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Tuesday, 2 December 2003

The SPEAKER (Mr Neil Andrew) took the chair at 2.00 p.m., and read prayers.

AUSTRALIAN LABOR PARTY: LEADERSHIP

Mr LATHAM (Werriwa—Leader of the Opposition) (2.01 p.m.)—On indulgence, Mr Speaker, it is my great honour to inform you and the House that this morning I was elected leader of the federal parliamentary Labor Party. I also wish to inform the House that I have made the following changes. I have appointed the member for Lalor as Manager of Opposition Business and the member for Fraser will take on the additional responsibility of acting shadow Treasurer. Mr Speaker, I look forward to working with you in this new capacity for the benefit of the House and the Australian people.

Mr HOWARD (Bennelong—Prime Minister) (2.02 p.m.)—On indulgence, Mr Speaker, I would like to congratulate the member for Werriwa on being elected as Leader of the Opposition. It is an enormous honour for anybody to be elected leader of a national political party. That applies whatever the political divide may be. May I also, whilst I am on my feet, wish the former opposition leader, the member for Hotham, and his family well for the future. I also pay my respects to a person whom I think it is well known I have always regarded as being of great stature and decency in the Australian Labor Party—that is, the member for Brand.

Mr ANDERSON (Gwydir—Deputy Prime Minister) (2.02 p.m.)—On indulgence, Mr Speaker, I too extend my good wishes and those of The Nationals to the member for Hotham and his wife, Carole, and to the Beazleys. Can I also, in congratulating the member for Werriwa on his election as Leader of the Opposition, note that I think the Australian people want and expect us to engage in robust debate about how we can best serve their future. I note that the member for Werriwa says he is committed to the best interests of the Australian people and wants to be positive. I look forward in particular to seeing some good, robust and serious engagement on rural and regional issues. Australia does not end at the Great Divide.

QUESTIONS WITHOUT NOTICE

Family Services: Child Care

Mr LATHAM (2.03 p.m.)—My question is to the Prime Minister. Given the compelling evidence from international research that the first five years of a child’s life are the most important for their later learning and development, can the Prime Minister explain to the House why the government has still not produced any early childhood strategy? Can the Prime Minister also explain why he and his Minister for Children and Youth Affairs have failed to deliver any new child-care places in the last three years or do anything to address the chronic shortage of qualified child-care workers? Why has the government failed to support young families and particularly the young children who are the future of our nation?

Mr HOWARD—I reject the premise of the Leader of the Opposition’s question. I would have thought that job security for mum and dad was pretty important to the early years of a child. I would have thought that housing mortgage affordability was pretty important to the early years of a child.

Ms O’Byrne interjecting—

The SPEAKER—Member for Bass, there are forms of the House!

Mr HOWARD—As to child-care places, the reality is that child care is more plentiful and more affordable under this government than it was under the former government.

Ms King interjecting—
The SPEAKER—The member for Ballarat!

Mr HOWARD—The truth is that this government has created tens of thousands of additional child-care places. With the introduction of the GST, contrary to the doom-saying predictions of the then shadow Treasurer, the member Hotham, and the then Leader of the Opposition, the member for Brand—and some doom-saying predictions repeated by the then shadow Treasurer and now Leader of the Opposition, the member for Werriwa—child care became more rather than less affordable under this government. Whilst I welcome very much the interest of the new Leader of the Opposition in these matters, he had better get his facts right if he is to make any headway.

Public Policy: Bipartisanship

Mr LLOYD (2.05 p.m.)—My question is addressed to the Prime Minister. Has the Prime Minister seen comments on the importance of bipartisanship in the conduct of public policy? What is the Prime Minister’s response?

Mr HOWARD—I thank the member for Robertson for his question. In his press conference this morning, the Leader of the Opposition said that he would reject opposition for opposition’s sake. He said that, if he saw a good idea that was for the good of Australia, he would support it.

Ms King interjecting—

The SPEAKER—The member for Ballarat!

Mr HOWARD—I cautiously welcome this—

Ms King interjecting—

The SPEAKER—The member for Ballarat now chooses deliberately to defy the chair!

Mr HOWARD—as a break from 7½ years of negativity by the Australian Labor Party. In the spirit of that bipartisan reach, I invite the Leader of the Opposition to give flesh to the notion and to practise what he preached at his press conference. I invite him now, before the parliament rises, to reverse the opposition of the Australian Labor Party to the safety net in the new MedicarePlus plan. Anybody who cares about the struggling families of Australia could hardly object to a safety net. How can you hate a safety net if you claim to represent the battlers of Australia? It is open to the Australian Labor Party to support the safety net. If it goes to the next election and is successful, it can then add to what is already in place.

By supporting the safety net, they are not in any way inhibiting their freedom of movement—if they were to win the next election—in relation to the implementation of health policy. Therefore, by maintaining opposition to a safety net, which is the only piece of legislation that is needed to give effect to MedicarePlus, the Labor Party is practising opposition for opposition’s sake, and the Leader of the Opposition said less than two hours ago that he was not going to be like that. Well, he has an opportunity immediately—on his first day—to practise what he preaches, to give effect to the fact that we now have a new era and that we now have a Leader of the Opposition who calls it for Australia rather than for the negative opportunism of the Labor Party. So he can do that.

While he is at it, I invite him to adopt the same approach to our higher education proposals. There is nothing to stop Labor from voting for them now, and if they want to make changes after the next election they can introduce those changes. Finally, for good measure, if he is a man who believes in strong border protection—if he believes in protecting Australia’s borders—maybe he will lead the Labor Party to reverse their rejection of the excision of those islands from
the Australian migration zone, thus adding to the store of achievements insofar as border protection is concerned. In other words, on his first day, he can really break with the past. Unlike his two predecessors, he can avoid negativity and opposition for opposition’s sake, and he can actually give effect to the spirit of bipartisanship that he regards as so important to the quality of public debate in Australia.

Environment: Kyoto Protocol

Mr LATHAM (2.09 p.m.)—My question is addressed to the Prime Minister, and I refer to the international climate change conference in Milan, which is commencing today. How can it be in the national interest for the Prime Minister to commit Australia to paying all the costs of meeting our Kyoto target but not allow Australia to reap the benefits from ratifying the Kyoto protocol?

Mr HOWARD—Once again, the premise of the question is absolutely wrong. The reason why we have not been willing to ratify the Kyoto protocol is that, by doing that, we would impose costs on Australia that would not be passed on to countries like China and Russia that might well be our competitors, particularly in relation to resource projects. What the Labor Party wants us to do is sign up to something that would place burdens on Australian industry but not impose the same burdens on the industries of other countries that could well be our competitors. For us to sign the Kyoto protocol in its current form would destroy jobs in many of the industrial areas in Australia—it would be bad news for the Hunter Valley region, it would be bad news for the electorate represented by the member for Hunter, it would be bad news for Australian exporters. Overall, I am not going to be party to something that destroys jobs and destroys the competitiveness of Australian industry.

Foreign Affairs: United States of America

Mrs GASH (2.10 p.m.)—My question is addressed to the Minister for Foreign Affairs. Will the minister update the House on the importance of the United States alliance to Australia—

Honourable members interjecting—

Mrs GASH—I do not think that is funny—particularly in the fight against terror, and is the minister aware of any alternative views?

Mr DOWNER—I thank the honourable member for Gilmore for her question and for the interest she shows in the American alliance. I think that, on this side of the House, we know that the alliance between Australia and the United States is absolutely vital to our national security. That is particularly so in these difficult times. We have the problem of fundamentalist terrorism, including in our own part of the world, South-East Asia; we have the problem of the proliferation of weapons of mass destruction—notably, in the case of North Korea, again in our own region; and we have the risk of those weapons systems falling into the hands of terrorists.

I do not think there has been any time since at least the end of the Second World War when the United States alliance has been more important to our national security, and there is a component of it which is particularly important—and which is not often spoken of—and that is the intelligence cooperation between Australia and the United States. That intelligence cooperation is one of the strongest weapons we have to use against terrorism.

The honourable member for Gilmore asked whether there are any alternative views. The Leader of the Opposition has expressed many alternative views on the subject, but what we are certain of is that he has no enthusiasm for the alliance, unlike the
member for Brand, who has a history of being a strong and longstanding supporter of the alliance. The House barely needs to be reminded—but it should be reminded—that in February this year the Leader of the Opposition said of the President of the United States:

Bush himself is the most incompetent and dangerous president in living memory.

I think it was Bill Hayden, as Leader of the Opposition and then as foreign minister, who said that, in international relations, words are bullets. That sort of language, of course, does nothing to build the support between the opposition and the United States alliance, and it shows a complete lack of understanding of that alliance.

More seriously, according to Laurie Oakes, a well-respected journalist, in February this year the Leader of the Opposition said that Australia should be prepared to withhold shared intelligence from the United States if the United States attacked Iraq. In other words, our intelligence relationship should not be fundamental to the alliance; our intelligence relationship should become a bargaining chip on individual policies. I call on the Leader of the Opposition to repudiate that report and to show a strong commitment, as we saw from the member for Brand, and as we have seen from this side of the House, to the American alliance, because it is vital to the security of this nation at this very uncertain time. It does not mean that we always agree with the Americans, but it does mean that we value the friendship, that we value the alliance and that we value the security we get from that relationship.

Distinguished visitors

The SPEAKER—I inform the House that we have present in the gallery this afternoon members of a parliamentary delegation from Indonesia led by the Deputy Speaker, Mr Muhaimin Iskandar. I also notice in the gallery the Hon. Fred Chaney, a former cabinet minister. On behalf of all members of the House, I extend to our guests a very warm welcome.

Honourable members—Hear, hear!

Questions without notice

Medicare: Reform

Mr Latham (2.14 p.m.)—On this, the 31st anniversary of the Australian people voting for a universal public health system, my question is to the Prime Minister. Does the Prime Minister recall telling the A Current Affair program on 25 September:

I thought we had a very good system in the very early 1970s before there were some changes made that I don’t think made it better; I think it made it worse.

Doesn’t this statement confirm the Prime Minister’s opposition to a universal Medicare and his support for the health system we had in the early 1970s, a system with means-tested fees for public hospitals and no bulk-billing doctors?

Mr Howard—I suppose people’s views of memory are a little different, depending of course on where they come from in the Australian political spectrum.

Mr Melham—‘Never, ever’!

Mr Howard—Come on, Daryl, don’t get too excited. You’ve had a good day, I know, but don’t get too excited.

Mr Melham interjecting—

Mr Howard—You can’t help yourself, can you, Daryl?

The SPEAKER—Prime Minister!

Mr Howard—Mr Speaker, a lot of people think this is the 31st anniversary of the election of the worst government this country has had since the end of World War II. But I will put that aside in this new spirit of bipartisanship and say that, as far as we on this side of the House are concerned, once
again we reject the fact basis of the Leader of the Opposition’s question—for the third time. It does not prove anything of the kind. I go back to what I said in my first answer, and that is: if we are to have an end to the days of opposition for opposition’s sake, why do they oppose a safety net? What is wrong with a safety net? How could anybody object to a safety net? I can understand them objecting to other things, but a nice, simple, protective, cuddly safety net—how could they possibly object to it?

Economy: Performance

Mr KING (2.17 p.m.)—My question is directed to the Treasurer. Would the Treasurer inform the House of the import of recent economic data? What does the data indicate about the health of the economy? What are the challenges ahead? Are there any alternative policies to meet those challenges?

Mr COSTELLO—I thank the honourable member for Wentworth for his question. I can inform him that building approvals for the month of October were released today, showing that total building approvals increased by 1.6 per cent. They are down over the course of the year, Mr Speaker, as you would expect, but it was a stronger than expected figure today. Retail trade continues to grow strongly, rising by 1.2 per cent in October to be 8.6 per cent higher than a year ago. We will be receiving the national accounts tomorrow, which will give us a fix on the state of the Australian economy, which, notwithstanding drought and the difficult international situation, continues to outperform most of the developed economies of the world.

I take this opportunity to welcome back the member for Fraser as the shadow Treasurer. I can tell him that it will certainly lift the Labor Party’s credibility on Treasury matters that he is back as the shadow Treasurer. I congratulate the member for Werriwa on his elevation, and offer commiserations to the members for Griffith, Perth and Lilley on such a bad day. But it could always be said of them that, on this occasion, the roosters voted against an early Christmas!

The alternatives that have been put forward by the Labor Party have been many and varied. We had the proposal from the member for Werriwa to abolish negative gearing. He was overruled on that question by the then Leader of the Opposition. However, there is now no Leader of the Opposition to overrule him. So we have negative gearing, which undoubtedly will come back onto the table. We also had the capital gains tax on the family home—another one of the pet projects of the member for Werriwa. Again there is no-one to overrule him on that. Speaking of pet projects, we also had the progressive expenditure tax, another one of the pet projects of the member for Werriwa, which he put forward as an alternative to the GST. And of course we had regional GSTs, which were also put forward by the member for Werriwa.

The reality is that there is now no safety net under the Leader of the Opposition. The Leader of the Opposition is now on his own, with no higher authority to overrule him, and that speaks rather ill for the conduct of economic policy in this country. While he is about it, perhaps he could go back on Lateline tonight and resurrect negative gearing—the policy that lasted from Lateline to lunchtime can now come back in his own lifetime! On Lateline tonight, in relation to negative gearing, capital gains tax, PET and regional GST, as somebody said, it is going to be a ride—oh, what a wild ride! We expect to have two leaders for the price of one: both Arthur and Martha!

Medicare: Reform

Ms GILLARD (2.21 p.m.)—My question is to the Minister for Health and Ageing, and
I refer to the registration form for his so-called safety net. It is called ‘Here is your chance to catch up’, a clear acknowledgment that, under the Howard government, Australians are missing out on affordable health care.

The SPEAKER—The member for Lalor will come to the question.

Ms GILLARD—Can the minister seriously maintain that his bandaid safety net system that requires millions of Australians to fill in this simple and ‘cuddly’ form is really the system we should have? Minister, wouldn’t it be fairer and simpler to increase the Medicare rebate by $5 for all bulk-billing for all Australians?

Mr ABBOTT—The fact is that, even if you did do exactly what the member for Lalor proposes, there would be no guarantee of universal bulk-billing. Members opposite are running around the place saying, ‘We believe in universal bulk-billing,’ but universal bulk-billing is simply undeliverable. It was not deliverable by the former government and it is not deliverable by any government.

Ms Gillard interjecting—

The SPEAKER—The member for Lalor has asked her question.

Mr ABBOTT—The member for Lalor asked me about the registration form for a safety net. I very much suspect that the registration form in question is a registration form for the existing MBS safety net—a safety net which members opposite support.

Health Insurance: Rebates

Mr NEVILLE (2.22 p.m.)—My question is also addressed to the Minister for Health and Ageing. Would the minister advise the House why the government is committed to the private health insurance rebate? How does the private health insurance rebate assist struggling Australian families? Could the minister inform the House if he is aware of any alternative policies?

Mr ABBOTT—I want to make it very clear to the member for Hinkler that this government strongly support private health insurance. In our support for private health insurance, our view is very similar to the view of the member for Brand, Mr Kim Beazley, who, of private health insurance, said:

In fact, we see it as complementing the core services funded through Medicare.

In this, as in so many other things, the member for Brand has been a voice of decency, commonsense and moderation, which perhaps explains why he has just been rejected by the Labor caucus. Thanks to this government’s policies, nearly nine million Australians whose incomes are less than $20,000 a year. I have also been asked about alternative policies, and I have come across a statement from none other than the member for Werriwa. The member for Werriwa, of private health insurance, said:

This is a first-rate absurdity.

Private health insurance is held by 40 per cent of the electors of Werriwa, and the member for Werriwa calls it a ‘first-rate absurdity’! He also said:

This is the maddest piece of public policy that one will ever see out of the Commonwealth parliament.

That is the problem with the member for Werriwa: on any one day you never know whether he is going to be Dr Jekyll or Mr Hyde, and he was plainly Mr Hyde on the day he said that. The Labor Party has had the member for Werriwa as a senior frontbencher in this parliament for two years. I say to the member for Werriwa, the new Leader of the Opposition: state your case, declare your
hand; say where you stand on the private health insurance rebate so that the decent working folk of Western Sydney, the aspirational class of Australia, know where they stand with Labor.

**Medicare: Reform**

Ms GILLARD (2.25 p.m.)—My question is to the Minister for Health and Ageing, in the hope of getting a correct answer on the so-called safety net.

The SPEAKER—The member for Lalor will understand her obligation to come to the question.

Mr Ross Cameron—Mr Speaker, I rise on a point of order. The member is a serial offender. I ask you to require her to withdraw the inference and argument in the question and to avoid it in the balance of the question.

The SPEAKER—I am quite surprised that the member for Parramatta is aware of what is contained in the balance of the member for Lalor’s question. The member for Lalor is aware, because I in fact interrupted her, that her preamble was inappropriate.

Ms GILLARD—I refer to the answer given yesterday by the minister for health on the cost of AIDS drugs and his claim that the so-called safety net in the Howard government’s Medicare package would protect against such costs. Is the minister aware that the safety net does not cover these particular costs? If the minister cannot understand his so-called safety net, how can he expect Australians to understand it?

Mr ABBOTT—I simply say to the member for Lalor: if AIDS sufferers have significant out-of-pocket, out-of-hospital MBS expenses, they will be covered by the safety net. AIDS sufferers, in common with many other Australians, have to visit GPs and specialists and have to receive out-of-hospital treatment. I noticed today that the new Leader of the Opposition said that his objective is to save Medicare. Well, save Medicare: pass the MedicarePlus package.

**Immigration: People-Smuggling**

Mr TOLLNER (2.28 p.m.)—My question is addressed to the Minister for Foreign Affairs. Would the minister advise the House how regional cooperation arrangements with Indonesia on people-smuggling are assisting with the handling of the *Minasa Bone* case?

Mr DOWNER—I thank the honourable member for Solomon for his question. I recognise the strong support that, on behalf of his local constituents, he has always provided for the government’s border protection policy. Regional cooperation with Indonesia is a critical component of our policy. By mid-October this year, about 3,900 potential illegal immigrants had been intercepted and processed under arrangements in place with Indonesia. These arrangements involve the United Nations High Commissioner for Refugees, and at the moment the UNHCR is continuing the processing of passengers from the *Minasa Bone*. During that processing, further information is coming to light about the circumstances of their voyage. I understand, according to media reports, that the UNHCR has said that at least six of the passengers have indicated a wish to return to Turkey. The AFP has completed interviews with the *Minasa Bone* passengers and investigations are continuing into the broader smuggling operation.

The government has, in the case of the *Minasa Bone*, sent a very clear message to the people smugglers that they will be thwarted. They were thwarted by the government’s decision to excise Melville Island, they were thwarted by the return of the vessel, they were thwarted by the regional cooperation arrangements we have with Indonesia involving the IOM and the UNHCR, they were thwarted by our Federal Police. This is another example of the government’s deter-
mined and successful fight against people-smuggling. This is a tough policy, but this is an effective policy.

Are there any alternative views? There are a variety of alternative views from the opposition, and I note a report in the *Sydney Morning Herald* of 26 January last year. The report says that the Leader of the Opposition—taking a line somewhat different from the general opposition line but somewhat similar to the position he takes more generally on foreign affairs—accused Indonesia of behaving ‘in a highly irresponsible and illegal manner’ by trying to ‘pass on the flow of asylum seekers to our country’. We on this side of the House do not accuse Indonesia of behaving in a highly irresponsible and illegal manner, but we have a policy of being tough on people-smuggling. The Leader of the Opposition once more demonstrates his style of diplomacy, which is to abuse our allies, abuse our neighbours, abuse our friends. Where will that sort of approach—let alone the pulling down of the barriers and the infamous coastguard that the opposition wants to put in the place of the current arrangements—get us in terms of cooperation on people-smuggling?

**DISTINGUISHED VISITORS**

The **SPEAKER**—I am indebted to the Clerk, who informs me that we have present in the gallery this afternoon the Hon. Teburoro Tito, former President of Kiribati. On behalf of all members of the parliament, I extend to the former President a welcome.

**Honourable members**—Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Education: University of Western Sydney**

Ms **MACKLIN** (2.31 p.m.)—My question is to the Minister for Education, Science and Training. I refer to a statement by the Vice-Chancellor of the University of Western Sydney concerning the member for Lindsay’s failure to protect her university from the Howard government’s $25 million funding cut. It says:

> What you can say about Jackie’s interventions is they clearly haven’t helped her university and may indeed have influenced the Government’s views.

Does the minister agree with the member for Lindsay that the University of Western Sydney are ‘dreaming if they think they are going to get any more funding’?

**Dr NELSON**—I think the people of Lindsay have made the very sound judgment on at least three, if not four, occasions that they are very well represented by the member for Lindsay. The first thing that I should do is to point out to the House some facts in relation to the University of Western Sydney. Firstly, this government is determined to see that Australian higher education institutions are on a sound footing. The government is proposing to invest another $2.4 billion of hard-earned taxpayers’ money—extra money—into universities over the next five years and to change the way in which those universities are funded and regulated.

The University of Western Sydney will not lose a single dollar over the next three years and beyond; in fact, it will be receiving additional funding. The fact is that universities the length and breadth of Australia argued that we should fund them on the basis of what they actually deliver. It is described as a discipline mix—the Commonwealth Grants Scheme. That process has revealed that over the last 10 to 12 years the University of Western Sydney has moved away from high-cost courses in agriculture and science to lower cost courses. In order to ensure this, as we move to funding universities for precisely what they provide—and the member for Jagajaga refuses to tell anybody this—this government have put aside a $39 million transition fund which will fully com-
compensate the University of Western Sydney over the three years of the transition. It will receive $5.4 million in 2005 and $1.98 million in 2006, and that assumes that the University of Western Sydney does not change a single HECS charge and does not create a single opportunity for an Australian citizen to be a full fee paying student—unlike the 5,000 foreigners it has got there. It also assumes that it does not access $138 million for the Learning and Teaching Performance Fund and that it does not access a single dollar of the $55 million available for a workplace performance pool. It also ignores the fact that it will be receiving almost twice as much for its overenrolled students. I say to the member for Jagajaga: if she is concerned about the member for Lindsay, I think she might ask her leader, the Leader of the Opposition, what his attitude is to the deregulation of universities—a subject to which I will return.

Trade: Steel Industry

Mr HUNT (2.35 p.m.)—My question is addressed to the Minister for Trade. Would the minister inform the House how the government’s close relationship with the United States has helped protect the jobs of Australian steelworkers in plants throughout Australia, such as BlueScope Steel in Hastings?

Mr VAILE—I thank the honourable member for Flinders for his question. The member for Flinders played an active role—along with other government members—in our advocacy of change when, early in 2002, the US administration applied some safeguard measures to Australian exports of steel to the United States. A prohibitive tariff was placed on all steel imports into the United States, including those from Australia; but, through a process of positive engagement and diplomacy, with the assistance of many members of the government, like the member for Flinders, we managed to convince the Bush administration to exclude the overwhelming majority of Australia’s steel exports to the United States from those safeguard tariffs.

In fact, as a result of that advocacy, over 85 per cent of our exports have from the outset been excluded from the impact of those tariffs. That has secured the jobs of many Australians—like those who work for BlueScope Steel, formerly BHP Steel—in factories across Australia and in the member for Flinders’ electorate. It allowed the Australian steel industry to continue to trade into the United States, which is a very important export market for them. That has helped to maintain the jobs and support the families of those steelworkers, and it has supported the communities where those factories exist.

We hear news this week, which I am sure all members of the House would be pleased to hear, that the Bush administration is considering repealing the balance of these safeguard measures—repealing the tariffs completely. That would eliminate all tariffs from all Australian steel products going into the United States. I need to underline that point—that the US decision regarding Australian steel in 2002 demonstrated our ability in an unprecedented way, through diplomatic means and positive engagement, to achieve an outcome that had never been achieved before in a trade circumstance where there had been a prohibitive trade measure put on Australian product going into a country, particularly into the United States. As I said, our government have embarked upon a diplomatic exercise of positive engagement with the United States, and that is reaping rewards. We will continue to work with industry and with our counterparts in the US. I had the opportunity last week of meeting with the Secretary of Commerce, Don Evans, on this exact issue, and that is bearing fruit in the early stages and certainly with the prospect of the tariffs being removed.
It is important to note that we believe the best way to get quick results and the best results is through positive, constructive engagement in our diplomatic relations. That has proven to be the case and it has delivered results for Australians, particularly Australian workers in the steel industry. It goes without saying that the negative, abusive approach to our bilateral relationships, particularly with the United States, does not work and it will never work. Hopefully, the new Leader of the Opposition, the member for Werriwa, will curb his ways and curb his tongue on these measures. Our international diplomatic relations are very important—and none is more important than our relationship with the United States, especially for the workers of Australia, who rely on it for a lot of the exports we sell across the world.

Education: La Trobe University

Mr Gibbons (2.40 p.m.)—My question is directed to the Minister for Education, Science and Training. Is the minister aware that 500 places at La Trobe University’s campus in Bendigo are overenrolled places and at risk because of the Howard government’s unfair university changes? Isn’t it true that the Deputy Vice-Chancellor of La Trobe University, Graham McDowell, is concerned that Bendigo will be forced to enrol fewer students? Will the minister guarantee that no place will be lost from La Trobe University?

The Speaker—I point out to the member for Bendigo that the inclusion of the name did not in fact authenticate the question.

Dr Nelson—I thank the member for Bendigo for his question. These are issues which I have discussed directly with him. The first thing that I would say to the member for Bendigo is that he should go back and explain to the Vice-Chancellor of La Trobe University why he has voted against La Trobe University getting an extra $15 million minimum funding in the first three years. The next thing that I would point out to the member for Bendigo is that, if the member for Bendigo is concerned for opportunities at La Trobe University—which will expand under the proposals that are being put by this government to modernise, reform, strengthen and protect Australian universities—then he will support the Leader of the Opposition, who will now be presumably asking Labor senators to pass the government’s higher education reforms through the Senate.

What the member for Bendigo is doing is seeking to remind the La Trobe University and the people of Bendigo that he has voted against that university receiving additional funding and that the Labor Party is standing in the way of making sure that Australia is internationally competitive and that we have high-quality education the length and breadth of Australia. It is critically important to put, as the new Leader of the Opposition said, Australia’s interests first—and I implore him to do that. Higher education is a national interest issue. Many of the policies which have been adopted by this government are policies which you, Leader of the Opposition, in your heart support and have written about. I urge you to persuade your colleagues to those views.

Education: Higher Education

Mr Somlyay (2.42 p.m.)—My question is also addressed to the Minister for Education, Science and Training. Would the minister inform the House of recent enhancements to the government’s plan for the future of universities? How important is the reform of the university sector for the future of higher education?

Dr Nelson—I thank the member for Fairfax for his question and for his long career in support of university education in general and the University of the Sunshine Coast in particular. The government has be-
fore the Senate—and it has been opposed by the Australian Labor Party—a $2.4 billion additional investment in Australian universities over the next five years, some $10.6 billion of additional investment in universities over the first 10 years. I announced late last week a further $200 million enhancement to that package, which will include another 1,400 HECS places in the sector. That brings it to 33,000 over the five years. It includes an extra 7,500 scholarships for low-income rural students to help them with their living costs whilst they are at university—worth $16,000 each. In addition, there are a range of measures which include increasing by three times the amount of money for universities to support students with disabilities and doubling the amount of money into the fair go performance program.

I am asked about other statements in relation to higher education. The Leader of the Opposition seems to be particularly mindful of what happened 30 years ago, so he should not have much trouble coming a bit closer to 2003. I bring the Leader of the Opposition to 1999 and a paper he delivered to the University of Western Sydney’s senior staff conference in the Blue Mountains on 11 November 1999. Let us keep in mind that today the members of the Labor Party have not only chosen a new leader; they have chosen the views and policies that this person represents. The Leader of the Opposition said on 11 November 1999 that he is arguing for a group of institutions with greater emphasis on private revenue sources rather than public money. He argued:

They would need to make strong use of their large endowments and positional goods. Their fees would be deregulated, with the equity role of government pursued through publicly funded, means tested scholarships.

The Leader of the Opposition believes that there are universities in Australia—and he named them: Queensland, New South Wales, Macquarie, Melbourne, Monash, Adelaide and Western Australia—whose fees would be deregulated. In other words, should he ever be the leader of his party, that would be the policy that would be adopted by his party, yet the Labor Party is opposed to what this government is doing in response to advocacy from every one of the 38 vice-chancellors of Australian universities. This government did not support full deregulation of universities, but what we did say in relation to the leadership of the universities is that, at the same time that we will invest another $2.4 billion of taxpayers’ money in the first five years, we will allow the universities to set their own HECS charges between zero and a level which is a maximum 30 per cent above what it currently is, with no change for teaching and nursing.

The Leader of the Opposition said this morning, ‘I am not here as opposition for opposition’s sake. I’m here to do the right thing by Australia’s national interest.’ My challenge to the Leader of the Opposition is to stand by those words, and the Leader of the Opposition can start today. The Australian Vice-Chancellors Committee on 25 November this year said, ‘Australia’s universities need a reform package’. On 28 November they said:

We are on the cusp of crucial reform across the higher education sector. Australia’s universities deserve a new deal to serve our students well and to make us internationally competitive.

That sounds like national interest to me. I ask the Leader of the Opposition and the Australian Labor Party to now stand by those words, support the government and pass the higher education reforms in the Senate.

Aviation: Airport Security

Mr SIDEBOTTOM (2.47 p.m.)—My question is to the Deputy Prime Minister. Is the Deputy Prime Minister aware of the in-
dependent review of regional airports in New South Wales by the Southern Cross group, which concluded that our regional airports were a launching pad for terrorism because, amongst other things, commercial passenger aircraft were left unguarded overnight, commercial vehicles were not being checked and airports had no terminal guards? Deputy Prime Minister, given that it has now been more than two years since 11 September, why hasn’t the government secured Australia’s regional airports?

Mr ANDERSON—I thank the honourable member for his question. I am of course aware of those media reports in relation to the review of regional aviation security by the Southern Cross group. I note that they asked neither the government nor my department nor me for any input. I would also think that it is very important to put before this House the fact that the country’s intelligence agencies have undertaken a major review of our aviation safety arrangements in this country. They have certainly not indicated that there is any information available to them which would indicate that the very concerning claims made in that report are to be vindicated or acted upon at this stage.

The first point that I would make is that there is no distinction between regional and non-regional airports; rather it is between what we call ‘categorised’ and ‘non-categorised’ airports. It is a question of the nature of the types of airports, the types of aircraft that move through them and the security risk that is assessed to pertain to those airports and those aircraft as ascertained—and I think I can say this on the basis that we enjoy bipartisan respect—by Australia’s respected intelligence agencies. I can also inform the House that in response to the major overview of our security arrangements in relation to aviation, which was completed a little while ago by our intelligence agencies, the government has formulated a further set of responses in addition to those which were announced last year and which are being implemented as we speak. I will be making a full and detailed explanation of those over the next few days.

Workplace Relations: Union Movement

Mr BALDWIN (2.50 p.m.)—My question is addressed to the Minister for Employment and Workplace Relations. Is the minister aware of any reported incidents of violence and thuggery in the union movement? What is the government doing to ensure the rule of law in the Australian workforce?

Mr ANDREWS—I thank the honourable member for Paterson for his question and can indicate to him that I am aware of a report in the Melbourne Herald Sun last Friday which is entitled ‘Union official bashed’. The report starts by saying:

A building union official has been flown to hospital after being viciously bashed during a key strategy meeting.

This was a meeting at the Victorian plumbing union planning day at Lorne in Victoria, which resulted in the bashing of one of the union officials and the subsequent transportation of that official to the Geelong Hospital because of the seriousness of the injuries. This comes on top of a recent incident in which a well-known union official, Mr Doug Cameron, was bashed just outside the front door of his own home and it comes shortly after a number of court cases, in both Victoria and New South Wales, where leading officials of the CFMEU were found guilty of intimidation, threatening behaviour and thuggery.

I want to say quite clearly that this thuggery and intimidation in parts of the union movement is a disgrace. The Secretary of the ACTU, Mr Greg Combet, is on record as saying recently that he has been trying to clean up this sort of intimidation and thug-
gery in parts of the union movement for years. Clearly he has failed, because here is yet another example of thuggery and intimidation in the union movement, coming on top of the recent bashing of Doug Cameron, this time in another union in Victoria.

This also reinforces the findings of Mr Justice Cole in his Royal Commission into the Building and Construction Industry, in which he found a culture of intimidation and thuggery practised by parts of the union movement in Australia. This government is determined to do something about it. The question for the new Leader of the Opposition is about choice—whether or not he will get behind the measures and legislation of this government to clean up the building and construction industry in Australia or continue to support a culture of thuggery, intimidation and violence in the union movement. He has a choice to do something about it; the time for talking is over. Is the Leader of the Opposition going to do something about it or is he going to reject the needs and the aspirations of ordinary Australians?

**Aviation: Air Safety**

Mr Costello—Martin!

Mr MARTIN FERGUSON (2.53 p.m.)—I’ve still got my integrity and self-respect, Peter, which is more important than winning or losing a ballot.

Government members interjecting—

The SPEAKER—The member for Batman will come to his question.

Mr MARTIN FERGUSON—My question is to the Minister for Transport and Regional Services.

Mr Costello—What about your brother?

Mr MARTIN FERGUSON—We got a unity ticket on that, Pete. My question refers to an incident at Tamworth Airport last week where air traffic controllers had to guess the altitude at which a light plane was flying. Is the minister aware that the light aircraft and a commercial jet carrying 30 passengers would have crossed midair within minutes if the private plane’s pilot had not used a radio to call air traffic control before proceeding to land? Given that the government’s new airspace management system discourages such calls to air traffic control, why is the minister persisting with a system which the experts say increases the risk of midair collisions?

Mr ANDERSON—Again, the opposition spokesman for transport is seeking to establish, firstly, that he knows all about aviation safety and, secondly, that he is running the union line. In reality, the people who are responsible for aviation safety in Australia include, first and foremost, CASA—the Civil Aviation Safety Authority. After that comes Airservices Australia, who have to implement the management of airspace in Australia. But, again, if we are going through this exercise of who says what, I remind him that those who have flown in Australia and in America—Qantas, the RAAF, Virgin, Rex and a whole range of others—all say that Australia should update its airspace management and that this is the way to do it.

Ms Jackson interjecting—

The SPEAKER—The member for Hasluck should take extra care as well.

Mr ANDERSON—Let me come to the issue of these incidents. Up until now, I have been charitable. I have said, ‘Perhaps this is just about the conservatism of air traffic controllers.’ But it now has all the hallmarks of a union campaign, so there are several points that need to be made. The first is that it is the responsibility of the agencies that look after our airspace to ensure that what is happening in our airspace is safe. The second is in relation to these incidents that are being reported: pilots are required to report anything out of the ordinary. This can happen on average up to 50 or so times a week: those pilots
might stray out of their assigned altitude; they might make an incorrect radio call; they might be concerned about their final approach to an airport and do a second run around; they might have a warning light malfunction; or their radar transponder might not be operating properly.

The first point is that there is a layered approach to safety and protection against all these sorts of incidents. The second point is that all of the incidents I have just mentioned, although they are not life-threatening in any way, have to be reported and are monitored by the Australian Transport Safety Bureau as part of the process of keeping our skies safe. These incidents happen every day. As I said, there are up to 50 a week on average. They are not near misses, and it is irresponsible to claim that they are. I hear this claim again emanating from the unions, astonishingly, are saying that it is inevitable that we will have a midair crash. That is irresponsible. It completely ignores groups like CASA. It ignores the reality that we are simply moving to the airspace arrangements used in America. But, above all, the implication is that it has never happened in Australia—tragically, it has happened 36 times since 1961.

You cannot rule against every eventuality in our skies. But you can move to a more modern system. You can move to a system which takes advantage of new and emerging technologies. You can set yourself up for the future. That is what aviation in Australia overwhelmingly wants to do and that is what the government is supporting it in doing.

Small Business

Mr PEARCE (2.58 p.m.)—My question is addressed to the Minister for Small Business and Tourism. Would the minister advise the House of what initiatives the government has introduced to help Australia’s 1.1 million small businesses? Is the minister aware of any initiatives that will adversely affect small businesses?

Mr HOCKEY—I thank the member for Aston for his question and recognise that he fights for every single one of the 1.1 million small businesses in Australia—every single one! More than half have been created since the Howard government came to office in 1996, and many of them in his electorate. One reason why we have so many small businesses doing well is that we believe in lowering tax. We believe in it, because we have abolished provisional tax; we have abolished wholesale sales tax; we have abolished stamp duty on the transfer of shares; we reduced income tax; and we halved capital gains tax—all with the net effect that it has delivered real benefits to Australia’s small businesses. Importantly, we should note that the Labor Party voted against all those initiatives. We live in hope, now that the member for Hotham and the member for Brand are on the backbench. In fact, how cruel it is that it is his first day on the backbench and the member for Hotham is sat next to the member for Lowe. How cruel is that! You will do anything for a vote.

The 23,000 Tasmanian small businesses are now being asked by the Tasmanian Labor government to backdate payroll tax, and 23,000 Tasmanian small businesses are now saying, ‘Why? Why is the Labor Party so determined to increase taxes?’ We were hoping that the member for Werriwa as shadow Treasurer would oppose the Labor Party at a state level on issues such as rising land tax. We had hoped that he would oppose higher stamp duties. We had hoped that as shadow Treasurer the member for Werriwa would have opposed higher payroll tax. Unfortunately, he has form. If people are shocked at the election of the member for Werriwa, wait until they see his policies. When it comes to tax, these are the words of the member for Werriwa:
It is not too late ... to use taxation policy as a dis-incentive for growth in Western Sydney. Other options include the extension of the Federal capital gains tax to the family home and the introduction of a local ... betterment tax.

And it goes further. He says:

The member for Werriwa has shown that he supports higher taxation. Over the last few months he has talked about increasing capital gains tax and abolishing negative gearing. On the record he has previously said he wants a local betterment tax. The Labor Party, true to form, do not like small business. They want higher taxes and they think small business is an easy target.

Indonesia: Terrorist Attacks

Mr ORGAN (3.02 p.m.)—My question is to the Prime Minister. Is the Prime Minister aware that my constituent Ms Chris Min, who worked selflessly for 22 hours treating victims at Sangla Hospital, Bali, in the immediate aftermath of the October 2002 bombings, was not recognised in the Bali honours list, despite the fact that her mother was one of the first people to raise with the Prime Minister the need for formal recognition of the volunteers? As recognition delayed is recognition denied, what steps is the Prime Minister taking to ensure that my constituent’s contribution is formally recognised in the same manner as that of other volunteers forthwith?

Mr HOWARD—In answer to the member for Cunningham, no, I am not aware of that. I will investigate the matter. If there is anything that I can do at this stage to address it, I will. I point out, in no sense of argumentation with the member for Cunningham, that decisions and recommendations in relation to these awards and recognitions are through an essentially independent, arms-length process from the government. I think that is something that is respected on both sides. But I will have a look at the matter, and if it is evident that there has been unfair treatment of the lady, I will see what I can do to remedy it.

Mr Organ—I seek leave to table two letters to the Prime Minister dated 21 October and 25 November, dealing with this issue.

Leave granted.

Mr Howard—Mr Speaker, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Medicare: Reform

Mr ABBOTT (Warringah—Minister for Health and Ageing) (3.04 p.m.)—Mr Speaker, I wish to add to an answer.

The SPEAKER—The minister may proceed.
Mr ABBOTT—Earlier today I was asked a question by the member for Lalor. I point out to the member for Lalor that I have been advised by my department that the document displayed by the member for Lalor—

Mr Tuckey interjecting—

The SPEAKER—Order! The member for O’Connor is indicating that he, and I presume others on the horseshoe, is unable to hear the Minister for Health and Ageing. Could I ask the sound people to recognise that the minister has the call.

Mr ABBOTT—In response to a question today by the member for Lalor I have been advised by my department that the document displayed by the member for Lalor is the application form for the existing MBS safety net. To suggest that the form in question was for the new MedicarePlus safety net, quite frankly, verges on the dishonest—

The SPEAKER—The minister has made his point.

Mr ABBOTT—and that is a very bad start from the new Leader of the Opposition.

PERSONAL EXPLANATIONS

Mr LATHAM (Werriwa—Leader of the Opposition) (3.06 p.m.)—Mr Speaker, I wish to make a personal explanation.

The SPEAKER—Does the Leader of the Opposition claim to have been misrepresented?

Mr LATHAM—Yes.

The SPEAKER—The Leader of the Opposition may proceed.

Mr LATHAM—During question time the Minister for Foreign Affairs said that, in the lead-up to the Iraq war, Laurie Oakes broadcast on Channel 9 news a proposition that I advocated withholding shared intelligence information with the United States. The minister asked me to repudiate this position. In fact, Mr Laurie Oakes himself repudiated the report by subsequently broadcasting a correction. His report was wrong, and the Minister for Foreign Affairs needs to check his facts in the future.

AUDITOR-GENERAL’S REPORTS

Reports Nos 14 and 15 of 2003-04


Ordered that the reports be printed.

QUESTIONS TO THE SPEAKER

Legislative Assembly of Queensland

Mr ORGAN (3.07 p.m.)—Mr Speaker, my question to you relates to the business of the House. I refer to the resolution passed by the Legislative Assembly of Queensland on 11 November 2003, which you tabled last Tuesday, 25 November. I ask what action you intend to take in relation to the request from the parliament to establish an inquiry to investigate the possible involvement of members of the Commonwealth parliament and others in the process of funding the investigation and civil and criminal prosecution of Pauline Hanson and David Ettridge. I am seeking information as to what action you intend to take arising from that request from the Legislative Assembly of Queensland.

The SPEAKER—I should indicate to the member for Cunningham that it was not my intent to take any action at all and I would not do so unless instructed to by the House.

Mr Melham—Maybe the Leader of the House will instruct you!

Mr Abbott—No, I have no instructions—no instructions whatsoever!
The SPEAKER—But, I point out to the Leader of the House, you do have the call.

PAPERS

Mr ABBOTT (Warringah—Leader of the House) (3.09 p.m.)—Papers are tabled as listed in the schedule circulated to honourable members. Details of the papers will be recorded in the Votes and Proceedings.

MATTERS OF PUBLIC IMPORTANCE

Health: Aged Care

The SPEAKER—I have received a letter from the honourable member for Canberra proposing that a definite matter of public importance be submitted to the House for discussion, namely:

The failure of the Government to provide adequate aged care services.

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

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

Ms ELLIS (Canberra) (3.09 p.m.)—I open this debate on the matter of public importance on ‘The failure of the Government to provide adequate aged care services’. I regret that we have to have this debate, but we must have it because the aged care sector is in, or is heading straight into, crisis. Today I will discuss how the sector came to be in this crisis position under the Howard government and the impact that this is having on the adequacy of aged care services. This includes an inadequate funding model, an inadequate accreditation system and an inadequate planning ratio.

I begin with how the sector came to be in the position of crisis that I believe it now faces. The government failed to ensure that providers were able to remain viable following the sweeping reforms of 1997 which had major implications for the way in which the aged care sector is funded. Many analysts have argued that the aged care sector has not been viable since the Howard government’s aged care reforms. The National Aged Care Alliance commissioned La Trobe University to examine whether the new system of government funding adequately meets the needs of the sector following those reforms. The report, Residential Aged Care Funding: fourth report, concludes that ‘current indexation arrangements using Commonwealth Own Purpose Outlays’—or COPOs—‘do not adequately adjust for wage cost increases’, and, due to the current indexation method, the sector has been underfunded up to $405.8 million since 1996-97, which is an average of approximately $50.7 million per year over eight years. The reason for this underfunding is that the COPO indexation method underestimates the cost pressures faced by residential aged care providers. As a result, the funding is inadequate.

The aged care industry had every right to be appalled by the 2.2 per cent increase in residential aged care subsidies this year, especially when the CPI was 3.3 per cent. The Chief Executive Officer of the Australian Nursing Homes and Extended Care Association said in the INsite journal of October/November 2003:

The first five years of the post 1997 reforms have seen a 10.6 percent increase through indexation with cost escalations during the same period varying from state to state but some running as high as 26 percent.

It does not help that the government claws back money from the sector through its RCS reviews. Information I obtained through Senate estimates shows that $30.2 million was clawed back between July 2002 and June 2003. When one newspaper recently highlighted this, but unfortunately distorted the nature of the clawback by portraying the process as a rip-off by the aged care sector, I was disappointed that the government did
not move to clarify the situation. The Howard government allowed the media to portray the aged sector in this negative light, despite the challenges the sector faces due to bad government policy.

Aged care providers are expected to provide high-quality care and have to follow complicated and time-consuming processes to receive funding and pass their accreditation assessments, but they do not have the resources that allow them to do that. Many facilities have closed down or gone into receivership over the past few years. I know of some providers who are planning to close down some of their facilities because they are no longer viable. Recent actions taken by aged care providers and by aged care staff demonstrate very clearly that there is a crisis in the sector. There are several campaigns now being run by groups within the aged care industry.

One example is the campaign by Aged and Community Services Australia, which will be launched tomorrow. They are calling it ‘Aged Care: Who’ll Care?’ As part of this campaign, many members of parliament will have already received letters highlighting the challenges faced by the aged care sector. I look forward to the launch of that campaign tomorrow. Another example is the campaign being run by the Australian Nursing Homes and Extended Care Association, involving a $750,000 fighting fund which is being managed by a former adviser to the previous Minister for Ageing, Mr Andrews. It is fair to say that when providers face financial pressures there is likely to be reduced quality of care for residents of aged care facilities. In fact, the pricing review submission by Aged and Community Services Australia states:

The pricing arrangements in place since 1997 have eroded product quality by reducing the quality of life of residents. They have done this through the pressure they have imposed on funding levels. This has resulted in a reduction in support for the quality of life of residents due to a reduction in the time staff are able to spend with them.

The letter sent to members of parliament from Aged and Community Services Australia states:

Unless these issues are addressed, the reality is that Australia is facing the collapse of the aged and community care system as we know it. This is not over-stating the case. Many of our members, despite making substantial productivity improvements, are carrying deficits that increase every year. Some can afford to carry these for a time through subsidisation from other areas. Most cannot. Without fundamental change to the current funding system, all our members will soon be facing the decision of whether they can continue to operate, if they are not already.

I am extremely concerned about the impact this has on the quality of care provided to residents. When I make statements in the press or in parliament about concerns in relation to the quality of care, I am not for one minute saying that providers intentionally neglect their residents—in fact, it is quite the reverse. I honestly believe that most, if not all, providers have the best interests of their residents at heart and deliver good care despite the difficulties they face. Aged care providers do the best they can but, in order to survive financially, they often have to cut corners and this can include reducing the levels of staff. This should be of great concern to everyone.

There have been many cases of aged care facilities failing accreditation standards, and many horror stories. I will not focus on these because I do not want to portray aged care facilities in that negative light. However, some stories are horrifying and something must urgently be done to ensure that our residents receive the quality of care they deserve. The Labor Party and the aged care sector have been calling on the government to take urgent action to address the funding crisis, but the government has constantly
stalled, using its reviews as an excuse. Time is running out. The aged care pricing review is due at the end of this month. I call on the Minister for Ageing to release the pricing review report as soon as it is completed. This pricing review is costing Australian taxpayers $7.2 million. It is an important review that will contain vital information that is needed by the sector. The minister cannot allow this review to be referred to a committee, to be left on a bookshelf collecting dust or to be locked away somewhere. The sector needs action urgently.

I now move on to the inadequacy of the Howard government’s aged care accreditation system. What I am hearing from various sources is that the system is failing. And these sources do not come from just the aged care sector. If there were any doubts about the failure of the government’s accreditation system, then the report by the Australian National Audit Office, the ANAO, on the accreditation agency unfortunately put those doubts to rest. The ANAO report confirmed what many in the industry have been saying for years: the Howard government’s accreditation system for residential aged care may not improve the quality of care for residents. The report, Managing residential aged care accreditation, concluded that there is no way of knowing whether or not the accreditation system improves the quality of care for residents because the government has not undertaken an evaluation program to determine this vital information. I find that incredible and unacceptable.

The accreditation system costs the government millions of dollars—in fact, an estimated $11.5 million in 2002-03—and the service providers are charged a fee for each accreditation review. It is astonishing that the Howard government would introduce an accreditation system without ever developing an evaluation program to see if it achieves its goal of improving the quality of care. I am extremely pleased that both the accreditation agency and the Department of Health and Ageing have agreed with the recommendation of the National Audit Office to develop an evaluation plan. It took a report from the National Audit Office to highlight what should have been obvious. As a result of the failure to develop an evaluation plan, the well being of frail and elderly residents is not protected to the degree that it should be and residential aged care providers are being asked to participate in an expensive and time-consuming process which may not necessarily achieve the right goals.

I now turn to an area in which the government has misled the aged care sector, and this relates to the aged care planning ratio. The current aged care planning ratio is 40 high-care places, 10 low-care places and 10 community aged care packages for every 1,000 people aged 70 years and over. Some regions in Australia have more aged care residential beds and CACPs—community aged care packages—than that recommended in the ratio, yet people still suffer long waiting lists for bed places and for CACPs. This ratio should have been subject to regular review over the last seven years. The Howard government has not reviewed this ratio since it came to power. I do not understand how the government can continue to allocate beds on that ratio, considering the changing demographics of our society. This lack of forward planning has led to massive shortages of aged care places. People in the community are crying out about the shortage of both community and residential places. My figures show that there is a shortage of 10,388 residential places in Australia based on that ratio. So we can safely assume it is an underestimate of the shortage and the real need.

When asked at budget estimates in June whether the government was planning to review the aged care planning ratio, we were
told that the government was not planning to review the ratio. In August, the then Minister for Ageing, Mr Andrews, said in parliament that the Department of Health and Ageing was going to review the ratio. But when we asked again in budget estimates last month what progress the department had made with the review of the planning ratio, we were told that it was not reviewing the ratio. One minute the department says it will not, then the minister says it will and then the department says it will not. I hope the new minister is honest with the aged care sector—I am sure she will be. They are fed up with all the talk and no action from the government.

The aged care sector is in crisis. The government introduced the reforms of 1997 and then left the sector and everyone in it to themselves. It basically sailed off, having pushed the aged care reform of 1997 off into the wide blue yonder while hoping like billyo it would not sink. I have news for the government: it is looking like it is beginning to sink. What I ask of the government and what I implore the Minister for Ageing, who is at the table, to do is not to respond to this MPI by trotting out statistics of billions and trillions of dollars of expenditure and millions of places that have been created when we know that around the country there is an enormous level of concern. Despite the planning ratio, despite the government rhetoric, there is a financial crisis facing the aged care sector in this country. The sector will not be sustained unless something is done.

There are people who are trying to get loved ones and others into residential care, to get them CACP packages within their own homes and to do all sorts of things to offer to older residents, who need this sort of care, the care they want. Despite that, the government rhetoric is trotted out time and time again. They ask what we are worrying about. They say that we are scaremongering, we are creating a false impression. They say, ‘It is really okey-doke. We have spent so much money.’ What I want, what I believe the sector wants and what I know the community demands is an honest response—acknowledgment of the crisis, acknowledgment of the need to do something and action on behalf of the government. Boy, am I waiting for that pricing review report to be in my hands. That is where it ought to be—in the hands of this opposition, in the hands of the sector and in the hands of the public so that we can see at first hand the true state of the aged care system in this country.

**Ms JULIE BISHOP** (Curtin—Minister for Ageing) (3.24 p.m.)—I am really quite surprised that the member for Canberra would allege government failure in the provision of aged care services in this country. While, of course, aged care is a priority issue and an issue of public importance—it is certainly a priority issue for this government and it has been since we came to office—all this MPI does is to highlight the absolute policy vacuum in aged care on the part of Labor. The member for Canberra says she wants a copy of the Hogan review. What has the ALP done to contribute to that most significant and important review? What was Labor’s submission to Hogan? What positive alternative did Labor put forward to Professor Hogan in terms of the long-term funding needs for Australia?

The member for Canberra had an opportunity just then, in her MPI, to offer a constructive, positive and productive alternative. If she says the government has failed, what are her alternative policies? There has been not one policy, not one hint—not a fresh thought from Labor on the very important issue of aged care and services for aged care. Her rhetoric has come straight from the lobby group that is preparing, according to the member for Canberra, to launch a political campaign. We are used to being lobbied; we expect to be lobbied. But fancy that the
only sign of activity, the only sign of life, from the opposition in the area of aged care is when it jumps on the bandwagon of a lobby group. It is a really sad reflection on an opposition party that the only time it is able to come up with any sign of life is when a lobby group says that it is going to bus people in from their aged care beds to question time tomorrow. I would hardly have thought that that was a productive activity, but if that is the way Labor thinks aged care residents should be treated then it is an example of Labor’s approach to aged care residents. All it will do is highlight the contrast between the government’s achievements in aged care and Labor’s total and absolute lack of policy on any aspect of, or on any issue in, aged care.

I would not deign to give any advice to the opposition, but one would have thought that opposition was, firstly, a time of healing. Of course, it depends on how deep the wounds are. Secondly, I would have thought that the time in opposition would be spent rethinking policies. Labor left government after 13 years of abject neglect of the aged care sector. They can say all they like now about the government’s funding, the government’s policies and the government’s achievements, but perhaps the opposition ought to rethink their policies. They ought to look forward, devise a body of ideas—something sound, something progressive. They ought to use this period in opposition—it is now the second year of their third term in opposition—to come up with some sort of constructive issue in a period of preparation for the responsibilities of office.

What we have seen from this opposition is precisely the opposite. All they are able to do is to jump on the bandwagon of a lobby group that is seeking to undermine the Hogan review. The member for Canberra is dying to have the Hogan review in her hot little hands, even though the opposition provided not one idea, not one option, not one alternative and not one submission to the Hogan review, a review that she says is so important. But the lobby group that is campaigning tomorrow is seeking to undermine the Hogan review. That is its express intention. While it is bussing in people from aged care beds for tomorrow’s question time, the question has to be: what is the alternative from Labor?

The member for Canberra raised a number of issues. She said, ‘We are unhappy with the government’s failure to provide aged care services.’ That is generally what she was saying. What is Labor’s aged care policy? What is Labor’s policy on accreditation? Labor opposed accreditation when it was introduced under the 1997 reforms. Labor opposed accreditation the first time that there was a national quality assessment and compliance program, and the Howard government introduced it. For the first time every aged care facility in Australia was independently visited, assessed, reviewed and audited to ensure that residents in taxpayer subsidised places were being cared for at the appropriate level and that the providers were providing the quality of care that we expected of them, given the government subsidy for aged care. So what is Labor’s policy on accreditation? It stridently opposed the accreditation system that has raised standards of care across Australia. So what is its alternative?

What is Labor’s policy on certification? This government introduced building certification standards to lift the quality of the built environment so that those who need aged care in residential facilities have quality buildings in which to live. It is their home, after all. So what is Labor’s alternative policy on certification? It has opposed it from the beginning. It opposed it in 1997. What is its alternative policy?
What is its policy on aged care funding? As I said, it did not make any submission to the Hogan review. So what does it say funding for aged care should be? Labor introduced the COPO—the Commonwealth Own Purpose Outlays indexation model. That was Labor’s policy back when it had a policy—back when it was in government. I was not here, but apparently it used to have policies. That was Labor’s policy in 1995. Labor introduced that COPO indexation formula. What is Labor’s alternative formula? Is Labor now scrapping its policy from 1995? If so, what is it introducing? Again, there is a policy vacuum.

What is Labor’s policy on residential care place allocations? The member for Canberra says there are insufficient places being allocated to aged care. What is Labor’s policy? When Labor was in government—when Labor apparently had policies—the target that it introduced back then, in 1985, was something like 100 places per 1,000 people for every person in the community over the age of 70. That was its ratio. It aimed for it, but it did not ever meet its target. It could not and would not meet its target. It was okay for Labor, between 1985 and 1996, to accept 100 places per 1,000 for the population aged over 70.

The member for Canberra does not appreciate that this formula is sensitive to demographic changes. She asks, ‘What about the demographic changes?’ Obviously, the formula is sensitive to changes in the demographics. So if there are more people over the age of 70 in the population, the formula adjusts, obviously. Labor could not or would not meet that. What were we left with? A 10,000 place shortfall. That was a national disgrace. The member for Canberra was not in parliament at the time. She would be embarrassed to have to admit to that 10,000-place shortfall.

The member for Canberra is a nice person. The member for Canberra cares about her constituents. Only the other day we were both at Moreshead Home. The member for Canberra was there to witness the success of one of the homes in the member for Fraser’s electorate in Canberra under the accreditation system. That home was recognised for the truly exceptional care that it is providing under this government’s accreditation system. I am glad the member for Canberra was there. She would be embarrassed to have to admit that, when Labor left government after 13 long years, its priority in aged care was to be 10,000 places short.

Mr Downer—and no accreditation!

The DEPUTY SPEAKER (Hon. I.R. Causley)—Minister for Foreign Affairs!

Mr Sidebottom—A serial offender!

The DEPUTY SPEAKER—The member for Braddon does not need to interrupt!

Ms JULIE BISHOP—That was not the government’s assessment; that was an independent assessment of Professor Gregory. The member for Canberra talks about leaving reports on the shelf. What did Labor do about Professor Gregory’s independent assessment? What did Labor do about the Auditor-General’s assessment of there being 10,000 places short? What is Labor’s allocation target? What is Labor suggesting should be the appropriate allocation of places per head of population aged over 70, and how would it meet it? Labor at election time can be long on promises, but they are always unfunded and they are never attributed to a funding outcome. How would Labor meet that?

The member for Canberra mentions the La Trobe University report. She speaks of the report as though it is some independent report. Of course, it was commissioned and funded by the aged care sector. It was a group comprising providers, nurses, the
Nurses Federation and unions, and—surprise, surprise!—this report managed to get the answer they wanted, which was that it alleges a shortfall in funding. The fact is that the Howard government has demonstrated its ongoing commitment to ensuring that older Australians receive the care that they need, and not only by increasing funding. The member for Canberra dismisses a 100 per cent increase in funding in aged care from $3 billion to $6 billion. She dismisses that as just statistics. What that $6 billion of the federal government budget delivers is a quality of care in aged care residences across Australia that any country would be proud of. The member for Canberra was there at Morreshead Home to see the truly exceptional provision of care, under the government’s accreditation certification systems, that providers are able to give to those in our community who need care.

Let us have a look at the funding increases. The member for Canberra dismisses these as statistics. Let us have a look at what we have done in one area that has truly met the aspirational needs of an increasing number of older Australians—that is, to age in place at home in their community. The government made an election promise to meet 200,000 allocated places by June 2006. We are well on track to doing that. I have mentioned the fact that Labor was 10,000 places short. But, by June 2006, we will have 200,000 government subsidised aged care places in Australia.

What that also means is that we have allocated many community aged care packages within that sum. Of the 148,000 allocated aged care places that were in place shortly after the election of the Howard government, there were very few in community aged care. What we have done is ensure that community aged care packages are receiving a priority allocation. That is because older Australians want to age at home and in their community.

We have planned a further 8,666 aged care places for allocation in 2003-04 and I expect to announce those allocations shortly. We have ensured that 7,350 of the places will be in residential care, but 1,316 will be used for some of our national programs. I think that is a very positive outcome. We have also ensured that these places are made operational quickly. All aged care providers now have two years for their provisional allocation of places to become operational, so the government again are acting to ensure that government subsidised places that are allocated become operational very quickly.

The accreditation system is working. The success of the system is demonstrated by the overwhelming majority of accredited homes throughout Australia. Almost all of the 3,000 homes are accredited for three years. That is a fantastic achievement on the part of the aged care sector. This is a sector that is responding to the demands and expectations of the community that it meet high standards of care. We introduced the Aged Care Complaints Resolution Scheme. Again, what is Labor’s policy on an aged care complaints resolution scheme? They opposed it in the 1997 reforms and we have heard nothing from them since the 2001 election. We have spot checks that are being carried out by the Aged Care Standards and Accreditation Agency, and the department undertakes monitoring to ensure that providers continue to comply with their responsibilities under the Aged Care Act. What is Labor’s alternative policy on the accreditation agency? The agency is an independent operation. It is working very well, and the aged care sector is responding extremely well, and we hear nothing from Labor on that.

Another area where the federal government is meeting expectations and meeting
aged care needs is home and community care. This is a joint Commonwealth-state initiative, and the Commonwealth provides about 60 per cent of the funding. This year, we are providing over $730 million in funding for home and community care packages. That is a 70 per cent increase since we have been in government, and that is a substantial increase. But in the community aged care packages the increase in funding has been some 700 per cent. Again, the member for Canberra says that that is just a statistic, but a 700 per cent increase in funding means that we are delivering in the area of community aged care packages. I am sad to have to say that the only thing the Labor Party has to offer is to jump on the bandwagon. (Time expired)

Ms JANN McFARLANE (Stirling) (3.39 p.m.)—I am pleased to engage in this matter of public importance with the government on their failure to provide adequate aged care services. What I would like to talk about is how Labor is synonymous with the development of the aged care services that we currently have in this country. I want to talk about how Labor is visionary, innovative and consultative, which is something that the government have failed to be.

Mr Deputy Speaker, as you are aware, I went into community work in 1972. What aged care was there? There was not much at all. There were nursing homes, some hostels, very little in the way of self-care units and some small not-for-profit community groups delivering some services. There was no program. It was ad hoc and there were differences from state to state. Very little was put into this very important area by the state governments. What came out of the Whitlam government’s innovative Australian Assistance Plan was the need to develop a whole new strategy to deal with the issue of what people do when they become aged. I might add that, when we are talking about aged care services, we are talking about the full range of services.

As we all know, only about six to seven per cent of people go into an aged care facility, which means that 92 to 93 per cent live at home. Labor heard the call from the community back in the 1970s; Labor were out of government and not much happened for the next couple of years. However, when Labor came back into government in the mid-1980s, what did we do? We again became visionary, innovative and consultative. What we had from 1985 was the development of the Home and Community Care program. This is the program which enabled people to live at home with independence, in dignity, supported by their networks—their families and their communities—in the way they wanted, funded by the government and helped and supported by a whole community program.

Labor were aware of how this government can come and go on programs. So when Labor invented and developed the Home and Community Care program, we ensured that we backed it up with legislation so that, in the event that we lost government, the program would stay. This was very clever and intelligent of Labor because, when we eventually lost government in the early 1990s, the Home and Community Care program not only stayed but became the centrepiece of this government’s policy. Again, they were acknowledging that Labor were innovative, visionary, consultative and in tune with the community.

Mr Deputy Speaker, let me tell you what the Commonwealth responsibilities are, as some people are not very tuned-in to the finer points of aged care. When it comes to residential aged care—when people have to
go into some kind of facility—the Commonwealth has responsibility in two areas. The Commonwealth is responsible for high-care places, which most people generally call ‘nursing home places’, and low-care places, which the community generally calls ‘hostel beds’. Again, we developed an innovative framework, good funding formulas and a capital grants program so that, in the event that the five or six per cent of people who needed residential aged care had to take up that care, it would invariably be in a place that was built through a contribution from the government—a dollar-for-dollar program—and supported by a funding program from the Commonwealth.

What has happened in the intervening years? I agree with the Minister for Ageing that Labor were not very keen on accreditation. There were flaws with accreditation, and it was not just Labor saying that we were not keen on accreditation; the sector—the people who worked in the facilities—and the community also said that it was a wee bit hasty, that it was flawed, and there were no evaluation strategies. They asked whether it was a little too much too soon and whether it would give the desired outcome: a quality supported framework for people living in a residential care facility. Accreditation has now come and the community do not really like it, and some of the facilities do not like it, because it has not delivered. What has been the major flaw in it? It has been that the funding formula has not kept pace.

The capital grants program was disbanded by this government in 1997. What we have in its place now is, I think, a limited hostel capital grants program. But, generally, without an adequate funding formula, what do we have? As the member for Lyons tells me—and he is one of my mentors and I much admire him for his life’s work and for his Labor experience—the staff in an aged care facility in a rural area in Tasmania are paid 17 to 20 per cent less than city staff. This creates enormous pressure on those facilities to keep functioning. Why? It is because this government has failed to keep pace with the capital grants funding formula as well as with the staffing and other funding formulae.

What is happening now? I agree with the Minister for Ageing that this government does fund bed licences. But there is no point in funding bed licences when you have a situation such as exists in my electorate of Stirling—and I have spoken about it before in this place—where, in 11 facilities in the electorate, not one new bed has been built in the five years that I have been the member. This is because of a number of factors: (1) the lack of a capital grants program and (2) the funding formula. The private sector are not developing facilities because, as the private sector people tell me when they come to meet with me, there is only about a one per cent profit margin in developing a facility. They might as well put their money in an ordinary bank account where they can get three or four per cent and make more profit without all the work of running an aged care facility.

What has happened with home and community care in this scenario? It is the major form of aged care in this country—92 to 93 per cent of people live at home when they are ageing. We are an ageing population. We have an ageing healthier population and so by the time people need the Home and Community Care program they are usually 75, and often much older. And what do they have? They have waiting lists. Even though Labor developed a range of programs to help people live independently at home—Home and Community Care, as well as the hostel care package, the Community Aged Care Package and some other programs—the programs have not moved on from that. This government have not moved on from that. They have increased funding, but there is
still insufficient funding in these programs to help the number of people who need support to live at home.

In Western Australia, in one of the major hospitals in my electorate, they are running a program—using some pilot money from the Commonwealth—to help people to come out of a hostel or an aged care facility where they have been placed early or inappropriately. People get placed in a hostel or a nursing home facility because of the lack of a Home and Community Care program. Whether it is on the aged care residential side or the home care support side, this government have failed to keep pace and they have mainly failed to keep pace with the funding formulas.

I have friends who are nurses. A lot of my generation became nurses. What do I find? I find they are exiting the industry, and a lot of them work in the aged care industry. Why are they leaving? The wages are poor and they can get a lot more being paid as an agency nurse or in the Western Australian hospital system, where the good Gallop government have increased wages and given them a career path. The Gallop government have attracted an extra 700 nurses back into the Western Australian health system. What have they done that on? They have done it on the back of the residential aged care sector. Nurses are leaving the aged care sector to go and work back in the mainstream hospital system, because they are better paid, they have better hours, they do not have to work the excessive overtime when the staff are inadequate and insufficient, and they have a career structure. On two levels the government are failing to provide adequate aged care services: they are failing to provide sufficient numbers on the home and community care side for support, and they are failing to provide on the residential care side.

There is another issue that keeps coming up, and that is the issue of carers. People come to my electorate office all the time. They want respite care: in-home respite care, drop-in respite care and centre respite care—it varies. There is insufficient money being provided by this government, and in Western Australia a lot of it is now being provided or backed up by the state government. Labor stand on our record. When we are back in government we will continue to consult with the community and say: ‘What are your needs? How do you want it done?’ We will go along the path that we followed in the mid-eighties. We will expand the programs and develop new ones, but we will put a lot of extra money into it. I am proud of Labor’s record in this regard. I am sad that the government do not value aged people to the same extent that Labor did and will not put the money in. (Time expired)

Ms GAMBARO (Petrie) (3.49 p.m.)—I am very pleased today to be supporting the Minister for Ageing in speaking to this MPI. I have a great deal of respect for the member for Canberra, but I do not agree with her when she talks about a crisis in aged care. I do agree on one thing: there is a crisis—and it is right there behind her in the Labor Party. Hopefully today will see the end of that. When she talks about aged care services, she concentrates solely on the aged care sector. I noted, when I checked on her electorate, that she is one of the most fortunate members in this House, in that her electorate has a very low elderly population, with just 8.2 per cent of residents aged 65 years and over. I am quite envious of her having such a very low ratio, because in my electorate 15 per cent of residents aged 65 years and over. I am quite envious of her having such a very low ratio, because in my electorate 15 per cent of residents—nearly double the percentage of the electorate of Canberra—are aged 65 years and over.

It was not so long ago that I was elected member for Petrie, and one of the most appalling things that I remember from the first
year that I was elected is that every Monday morning I would get a stack of reports about the inadequate and—I cannot describe them—horrible conditions that existed in aged care facilities. Every Monday morning I would dread getting those reports. They would go into the terrible and crowded conditions that existed. They would go into hygiene aspects, where soiled clothing would be washed with kitchen tea towels. It is appalling to even talk about it. There were terrible conditions in nursing homes.

The former minister, the member for Pearce, is sitting beside me here and she remembers those times only too clearly. They were horrendous. The Gregory report had come out. One of the most unpleasant things I had to do was to go through an aged care facility where the providers were sent to jail for their terrible treatment of residents and their appalling management of the centre. They were ghosting staff members—putting people that did not exist onto the payroll—and the residents in that nursing home were subjected to the worst type of treatment that anyone could imagine. So this government came along and we introduced an accredited system. The member for Stirling complained that it was too late, too little and too much paperwork. I disagree. Those people had to put up with appalling conditions. It was not too late for those people and I make no apologies for the system of accreditation that we brought in.

As I said, the former minister is sitting next to me, and her contribution to the aged care sector really needs to be highlighted. One of the things I remember her telling me is that she made no apologies for helping people in the aged care sector and that there was absolutely no excuse for people to treat the elderly in an appalling manner. We brought in the Aged Care Standards and Accreditation Agency to monitor that and to make sure that standards were up to scratch, and we took action against people who did not comply.

Sure, some people were going to be upset with the accreditation process. People say all sorts of things to me, even today as I go around aged care facilities. Yes, there is paperwork. Doctors have complained to me that, when they go to aged care facilities, they do not have enough of the medical history of the patient, and we need to make sure that we have some sort of computerised system that will ensure that that information is available to them. Since 2001, we have had a very high record of accreditation. We have had more than 5,000 visits to aged care homes around Australia, and that has resulted in two per cent of homes having to change their accreditation period as well. As of 31 December, there have been 2,977 accredited aged care facilities.

The member for Canberra today concentrated on the nursing home sector. To listen to her you would think that there are no other benefits in this area that we have funded over a long period of time. A week does not go by when I am not doing something in aged care. I will just go through a few things that I have done recently. I visited a hostel, the Buffalo Memorial Home at Kippa-Ring. A $2 million extension to that home was made possible through the capital funding that the member mentioned earlier. Earlier this month, I also announced funding for 15 extended aged care places that will allow several frail, elderly residents to remain in their homes. We are absolutely committed to ensuring that people stay in their homes. People want to stay in their homes. I know that for many members in this House, although they enjoy coming to parliament, the best part about parliament is returning to their own home.

It does not really matter what age we are, but when we become older we are much more attached to our home and surroundings.
Also, when we become older and we lose our memory, we revert to our native cultures, and that is why this government has been very focused on providing for ethnic homes and facilities. I see the Minister for Citizenship and Multicultural Affairs is here as well. That has been something that we have had a very strong emphasis on: making sure that there are homes for people of different cultural backgrounds. I support that move.

The government has been absolutely committed to all of these areas and programs and to providing aged care packages and ensuring that elderly and frail people can stay in their homes for as long as possible. Recently, when I provided some extended aged care packages to the Uniting Church’s Wesley Mission at Chermside, the program director said, ‘These packages are the most fantastic things that you’ve ever done.’ Seriously, the credibility from the local level is much more important than some of the throwaway lines which the member for Canberra has been using here today.

These packages have been highly successful. Since 1999, we have been committed to providing 650 high-quality places in the Brisbane North region that I represent. They are part of an overall $13 million aged care program. The record against Labor speaks for itself; their record was appalling when we came into government. As the minister said earlier, since 1996 we have doubled our spending from $3 billion to $6 billion this financial year. We have also provided some 52,700 aged care places. We are on track, and we are going to meet the 2001 election commitment that the minister spoke of earlier, of 200,000 places by June 2006. That is hardly what one could call a crisis in the sector.

The member for Canberra and the member for Stirling spoke about wage increases, particularly in the nursing sector. I would like to remind the members for Stirling and Canberra that they are a little confused in this area. The Commonwealth’s purpose outlay indexation arrangements were a response to the emergence of enterprise bargaining, which made a very clear distinction between wage increases that should be self-funded through productivity gains at an enterprise level—I would have thought that the other side of the House would understand what enterprise bargaining is—and those that are non-productivity based, funded from a federal budget through the safety net adjustment to minimum wage rates. They really need to get that distinction very clear because they are slightly confused about how funding works. These arrangements apply to a number of payments that were made by the Commonwealth directly to service providers, which on 1 July 2003 resulted in an increase of 2.2 per cent in the residential and community care subsidies. That was based on a wage cost index which included both safety net adjustments and CPI.

I also want to mention the review of the pricing arrangements. I know the minister has been working very hard and has been consulting widely on this, particularly in response to the 2002-03 budget. This review has been conducted by one of the most respected economists, and I had the great pleasure of meeting with Professor Hogan very recently. He is absolutely committed to making sure that we look at the long-term financing options for the aged care sector. I do agree with the member for Canberra on some things: we are ageing, we do have demographic changes—I am ageing every day, and I know how that feels. We are here to make sure that we improve those care outcomes, and that review has been a very important one. It will look at underlying cost pressures, it will look at movement in nurses’ wages and other wages, and it will also en-
sure that workers compensation and other insurance premiums are looked at.

On this side of the House, we are committed to ensuring that a range of aged care services is provided to all of those whom we represent. We have also ensured that a Medicare rebate of $140 has been introduced so that doctors can now go into nursing homes and make sure that those much-needed services in aged care facilities go on. I commend that measure. I say to the member for Canberra that there is no crisis. We are doing everything we can to ensure that the aged care sector continues to be funded in the strongest possible way.

Mr WINDSOR (New England) (3.59 p.m.)—In speaking to this matter of public importance, I think that there are going to be two very important political issues for us, and they are at both ends of the age spectrum. Obviously, care for the aged is going to be a critical issue as we move through the next 20 years. I do not think that anybody would deny that it is going to be a dilemma for governments in terms of funding, and the aged care lobby group is going to be quite powerful in the way that it could impact on the political process. The issue at the other end of the spectrum is providing affordable housing for our young people. If those two dilemmas are not addressed by governments of various persuasions, they will face some political heat further down the track.

Obviously, coming to grips with an ageing population is a dilemma for any government—particularly when we view the demographics and what is going to happen in terms of that ageing group. There is a hump that we are going to go over, where there could be quite a lot of capital expenditure incurred and then there will be empty accommodation further down the track. It is a dilemma that governments do have to deal with.

I would like to pay a compliment to the former Minister for Ageing, Kevin Andrews, and I wish the new minister well in her portfolio. The former minister was starting to address some of the key issues in the ageing portfolio—particularly those in regional areas. One of the things that I was pleased to see was that he was revisiting the process by which the formula is imposed—the number of people aged over 70 per thousand head of population—given that a lot of people do not access facilities until they are in their late 70s, or even in their 80s, and there is a changing usage pattern. I would encourage the new minister to maintain that review process in relation to the formula.

Being a country member, one of the criticisms that I have in relation to the formula is the way in which it takes very little regard of distance, remoteness and smallness. There are a number of things that I think are having a positive impact in relation to that, and I will mention those in a moment. But I think, in any review of the distribution of aged care beds—whether they be high care, low care or care at home—those factors of distance, remoteness and smallness should be taken into account. In regional areas in particular, they do have an impact on the viability of communities and the capacity of those communities to maintain the wisdom of their elderly in the environment in which they lived their younger lives. People do make decisions much earlier if they believe that they are not going to be able to remain in the community in which they have lived their lives and raised their families. They make decisions to move to places where facilities may be far better.

In relation to that issue, when the former minister, Kevin Andrews, came to my electorate, I did some numbers on the size of his electorate, particularly taking into account the aged care formula, and I found that his electorate is something like 100 square kilo-
metres—a typical urban electorate. It has a similar number of voters to the electorate of New England, and essentially the same formula was used to determine the number of aged care beds. I checked on the electorate of the new Minister for Ageing and found that her electorate is about 93 square kilometres, so the figures are fairly similar. The electorate of New England is 500 times bigger than those two urban electorates, even though the aged care formula is not significantly different, and I do understand that there are some minor variations in relation to that theme. The electorate next door to me—the electorate of my good friend the member for Gwydir—is 1,500 times bigger, but it still has to essentially use that same formula. So I would encourage the government, in revisiting that formula, to look at the distance and remoteness factors.

On the positive side is the multipurpose service model that the government has looked at. It is one way in which there can be a combination of aged care—federally funded beds and acute care, state funded beds in smaller communities—that recognises the economic disadvantage of smallness. I think that model has been working quite effectively. Some people believe it has been an attack on the system in some ways, and country people in particular are taking a while to get used to it. But I think it has been a positive step forward, and I commend the current Minister for Ageing, who is at the table, for her involvement recently in the Tingha MPS. The Commonwealth government has come to the party on that, as has the state government. I compliment the community of Tingha, which has a large Aboriginal component and is a very active community, for the work that they did in obtaining an MPS.

I compliment the former minister, Kevin Andrews, for his assistance in relation to another small community, called Bundarra, through the Uralla Shire Council. One of the questions that is often asked is: who pays for aged care? The Council of Uralla was prepared to put its money where its mouth is and has put half a million dollars into a potential facility. The state government and the Commonwealth government have put some money in, and there is a shortfall of about $80,000 to complete the arrangement. It is not an MPS, and it probably could be used by some small communities to work off the back of some of the major communities in terms of a satellite model. So there are positive indications out there at a government level.

The electorate of New England is fortunate in its multipurpose service model, which was essentially developed by a former member for New England, Ian Sinclair, after he left the political scene. The then New South Wales Labor Minister for Health, Craig Knowles, asked Ian to chair a committee to look at how we could provide acute care and aged care services in smaller communities, and the MPS model has come out of that.

The electorate of New England has been the recipient of seven or eight MPSs over a period of time—some of which are still in the planning stage but have been committed to by governments at state and federal level. Those communities are: the Walcha community; the Guyra community; the Bingara community; the Barraba community, some of the money for which has been private money that has been put in; and the Emaville community, which is a small community in the north of my electorate which possibly has the best care facility anywhere in regional Australia. The impact that that has had on its capacity to attract a doctor and other medical services is enormous—it is not only the delivery of the aged care and acute care services; it is those other services that flow. Other communities are the Tingha community, which the current minister has had
something to do with as well; and the Warialda community, which is not far from Inverell and is also in the planning processes for an MPS.

There have been some positives, but I think there are some clouds on the horizon as well. Everywhere I go I am told that the administrative costs of running aged care facilities are enormous; it is something like 30 per cent of the income that they receive. I know that we have to have accreditation and those sorts of things, but I do not know whether we want the cleaning ladies also checking on the grades of each—I cannot think of it now—

Ms Ellis—The RCS.

Mr WINDSOR—Yes, the RCS; we do not want the cleaning ladies checking on people as to their degree of frailty et cetera. I know that, as soon as a government drops its scrutiny of the accreditation process, it will be condemned if something goes wrong in a particular facility. I think the provisions of facilities are very important. Maybe we have just got to try to cut back on the administrative costs and apply some of that money in other directions. As I said, the formula application is something that does need to be looked at.

In conclusion, I note that a lot of disabled people are now living into older age. There are certain models being developed within certain communities—I have some within my own electorate—that are keen to look at mixing and matching in relation to aged people with disabilities. That is something the government needs to put on the agenda. It can use the community to help drive that process, because I think there are some very good ideas out there that could assist the government in relation to the costing of those facilities. *(Time expired)*

The DEPUTY SPEAKER (Hon. I.R. Causley)—Order! The discussion is now concluded.
NEW BUSINESS TAX SYSTEM
(TAXATION OF FINANCIAL ARRANGEMENTS) BILL (No. 1) 2003

Consideration of Senate Message

Bill returned from the Senate with amendments.

Ordered that the amendments be considered forthwith.

Senate’s amendments—

(1) Schedule 4, item 58, page 43 (line 5), omit “shortfall”, substitute “excess”.

(2) Schedule 4, item 58, page 45 (line 2), omit “item 7”; substitute “item 8”.

(3) Schedule 4, item 58, page 58 (lines 14 to 19), omit paragraphs 775-80(3)(a) and (b), substitute:

(a) if you were in existence at the start of the applicable commencement date:

(i) within 90 days after the applicable commencement date; or

(ii) within 30 days after the commencement of this subsection; or

(b) if you came into existence within 90 days after the start of the applicable commencement date:

(i) within 90 days after you came into existence; or

(ii) within 30 days after the commencement of this subsection; or

(4) Schedule 4, item 58, page 65 (line 11), omit “, 3, 4 or 5”, substitute “or 4”.

(5) Schedule 4, item 58, page 65 (line 19), omit “, 3, 4 and 5”, substitute “and 4”.

(6) Schedule 4, item 58, page 66 (lines 4 and 5), omit “made within 60 days after the applicable commencement date.”, substitute: made:

(a) within 60 days after the applicable commencement date; or

(b) within 30 days after the commencement of this subsection.

(7) Schedule 4, item 58, page 71 (line 25), omit “date.”, substitute “date; or”.

(8) Schedule 4, item 58, page 71 (after line 25), at the end of subsection 775-195(2), add:

(c) within 30 days after the commencement of this subsection.

(9) Schedule 4, item 58, page 71 (lines 33 and 34), omit paragraph 775-195(4)(a), substitute:

(a) you make a choice:

(i) within 90 days after the applicable commencement date; or

(ii) within 30 days after the commencement of this subsection; and

(10) Schedule 4, item 58, page 72 (line 3), omit “began at the start of the applicable commencement date.”, substitute:

began at whichever is the later of the following times:

(c) the start of the applicable commencement date;

(d) the first time you issued an *eligible security under the *facility agreement.

(11) Schedule 4, item 58, page 82 (after line 16), after subsection 775-230(2), insert:

(2A) If:

(a) you make an election within 30 days after the commencement of this subsection; and

(b) the election is expressed to have come into effect on a specified day; and

(c) the specified day is included in the period:

(i) beginning on 1 July 2003; and

(ii) ending on the day on which the election is made;

the election is taken to have come into effect on the specified day.

(12) Schedule 4, item 58, page 90 (after line 6), after subsection 775-270(2), insert:
(2A) If:
   (a) you make a choice within 30 days after the commencement of this subsection; and
   (b) the choice is expressed to have come into effect on a specified day; and
   (c) the specified day is included in the period:
       (i) beginning on 1 July 2003; and
       (ii) ending on the day on which the choice is made;

   then the choice is taken to have come into effect on the specified day.

(13) Schedule 4, item 59, page 98 (line 34), omit “Part 2.5”, substitute “Part 2-5”.

(14) Schedule 4, item 59, page 99 (line 3), omit “Schedule 2”, substitute “Schedule 1”.

(15) Schedule 4, item 59, page 104 (table item 1, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(16) Schedule 4, item 59, page 104 (table item 1, 3rd column, subparagraph (b)(ii)), omit “within 90 days after you came into existence”, substitute “within 90 days after you came into existence or within 30 days after the commencement of this section”.

(17) Schedule 4, item 59, page 104 (table item 2, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(18) Schedule 4, item 59, page 104 (table item 2, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the permanent establishment came into existence”, substitute “within 90 days after the permanent establishment came into existence or within 30 days after the commencement of this section”.

(19) Schedule 4, item 59, page 105 (table item 3, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of that income year”, substitute “within 90 days after the beginning of that income year or within 30 days after the commencement of this section”.

(20) Schedule 4, item 59, page 105 (table item 3, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the offshore banking unit came into existence”, substitute “within 90 days after the offshore banking unit came into existence or within 30 days after the commencement of this section”.

(21) Schedule 4, item 59, page 106 (table item 4, 3rd column, subparagraph (a)(ii)), omit “within 90 days after the beginning of the CFC’s statutory accounting period”, substitute “within 90 days after the beginning of the CFC’s statutory accounting period or within 30 days after the commencement of this section”.

(22) Schedule 4, item 59, page 106 (table item 4, 3rd column, subparagraph (b)(ii)), omit “within 90 days after the beginning of the CFC’s statutory accounting period”, substitute “within 90 days after the beginning of the CFC’s statutory accounting period or within 30 days after the commencement of this section”.

(23) Schedule 4, item 59, page 106 (table item 5, 3rd column), omit “within 90 days after the beginning of an income year”, substitute “within 90 days after the beginning of an income year or within 30 days after the commencement of this section”.

(24) Schedule 4, item 61, page 119 (line 2), omit “960-65”, substitute “775-105”.

Mr ROSS CAMERON (Parramatta—Parliamentary Secretary to the Treasurer) (4.11 p.m.)—I move:

That the amendments be agreed to.

The only substantive amendments to this bill are to ensure that various elections already provided for by the new foreign currency rules can have retrospective effect from 1 July 2003 or from a date between 1 July
2003 and enactment of the bill. The amendments are only necessary because the bill was not enacted prior to 1 July 2003. While the foreign currency measures in the bill become operative from 1 July 2003, it is not possible to make an election before the date of royal assent. As the elections are designed to reduce compliance costs associated with the taxation of foreign currency denominated transactions, it is to taxpayers’ advantage to allow additional time to make effective elections from 1 July 2003. The amendments address concerns raised in submissions to the Senate Economics Legislation Committee, which examined the bill, and they have no revenue implications. Accordingly, the government agrees to the Senate amendments.

Question agreed to.

TRADE PRACTICES LEGISLATION AMENDMENT BILL 2003

Consideration of Senate Message

Bill returned from the Senate with amendments.

Ordered that the amendments be considered forthwith.

Senate’s amendments—

(1) Page 1 (line 1) to page 53 (line 20), omit “An inquiry body” (wherever occurring), substitute “The Commission”.

(2) Page 1 (line 1) to page 53 (line 20), omit “inquiry body” (wherever occurring), substitute “Commission”.

(3) Schedule 2, item 40, page 11 (lines 8 and 9), omit the definition of external inquiry.

(4) Schedule 2, item 40, page 11 (lines 20 to 24), omit the definition of inquiry body.

(5) Schedule 2, item 40, page 11 (lines 25 to 31), omit the definition of inquiry Chair, substitute:

inquiry Chair means the member of the Commission presiding at the inquiry.

(6) Schedule 2, item 40, page 18 (lines 4 to 13), omit subsections 95H(3) to 95H(5).

(7) Schedule 2, item 40, page 23 (lines 6 to 8), omit subsection 95N(7).

(8) Schedule 2, item 40, page 25 (line 10), omit “body”, substitute “Commission”.

(9) Schedule 2, item 40, page 25 (line 15), omit “body”, substitute “Commission”.

(10) Schedule 2, item 40, page 26 (lines 5 to 8), omit subsection 95S(2), substitute:

(2) An oath or affirmation may be administered by a member of the Commission.

(11) Schedule 2, item 40, page 26 (lines 22 to 27), omit paragraph 95T(1)(c), substitute:

c the person has not been excused, or released from further attendance, by a member of the Commission.

(12) Schedule 2, item 40, page 27 (lines 3 to 8), omit paragraph 95U(1)(a), substitute:

(a) refuse or fail to swear an oath or to make an affirmation if required to do so by a member of the Commission; or

(13) Schedule 2, item 40, page 37 (lines 24 to 29), omit subsections 95ZH(3) and (4).

(14) Schedule 2, item 40, page 38 (lines 19 to 25), omit subsections 95ZJ(3) and (4).

(15) Schedule 2, item 40, page 39 (line 29) to page 40 (line 6), omit subsection 95ZK(2).

(16) Schedule 2, item 40, page 42 (lines 1 to 7), omit subsection 95ZL(5).

(17) Schedule 2, item 40, page 42 (line 9), omit “, or a body other than the Commission,”.

(18) Schedule 2, item 40, page 42 (line 15), omit “or other body, as the case may be.”.

(19) Schedule 2, item 40, page 42 (lines 19 and 20), omit “or other body, as the case may be.”.

(20) Schedule 2, item 40, page 42 (line 31), omit “or another body”.

(21) Schedule 2, item 40, page 42 (lines 33 and 34), omit “or another body”.

(22) Schedule 2, item 40, page 43 (line 1), omit “or other body”.

(23) Schedule 2, item 40, page 43 (line 2), omit “or other body, as the case may be”. 
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(24) Schedule 2, item 40, page 43 (lines 9 to 17),
omit paragraphs 95ZN(2)(c) and (d),
substitute:

(c) a member of the Commission or an
associate member of the Commission;
or

(d) a member of the staff of the
Commission who receives the
information in the course of his or her
duties.

(25) Schedule 2, item 40, page 43 (lines 27 to
31), omit subsection 95ZO(2).

(26) Schedule 2, item 40, page 45 (line 15) to
page 46 (line 24), omit section 95ZQ.

Mr ROSS CAMERON (Parramatta—
Parliamentary Secretary to the Treasurer)
(4.14 p.m.)—I move:

That the amendments be disagreed to.

It is intended that part 7A of the Trade Practi-
ceses Act 1974 will allow the minister to de-
termine which body should undertake a par-
ticular price inquiry in light of the particular
circumstances at the time. Allowing for the
ACCC or another body to hold price inquir-
ies represents a sensible middle course be-
tween two unreasonably restrictive views
that is, that the regulator should conduct no
price inquiries or that it should conduct them
all. The statement of reasons details objec-
tions to the amendments made by the Senate.

Mr COX (Kingston) (4.15 p.m.)—The
Trade Practices Legislation Amendment Bill
2003 contains two schedules of amendments
to the Trade Practices Act. The first schedule
contains measures which address doubts
about the constitutionality of the provisions
relating to access regimes in part 3A of the
act. The second schedule repeals the Prices
Surveillance Act and in its place inserts a
new part in the Trade Practices Act. The
amendments moved by Labor and supported
by the Senate relate to the second schedule.
Currently under the Prices Surveillance Act,
if the government wants to conduct a prices
inquiry under the act, the only body that can
be asked to do that job is the ACCC.

The bill, as introduced by the government,
seeks to change this situation. It would allow
the minister to appoint another body to con-
duct an inquiry, utilising the powers that are
currently available only to the commission.
The rationale for the change is that the com-
mission may have a conflict of interest. The
argument is that the ACCC would be influ-
enced to recommend ongoing price monitor-
ing because this would attract increased re-
sources to the commission. Labor see no rea-
son to question the ACCC’s independence or
its professionalism and we do not believe
that the price inquiry role of the ACCC
should be privatised.

In Labor’s view, the ACCC has experience
and expertise across all sectors of the econ-
omy and is the appropriate body to conduct
any pricing inquiry. The parliament has no
guarantee that any other body appointed by
the government would be similarly endowed
with these characteristics. Labor believes
that the House should accept these amend-
ments made by the Senate. While there are
26 separate amendments, the key amendment
is amendment (2), which omits the definition
of ‘inquiry body’ in proposed section 95A.
The other changes are consequential on the
removal of this definition, which envisages a
body other than the commission being ap-
pointed as inquiry chair.

The DEPUTY SPEAKER (Hon. I.R.
Causley)—The question is that the amend-
ments be disagreed to.

Question agreed to.

Mr ROSS CAMERON (Parramatta—
Parliamentary Secretary to the Treasurer)
(4.17 p.m.)—I present the reasons for the
House disagreeing to the Senate amendments
and I move:

That the reasons be adopted.
Question agreed to.

TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH) BILL 2003

Consideration of Senate Message
Bill returned from the Senate with amendments.

Ordered that the amendments be considered forthwith.

Senate’s amendments—

(1) Schedule 1, item 2, page 3 (lines 9 to 15),
omit subsection 82(1A), substitute:

(1A) Where a person suffers loss or damage by conduct of another person, and:

(a) the action would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury;
in awarding damages under this section, the amount of damages recoverable must not exceed the amount of damages recoverable under the civil liability law of the State or Territory where the event giving rise to the loss or damage occurred or the State or Territory which had the closest connection to the event giving rise to the loss or damage.

Note: An example of a relevant law of a State is the Civil Liability Act 2002 of NSW.

(1B) In circumstances where subsection (1A) applies, a person who suffers loss or damage by conduct of another person may not recover the amount of the loss or damage by an action under this section to the extent to which the death or personal injury is attributable to any act or omission of the person who suffered the loss or damage.

(1AB) Where a person suffers loss or damage by conduct of another person, and:

(a) the action would be based on the conduct contravening a provision of Division 1 of Part V; and

(b) the loss or damage is, or results from, death or personal injury;
the amount of damages recoverable under this section must not exceed the amount of damages recoverable under the civil liability law of the State or Territory where the event giving rise to the loss or damage occurred or the State or Territory which had the closest connection to the event giving rise to the loss or damage.

(1AC) In circumstances where subsection (1AB) applies, a person who suffers loss or damage by conduct of another person may not recover the amount of the loss or damage by an action under this section to the extent to which the death or personal injury is attributable to any act or omission of the person who suffered the loss or damage.

Mr ROSS CAMERON (Parramatta—Parliamentary Secretary to the Treasurer)
(4.18 p.m.)—I move:

That the amendments be disagreed to.
The government does not intend to accept the amendments moved by the Senate in this instance. The amendments are based on incorrect assumptions about the implications of the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 and fly in the face of the reform efforts of Labor, state and territory governments. What we have is a situation where the Commonwealth, the states and territories are working together to cap the spiralling public costs of public liability and indemnity insurance and trying to make that insurance more available at a reasonable price to more Australians to allow the conduct of our private recreations and our professional obligations to be conducted...
without undue hindrance. This bill is part of an ongoing process of reform to try and ensure that we put a cap on spiralling public liability and personal liability insurance costs.

The measures grew out of universal acceptance by all Australian governments of the Ipp review recommendations, including that as the Trade Practices Act 1974 currently leaves open the very real prospect that plaintiffs can easily substitute a no-fault required section 52 action for a common law fault required action, thereby circumventing state and territory tort law reforms in relation to claims for damages for personal injuries or death, it should be redressed. It follows that the express recognition admitted by the Australian Consumer and Competition Commission that the Trade Practices Act in its current form can provide an alternative route to a negligence claim, it is not reasonable to argue that personal injury and death claims should not rely on some element of fault.

The misleading and deceptive conduct prohibition in the Commonwealth Trade Practices Act, section 52, does not require a person to prove fault by another. There is no consideration of risk or responsibility, intent or contributory negligence. The amendments to the bill do nothing to overcome the lack of fault required to establish a breach of section 52. Section 52 would be attractive to applicants because defendants could be found liable without the need to establish fault and thereby enlarge the range of potential ways to frame a cause of action for personal injury. Under section 52, an applicant can succeed merely by proving misleading or deceptive conduct, even if the defendant has acted with the utmost care and with complete honesty.

The amended legislation would result in greater uncertainty and complexity for plaintiffs and the insurance market, particularly as the legal linkages they create between Commonwealth and state and territory laws will need to be tested and challenged in the courts. The amendment does not define civil liability law or indicate how the relevant cap for the purposes of the Trade Practices Act will be determined. There is no easy way to ascertain which is the relevant cause of action to determine the applicable cap. The amendments could also leave questions as to which state or territory’s laws should be applied. In short, accepting these amendments could create a field day for lawyers.

Under the opposition’s approach, a range of professionals, including doctors, would continue to be under threat of litigation for conduct, regardless of whether they were at fault or not. This approach will also produce distortions, depending on the legal status of the professional. This fails to resolve uncertainty in the insurance market. This is at a time when the federal ALP is seemingly keen to convince the Australian public that it will ensure doctors will stay in practice so that Australians can access essential medical services. The bill in its current form has the support of the majority of state and territory governments—specifically NSW, Western Australia, South Australia, Tasmania, the ACT and the Northern Territory. Indeed, NSW and Tasmania have already passed amendments to their own fair trading laws to stop the nonsense that allows a person to sue another for personal injuries or death where that other person has been found by a court of law to have acted reasonably honestly and with the utmost care.

After the recent debate on this bill, Senator Coonan wrote to her state and territory counterparts to yet again confirm the agreement struck at ministerial meetings on public liability insurance and to confirm their preference for the government to press ahead with this legislation as drafted. The New South Wales Treasurer, Michael Egan, has responded, advising that the government’s
The bill is consistent with the Ipp review’s recommendations and consistent with the New South Wales government’s amendments to the Fair Trading Act. Mr Egan has advised that the New South Wales government would prefer that the bill be passed without amendment.

The parliament should pass the government’s bill. It is the preferred model among other governments and the model recommended by Justice Ipp’s review of the law of negligence. The bill as presented by the government also has the support of the peak body of the insurance industry, the Insurance Council of Australia, which strongly indicated before a committee of the Senate—the Senate Economics Legislation Committee—that the bill must go ahead unamended if it is to have any effect in helping to reduce difficulties being experienced in relation to insurance. The Insurance Council of Australia subsequently confirmed a clear preference for the bill as drafted. To quote ICA’s October newsletter:

The ICA has made clear to the Australian government that the insurance industry supports the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 in its present form. The bill’s passage through the parliament may now be delayed following proposals by the ALP opposition and the Australian Democrats pushing for a number of amendments. The government’s bill is part of a national program of tort reform. Its passage is vital to avoid claims transferring from the state and territory negligence laws to the Commonwealth’s trade practices law.

What we see here is a situation where the Labor states and territories and the Liberal-National government are working together in a cooperative act of federalism to try and solve a complex and vexed problem for our community. We are tightening the noose, if you like, around the availability of no-fault remedies for those who would seek to run actions for personal injuries or death. As we are all rowing in perfect concord and symmetry, the opposition is working to reopen the availability of no-fault remedies and is using the provisions of section 52 of the Trade Practices Act for a purpose for which they were never really intended.

Mr COX (Kingston) (4.26 p.m.)—Labor believes that this House should accept the amendments to the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 which have been passed by the Senate. The bill is part of a package of measures introduced following the rapid increase in public liability and professional premiums. Its intention is to prevent the recovery of damages where conduct breaches the unfair practices provisions of the Trade Practices Act and results in personal injury or death. The most important consumer protection provision in the act is section 52, which prohibits corporations from engaging in misleading and deceptive conduct. The rationale for the amendment is that, following the state tort law reforms, plaintiff lawyers will structure their claims to come within the TPA to avoid the caps and thresholds which apply under state law. In other words, the government feels that plaintiffs will engage in forum shopping.

Labor has consistently stressed the need for Commonwealth action to support the efforts of the state and territory governments to reduce public liability premiums. Labor has always emphasised, however, that any reforms must reflect the need to ensure that consumers are adequately protected and that the legislative response is proportionate to the size of the problem. If this bill is enacted in its present form, a company that misleads a consumer in a way that causes injury or death will not be liable to pay any compensation under the Trade Practices Act. Labor does not believe that this bill is a proportionate response to the possibility of forum shopping. Claims under the TPA for personal
injury are rare. The act can in no way be blamed for any blow-out in costs from personal injury litigation.

Notwithstanding this fact, the government has argued that the toughening of negligence laws by the states will encourage plaintiffs to explore using the Trade Practices Act. The government argues that it is easier to bring an action under the TPA than under negligence law because strict liability applies. The major problem with this argument is that section 52 has been a strict liability provision since 1974, when the Trade Practices Act was introduced for the first time. If it were significantly easier to bring claims under the TPA than under negligence law, surely we would have seen more use of it as the basis for personal injury claims. An action under section 52 for misleading and deceptive conduct is different to an action in negligence, but there is no evidence that it is easier.

There are a number of reasons why Labor believes that it is necessary for the TPA to cover personal injury and why compensation cannot simply be left to the law of negligence. Firstly, the Senate committee investigating the bill heard evidence of several plausible scenarios where the removal of the right to bring an action under part V, division 1, could result in consumers being left without a remedy. Examples included cases involving defective products or where defendants had destroyed crucial evidence. The Trade Practices Act serves as a vital safety net in these rare cases.

More generally, witnesses such as the ACCC, the Australian Consumers Association and even the Law Council of Australia emphasised the contribution made by the Trade Practices Act to creating a culture of care in the Australian business community. Fundamentally, Labor does not believe that there is any reason to completely excuse companies who engage in misleading and deceptive conduct that causes personal injury or death from the consequences of their actions.

Nevertheless we do recognise that there is a theoretical possibility that claims that would otherwise be brought under negligence law may be brought under the TPA as a result of the state reforms. Labor do not believe that this bill is a proportionate response to the size of that problem. In Labor’s view, the key problem is not that it is easier to bring an action under the TPA than under negligence law; rather, it is that personal injury damages are capped under state and territory law but not under the Trade Practices Act. If forum shopping is to emerge at some future stage, this will be the driver.

Labor believes that the amendments moved by the Senate address this danger. These amendments are based on a proposal by the ACCC. They ensure that the damages awarded for personal injury under the unfair practices provisions of the Trade Practices Act are aligned with those available under the relevant state or territory civil liability laws. These amendments have the benefit of reducing the motivation for plaintiffs to seek to evade restrictions under state and territory law while still providing consumers with a measure of protection under the Trade Practices Act and maintaining incentives for companies to minimise risks. The Senate amendments represent a proportionate response to the possibility of forum shopping and should be supported by the House.

Mr ROSS CAMERON (Parramatta—Parliamentary Secretary to the Treasurer) (4.31 p.m.)—I have listened with interest to the member for Kingston, who is putting the proposition that there is no real risk of regulatory arbitrage, of forum shopping, of litigants moving to the forum in which they believe the die is weighted more heavily in their favour. I note simply that the ACCC
themselves, who one would think have the strongest interest in preserving the act in its current form, have acknowledged that the lawyers will often plead liability under the Trade Practices Act for misleading or deceptive conduct as an alternative to liability in negligence. If there was little scope for one course of action to be substituted for the other, one might ask why they are so frequently pleaded in the alternative.

It was not the government who identified this gap in the regulatory net, if you like, in our efforts to make insurance more available to more Australians. It was, as I stated earlier, Justice Ipp in his review of the law of negligence, which was embraced and adopted by all nine of Australia’s governments—each of the state and territory governments and the Commonwealth. It is, we believe, a practical, necessary step to avoid the risk. The member for Kingston points out that there is not a lot of evidence that this has taken place to date. The point of the government’s measure is to avoid the potential which was identified, as I said, not by the government in the first instance but by Justice Ipp. We regard this as an act of good faith. It is for those reasons that we are rejecting the amendments of the opposition, which will water down the effects of state and territory tort law reform and continue to place insurance beyond the reach of ordinary Australians.

The DEPUTY SPEAKER (Hon. I.R. Causley)—The question is that the amendments be disagreed to.

Question agreed to.

Mr ROSS CAMERON (Parramatta—Parliamentary Secretary to the Treasurer) (4.33 p.m.)—I present the reasons for the House disagreeing to the Senate amendments and I move:

That the reasons be adopted.

Question agreed to.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2003

Consideration of Senate Message

Bill returned from the Senate with amendments.

Ordered that the amendments be considered forthwith.

Senate’s amendments—

(1) Schedule 1, page 3 (before line 6), before item 1, insert:

1A After subsection 73(1)

Insert:

(1A) The Minister may not make a determination authorising the payment of financial assistance under subsection (1) unless evidence has been provided that schools or student hostels proposed to receive assistance meet criteria of educational and financial need specified for the purposes of this subsection.

(2) Schedule 1, page 3 (before line 6), before item 1, insert:

1B At the end of section 116

Add:

(3) The report under paragraph (2)(b) must include detailed information for each State and Territory on the capital projects supported by Commonwealth capital grants to each school, in accordance with the following table:
Dr NELSON (Bradfield—Minister for Education, Science and Training) (4.35 p.m.)—I move:

That the amendments be disagreed to.

That the amendments be disagreed to.

These amendments to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 passed by the Senate will not be supported by the government. As I indicated in the House last week when we first debated these amendments, their effect would be to remove the arms-length approach to the allocation of capital grants to non-government schools. This arms-length approach was introduced by the Australian Labor Party in 1988. It has operated effectively for both government and non-government schools since that time.

Under the current arrangements, expert block grant authorities made up of representatives from their respective education sectors assess all applications for capital funding from non-government schools against detailed ministerially approved guidelines and provide recommendations to the government on projects and schools to be funded. In making their recommendations, the block grant authorities are required to take into account both the financial needs of individual schools and the relative educational disadvantage of the student population of each school, with the more disadvantaged being given priority over the less disadvantaged. Their methodology is primarily quantitative and must be sufficient to justify recommendations to an independent appeal body or to a departmental audit.

The amendments would fundamentally change the relationship between the minister and the block grant authorities. Instead of relying upon the professional judgment of the granting authorities for funding recommendations, the government would be required—at some considerable expense—to check every project recommendation to enable the minister to make a determination specifying educational and financial need. That could spell the end of the arms-length approach by government to decisions on schools’ capital funding—indeed, it would.

It is telling that the proposed amendments do not apply to Australian government grants to government schools, despite the bulk of capital grants going to these schools. Further, the non-government school sector was not fully consulted on these amendments and does not support the amendments. Senator Carr was misrepresenting the position of the non-government school sector when he said in the Senate last night that the sector is supportive of these amendments. The sector has made it quite clear to me, both verbally and
in writing, that it does not support the amendments. In fact, Mr Allan Dooley, the Acting Chair of the National Catholic Education Commission, in a letter to me dated 27 November 2003 said in part:

Dear Dr Nelson,

… … …

1. We believe the amendment may limit the ability of the minister—of whatever political party—to set Government priorities for the Capital Grants Program. …

2. The amendment may lead to the duplication of assessment of applications for capital funding, with the Commonwealth having to double-check the decision of Block Grant Authorities, as the Minister may require the department to advise him or her as to the correctness of the BGA assessments. This may lead to inefficiency and uncertainty.

Mr Bill Daniels, the executive director of the Independent Schools Council of Australia, in a letter also of 27 November 2003 addressed to me said:

Dear Minister,

I note from the Hansard of the debate yesterday on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003, that it could be interpreted that the Independent Schools Council of Australia supports the amendments to the legislation proposed by Ms Macklin. I have written today to Ms Macklin to clarify our position and I attach a copy of my letter to her for your information.

… … …

… I confirm that in our view the amendments proposed by Ms Macklin are unnecessary.

Any decisions which change the way programs are administered for the non-government schools sector should be made in consultation with the sector. There are already substantial mechanisms in place to ensure full accountability of Australian government grants. Last week, for example, I tabled States Grants (Primary and Secondary Education Assistance) Act 2000: report on financial assistance granted to each state in respect of 2002, which documents every single grant to every school—government and non-government. Block grant authorities are regularly audited by the government on their operations and management of the capital grants program. The Australian government is happy to discuss further accountability and transparency mechanisms, but any change should be made in consultation with the school authorities, should apply to both government and non-government schools and should be dealt with at an appropriate time and not tagged into what should otherwise be an uncontroversial bill. As such, these amendments should be rejected.

Ms MACKLIN (Jagajaga) (4.39 p.m.)—

The response of the Minister for Education, Science and Training to what he has rightly said is a relatively straightforward bill has been pretty revealing. The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003 has shown for all to see what the government’s ‘arms-length’ approach to its responsibilities for schools really is. The minister has in fact refused to even talk about what might be done to improve the way in which federal funding for schools is allocated. As I have said to the minister before, our amendments were put forward in good faith. They were designed to enhance the integrity of the capital grants program and to position that program for the future—a future where there will be a school-aged population that overall is relatively stable, where any new school developments are more likely to be at the expense of existing government and non-government schools, where the public interest in capital facilities purchased with the support of public funds will increasingly be open to question, where the differences in
the quality of capital facilities in schools will become increasingly apparent and where transparency in the way in which the program is administered will be demanded. These were the issues that the opposition put on the table, as I might reiterate, for genuine debate. Unfortunately, the minister has refused to engage with us in this debate. The response has been disappointing to say the least.

I want to comment on a couple of the things the minister has said. In his response to the debate he trotted out the old argument that non-government schools save public money—as if this was the purpose of the government’s role in schooling. Labor reject this rationale for federal support of schools. We believe in supporting schools for the achievement of educational goals, for students and their families—in fact, for society as a whole. We do not accept spurious arguments about cost saving and cost shifting as the basis for Commonwealth programs for schools.

But even here the minister misleads. He has repeated his oft-quoted statistic that ‘the kids from the wealthiest families attract 87 per cent less public funding’. This figure appears to be based on the fact that the minimum federal per capita grant for a student in a non-government school under the government’s SES scheme is 13.7 per cent of average government school recurrent costs. Leave aside for the minute that only two schools across Australia receive this minimum grant—that is, two out of more than 2,650 non-government schools. Non-government schools also receive funding from state and territory governments. The level of this does vary across the nation, but at the very minimum it brings the level of total public funding to over 20 per cent of the average costs of education in a government school.

The minister also omits to mention that his government has increased funding to some of the best-resourced schools in the country, so that those schools are able to operate from all sources at more than twice the resources available in public schools and the great majority of non-government schools. No wonder the minister was reluctant to include the needs principle in the legislation. The opposition accept that all schools should receive some public funding in recognition of the contribution they make to education generally. But we need to be clear about priorities and about the criteria we use to allocate public funds according to need.

The minister also recited his comparisons of federal and state funding of government schools. There is a bit of a danger that the minister might start to believe his rhetoric. For the record, federal funding of government schools since 1996 has generally increased in line with indexation of the costs of government schooling. That indexation is based on reporting by state and territory governments of the expenditure on government schools. Of course, there are various technical issues about cash and accrual accounting, the difference between expenditure and income and the fact that the indexation is lagged by around 18 months. But, when all is said and done, the truth is that federal funding for government schools has generally only increased in line with indexation.

The minister’s arguments against the opposition’s amendments have been curious. (Extension of time granted) He has rightly pointed out—and he repeated this today—the way in which block grant authorities are required to develop their advice against ‘... generally applied indices and (other) information, which is applied in a consistent way and ... is supported by evidence’. The methodology used by the block grant authorities enables them to justify their recommendations to an independent appeals body or a
departmental audit. I made it quite clear in my speech during the second reading debate—and I will make it clear again because the minister has repeated his criticism of Labor’s amendments and he is incorrect—that Labor’s amendments would not require any additional processes for approval or auditing. The needs principle would be required by the legislation, just as they are now by the minister’s program guidelines. Labor is seeking to have that principle in the legislation.

The point of the block grant authorities of course was to devolve the administrative responsibility to school authorities and to clarify the government’s role in setting policy goals and accountability requirements. This is patent from the statement of the then minister, Susan Ryan, when she established the block grant authority arrangements in 1987. Her statement made it clear that the reason for the arrangement was:

... to ease the administrative burden on the Australian government.

She went on to say—as the minister correctly reported:

The Australian government will continue to set priorities for the use of its funds, and distribution proposals will require my approval.

that is, the approval of the minister—

Funds will continue to be directed to the most disadvantaged schools and the most needy groups.

How perverse is it for the minister to quote these words in defence of his refusal to be explicit about the needs principle in the legislation and in reporting to the public on how these criteria have been met? The minister’s way of dealing with all of this was to fall back on accusations of Labor being ideologically opposed to non-government schools. As I said when we were debating the bill, Labor has supported funding for non-government schools for over 30 years. Labor has been party to initiating and supporting billions of dollars of funding on the basis of meeting educational and financial need. Labor is entitled to ask that the integrity of the needs principle is protected by the legislation. In the light of this record, the minister’s extraordinary claim that Labor is ideologically opposed to non-government schools is frankly nothing more than laughable.

Labor asks the government to move on from what are, I have to say, very silly claims, and to engage constructively with these issues. What is clear is that the issues raised by this bill will not go away. I can assure the House that Labor will renew its efforts to develop legislation that affirms the provision of federal funding for government and non-government schools on the basis of the educational and financial needs of school communities, and that provides a more explicit link between policy goals, program administration and the reporting of program outcomes. Because of the government’s response to these amendments, of course we will continue to press for them when the legislation for the next quadrennium is introduced in 2004. In the meantime, Labor will support this bill. As I said earlier, Labor will not stand in the way of this money going to the schools that need it. Labor knows that that is in the best interests of the students and schools that stand to benefit from the educational resources that it provides. But I am very disappointed in the minister being unwilling to sit down and discuss the issue.

Dr NELSON (Bradfield—Minister for Education, Science and Training) (4.49 p.m.)—I table three letters in support of the government’s position. The first is from Mr Dooley, the Acting Chair of the National Catholic Education Commission, and the second and third are from Mr Bill Daniels, the Executive Director of the Independent Schools Council of Australia.
The DEPUTY SPEAKER (Mr Jenkins)—The question is that the amendments be disagreed to.

Question agreed to.

Dr NELSON—I present the reasons for the House disagreeing to the Senate amendments and I move:
That the reasons be adopted.

Question agreed to.

COMMITTEES

Public Works Committee

Report

Mrs MOYLAN (Pearce) (4.50 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present the 14th, 15th and 16th reports for 2003 of the committee, relating to the development of off-base housing for Defence at Queanbeyan, New South Wales; the proposed re-specified Christmas Island immigration reception and processing centre; and the proposed community recreation centre on Christmas Island.

Ordered that the reports be printed.

Mrs MOYLAN—by leave—I thank the House. The committee’s 14th report for 2003 addresses the proposal by the Defence Housing Authority to construct 40 dwellings at the former pitch and putt golf club site at Queanbeyan, New South Wales. These works are required to accommodate an expected increase in defence personnel in the Canberra Queanbeyan region over the next few years. Based on the housing preferences of defence personnel, the dwellings will comprise 33 free-standing homes and seven townhouses. Other works will include the construction of internal roads and footpaths, and reticulation of essential services and telecommunications. It is estimated that the work will cost $12 million.

In response to community suggestions, the Defence Housing Authority also intends to excise the existing golf clubhouse and associated car park from the development and to offer it for sale, possibly as a child-care centre. At the public hearing, the authority stated that the details of the proposed child-care facility had yet to be determined. Witnesses added that if the proposal should prove to be unfeasible the Defence Housing Authority would consider building an additional dwelling at the site. The committee questioned the authority about the nature of the proposed development and is satisfied that it will fit comfortably with the surrounding community and will offer a suitable level of amenity to residents. The committee commends the Defence Housing Authority on the community consultation undertaken in respect of the proposed development. The committee notes that the authority has altered the traffic flow within the development, in response to community concerns, and that an agreement has also been reached with the local racing club regarding the use of stormwater from the site. The committee therefore recommends that the work proceed at a cost of $12 million.

The committee’s 15th report deals with the respecified Christmas Island Immigration Reception and Processing Centre. The project was referred to the Department of Finance and Administration at an estimated cost of $197.7 million. It is intended to deliver appropriate facilities for the humane detention of unauthorised boat arrivals, an efficient and secure facility appropriate to the location and a cost-effective execution of the government’s policy of processing unauthorised arrivals on Christmas Island. The proposed respecified IRPC differs from the facility originally proposed by the government in March 2002 in that the size has been reduced from twelve 50-bed compounds, with 50 contingency places in each, to eight such compounds. This has allowed for the provision of additional open space within the facility.
In considering the IRPC projects the committee sought to confirm that the need and scope of the project were justified, and it questioned the proposed expenditure. The committee was informed that, although the number of unauthorised boat arrivals has dropped significantly since 2001, the government does not wish to be complacent. The location and scope of the proposed facility are therefore consistent with the government’s policy of processing unauthorised arrivals offshore. The committee was also assured that moneys spent on the original IRPC project would not be wasted as a result of the re-specification.

The committee wished to know why responsibility for the project had been transferred from the Department of Immigration and Multicultural and Indigenous Affairs to the Department of Finance and Administration in February 2003. Finance explained that it had the most experience in delivering large capital works projects using a traditional delivery strategy. The committee was assured of the relevant experience of the project architects and of the ongoing involvement of the Department of Immigration and Multicultural and Indigenous Affairs in the design and functionality of the facility. During its inquiry, the committee examined the nature of the proposed accommodation, the suitability of the building materials and services and the compliance of the facility with all relevant guidelines and legislation. The committee particularly recommended that consideration be given to the island’s harsh climate in the selection of building materials.

The committee is also concerned to ensure that the project should maximise benefits to the local Christmas Island community while minimising any negative impacts. In particular, the committee notes the very practical suggestions submitted to the inquiry by the Christmas Island Chamber of Commerce and recommends that the department of finance take note of the submission and continue discussions with the chamber and other relevant organisations. Further, the committee recommends that the work proceed at the estimated cost of $197.7 million.

The committee’s 16th and final report for 2003 examines the proposal by the Department of Transport and Regional Services to construct a community recreation facility on Christmas Island, at an estimated cost of $8 million. The works are required to replace existing inadequate facilities and to cater for an expected increase in the island’s population. The proposal comprises a multi-use recreation centre and associated parking areas, fencing and services. The committee was concerned to learn at the public hearing that no arrangements had been made by the Department of Transport and Regional Services for the ongoing management and maintenance of the new facility. The committee requested that the department develop a forward management plan for the centre and recommends that it negotiate a settlement with the Christmas Island Shire Council to clarify management issues prior to construction.

During the inquiry, the committee sought to ensure that the proposed facility is suitably located, will be readily accessible to island residents and that all relevant parties have been consulted on the project. The department stated that consultation had been undertaken through the administrator’s Advisory Council. In view of the submissions received, however, the committee recommends that the department not only continue its discussions with that body but also undertake continuing consultation with the local school and the Christmas Island Cricket and Sporting Club, both of whom have an interest in the development. As with the IRPC, the committee requests that the Department of Transport and Regional Services take cognisance of the island’s climatic conditions in
the selection of building materials and equipment. It recommends that construction of the proposed recreation facility proceed at the estimated cost of $8 million.

Public hearings into both Christmas Island works were held in Canberra in October this year. The committee notes the disappointment expressed by some Christmas Island residents that the hearings were not held locally. However, the committee went to the island in 2002 and viewed the site and some of the site works for these facilities. It is therefore familiar with the sites of the proposed works. Moreover, the committee is aware of the importance of the recreation facility and IRPC projects to the social and economic life of the island. Had the committee chosen to visit the island, consideration of the works could not have taken place until 2004. The committee does not believe a delay of this magnitude to be either necessary or desirable. In closing, I extend my thanks to my committee colleagues for their support and hard work through what has been a very busy year, and to the secretariat for their support. I commend these reports to the House.

ASIO LEGISLATION AMENDMENT BILL 2003

Second Reading

Debate resumed from 27 November, on motion by Mr Ruddock:

That this bill be now read a second time.

Mr McCLELLAND (Barton) (4.58 p.m.)—I rise to speak on behalf of the Australian Labor Party in respect of the ASIO Legislation Amendment Bill 2003. We are supporting it after careful and detailed examination of its provisions, and we are prepared to facilitate its passage through the parliament this week. The bill would alter the machinery rather than the framework of the antiterrorism questioning regime established earlier this year by the Australian Security Intelligence Organisation Legislation (Terrorism) Bill 2003. Members will recall several late night sittings considering that in the context of several parliamentary inquiries.

The investigation of Willie Brigitte revealed technical flaws which affected ASIO’s ability to question people who ASIO believed had significant information about potential terrorist attacks or to assist generally in the gathering of intelligence. The amendments address a limited number of technical problems identified by ASIO during its administration of the questioning regime. We appreciate the frankness and sincerity of the briefing that has been provided to us on these matters.

The first area of amendment relates to interpreters and where they are to be used during questioning. This amendment would permit a prescribed authority—a prescribed authority is effectively the supervisor of the questioning process—to extend the time available to question the subject of a warrant by three additional eight-hour blocks, bringing the maximum possible period of questioning to 48 hours. We should indicate that the discretion is vested in the prescribed authority; the extension of time will not necessarily follow. The prescribed authority already has discretion as to whether to extend a questioning period. Obviously this depends on the quality of the questioning, the subject matter involved and the information that is being obtained from the subject. That same discretion will still be exercised by the prescribed authority.

The absolute maximum period that a person can be detained would remain exactly the same—that is, seven days—and a person could only be questioned for eight hours in one 24-hour period. The criteria for allowing further eight-hour blocks of questioning, as I mentioned, would be the same as that for
earlier extensions—that is, the prescribed authority would have to be satisfied that further questioning will substantially assist the collection of intelligence in relation to a terrorism offence and that the questioning, through the interpreter, is being conducted properly and without delay, not as a ruse for obstructing the questioning process.

The House will recall that the prescribed authority must be either a retired or serving judge or a presidential member of the Administrative Appeals Tribunal—presidential members being either judges or senior and experienced lawyers. The intention of the questioning regime is to give ASIO sufficient time within a safe, supervised environment, under the control of the prescribed authority, to question people where other methods of intelligence gathering would be ineffective. The opposition believes that this amendment is reasonable and can be supported.

It has been suggested that providing for extra questioning time when interpreters are being used breaches article 26 of the International Covenant on Civil and Political Rights by discriminating on the ground of language. On careful reflection, we do not believe this argument can be sustained. According to the United Nations Human Rights Committee, differential treatment does not constitute discrimination provided it is based on objective and reasonable criteria. Obviously the need for an interpreter is itself a necessity for differential treatment.

ASIO has advised that the questioning time is effectively halved when a person is questioned using an interpreter—obviously to permit for the exchange of information. The reality is that the capacity of ASIO to gather intelligence that may substantially assist in the prevention of a terrorist attack or the apprehension of a terrorist would be seriously diminished if this measure were not included. For this reason, we firmly believe the amendment is based on objective and reasonable criteria. Indeed we note that a comparable provision already exists in section 23C(7)(b) of the Commonwealth Crimes Act. That provision provides that any time during which questioning of a person is delayed to allow the person to communicate with an interpreter is to be disregarded when determining how long the investigation period has run—that is, the period a person may be detained after arrest for the purpose of investigation. Effectively the stopwatch is turned off while the interpreter is involved. The legislative model proposed in this bill avoids that cumbersome procedure.

It should be made clear that the need for this measure did not arise from the process of negotiation and amendment which preceded the enactment of the questioning regime earlier this year—that is, the original ASIO bill drafted and introduced by the government did not distinguish between questioning times for persons with or without an interpreter. I recall it was, in fact, a government amendment that provided for interpreters—quite sensibly. Obviously there would be a need for interpreters, but it is fair to say that the collective mind of neither the government nor the opposition was focused on this particular issue.

The second area of amendment concerns passports and exit from Australia. Two new offences are proposed to deal with these matters. The first is the offence of failing to surrender an Australian or foreign passport after being notified of the issuing of a questioning warrant. There is an obligation on the Director-General of Security to return a passport, as you would expect, as soon as is reasonably practicable after the questioning warrant has expired. The second is the offence of leaving the country after being notified of the issuing of a questioning warrant, and before the expiry of the warrant, without permission from the Director-General of Security. Each
of these offences carries a maximum penalty of five years imprisonment. Once again the need for such a provision was suggested following the investigation surrounding Willie Brigitte, when it was determined that a person subject to a questioning warrant—as opposed to a detention warrant—may seek to frustrate the gathering of intelligence by fleeing Australia.

The opposition regards these as reasonable measures to minimise the risk that such intelligence gathering about a potential terrorist attack will be frustrated by a person who is the subject of a questioning warrant leaving the country. Obviously people of fair mind would say it is desirable that a person be questioned under a questioning warrant, as opposed to a detention warrant, if that is at all possible. These circumstances would permit that alternative to be available rather than necessitate the detention of a person simply to avoid them leaving the country. That can be prevented by the measures that have been adopted by this bill. Again it is important to record that the need for these amendments did not arise from any negotiation or compromise in the House of Representatives or the Senate on the original bill—that is, these issues were simply not addressed in the original legislation as drafted and introduced by the government.

The third purpose of these amendments is to broaden the protections against disclosure of information relating to questioning, and it is likely to be the case that this is going to be the most controversial of areas. Currently the focus of the disclosure provisions is on unauthorised disclosures by specified people, such as lawyers, parents or other representatives of a person being questioned, who are likely to be present at the questioning. The amendments in this bill would refocus these provisions on disclosures that are not ‘permitted disclosures’, whoever the discloser may be.

Two new offences have been proposed. The first offence prevents a person from making a disclosure of information without authorisation where the information relates to the fact of a warrant being issued, the questioning or detention of a person under the warrant, or operational information during the 28-day period the warrant is in force. The second offence prevents a person from making a disclosure of operational information without authorisation for two years after the warrant ceases to be in force.

The first offence covers information, as I have mentioned, in relation to the warrant, but the second is limited to operational information gained as a result of the questioning under a warrant—in other words, after 28 days, a person could reveal that the warrant had been issued and that they had been questioned by ASIO, but they could not reveal the contents of the questioning until after two years. In respect of both offences, the prosecution would have to prove that a person intended to disclose information and was reckless in respect of the other elements of the offences—that is, they knew of a substantial risk but ignored that risk. The exception to this is that a person who is the subject of the questioning warrant and their lawyer are subject to strict liability on the question of whether information is operational information. That is because the person and their lawyer would have been directly involved in the questioning and would be more aware of the sensitivity of the information, merely from the fact that it was the focus of the questioning.

The opposition also regards this amendment as reasonable in order to protect the integrity of ASIO’s intelligence operations against threatened terrorist activity. This is consistent with Labor’s position on the earlier legislation which implemented this questioning regime when we supported strong protections against disclosure of operational
information and information about a questioning warrant—I recall that we may have indeed proposed amendments that strengthened the government’s provisions.

While they are never free of controversy, as I have mentioned, and inevitably impose some restrictions on the reporting of information, provisions against disclosure of information are normal for organisations whose task it is to investigate and prevent serious criminal activity, such as the Australian Crime Commission, where there is an obligation not to disclose information about an Australian Crime Commission investigation for five years. There is clearly a balance to be obtained in open debate of issues of public importance in a democratic community—we must balance the interests of the community in having access to information for the purpose of that debate against the risks to the investigation procedure. It is not an overstatement to say that in some instances it is potentially a risk to the safety of individuals should that information be disclosed. For those in the community who would argue that these measures are excessive, we would ask them to have regard to those two fundamental requirements.

The fourth and final measure that the bill introduces would be to remove any doubt about the ability of the prescribed authority to give directions consistent with questioning warrants, including in relation to detention. We see the amendments as being essentially technical, and they have been proposed more out of abundant caution, as we understand the position. The amendments are not intended to alter the powers of the prescribed authority, who performs a very important role in the task of supervising the questioning process.

In summary and in conclusion, the opposition have carefully scrutinised the detail of this bill, as we do always when questions of civil liberties are involved. We have concluded that the bill is balanced and justified on the basis of overcoming some technical impediments to the effective operation of the questioning regime. We will support these measures, which are designed to improve the machinery of the questioning regime that was put in place by the parliament after considerable debate and consultation earlier this year. Given the controversy surrounding the earlier legislation and the numerous expressions about powers—perhaps with some longing for the powers possessed by secret service agencies in other countries, including those of French authorities to detain people without charge for up to three years—it is perhaps inevitable that there will be a high degree of public interest in and comment on this bill as to whether it is going too far in the impact that it has on people’s civil liberties and, in particular, the right of discussion of issues of significant public importance.

However, on careful examination and given the potential serious consequences of a terrorist incident, we do not believe that these amendments are of such significance as to warrant being delayed by a full Senate committee inquiry, which could delay their implementation until some months into next year. We think the public interest is served by the legislation being passed expeditiously, to assist ASIO and those involved with the questioning regime to apply it, should it be needed, as effectively as possible for the purpose of protecting the Australian community from potential terrorist attacks or in the event that information is obtained that could lead to the apprehension of terrorists themselves. We do not see these measures as affecting the fundamental structure and protections that were inserted in the previous legislation. The amendments, for instance, do not alter the maximum period of detention. They do not limit access to legal advice or otherwise change the strong safeguards insisted
on in earlier debate. Rather, they close loopholes in the machinery of the existing questioning regime which, thanks to the parliament’s insistence, gives ASIO powers that are robust but balanced by strong safeguards.

It is important to remember that these new provisions are subject to the same review and, indeed, the same sunset clause as the questioning regime established by the earlier legislation. I think Australians on the whole will permit the exercise of significant powers by our secret service organisations in the context of there being appropriate safeguards. They will indeed assist those agencies in going about their tasks—again, provided they are confident that the powers are being adopted for sound measures and are not being exploited for political purposes. These measures are in that category. We sincerely trust that that will continue to be the approach of the government. Quite frankly, success in the fight against terrorism requires the support of the community generally. We will have that community support if they feel they are being included in the process and if they feel that there are adequate safeguards in place and that measures are not being adopted simply for political purposes. As I have said, these measures are not in that category but are being proposed, we accept, in good faith and are justified. On that basis, they will be supported by the opposition.

Mr BAIRD (Cook) (5.17 p.m.)—I rise today to support the ASIO Legislation Amendment Bill 2003. I am very pleased to see that my neighbouring member, the member for Barton, has supported the bill on behalf of the opposition. That is appropriate. There was considerable discussion within our committee—I am a member of the Attorney-General and justice committee—about looking at the civil liberties question. There have been some minor changes, and I believe we have a bill which everyone can support. I notice that the member for Cunningham is shaking his head in disagreement. He will not be supporting it. Are we surprised, as regards anything that the Greens would produce? But I am very glad to see that some pragmatism by the Labor Party has resulted in my neighbour the member for Barton supporting the bill today. This is an important bill. It is important in the operation of the ASIO bill that we do make some changes to ensure the security of Australia. I commend the Attorney-General for continuing to look at ways in which Australia’s security can be improved. This takes us a step further along the road.

I think all Australians are concerned about the security arrangements within this country. The recent events in Turkey and Saudi Arabia have brought to mind the issue of terrorism offshore. Of course, in my own electorate the questions regarding the issue of Bali lie deep within the community, as six young women from my electorate were killed in the blast in Bali. So we are aware, in my electorate particularly, of issues of terrorism. We are concerned about them. That is why I, on behalf of my electorate, very much support this bill. We cannot live in an Australia isolated from the rest of the world in terms of international terrorism, and these powers will strengthen ASIO in how they look at the threat of terrorism on our shores.

Constant vigilance is important. The appearance in Australia of Willie Brigitte, with his al-Qaeda links, emphasises not only the need to remain vigilant but also that these people are in the country. They are having discussions regarding terrorist links. They are trying to muster support. That is why the role of ASIO becomes particularly important at this time. It is the responsibility of good government to ensure that appropriate security agencies are armed with the appropriate powers to deal effectively with terrorism investigations. In July, the government intro-
duced legislation that specifically targeted terrorists and terrorist organisations, and that really set out the framework for dealing with these organisations. It is important that the legislation is constantly upgraded. I recently spoke on the Criminal Code amendment bill, which had bipartisan support as well. We saw legislation passed to have Hamas and Lashkar-e-Taiba listed as terrorist organisations. It was further evidence of this government developing strong counter-terrorism initiatives.

ASIO is charged with gathering information and producing intelligence to warn the government about activities or situations that may endanger national security and to secure Australia from terrorists who act with violence as an answer and from people who otherwise seek to harm Australia’s interests in order to further their own. The measures in the government’s packages are all designed to strengthen ASIO’s ability to protect a great nation from these clandestine organisations. The bill currently before this House is designed to provide ASIO with a more substantial legal basis from which it can collect and disseminate intelligence. The changes will aid the process of intelligence collection, with the sole purpose of combating terrorism. There are some areas of particular significance to the bill: extending the period of questioning time, minimising the flight risk of a person being questioned, clarifying the powers of the prescribed authority and secrecy provisions.

The bill’s first aspect extends the length of time that a person can be questioned from 24 hours to 48 hours when an interpreter is required. Under current arrangements, the very need for an interpreter means that questioning time is effectively halved through the processes of translation. This amendment is designed to ensure that individuals are adequately questioned, whether or not they speak English or they refuse to speak English. It will not alter the format or structure of questioning; rather, those who need an interpreter will effectively get the same time as those who speak English. Questioning blocks will still remain of eight hours duration for the first 24 hours. A person being detained for questioning must be released from detention at the expiry of 48 hours, unless specific orders have been obtained from authorities; and the maximum period of detention is seven days. Following this time, a prescribed authority will then make a decision as to whether the subject requires an interpreter. Should that be the case, questioning would proceed for up to another 24 hours in the same structure as the first three eight-hour blocks. Again, ‘prescribed authority’ means independent of government, usually with judicial background—and this would be an appropriate way to go. So the first aspect of this legislation relates to the involvement of translators, and it is a sensible, pragmatic decision.

The bill’s second aspect concerns minimising the flight risk of those who are subject to investigation and with whom ASIO wishes to have discussions. Obviously—as reflected in the case of Willie Brigitte when we found he had left the country very hurriedly—this provides the ability to obtain warrants, to cancel and ask for the surrender of passports and, of course, to prevent persons from fleeing the country. All these measures are aimed at curtailting this risk. Currently it is not an offence to retain your passport, even in circumstances where the subject of the warrant may be a flight risk. When dealing with such terrorist cells, we have to presume they will be a flight risk and may seek to avoid questioning by absconding overseas.

Under this bill, the subject of a warrant will be required to relinquish all passports in their possession—of course, there may be some with dual passports—as soon as is
practicable following the notification of the warrant. The warrant ceases to be active after 28 days, after which all passports must be returned expeditiously to the subject. It is possible that the passport may be returned earlier if it is deemed appropriate. There is a maximum penalty of five years for not surrendering a passport; the second part of the offence is that of leaving the country, which also has a maximum penalty of five years. Those two are very much tied together. The subject of the warrant will not be able to leave the country during the 28 days without the authorisation of the Director-General of Security.

The bill’s third aspect clarifies the powers of a prescribed authority. Questions of civil liberties have been raised in relation to this but, overall, questions relating to the broader interests of national security would mean that the definition of what is involved would seem more appropriate. This bill will give absolute qualification to the prescribed authority to detain a subject that they regard as someone who may seek to avoid further questioning or alert other people to the investigation. So it is really the passing on of information where in the process of investigation such information may be revealed in discussion. It is appropriate that a person not reveal, firstly, that they have been subject to investigation and, secondly, the nature of what was discussed. If a person who is subject to a warrant clearly disclosed or intended to disclose information about what occurred, they are subject to a penalty of up to five years imprisonment—and they are subject to that provision for up to two years.

Secrecy is also paramount when dealing with a warrant. With few exceptions, no information should be disclosed, such as the specific details of a warrant or the information that is discussed when a subject is being questioned. Secrecy obligations will also apply to people who are in receipt of information as a result of contact or disclosure from a source or a subject. However, disclosure of information from a secondary source involves ‘reckless disclosure’, and the penalties involved come under separate prosecution. The planning and organisation that goes into terrorist attacks is very extensive. This bill proposes that secrecy obligations will apply to a subject for two years after the expiry of a warrant. The maximum penalty for offences of disclosure, as I have mentioned, is five years. The other provisions of the bill are of a technical nature.

In summary, this bill takes us forward in the fight against terrorism. It strengthens the hand of ASIO within this country. I think all members of the community would be concerned to ensure that information held within investigations be kept strictly limited, that provisions applying to the time of questioning where interpreters are involved be lengthened and that individuals who are subject to a warrant who are being required by ASIO for discussions about suggested links with terrorist organisations or knowledge that they might have not be able to leave the country and be required to forfeit their passports for a limited period. All these seem quite sensible proposals. The civil liberties issues have been addressed in terms of this legislation, and I believe it is entirely appropriate. All Australians would want to ensure that their country remains secure at a time of international terrorist threat. While the Left may want to make their own particular points, as I am sure we will hear from the member for Cunningham, the fact is that 99.9 per cent of all Australians see the need to make Australia a safe environment for their families, their children and their grandchildren. We are blessed in that we have not endured the terrorist incidents that we have seen occur offshore. We want to ensure that that remains the case, and this legislation
will assist in that process. I commend the bill to the House.

Mr ORGAN (Cunningham) (5.29 p.m.)—From the outset, I wish to state my opposition to the ASIO Legislation Amendment Bill 2003. I am dismayed that the Labor Party has decided to facilitate its passage through the House. This bill goes too far, and I cannot accept the Attorney-General’s arguments supporting its introduction into the parliament. It is legislation which further eats away at the basic civil rights and freedoms enjoyed and so vigorously defended by the Australian people. Amongst other things, this bill will double the potential detention time for people targeted by intelligence services who require an interpreter. The bill also seeks to impose jail terms on suspects who talk about their interrogation and on others who may wish to draw the public’s attention to any matter regarding their interrogation and/or detention. This threat of jail hangs over people for a period of two years after the investigation occurs.

The Attorney-General went to some length in his second reading speech to discuss the implications of the war on terrorism and the need for an appropriate response. We have just heard the member for Cook talk about the importance of dealing with the war on terrorism. There is no doubt that, since the so-called war on terror began after the September 11 attacks, there has been a need for a growing awareness in regard to potential security threats. Apart from dealing with these threats, the government has, in many ways, increased the threat of attacks on Australians by involving us so heavily in the war in Iraq, in particular, and as an enthusiastic partner in the coalition of the willing. I, like many Australians, was extremely concerned that the decision to go to war was made without reference to the parliament, and for dubious reasons at best. Since the tragedy of 11 September 2001, citizens from all over the world have had to face the prospect of tightened security laws and other associated responses by governments. Our own government is, of course, no exception. The bill currently before the House presents part of the response to the terrorist threat.

However, I am not satisfied that appropriate safeguards to protect our rights and civil liberties have been included in this bill. In this sense, I find that it does not strike an appropriate balance—and I therefore oppose it. The purpose of this bill is to amend part III, division 3 of the Australian Security Intelligence Organisation Act 1979, the ASIO Act, to: firstly, extend the maximum period during which a person using an interpreter can be held for questioning under an ASIO warrant; secondly, require the subject of an ASIO warrant to surrender their passports and make them criminally liable if they leave Australia without permission from the Director-General of Security while a warrant is in force; and, thirdly, create new offences relating to the primary or secondary disclosure of information about ASIO warrants or operational information. Important comment on the impact of this tightening up of security powers has been made in the media, and I will refer to some of the arguments later.

This bill derives from the original ASIO Legislation Amendment (Terrorism) Bill 2002, which would have given ASIO new and unprecedented powers to question and detain. This bill was introduced into the parliament in March 2002. It was highly controversial, being the subject of two parliamentary committee reports and amendments in both chambers. There was also considerable public comment and dissent concerning its content and also the view the opposition took to the legislation. However, the bill was laid aside by the House after the Senate insisted on amendments with which the House could not agree. The ASIO Legislation Amendment (Terrorism) Bill 2002 [No. 2] was then intro-
duced into the House of Representatives in March 2003. I was fortunate enough—or, rather, unfortunate enough; for it was not a bill I welcomed—to participate in the debate. After considerable debate and some amendment the bill finally passed both houses in June 2003 and commenced operation on 23 July 2003. The ASIO Legislation Amendment (Terrorism) Act 2003 inserted part III, division 3 into the ASIO Act. In early November this year, the new Attorney-General said that he had asked for a report on ‘shortcomings’ of the ASIO legislation.

The current bill before the House proposes amendments to division 3 of the act and provides, amongst other things, new powers in regard to questioning and detention under an ASIO warrant. At present, the subject of an ASIO warrant cannot be detained for more than 168 hours. They can be questioned under a warrant for no more than a total of 24 hours. Once they have been questioned for this period of time, they must be released. The current bill proposes to double the amount of time to 48 hours, during which time a person can be questioned under an ASIO warrant if that person uses an interpreter because they are not fluent in English or have a physical disability. This means that the changes would allow non-English speakers to be subject to a maximum of 48 hours interrogation or questioning ... is a clear distinction or discrimination, and would therefore be a clear breach of the convention ...

Professor Rothwell also said that any Australian subject to those laws would have a right to complain to the Human Rights Committee of the UN.

Mr Ciobo—So should they not have an interpreter either?

Mr ORGAN—Of course they should have an interpreter. That interpreter may hasten the interpretation process. Unfortunately, this government enjoys making a habit of flouting international law; so I do not imagine that the Attorney-General will pay too much attention to the way he may be encroaching on international standards regarding human rights in this instance. Apparently, the opposition is also happy to follow the Attorney-General’s lead in this instance.

Apart from that, there are many questions of concern relating to the possible extension of questioning time when interpreters are required. For example, should ASIO be able to question children aged between 16 and 18 years who need an interpreter for up to 48 hours? Does the presence of an interpreter facilitate or impede questioning? It may in fact make it faster. We have heard the statements from previous speakers in this debate that it will double the time, but I question that. Should the fact that an interpreter was present at some stage during the questioning process trigger a potential doubling of a person’s questioning time, irrespective of how long the interpreter has been present, whether questioning has been conducted
through them and whether their presence has facilitated or impeded the questioning process? There are a lot of unanswered questions. The proposed subsection 34HB(8) includes the words:

... an interpreter is present at any time while a person is questioned under a warrant issued under section 34D.

For clarity, should the provision not read instead ‘an interpreter is present at any time while a person is questioned through an interpreter under a warrant issued under section 34D’? At present, the prescribed authority can only decide to extend questioning at the end of each eight-hour period if they are satisfied that questioning will substantially assist the collection of intelligence about terrorism and that the person exercising authority under the warrant has conducted the questioning properly and without delay.

Should there be additional matters about which the prescribed authority must be satisfied if questioning is to be extended because an interpreter has been present—for example, that the presence of the interpreter has contributed or substantially contributed to delays to, or suspension of, questioning?

Concerns have been expressed about the impact of the proposed amendments on non-English speakers, but they may also impact on those who only speak English. The amendments will double the maximum questioning period for those who have an interpreter because they are unable to communicate with reasonable fluency in English because of a ‘physical disability’—that is, they are doubling the detention period for people with physical disabilities. That is disgraceful. Does the maximum questioning time for people with physical disabilities need to be doubled? No, of course not. Will the amendments mean that people will be less likely to ask for an interpreter, even if they might need one, because they fear a doubling of their incarceration time for questioning? I would think so.

On the other hand, will the amendments mean that interpreters will be provided more frequently, especially given the fact that the doubling of maximum questioning time will be triggered if an interpreter is present ‘at any time’ during questioning under a warrant? Does the doubling of the maximum time for questioning when an interpreter has been used, if combined with detention under the warrant, amount to punitive detention of the sort that requires judicial sanction under the Commonwealth Constitution?

Section 94 of the ASIO Act provides that the annual report of the Director-General of Security must contain specified information. This includes the total number of ASIO warrants issued under section 34D, the number of hours each person was questioned and the number of hours they were detained under a warrant. Should there not be inserted into the ASIO Act additional reporting requirements relating to the use of interpreters and the use of the extended questioning periods? Should the ASIO Act not be amended to require that a person brought before a prescribed authority be given a copy of the ASIO protocol in English or in a community language in which they are fluent? Should there not be a statutory requirement that an interpreter be competent and/or accredited?

The ASIO Act does not prevent a person being subject to more than one warrant. Conditions under which new warrants can be requested and issued are set out in the act. The bill also provides for the confiscation of a person’s passport, or passports, while they are the subject of an ASIO warrant. It will be an offence for a person who is the subject of an ASIO warrant to leave or attempt to leave Australia without the permission of the Director-General of Security.
The bill also allows for new secrecy provisions within the ASIO Act. The bill proposes to repeal existing secrecy provisions in part III, division 3 of the act and inserts new provisions. The existing secrecy provisions relate to lawyers and to children’s representatives. However, the bill proposes to insert general requirements and general offences which criminalise primary and secondary disclosures of information about an ASIO warrant or about operational information. The secrecy provisions of the bill essentially comprise two separate criminal offences. Both offences are punishable by a maximum of five years imprisonment.

Some compelling arguments in regard to these provisions have come from legal academics, one of whom is Joo-Cheong Tham, an associate law lecturer at La Trobe University. Joo-Cheong Tham has argued that this bill poses a grave threat to Australia’s democracy. He was quoted in the Age this week as saying:

The ASIO Legislation Amendment Bill 2003 proposes to criminalise public discussion of much of ASIO’s activities by introducing broad-ranging offences.

He provides some specific examples of offences relating to the disclosure of information, such as: journalists reporting on the issue of a warrant soon after it is issued, even if it is issued illegally; journalists reporting on a person who is being detained, even if the conditions of detention do not comply with the act; journalists reporting on conditions of detention for two years after the expiry of a warrant or on ASIO’s investigation into the detainee for two years, even if the investigation involves conduct pursuant to the warrant; a parliamentarian highlighting the conditions under which persons are presently detained under the act; or groups publicising the conditions under which the persons are presently detained under the act. The offences proposed by the bill—in particular, the operational knowledge offence—will mean that much of ASIO’s activities will be cloaked in secrecy and will not be subject to public discussion.

This bill, if passed, will mean that it will generally be illegal to disclose information relating to ASIO’s conduct in detaining and questioning people while a detention and/or questioning warrant is in force, and for two years afterwards. Joo-Cheong Tham has said that if these offences become law they will severely reduce the freedom of the press and the freedom of discussion in this country. Despite the reassuring words from the government and from the member for Barton, these amendments do go too far. They are not just mechanical or cosmetic changes. Amnesty International have also outlined concerns with the bill, including:

The legislation establishes a system under which a person wishing to make public comment on the actions of ASIO would first need to get approval from the Government.

Whilst a person is being detained, no human rights or media or other independent (non government) organisations could make public any existing concerns about the welfare of the detained person, without Government approval. Organisations such as Amnesty International should not be prohibited or effectively prevented from monitoring the application of ASIO’s powers in relation to the protection of human rights.

Amnesty International further states:

While Amnesty International recognises and respects the need to retain a certain level of confidentiality regarding ongoing investigations, the public has a right to know in general terms the degree to which and how Australian security agencies are applying their broad-ranging and unprecedented powers.

The level of secrecy and lack of public scrutiny provided for by this Bill has the potential to allow human rights violations to go unnoticed and in a climate of impunity.
Civil liberties organisation Liberty Victoria has also outlined its concerns with the bill, saying the ‘secrecy offences pose a grave threat to Australia’s democracy’ and:

... the imposition of such extensive limitations on free speech and political discourse is grossly disproportional to any legitimate objective.

Liberty Victoria has also stated:

ASIO’s activities pursuant to judicially granted investigative warrants are to be covered in a veil of secrecy unprecedented in Australian history.

The mere fact a person has been detained and eye witness accounts of the execution of the warrant will not be able to be discussed publicly.

These secrecy offences pose a grave threat to Australia’s democracy and could enable the government of the day to impose a ‘war of terror’ against its political opponents or vulnerable sections of the community.

Indeed, the Australian Greens have been concerned to read of recent accounts of ASIO’s behaviour with the powers which they have already been granted by the parliament, and which the Greens opposed. Given that reports of heavy-handedness and inappropriate use of powers have already started coming through, we reiterate that it is not in the community’s best interests to increase already extensive powers. For example, yesterday’s Sydney Morning Herald reported:

New powers handed to Australian intelligence agencies to combat terrorism have been misused, left lawyers feeling powerless to defend clients facing interrogation and collectively ‘stripped back’ three decades of hard-won freedoms, opponents claim.

The article goes on to quote Adam Houda, who represents five families whose homes were among seven raided by ASIO last month. He said:

“If ASIO or the proscribed authority do not act in accordance with the law during an interrogation, a lawyer cannot stand up and address the hearing in relation to a breach … They risk being thrown out for disrupting. Our presence is merely a token gesture ...”

These are frightening words, coming as they do from an Australian lawyer. Another lawyer, Stephen Hopper, who is acting for the other two families raided in October, said that, while he supported lawful intelligence gathering by ASIO, abuses of process had already occurred. He said:

“There is one complaint about a coercive threat … made on behalf of one of my clients—a threat to use detention powers … (Special Branch) is a good example of how an unaccountable organisation can become corrupted with power and run amok.”

There was also a story in yesterday’s Australian which outlined a 17-year-old girl’s experience when her family’s home was raided by the Australian Federal Police earlier this year. Nosrat Hosseini is currently undertaking her final year at school and wants to study law. She said:

“I have worked so hard this year. I have been doing really well but after the raid I had to help translate for my parents, who were trying to get our things back. It was too much. It has been terrible. My little sister still has nightmares.”

I understand that some of this young woman’s study notes were confiscated during the raid, further upsetting her studies.

It is vital that this bill be more substantially scrutinised in the public arena. Australians have a right to know what the government is planning to allow intelligence services to do, and we need to be able to make those services publicly accountable. The government has a responsibility to address the risk of terrorism, but this bill presents an example of the government allowing its agencies to become increasingly unaccountable in the use of their powers, effectively creating a secret police force. The threat of terrorism should not be used to justify stripping back the rights of the Australian people, and it is shameful that the government is
attempting to do just that. I therefore con-
demn this bill and reject it in its entirety.

Mr CIOBO (Moncrieff) (5.49 p.m.)—I
have to say, after listening to the Australian
Greens speak on the ASIO Legislation
Amendment Bill 2003, that there is a sense
of nostalgia in the air for a world that once
was. I cannot help but share that certain
amount of nostalgia for a world in which, we
could hope and pray, bona fides would exist
on the part of all people—whereby powers
such as those held by ASIO would not need
to be enhanced to deal with the very real
threat that Western democracies face. It
seems to me that the Greens still live in a
world that denies in large part the potential
for another September 11 attack, another
Bali bombing or the kinds of attacks that we
saw recently in Turkey. Let us be clear about
what this bill does. It is a bill to enhance cer-
tain powers and to provide clarification with
respect to other powers within the frame-
work that has already been provided to
ASIO. It is a bill that operates alongside the
framework that currently exists for ASIO, a
framework—and I would stress this point
—that already has adequate safeguards in place
for the issuing of warrants.

I am particularly concerned and perturbed
that the Greens would say that a bill like this
could be misused by a government in the future to ‘wage a war of terror’—I think
those were the words that my colleague used—on political opponents. That is abso-
lute rubbish and scaremongering of the worst
type that exists in the chamber. It is scare-
mongering because adequate safeguards ex-
ist within the ASIO framework that ensure
that it would not be possible to have a war-
rant issued against individuals purely and
simply because they were political oppo-
nents. I know that the Greens know that
those safeguards are in place, and for them to
attempt to portray these amendments as a
way in which the government could use, or
rather misuse, these powers—which is what
the promulgation put forward by the Greens
pursuits—is, in my view, a disgrace, given
what this bill is actually about. I am very
pleased that in this current debate the Labor
Party has the good sense to recognise the
value of a bill such as this. I am pleased that
the Labor Party recognises that the safe-
guards that exist in respect of ASIO’s powers
are adequate to ensure an appropriate bal-
ance between democracy and civil liberties
and the need to ensure that, in this new threat
environment, we make available to our intel-
ligence agencies the kinds of powers that are
required.

I have spoken at length about this, and the
overall framework ASIO has to operate un-
der, with my good friend the member for
Dickson. I know he has a very real interest in
this matter as well. I spoke to him shortly on
this bill this morning after I returned from an
Emirates function. We discussed at length
the fact that there is a new threat environ-
ment facing this country. Gone are the days
when we had a situation in which the pri-
mary concerns of Australians, when it came
to risks to their personal safety and national
security, were the threats posed by other na-
tion states. The new threat paradigm, as it
applies today, is not the threat of nation
states but rather a cultural threat that comes
from a small group of Islamic extremists
who would like to wage jihad against the
values that Western democracies hold near
and dear.

Principal among those values our greatest
strength, I would argue, is liberty. Unfortu-
nately, in this new threat paradigm, liberty is
also our greatest vulnerability. Because of
the liberties we all, as Australians, enjoy and
take for granted there is now opportunity
available to individuals, terrorist cells or
groups of individuals, who would like to
wage jihad on our Western democratic val-
ues. They would use our liberties in a way to
ensure that they are successful in repeating
the kinds of horrific acts we have seen inter-
nationally that have been responsible for the
murders of thousands of people.

We know that terrorist groups have veins
and roots that go into our communities to a
far greater extent than we previously be-
lieved. We also know that those who commit
the acts are not acting in isolation. We have
learnt that those who commit the acts, unfor-
tunately and regrettably, often have a large
number of people who actively assist and
support them in carrying out these heinous
crimes.

I am very proud to be part of a govern-
ment that has operated to ensure we have in
place a framework that provides the greatest
counter-terrorist utility available to us—that
is ASIO—with the kinds of powers they
need to safeguard the Australian public as
much as possible. The reality is that, in the
current environment, it is not good enough
simply to have punishments for terrorist acts.
It is not good enough because there is little
that can be done after an attack of the style
of September 11, the Bali bombings or the
bombings we have seen in Turkey in recent
weeks.

The fact that people might be imprisoned
after the event is of little solace to the com-
munity. The best defence we have is to en-
sure that our intelligence agencies have an
appropriate level of powers that enable them
to penetrate the web of nefarious and evil
people who would abuse our liberties to try
to provoke terror and have it reign in our
communities. To me that is the only real tool
Western democracies have against those who
would seek to wreak havoc on our commu-
nity. The ASIO framework, as it has been put
in place, which was passed by the parliament
in July last year, is an appropriate balance.

I recall sitting in this chamber for some 27
hours on the final sitting day of last year, as
this parliament debated, among other things,
the ASIO bill. I am not sure if the Greens
member, the member for Cunningham, was
here for the entirety of the debate; most of
the other Independents were not. If he was
here, then I would applaud him for at least
remaining for the whole debate, unlike most
of the Independents who left at about 9 p.m.
I have also heard some concerns raised by
the Greens in respect of article 26 of the UN
Covenant on Civil and Political Rights. The
concern put forward was that this bill is in
some way discriminatory and therefore in
breach of that article.

You cannot have it both ways. I am in-
trigued that the argument would be put for-
ward that because this bill stipulates that,
where someone has access to an inter-
preter—that is, the person either does not
speak English or refuses to speak English
and, as a consequence, an interpreter is
brought in—and we make provision to ex-
tend the amount of time available for ques-
tioning, that is a breach of article 26 because
it is viewed as being discriminatory. Yet, un-
der the same framework, the fact that the bill
provides for an interpreter, which is a sepa-
rate mechanism from that applying to some-
one who does speak English, is not ques-
tioned. For consistency, if the Greens were to
make the argument that to have any sort of
difference at all is discrimination, then surely
the Greens would have to adopt the position
that to provide an interpreter for those who
either cannot, or choose not to, speak English
would be discrimination as well. You cannot
take only the good and reject, in their argu-
ment, the bad, because it is totally inconsis-
tent. What we are doing is reasonable and
rational. In the good vein we say that, if
someone does not speak English or chooses
not to speak English, to help that person we
provide an interpreter. In addition to that it
goes almost without saying that it is of added
benefit to our intelligence agencies that they
have someone there who can speak in that person’s native tongue. But, likewise, it is also commonsense and reasonable that, where we do provide an interpreter, we make provision for the fact that it will take twice as long to ask a question of that individual.

Mr Organ—What if it takes half the time?

Mr CIOBO—I am uncertain as to how that is possible. Two people speaking in English would be much faster than one person speaking to an interpreter in English, the interpreter putting the question to the subject in their native tongue, the subject replying to the interpreter in their native tongue and the interpreter repeating it in English to the questioner. That to me is pretty clearly going to be an example of why it will take twice as long. Instead of two statements, you have four.

It is not complicated. What we have done in this bill is ensure that we extend the amount of time available for questioning. But that does not automatically mean the amount of time used for questioning will double. It means that our intelligence agencies have the ability, should they require it, to use a greater total amount of time, which is double the current allowable limit of 24 hours, in order to go through the same amount of information and interrogate the person to the same extent as they would if that person spoke English.

That is very reasonable. I am quite certain that the people in my electorate—the sensible people that I speak with—recognise that it is an appropriate safeguard. I quite frankly find it absurd to argue that it is discrimination to allow more time for the questioning of someone who does not speak English. In addition to that, this bill not only provides for an extra period of time when an ASIO warrant has been issued for questioning but also incorporates two new limbs into the ASIO Act. The second limb is to require the subject of an ASIO warrant to surrender their passport or passports and to make them criminally liable if they seek to leave Australia without permission. The third limb is to create a new offence regime relating to the disclosure of information about ASIO warrants or operational information.

As I have already dealt with the questioning regime, I will deal with the issue of passports with respect to the second of these limbs. As a consequence of a review conducted by ASIO it became apparent that, where a particular individual came to the attention of ASIO and where a warrant was issued for the individual, there was a risk that the person may choose to flee. As there are insufficient powers at present to enable ASIO to remove from that person the passport issued in their name—be it an Australian or a foreign passport—it was quickly recognised that ASIO should have these powers to obtain a person’s passport to ensure they are no longer a flight risk. It means we can then question the individual who is the subject of the warrant, knowing full well that it will be exceptionally difficult for them to flee the country.

I will now deal with the third limb, which involves the new secrecy provisions as they will exist in division 3 if this bill is passed. Under the current secrecy provisions, which at the moment are limited and relate only to lawyers and to children’s representatives, there is of course the difficulty that arises from the disclosure to third parties of information pertaining to warrants. Under this bill, it will be an offence to disclose information about an ASIO warrant or operational information. This is a more holistic approach to ensuring the secrecy of an operation.

Let us not lose sight of the facts of what we are dealing with. We are dealing with those individuals that have knowledge of or
are directly involved in the planning and preparation of a terrorist act. It seems to me very reasonable that, in dealing with them, we should seek to limit the information disclosed to third parties, recognising that the very last thing we want—and what the Greens position would be—is for someone who is the subject of a warrant to be questioned by ASIO and then walk out on the street and tell all and sundry that ASIO has just been questioning them about particular issues. Of course, it does not take a great deal of sophistication to recognise that the very first thing someone who is involved in nefarious activity would do is pick up the phone and disclose to third parties who are involved in planning and preparing an attack that they are the subject of a warrant and that, ‘We’ve got to change the plans. Something’s come up: ASIO’s onto us.’

It is fairly straightforward that the new secrecy provisions this bill puts in place pertain to those individuals that are the subject of a warrant. I reinforce and restate that there are ample safeguards that exist in the legislation already that have to be cleared as a hurdle before a warrant can be issued. There really needs to be a sense of reasonableness and a clear-cut case made to the Attorney-General about why someone should be the subject of a warrant, before we impose this additional responsibility that they not disclose information to third parties.

The ASIO Amendment Bill 2003 makes a number of minor changes to the ASIO framework to ensure that we have a better operating framework for our intelligence agencies. It has the support of the opposition, and I am pleased about that: they too recognise the reasonableness of what is contained within this act. It also ensures that the Australian Security Intelligence Organisation is in a position where it can adequately deal with this new threat environment. As I said, the concern that I have and I know my constituents have is toward those individuals or small groups of individuals that would seek to abuse our liberty and ensure that they wreak as much havoc, murder and destruction as possible on our community.

The only real safeguard that we have is to ensure that our intelligence services have in their power a reasonably balanced framework that ensures they can obtain the information they need to try to prevent an attack before it takes place. In this new environment where of course we have been required to forgo some liberties in a very strict, clearly defined and, I would argue, reasonable way, it seems to me that we do so recognising that there is a huge dividend that could be paid at the end of that process.

The recent case of Willie Brigitte is a good example of exactly the reasons we need these powers—when you have individuals like that who would come to this country and seek to abuse our liberties so as to wreak the most horrendous of crimes. This is an important bill. It ensures that ASIO has at its disposal the kinds of powers it needs, that ASIO can operate in an effective and efficient way and that ASIO can help to protect Australians against the very worst possible kinds of attacks. I commend the bill to the House.

Mr HUNT (Flinders) (6.06 p.m.)—I came to this chamber and I come to this debate on the ASIO Legislation Amendment Bill 2003 with a passionate belief in and commitment to basic freedoms, individual liberties and the notion of a society which is essentially free and which gives people a chance to pursue their own lives and destinies and to make their own choices. One of the greatest challenges for any society faced with external threats is to ensure that it does not derogate from core liberties and freedoms.

In a post September 11 environment, where we have moved from classic confrontations and threats across state borders—
transnational threats—to a situation where there are non-state actors willing to use means which have not traditionally been part of the threats faced by Western democracies, we have to deal in a balanced way with providing security on the one hand and protecting our liberties, our freedoms and the essential values which define who we are on the other. We have to deal with that trade-off while maintaining an important balance.

I believe this bill preserves those rights and freedoms and the integrity of the values that brought many of us to this chamber. But it does so in a way that recognises that we are not as we were two, three or four years ago, that there are real threats now which are aimed at the heart of the society we live in and that those threats have to be dealt with.

I want to briefly outline to the House what I believe to be the core threat facing not just this society but much of the developed world. You have in al-Qaeda a non-state actor. It is a fringe group—an extreme group—that is a perversion and a betrayal of its own faith. Islam is a fine and noble religion with a powerful tradition of peace and preaches many of the highest sentiments known to humanity. This is not about Islam; this is about a perverted ideology. The core ideology within the al-Qaeda movement is simple. It seeks to take that which was in place under the Taliban in Afghanistan and to apply it on a global scale. If you view it this way, it is a 100-year vision of a Taliban style globe. Al-Qaeda has as its strategic objective, on a 30-year basis, the capacity to destroy or destabilise core Islamic countries. Egypt, Saudi Arabia, Pakistan, Indonesia and now Turkey have all been subject to acts by al-Qaeda seeking to destabilise and fragment their countries and to use them as a base for long-term activities.

On that front, we see that, very simply, in order to achieve that goal they are willing to use types of force and types of activity that target civilians, civilian and humanitarian organisations, whether they are in Turkey, in Iraq, in Morocco, in our own region—as we saw with the attacks in Indonesia and the Bali tragedy—or in other Western countries, as we saw most notably with September 11. That risk is real, it is palpable; it is the ongoing state of conflict in which we find ourselves now. It is aimed at destabilising Western engagement with these core Islamic countries and, ultimately, at breaking down the existing structures in those countries so it can fill the vacuum. That is the strategic objective. This legislation helps to deal in a very modest and careful way with an entirely new threat regime. We now face a level of conflict with a nature and notion of threat that was previously not in place.

I wish to address three things briefly: the background to this bill, its importance and some of its core provisions. On the background: since September 11 and the recognition that the level of threat was far greater than we had previously understood, the government has taken a series of steps aimed at ensuring our basic security and dealing with this new type of non-state threat in a way that makes all Australians feel more secure. Firstly, legislation was passed in July to enhance ASIO’s antiterrorist powers. Secondly, legislation was passed only last month to list the military wing of Hamas and the Lashkar-e-Taiba as terrorist organisations. Thirdly, the Criminal Code Amendment (Terrorist Organisations) Bill 2003 has been developed to list all terrorist organisations as they arise—and appropriately—as illegal. The latest addition to these measures is the ASIO Legislation Amendment Bill 2003. In essence it aims to remove any deficiencies in the questioning regime of terrorist suspects so as to enhance ASIO’s ability to collect the base information necessary to conduct investigations. It also safeguards sensitive information
gathered by ASIO to protect Australians from terrorist networks, whether they are al-Qaeda, affiliated or like organisations.

As you can see from that overview, this legislation has three main purposes. First, we seek to enhance the current legislation so as to address shortfalls, particularly in adapting to changing terrorist tactics and activities. That is the nature of the challenge that we face. Second, we seek to permit ASIO to more effectively carry out its intelligence monitoring and gathering duties, particularly in the prevention of the execution of terrorist attacks in Australia and elsewhere, by increasing the legal tools available to ASIO to intercept and prevent attacks rather than deal with them and address them after they have taken place. It is the very same thing that we apply within our own domestic laws for the police. There are cautious protective measures to ensure that these powers are used in the most limited fashion. But the fact is that the nature of the challenge we face is greater than any we have faced before. Third, we seek to safeguard the information gathered by ASIO and in particular to ensure that our national security is not compromised by limiting the flow of information from a person suspected of terrorist activity.

It is worth reflecting on the importance of the bill. These reforms are part of the government’s ongoing commitment to deal with this new type of non-state threat—one that is not merely hypothetical but real, as we have seen from September 11 and Bali—and emerging threats to our security. There are real and palpable challenges in relation to these types of agencies; their willingness to use force against civilian targets, their weapons, the opportunities they have for exploiting technology and their attempts to develop—as have been revealed in al-Qaeda’s own tapes—and exploit new forms of weapons of mass destruction. If they can get them—if terrorism and weapons of mass destruction can be linked—then, whether the target is Manchester or Liverpool or Lyon or any other great city, there is a new risk that we must face.

In that context, there will be four core legislative measures taken so as to achieve the goals of the ASIO Legislation Amendment Bill 2003. Firstly, the bill extends from 24 hours to 48 hours the maximum time a person may be questioned under a warrant where that person needs an interpreter because they are either unwilling or unable to communicate in English. Essentially, the time needed to carry out a full investigation doubles and the time provided to carry out that full investigation is also doubled. It is a simple, practical measure. I understand that the member for Cunningham challenged it and, while I respect the views of the member for Cunningham, I disagree. Simple, plain logic indicates that a process which may require double the time should be allowed double the time. We are talking still about a maximum of 48 hours.

Secondly, the legislative measures in this bill also reduce the risk that a subject may leave or attempt to leave Australia should they be served with a warrant by authorities. In essence, what this amendment attempts to do is to ensure that if a warrant is served on someone they cannot flee. It does that by requiring them to surrender their passport to authorities when a warrant is served because of a matter of national security. That is neither onerous nor unreasonable; it is simply practical and sensible.

Thirdly, the bill seeks to clarify the powers of ASIO with respect to a warrant. In particular, it clarifies that a warrant for questioning may include arrangements for detention of a subject, or other actions that are allowable under the act, where that subject is suspected of terrorist activity. That detention—again for minimal periods—is subject
to the most rigorous and strict compliance mechanisms.

Fourthly, the legislative measures in this bill safeguard sensitive information. They do that by overcoming the fact that the current legislation does not preclude a person from discussing information they obtained during questioning with others. Very importantly, it ensures that there is a protective mechanism to secure and contain information which may be drawn from investigations. It is a simple but important measure.

In looking at the provisions of the bill I wish to make four brief comments. Firstly, part 1 of the bill under section 34HB—which assesses and makes provisions for the time for questioning in front of an interpreter—takes steps to double the maximum time a person may be questioned under a warrant from 24 hours to 48 hours when an interpreter is present. That fulfils the first of the goals.

Secondly, part 2 of the bill under section 34JC enforces the surrender of a person’s passport after they receive notice of a warrant for questioning. It implements the passport surrender provisions. In addition, part 3 of the bill under section 34F removes any doubts surrounding the powers of ASIO with respect to a questioning warrant. Questions have been raised about ASIO’s powers and this provision clarifies the capacity for a person to be subject, under a warrant, to detention for a brief and limited period.

Finally, part 4 of the bill acts to deter people from seeking to find out what was discussed with, and obtained by, ASIO, and from releasing information obtained by ASIO for a period necessary to ensure that, at the height of a threat, the government can act to ensure that the threat is addressed.

This is a sensible and simple package of measures in the context of a heightened international threat—one that I fear will be with us for as long as I and all my colleagues within this chamber remain members of this House. But these measures also protect the core values that are fundamental to our society: the essential notions of freedoms and liberties. The measures are part of a package that we have looked at and balanced and, while in some ways the government is more limited than it might ideally want to be, I think it is a healthy thing that there are those checks and constraints and balances in place. I support this bill. I recognise that it comes in the context of threats that we have not previously faced. I am delighted to commend the bill to the House.

Mr RUDDOCK (Berowra—Attorney-General) (6.20 p.m.)—in reply—I would like to thank those members who have contributed in this debate, particularly the honourable member for Barton but also the members for Cook, Cunningham, Moncrieff and Flinders. There has been a successive chain of terrorism events around the world which the government has vigorously responded to over the past two years. The ASIO Legislation Amendment Bill 2003 will further strengthen the government’s response to that chain of terrorism events.

The government recognise that to prevent terrorist activities occurring on Australian soil we must ensure that our security agencies are armed with the appropriate legal tools to properly advise us. The government have given ASIO special powers to question and, in some circumstances, detain a person for the purposes of collecting intelligence relevant to a terrorism offence. These powers have clearly enhanced ASIO’s abilities to perform its functions in the collection of intelligence relating to possible acts of terrorism.

The bill was introduced during this parliamentary sitting as a result of operational and practical limitations that have arisen in
the use of these new powers by ASIO. The bill has been drafted to address these limitations and to provide ASIO with a stronger legal basis upon which to collect intelligence for the purposes of combating terrorism.

The bill addresses concerns over questioning time being effectively halved when an interpreter is used. When an interpreter is used, questioning time will be increased from 24 hours to 48 hours without affecting the fundamental structure of the questioning regime, and there are a range of safeguards associated with that measure.

The bill creates two offences to address a situation where the subject of a warrant is a flight risk. The bill would require the subject of a warrant to give up all passports in his or her possession or control to a person exercising authority under the warrant while the warrant is in force. It would also be an offence for the subject of a warrant to leave or attempt to leave Australia without the permission of the Director-General of Security. These offences are aimed at ensuring that ASIO is able to question all persons subject to a warrant without the risk of them departing Australia and therefore not being available for questioning.

The bill clarifies the power of a prescribed authority. I think the member for Barton outlined properly what the role of a usually retired judge might be in giving directions to a person who is being questioned under a warrant. This means, for example, that the prescribed authority may detain a person if he or she is satisfied that the person may seek to avoid further appearances or may alert other persons to investigations. Obviously, if people were alerted to investigations which were current it may undermine the integrity of those investigations and perhaps lead to our capacity to handle a potential terrorist action being impeded.

The bill also provides for security provisions to stop persons disclosing information that may compromise ASIO and terrorism investigations—it is the same issue here—that is, live investigations. The secrecy obligations would apply to primary and all subsequent disclosures of such information. While the warrant is in force, it will be an offence to disclose information about a warrant issued in relation to a person, the questioning or detention of a person or operational information. It is clear that disclosure of this kind of information while the warrant is in force could have significant implications for the integrity of the questioning process under the warrant and could compromise related investigations. I do not think the members for Flinders and Moncrieff outlined that very well in their speeches.

One has to keep a sense of perspective about these matters. As I have said in some of my own addresses recently, a fundamental human right that people in Australia have from their government is the right to be safe and secure. Investigating terrorist offences and being able to deal with those issues in a comprehensive way protect that fundamental right of Australians. You do have to balance those matters with other rights that people enjoy, but I think the fundamental right to security is a pervading one which, in the present environment, governments have an obligation to address.

This bill also prevents the disclosure of operational information for two years. This is designed to protect ASIO's sources, its holdings of intelligence and its methods of operation. It is necessary to prevent the disclosure of this kind of information after a warrant ceases to be in force because of the potential to seriously affect ongoing or related investigations.

In framing these secrecy provisions, the government has been mindful to include
strong safeguards by permitting a range of specified disclosures to be made which are not offences. These include disclosures authorised under a warrant or by a direction or through permission of a prescribed authority. A disclosure also may be made by a lawyer for a remedy relating to the warrant or for the treatment of a person under the warrant in a court. A disclosure may be permitted by the Director-General of Security, the Attorney-General or as prescribed by regulation. Additional disclosures would be permitted where a young person is questioned or detained.

I understand there have been some queries about the application of these measures. One query was whether these measures would apply, for instance, to the media. The media has no greater right than anybody else in relation to these matters, and they will be subject to the secrecy provisions in the same way. That is appropriate. The purpose of the provisions is to protect the effectiveness of intelligence gathering operations in relation to terrorist offences, and I do not see why any segment of the public should be exempt from these kinds of provisions.

The government has taken this step only after serious consideration in response to genuine concerns about the integrity and effectiveness of the new regime. We acknowledge that the offences are demanding, but this is because we are dealing with information that could result in the loss of life. The government also recognises that there cannot be a complete blanket over information. That is why these provisions do not apply for an indefinite period of time and there are time limits associated with them and that is why there is a range of permitted disclosures of the sorts that I have already referred to.

I understand there have also been some queries about the application of strict liability to the secrecy offences. Let me be clear on this point: strict liability will not apply to all elements of the offences—nor will it apply to all situations. It will apply only to one element that relates to the content of the information and it will only apply in relation to a person who is the subject of a warrant or that person’s lawyer. These people will be left in no doubt about their secrecy obligations and the serious implications of breaching those obligations. The prosecution would still need to prove the subject or their lawyer intended to disclose the information, that they were reckless in relation to other elements of the offence and, in particular, that it was not a permitted disclosure.

In relation to all other people, strict liability will not apply to any element of the offences, and the prosecution’s task will obviously be quite difficult in those matters. The prosecution will need to prove that a person intended to disclose the information and the person was reckless in all of the other elements of the offence. The effect is that a successful prosecution could not be brought against a person who discloses information in innocent circumstances or is not culpable for any deliberate or reckless disclosure.

The government believes that the secrecy proposals are measured and reasonably adapted and that they strike an appropriate balance between protecting terrorist investigations from being compromised and protecting individual rights. On that matter, I hope we will not be proved wrong in relation to some of the compromises that we have made. The government urges the parliament to consider the terrorist events that have taken place in diverse countries around the world and the horrifying reality that terrorism could occur here. If terrorists can have free and lawful access to information about ASIO investigations into their activities, if a terrorist can lawfully leave Australia and avoid questioning required under a warrant,
if a terrorist can be questioned for an effective period of 12 hours where the terrorist refuses to speak English, it is imperative that the bill be passed in this sitting period to give full effect to ASIO’s existing powers. As the Brigitte investigation has demonstrated, these kinds of issues arise unexpectedly.

The government have brought these amendments forward only after serious consideration and in response to genuine concerns about the integrity and the effectiveness of the new regime. The government will continue to monitor the adequacy and the effectiveness of the legislation in light of any issues that arise from further experience in its implementation and, I might say, as a result of the further inquiries that I have asked to be undertaken, comparing Australia’s regime with those elsewhere and on any other matters that are seen as relevant. Our objective is to ensure that ASIO has the tools necessary to do its job. Once the bill is in place, ASIO will be in a better position to protect Australia. I do not say that it will be a perfect outcome. As I say, one needs to be prepared to look at these issues afresh if further matters arise.

There are two other matters that I should address that have been raised during the debate. The member for Barton dealt very well with the issue of whether or not the bill infringes the International Covenant on Civil and Political Rights, particularly in relation to discrimination against people because of their language. I simply endorse the comments he made; I thought they were well taken and an appropriate response.

There has also been a point made as to whether the secrecy of offences infringes the implied constitutional freedom of political communication. The implied constitutional freedom of political communication applies to communications about government or political matters. However, the law burdening such communications does not infringe the implied constitutional freedom if it is reasonably appropriate or adapted to serve a legitimate end which is compatible with representative and responsible government.

The government included this provision in the bill because it recognised that certain communications and information about government activities that relate to ASIO investigations may, in some cases, be limited by secrecy provisions. However, the government believes that the secrecy provisions are reasonably appropriate and adapted to serve the legitimate purpose of preventing terrorists from launching an attack in Australia and do not therefore infringe the constitutional freedom. I commend this bill to the House. I thank the opposition for its advice that it does not oppose the matter. I hope that it receives a speedy passage in the other place.

Question agreed to.

Bill read a second time.

Mr RUDDOCK (Berowra—Attorney-General) (6.31 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COMMITTEES

Agriculture, Fisheries and Forestry Committee

The DEPUTY SPEAKER (Mr Wilkie) (6.32 p.m.)—The Speaker has received advice from the Government Whip that he has nominated Mr Tuckey to be a member of the Standing Committee on Agriculture, Fisheries and Forestry in place of Mrs Gash.
Mr ANTHONY (Richmond—Minister for Children and Youth Affairs) (6.32 p.m.)—by leave—I move:

That Mrs Gash be discharged from the Standing Committee on Agriculture, Fisheries and Forestry and that, in her place, Mr Tuckey be appointed a member of the committee.

Question agreed to.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 1) 2002

Second Reading

Debate resumed from 1 December, on motion by Mr Truss:

That this bill be now read a second time.

Mr HAASE (Kalgoorlie) (6.33 p.m.)—I rise in the House tonight to speak on the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002, the purpose of which is to amend the Quarantine Act 1908, the Imported Food Control Act 1992, the Pig Industry Act 2001 and the Wool Services Privatisation Act 2000. The content of this legislation is a clear indication that the Howard government are deeply concerned with quarantine issues. The detail of this legislation is a very strong indication that we are committed to the protection of our quarantine borders and our unique and disease-free status as an island nation. The bill will extend the Quarantine Act to Christmas Island in accordance with the Howard government’s policy to align conditions and standards in the Indian Ocean territories with those of comparable communities in the rest of Australia.

Amendments to the act were developed in conjunction with the Department of Transport and Regional Services after consultation with the inhabitants of Christmas Island. The amendments will see the replacement of the existing quarantine regime on Christmas Island, which was constructed on a law adopted from the colony of Singapore a very long time ago. The new legislative changes mean that the responsibility for animal and plant quarantine functions on the island will come under Australia’s own strict regulations, standardising quarantine strategies for lands in Australian waters.

This change does not mean that diseases and pests on Christmas Island can travel more freely to Australia—quite the contrary. The quarantine barriers to be set in place on Christmas Island recognise the differences in pests and disease status between mainland Australia and Christmas Island. People, vessels, animals, plants or other goods entering Australia from Christmas Island will continue to be treated with the same quarantine precautions and procedures as for those same items entering Australia from a foreign country. The bill will extend and maintain Australia’s marked quarantine zone but at the same time will allow Christmas Islanders a more flexible approach to developing protection strategies that are aimed at their own trading needs and quarantine status.

The bill will also amend the Quarantine Act to provide for some much-needed flexibility in the current arrangements for the employment of quarantine officers. You may well ask why these changes are necessary. At present, there is a limitation in the act which says that only government employees can be deputised to assist in protecting Australia’s borders in an unpredictable, non-emergency situation. This means that a high level of full-time staff are potentially employed for intermittent or low-frequency quarantine situations. The Australian Quarantine and Inspection Service—AQIS—is currently severely limited in its ability to respond to quarantine intervention situations quickly and efficiently. A restriction on the type of staff able to be deputised by AQIS means increased costs to the Australian taxpayer in the employment of full-time staff for part-time or very rare situations.
The amendments are particularly relevant to remote areas of Australia—including a great deal of my Kalgoorlie electorate. They will effectively allow the Director of Quarantine to appoint a person who is not a Commonwealth, state or territory employee to be a quarantine officer. As a result of the proposed changes, the Director of Quarantine will have the freedom to make the choice to appoint a qualified person from a contract pool who can perform quarantine duties as required and is available on call. Contract hire firms can place staff quickly and efficiently to meet increased and fluctuating demands. This means we can have fully qualified and fully-fledged quarantine officers operating border protection programs as required. We are not here to waste resources on paying staff working full time who have no choice but to sit on their respective backsides in quarantine stations when there are no duties to perform or inspections to carry out. Additionally, the use of contract staff frees up fully trained quarantine officers to concentrate on risk management and enforcement tasks.

The speed and efficiency of our quarantine operations have the potential to be greatly improved as a result of the changes in this bill but Labor, unfortunately, would have those improvements squashed for the sake of their own misperceptions. AQIS already employs contract staff, contrary to what we are hearing in this House from the opposition, so no precedent is set by this bill. At present those contract staff do not have the benefit of a legal safety net to ensure that they and all the duties they perform are protected under law. Yet Labor would deny them the legal protection that we propose.

The amended legislation will provide for a sound legal base to empower those existing or new contract workers, giving them the opportunity to be a real force in the protection of this nation’s borders and pristine quarantine reputation. In the event of an unpredictable arrival, deputised or casual employees are a front-line defence against breaches of quarantine, but at present they are limited in their tasks for the simple reason that they are not legally empowered to perform a task as simple as opening a bag. In the case of a major breach of quarantine regulations and an attempt by Australian authorities to bring those that would perpetrate such a breach to task through the courts, if there were a charge that perhaps the officers involved in the search for or discovery of the goods that contravened quarantine regulations were not fully qualified—were not qualified, under the law, to be involved—such a prosecution would be thrown out of court. As a nation we cannot afford to have our cases thrown out of court. We need to have real deterrence in place that will deter and therefore curtail some of the operations that may be engaged in by potential smugglers that would contravene our quarantine regulations.

The contract staff that Labor calls ‘outsourcing’ are already engaged in the quarantine procedures carried out by AQIS. The savings that are proposed as a result of the amendments to this legislation are legitimate, and it is not a case of breaking down union domination in the AQIS area just for the sake of it. Unfortunately, I feel that many of those opposite would talk down this legislation because of the belief that if they did not they were in some way letting down their union mates. I find that deplorable because what is at risk here in the long run is the protection of our borders, the maintenance of our quarantine service and the continuation of the knowledge overseas that Australia is the source of good quality, safe, disease-free product.

If our market situation is contaminated with the belief that we are not tough on quarantine measures—that we will potentially
allow exotic diseases into this country—and we lose the faith of our potential buyers, my constituents are going to be directly affected in a very harsh economic way. We are already seeing a situation that is absolutely deplorable where people, through a total lack of responsibility, have put at risk a long-standing and very valuable export market in the form of live sheep exports. Such unconscionable behaviour is, in my opinion, absolutely unforgivable. I believe that no penalty would be sufficient to castigate the perpetrator of an act that put at risk the reputation of this country as a reliable supplier of high-quality product to overseas markets.

We had a big enough problem recently when we had in excess of 50,000 sheep wandering around the Indian Ocean on the Cormo Express. Our reputation as a supplier of high-quality product was sadly damaged in that exercise, and it was damaged through absolutely no fault of Australian producers. They filled the Cormo Express with very healthy, high-quality product and, through some misunderstanding—be it accidental or deliberate—those sheep were charged with being unhealthy. We all know about the consequences—we had a dreadfully embarrassing situation and, thank goodness, that was satisfactorily resolved in the final exercise.

Most indelibly, it highlights for me the fragile nature of our reputation as a reliable supplier of a reputable product, and it is only with the maintenance of that reputation that the long-term economic sustainability of my graziers and pastoralists can be maintained. The last thing we want is to have our quarantine borders breached as a result of a situation where we simply have not been able to have enough inspectors on the ground to guarantee that thorough searches are carried out. We need a flexible and more cost-effective approach, and that is particularly relevant in the current environment where AQIS is implementing enhanced border controls in accordance with the Howard government’s initiative announced in the last budget.

In 2001, the Howard government introduced the increased quarantine intervention, or IQI, program. The IQI program has provided almost $600 million for the development of a strategy to identify and act on potential quarantine risks. Since the implementation of the IQI program in 2001 there has been a marked increase in the successful intervention of sea cargo containers and passengers by quarantine staff. The importance of that early detection and intervention was brought to light this year in the north of my electorate. I am pleased to congratulate quarantine officers at Dampier Port in the shire of Roebourne on their quick and decisive actions in identifying a potential risk.

An exotic mosquito species *Aedes albopictus* was identified aboard an overseas vessel arriving at Dampier Port in March this year. *Aedes albopictus* is considered to be a serious exotic pest, capable of transmitting a variety of diseases, that can be controlled by the application of strict quarantine measures and screenings. Through the diligent efforts of Ken McFarlane, the environmental health officer for the Roebourne shire, and his staff the situation was dealt with by immediately fogging and monitoring the port area. These quick response measures have resulted in Roebourne shire being recently awarded both a quarantine certificate of commendation and a quarantine national award in recognition of its outstanding preventative measures and efforts. Roebourne shire’s response to the mosquito incident, coupled with its ongoing commitment to quarantine waste management, make it a worthy recipient of national recognition.

The shire’s strategy for dealing with waste material deemed to be a quarantine risk is an example of how highly they view the neces-
sity for strict quarantine procedures. Tony Battersby, Roebourne’s waste management coordinator, and his staff have worked closely with AQIS in Karratha to develop long-term, effective quarantine waste disposal measures for the shire. AQIS staff have been able to contact Tony at all hours to make arrangements for the safe removal and disposal of this waste. The flexibility and willingness of Tony and his staff to accommodate quarantine requirements have enabled AQIS in Karratha to operate at its optimal level.

We are on track financially and practically to take full advantage of our enviable quarantine status. We enjoy a unique location and the luxury of a disease free status that huge economic trade centres like Europe and the United States cannot claim. Our agricultural industry relies on Australia’s national and international reputation as a country that produces safe, high-quality produce, and I wish to do all I can to see the successful passage of this legislation, which will maintain that reputation.

The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002 is not just about quarantine. The proposed amendments to the act are designed to help our agricultural industry in every way possible. We have an effective quarantine policy in this country, but if we are to maintain our pristine status we must be vigilant and uncompromising. We must have the courage to make adjustments to legislation wherever necessary in order to achieve the best possible quarantine protection. We owe that to our farmers and we owe it to ourselves as a nation. It is vital that all Australians are made aware of the importance of quarantine in protecting Australia’s unique environment and agricultural industry from exotic pests and diseases.

Vessels arriving illegally to our shores have gone through none of the strict quarantine measures that have been set up to protect our native flora and fauna. These vessels pose serious quarantine risks from possible infestations of timber pests, insects and vermin, not to mention the exotic diseases which may be carried by animals on board. People may also carry all manner of diseases. The world watched in horror at the spread of the highly infectious and highly lethal SARS virus. What if we could prevent the rapid spread of dangerous illnesses or pests simply through interception? The answer is: we can.

To improve our border protection we need to amend legislation so that remote locations in my electorate and throughout Northern Australia can call upon quarantine staff at a moment’s notice. The contracted quarantine staff will be able to deal with an identified quarantine risk or breach within an effective time frame. We should not have to wait for a full-time AQIS staff member to be transported to the area to deal with the situation. By then it is often too late. It would take just one aggressive exotic pest or disease for our agricultural industry to suffer devastating effects that could spell utter disaster for people’s livelihoods and the economy of Australia.

That is why I call on the opposition to pass without further amendment this proposed legislation. The issue is far too important to be bogged down by party politics. We have heard today from the new Leader of the Opposition that now is a time to turn over a new leaf and an opportunity for the Labor Party to work with the government to provide a better course for this nation in the future. I call on the Labor Party again: do as your new leader has said, agree with us on the passage of this legislation and make sure that the agriculturalists, horticulturalists etc. of this nation, who are still the back-
bone of regional Australia, are in a position to be assured that this parliament will collectively put in place legislation as required to guarantee our clean and green status into the future. With determination and a strong stance on border protection in this country we can prevent any such quarantine breakdown and consequent disaster. I applaud the Howard government’s commitment to quarantine, which was so sadly neglected under the Labor government. I urge all in the House this evening to put aside traditional party differences and pass this legislation without further amendment.

Mr JOHN COBB (Parkes) (6.51 p.m.)—Like my colleague the member for Kalgoorlie, I rise to speak in support of the amendments outlined in the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002. There are four different areas to this bill: the Quarantine Act 1908, the Imported Food Council Act 1992, the Pig Industry Act 2001 and the Wool Services Privatisation Act. This bill will extend to Christmas Island the Quarantine Act 1908. This accords with the government’s policy to align conditions and standards in the Indian Ocean territories with those of comparable communities in the rest of Australia. The Quarantine Act extends already to the Cocos (Keeling) Islands, and these amendments extend it to Christmas Island in the same way.

I think it has to be said that these amendments are all about formalising the arrangements on Christmas Island and at the same time recognising the different pests and diseases that have to be dealt with in a situation such as exists on Christmas Island. It is about trying to align all the communities in the region that have a similar pest and disease status, and doing that in a way that recognises and takes into account that their disease status is somewhat different to that experienced on the mainland—and I guess that is pretty obvious. Simply put, it will provide these communities with the same legislative framework that covers mainland Australia.

The long-term goal of these amendments is in the interests of the whole of Australia; it is obviously mainly to protect our virtual disease and pest free status in the world. I think we can very well pause for a moment and reflect on what that means to Australia—not just to country Australia, agricultural Australia or Australian tourism but to the wellbeing and prosperity of our whole nation. Let us face it: we are a nation small in people but big in exports. In quite a few commodities we are not the biggest producers, but quite often we are the biggest exporters. Why is our virtual disease free status so important to us? Without the slightest shadow of a doubt, it is the greatest selling point that Australia has. Whether it be wheat or meat, whatever it might be, the fact that it can be bought from Australia—as the member for Kalgoorlie mentioned—with its disease free, green, clean status is without doubt the greatest thing Australian exports have going for them. Let us not forget tourism in all this. Tourism also requires a measure of disease free status. People coming to Australia with that thought in mind know that they can do so and, by and large, run little or no risk of taking home things that they do not want.

These amendments support the move I have referred to, without being overly restrictive or overly punitive on Indian Ocean territories. There is no logical reason why this bill will affect the standard of living on Christmas Island: in fact, should there be market opportunities in the future, it will improve the island’s ability to deal with them. The bill provides opportunities to improve quarantine standards in the long term in a way that will, without doubt, facilitate and help with the import and export of goods on the island. More importantly, it will pro-
tect the unique environment of the island and the associated tourist benefits. I did mention earlier that tourism, like every other export industry, has its peculiar needs: the confidence of the people who operate the industry and, even more importantly, the confidence of those who are the industry or the clients. Without doubt, that is something that Christmas Island can look forward to.

This is all part of the government’s strong commitment to border protection and quarantine protection, as I said before, of our virtually disease and pest free status. We trade on that basis. Our export economy depends upon that status. Producers from agricultural electorates, like my electorate of Parkes, have built their livelihoods on Australia’s formidable trade links. Virtually any child can tell you what is exported from our region, why and, quite often, where it goes. They are all very aware that the economy of one-third of New South Wales, which my electorate represents, depends upon exports. It does not matter whether it is the service industry, the food industry or the mining industry; whatever it might be, it is all underwritten by the value of the exports that come from it.

The foundations of our virtual disease and pest free status must remain with us, and there are no limits to which we should not go to ensure that they do remain. Whether it be our security, our quarantine or our trade, Australians know that the one thing this government will always do—unlike some of the actions of our opponents in the past—is defend it to the nth degree. I hope that in this particular case the opposition will pass, without amendments, what has been put forward tonight, because it has been put forward not just in the best interests of and without prejudice to Christmas Island but certainly in the best interests of Australia as a whole. Currently there is not a lot of trade between Christmas Island and the mainland. But these amendments set up a framework to allow for it; should such an industry open up in the future, this framework will cater for it.

When it comes to quarantine laws, ours are up there with the best. Despite the fact that some countries have claimed otherwise, all our quarantine laws are based on science and on logic. They have served Australia very well, and they must continue to do so in the future. No government has worked harder than this one has in the last seven years to protect those standards and to shore up future security by investing in border protection—and we shall continue to do so. The government has significantly strengthened border protection in the last 18 months with its $596 million funding boost in 2001-02, delivering the strongest quarantine inspection arrangements ever seen in Australia. The difference between what we do in quarantine and what is done by some other countries can be seen in how they surprisingly were caught short in the recent past—within the last five years or so—in a way that I do not believe we ever shall be. While we probably have less to protect than some of those countries have had to protect in the past, we seem to have put a lot bigger effort into making sure—as we will continue to do—that, if we ever do have an incident, we deal with it quickly, efficiently and in the way it has to be dealt with. I could be wrong, but I think we have now committed something like $1 billion to quarantine overhauls in the last four to five years—certainly, in the term of this government, never has more been committed to doing so.

You cannot run a quarantine service like AQIS, which looks after Australia, without having the people to do it. It is a highly specialised service. It is a very hands-on service. I was part of the Joint Committee of Public Accounts and Audit which recently audited quarantine in Australia, and the thing that struck me straight away was that we are al-
most at the mercy of the individuals who run it. It is very much a hands-on thing. It requires the cooperation of people around Australia, such as those in the Torres Strait. By that I do not mean people in the service; I mean people who just live there and are very conscious of where they are and what could come in from the north or from other places. Personnel have an enormous effect upon AQIS and the quarantine standards we set.

This bill will also amend the Quarantine Act to overcome a limitation in the act that generally restricts the pool of people who may be called upon to assist in the protection of Australia’s borders in non-emergency situations to Commonwealth, state or territory government employees. Border protection is not a nine to five job. There is an ongoing need for constant vigilance by ordinary citizens, along with caution and security. We need to be able to respond quickly and efficiently to issues that arise. In the north of Australia we have something called Top Watch. This is nothing more or less than the cooperation of the people who live around the Top End. They cooperate with AQIS incredibly well, and this is certainly to the benefit of all of Australia.

The Australian Quarantine and Inspection Service must be well resourced to meet the increasing demands placed upon it—and those demands are increasing. The amendments in this bill move to free up highly professional, highly specialised and trained AQIS officers to perform their tasks in high-risk quarantine areas, where they are most needed. It will also give them flexibility to allow adequate protection for remote areas. Most of the northern areas we are concerned about would certainly be termed that. The amendments to the Quarantine Act will give the Director of Quarantine the power to appoint a person who is not a Commonwealth, state or territory employee as a quarantine officer. The Director of Quarantine will be able to appoint a person who is in a contract pool to be a quarantine officer. Furthermore, the directors of human, animal and plant quarantine will be able to enter into contracts to create a contract pool. I guess this is what you call flexibility—making use of the resources at your disposal, knowing who they are and where you can use them.

Obviously, the Director of Quarantine will need to be satisfied that such a person is able to perform that job competently and is suitable to be appointed. The person must also comply with the APS code of conduct. That requirement has been included because persons from a contract pool exercising quarantine powers should have the same level of accountability as government employees who currently, and normally on a full-time basis, exercise those powers. Under these amendments, the legal position of contracted staff will be clarified. The proposed amendments will give them the protection under law they need to perform their duties. I guess this will be done in a way not dissimilar to the way in which the volunteer bushfire brigade used to work. I support any move that gives AQIS a greater ability to perform what is undoubtedly one of the most important jobs in Australia. Any move that will ensure our high quarantine standards are continually met—or improved; as, indeed, they must be—must have the support of any clear-thinking Australian. As I said before, I cannot think of anything more important in normal commerce than protecting the virtually disease free status that Australia has. We must continue to enjoy this status.

The amendments in this bill also go to the Pig Industry Act 2001 and the Wool Services Privatisation Act 2000. The Liberal-National coalition government is committed to investing in and stimulating research and innovation to boost the competitiveness, profitability and sustainability of all our rural industries—and, in particular, the pig meat and...
wool industries, which have had their problems over the last decade. As the member of parliament who represents New South Wales’ largest electorate—with agriculture and mining being the heart and soul of my electorate—I see R&D as the humble driver behind economic growth. I think it will become even more so as time goes on. Staying ahead of the game in an ever aggressive global market means being competitive. In an export sense, Australian farmers do compete—not just because of quarantine and not just because of our disease free status but because of efficiency and the legwork carried out over many years in R&D.

The purpose of the amendments to the Pig Industry Act 2001 and the Wool Services Privatisation Act 2000 is to allow the research and development bodies for the pork and wool industries, Australian Pork Ltd and Australian Wool Innovation Ltd, to carry forward research and development expenditure eligible for Commonwealth matching contributions from one financial year to the next. All rural research and development bodies attract Commonwealth matching contributions, Mr Deputy Speaker Wilkie, as I am sure you are aware. At the moment, the R&D bodies for the red meat and horticulture industries as well as all of the R&D corporations and councils operating under the Primary Industries and Energy Research and Development Act 1989 are able to carry forward unmatched eligible R&D expenditure from one financial year to the next without loss. AWI and APL, the research and development bodies for the wool industry and the pork industry respectively, are not able to do that. Obviously, this is an anomaly that this amendment seeks to address and should do, for very obvious and simple reasons. I hope that the opposition see that, and I am sure that they will. The point of the amendments under the Pig Industry Act and the WSP Act is to allow APL and AWI to carry forward unmatched eligible research and development expenditure from one financial year to the next. Obviously, the wool industry and the pig meat industry have both had a rollercoaster ride in the last few years and should not be limited by their ability to carry forward well-needed and well-used funds.

Mr WINDSOR (New England) (7.07 p.m.)—I will be supporting the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002. However, I would like to take the opportunity to raise a matter, which the Minister for Agriculture, Fisheries and Forestry is familiar with, concerning the Australian Quarantine and Inspection Service. It relates to a company in my electorate called Angora City (Rabbits) Pty Ltd. This issue has been raised in the parliament a number of times. As recently as last week, it was raised in question time with the minister, who was to report back to the parliament on the allegations made by the managing director of Angora City (Rabbits), Mr Warwick Grave. The allegations are about the conduct of AQIS concerning Mr Grave’s importation of angora rabbits from the United States back in 1998 and the subsequent treatment of Mr Grave in relation to the establishment of his business.

I listened to the previous speaker, the member for Parkes, talk about Australia’s disease free status. I think anybody involved in agriculture or in the importation or exportation of animals would be fully aware of the job that AQIS does and would endorse the sentiment that we do need a disease free Australia. But there have been allegations made, and I think they are quite important allegations. I would not go so far as to suggest that the minister is covering up this matter, but I think some further investigations need to be made into the conduct of AQIS officers, concerning the loss of certain articles of research done and the loss of certain communications made over many years in
I have with me a list of a number of events that have happened, essentially since 1977, when Mr Grave and a partner became interested in the importation of angora rabbits into Australia. I would like to read into Hansard a couple of things that have happened since February of this year. As the Minister for Agriculture, Fisheries and Forestry is at the table, I would be delighted if he would pick up on some of these issues and notify Mr Grave of the contents of a report which I believe has been done and which I also believe the minister’s people have at the moment. However, there is some conjecture as to whether that report will be released. If it is not released, a lot of the things that we are talking about in this bill and a lot of the arguments that have been put forward in the contributions on this bill will really be for nothing. These allegations need to be investigated and a clear report given on them—not only to Mr Grave, who made the allegations, but also to the Australian public—to make sure that things are not happening behind the scenes whilst people are saying something else.

On 28 February 2003 the company owned by Warwick Grave was cleared for quarantine, after an arduous process that had taken many months and required a lot of hurdles to be jumped. It was almost as if the AQIS people were against the establishment of the rabbit business by Warwick Grave. Once Warwick Grave was cleared for quarantine on 28 February 2003, he approached the office of the federal minister for agriculture, Warren Truss, regarding the allegations of illegal United States rabbit imports of 4 November 1998. There had been allegations made prior to that date, but they were made again after Mr Grave’s AQIS clearance came through and he was able to establish his business in Guyra, in the electorate of New England.

On 30 May 2003, Mr Grave had a meeting in Sydney with Mrs Meryl Stanton, the executive director of AQIS, Canberra, and with a consultant of Warwick Grave’s. The allegations were reviewed, and a full copy of a US quarantine release was offered by Mr Grave to Mrs Stanton. AQIS had withheld one page of that release, which was of major significance. If the minister took the time to sit down and investigate this matter, I think he would find more than one page missing from a number of documents.

On 16 July 2003 the Merit Protection Commissioner—a chap called Alan Doolan—was appointed by the Australian Quarantine and Inspection Service, under Mrs Meryl Stanton, to discuss the legality of the US import on 4 November 1998. The AQIS process was controlled by Mrs Jenny Gordon, who was at that time—and I assume still is—Mrs Stanton’s assistant. The minister would well remember that I raised that particular issue in parliament. Six allegations were made at the time, and the minister gave an assurance that he would look into this. I raised the allegations back in June, and on 16 July Alan Doolan was appointed to look at the legality of the US imports.

On the release of the terms of reference for the inquiry, Mr Grave telephoned the United States Embassy as a courtesy call, and certain conversations were held. On 6 August 2003, there was a meeting in Sydney between the Merit Protection Commissioner—Alan Doolan—Mr Grave and two others, at which a promise was given that the report would be completed by the end of August 2003. On 11 November, Mr Grave was
advised by the Merit Protection Commissioner that the inquiry would be completed in two weeks—he had previously said that it would be completed in August 2003.

The delay had been caused by the slowness of the Australian Quarantine and Inspection Service officers responding to the Merit Protection Commissioner. That in itself is something that the minister should be concerned about. Mr Grave was now advised that he would not see the AQIS response to the Merit Protection Commissioner and would not see the final report. I am not privy as to who advised of that but I suggest that the minister might be able to look into who advised Mr Grave that he would not be able to see the report about allegations that Mr Grave made. On 17 November 2003, Mr Grave was advised that the merit protection commission was not a statutory authority, having ceased to be so on 31 December 2001. It is in fact a private contract between the Australian Quarantine and Inspection Service and Mr Alan Doolan and some associates. If that allegation is correct, and I have no reason to believe it is not, the minister should be making serious investigations into why Mr Grave was told that there would be that inquiry by the merit protection commission—the so-called independent authority in relation to an allegation—and that it would be at arm’s length, yet many months later, after giving the inquirer a lot of the information that he required to assess the allegation, he was now told that it was a private contract between AQIS and a private citizen in a sense, not the Merit Protection Commissioner. There are a number of issues that need to be answered.

This process has been going on for far too long, Minister. I am very concerned, particularly given the state of Mr Grave’s business at the moment—and not the least the state of his health—because of the problems that he has experienced in this particular process, that the report that was being undertaken by Mr Alan Doolan, in this fictitious role as Merit Protection Commissioner, will not be available to Mr Grave. Minister, while you are responding to the bill—and I will be supporting the bill; I believe it has merit—I would like you to respond to those allegations. I gave you the opportunity to do so in question time last week and obviously, and quite understandably, you were not fully up to speed on that issue. But I believe that as a minister, given an allegation such as that made at question time and back in June, you would have done some homework since those allegations were raised, and I would be very pleased to hear what your intention as minister is on the allegations that have been made—and to the report that was made after the allegations were made—about the illegal importation of rabbits from the United States. If we are serious about the Australian Quarantine and Inspection Service and about keeping Australia free from any diseases that could come in with various animals, I think these allegations have to be constructively and properly dealt with and not hidden behind a wall, as seems to be happening at the moment. I ask the minister to cover in his response some of those areas in concluding the debate on the bill.

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (7.19 p.m.)—in reply—I thank the honourable members who have contributed to this debate on the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002. This legislation covers amendments to quite a number of pieces of legislation. The legislation has been around for quite a long time. You will notice that it is called the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2002, and finally it is being brought on for vote here today. That is because it has been examined at a Senate inquiry which has taken quite a bit of time. I
will refer to some of the matters raised by individual contributors to the debate in a moment.

I need to outline briefly the contents of the bill. There are amendments in this bill to the Quarantine Act 1908. These amendments extend the act to Christmas Island, make a number of changes to improve the arrangements for the payment of fees, broaden the range of persons who may be appointed as quarantine officers and make a number of clarifying amendments. We are going to move some further amendments tonight which correct a reference to the title of this bill in the quarantine amendment health act 2003 brought about by the fact that a year has clocked over since this legislation was first introduced into the House.

The extension of the act to Christmas Island is in response to the government’s policy to align conditions and standards in the Indian Ocean territories with those of comparable communities in the rest of Australia. The amendments extend the act to Christmas Island in the same way as it has been extended to the Cocos (Keeling) Islands. The amendments provide Christmas Island with the same legislative framework for quarantine as that which applies to the rest of Australia while providing for quarantine barriers between Christmas Island, the Cocos Islands and the mainland in recognition of the different pest and disease status of these areas.

In relation to the arrangements for the payment of fees, the key changes are the amendment of sections 59A and 63 of the act to put beyond doubt that the liability for fees currently imposed on an agent by those sections is not a tax; the amendment of section 64 of the act to impose a liability for fees on an agent; the repealing of section 61 because it is a redundant provision; clarification that, in cases where a fee for service can be calculated in advance of the service being provided, the determination under section 86E may require that the fee be paid before the service is provided and that in such cases a quarantine officer may decide to withhold delivery of the service until prepayment is made; and clarification that a late payment fee may be a fee that is a percentage per annum of the basic fee. The amendments also broaden the range of persons who may be appointed as quarantine officers and will empower the Director of Quarantine to enter into contracts and to appoint persons covered by those contracts to be quarantine officers.

The opposition, when responding to this bill, sought a couple of assurances and made some other comments, particularly in relation to the appointment of contract quarantine officers. Firstly, the member for Braddon asked for assurances about the impact of the bill on the people of Christmas Island. I can give an assurance that I can think of no way in which this bill would adversely affect the standard of living of the island residents. The provisions of the bill will improve the market opportunities for Christmas Island in the long term. In the short term it provides a framework to recognise that Christmas Island’s different quarantine status will mean that some things will be allowed onto Christmas Island that might not be allowed onto the mainland and, of course, vice versa. That is important to us for a whole range of reasons because of the different pest and disease status of Christmas Island compared with the mainland. That is recognised in the bill.

Bringing the island within the legislative framework of the mainland provides opportunities to improve the quarantine status of the island in the longer term. Improving the quarantine status will facilitate the import and export of goods, as well as protect the unique environment of the island and its associated tourism benefits. This legislation will benefit Christmas Islanders and give
them opportunities to enhance their trading opportunities.

The second and obviously most fundamental criticism of this bill coming from the opposition is the suggestion that, somehow or other, it is a clandestine attempt to privatise the Australian Quarantine and Inspection Service. The bill has been around for a year because of the prolonged Senate inquiry that dealt with those sorts of issues and the seeming unwillingness on the part of the opposition, at least to this stage, to recognise the good sense of what was being proposed.

There can be no question about this government's commitment to quarantine. We have made a $600 million commitment over four years of around 1,200 extra staff. This certainly compares dramatically with Labor's poor record in quarantine. Inspection of mail has gone from five per cent to 100 per cent and there have been massive increases in inspections at airports and the like. So to take cheap shots from the sidelines about Steve Irwin and the highly successful 'Quarantine matters' campaign seems to me to be a surprising response.

The bill is not about privatising quarantine services; it is about providing flexibility for an organisation which has to cover a huge area. Surely even the opposition can see the merits of having somebody who can be appointed on contract to do a job in a particular locality, instead of having full-time quarantine people travelling vast distances to remote areas. This bill is about freeing up highly professional and highly trained AQIS officers to perform tasks in high-risk quarantine areas and not have them doing baggage-handling tasks or undertaking other activities that could be carried out by less qualified and less experienced officers, providing flexibility to allow adequate quarantine inspection for remote areas, and enabling us to direct additional resources for any disease incursions. If the opposition persist with their resistance to these measures, they will be compromising our capacity to deliver a comprehensive quarantine service. I do not think that is what they would want to do; therefore, I urge them to think very seriously about giving this legislation passage in the other place, presumably next year.

The member for New England again raised the allegations of Mr Grave about rabbit imports. I know he qualified the accusation that this is some kind of cover-up. There is no reason for me, the Director of Quarantine or anybody else to seek to cover it up because it all happened way before our time. We have nothing to hide. These allegations have been investigated on many occasions.

The member for New England has been a very persistent objector because he believes he has a grievance. The matter was certainly brought to my attention by the previous member for New England when I became minister for agriculture and I made some inquiries at that time. When I looked at it objectively, with all the compassion I could muster, I had great difficulty coming to any conclusion other than that AQIS had acted correctly in every regard. But, when the allegations persisted, the view was taken that we should seek a further independent assessment. That is why Mr Doolan was contracted to undertake that task. There has never been any doubt in my mind that he was appointed as a private contractor; he was no longer serving in the task the member referred to. It was never suggested that he was acting in any kind of professional capacity. It is obvious that he has in his CV the fact that he was once the Merit Protection Commissioner. In the circumstances, that would have been relevant to his appropriateness to be appointed. But he is certainly acting as an independent person.
Mr Doolan was appointed from a list of people provided by the Australian Government Solicitor, so there was independent accreditation for his appropriateness. As has been said, he is an ex merit commissioner; therefore he was considered to be entirely independent of the Public Service because he had a record of being able to deal with issues dispassionately. I am also advised that Mr Grave was notified of the name of the person before the inquiry and that he indicated he had no problem with his appointment.

I am not aware that anybody has told Mr Grave that he is not going to receive a copy of the report. That is news to me. I am aware of a letter sent to him by AQIS which implied the opposite. I have not seen or read the report but I can confirm that it was made available, I presume to AQIS, at the beginning of the week when the honourable member asked the question in the House. At present, its contents are being reviewed in great detail by AQIS and I would expect AQIS to respond in an appropriate way.

I can certainly assure the honourable member that there has been and there will be no attempt to cover up the issues. I will also look at Mr Doolan’s report with a fresh mind and not with any prejudged interpretation of what happens. I repeat again that all this happened many, many years ago and therefore there is no particular concern from my perspective about what the findings might be from a personal point of view. The other elements of the bill deal, as other members have discussed, with the Imported Food Control Act and also some changes to the Pig Industry Act and the Wool Services Privatisation Act, all of which have been non-controversial and have been supported, I think, by all speakers in the House. These bodies do an excellent job and this will give them greater flexibility in their work. I commend the motion for the second reading to the House.

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (7.30 p.m.)—by leave—I present a supplementary explanatory memorandum to the bill and move government amendments (1) and (2):

(1) Clause 2, page 2 (at the end of the table), add:
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(2) Page 47 (after line 11), at the end of the Bill, add:
Schedule 4—Amendment of the Quarantine Amendment (Health) Act 2003

1 Subsection 2(1) (table item 3, 2nd column)
Omit “Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2003”, substitute “Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2002”.

These amendments will correct a reference to the title of the bill within the commencement provisions of the Quarantine Amendment (Health) Act 2003. The proposed amendments will remove the now incorrect reference, replace it with a correct reference and indicate the commencement date of this change.

Question agreed to.

Bill, as amended, agreed to.
Third Reading

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (7.30 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AVIATION TRANSPORT SECURITY BILL 2003

Cognate bill:

AVIATION TRANSPORT SECURITY (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2003

Second Reading

Debate resumed from 27 March, on motion by Mr Anderson:

That this bill be now read a second time.

Mr MARTIN FERGUSON (Batman) (7.32 p.m.)—I rise to address the opposition’s view of this very important legislation. Against the events of 11 September legislation, which very dramatically changed the way we live, the fact of—and televised images of—a jet passenger aircraft being used as a weapon of terrorism made an indelible impression on each and every one of us. As we consider a new aviation security framework in the legislation we must remember that the aviation industry has been security alert for many years. It has always been an industry that has needed to have regard to issues of security.

Alternatively, I think it is fair to suggest that, whilst the aviation industry has been more security conscious than many, industries such as the maritime and port industries must now also become just as security conscious. That culture has not existed in such industries in the past. Indeed, when we think about it, being screened at their airport was for many Australians one of the few places they ever encountered security procedures. Even at Parliament House prior to 11 September we did not have a strong culture of security.

We also accept that this is changing and it is going to change even further in the future. More and more Australians are being screened and monitored as they go about their daily lives and business. For example, they are screened to enter workplaces like this one. There are CCTV systems on our streets, the screening of containers on our docks, and radical procedures for documents in government departments, sometimes to check if they are being released to the opposition, dare I suggest. There are security procedures for truck drivers and increasingly sophisticated computer security systems. These are just a few examples where terrorism and its curse are impacting on the daily lives of Australians.

While aviation has for many years had a highly regulated security environment, we learned on 11 September 2001 that more needed to be done. This legislation therefore represents the Australian government’s response to those events and the challenge that confronted the aviation industry. As a result of those considerations, this legislation puts in place a new aviation safety regime in response to that new sense of insecurity, both domestically and internationally.

I point out that the Australian government—and we should all acknowledge it—had early warnings that more needed to be done on aviation security. If anything, some of the criticism this evening is that they perhaps should have acted earlier. We are talking about 11 September 2001 as being the real pressure point to getting more serious about aviation security. I note this evening that there was an audit report of 1998 that noted a solid regulatory framework but
clearly spelt out in very stark terms the need for improvement of an immediate nature.

It took the minister until 2001 to respond to that warning. The bill he introduced back then was heralded as the first stage in an overall proposal to enact reform within aviation security. Modernised standards were going to be created in separate and specialised regulations. These regulations were planned to replace the provisions deleted from the Air Navigation Act. The problem for the minister was that he had not done the work on the new regulations, and the bill disappeared when the parliament was prorogued for the 2001 election.

In early 2002 the minister, almost oblivious to the events of September 2001, reintroduced what was in essence the same bill. Again unfortunately, the minister had not concluded the groundwork on the new modernised regulations and dithered over them for almost 12 months. In late 2002 the minister had a total change of heart—if anything, a change of approach—to fixing aviation security, and his plan to make reforms through the modernised regulations was ditched.

In January 2003 the Australian National Audit Office released findings from a follow-up audit to its 1998 report. It was a disgraceful state of affairs. The Auditor-General was forced to report that the findings of five years ago, in his earlier report of 1998, had in essence not been acted on. They had sat in the minister’s office and had not been attended to. It is no surprise, therefore, that the Joint Committee of Public Accounts and Audit, the parliamentary committee responsible for the Audit Office, has seen fit to institute an inquiry into aviation security. I look forward to that committee’s report, as I know it has canvassed these issues widely, and I urge the minister to give due consideration to its findings.

In the second reading amendment to the Aviation Transport Security Bill 2003 that I will move this evening, I call for a post-implementation review of this bill to be conducted in 12 months time, which is about holding the parliament and the industry accountable for the implementation of this bill. Obviously, there are potential teething problems and we should have a process for the parliament to assess the bill’s performance. I suggest that that review by the House of Representatives Standing Committee on Transport and Regional Services also include a look at the government’s response to the pending report from the Joint Committee of Public Accounts and Audit.

I suppose in some ways I am suggesting this evening that we as a House start using some of our own committees to do some of this work. There are a range of House committees responsible for different areas, such as employment, economic policy, public accounts and transport and regional services. I think all too often this House allows the other house, the Senate, to do work that we could ideally do ourselves through our own committee structure. So not only do I suggest this evening in a second reading amendment that we conduct a post-implementation review of this bill but I think it is time the House itself seized the opportunity through its own committees to do some work to make the outcomes potentially more rewarding and fulfilling for the people who put a lot of hard work into those committees.

Rather than producing reports which all too often just sit on ministers’ desks and are not acted on, why don’t we give them a defined task with a defined deadline, such as a review of the aviation security legislation—which will no doubt be passed by both houses—and the responsibility for assessing whether or not there are further weaknesses and, if need be, reporting back to the House with suggested amendments? It has been
done on infrequent occasions in the past—for example, with respect to some legal issues when the member for Banks was Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs in days gone by. So let us use the opportunity, irrespective of who is in government, to do something of note and substance through our own committee structure. However, it requires the minister to seize the opportunity, work with the committee and to suggest that such work be undertaken.

I raise those issues and I also acknowledge that, after the minister’s total shift in direction in 2002, it was not until March 2003 that we learnt what this new approach would be. It was then that we saw the legislation that is before us today. The minister then thought he could fast-track this important legislation by immediately referring it to the Senate Rural and Regional Affairs and Transport Legislation Committee—which goes to the very issue I raised this evening with respect to the workings of our own committee structure—before it was considered in the House. The record shows that, if anything, that tactic backfired. The Senate committee was not going to have the wool pulled over its eyes.

Soon after the committee convened, we learnt that the draft regulations were still not ready and that they were integral to understanding the operation of this bill. It follows, unfortunately, the established trend of this government to use legislation to establish a framework—yes, a necessary framework—and then the nuts and bolts are all too often delegated to regulations. I simply point out to the House that if we are going to consider issues such as aviation security in a proper, independent way then the regulations are critical to the understanding of the legislation, and this view was clearly realised and shared by industry when they prepared their submissions to the Senate committee. It unfortunately took an inordinate amount of time for the draft regulations to be provided.

The development and passage of this legislation has been fraught with delays and obstructions, but none have been from this side of the chamber. The blame for the delays fits squarely with the Minister for Transport and Regional Services—and, until recently, can I suggest that he could not decide if he wanted the job. In recent times the minister has not been focused on the serious task at hand. I remind you that we actually commenced this work prior to the last election in 2001. It is clearly complex legislation because it sets out to establish a whole new aviation security framework, and I acknowledge that. But some of the difficulties could have been overcome if we had had proper consultation with industry and some consideration of the need for workers to be consulted through their unions. That was neglected—a huge fault. So we actually created some problems for ourselves as a parliament with respect to the way consultations on the legislation occurred.

Having said that, it is clear that the legislation has come a long way. I am hopeful now that, as a result of the way we have been able to prod it, suggest some changes and point out the need for consultation, we are getting to the end of that long development stage. I must say I am still not convinced this evening that the legislation addresses all industry concerns and those of the travelling public, but we are starting to get there.

To his credit, the minister for transport cooperated to permit negotiations between his department, the opposition, unions and industry. Those negotiations have rightfully—and this is what life is about—arrived at significant compromises and have helped to ensure that all affected parties had the amendments, information and understanding required to support the legislation. For ex-
ample, a number of the government amendments relate to allaying the unions’ concerns that the definition of ‘unlawful interference in aviation transport’ may impact on the unions’ right to take industrial action. The words in this amendment were negotiated with the opposition and in consultation with the unions. The same accommodation applied to the Maritime Transport Security Bill 2003, which also passed in this place this week.

A further area where the government has been compelled to listen to industry and make changes is the demerit points system. On close examination, this legislation introduces a specific power to introduce a demerit points system for penalising breaches of aviation security. This week the Department of Transport and Regional Services confirmed Qantas advice to the Senate Rural and Regional Affairs and Transport Committee that the government will not pursue the demerit points system. While the government wants to retain the power to introduce the system in the legislation, it will not write regulations to commence that section at this stage. The government has acknowledged that the level of industry opposition has caused it to rethink its original position—and the government is to be thanked for that consideration. The opposition seriously questions the government’s decision to proceed with that section of the bill, given that reconsideration and concession that the industry’s concerns have merit.

There is a range of issues that requires further government consideration and attention. There are many areas where the government needs to work more closely with industry, including unions, to increase the effectiveness of this new framework. Many of these issues will be broached in my second reading amendment, which I will touch on in detail in my following comments.

As we all accept, there is no doubt that the aviation industry, especially airport owners, remain perplexed about the government’s decision to break with the use of established international aviation security terminology. The term ‘sterile area’, for example, is well known and understood. But the new legislation adopted a whole new vocabulary. This is not the type of change that could be fixed by amendment. The call to have a new, distinct terminology and system is fundamental government policy underpinning this legislation. There was an opportunity to build on the current system, instead of rewriting it for no obvious advantage.

While the opposition does not support it and agrees with the industry that this will create unnecessary confusion and exacerbate the amount of change to be comprehended, it is not something that we will seek to amend. At the same time, this is not significant enough to cause the opposition to vote against the legislation. It is unfortunately just another example of this minister not appreciating the detail of the legislation and being too distant from the industry and the challenges it confronts. The opposition urges the continuation of detailed consultation with the industry to ensure that the implications of this policy decision are minimised. We have to go out of our way to try to assist the industry in taking these necessary changes forward. We therefore urge the government to accept the need for continued detailed consultation with the industry to ensure that the implications and application of this policy, and our ability to make it work, are facilitated and assisted. As my second reading amendment will say, I call on the government to discuss appropriate ways to ensure that the regulations spell out agreed, clear and consistent roles and responsibilities for landside security between the different operators and authorities.
The legislation is also deficient in other ways that cannot be easily addressed through amendments—for example, the accountability and governance mechanisms are not clearly spelt out with respect to security incident investigations. At the moment, we have the Department of Transport and Regional Services being the font of all knowledge and control. They write the rules and regulations, they monitor compliance, they investigate the breakdowns and breaches of their rules and regulations and they are responsible for ensure that any flaws are fixed. In my mind, this is simply not appropriate.

The opposition very strongly believes that there needs to be more separation of these functions to ensure the system is properly accountable. The model for aviation safety regulation, compliance and accident investigation is a decent starting point of reference. I refer in passing to the security incident on the QF1737 flight to Tasmania as a case in point. The incident occurred on 29 May this year. The department very quickly said that they would investigate the incident—but we are waiting to see the outcome of that investigation. Surely there should be some process of independent assessment and accountability with respect to these sorts of matters. A system must be designed so that we as a community learn from errors. The aviation security regulatory, compliance and investigation framework must therefore be more transparent.

On that note, I refer in passing to the evidence given last week to the Senate inquiry into the current version of the draft regulations. I was pleased to see in that inquiry that the department is paying more attention to the issue of unscreened service personnel and unchecked vehicles going airside—something that I have raised previously in questions without notice to the minister in this House. The evidence provided by airport operators and airlines on the operation of this legislation also revealed deficiencies in the administration of airside security identification cards. These cards, as we all appreciate, are now a critical part of the security net at airports. The government has made significant changes in terms of requiring an ASIO politically motivated violence check of applicants for ASICs and shortening the time for renewal—obviously at cost to industry. Industry is prepared to pull its weight, but one of the industry’s criticisms with respect to this new approach to aviation security is that the government is not pulling its weight. There is a minimum financial contribution to the Australian community and the industry to enable them to embrace the changes embodied in the legislation before us this evening.

Putting that aside, in evidence to the committee—very strong evidence—it has become clear that not enough is being done with respect to some of these issues going to airside. Unfortunately, we were advised through those Senate inquiries that hundreds of these ASICs go missing—often when staff leave employment without handing them back to their employer. The opposition is not convinced that the system can be improved by an amendment to this legislation. But there is ample opportunity for regulations to be more rigorous, and I believe that the government should be giving more attention to this matter.

There is a very clear need, on evidence available to the Senate committee—an absolute requirement—for stricter controls, crosschecking and audit arrangements on ASIC users to minimise the number of missing passes. If the government had had more regard to this we might not have had the break-in at the department not that long ago. That break-in involved a missing pass and the government should have learned from that. When their own department in Canberra was broken into, with a missing card a contributing factor, they should have had more
regard to the need for stronger regulation on these matters with respect to the operation of aviation security.

I will now go to the issue of security at regional airports, an issue that is exceptionally important to the member for Braddon. This is another area where, without a doubt, the government in a very neglectful way is leaving people on the ground to make decisions about whether or not they should have more security. The truth is the government is basically wiping its hands in a lot of ways over the need for tighter regional aviation security.

There is a litany of media reports exposing security weaknesses at our regional airports, some as recent as today’s *Daily Telegraph* and *Sun Herald* reports. The Joint Public Accounts and Audit Committee public hearings around regional Australia have also revealed a range of concerns from operators and members of this place from both sides of the chamber.

The security of regional Australians must be respected. We must also be mindful that lax regional security can undo the most stringent measures in place at major airports and population centres. While we are assured on a regular basis that appropriate risk assessments are conducted, the opposition is convinced that the cost of providing security is given too much weight. The government simply has no excuses on this front.

On the question of available dollars, I remind the House this evening that this government is sitting on tens of millions of dollars from the Ansett ticket tax surplus. Despite promptings and requests, the government will not reveal how much it is. But, on available evidence, the opposition is convinced that there is enough to make a significant difference to the security of our regional airports.

To that end, I call on the government to use the surplus proceeds from the collection of the Ansett ticket tax—collected from people travelling on planes in Australia; it is their money—to improve security at regional airports. That money ought to be used on a selective basis, for example, to purchase screening equipment and related infrastructure at regional airports such as Burnie and Devonport in Tasmania; Dubbo, Albury and Wagga Wagga in New South Wales; Gladstone in Queensland; Port Lincoln in South Australia; and Tamworth, Port Macquarie and Kingscote.

The opposition appreciates that the local airport managers need to be involved in decisions about their airports. I simply say to those airport managers that I know that as many of those airports are operated and owned by local councils it might not be financially viable for you to improve security at this point. But I say that the Howard government has the money from the Ansett ticket tax to assist you in overcoming fears about regional aviation weaknesses.

Obviously, as I have pointed out to the House this evening, this legislation has a protracted history. It is long and complex. For that reason I call on the government to agree to ask the House of Representatives Standing Committee on Transport and Regional Services to conduct a post implementation review of the new security arrangements within 12 months of the legislation’s commencement. That is not only good for the legislation; it is good for the House to give the committee that responsibility. They want to do some work of a meaningful nature so let us not only involve them in debates about bills such as this but also give them due consideration and respect by giving them the responsibility of follow-up work on the application of the legislation so they can assess any weaknesses.
With those comments, the Labor opposition is at this point: we clearly support the legislation. As I have foreshadowed by discussion, the government and the opposition are putting forward agreed amendments. I will give my specific comments on those amendments when the legislation reaches the committee stage.

In conclusion, I would like to pay tribute to Australia’s great aviation industry. It is an exciting industry and a tremendous employer. One of my former colleagues referred to airports as ‘job zones’ and I think it is an apt term. Australia as a nation relies on a healthy, accessible and efficient industry—and one that is safe.

This week we saw the House of Representatives Standing Committee on Transport and Regional Services report on the difficulties confronting regional aviation and airports. There is no doubt that this part of the industry does it tough but, equally, the high-capacity end of the industry also faces many challenges—both domestically and internationally—in a very tough industry that, I remind the House, is recovering from the brunt of September 11. It is an industry that depends on community confidence. The market is particularly and highly sensitive to factors that impact on the safety and security of flight. The same sensitivity does not apply to other transport markets, such as private vehicle travel or commercial bus travel. But it is a fact of life in aviation. The opposition are acutely aware of it and we will always temper and monitor our comments accordingly.

At the same time, we as the opposition are charged with the responsibility of holding the government to account. Aviation security matters to travellers and they must have confidence in the regulatory framework. In our work scrutinising this legislation we have tried to be constructive but also cognisant of these sometimes conflicting responsibilities and we have minded our comments in a public sense accordingly.

In concluding my remarks, I would like to thank the industry and unions for their input. We as an opposition placed considerable demands on them to assist us in considering this complex legislation in a proper and thorough way. I would therefore like to extend my appreciation to the Board of Airline Representatives, the Australian Airports Association, Qantas, Virgin Blue, the Flight Attendants Association, the LHMU and the ALAEA for their assistance with finalising the legislation. I also express my appreciation to the minister’s staff and departmental officers for their cooperation, and acknowledge the input of my own staff with regard to getting us to this point. We have received from the government side, through the department and the minister’s office, ready access to information and answers to our concerns and those raised with us by industry. As the shadow minister, I very much appreciate that assistance because it enables us, as the opposition, to conduct ourselves in a responsible and cooperative way. Therefore, I move:

That all words after “That” be omitted with a view to substituting the following words:

“while not declining to give the bill a second reading, the House:

(1) condemns the Government for the unnecessary confusion that will be caused by its insistence on using a whole new terminology in its legislation instead of using and building on the terminology already used in the industry and recognised internationally;

(2) calls on the Government to ensure that the regulations spell out agreed, clear and consistent roles and responsibilities for landside security between the different operators and authorities;

(3) calls on the Government to improve the accountability and transparency of the
aviation security rule making, compliance and incident investigation governance arrangements;

(4) calls on the Government to discuss with industry appropriate ways to close the security gap caused by the ability of unscreened service personnel and unchecked vehicles to access aircraft;

(5) calls on the Government to impose stricter controls, cross-checking and audit arrangements on who is using ASIC passes, to minimise the number of missing passes;

(6) calls on the Government to use the proceeds from the Ansett ‘ticket tax’ to have screening equipment and related physical infrastructure provided in respect of the airports at:

(a) Burnie;
(b) Devonport;
(c) Dubbo;
(d) Albury;
(e) Wagga Wagga;
(f) Gladstone
(g) Port Lincoln;
(h) Tamworth;
(i) Port Macquarie; and
(j) Kingscote

if requested by the relevant airport managers;

(7) calls on the Government to require that the regulator consult formally with aviation industrial organisations on an ongoing basis in respect of security matters; and

(8) calls on the Minister to ask the House Transport and Regional Services Committee to conduct a post-implementation review of the new security arrangements within 12 months of the bills commencement”.

I commend the legislation and the second reading amendment to the House. I thank you for the opportunity to contribute to what I think is a significant change in aviation security—hopefully one that will benefit the Australian travelling public and assist our operators, such as Qantas and Virgin Blue, and their ability to conduct their activities in a safer environment that has the confidence of the travelling public.

The DEPUTY SPEAKER (Mr Barresi)—Is the amendment seconded?

Mr Wilkie—I second the amendment and reserve my right to speak.

Mr LINDSAY (Herbert) (8.02 p.m.)—I thank the shadow minister, the member for Batman, for his support and his recognition of this landmark legislation. Mr Deputy Speaker Barresi, as you know, I represent a large regional community in this country. I have a very significant airport in my electorate, in Townsville in North Queensland, and it finds itself in the situation where it is also a joint-user airport. It is an RAAF base as well as a civil airport and, as such, it is covered by the legislation before the House tonight.

This is landmark legislation; it is appropriate and timely, and I am very pleased to see the support that the opposition are giving to the government with regard to the legislation. The Aviation Transport Security Bill 2003 acknowledges that all participants in the aviation industry play an important role in the overall security of Australian civil aviation. The legislation consolidates existing aviation security provisions into a cohesive package. It is one of the very few pieces of legislation that has come into this House that is easy to read and understand, and I am pleased to see that that is the case.

The government’s role and the role of different industry participants are clarified, particularly with respect to emergency and contingency arrangements. The legislation aims to improve the structure of the aviation security regulatory framework and provide adequate flexibility in order to reflect the rapidly changing threat environment. There is an accompanying piece of legislation, the Aviation Transport Security (Consequential Amendments and Transitional Provisions)
Bill 2003, which will allow for future amendments and may be extended to other transport sectors. Importantly, the bill will align Australian aviation security with the revised International Civil Aviation Organisation standards and satisfy recommendations from the ANAO report tabled on 16 January 2003.

Townsville airport—which is run by Australian Airports Ltd, under the direction of the CEO, Catherine Rule—is going from strength to strength. Townsville International Airport welcomes the measures in the legislation that is before the parliament. Townsville airport, as I said, is a joint-user airport, with about 75 per cent of air movements being civil and the remaining being military. It is an international airport, although some would say that there are no international arrivals and departures. Indeed, Customs meet over 400 arrivals and departures each year going to Northern Australia.

I will be privileged to be at the opening of new facilities at Townsville airport on 12 December. We will be opening three new aerobridges. I note that some of our capital cities still do not have aerobridges—Melbourne excluded—but Townsville will have four aerobridges, and that is an amazing facility to provide to the travelling public. But hand-in-hand with those kinds of facilities—the new departure lounges, the new airline clubs and so on—goes the need for proper aviation security, and that is covered in the legislation.

Before I deal with the legislation, I want to deal with part (6) of the second reading amendment moved by the shadow minister, which recommends that the government uses the proceeds of the Ansett ticket tax to have screening equipment and related physical infrastructure provided at a number of regional airports. I think that is an unfair request of the government and an unfair request of those who have paid the Ansett ticket tax. At other airports, security facilities are provided under different arrangements. Why should arrangements be different to those normally in place at regional airports? It is not consistent with what happens across the Commonwealth of Australia and, as such, I argue that it would be poor public policy to suggest that the Ansett ticket tax be used for these particular facilities.

You have to be a bit realistic about this. You have to look at the threat assessment and what levels of security are needed. You have to draw a line somewhere and say, 'At such and such an airport, you do not need these particular facilities.' We could go to ridiculous extremes and say that there should be screening equipment at Cardwell airport, where I landed last Friday, but it would be patently ridiculous to expect that to happen. So I think we have to rely on the advice that we receive from the department and from those who do security assessments as to where security equipment and screening equipment should be installed.

You have to balance the need to protect passengers against the need to not upset them over ridiculous bureaucratic procedures where there is no threat whatsoever. I see that Wagga Wagga is on the list in the second reading amendment moved by the shadow minister. I flew out of Wagga Wagga only a few weeks ago and it is my view—not as a technical person but as a passenger—that there is no need for screening whatsoever. We have to be reminded that when passengers from regional airports come into city airports they are not secure passengers and they are screened before they get into the sterile areas. So there are provisions in place to make sure that there is no threat to general aviation security in the country. I do not think that I could support this amendment at all, because it is not practical or realistic.
The legislation covers a whole raft of very comprehensive matters. I would like to draw the parliament’s attention to some of them. Firstly, aviation industry participants are required to have programs for aviation security. Under this legislation, operators of a security controlled airport and operators of a prescribed air service are required to have such a program. Secondly, the content and the forms of the programs must cover how the participant will manage and coordinate aviation activities; how the participant will coordinate the management of aviation security with other parties; the technology, equipment and procedures to be used by the participant to maintain aviation security; how the participant will respond to aviation security incidents; the practices and procedures to be used by the participant to protect security compliance information; and so on. It is extraordinarily comprehensive.

The legislation also establishes areas and zones. It establishes what is a security controlled airport and what is a joint-user area. It talks about airport areas that are airside and landside. In terms of airside security zones, the legislation covers what might be prescribed—for example, controlling the movement of people, vehicles and goods within airside areas; restricting areas to zones within airside areas; providing cleared zones; preventing interference with aircraft, including unattended aircraft; and ensuring the security of control towers, fuel storage areas, general aviation areas, cargo and baggage handling facilities, navigational aids, critical facilities, structures and so on. In the landside security zone, the legislation controls the movement of people, vehicles and goods within landside areas, which is very important; restricts access to zones within landside areas; provides cleared zones; prevents interference with aircraft, including unattended aircraft; and ensures the security of various facilities. It is very comprehensive indeed.

In relation to controlling these particular zones, the legislation, by way of regulation, will deal with access to the airside area; patrolling the airside area; the provision of lighting, fencing and storage facilitates; identification and marking of the airside area; the approval of building works within and adjacent to the airside area; the screening of people, vehicles and goods for entry; security checking; the movement, management and operation of aircraft and so on; the management and integrity of the airside area; access to aircraft, including unattended aircraft; and the management of people and goods, including the management of unaccompanied, unidentified or suspicious goods in the airside area and so on. It is extraordinarily comprehensive.

It is the same with the control of the landside areas and zones. Those listening to this debate tonight will be able to gather from this that it is very comprehensive legislation. It covers all of the key issues related to protecting the security of airports. In the landside areas, it covers access to the landside area; patrolling of the landside area; the provision of lighting and fencing and so on; approval of building works within that area; screening of people, vehicles and goods; security checking, including background checking of persons who have access; the movement, management and operation of aircraft; and the management and integrity of the landside area and so on.

The legislation goes on in a comprehensive way to deal with things like weapons—in the airside area and the landside security zones, the clearing of weapons through the security point, weapons on board an aircraft and the reliability of that, and the failure to comply with the regulations. The legislation talks about prohibited items. It
allows regulations to proscribe things such as prohibited items and establishes restrictions in relation to prohibited items that parallel the restrictions which apply to weapons under division 3 in this particular legislation. The legislation goes on to comprehensively talk about onboard security and provides for regulations dealing with aircraft security, including control of passengers on board aircraft and the management of baggage.

The legislation then proceeds to provide control of aviation security inspectors and states how they can be appointed for security purposes, what powers they might have, what powers they can exercise and how they can determine whether a person is complying with the act. The legislation talks about the duties of law enforcement officers, who can stop and search people and vehicles at airports, remove people from aircraft at the airport, remove vehicles from an airport and so on. The legislation then goes on to talk about the roles and responsibilities of airport security guards and screening officers, who meet us every time we wish to go into the sterile area. Finally, the legislation comprehensively deals with reporting requirements—reporting by aircraft operators and airport operators—so that we can track where incidents might occur and determine how we might better deal with those sorts of issues in the future.

This is one of the most comprehensive, timely and important pieces of legislation that I have seen come before this House for some time. It is also, as I said earlier, one of the most readable pieces of legislation that I have seen for some time. I am pleased to support this. I thank the opposition for supporting it. I commend the legislation to the House.

Mr WILKIE (Swan) (8.17 p.m.)—I wish to speak on the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003 and, in particular, support the second reading amendment moved by the shadow minister, the member for Batman. The Australian National Audit Office released a report in 1998 called *Aviation security in Australia*. The conclusion of the report was essentially that security for Australian aviation needed to be strengthened. The response to that report was to revise the Air Navigation Act and to look at, amongst other things, the screening of passengers and their baggage and the reporting requirements for unlawful interference with aircraft and airport security programs. The outcome of all this was the Aviation Legislation Amendment Bill (No. 2) 2001 being introduced into the parliament. This bill was never debated and, as a result, lapsed. The bill was then reintroduced the following year as the Aviation Legislation Amendment Bill 2002.

I find it very interesting that we are debating the Aviation Transport Security Bill 2003 when only last week there were new civil aviation rules introduced that are a massive threat to aviation security. The new airspace rules that came into effect last Thursday, where light planes are allowed into areas used by commercial airlines, are a definite concern in relation to security and safety in the skies. I am particularly concerned, given that Perth international airport is in my electorate. This airport is a principal international, domestic and regional gateway to Western Australia for commercial aircraft and airfreight. Of course, Perth airport is not the only airport in the area. Pearce air base, whilst not in my electorate, is certainly close by. It is less than 30 kilometres away. This is a military air base with many take-offs and landings. It is also used as a training facility. Aircraft originating there occasionally fly into Perth airport to take on fuel or cargo. Other airports close by are Northam and York to the east and Jandakot to the south.
Jandakot is one of the busiest airports in Australia. This airport services light aircraft, including the Royal Flying Doctor Service. Jandakot is also the home base for a number of flight schools and the Royal Aero Club, of which I am a past member. Jandakot is in what was a semirural area but it is rapidly becoming part of suburban Perth. Perth international airport ranks fourth in passenger traffic volume in Australia. The airport has facilities for international and domestic air passenger operations, airfreight and general aviation. The airport operates year round, curfew free, 24 hours a day. In 2002-03, there were 1,027,069 passenger movements at Perth international airport. In the same period, 2,157,051 passengers went through the domestic airport facility. That is a total, between the two terminals, of 3,184,120 movements. This equates to an average of nearly 9,000 passengers per day. The Perth international and domestic airports are located close to the suburbs of Kewdale and Belmont. These are densely populated areas and are both industrial and residential. These areas have schools, child-care centres and recreational facilities and boast a number of large shopping centres, hospitals and, obviously, houses.

Under the new aviation rules, light aircraft operating above 3,000 metres must now use transponders. These are radar devices which make aircraft visible to air traffic controllers and other commercial aircraft. There appears to be a big problem here. Air traffic controllers are reporting that many light aircraft are operating without working transponders. They are also saying that these light aircraft without working transponders are straying into what should be tightly controlled airspace. These aircraft are straying into international and domestic capital city flight paths. It seems to me that this is a disaster waiting to happen—one which the Minister for Transport and Regional Services is ignoring, to the peril of the public. The president of the air traffic controllers union, Civil Air, was reported in yesterday’s *Australian* as saying that controllers in Sydney, Brisbane, Perth, Adelaide and Melbourne were reporting about four transponder failures an hour. This is absolutely unacceptable. If the technology is faulty then it should not have been introduced in the first place.

I also read with interest that the Prime Minister is suggesting that local governments, which own many of the smaller airports in Australia, should become more responsible for managing aviation security, even going so far as to suggest that they use local police. I do not know where the Prime Minister has been recently but obviously it was not to any of the smaller regional airports, because if he had been to some of those he would realise what a stupid suggestion that is. Local authorities responsible for regional airports in places such as Esperance, Kalgoorlie or Port Hedland in Western Australia already struggle to support the airports out of ratepayers’ funds. The local police resources in these areas are stretched as tightly as possible. There is nothing left over to put into what is and should be a federal government responsibility.

If this government is serious about airport security, it needs to get serious about shouldering some of the cost. While screening machines cost in the region of $1 million each, the imposts on local residents near to the airports I have mentioned are huge. If ratepayers do not pay for this suggested increase in security, the alternative is that tourists are charged a levy. This is not an option that most local authorities want to take up. Tourism has been greatly affected by the threat of terrorism and the effect of SARS. Many smaller communities depend upon tourism to keep their economies viable. Airlines are also bearing the costs of increasing security and are passing them on to their cus-
tomers. The government has refused to fund any of the cost apart from updating screening equipment at some of its own facilities at the airports of Cocos and Christmas islands.

I believe that the government should use part of the profit from the Ansett ticket tax to fund aviation security, especially in the regions. The member for Herbert rightly referred to what the government is continually calling the ‘Ansett ticket levy’ as a tax—and, of course, it is a tax. It has raised more money than is needed to fund the obligations for Ansett workers; therefore, that money should go into regional aviation security. Clearly it is a tax; it is returning a profit to the government, and it should be put back into aviation.

I will return to talking about the Perth airport. That airport is used by the military, which raises yet more issues in relation to security. As I am sure the Perth airport is not the only passenger airport in the country used for military purposes, the issues I raise in relation to it are not isolated; rather, they are issues that we should be aware of and respond to in an appropriate manner. I am advised by representatives from both the Department of Transport and Regional Services and the Westralia Airports Corporation that security for military operations is the responsibility of the Department of Defence. However, I have not been able to ascertain what the Department of Defence is doing in relation to security arrangements at airports—and, indeed, at sea ports.

It has been suggested that some private security might have been contracted to assist with guarding and patrolling planes and their cargo whilst they are on the ground, but I am unable to confirm this. This is particularly relevant when we consider that during the Gulf conflict we had Antonov and Ilyushin aircraft coming into Pearce air base, loading up with a military payload and being protected by military personnel, armed guards and dogs to ensure that no-one could access those aircraft while they were on the ground. But, because they were civilian aircraft, they would then fly down to Perth airport to refuel. Carrying rocket launchers, grenades, machine guns, ammunition and explosives, they would sit on the tarmac at the Perth airport while being refuelled, with no security whatsoever. I find this absolutely unacceptable. The reason they had no security after leaving the Pearce Air Force base was that they were then on a commercial flight. So they went on into Perth; obviously, the authorities knew what those planes were carrying, but no additional security was put in place to guard them. I just find this to be ridiculous.

The 2001-02 annual report of the Westralia Airports Corporation sets out the additional security measures implemented at Perth international airport following the September 11, 2001 terrorist attacks in the United States. Parking is now prohibited in the vicinity of any airport terminal other than in the allocated spaces of the public car parks. Airside access restrictions have been strengthened. There has been an increase in the Australian Protective Service’s presence, with 31 new staff being posted to the airport. This may sound impressive but, frankly, this is nowhere near enough. These measures will not deter anyone with a serious intention to cause disruption. This was proven recently when a person on a motorbike managed to drive into the passenger booking area through the front windows of the airport. If this person had been a terrorist, there could have been a major disaster.

In reality, there has been little increase in security. What increases there have been seem to do more to irritate passengers than to protect them. Taking nail clippers and nail files off passengers prior to their going into lounges to await their flights, and making...
women take off their shoes for a rescanning, when everyone knows that the pieces of support metal in them set off the machines, is not really a viable increase to the security of passengers, especially when those passengers can then purchase drinks served in glass containers and various other items that could be used as weapons once they are inside the security umbrella. All that these types of security measures do is stress people and make them angry when they are often tired and stressed already. This is not good enough.

Like every other person in this House, I am a regular air traveller, as are many other people in the population. It is incumbent upon this government to take this issue seriously and not to use tactics that, due to their visibility, appear to be appropriate whilst really offering only a bandaid solution. To date, the measures that I have seen and experienced appear little more than, as I said, a bandaid to give people the impression that they are safer whilst not actually providing any additional security. I fail to see how employing a private security company to screen passengers after they have checked in their luggage, most of which is not screened at all, helps to protect passengers on domestic and international flights. Surely, if we are serious at all about security, we would be screening everything that is loaded onto aircraft and not taking a haphazard approach where at some airports luggage screening is done and at others it is not.

The story is much the same with sky marshals. Apparently, around 100 people are doing this job but they are only present on 10 per cent of domestic flights. I wonder who makes the call as to which flights need them and which flights do not. Is there some magic formula? Perhaps there is some form of intelligence collecting going on. What is more likely is that, once again, an arbitrary system of cost against chance is taking place. It is my opinion that the present security at airports is appalling and dangerous; it does not instil any confidence at all.

I have spoken about issues in relation to passenger handling, but what about cargo in aircraft? As I see it, there are still issues in relation to the people who are allowed into sterile and security restricted areas. There have to be stricter controls on who is using airport or aviation security identification card passes. There must also be much tighter controls on unscreened service personnel and unchecked vehicles having access to sterile and security restricted areas. This bill and the draft regulations do not require the screening of all individual baggage handlers, cleaners, drivers or others as they go airside. As a result, unscreened personnel have access to aircraft. This is clearly unacceptable. Either we are serious about security or we are not. If we are, then this has to be addressed.

If that is not enough to be concerned about, it goes further in that there is also a problem with unchecked vehicles being allowed to go airside. That the drivers of these vehicles have aviation security identification card passes is not enough. There is always the possibility that people can unintentionally be involved in the carriage of illicit or illegal items. There is also the possibility that these passes have been obtained illegally. It is therefore necessary for all people, whether in possession of an aviation security identification card pass or not, to be subject to checks and searches where necessary. I speak from experience, having spent many years working in a secure environment—in fact, it was a prison, where you do not really want things to go in or out on a willy-nilly basis. I know also that people can be either used willingly or coerced to do things that they would not ordinarily do. I am not suggesting for one moment that we treat everybody as a criminal but, rather, I am suggesting that we protect people by making security such that it has fewer gaps for people to slide through.
This bill will cause the implementation of wide-ranging and fundamental changes to aviation security. Given these huge changes, I agree with my colleague’s suggestion that it would be appropriate to pursue a review of the framework 12 months after its commencement. Therefore, I would agree with the recommendation that the minister for transport require within 12 months that the House of Representatives Standing Committee on Transport and Regional Services conduct a post-implementation review of the new aviation security framework. Given that proviso and the second reading amendment moved by the member for Batman, I commend the bill to the House.

Mr HUNT (Flinders) (8.30 p.m.)—I rise to speak on the Aviation Transport Security Bill 2003 knowing that it is both a reflection and a necessary by-product of the fact that we live in a changed world. September 11, 2001 was a sad and salutary lesson for everybody. It indicated that our skies were not as safe as we had hoped and not as safe as we need them to be. There are new threats which we had not imagined only 2½ years ago. This bill is in part a response to that and in part a response to the necessary and continual process of modernising our organising systems for our skies, for our safety and for our airline systems. In essence, the Aviation Transport Security Bill 2003 focuses on the coordination of security in our skies. It establishes a framework that brings together our airlines and airports and places them within the reach of the Department of Transport and Regional Services. It provides a framework and a structure so that we can deal with the unexpected and adapt to new security needs.

What does this mean in practice? What does it mean for the men and women throughout Australia who fly and who go to airports, whether they be large city airports or smaller regional airports, such as those in Tamworth, Launceston or Broken Hill? Very simply, it means that there will now be a national system which can be tailored to each airport based on the level of threat assessment. So it is utterly flexible but with consistent policies and a consistent set of actions for each of the airports. That means that for the things that matter to people who catch planes—whether it is in rural and regional areas or, as for the vast bulk of travellers, in urban areas—such as baggage screening, access, distance from fuel facilities, before they are screened off, there is the ability to adapt and adjust to changed security circumstances. That is important; it has a big impact.

In essence, today I want to speak about three things: the background to the bill, the importance of the bill and the core provisions of the bill. Firstly, the bill is designed to enhance levels of aviation security. In particular, it seeks to establish safer airports and safer skies. That means, for the general public, a safer travelling environment. Secondly, the bill is designed to improve the structure of aviation security by creating a regulatory framework. That, again, is a very important element. That framework is not just a bureaucratic construct but a practical way of ensuring that if there is an airport, such as Launceston or Tamworth, which needs to have its security approach adjusted then that can be done—and it can be done quickly, and it can be done in anticipation of needs or in response to changed circumstances. That matters for the travelling public.

The bill is also designed to reform penalties for non-compliance and reform the enforcement regime more generally. What this means in practice is that if airlines or airports fail in their duties then there are consequences. That is a very important measure. In addition, it deals with the increased awareness of threats posed by breaches of aviation security since September 11. Furthermore, it implements the recommenda-
tions of the Australian National Audit Office report on aviation security tabled this year. We have recognised that the current legislation needs updating to adapt to the changed circumstances. Presently, the aviation security regulatory framework is spread across a range of legislation. It is difficult and slow moving. What we have here is a means of consolidating the general approach to aviation security in Australia and a means of giving Australia’s travelling public confidence.

In essence, the importance of the bill is that it delivers two main benefits: security and confidence. How does a bill such as this improve security? How does it actually help the 94 per cent of the travelling public who will immediately be brought under the legislative provisions of this bill and the six per cent of the travelling public, in some of the most remote and regional airports, who might potentially in the future—if necessary—be brought within the provisions of this bill? What does the bill do to improve security? The answer is simple: firstly, it acts to improve the capacity to control specific security issues such as cargo security; secondly, it acts to help with issues such as the transportation of people in custody by providing a mechanism for such transportation; thirdly, it tightens up the vagueness of the weapons schedule, which is a legacy from times past and something that will be clearly and precisely dealt with by this bill; and, fourthly, it restructures the airline and airport categorisation. It does this to ensure that there is a clear system so that all airports are appropriately categorised and that, where there is a change in threat assessment, an airport’s category can immediately be altered to fit the new system.

Those are the important measures in terms of security. How does this bill enhance confidence in Australia’s system? That is quite simple. Again we have four basic measures which will lead to that confidence. Firstly, the public will be able to have a well-founded belief that each of the airports covered will be safe. Secondly, there is a recognition that a single security breach has the potential to destroy confidence in aviation security—and this bill drives at zero breach. That is the goal and the tough, hard, clear objective established by the Minister for Transport and Regional Services, and I commend him for the work he has done on this bill. The bill aims at a set of measures that are free of breaches. It will be difficult, but that is what we have to deal with in this changed security environment, where we have seen, unfortunately, that planes can be used as weapons.

Thirdly, we also recognise that there is a potential risk of disastrous damage to the Australian economy if our airline system is seen as unsafe. So by pre-empting any threats we provide confidence, which can help with our transport, with our cargo, with our commercial aviation and with our inbound and outbound tourism. Fourthly, by focusing on that tourism level, the general notion of Australia as a safe place is a critical element. The general notion of Australia as a safe environment is enhanced by the fact that Australia is pre-emptively taking steps to ensure that our skies are completely safe.

In that context, I briefly want to mention a couple of provisions of the bill. In particular, part 2, division 2, clause 12 of the bill works to ensure that industry participants must have a transport security program in order to operate. That is a very important thing. Under this bill not all airports and aircraft officers will be required to meet aviation security regulations, and some of the smallest airports will have their own set of arrangements, but we can see that all the participating airports will be included in the system and, where necessary, even the smallest airports can be brought in. That is very important.
Finally, I spoke earlier this evening on the ASIO Legislation Amendment Bill 2003. We find that Australia, along with other countries throughout the world, is facing a different international security environment. In the post September 11 world, we have come to realise that threats which we had perhaps previously swept under the carpet or which we had hoped would not manifest themselves are real. Those threats—be they in aviation security, in our domestic infrastructure or, as we have so sadly seen in the tragedy in Bali, in the places where Australians holiday—are all too real. So we have to update all of our security mechanisms, be they in terms of our intelligence, our capacity to investigate or, as in this case, our aviation transport security. In that context, I am delighted to commend this bill to the House. I hope that it receives the full support of members of both chambers.

Ms GRIERSON (Newcastle) (8.41 a.m.)—As the previous speakers, including the shadow minister for transport, have noted, the Aviation Transport Security Bill 2003 is critical, and it certainly should have been before us before this stage. But it is here, and we on the opposition benches will be supporting it; and I will be supporting the second reading amendment to it. Civil aviation now faces a new challenge—although it was certainly one that we were always aware of. We were aware that there were security risks for aviation, but it is a changing world and September 11 changed the landscape a great deal.

This legislation has been vital. Perhaps it should have been before us as a response to the 1998 Audit Office report on security. It has been in the process since 2001. The audit report of 1998 did not get a speedy response. The 2003 audit report, which was presented to those of us on the Joint Committee of Public Accounts and Audit, if not prompted this legislation, certainly demanded some speed in this legislation. So this legislation does respond to the changed threat context and it also aligns Australia with international civil aviation standards, and that is something we are seeing in all transport areas at the moment. It is those international standards that everyone is going to look for before they commit their aviation industry to international travel, and the same will apply in the maritime industry.

This legislation now introduces penalties within a revised enforcement regime to try to make sure that the Australian travelling public are protected. It also attempts to respond to the ANAO recommendations that were tabled in January and separates the legislation to allow, as and when required, further amendments as well as policy reviews. That is important, because we cannot have a new legislative framework every time we want to make changes; so this legislation does contain procedural changes as well.

Unfortunately for Australia, I believe the audit report showed that we had problems; that is as recent as January of this year, post September 11. There were problems. Tests were put in place and actions were taken by the Audit Office as it moved around Australia, and these problems certainly alarmed it. When there are incidents at airports where doors marked ‘do not enter: secure area’ are able to be opened and alarms go off but no one comes, we know we have not quite got it right. But this legislation is one way of trying to get it right.

Unfortunately though, this legislation is very dependent on regulations. We are seeing this government move, more and more, to a regulatory framework rather than a legislative framework. That means there is a lot of regulation drafting, in which we do not always get a say and nor does the industry. Therefore we are concerned that, without full disclosure and full consultation with those
regulations, the scrutiny of parliament—which is why we are here—cannot be carried through as rigorously as it should be. But overall this legislation does reflect the aviation industry’s primary role in delivering security outcomes and regulating the industry to ensure some compliance and to monitor progress and encourage achievements.

The legislation has 10 parts. Some of these are fairly straightforward but others I would like to draw to the attention of the House. The first part of the legislation includes the objects of the bill, its application inside and outside Australia, and particular definitions. The second part of the legislation requires various aviation industry participants to develop and comply with a transport security program. I certainly know, from being a member of the audit committee, that the industry is responding. I know that security firms and organisations, airport operators and airlines are certainly responding, but I cannot say I have confidence that all those three responses are dovetailing as smoothly as we are going to need them to. The programs that are being developed will be approved, according to this legislation, by the Secretary of the Department of Transport and Regional Services. If adequate, they will be allowed to stand but they may also be cancelled by the secretary and reviewed over time. I am always interested in monitoring: we have seen too many examples in Australia where things have not been monitored and the results, whether they be financial or employment outcomes, have been bad for the public. In this case it is absolutely vital that we have a security and safety monitoring process.

Part of the legislation looks at airport areas and zones. It gives the department the power to declare an airport or part of an airport to be a security controlled airport. That very much interests me, being the member for Newcastle, as our regional airport is classified by the department as category 3—it is in the middle of the five categories—yet our airport is co-located with an air force base, which would signal some things to most of the travelling public. One would be that, yes, you would expect a high level of security because you would expect to some degree a higher level of risk. I can only praise the fact, and I will speak later about this, that our airport is taking security particularly seriously.

The legislation also makes sure that screening occurs of passengers and persons who are cleared to enter certain areas or board an aircraft. That is vital, particularly when we look at regional airports in areas that are going to be security classified. It also gives powers to officials—and the public are always concerned about how much power officials have—and there will be four classes of person with different powers: aviation security inspectors, law enforcement officers, airport security guards and screening officers. Having listened to the evidence put forward to the audit inquiry, I think that is going to be difficult. Everyone needs to know who is doing what, particularly when it comes to powers. There is currently a heavy reliance on ordinary state police responding to most incidents in most airports. However, there is also a much higher expectation that police will be there all the time. From living in busy cities, I know the reality is that police are not always available to be at airports and perhaps there is not that needed presence, so I would be very concerned that the Australian Protective Service do have a greater role and may need greater resourcing. There may be a need to coordinate the training of police with the APS and for some formalised agreements that I do not think are there at the moment. There will also be reporting and information gathering regimes in this legislation and, as I have already mentioned, enforcement. There will be review throughout the course of this legislation.
The shadow minister for transport has moved a second reading amendment. It asks for a review within 12 months. I think that is critical, as the world is changing and the requirements are many. We are already seeing legislation, such as the ASIO legislation, coming back to us. Legislation has to be responsive to situations we might have never encountered before, and a 12-month review of an area as critical as this is important. In our amendment we have also proposed replacing the secretary of the department’s powers, making them the minister’s powers. We in this country are not used to giving a bureaucrat unfettered powers. We really must make sure that those powers rest with a minister so that they do come more fully under the scrutiny of parliament. Certainly the actions of a minister have absolute public accountability; it is very difficult for secretaries of departments to have that sort of accountability to the public. They do not have that responsibility; their responsibility flows through the minister, so that amendment is terribly important.

The other part of the amendment that I think is vital to regional and rural Australia is that the Ansett levy be used to assist the small regional airports that lack the critical mass, or volume of traffic, to be able to institute major security measures. I am pleased to say that passengers who arrive at Newcastle airport will know that their security is being looked after, albeit at the cost of the airport. When they arrive and they go to buy their tickets, they will have to show their photo ID before they are given a ticket or a boarding pass. To enter through the screening into the departure lounge, they will again have to show their photo ID, ticket and boarding pass. It might seem slow—and I recall that when that was introduced it was a bit of a groan—but, now that human behaviour has been conditioned a little bit, we get our ID ready for screening and we just go through at peak hours, quite used to being screened to make sure that we are the travelling person before we go into the secure area of our departure lounge and can then board an aircraft.

I have had a recent experience of being tested by the trace explosive detection system at Newcastle airport. I am told that this equipment costs between $80,000 and $100,000. That is a significant cost for a regional airport. It has been purchased by Newcastle airport, which is under the authority of two councils—Newcastle City Council and Port Stephens Council. It is quite a big commitment for a regional airport to look at a trace explosive detection system to the tune of $100,000. Added to that, you need a person to operate it; an additional person is needed at all times.

Those are the expenses faced by regional and rural airports. Hiring skilled and trained people, manning the machines in inconsistent hours and shift work—it is not easy to find people who are willing to take that on—mean that our regional and rural airports will have significant costs. I am fortunate because at Newcastle the configuration changes and security strategies were taken on a long time ago. But I have travelled through many regional and rural airports where there is no separate and secure area for passengers.

Regional and rural airports need to look at building and construction works. We are very much aware of that on the committee because that sort of evidence has been put forward. It is not just building reconfiguration that needs to be looked at but apron areas that are accessible to the public. To screen those areas off by putting fences and boundary protection around them will be very difficult. So there will be some specific and considerable costs. The Ansett levy has had a while to build up and must have attracted some interest by now. I imagine it
would make a great investment in aviation security and would be well spent in regional and rural Australia.

The committee also discussed several other issues of general concern in aviation security. Salary levels in the security field are not high. Security personnel working in airports are not being paid a great deal of money—you cannot convince me otherwise because I have looked at those rates—and now have responsibilities that are not reflected in what they are paid. I am assured that there are certificate level training courses and that this is a well-monitored industry. I would think that it needs to be tested and monitored very carefully. Retention rates of security personnel and salary levels have improved. But the way in which front-line personnel have been affected needs to be considered in any 12-month review.

The other area everyone in Australia should be worried about is the use of subcontractors and the outsourcing of IT services. We have seen too many incidents where security is diminished because of the failure to regulate outsourced operators and private contractors. Some of these people have also put forward evidence to suggest that, when some functions are passed on, other people think that their responsibility is diminished: if IT services are passed on, people think the security of that service is passed on as well. That is not the case.

I have mentioned the role of state police, which I think is an important issue. The other issue is ‘who knows what’. Capital city airports are huge; they are like mini-cities. I am pleased to see coordination of information in Melbourne and Sydney. Procedures are being set up and people are holding meetings. In some cases meetings are being held more frequently and others are being held as needed. Exchange of information is critical. This legislation will not bring about any improvement unless there is a change in attitude and culture, and human beings are given support and a definition of what is really expected.

There have been many security incidents in aviation. This year there have been 19 recorded incidents which have been well documented and shared with the public. That is a high number. There have been five security incidents at Melbourne airport, six at Sydney airport, two at Perth airport, two at Brisbane airport, one at Adelaide airport, one at Cairns airport and one at Mackay airport.

The risk that I have mentioned for airports like mine is that, although their screening and security processes are very good, unfortunately you can travel from smaller regional and rural airports in this country to Newcastle without being screened. In two instances I have been contacted by constituents who were mortified that, when arriving at Newcastle airport, they had been able to bring through things like Swiss army knives which had not been detected. These people had come from small airports which do not have the security capacity of larger airports. So I suppose no airport is really secure if we do not respond to the risks in regional and rural Australia.

Some incidents at our airports have required specific responses. Some have involved drunken tourists making threatening comments. There is a culture of people making jokes about security, but it is not a joking matter. Evidence has been put forward that more responsibility should be placed on travelling passengers to behave in a certain way and that consideration should be given to imposing penalties. At this stage there are no penalties for passengers unless they break a provision of the Crimes Act. There have also been instances of assault. In one incident which took place a security guard was assaulted by a passenger at Melbourne air-

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port. Of course we know about the attempted hijack on Qantas flight 1737 shortly after take-off from Melbourne airport. Staff certainly are at risk. We have received evidence from their union that staff will need protection, and changing the behaviour of the travelling public is most important. Of particular concern is that minor weapons have passed through the detection process. I think only training and rigour can address that.

Previous speakers have said that these are difficult times. They certainly are, but one of the wonderful things for Australia is that we are seeing a certain amount of recovery in aviation. We have had tough times in Newcastle, with one of our minor operators going into liquidation. However, that airline is still operating because the industry has shown interest and kept it going, which is good. Smaller airlines do have a responsibility in this area. Major airlines have had to carry a bit of a load since Ansett was allowed to go under. Although our smaller airlines have done it tough, they have continued to operate through this difficult time. I am pleased to say that the travelling public are still travelling within Australia.

We have to take this legislation very seriously and get it right. The report that will be handed down by the Joint Committee of Public Accounts and Audit is vital. This legislation will be passed because we are supporting it. Members of the committee have travelled Australia. The committee inquiry has been rigorous and open. Confidential evidence has been put forward and there has been a willingness by the industry and by the travelling public to make submissions to the inquiry, which I know will only better inform the debate on improving aviation security around Australia. I support the proposed legislation and certainly urge support for the amendment moved by the member for Batman.

Debate interrupted.

**ADJOURNMENT**

The DEPUTY SPEAKER (Hon. I.R. Causley)—Order! It being 9.00 p.m., I propose the question:

That the House do now adjourn.

**Shortland Electorate: Nature Walks**

Ms HALL (Shortland) (9.00 p.m.)—Every member in this House represents an electorate, and each of those electorates has something that makes it very special. The electorate of Shortland that I represent in this parliament is very special because of its environment. It is a very fragile electorate, placed between a series of lakes and the ocean. One of the things about the Shortland electorate is that it has spectacular walks.

I am going to be releasing a booklet this month called *The Great Walks of Shortland*. There are 24 walks within Shortland, and this book has been beautifully illustrated by a local artist, Lorraine Robertson, who has taken the time and made the effort to prepare these illustrations. I thank her for the magnificent illustrations that accompany the booklet. The booklet includes tips for getting started, making it safe for walking and making sure that people are able to undertake the activity without placing undue physical stress upon themselves. It details that people with heart disease, injuries and diabetes should check with their doctors prior to undertaking any of the exercises.

The booklet talks about the fun of walking—something that you can do with your friends and family—setting goals for yourself when you start walking and the need to warm up to make sure that you do not sustain an injury. It has details of local walking groups and of where more information can be obtained. The walks in the booklet have been graded from flat and easy walks to
fairly flat with some breaks and then some more difficult walks.

The walks that have been highlighted within the booklet are the Great North Walk, which goes from Sydney to Newcastle; the Caves Beach lookout; the Fernleigh track; Swansea to Pelican; and the Green Point Foreshore Reserve, which was a reserve that the New South Wales government contributed some $3.5 million towards. It is a walk that is of varying degrees of difficulty.

Mr Hartsuyker—It’s a great area!

Ms HALL—On a Sunday, if you go for a walk along the foreshore at Green Point, you will see many people there—families, older people and people with disabilities—enjoying that wonderful natural environment. There is also the Glenrock State Recreation Area and the Charlestown to Windale walk, as well as the Galgabba Point walk, where the Galgabba Point Landcare group have done an enormous amount of work to restore the area. There is the Audrey and Ken Owen walk, and Ken Owen has made an enormous contribution to the area of Redhead over the years. There is the Lake Macquarie Shared Path, the Croudace Bay Recreation Area and, of course, the Awabakal Nature Reserve.

By the walks I am detailing, I am sure that the members in this House can see that this is an area with an exquisite environment. There is also the Central Coast part of the Shortland electorate with the Norah Head Lighthouse walk and the walks one can undertake in the Lake Munmorah State Recreation Area. We have the San Remo walk, the Canton Beach walk and many other walks on the Central Coast. Members, I highly recommend that, if you are in the Lake Macquarie or Central Coast area, you have a look at this book and enjoy the wonderful environment of the Shortland electorate. You enjoy the walk and you share it with your family and friends. That is what I know the people of the Shortland electorate, Lake Macquarie and the Central Coast have done and will continue to do. I recommend to the people of the area that they participate in walking as a good, healthy physical activity. (Time expired)

Aston Electorate: Scoresby Freeway

Mr PEARCE (Aston) (9.05 p.m.)—I want to take the opportunity this evening to update the House on the latest developments relating to the Scoresby Freeway, which many members know is a very important issue—in fact, the most important issue in the eastern suburbs of Melbourne. Members will of course be aware that the Bracks state Labor government have disgracefully gone back on their pre-election promise not to impose tolls on this freeway and, in April, made an announcement to impose tolls. I was absolutely amazed last week to read an article published in the Age on Thursday, 27 November, titled ‘Unspent $200 million meant for roads, transport’. The article states:

More than $200 million that was earmarked for roads and public transport remained unspent by the state government, an Auditor-General’s investigation into the state’s finances has found.

In his annual report on the Government’s finances, Auditor-General Wayne Cameron highlighted the $207 million kept by the Department of Infrastructure—

Mr Hartsuyker—How much?

Mr PEARCE—There was $207 million kept by the Department of Infrastructure. He said:

... any money unspent by government departments at the end of the financial year should have been repaid into consolidated revenue.

The article continues:

Treasurer John Brumby described the matter as a “technical accounting issue”, and said the money would end up being spent on roads and public transport.
He went on to say:

“This is all money which is allocated for roads, so we know where we’re going to spend it; it just hasn’t been spent at this point in time.”

Here we have a state Labor government that said it could not build the Scoresby Freeway because it did not have the money in the budget. We now have the Victorian Auditor-General saying in his report that there is over $200 million unspent in the roads budget. So, on the one hand, they are saying, ‘We can’t keep our election promise and make the Scoresby Freeway toll-free because we’ve got no money,’ and on the other hand we have the incompetent Steve Bracks and the even more incompetent Peter Batchelor underspending in the roads and transport area by $200 million. All I can ask, on behalf of everybody who lives in my electorate and in fact the whole Scoresby corridor, is: could the Bracks government please stop short-changing all of us who live there and everybody who works there, and at least spend the unspent money that was set aside for roads in Victoria? Could they at least spend it on roads and, in particular, start building the Scoresby Freeway, which is what they promised to do before they were elected at the last state election?

What this Auditor-General’s report demonstrates is that the Bracks government are totally incompetent; they cannot meet their commitments, they cannot build a damn thing and they certainly cannot build anything in line with what they promised. The most hypocritical thing is that on the one hand the Bracks government cry poor but on the other hand they have this money. All members should also remember that, on top of this unspent money, the Bracks government refuse to help themselves by walking away from the memorandum of understanding that they signed with the Commonwealth and the $445 million already allocated to them.

Mr Baldwin—Their signatures are worth nothing.

Mr PEARCE—As my colleague the member for Paterson just said, a Victorian Labor government signature is worth nothing. You cannot trust the Victorian Labor government, you cannot trust Steve Bracks and you cannot trust Peter Batchelor to stick to what they say before an election. You cannot trust them to honour a signed commitment that they made with the Commonwealth government. The money is there for the project to get started now—without tolls. If Bracks and Batchelor and the whole of the Victorian Labor Party were serious about the best interests of the eastern suburbs of Melbourne, they would do the right thing: they would honour their election promise and build the Scoresby Freeway now. Every single member of the federal Labor Party should be calling on their Victorian Labor Party comrades to insist that they meet their election promise. (Time expired)

Veterans: Entitlements

Mr DANBY (Melbourne Ports) (9.10 p.m.)—A few weeks ago, like most MPs, I attended a Remembrance Day service—in my case, in the electorate of Melbourne Ports—accompanied by friends Bob Keeley, President of the West St Kilda RSL; Gerard McArdle, President of the St Kilda Army and Navy Club; and Jack Lawton, President of the Elwood RSL. The usual moving ceremony took place at the Alfred Square memorial, overlooking the upper and lower esplanades in St Kilda. After the ceremony, as usual we headed back to the St Kilda Army and Navy Club for a few drinks and a chat. Tonight I want to mention a couple of the concerns that veterans right across the age spectrum have at the moment.

First is the discriminatory treatment of POWs who were held in Europe compared with POWs who were held in Japan. In 2001
the government announced that former POWs in Japan—around 2,500 veterans—would receive an ex gratia payment of up to $25,000, yet POWs in Europe and Korea would not. Bert Stobbart, another friend of mine, former Pathfinder air serviceman and a member of the Elwood RSL, and other members of the Ex-Prisoner of War Association have been actively campaigning to readdress this inequity, but so far the government has not been particularly forthcoming. On 16 July this year, Mr Gilbert OAM, National Secretary of the Ex-POW Association, wrote to the Prime Minister, saying:

The Association is most disappointed with the recommendation of the Clarke Committee of Review into POW compensation regarding the claim for a similar grant for POW [Europe] as that provided to POW [Japan], widows and civilians. It is estimated that up to 40 or more of the 141 items of the Convention were abused by the captors in relation to many of the POW. Some of these were rations ... clothing ... shackling – Interrogation ... physical abuse—Needless murders, shootings and physical abuse by both the German and Italian captors ...

When the Prime Minister’s office eventually responded, the issue of compensation for POWs in Europe was not adequately dealt with and failed to explain the discriminatory treatment of POWs in Europe compared with POWs in Japan. The Clarke report referred to abuse claims:

One submission from the Ex-Prisoner of War Association of Australia is supported by the personal testimonies of 39 POWs [Europe], four POWs [Korea] and 15 widows of POWs [Europe]. Arguments presented in the submissions ... were:

- POWs [Europe] experienced similar levels of deprivation to POWs [Japan];
- POWs [Europe] experienced similar levels of deprivation to POWs [Japan];
- widows of POWs [Europe] and POWs [Korea] have experienced similar hardships to widows of POWs [Japan]; and
- there is stigmatisation of POWs [Europe] and POWs [Korea] in the community because they did not receive the payment.

Although the Clarke committee recommended that ex gratia payments should not be extended to POWs in Europe, in my view this payment remains discriminatory and the decision by the government ought be reversed. It is clear that these people, the European and Korean POWs, suffered many of the same kinds of deprivation during their imprisonment for fighting for exactly the same just cause.

The second issue raised by my veteran friends was the gold card. Veterans and war widows needing urgent treatment by medical specialists will increasingly find that they are unable to use their gold cards, according to evidence given at Senate estimates by the Department of Veterans’ Affairs. The admission that 319 specialists had indicated they would no longer honour the gold card is a major defect in the operation of veteran entitlements. In fact, this situation is considerably worse because, on the department’s own admission, a considerable number of specialists, on top of those 319, have simply not advised the department that they are not honouring the veterans gold card. Many specialists are committed to treating veterans out of respect for their contribution to Australia’s defence but claim they can no longer afford to do so due to the increased costs of medical indemnity insurance. They claim the remuneration set for the gold card is now below cost. The problem is serious and getting worse as veterans and widows are forced to travel longer distances or simply pay the
gap. Moreover, there is nothing being done because of the government’s failure to negotiate any new agreement on fees.

The final issue that was raised, in particular by Vietnam veterans, was the cut to pensions for totally and permanently incapacitated veterans—TPIs. The Minister for Veterans’ Affairs confirmed in question time that in the future TPIs would have their pensions cut if they were also in receipt of superannuation. This is a matter that I want to return to at a later date which is causing particular trauma to former members of the ADF who served in Vietnam.

Paterson Electorate: Medibank Private

Mr BALDWIN (Paterson) (9.15 p.m.)—Tonight I want to raise in this House the issue of health care for the constituents in my electorate of Paterson. On 18 August I raised in this House during an adjournment debate the fact that Medibank Private had issued a notice that, on 12 August, they were ceasing to provide private health insurance coverage for people attending Maitland Private Hospital. I tried to organise a meeting, as a local member representing his constituents would, between Mr George Savvides, the General Manager of Medibank Private, and the owner of the Maitland Private Hospital, Mrs Susan Ivens, in my office here in Parliament House. I was fairly disappointed when I was advised, in an email sent to me by Medibank Private, that:

Unfortunately it won’t be possible for George Savvides to meet with Bob tomorrow to discuss matters surrounding Maitland Private Hospital. At this point in time, Medibank Private is not in a position to alter the present stance on the current out of contract situation with the Hospital.

While George has no problem catching up with you, there is currently as indicated no change in position on the matter, so it makes further consultation on the matter pretty difficult to achieve an alternate outcome.

What we are seeing here is bureaucracy standing in the way of provision of what people pay for. For constituents in my electorate who take out private health insurance—subsidised 30 per cent by taxpayers—Medibank Private is refusing to put a contract back into place for Maitland Private Hospital. This is a 62-bed state-of-the-art facility which was built in 2001. I fail to see how any health insurance provider can argue, with any rationale, that the cost of providing a rebate per bed night in one hospital is different to that in any other hospital.

What we are seeing is a drive for dollars by a supposedly not-for-profit corporation wanting to turn into a private corporation at the expense of the people in my electorate of Paterson. I will give you an example. A person in my electorate in a great deal of pain went to see a doctor. I will not mention names, Mr Speaker, because I know what you are like about that. The doctor put to that person: ‘We can get this fixed but you need to see a specialist.’ The appointment was arranged with the specialist and, because of the speed required, they were told that they needed to go to a private hospital. That private hospital was Maitland Private Hospital. The patient went over there and met with his doctor. While he was lying in the bed, around came a clerk, who said, ‘Sir, I’ve got to advise you that your Medibank Private insurance does not fully cover you at this hospital and you will be up for a bed gap fee per day—just on the bed rate—of some $250.’ That $250 did not cover any gap that might occur if that person had to go to surgery—and fortunately they did not have to. So what was the response when the matter was raised with Medibank Private? It was: ‘We don’t have a contract with them and there are plenty of private hospitals.’

The case that I want to put to the government is that a person in pain, directed by a doctor to see a certain specialist and go to a
certain hospital, is in no mental condition to argue with the doctor who is looking after their health care as to whether that hospital provides the medical insurance coverage that they have paid their money for. What we are seeing is a drive and determination by not only Medibank Private but also other private health insurers to look after their bottom line at the expense of the taxpayer and to the detriment of those constituents who pay out the extra to have private health insurance. I think that is an unconscionable act by the private health insurance industry in this country, and I would urge them to consider that those who pay the fees need to have support. It is no good arguing: ‘We will go to certain hospitals and you can travel,’ because, when a person is put in the predicament of requiring access to that hospital and that doctor, the last thing they need to have is the financial pain of a gap to be paid.

Medibank Private uses the statement ‘I feel better now’—well, that is not the truth. People are worse off if they live around the Port Stephens, Maitland and Raymond Terrace area if they take out insurance with Medibank Private, because Medibank Private does not look after their interests. I will be urging all of those people in that area of my electorate to change their health insurance provider to somebody who will cover them at Maitland Private Hospital. I think that we need to reconsider the whole aspect of private health insurance in this country to make sure that people get what they pay for when they pay for private health insurance and to make sure that the taxpayers who support the 30 per cent rebate also get a better deal. (Time expired)

The SPEAKER—I point out to the member for Paterson that the standing order covering names applies to questions only, not to debates or to answers.

Dowling, Mr Austin

Ms KING (Ballarat) (9.20 p.m.)—I rise this evening to inform the House of the recent passing of Mr Austin Dowling DFC—wartime bomber pilot, teacher and someone whose advice and friendship I was privileged to receive. This is the first opportunity I have had to mark Austin’s passing in this place, and I want to quote from the obituary published in the Age last week, prepared by his family and his friends David Volk and Jeremy Harper:

Austin Dowling was born in London where his parents lived briefly for study reasons. His father was a pharmacist and veterinarian and his mother, unusual for the time, was also a pharmacist. Returning to Australia as a young child and growing up in a home where educational achievement was valued, Austin received his formative education in Ballarat. As an 18 year old, Austin joined the RAAF in late 1941, was stationed in Britain and as a Flight Lieutenant flew Lancaster Bombers over Germany during the closing stages of World War II. He was a skilled pilot and won the Distinguished Flying Cross with the citation:

“Flt Lieutenant Dowling has completed numerous operations against the enemy, in the course of which he has invariably displayed utmost fortitude, courage and devotion to duty.”

He returned from the war physically unscathed, but emotionally it had taken its toll. A deeply reflective man he had an abhorrence of war and he was never one to uncritically accept the myths surrounding the role of bomber command.

On returning to Australia, Austin married his beloved Isobel in 1945 and they became inseparable partners for the next 58 years. Their first son Bill was born in 1947 and Peter in 1950. Based on his deep and enduring affection for children and believing teaching to be a socially responsible job, Austin decided on an arts degree at Melbourne University and he became a teacher. He taught in Ballarat from 1954 at Ballarat High School, where he remained for 17 years.

He influenced the lives of many young people in Ballarat, much to the annoyance sometimes, I suspect, of some of their parents. In
one year, he was accused by a parent of trying to turn students into communists; by another into Catholics. Austin described that as a champagne year.

During this same period, politics sat comfortably with Austin’s critical and compassionate mind. His political involvement was uncompromisingly directed by the common good. As a federal Labor candidate in 1955 he had no illusions about winning the seat of Ballarat but was motivated by what he saw as a pernicious influence in Australian politics: the rise of the DLP, the cause of ALP paralysis for the next 20-odd years. It took considerable courage to stand as a Labor candidate in this era. Austin did so with dignity and good humour, being hugely delighted for example when, in six foot high letters, ‘Don’t vote for commo Dowling,’ appeared on the local racecourse fence.

In 1970, Austin left teaching to return to study to become a social worker, again motivated by his respect and care for children. In public social welfare, working with the most vulnerable children in society, he promoted through dedicated practice the best interests of the child and is remembered fondly by colleagues and clients as a thoughtful and compassionate practitioner, and later as an effective administrator within the state Department of Community Welfare Services.

On retirement in 1986, Austin resumed his pursuit of a variety of interests. History along with literature ranked highly and his meticulous work at the Ballarat Fine Art Gallery on their illuminated manuscripts is appreciated by many today. Austin was a valued member of the Ballarat Choral Society and also had a great passion for bushwalking.

What epitomised Austin, and for what he is most fondly remembered, was his belief in the importance of human relationships. He was passionate about the concept of friendship. In difficult times he would often come back to one of E.M. Forster’s essays, What I Believe, in which Forster talks about his own disenchantment with 20th century doctrines of all political persuasions when saying:...

For Austin, friendship and close personal relationships were his points of reference; where he started from. In describing Austin Dowling, the words ‘unconventional’, ‘principled’, ‘rational’, ‘brave’ and ‘humane’ come to mind. Austin would have preferred to be summed up by a few plain English nouns: a friend, a teacher, a dad and a grandad. He is survived by Isobel, his companion of over 60 years; his sons, Bill and Peter; and their families. Austin, Ballarat is a richer place for you having lived there and shared your life with us.

**Court Access: Immigration and Family Law**

Mr HARTSUYKER (Cowper) (9.25 p.m.)—I rise in this adjournment debate tonight to discuss the issue of migration cases and equity and access to justice before the courts. I welcomed the announcement by the Attorney-General back in October that the government has ordered a review into litigation on migration matters in our courts. Migration cases are placing increasing burdens on our courts, making up 66.5 per cent of cases before the Federal Court last year—up from 56.5 per cent in the previous year.

In 2001-02, 182 migration cases were filed with or transferred to the Magistrate’s Court. In 2002-03 that number increased substantially. How much do you, Mr Speaker, think it increased by? Do you think it doubled, perhaps, to 364 cases? No: in fact, the number of migration cases increased from 182 in 2001-02 to 1,397 in 2002-03.
On 26 November this year the Attorney-General told the House that around 82 per cent of matters before the High Court involved migration litigation. Basically, that means that there are substantial numbers of Australian citizens out there whose matters are being placed in a queue behind migration cases. It is important that all cases get genuinely considered but one-third of migration matters in the Federal Court and Federal Magistrate’s Court in 2002-03 were withdrawn before the court handed down a decision. And, of those cases in the Federal Court that proceeded to conclusion, 92.5 per cent were decided in favour of the government.

What we have is a situation where there are substantial delays in the court system, it is being clogged up, because of unmeritorious cases.

In this country we believe that people with a genuine case should have their day in court; they should have their access to justice. But most Australians would believe that it is a fair thing that cases before the courts—before the highest court in the land or before the Federal Magistrate’s Court—should have a meritorious basis. If 92.5 per cent of cases are being decided in favour of the government, that sends a pretty powerful message that many of these cases are in fact unmeritorious.

I would like to touch now on another issue regarding access to our courts. It is in the area of the Family Court. We can contrast this situation with the situation where we have vast numbers of unmeritorious migration cases being put before the Federal Court and a large number put before the High Court. I have been discussing with many people in my electorate this situation where many non-custodial dads cannot afford to get legal representation in the Family Court. We have a situation in many cases in my electorate where we perhaps have a custodial mum who has access to legal aid and a non-custodial dad who does not have access to legal aid. We have a court system in which we have a substantial number of people being unrepresented. Some members of our community are being given the benefit of legal aid and representation in the Family Court while their former partners are unable to get legal aid and unable to get access to representation. One would have to agree that the likely outcome in such a situation is that justice is not served. The person who is unrepresented gets a worse outcome than the person who is represented through legal aid. That is certainly not a fair outcome.

I have had discussion about this in my electorate with Tony Miller, who runs an organisation called Dads in Distress. It does a great job of trying to heal some of the wounds inflicted on non-custodial dads, who in many cases do not have access to legal aid. Dads in Distress meets on a Sunday night, because that is when they lose custody of their kids after the weekend and they have to send them back, so they are very down in spirit.

It is a dreadful situation. These dads do not have the financial resources to seek what is an important fundamental right: equitable access to their children—something they value very highly. Tony Miller and his group, Dads in Distress, are doing a great job in trying to alleviate that pain. But it is a systemic problem, we have a large number of people being represented versus a large number of people who lack that representation. I hope that the joint custody inquiry will come down with arrangements which redress that.

The SPEAKER—Order! It being 9.30 p.m., the debate is interrupted.

House adjourned at 9.30 p.m.

NOTICES

The following notices were given:
Mr Ruddock to present a bill for an act to amend the Disability Discrimination Act 1992, and for related purposes. (Disability Discrimination Amendment Bill 2003)

Mr Ruddock to present a bill for an act to amend the Privacy Act 1988, and for related purposes. (Privacy Amendment Bill 2003)

Mr Truss to present a bill for an act to amend legislation relating to the dairy industry, and for related purposes. (Dairy Produce Amendment Bill 2003)

Mr Entsch to present a bill for an act to establish a National Measurement Institute, make technical amendments of the National Measurement Act 1960 and associated regulations, and for related purposes. (National Measurement Amendment Bill 2003)

Mr Entsch to present a bill for an act to amend the Industry Research and Development Act 1986, and for related purposes. (Industry Research and Development Amendment Bill 2003)

Mr Slipper to move:

That, in accordance with the provisions of the Public Works Committee Act 1969, it is expedient to carry out the following proposed work which was referred to the Parliamentary Standing Committee on Public Works and on which the committee has duly reported to Parliament: Development of off-base housing for Defence at Queanbeyan, NSW.

Mr Slipper to move:

That, in accordance with the provisions of the Public Works Committee Act 1969, it is expedient to carry out the following proposed work which was referred to the Parliamentary Standing Committee on Public Works and on which the committee has duly reported to Parliament: Construction of a respecified immigration reception and processing centre on Christmas Island.

Mr Slipper to move:

That, in accordance with the provisions of the Public Works Committee Act 1969, it is expedient to carry out the following proposed work which was referred to the Parliamentary Standing Committee on Public Works and on which the committee has duly reported to Parliament: Proposed Christmas Island community recreation centre.
QUESTIONS ON NOTICE
The following answers to questions were circulated:

Taxation: Bankruptcy Laws
(Question No. 1346)
Mr Murphy asked the Treasurer, upon notice, on 4 February 2003:
(1) How long has the Minister had in his possession a report from the Bankruptcy Taskforce that was established following the investigation and revelations about certain barristers failing to pay their fair share of taxation by the journalist Mr Paul Barry and published in the Sydney Morning Herald on 26 February 2001.
(2) Is the Minister aware of the under-reporting by barristers and solicitors to their professional bodies of prosecutions and other matters that require reporting.
(3) Has the Minister received representations from the NSW Bar Association recommending changes to section 16 of the Income Tax Assessment Act 1936 that would allow professional bodies to better regulate or discipline their members under the New South Wales Legal Profession Act; if so, what action has the Minister taken to change the law; if not, why not.
Mr Costello—The answer to the honourable member’s question is as follows:
(1) Refer to the joint news release issued by the Attorney-General and the Minister for Revenue and Assistant Treasurer on 2 May 2003.
(2) I am not responsible for ensuring that barristers and solicitors satisfy the reporting requirements of the professional bodies of which they are members.
(3) Yes. Refer to the joint news release issued by the Attorney-General and the Minister for Revenue and Assistant Treasurer on 2 May 2003.

Taxation: Bankruptcy Laws
(Question No. 1433)
Mr Murphy asked the Treasurer, upon notice, on 10 February 2003:
(1) Has his attention been drawn to an article by Paul Barry titled “As Caesar judges Caesar, bankrupt barristers go on their merry way” which appeared in the Sydney Morning Herald on 27 February 2001, identifying four Sydney barristers who have been bankrupted twice over huge unpaid tax bills.
(2) Is he aware that one of those barristers, Mr Robert Somosi, has incurred $835,000 in unpaid tax and penalties since the 1980s.
(3) Is he aware that Mr Somosi was also convicted in 1996 of failing to lodge a tax return for 17 years, which then covered his entire working life at the Bar.
(4) What action is the Government taking to deal with serial bankrupts like Mr Somosi, who use serial bankruptcy to avoid paying tax, including whether it will report such persons to the Law Society of New South Wales and the Bar Association of New South Wales.
Mr Costello—The answer to the honourable member’s question is as follows:
(1) to (3) The independent Commissioner of Taxation has responsibility for administering the taxation laws and collecting the revenue. He assures me that the Australian Taxation Office is doing all it can to recover unpaid tax from Mr Somosi in the course of bankruptcy proceedings.
(4) Refer to the joint press release issued by the Attorney-General and the Minister for Revenue and Assistant Treasurer of 2 May 2003, ‘Progress of Government action to strengthen laws to prevent tax abuse’.

**Taxation: Bankruptcy Laws**  
(Question No. 1592)

Mr Murphy asked the Treasurer, upon notice, on 6 March 2003:

1. Is he aware of reports that Mr Timothy Wardell, a barrister, went bankrupt in 2000 owing $1 million to the Australian Taxation Office (ATO); if not, why not.
2. Has he been advised that Mr Wardell told the Federal Court that he had no assets even though court documents proved that he had an income of $350,000 per annum, drove a BMW motor vehicle and lived in Sydney near the waterfront; if not, why not.
3. What has the Taxation Commissioner done to ensure that Mr Wardell pays his debts to the ATO.
4. Have Mr Wardell’s services ever been retained by the Commonwealth; if so, on how many occasions, for what periods of time and for what purposes.

Mr Costello—The answer to the honourable member’s question is as follows:

1. to (3) The independent Commissioner of Taxation has responsibility for administering the taxation laws and collecting the revenue. He assures me that the Australian Taxation Office (ATO) is doing all it can to recover unpaid tax from Mr Wardell in the course of bankruptcy proceedings.

**Taxation: Bankruptcy Laws**  
(Question No. 1593)

Mr Murphy asked the Treasurer, upon notice, on 6 March 2003:

1. Is he aware of the case of Mr Wayne Baffsky, a barrister practising criminal law, who did not lodge income tax returns during 1998 or 1999 and was subsequently bankrupted by the Australian Taxation Office (ATO) in February 2000 owing $442,000.
2. Is he aware that Mr Baffsky continues to drive a $70,000 red Mustang motor-vehicle.
3. What is the total amount of tax to date that the ATO has forgone in relation to the case of Mr Baffsky.
4. Have Mr Baffsky’s services ever been retained by the Commonwealth; if so, on how many occasions, for what periods of time and for what purposes.

Mr Costello—The answer to the honourable member’s question is as follows:

1. to (3) The independent Commissioner of Taxation has responsibility for administering the taxation laws and collecting the revenue. He assures me that the Australian Taxation Office (ATO) is doing all it can to recover unpaid tax from Mr Baffsky in the course of bankruptcy proceedings.

Taxation: Bankruptcy Laws  
(Question No. 1594)

Mr Murphy asked the Treasurer, upon notice, on 6 March 2003:

How many public examinations of members of the legal profession, who have employed bankruptcy or family law to avoid paying tax, have occurred in the Federal Court Registry since 16 August 2000.
Mr Costello—The answer to the honourable member’s question is as follows:
The Australian Taxation Office has funded public examinations of ten bankrupt barristers and twelve related parties including spouses, business partners, accountants, tax agents and solicitors.

**Taxation: Australian Business Number**

*(Question No. 1615)*

Ms Burke asked the Treasurer, upon notice, on 18 March 2003:

(1) How many Australian Business Numbers (ABN) have been issued by the Australian Taxation Office (ATO).

(2) How many ABNs have been:
   (a) associated with the lodgement of a GST return in the last 12 months,
   (b) not associated with the submission of a GST return in the last 12 months and (c) found by the ATO to be inactive or no longer operational.

(3) What are the criteria for determining the continuing use or functionality of an ABN.

(4) Has the ATO found cases of the issue of multiple ABNs to any registered entity; if so,
   (a) is there any legitimate reason for any entity being issued with multiple ABNs,
   (b) how many instances of multiple ABN issues have been found, and
   (c) what is the highest number of ABNs that have been issued to a single entity.

(5) Does the issue of multiple ABNs provide opportunities to attempt the commission of taxation fraud.

(6) Does the ATO undertake any data matching to reduce the instances of multiple issue of ABNs

(7) What steps has the ATO taken to eliminate or reduce instances of multiple ABN issue.

Mr Costello—The answer to the honourable member’s question is as follows:

(1) As at 8 September 2003, the ATO had issued a total of 4,751,448 ABNs.

(2) (a) There have been 1,824,850 ABNs associated with the lodgment of a GST return in the last 12 months to 8 September 2003.
   (b) There are 2,434,694 ABNs not associated with GST return lodgment. It should be noted that not all entities with an ABN are required to be registered for GST. Further, GST lodgment can be monthly, quarterly or annual depending on certain criteria. Therefore a proportion of recent registrants’ GST lodgment may not yet be due.
   (c) The number of ABNs inactive or no longer operational i.e. cancelled is 491,933.

(3) In general, an entity can continue to use its ABN unless the enterprise:

- has been sold
- has ceased, or
- is no longer carried on in Australia or not making supplies that are connected to Australia.

In those circumstances the entity is required to request cancellation of their ABN.

The Registrar can initiate cancellation of an ABN if:

- the entity is registered under an identity that is not their true identity
- at the time the entity was registered, they were not entitled to have an ABN
- the entity is no longer entitled to an ABN, or
- an ABN was issued to the entity in error.

QUESTIONS ON NOTICE
(4) Yes.
   (a) There are some legitimate circumstances where an entity can be issued with more than one ABN. For example, a person can be entitled to an ABN in their own right and another in their capacity as trustee of a trust. In each of those capacities the person is taken to be a different entity for the purposes of issuing an ABN.
   (b) 12 723.
   (c) These matters are sub judice.
(5) See answer to 4(a) above.
(6) Yes.
(7) The ATO’s registration systems routinely validate the identity of the applicant (and associates where appropriate) as an integral part of the registration process via the matching of information with existing ATO identity data. Further data matching and detection systems are run regularly across the ATO’s registers to identify potential multiple registrants.

   The ATO has, and continues to undertake, data matching and cleansing activities targeting the improvement in the integrity of both the tax file number and ABN registers. This includes specific attention to the identification and elimination of existing multiple ABNs as well as further investment in enhancing their prevention and detection systems.

   Taxation: Evasion
   (Question No. 1640)

   Mr Murphy asked the Treasurer, upon notice, on 18 March 2003:

   What investigations are currently being undertaken in the Australian Taxation Office (ATO) with respect to
   (a) breaches of the Income Tax Assessment Act by barristers with residential addresses or normal places of business located in the State of Queensland and
   (b) with respect to use of the following legal instruments for the express or substantive intention of avoiding or evading taxation:
      (i) Family Trusts in equity law,
      (ii) Property Orders under the Family Law Act,
      (iii) Debtors’ petitions under the Bankruptcy Act,
      (iv) any other legal instrument, lawful in itself, yet with the intention of being used to put the assets of the barrister out of the reach of their sole or principal creditor, the Commissioner of Taxation; if there are no investigations into these issues, why not.

   Mr Costello—The answer to the honourable member’s question is as follows:
   (a) (b) It would be inappropriate to detail the nature and extent of Australian Taxation Office investigations. The Commissioner of Taxation continually monitors all occupations for breaches of the tax laws and takes appropriate action where cases are identified.

   Taxation: Employee Incentive Trust Scheme
   (Question No. 2071)

   Mr Windsor asked the Treasurer, upon notice, on 25 June 2003:

   (1) What action will he take in response to the issues raised in the editorial in Taxpayers Australia on 28 April 2003 that posed the question “Has the Australian Taxation Office (ATO) become a law unto itself”.

   QUESTIONS ON NOTICE
(2) What action is the ATO taking in response to the Federal Court’s decision on *Essenbourne Pty Ltd v Commissioner of Taxation* [2002] and can he explain the implications of this action.

(3) Is the Australian Taxation Office ignoring the Federal Court’s decision on the Essenbourne employee incentive trust scheme case by pursuing taxpayers who have been involved in similar employee incentive trust schemes; if not, will he explain why; if so, will he intervene to direct the ATO to treat all taxpayers in similar circumstances in a manner consistent with the Court’s decision and in light of the concerns expressed in the Taxpayers Australia editorial.

**Mr Costello**—The Minister for Revenue and Assistant Treasurer has provided the following answer to the honourable member’s question:

(1) The Commissioner of Taxation has advised that a senior ATO officer has responded directly to Mr McDonald, addressing the issues raised in the article.

(2) The Commissioner of Taxation advised that in the case of *Essenbourne Pty Ltd v Commissioner of Taxation*, [2002] ATC 5201; (2002) 51ATR 629, the Federal Court upheld the ATO’s decision to disallow a deduction claimed under the general deduction provisions of the tax law, in respect of a payment to an employee benefit trust.

While the Court also found that neither FBT nor Part IVA applied, the ATO felt that not enough clarity was given to these issues, but saw no point in appealing as the court confirmed that the scheme did not create allowable deductions.

The ATO is continuing to deny deductions and to decide objections in similar cases, in accordance with the Essenbourne decision. However, the ATO has offered reduced penalties for taxpayers involved in these arrangements who agree to settle.

The implications of these actions are that taxpayers will either settle with the ATO on the basis of a single taxing point, or they will choose to litigate, in which case the courts will determine the appropriate single taxing point.

Because of the structure of EBAs, they generally involve multiple possible taxing points. The ATO issued multiple assessments to ensure that all the relevant legal issues will be considered by the courts in the event of litigation.

(3) The Commissioner of Taxation advised that the Federal Court’s decision in Essenbourne affirmed the ATO’s view that payments made to these types of employee benefit trusts do not create allowable deductions. The ATO’s settlement offer to participants in these arrangements is entirely consistent with the court decision.

**Office of Film and Literature Classification: Selection Processes**

(Question No. 2171)

**Ms Plibersek** asked the Attorney-General, upon notice, on 11 August 2003:

Was Ms Maureen Shelley’s position at the Office of Film and Literature Classification publicly advertised and subject to public and objective selection processes; if not, why not.

**Mr Ruddock**—The answer to the honourable member’s question is as follows:

No. The appointment of Ms Shelley was made following consultation with State and Territory Ministers responsible for classification matters. A majority of State and Territory Ministers supported the appointment of Ms Shelley.

**Indonesia: Terrorist Attacks**

(Question No. 2177)

**Mr Danby** asked the Treasurer, upon notice, on 11 August 2003:

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QUESTIONS ON NOTICE
(1) Is the Minister aware of reports, including those on Foreign Correspondent on ABC TV on 4 March 2003, that a Saudi Arabian charity was responsible for funding the terrorist attacks in Bali in October 2002.

(2) Has the Minister raised the question of funding of Jemaah Islamiah (JI) and the Bali attacks with the Saudi or Indonesian government; if so, what was the result of those representations.

(3) Is the Minister able to say whether money from individuals, corporations or charities in Australia going to the Al-Haramain charity in Saudi Arabia, which is suspected of funding terrorism; if so (a) does the group have any representatives or offices in Australia, and (b) does the group have any connection with any organisations or individuals in Australia.

(4) Is the Minister aware of the World Assembly of Moslem Youth, which is also suspected of funding terrorism; if so, (a) does the Assembly have any representatives or offices in Australia, and (b) does the Assembly have any connection with any organisations or individuals in Australia.

(5) Is the Minister able to say whether any money from individuals, corporations or charities in Australia is going to the Assembly.

Mr Costello—The answer to the honourable member’s question is as follows:

These questions do not fall within my portfolio responsibilities. Please refer to the response of 13 May 2003 given by the Minister for Foreign Affairs to Question No. 1607.

Aviation: Sydney (Kingsford Smith) Airport
(February No. 2190)

Mr Murphy asked the Minister for Transport and Regional Services, upon notice, on 11 August 2003:

(1) Further to the answers to question Nos 1724, (Hansard, 15 May 2003, page 14540), 2056 and 2058, does the Airports Act 1996 preclude the inclusion of the following instruments into the airport-lessee company’s assessment of environmental issues: (a) all relevant New South Wales environmental planning instruments and binding clauses, and (b) the Long Term Operating Plan, if not, why not.

(2) Does the Act direct how the airport-lessee company should plan for dealing with the environmental issues which flow from the assessment of those environmental issues, if so, which parts of the Act apply and how do they operate.

Mr Anderson—The answer to the honourable member’s question is as follows:

(1) and (2) I have dealt exhaustively already with matters relating to New South Wales environmental issues and the Long Term Operating Plan in the context of the Airports Act in response to questions previously asked by the Honourable member.

High Court: Legal Proceedings
(Question No. 2198)

Mr McClelland asked the Attorney-General, upon notice, on 12 August 2003:

(1) Has he received a request from the Attorney-General of Victoria to seek leave to intervene in the High Court application for special leave to appeal in the matter of Roxanne Cowell (representing the estate of Rolah Ann McCabe deceased) v British American Tobacco Australia Services Limited; if so, what has he decided to do in relation to this matter and what are the reasons for his decision.

(2) What is the Government’s position on whether the Victorian Court of Appeal correctly formulated and applied the law relating to the duties owed by legal practitioners with regard to the preservation of documents which might be relevant to anticipated legal proceedings.
(3) Does the Victorian Court of Appeal’s decision in this matter have implications for the administration of justice by federal courts; if so, what are the implications.

(4) Has the Government given consideration to the duties owed by legal practitioners with regard to the preservation of documents which might be relevant to anticipated legal proceedings in the course of its work on national regulation of the legal profession; if so, what steps is the Government taking to ensure that the federal administration of justice is not undermined by the destruction of documents which might be relevant to anticipated legal proceedings.

Mr Ruddock—The answer to the honourable member’s question is as follows:

(1) The former Attorney-General received a request from the Attorney-General of Victoria. As there was no Constitutional issue involved, the Attorney-General could not have intervened in the proceedings as of right. He decided not to seek leave to intervene having regard to the limited responsibility of the Commonwealth in relation to the matter before the court.

(2) On 3 October 2003, the High Court, in refusing leave to appeal, expressed no view on the correctness of the Victorian Court of Appeal’s statements as to principle. It is unclear whether legal proceedings in relation to this matter may continue in the Victorian Supreme Court. Accordingly I do not propose to comment publicly on issues that may be in dispute in any such proceedings.

(3) See the answer to (2) above.

(4) Regulation of the conduct of legal practitioners is a matter for the States and Territories. The National Legal Profession Project, conducted through the Standing Committee of Attorneys-General and chaired by New South Wales, will address the development of a uniform definition of ‘professional misconduct’ for the purposes of State and Territory disciplinary processes.

Trade: Fur Imports
(Question No. 2339)

Mr Murphy asked the Minister representing the Minister for Justice and Customs, upon notice, on 8 September 2003:

(1) What are the current customs regulations relating to the import and export of cat and dog furs.

(2) Is the importation of cat and dog furs prohibited; if so, which legislative provisions prohibit it; if not, why not.

(3) Is the export of cat and dog furs prohibited; if so, which legislative provisions prohibit it; if not, why not.

Mr Ruddock—The Minister for Justice and Customs has provided the following answer to the honourable member’s question:

(1) All imports and exports are subject to the provisions of the Customs Act 1901 and associated legislation, including the Commerce (Trade Descriptions) Act 1905 (CTD Act).

If cat or dog fur were imported as apparel then it would be subject to labelling by regulations made under the CTD Act. These require that articles of apparel must be labelled with the name of the country in which the goods were made or produced and a true description of the goods. The CTD Act also requires that any labelling about composition applied to any imported or exported goods must not be misleading.

(2) and (3) No.

The Government currently is considering a number of options to address concerns with the import and export of cat and dog furs. The options under review include an import and export ban; domestic market controls, along the lines of that adopted in the USA; labelling of goods and making representations to the Governments of the alleged source countries.

QUESTIONS ON NOTICE
Other countries are facing similar considerations. For example the Government of the United Kingdom recently announced an investigation to establish the facts about the extent of trade and the level of imports of cat and dog furs entering the UK. That investigation is expected to take six months to complete.

Aviation: Security
(Question No. 2357)

Mr Murphy asked the Minister representing the Minister for Justice and Customs, upon notice, on 9 September 2003:
In respect of the two mainframe computers stolen from Sydney Airport last week, can he confirm that those computers did not contain any information relating to:
(a) Customs alert system;
(b) Prospective cargo examinations;
(c) The selection of passengers for further investigation;
If so, how confident is he that the computers did not contain this type of information; if not, what action has he taken to secure that intelligence.

Mr Ruddock—The Minister for Justice and Customs has provided the following answer to the honourable member’s question:
The equipment stolen from Customs Link Road premises comprises two servers and two desktop PCs. The information that was stored on the missing servers is currently being reconstructed and analysed by the Defence Signals Directorate (DSD). The DSD findings will be documented in their final report. Until this work is completed it would be premature to answer parts a, b, and c of the question.
The two desktop PC were not in use and did not contain any sensitive information.

Aviation: Security
(Question No. 2358)

Mr Bevis asked the Minister representing the Minister for Justice and Customs, upon notice, on 9 September 2003:
(1) What type of computers were stolen during the security breach of Customs at Sydney Airport on 27 August this year.
(2) When were these units purchased and what was the purchase cost.
(3) How long have they been in use by Customs.

Mr Ruddock—The Minister for Justice and Customs has provided the following answer to the honourable member’s question:
(1) Two Compaq Presario ML370 servers and two Compaq Deskpro EN SFF Pentium 3 personal computers were stolen.
(2) All stolen equipment is the property of EDS Australia and is leased to Customs. EDS advises that the Compaq Presario ML370 servers were purchased in November 2000 at the cost of $9,942.49 (ex GST) per unit giving a total cost = $19,884.98. The Compaq Presario’s were leased to Customs at the total cost of $13,884.98 with a residual payout cost of $6000. The Compaq Deskpro EN SFF units were purchased by EDS in May 2001 at a cost of $2099 (ex GST) per unit giving a total cost = $4198. These units were not leased to Customs.
(3) The Compaq Presario ML370 servers were in use by EDS on the Customs account from February 2001. The Compaq Deskpro EN SFF units were spare units not in use at the time of the incident.
Taxation: Bankruptcy Laws
(Question No. 2406)

Mr Murphy asked the Treasurer, upon notice, on 16 September 2003:
Further to the answer to part (3) of question No. 1416 (Hansard, 26 May 2003, page 14975) what is the Taxation Commissioner doing to ensure that Mrs Mary Cummins pays to the Taxation Commissioner the large taxation debt (plus interest) due to the Treasury following the bankruptcy of her husband, the former QC, Mr John Cummins.

Mr Costello—The answer to the honourable member’s question is as follows:
The Commissioner of Taxation, as a creditor in the estate of Mr Cummins, has funded the trustee in bankruptcy to pursue assets transferred to Mrs Cummins. The matter was before the Federal Court and a judgment was handed down on 24 September 2003 which will result in a recovery of about 97 cents in the dollar by the trustee.

Taxation: New South Wales Bar Association
(Question No. 2447)

Mr Murphy asked the Treasurer, upon notice, on 18 September 2003:
Further the answer to question No. 1886 (Hansard, 15 September 2003, page 19412,) has the Commissioner of Taxation’s communications with the New South Wales Bar Association included communication about the professional misconduct of particular barristers; if not, why not; if so, what are the details.

Mr Costello—The answer to the honourable member’s question is as follows:
The Commissioner has communicated to the Bar Association his findings in aggregated form in respect of activities undertaken by certain barristers without divulging their identities.
Section 16 of the Income Tax Assessment Act 1936 prevents the Commissioner of Taxation from discussing the affairs of individual taxpayers with others except when expressly empowered to do so under the Act. The Bar Association of New South Wales is not an entity to which the Commissioner can provide such information.

Foreign Affairs: South-East Asia
(Question No. 2530)

Mr Danby asked the Attorney-General, upon notice, on 7 October 2003:
(1) Further to the answer to question No. 1645 (Hansard, 14 May 2003, page 14595), what was the outcome of the investigation into the IIRO.
(2) Have any individuals been (a) arrested, and (b) charged.
(3) Are there persons of interest in Australia.

Mr Ruddock—The answer to the honourable member’s question is as follows:
(1) In his answer to question number 1645, Mr Downer did not refer to any investigation into the IIRO, but rather to investigations into a number of other entities. It would be inappropriate to comment on matters under investigation.
(2) No persons have been arrested or charged.
(3) As has been made public previously, there are individuals in Australia who have links to terrorist organisations overseas.
Such links are investigated by the relevant police and security authorities. It would be inappropriate to comment on matters under investigation.

QUESTIONS ON NOTICE
Bowman Electorate: British Subjects
(Question No. 2590)

Mr Sciaccas asked the Minister representing the Special Minister of State, upon notice, on 13 October 2003:

(1) How many British citizens who are not Australian citizens in (a) Australia, (b) Queensland, and (c) the electoral division of Bowman are eligible to vote in Federal elections.

(2) Does the Government have any plans to change the voting rights of these British citizens in the future

Mr Abbott—The answer provided to the Special Minister of State by The Australian Electoral Commission is as follows:

Background
British subjects who are not Australian citizens, but who were on the Commonwealth Electoral Roll immediately prior to January 1984, retained their right to enrol and vote in federal elections when the law was changed to make Australian citizenship the basis for the franchise. Since that time, persons enrolling and changing their enrolment details have been required to provide their place of birth so that their entitlement on citizenship grounds could be established. Only those British subjects enrolled on the 25 January 1984 who have updated their enrolment details since that date have been identified as such in the AEC’s records.

(1) (a) There are currently 173,802 electors on the Roll who were identified as British subjects at the time of their re-enrolment. Some of these may have become Australian citizens since they last updated their enrolment. There are also a number of British subjects who were enrolled at the relevant time but who have not since changed their address or updated their enrolment details and who, as a consequence, the AEC cannot identify as British subjects. The AEC has no way of accurately estimating the number of these electors.

(b) The number of electors on the Roll, identified as British subjects at the time of their re-enrolment in Queensland is 30,866.

(c) The number of electors on the Roll, identified as British subjects for the Division of Bowman is 1,382.

(2) The AEC is unaware of any proposed changes the Government may be planning.

Defence: Board of Inquiry
(Question No. 2668)

Mr Rudd asked the Minister representing the Minister for Defence, upon notice, on 3 November 2003:

(1) Further to the answer to question No. 2031 (Hansard, 8 September 2003, page 1983), in respect of the Review of Structural Management, is it the case that ‘G’ meter print outs for the Mirage show that tolerances were exceeded and not reported and that major cracks to the old wing spar were not inspected within the hourly limit set by the RAAF extension of life program.

(2) How many Freedom of Information (FOI) requests by Captain Mackelmann, Craig Mackelmann’s father, were refused and why.

(3) Is it the case that documents obtained under FOI by Captain Mackelmann reveal evidence which was not produced to the inquiries; if so, (a) why was this evidence not produced, and (b) why will it not be reviewed now.

(4) Why was the Accident Investigation Team (AIT) report not made available to the Coroner and to Captain Mackelmann during the coronial inquiry.
(5) Why was the AIT report withheld from Captain Mackelmann for almost 6 years and then provided only after intervention by the Ombudsman.

(6) Were two differing transcripts of the same tape recording made by the AIT and were both withheld from the Coronial inquiry.

(7) Is the Minister aware that Captain Mackelmann claims to have evidence indicating that the tape has been manipulated in a way which would explain the seven second time difference.

(8) Can the Minister explain how the transcript of the tape used at the Board of Inquiry (BOI) and provided to the Coroner put F/Lt Riley further back behind Craig Mackelmann than he was in the transcript used by the AIT.

(9) Has the possibility that F/Lt Riley committed a breach of Air Force Orders and was being protected been investigated; if not, why not.

(10) Is there actual evidence which supports the RAAF assertion that no guns were fired; if so, why does the RAAF refuse to provide it to Captain Mackelmann.

(11) Did the RAAF witnesses interviewed by the Ombudsman regarding the downloading of the returned ammunition unload F/Lt Riley's aircraft; if not, who did and why were they not interviewed.

(12) Did the BOI inquire into whether proper radio procedures were being followed at the time of the accident; if so, what were its findings; if not, why not.

(13) Has the Minister personally reviewed the transcript of the Administrative Appeals Tribunal (AAT) proceedings.

(14) Was Air Commodore Ford represented at the AAT hearing by Barrister Logan and Solicitors from the Crown Law Office at Commonwealth expense.

(15) Was similar legal assistance offered or provided to the Mackelmann family; if not, why not.

(16) In what ways did Air Commodore Ford’s evidence to the AAT differ from the evidence he had given to the Ombudsman and the Durack review.

(17) Why did Defence try to prevent Captain Mackelmann obtaining a copy of Air Commodore Ford's interview with Senator Durack.

(18) Was Air Commodore Ford's interview with Senator Durack instrumental in challenging Air Commodore Ford's testimony to the AAT.

(19) Did the AAT ask the RAAF to conduct a further search for the gun camera cine film from the returned aircraft.

(20) Was this film provided for and viewed by (a) Air Commodore Ford when he was President of the BOI, and (b) another member of the BOI named Alexander; if so, what happened to it.

(21) Is the Minister able to explain (a) whether a breakdown in radio procedures occurred prior to the accident, (b) whether it is correct procedure for a pilot to hear an “off safe” from the previous pilot on a banner before calling “in live”, and (c) what the purpose is of the “off safe” and “in live” calls.

(22) Does the AIT transcript of the radio calls show F/Lt Riley “in live” 32 seconds after Craig Mackelmann called “in live” with no “off safe” call made by Craig Mackelmann; if so, will the Minister explain whether this is a breach of range safety standing orders.

(23) Has the possibility that F/Lt Riley had made an incorrect “in live” call and been too close to Craig Mackelmann been investigated; if not, why not.

(24) Has Captain Mackelmann’s hypothesis in respect of the accident been considered; if so, what evidence (a) supports it, and (b) contradicts it; if not, why not.
(25) Do the Range Standing Orders state that it is preferable for the Range Safety Officer to be a non-participating pilot.

(26) Was F/Lt Riley the Range Safety Officer at the time of the accident and what authority, if any, did the civil pilots in the tug aircraft “with Range Safety Officer responsibilities inherent in its role” have over F/Lt Riley.

(27) Should the civil pilots have reacted when F/Lt Riley called “in live” before Craig Mackelmann called “off safe”; if so, how; if not, why not.

Mr Brough—The answer to the honourable member’s question is as follows:

The information sought in the honourable member’s question is not readily available. To collect and assemble such information solely for the purpose of answering the question would be a major task and I am not prepared to authorise the expenditure and effort that would be required.

Mr Mackelmann, the father of Pilot Officer Craig Mackelmann, who was killed in the accident, has corresponded for the past 17 years with Defence. Defence has done everything possible to assist Mr Mackelmann with his requests for information so that he may have closure on the matter.

I am satisfied that the loss of the Mirage aircraft A3-40 has been adequately investigated. The Mirage accident has been the subject of an Accident Investigation; Board of Inquiry; Coronial Inquest; Ombudsman Investigation; Review of Structural Management Practices; Senator the Hon Peter Durack, QC Review; Defence Science and Technology Organisation Aeronautical Maritime Research Laboratory Structural Integrity Review; and Administrative Appeals Tribunal (AAT). The matter has also been the subject of a considerable number of Freedom of Information requests.

Crime: Money Laundering

(Question No. 2713)

Mr McClelland asked the Treasurer, upon notice, on 3 November 2003:

Further to the answer to question No. 2211, has the Reserve Bank of Australia conducted a symposium on money laundering; if so, (a) when was it held, (b) where was it held, (c) who attended it, and (d) was a presentation made on behalf of the Reserve Bank to that symposium; if so, is a copy of the presentation publicly available.

Mr Costello—The answer to the honourable member’s question is as follows:

The Reserve Bank of Australia (RBA) has not conducted a symposium on money-laundering.

The RBA provided a venue for a symposium (on 30 September 2002) on money-laundering which was organised by the Australian Institute of Criminology (AIC).

The RBA was not represented at this symposium.

Defence: Fremantle Artillery Barracks

(Question No. 2725)

Mr Beazley asked the Minister Assisting the Minister for Defence, upon notice, on 5 November 2003:

(1) What are the Government’s intentions in respect of the Fremantle Artillery Barracks.

(2) Is the Government proposing to require, as a condition of sale of the barracks, the retention on site of the Army Museum of WA.

(3) What resources for the maintenance/restoration of the site have been offered by the Commonwealth, State or local governments.

Mr Brough—The answer to the honourable member’s question is as follows:
(1) and (2) On 17 September 2003 the Premier of Western Australia, the Hon Dr Geoff Gallop MLA, declined the Commonwealth Government’s offer of January 2001 to transfer the Artillery Barracks, Fremantle to the Western Australian Government. Consequently, the Commonwealth Government is considering the way ahead for the Artillery Barracks site.

(3) None.

Parliamentarians’ Entitlements: Printing
(Question No. 2728)

Mr Martin Ferguson asked the Minister representing the Special Minister of State, upon notice, on 5 November 2003:

Further to answers to question Nos 2303 and 2329, in respect of the survey of costs incurred by a sample of Members that was carried out by the Department of Finance and Administration, when was this survey carried out and which Members were surveyed.

Mr Abbott—The Special Minister of State has provided the following answer to the honourable member’s question:

A survey of costs incurred by a sample of Members was carried out in March 2003.
The Members concerned were drawn from all States and Territories, except the ACT, and were Coalition – 25; Labor – 19; Independent – 1.

Australian Securities and Investment Commission: OneTel
(Question No. 2762)

Mr Murphy asked the Treasurer, upon notice, on 6 November 2003:

In respect of the ruling on 4 November 2003 by Justice Stephen O’Ryan indicating that there was prima facie evidence supporting the Australian Securities and Investment Commission’s claim that an agreement to shift assets, including the family home, to the wife of Mr Jodee Rich, Mrs Maxine Rich, was entered into because of a concern about claims on her husband’s property by third parties as a result of the collapse of OneTel, when will the Government amend the Family Law Act to allow the Court to examine and overturn agreements made by parties to put assets out of reach of creditors.

Mr Costello—The answer to the honourable member’s question is as follows:
This question does not fall within my portfolio responsibility. Refer to the answer provided by the Attorney-General for Question on Notice Number 2763.