected to other forms of harassment at the hands of the state.

The following two cases that I wish to highlight this evening demonstrate the extent to which human rights are suppressed within the country. The first is the case of Le Chi Quang. Like me, Mr Le completed studies in law and is keenly interested in issues of justice and social equity. In my case, these interests have led to a place in the federal parliament; for Mr

Le these interests have led to a prison cell. He was arrested on 21 February last year in an Internet cafe in Hanoi following publication on the Internet of an article calling for reform of the political system. He was charged under article 88 of the Penal Code with the offence of conducting propaganda against the state. According to court documents, he was accused of:

... gathering information, writing, distributing and keeping documents with distorted contents about the political situation of the Vietnamese State ... and falsely accusing and slandering some of the high ranking Party and State Cadres ...

In November last year he was sentenced to four years in jail, to be followed by a further three years of house arrest. Mr Le has been declared by Amnesty International as a prisoner of conscience, detained solely for the expression of his non-violent opinion on a political matter. There are grave concerns for his health as he suffers from a range of life-threatening medical conditions and as he has been refused medical assistance for these conditions. If he continues to be denied this treatment, he will effectively have been sentenced to death. I join with international human rights organisations in calling for this treatment to be provided immediately and for his unconditional release.

More recently, on 18 June, medical practitioner Pham Hong Son went on trial on charges of spying. According to the indictment, Mr Pham is charged under article 80 of Vietnam's Penal Code because he 'took the initiative to communicate by telephone and email with political opportunists in Vietnam and abroad'. The government has further charged that he used email to 'translate and send antiparty and anti-government documents' to contacts in the overseas Vietnamese Diaspora.

One of his alleged crimes was to translate and disseminate by email an article entitled 'What is democracy?' which he downloaded from the web site of the US Embassy in Vietnam. He is also charged with having written an open letter in January 2002 to the Secretary General of the Vietnamese Communist Party in which he argues that Vietnam was ripe for democracy. Spying is punishable by 12 to 20 years imprisonment, a life sentence or the death penalty. Since his arrest in March last year, he has been held in the notorious B14 Thanh Liet political prison. On 20 June he was sentenced to 13 years in jail to be followed by three years house arrest.

In addition to these two cases, dissidents who have been arrested in the past year include Nguyen Dan Que, arrested in March 2003 and not yet tried; Nguyen Khac Toan, who was sentenced in December 2002 to 12 years imprisonment under article 80; Pham Que Duong, who was arrested in December

2002 and charged under article 80; and Tran Van Khue, who was arrested in December 2002 and charged with making propaganda against the state under article 88.

As I said at the outset, this year marks the 30th anniversary of diplomatic relations between Australia and Vietnam. It is an occasion which offers an important opportunity for the Vietnamese government to affirm its commitment to human rights and its treaty obligations. Accordingly, I call on the Vietnamese government to release unconditionally all those currently being imprisoned, detained or restricted on account of their peaceful political activity and to take other steps necessary to bring Vietnam's law and practice into conformity with its international treaty obligations. I also urge Australia's Minister for Foreign Affairs to make use of growing diplomatic trade and other relations with Vietnam to pressure the government to implement the recommendations of the May 2000 Human Rights Watch report, 'Vietnam: the silencing of dissent', which calls on the international community and foreign aid donors to lobby for the release of all political prisoners, legal reform to achieve greater transparency and accountability and the end of the Vietnamese government's censorship and control of the media.

Fatherhood Foundation

Senator BARNETT (Tasmania) (3.51 a.m.)—I rise this evening to support the work of the Fatherhood Foundation and specifically the release earlier yesterday of the 12-point plan for strengthening and supporting Australian fathers. The preamble to that plan specifically states:

The greatest resource this country possesses lies in the families of our nation. At the same time, the strength of our families depends on the quality of the relationships between its mothers and fathers. The quality of the relationships between mothers and fathers and their children will determine the destiny of Australia. The future of Australia lies in the character of her children. Equipping and supporting fathers and mothers in their relationships helps ensure that our children have the best possible future.

Under the section entitled 'History' in the 12-point plan, they state:

On 10th February 2003, over 35 people gathered for the inaugural National Fathering Forum at Parliament House Canberra. Twenty-five delegates spoke at the Forum. The delegates represented a wide range of Men's Groups, Family Law Reform Groups, Education & Training Institutions, Academics, Social Researchers and Psychologists, Drug Rehabilitation Organisations, Prison Charities, Social Reform Networks, Church Groups, Journalists and Media. Family Focused Charitable Organisations and Fatherhood Institutions. All came at their own cost with the common goal to strengthen and support Australian fathers and 'to turn the tide of fatherlessness' that exists in Australia.

... ..

The National Fathering Forum does not see this Twelve Point Plan as a final document. Rather we see it as the first of many proposals to promote discussion and contribute to a coordinated national solution to turn the tide of fatherlessness and strengthen Australian fathers.

We commend the Parliamentarians from the different parties in both Houses who supported the National Fathering Forum Open Session by the attendance and input on 10 February.

Warwick Marsh, who heads up the Fatherhood Foundation, and his team made this specific comment yesterday with respect to Senator Paul Calvert, President of the Senate:

Senator Calvert, who cannot be here today, without his help we would not be here today so I have got to honour him because really it is all about restoring honour and respect as fathers.

He commended Senator Calvert, and I commend Senator Calvert, for the hard work he put into making the Fatherhood Foundation a success, into making the forum in February a success and into making the launch of the 12-point plan a success. I commend the many other parliamentarians who support the Fatherhood Foundation. They include Senator Brian Haradine and Senator Len Harris. Warwick Marsh made reference to the Prime Minister, Mr John Howard, and special reference to Ken Ticehurst and Ross Cameron, the Parliamentary Secretary to the Minister for Family and Community Services. Larry Anthony was specifically commended by the foundation. At the launch of the 12-point plan yesterday, Larry Anthony said:

What we are seeing in this country is 55,000 children every year are being separated from their parents through divorce.

He went on to say:

I personally believe research tells us and commonsense tells us that, unless there are mitigating circumstances, where there is more contact encouraged by the father with their children then it is a better outcome for those kids.

I support and commend Larry Anthony for his comments. The Hon. Ross Cameron made this comment about one of the team members supporting the Fatherhood Foundation, Aboriginal elder Ronnie Williams, a fine man I met yesterday:

Ron Williams stood up in the room—

this was at the February forum—

and gave about a 30-second reflection. It was a kind of epiphany where he said, 'In my opinion, the most pressing and urgent problem we have to solve as a nation is the absent father—fatherlessness.' You could feel around the room everybody felt 'this resonates with me'. It was at that moment that Warwick said, 'I'm going to do something about this.' So really it was an Aboriginal elder and pastor who brought a sort of prophetic word here in Canberra that means all of us here today. So as parliamentary secretary I am thrilled the government has just renewed nearly \$20

million in funding to the Men and Family Relationships program—50 programs around the country.

I commend all those who are involved in supporting the Fatherhood Foundation. Mark Latham, a Labor member from Sydney, is also a supporter and was there at the launch yesterday. The 12-point plan states:

One of the greatest challenges facing our nation is the social problems caused as a result of Fatherlessness. Australia's current birth rate of 1.75 births per female has fallen below the minimum population replacement rate of 2.1 births per female. Fatherlessness is a direct factor in this decline.

The problem of Fatherlessness has been estimated to cost Australia over \$13 billion per year. Bill Muehlenberg, in his article titled '*The Facts on Fatherlessness*' ... identified the following social and psychological problems

- Poverty.
- Lower educational performance.
- Increased crime.
- Increased drug abuse.
- Increased mental health problems.
- Increased child abuse.

In conclusion, I again commend the work of the Fatherhood Foundation and all those members of parliament of all persuasions—in particular, the President of the Senate, Senator Paul Calvert—for the work that they are doing to highlight the important problem of fatherlessness. I commend the 12-point plan. Without going through all of the 12 points, I simply refer to the web site at www.fathersonline.org

Orwell, Mr George

Senator BRANDIS (Queensland) (3.58 a.m.)—At 4 a.m., in the dying hours of this session of parliament, I cannot forbear from rising to mark a centenary which occurred two days ago. It was the centenary of the birth of the man I regard as the most eloquent voice of conscience in the 20th century, George Orwell. He was born 100 years ago, on 25 June 1903, in Bengal. I think that all honourable senators at some time in their lives would have become acquainted with George Orwell's writings—in particular, with his two most famous novels, *Animal Farm* and *Nineteen Eighty-Four*.

Indeed, one could say of George Orwell something that could, I suspect, only be said of two other English writers, Shakespeare and Dickens: that so much has he become a part of our common speech and discourse that the adjectival version of his surname has passed into the language. I searched yesterday's *Hansard*—that is, the *Hansard* of the Senate on the centenary of Orwell's birth—and remarkably, on no fewer than three occasions, different senators—Senator Faulkner, Senator Mackay (both of whom I note are in the chamber at the moment) and Senator Alston—chose to describe legislation or criticism of legislation as Orwellian, so great has the intellectual

contribution of this one man been to our common discourse today. Three times on one day. And, as recently as earlier this afternoon in question time, Senator Hogg posed a question to a minister—I forget which one—and again the gravamen of the question was, 'Is this not Orwellian?' So, with Shakespeare and Dickens, George Orwell has passed into common speech as representing a point of view which now defines an attitude so widely shared that our common discourse is not even comprehensible without reference to his works.

Why is that so? It is, I suspect, because George Orwell in his short life—he died at the age of only 46—combined two extraordinary virtues: the virtues of intellectual integrity and moral courage. George Orwell was a man of the Left. To his dying day, he described himself as a socialist. And yet, in all but one respect, I believe he called the 20th century more accurately than any writer, commentator or opinion leader ever did. I say he was a man of intellectual integrity and of moral courage because in the 1930s, when still an obscure writer, still an obscure journalist and a relatively minor figure of the British Left, nevertheless he was one of the first and, as we know with the passage of time, the most eloquent to denounce the experiment of the Left.

When fashionable left-wing opinion in England in the 1930s saw nothing but the new Jerusalem in the Soviet experiment and when people like Sidney and Beatrice Webb went to Moscow, as they did in the 1930s, and proclaimed it to be the new Jerusalem, George Orwell, standing defiantly against all the intellectual fashions of his time and inviting the contempt and loathing of his own intellectual peer group, had the moral courage and the intellectual integrity to stand and say, 'This is wrong. I might be a socialist, but I will not abide totalitarianism.' He was the first important figure on the Left in those critical years—the most painful, agonised years of the 20th century, the 1930s—to take that stand. And, like Martin Luther centuries before, his moral courage, his intellectual integrity, his sheer defiance, changed the way men and women thought and felt, and for that reason I say that he was a great man.

He was a great man because, although he was himself—on any commonly understood sense of the term—an intellectual, he nevertheless had contempt for that class of persons whom we would these days describe as the intelligentsia: the fashionable leftists of the 1930s, the Red Brigades crowd of the Spanish Civil War. His most famous essay, I suspect—and I interpolate to say that we are all familiar with his famous novels, but his essays strike a point of view and reach a pitch of eloquence in English essayism that was only reached by Francis Bacon three centuries before—was 'Inside the Whale', in which he took

W.H. Auden to task. After quoting some of Auden's glib, posturing, attitudinising, fatuous descriptions of the Spanish Civil War, he said:

Mr Auden's brand of amorality is only possible if you are the kind of person who is always somewhere else when the trigger is pulled.

No-one more acutely defined the disjunction between the moral posturing of the Left and their physical cowardice than did George Orwell, who was himself never a physical coward, who was prepared actually to do the things, to make the physical sacrifices, that his comrades on the Left—the attitudinising, pompous intelligentsia of whom he once, in another essay, famously said, 'They took their opinions from Moscow and their cooking from Paris,' that attitudinising clique—were never prepared themselves to do.

So tonight I want in the Australian Senate to pay my own tribute to this pure, luminous conscience, this man of integrity, this person who was honest enough to follow the facts wherever they led, no matter how unpopular that may have made him, no matter how much that may have placed him outside the mainstream of the opinion of his time, for whom the notion of ideologising the facts was contemptible.

But I said before that there was one respect, though only one respect, in which George Orwell got the 20th-century wrong. Orwell did think that totalitarianism was the way of the future, and in that he was wrong. In his review in 1944 of Hayek's *The Road to Serfdom*, he said this:

It cannot be said too often—at any rate it is not being said nearly often enough—that collectivism is not inherently democratic, but, on the contrary, gives to a tyrannical minority such powers as the Spanish inquisitors never dreamed of.

He thought that the way of the second half of the 20th-century would give to government, would give to the bureaucracy, those powers. He was wrong. How pleased we are that he was. (*Time expired*)

Senate adjourned at 4.08 a.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

ACIS Administration Act—ACIS Administration (Modulation) Amendment Guidelines 2003 (No. 2).

Civil Aviation Act—Civil Aviation Regulations—Instruments Nos CASA 242/03, CASA 248/03 and CASA 250/03-CASA 254/03.

Defence Act—Determination under section 58H—Defence Force Remuneration Tribunal—Determination No. 7 of 2003.

Financial Management and Accountability Act—Determination under section—

20—

Financial Management and Accountability (Special Accounts) Determination 2003/02.

Initial determination to establish components of the Reserved Money Fund, dated 31 December 1997.

21—Initial determination to establish components of the Commercial Activities Fund, dated 31 December 1997.

Hearing Services Administration Act—Hearing Services Rules of Conduct Amendment Rules 2003 (No. 1).

Medical Indemnity Act—Medical Indemnity Subsidy Scheme 2003.

National Health Act—

Determinations under Section 5D—PHS8/2003 and PHS9/2003.

Health Benefits Organizations — Capital adequacy Standard 2003.

Health Benefits Organizations — Interpretation Standard 2003.

Health Benefits Organizations — Solvency Standard 2003.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Attorney-General's: Family Law and Regional Law Hotlines (Question No. 1144)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 3 February 2003:

- (1) Can a copy be provided of the memorandum of understanding between Centrelink and the Attorney-General's office in relation to the Family Law Hotline and the Regional Law Hotline.
- (2) What are the hours of operation for the Regional Law Hotline.
- (3) In the answer to question on notice no. 1009, paragraph (2), reference was made to a caller who was dissatisfied with the service: Can the following information on this caller be provided: (a) what date was the original call made; (b) what date was the complaint made; (c) how was the complaint handled; (d) who handled the complaint; (e) was any follow up action taken; and (f) was the question answered to the caller's satisfaction.
- (4) In the answer to question on notice no. 1009 reference was made to the customer service operators not being able to directly distinguish between calls made to the Regional Law Hotline and the Family Law Hotline: (a) why is it not possible to distinguish between the calls; (b) how many calls are made in a month; (c) what are the busiest days and hours during a week; and (d) how is it possible to reconcile the expenditure on these programs against calls made if you cannot differentiate between the two.
- (5) Can a month-by-month breakdown be provided of the calls to the services, matching expenditure to calls for the past 12 months.
- (6) Is a review being undertaken given the decrease in calls during the period specified in the answer to question on notice no. 1009; if not, why not.
- (7) (a) What is the expenditure to date for the promotion of the Regional Law Hotline and Family Law Hotline; (b) how has the promotion for these services taken place; (c) what materials were used to promote this service; and (d) how many households were advised of this service.
- (8) What was the cost of the promotional material.
- (9) Which communication services were used to promote this service, for example, television, radio, newspapers, pamphlets and/or flyers.
- (10) What were the costs of these promotions in each individual case.
- (11) Can copies be provided of promotional pamphlets advertising these services.
- (12) From where was the money allocated.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) A copy of the MOU is at Attachment A. A hard copy is available from the Senate Table Office.
- (2) The Regional Law Hotline operates 8 am to 8 pm local time, Monday to Friday excluding national public holidays.
- (3) (a) The original call was made on 4 January 2002. (b) The complaint was made during the call on the same day. (c) The caller required legal advice and was calling outside the office hours of the Regional Law Hotline legal advice service providers. The caller was advised that the telephone information service did not directly provide legal advice and could not transfer the caller to the relevant service provider at that particular time. The caller was provided with the contact details and the hours of operation of the relevant community legal service. No further action could be taken and so the customer support officer recorded the complaint. (d) The complaint was handled by the Family and Regional Law Hotline customer support officer who initially took the call. (e) No follow up action was taken in this case. (f) The caller was not satisfied that legal advice could not be provided at 7 pm in the evening.
- (4) (a) The Centrelink call handling system that automatically routes calls to the customer support officers does not indicate to the customer support officer whether a caller has dialled the Regional Law Hotline or the Family Law Hotline. This means that the customer support officer does not know which Hotline number was called although the Centrelink system electronically counts calls to each Hotline. In order to determine eligibility of a caller for the enhanced Regional Law Hotline service customer support officers ask each caller to provide their postcode. If the postcode is supplied it is entered into an online system which automatically notifies the customer support officer of a match against a list of Regional Law Hotline postcodes.
(b) The following calls were handled by the Regional Law Hotline to 31 January 2003 since the telephone service commenced on 21 June 2001:

Month	Calls handled
September 2001 (from 5 September 2001)	75
October 2001	27
November 2001	27
December 2001	22

Month	Calls handled
January 2002	16
February 2002	18
March 2002	30
April 2002	48
May 2002	29
June 2002	29
July 2002	13
August 2002	24
September 2002	27
October 2002	36
November 2002	22
December 2002	20
January 2003	33
Total	496

The following calls were handled by the Family Law Hotline to 31 January 2003 since the telephone service commenced on 21 June 2001:

Month	Calls handled
June 2001 (from 21 June 2001)	330
July 2001	1,001
August 2001	1,599
September 2001	1,559
October 2001	2,231
November 2001	2,085
December 2001	1,766
January 2002	2,295
February 2002	1,772
March 2002	1,697
April 2002	1,679
May 2002	1,590
June 2002	1,254
July 2002	1,686
August 2002	1,558
September 2002	1,723
October 2002	1,927
November 2002	1,878
December 2002	1,881
January 2003	2,444
Total	33,955

(c) Mondays are generally the busiest days for the Regional and Family Law Hotlines, and the busiest hours are generally those between 11 a.m. and 2 p.m. local time.

(d) As explained in the response to 4 (a) above, the Centrelink system electronically distinguishes between calls and so collects data on numbers of calls to each Hotline.

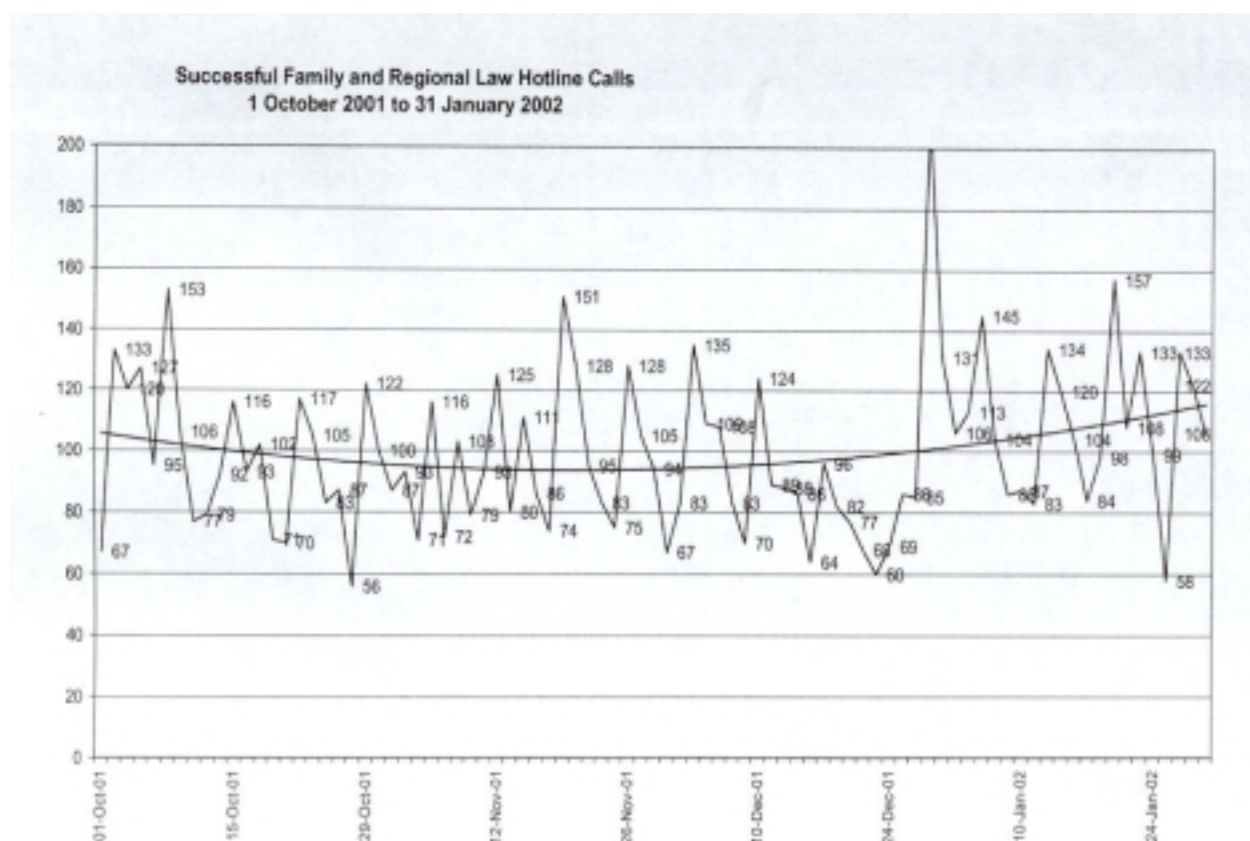
- (5) The following table shows a month-by-month breakdown of calls and payments made in relation to the Family and Regional Law Hotlines from 1 February 2002 to 31 January 2003:

Month	Payment to Centrelink for the operation of the Family and Regional Law Hotlines	Pro rata payment to community legal services and legal aid commissions for the Regional Law Hotline*	Family and Regional Law Hotline Calls
February 2002	\$64,783	\$58,500	1,772
March 2002	\$65,750	\$58,500	1,697
April 2002	\$65,776	\$58,500	1,679
May 2002	\$72,078	\$58,500	1,590
June 2002	\$57,479	\$58,500	1,254
July 2002	\$80,323	\$58,333	1,686
August 2002	\$71,315	\$58,333	1,558
September 2002	\$72,696	\$58,333	1,723
October 2002	\$83,866	\$58,333	1,927
November 2002	\$72,696	\$58,333	1,878
December 2002	\$67,926	\$58,333	1,881
January 2003	\$84,405	\$58,333	2,444

Month	Payment to Centrelink for the operation of the Family and Regional Law Hotlines	Pro rata payment to community legal services and legal aid commissions for the Regional Law Hotline*	Family and Regional Law Hotline Calls
Total	\$859,093	\$700,831	21,089

* This applies only to the Regional Law Hotline. Legal aid commissions and community legal services are able to use the resources for other services (including other telephone services and face to face advice) when not taking calls transferred from the Hotline call centres.

- (6) No. The following chart shows that overall there has been no significant decrease in calls for the period specified in the answer to question on notice no. 1009 (i.e. 1 October 2001 to 31 January 2002).



(7) (a) The total expenditure to 31 January 2003 for the promotion of the Family and Regional Law Hotlines, and the Family Law and Australian Law Online web sites is \$78,715.

(b) The focus of the communications strategy has been on public relations activities, the use of the media for publicity and direct contact with key stakeholders. A style and brand were developed and promotional material was prepared. Broadly, activities involved:

- four launches to announce different aspects of the project and to generate publicity nationally (the call centres, the website and Family Law Hotline, and the Regional Law Hotline);
- video news releases for television coverage
- news releases for newspaper coverage;
- mail outs to community organisations and stakeholders;
- briefing kits for Parliamentarians;
- promotional work through Centrelink's client publications, television broadcasts and internal systems;
- promotional work with the Department of Regional Services using the Countrylink Community Information Stands and 1800 number; and
- issuing of promotional materials to ATSIC nationally.

(c) The following materials have been used to promote the service:

- mail outs and fliers;
- video news releases;
- information kits;
- fact sheets;
- display stands;
- posters; and
- business cards.

(d) No households were directly advised of this service.

(8) The following table shows a breakdown of the expenditure on promotion including the costs associated with the production of the promotional material:

Purpose	Amount
mail outs and information kit distribution	\$29,746
display panel, poster and business card production	\$17,923
video news release production	\$10,745
fact sheet production	\$10,636
artwork	\$5,190
folder production	\$1,745
banner production	\$1,284
media release distribution	\$1,027
photography	\$387
media monitoring	\$32
Total	\$78,715

- (9) See the response for 7 above.
- (10) Promotional material was produced generally for use in a number of promotional events and so costs cannot be broken down any further.
- (11) Copies of the promotional materials produced for the mail outs and information kit have been provided to the honourable senator. A copy has also been provided to the Senate Table Office.
- (12) The money for the above-mentioned promotional activities was allocated from the Law by Telecommunications/Australian Law Online project budget.

Attorney-General's: Family Law Hotline

(Question No. 1147)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 5 February 2003:

- (1) (a) When was the tender for the Family Law Hotline announced; and (b) how was it announced.
- (2) How many tenders were submitted.
- (3) What were the names of the tenderers who applied.
- (4) How was the winning tender selected.
- (5) How many full-time operators staff the Family Law Hotline on a state-by-state basis.
- (6) How many part-time and/or casual operators staff the Family Law Hotline on a state-by-state basis.
- (7) What, if any, qualifications are Family Law Hotline operators required to possess.
- (8) Is there a qualified family law adviser in each of the call centres during operational hours; if not, what are the minimum qualifications a person must have in order to supervise staff within the call centre.
- (9) What are the hours of operation.
- (10) Where are these centres located.
- (11) How many calls were made to the Family Law Hotline in the 2001-02 financial year.
- (12) (a) Can a breakdown be provided of calls made to the Family Law Hotline in the 2001-02 financial year, categorised by issues for instance: custody, property issues etc; and (b) of these calls, how many were referred to: (i) Legal Aid, and (ii) an agency other than Legal Aid?
- (13) To which agencies were these other calls referred.
- (14) Were any of these calls referred to Community Legal Centres.
- (15) Are Family Law Hotline operators trained for a specific period; if so: (a) for how long; (b) who provides this training; and (c) are the trainers qualified to practice family law.
- (16) Is there a toll-free number for residents in rural areas.
- (17) How many calls were made from rural areas to the Family Law Hotline in the 2001-02 financial year.
- (18) How many calls in the 2001-02 financial year did Family Law Hotline operators satisfactorily deal with, without referral to another agency.
- (19) What processes have been put in place to ensure correct information is passed to consumers.
- (20) Of the callers to the Family Law Hotline Service in the 2001-02 financial year: (a) how many people were referred to a social worker; and (b) how long did each social worker spend on the line with each person.
- (21) Did these social workers complete any other work not relevant to the Family Law Hotline during the course of their employment.
- (22) Can a breakdown be provided of the amounts allocated to the Family Law Hotline service on a state-by-state basis.
- (23) Can a list be provided showing the names and call centre staff ratios for the 2001-02 financial year.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) (a) No tender was issued for the Family Law Hotline. The Department directly negotiated a memorandum of understanding with Centrelink for the provision of the Family and Regional Law Hotlines.
(b) See answer to part 1 (a) above.
- (2) See answer to part 1 (a) above.
- (3) See answer to part 1 (a) above.
- (4) See answer to part 1 (a) above.
- (5) The Family and Regional Law Hotline call centres are located in Victoria and Western Australia but handle calls from throughout Australia. Currently, in Victoria there are 12 full time staff and in Western Australia there are 9 full time staff operating in the Family and Regional Law Hotlines. Depending on call demand this staff also performs other duties at times.
- (6) Currently in Victoria there are no part-time or casual staff operating in the Family or Regional Law Hotlines. In Western Australia there are 6 part-time staff who sometimes operate the Family and Regional Law Hotlines and no casual staff.
- (7) The Family and Regional Law Hotline operators provide an information and referral service only, not legal advice. Callers requiring legal advice are either directly transferred or referred to an appropriate legal advice provider. All Centrelink operators must complete an induction and training course but there is no mandatory formal qualification required. Centrelink encourages all its operators including those operating the Family and Regional Law Hotlines to complete an accredited Certificate IV in Telecommunications.
- (8) There is no family law adviser operating in either of the two Family and Regional Law call centres as the centres provide information only, not advice. There is no mandatory qualification for call centre supervisors. However, Centrelink encourages its call centre supervisors to complete an accredited Certificate V in Telecommunications.
- (9) The Family and Regional Law Hotlines operate from 8 a.m. to 8 p.m. local time Monday to Friday excluding national public holidays.
- (10) The Family and Regional Law Hotlines are in Traralgon in Victoria and Bunbury in Western Australia.
- (11) There were 20,528 calls made to the Family Law Hotline in the 2001-02 financial year.
- (12) (a) The following table shows fact sheet information recorded as being referred to by Centrelink customer support officers when handling calls made to either the Family Law Hotline or the Regional Law Hotline during the 2001-02 financial year. Where callers required legal advice or non family law system information they may have been referred to an appropriate service provider/s without the customer support officer first referring to family law system fact sheet information on the Family Law Online web site.

Fact sheet referred to	Times referred to
Parenting orders	806
Children - residence	494
Children - contact	428
Parenting plans	381
Property settlements	312
Consent orders	295
Divorce	287
Penalties for breaking parenting orders	287
Divorce - the process	251
Children - issues guide	209
Relocation	199
Legal Aid and Community Legal Centres	170
Property - issues guide	158
Child abduction	155
Protecting property	154
FAQs - Divorce	153
Refusing contact	142
Separation - issues guide	107
Property - splitting superannuation	91
Divorce and separation	88
Children - supervised contact	69
Property - joint ownership	62
Enforcing court orders	59

Fact sheet referred to	Times referred to
Child support or maintenance - proving paternity	58
Mediation	58
Dispute resolution - options	55
Family violence - issues guide	53
Separation	53
Child abduction - removal from Australia	52
Protecting property - injunctions (example)	51
Protection orders (NSW)	50
Child abuse	48
Family violence	48
De facto relationships (WA)	43
Property disputes - conciliation and arbitration	43
Separation - planning ahead	43
Child support agreements	41
Separation and support	39
Counselling	38
Financial support for children	38
Mediation - what to expect	38
Family Court of Australia - dispute services	37
Protection orders (Qld)	37
Applying for consent orders	35
De facto relationships - property (NSW)	34
Legal costs	32
About child support	29
Using lawyers	29
Financial agreements - pre-nuptials and other	27
Marriage	27
De facto relationships - property (Qld)	26
De facto relationships (Vic)	26
FAQs - Child support or maintenance	25
Separation and children	25
Separation and parenting	25
Spouse maintenance	25
De facto relationships - property (Vic)	24
Nullity	24
Protection orders (Vic)	23
Changing child support assessments	21
Family Court of Australia - fees	21
About child maintenance	20
Disagreeing with Child Support Agency decisions	20
The family law system	20
Calculating child support	19
Protection orders (WA)	19
Adoption (Qld)	18
De facto relationships (NSW)	18
Emotional support	17
Adoption (NSW)	16
Family and child mediation	16
De facto relationships (Qld)	15
Mediation and children	14
Parents separating - information for children	14
Federal Magistrates Service	11
Refusing to pay maintenance for you or your children	11
Refusing to return children	11
Child maintenance - using courts	10

Fact sheet referred to	Times referred to
Spouse maintenance - how to apply	10
Australian Law Online	9
Child Support Agency - payment options	9
Legal rights	9
Child support - collection options	8
Children - specific issues	8
Emergency action	8
Protection orders (SA)	8
Using mediation (example)	8
Adoption (Vic)	7
Child support - using estimates	7
De facto relationships - property (ACT)	7
About the Family Court of Australia	6
De facto relationships - property (SA)	6
Adoption (WA)	5
Child Support Agency - complaints	5
Legal words	5
Special Medical Procedures	5
Child support - definitions	4
De facto relationships (ACT)	4
De facto relationships (SA)	4
Getting back together (example)	4
Family Court of Western Australia	3
Protection orders (Tas)	3
Self administration (example)	3
Adoption (ACT)	2
Child support - care arrangements	2
Child Support Agency - registered agreement (example)	2
De facto relationships - maintenance (NSW)	2
Family Court of Australia - specialist services	2
Family Law Online	2
Protection orders (ACT)	2
Protection orders (NT)	2
Responding to a spouse maintenance application	2
Same sex couples (NSW)	2
Adoption (SA)	1
Annulment	1
Child abuse, protection and welfare	1
Child's Representative	1
Client attitudes to the counselling service of the Family Court of Australia	1
Counselling certificate	1
De facto relationships - property (NT)	1
De facto relationships (Tas)	1
De facto relationships (NT)	1
Divorce - Dissolution of marriage - Where there is no child under 18	1
Divorce kit (When there is a CHILD under 18)	1
Domestic Violence Self-Help Kit	1
Legal aid	1
Mediation Services: Pathway to Agreement	1
Primary dispute resolution	1
Rights of children and parents	1
Same sex couples (ACT)	1
Same sex couples (NT)	1
Same sex couples (Qld)	1
Same sex couples (Tas)	1

Fact sheet referred to	Times referred to
Same sex couples (Vic)	1
Same sex couples (WA)	1
Total	7,224

(b) The following table shows calls recorded by Centrelink customer support officers that were referred to community legal service centres, state legal aid commissions and other service providers by month since 22 November 2001. The table includes calls made to both the Family Law Hotline and the Regional Law Hotline. It is not possible to provide comprehensive figures for the 2001-02 financial year as this information was not recorded by Centrelink until 22 November 2001.

It should also be noted that callers are routinely referred to a number of service providers. Consequently, a number of multiple referrals are included in the figures shown below.

Month	Calls referred to community legal services	Calls Referred to legal aid commissions	Calls referred to other service providers *
November 2001 (from 22 November 2001)	207	146	196
December 2001	470	346	566
January 2002	653	358	778
February 2002	547	213	712
March 2002	349	176	577
April 2002	533	212	533
May 2002	388	336	462
June 2002	42	56	64
Total	3,189	1,843	3,888

* Other service providers include community based organisations providing alternative dispute resolution services such as conciliation counselling and mediation.

- (13) See response to part 12 (b) above. The name of the agency to which callers are referred is not routinely recorded by the Centrelink customer support officers taking the calls.
- (14) Yes. See response to part 12 (b) above.
- (15) Yes. (a) Induction and general service delivery training of at least five weeks duration and technical business training of three days. Ongoing learning and development is provided to refresh understanding and to keep operators up to date. (b) Induction and general service delivery training is provided by Centrelink. Family law system training is provided by the Attorney-General's Department and other family law system providers. (c) Some of these trainers are qualified to practice law. However, the Family and Regional Law Hotline operators provide an information and referral service only, not legal advice. Callers requiring legal advice are either directly transferred or referred to an appropriate legal advice provider.
- (16) Yes.
- (17) Centrelink customer support officers ask all callers using the Family and Regional Law Hotlines to provide their postcode. However, the Department has not defined rural areas by postcode.
- I have provided both the honourable senator and the Senate Table Office with a table that shows calls recorded by Centrelink customer support officers by postcode for the 2001-02 financial year. The table includes calls made to either the Family Law Hotline or the Regional Law Hotline. The figures are not comprehensive as some callers supply incorrect or invalid postcodes and not all callers elect to identify their postcode.
- (18) It is not possible to provide comprehensive figures for the 2001-02 financial year as this information was not recorded by Centrelink until 22 November 2001. However, for the period 22 November 2001 to 30 June 2002, 3,646 calls were recorded as having been answered by Centrelink customer support officers without referral to another agency.
- (19) Family and Regional Law Hotline call centre operators use the Family Law Online web site (provided by the Attorney-General's Department) and other approved sources such as the Family Court website. Supervisors listen to a number of calls to provide feedback and coaching to operators.
- (20) (a) Operators refer callers to the call centre social workers only in the unlikely event that a caller with an urgent need cannot be transferred to an appropriate crisis service such as Lifeline. It is estimated that there were three referrals to call centre social workers in 2001-02. (b) Call centre social workers typically spend 30 minutes on the phone with a caller, but call durations vary.
- (21) Yes. Call centre social workers assist other Centrelink callers.
- (22) No amounts are allocated to the Family Law Hotline service on a state-by-state basis. Payments are made centrally to Centrelink for the Family and Regional Law Hotline service.

- (23) The Victorian call centre is La Trobe (located in Gippsland). The Western Australian call centre is Bunbury. Call centre ratios change over time. In December 2002 the ratios for the Family and Regional Law Hotline service were 54% in La Trobe and 46% in Bunbury.

Attorney-General's: Copyright

(Question No. 1420)

Senator Ludwig asked the Minister representing the Attorney-General, upon notice, on 30 April 2003:

- (1) How was the tender for the review of copyright reforms advertised.
- (2) When was it advertised.
- (3) How many tenders were submitted.
- (4) How was the winning tender selected.
- (5) What qualifications in copyright law, including legal, technical and economic aspects, was the Government looking for in the winning tender.
- (6) Does the law firm of Phillips Fox have an interest or specialise in copyright law; if so, can details be provided.
- (7) Where is the law firm Phillips Fox located.
- (8) How many employees of Phillips Fox will be working on the review process.
- (9) What is the total cost tendered for by the law firm Phillips Fox for the review of copyright reforms.
- (10) Can a copy be provided of the tender submitted by Phillips Fox.
- (11) What outcomes are expected from the review.
- (12) When will the review be completed.
- (13) Does the Government have any input into the review process performed by the law firm Phillips Fox.
- (14) What qualifications does the law firm Phillips Fox have in the economic and technical aspects of copyright law.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) A Request for Expressions of Interest (EOI) for a review of various aspects of the Copyright Amendment (Digital Agenda) Act 2000 (the Digital Agenda Act) and related matters was advertised in national newspapers, the Commonwealth Purchasing and Disposals Gazette and on the Attorney-General's Department's website (www.ag.gov.au).
- (2) The EOI was advertised in the Australian Financial Review on 10 May 2002, the Canberra Times on 11 May 2002 and the Australian on 11 & 12 May 2002. Further, the EOI was advertised in the Commonwealth Purchasing and Disposals Gazette from 14 May 2002.
- (3) Expressions of Interest were received from 14 organisations. A Request for Tender (RFT) was released to 11 of these organisations. Tenders were subsequently received from 7 of the 11 organisations.
- (4) A Tender Evaluation Team (Evaluation Team) consisting of two officers from the Attorney-General's Department and an officer from the Department of Communications, Information Technology and the Arts formulated and acted in accordance with a Tender Evaluation Plan. The Tender Evaluation Plan provided a framework for the Evaluation Team to evaluate the responses to the RFT leading to the selection of the preferred tenderer.
- (5) The nature of the issues associated with the Digital Agenda Act means that a range of expertise, including legal, economic and technical, are needed to undertake the proposed analysis. Consequently, the Government was looking for a Tenderer or Tenderers that demonstrated appropriate expertise in these specified fields. The RFT directed Tenderers to provide details of their experience in copyright law; economic analysis; and experience in developments relating to communications technology. The economic and technical experience provided by the Tenderers did not have to be directly related to copyright law.
- (6) Yes, Phillips Fox does have an interest in copyright law. It has Intellectual Property practices across Australasia.
- (7) Phillips Fox has 10 offices located throughout Australia, New Zealand and Vietnam, including offices in Canberra and Sydney.
- (8) Phillips Fox has specified nine personnel who will work on the analysis of the Digital Agenda Act and related matters. The personnel specified include employees of Phillips Fox, consultants, and employees of sub-contractors.
- (9) The agreed fee to be paid to Phillips Fox for their consultancy is \$193,094 (incl. GST). An additional amount to cover charges associated with conducting broader consultations on the issues under review and finalisation of their analysis forms part of the agreement between Phillips Fox and the Attorney-General's Department. These will be charged at cost but have been estimated at \$7,500 plus GST.
- (10) The tender submitted by Phillips Fox was in accordance with the Attorney-General's Department's Request for Tender (RFT). As the tenderer is the owner of all intellectual property rights, including copyright, in its tender documentation the Attorney-General's Department is unable to provide a copy of the tender without the permission of the tenderer.

Phillips Fox has requested that its tender not be disclosed as it is a commercial-in-confidence document. Phillips Fox considers that the structure and form of the tender as well as the methodology proposed for review of the Digital Agenda reforms in the tender has commercial value and is commercially sensitive. In addition, the tender contains information regarding its consultants that is commercial-in-confidence and information subject to legal professional privilege.

- (11) The purpose of the review is to ascertain whether the Digital Agenda Act reforms are achieving their objectives. The analysis being conducted by Phillips Fox is a major component of the broader review being conducted by the Government.
- (12) Phillips Fox is due to report to the Government by the end of 2003. The Government has indicated that it would review the Digital Agenda Act amendments within three years and is on course to meet that timeframe.
- (13) Yes. The Attorney-General's Department is managing the Government's review of the Digital Agenda Act, which involves monitoring the analysis being undertaken by Phillips Fox. Phillips Fox must report regularly to the Attorney-General's Department. The Attorney-General's Department will also provide comments on and approve the issues papers, agenda for the public forums, and the draft report. In addition, Government departments or agencies with an interest in the consultant's analysis will have the opportunity to contribute to the review process as interested parties.
- (14) As noted in (5) the Tenderer's experience in economic analysis and developments in communications technology did not have to be directly related to copyright law. Phillips Fox has supplemented its copyright expertise by entering into agreements with sub-contractors and consultants to provide the economic and technical expertise required to undertake the proposed analysis.