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Wednesday, 8 December 2004

The SPEAKER (Mr David Hawker) took the chair at 9.00 a.m. and read prayers.

WORKPLACE RELATIONS AMENDMENT (SMALL BUSINESS EMPLOYMENT PROTECTION) BILL 2004

First Reading

Bill presented by Mr Andrews, and read a first time.

Second Reading

Mr ANDREWS (Menzies—Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service) (9.01 a.m.)—I move:

That this bill be now read a second time.

This bill 2004 proposes to amend the Workplace Relations Act 1996 to maintain the exemption for small business from redundancy pay by overturning the decision earlier this year of the Australian Industrial Relations Commission (AIRC) to impose redundancy pay obligations on small businesses.

This legislation is necessary because it is the only option available to rectify a flawed decision of the AIRC. Under the current industrial relations system there is no review or appeal process to reconsider the merits of test case decisions made by a full bench of the AIRC.

The government strongly believes it is parliament’s responsibility to use its legislative power and authority to shield small businesses from the AIRC decision. In fact, the government sought and obtained a mandate for this legislative proposal at the recent election.

If this bill is not passed, the vast majority of small businesses covered by federal awards will eventually be subject to redundancy payments for their employees in accordance with the AIRC’s decision. If this bill is not passed, small businesses that are constitutional corporations and that are covered by state awards will become subject to redundancy payments if the AIRC decision flows to state jurisdictions.

The bill has three effects. First, it will remove redundancy pay for small businesses with fewer than 15 employees from the jurisdiction of the AIRC.

Second, it will cancel the effect of any award variations made by the AIRC from 26 March 2004, the date of its decision, until the legislation commences that impose redundancy pay obligations on employers of fewer than 15 employees. It will not, however, affect any redundancy pay provisions that were in awards prior to the AIRC’s decision. It will also not affect any actual entitlement that arises before the legislation commences. The government’s objective is not to take away something that employees already have.

And third, the bill will exclude constitutional corporations that employ fewer than 15 employees from redundancy pay obligations that may be imposed by state laws, state awards or state authority orders. The bill will also exclude all businesses with fewer than 15 employees in the territories from any redundancy pay obligation that may be imposed by a territory law.

The bill is an integral part of the first tranche of the government’s two-pronged approach to protect all small businesses from the AIRC’s decision. The second tranche involves the government also working to protect small businesses that are not constitutional corporations and that are covered by state awards from any flow-on of the AIRC’s decision.

The government has intervened in test cases in the Western Australian and Queensland jurisdictions to oppose the flow-on of...
the AIRC’s decision to impose redundancy pay on small businesses; and it will similarly seek to intervene in any other relevant proceedings before state workplace relations tribunals to oppose any flow-on.

Notably, both the Western Australian and Queensland governments agree with the Australian government and are also opposing the flow-on of redundancy pay to small businesses in their states.

The government has also called on state governments to legislate to maintain the exemption of small businesses from redundancy pay.

It is vital that opportunities for continued growth and job creation for the 1.1 million non-agricultural small businesses in Australia be maximised. It is even more essential for the 3.3 million people employed by these businesses. This is nearly half of private sector, non-agricultural employment.

Small businesses are central to employment and economic prosperity in Australia. The small business sector has made a significantly larger contribution to employment growth over the last eight years than big business.

The small business sector is performing very well—it is very much the engine room of the continued growth and strength that our economy is enjoying. And without doubt many small businesses are profitable.

But we cannot afford to confuse this profitability with an ability to make redundancy payments. Small businesses tend to be chronically undercapitalised and in general do not have the financial resources to cope with large, unpredicted commitments such as redundancy payments. Small businesses are twice as likely as larger businesses to go out of business in the earlier years of operation. Even after 15 years of operation they are still 1.7 times more likely to cease than larger businesses.

In the government’s view, the AIRC’s decision seriously underestimates the impact that redundancy pay would have on small businesses. For instance, a retail small business with seven employees, each with four years continuous employment, would now face a contingent liability for redundancy pay of nearly $30,000.

An obligation on small businesses to make redundancy payments will result in a cost impost that is unaffordable for many small businesses. The end result will of course be a significant decline in job growth in the small business sector and likely small business insolvencies. Clearly, employees of small businesses will not gain anything from the AIRC decision if they no longer have a job to go to.

The undesirability of removing the small business exemption is widely recognised. None of the four state governments that participated in the AIRC test case supported the removal of the exemption—the Queensland and Western Australian governments opposed the removal, while the New South Wales and Victorian governments neither supported nor opposed it. As I have already noted, the Western Australian and Queensland governments are continuing their opposition to the removal of the small business exemption in test cases currently under way in their own jurisdictions.

Just last year the Queensland Industrial Relations Commission agreed that small businesses are in a more financially constrained and precarious position compared to larger business. The Queensland commission unanimously decided that the exemption for small business from redundancy pay obligations under the Queensland workplace relations system ought to remain in place. The Queensland commission concluded that many small businesses operate in marginal circumstances and that their lack of financial
resilience had not changed since 1994 when the New South Wales Industrial Relations Commission also reaffirmed the need for the small business exemption.

The Queensland commission also accepted that small businesses would generally have smaller cash reserves to meet redundancy pay requirements and that redundancies occurring would represent a greater proportion of the overall labour costs of the business.

In short, the Queensland commission found that to impose redundancy pay obligations on small businesses had ‘the very real potential to result in the insolvency of a number of small businesses’.

This government agrees with the conclusions of the Queensland commission. We think it is imperative that the small business sector continue to be supported and encouraged to further grow and create new jobs for our economy and for all Australians. This legislation will lift from small businesses the additional cost burden imposed by the AIRC’s decision.

Of course, we are not saying that by introducing this legislation small businesses cannot reach agreement with their employees to make redundancy payments where they can afford it and where it is a priority for the employees.

The government has a strong history of encouraging employers and employees to reach agreement on a wide range of issues at the workplace. In our view, this is preferable to imposing an ‘across the board’ obligation on small businesses which cannot afford redundancy pay.

In introducing this bill the government is demonstrating its ongoing commitment to the small business sector and its recognition of the vital and essential role it plays in ensuring Australia has a strong, thriving economy capable of employing all those who want jobs.

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

Debate (on motion by Mr Kelvin Thomson) adjourned.

TAX LAWS AMENDMENT (2004 MEASURES No. 7) BILL 2004

First Reading

Bill presented by Mr Brough, and read a first time.

Second Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.10 a.m.)—I move:

That this bill be now read a second time.

This bill makes amendments to the taxation laws to implement a range of changes and improvements to Australia’s taxation system.

This government announced, in its Promoting an Enterprise Culture election statement on 26 September this year, that it would provide further assistance and encouragement to small businesses, particularly those that set up and operate from home.

The first two measures in this bill are part of this initiative.

Firstly, the government is introducing a tax offset for entrepreneurs, which is targeted at very small, micro and home-based businesses that are in the simplified tax system.

Broadly, the provisions introduce a 25 per cent entrepreneurs’ tax offset. The full 25 per cent will apply on the income tax liability attributable to business income for small businesses in the simplified tax system that have an annual turnover of $50,000 or less. This tax offset will then phase out for annual turnover between $50,001 and $75,000.

Secondly, this bill removes the current requirement for small businesses to use the ‘STS accounting method’ in order to be eli-
gible to enter the simplified tax system. The new provisions will enable businesses to utilise the most appropriate method of determining taxable income for them and still qualify for the Simplified Tax System. Removing the requirement to use the STS accounting method will extend the concession to a broader range of small businesses.

Schedule 3 allows tax concessions currently available to employee share scheme holders to extend beyond a corporate restructure in certain instances. This further supports the development of the employee share scheme and further aligns employer and employee interests. These amendments will allow taxpayers who have deferred their income tax liability on a discount received on shares or rights acquired under an employee share scheme, to roll-over a taxing point that would otherwise occur because of a corporate restructure.

Schedule 4 doubles the current fringe benefits tax exemption thresholds for long service award benefits. The exemption thresholds will be increased from $500 to $1,000 for 15 years of service and from $50 to $100 for each additional year of service thereafter.

The fifth measure introduces a taxation incentive designed to encourage petroleum exploration in Australia’s remote offshore areas, announced by the Treasurer and Minister for Industry, Tourism and Resources on 11 May 2004. This measure is designed to increase the probability of a new petroleum province being discovered. An incentive is needed because Australia’s frontier areas are underexplored due to the relatively high risk and cost associated with exploration in these areas.

After listening to the concerns of business, the government, in schedule 6, is implementing further refinements to the consolidation regime. The refinements provide greater flexibility and certainty to certain aspects of the consolidation regime. This bill clarifies the operation of the consolidation cost setting rules with respect to undistributed profits and liabilities on exit. The refinements also ensure that the consolidation rules apply appropriately with respect to bad debts, general insurance companies and life insurance companies. These amendments take effect from 1 July 2002, which is the commencement date of the consolidation regime.

Schedule 7 ensures that all roll-over relief available for partnerships under the uniform capital allowances regime is also available in relation to depreciating assets allocated to simplified tax system pools.

Schedule 8 provides greater flexibility, reduced compliance costs and ongoing certainty surrounding family trust elections and interposed entity elections. This will be achieved by allowing entities to make either of these elections at any time in relation to an income year.

Schedule 9 contains amendments to ease compliance costs for small business in relation to non-commercial loans from private companies. The amendments will extend the time a shareholder has to repay a loan from a private company or to put such a loan on a commercial footing. Following these amendments, if a shareholder repays such a loan or puts it on a commercial footing before the ‘lodgment day’ the loan will not be a deemed dividend. This bill also corrects a technical deficiency in the tax law to ensure that the rules in relation to loans from trustees apply as intended.

Schedule 10 to this bill makes a number of technical corrections and amendments to several taxation laws. These corrections and amendments fix errors such as duplicated definitions, asterisks missing from defined terms, incorrect numbering and referencing and outdated guide material. While not im-
plementing any new policy, these corrections and amendments are an important part of the government’s commitment to improving the taxation laws.

Schedule 11 amends the refundable film tax offset provisions to allow unused provisional ‘Division 10BA’ certificates to be revoked.

This amendment will ensure that certain film projects can revoke their provisional 10BA certificates, as long as the certificate has not been used to already gain a tax deduction. The intent is to allow these projects to then apply for the refundable film tax offset.

Full details of the measures in this bill are contained in the explanatory memorandum.

I commend this bill and present the explanatory memorandum.

Debate (on motion by Mr Burke) adjourned.

TAX LAWS AMENDMENT (LONG-TERM NON-REVIEWABLE CONTRACTS) BILL 2004

First Reading

Bill presented by Mr Brough, and read a first time.

Second Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.16 a.m.)—I move:

That this bill be now read a second time.

This bill amends the A New Tax System (Goods and Services Tax Transition) Act 1999.

It provides for the treatment, for GST purposes, of long-term non-reviewable contracts after the GST free transition period ends on 1 July 2005.

Pre-existing contracts that have not had a review opportunity before 1 July 2005 will become subject to GST from that date. The amendments put in place a mechanism to negotiate a pricing adjustment with the recipient of the supplies to take into account the impact of the A New Tax System changes.

As a result of the negotiation, the parties may adjust the price, if necessary through arbitration. Alternatively, the recipient of the supply may elect to pay the GST or may become liable for it if he or she does not accept the result of the arbitration.

Three imposition bills are also being introduced as part of this package to allow the imposition of GST on recipients in certain circumstances.

Full details of the measures in this bill are contained in the explanatory memorandum.

I commend this bill and present the explanatory memorandum.

Debate (on motion by Mr Burke) adjourned.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—GENERAL) BILL 2004

First Reading

Bill presented by Mr Brough, and read a first time.

Second Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.18 a.m.)—I move:

That this bill be now read a second time.

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and two other bills.

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of long-term non-reviewable contracts when the GST free transition period ends on 1 July 2005.
In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (2004 Measures No. 7) Bill 2004 circulated to honourable members.

I commend the bill to the House.

Debate (on motion by Mr Burke) adjourned.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—CUSTOMS) BILL 2004

First Reading

Bill presented by Mr Brough, and read a first time.

Second Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.20 a.m.)—I move:

That this bill be now read a second time.

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and two other bills.

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of long-term non-reviewable contracts when the GST free transition period ends on 1 July 2005.

In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is a duty of customs.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 circulated to honourable members.

I commend the bill to the House.

Debate (on motion by Mr Burke) adjourned.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—EXCISE) BILL 2004

First Reading

Bill presented by Mr Brough, and read a first time.

Second Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.22 a.m.)—I move:

That this bill be now read a second time.

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 and two other bills.

The Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of
long-term non-reviewable contracts when the GST-free transition period ends on 1 July 2005.

In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is an excise duty.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 circulated to honourable members.

I commend the bill to the House.

Debate (on motion by Mr Burke) adjourned.

CHILD SUPPORT LEGISLATION AMENDMENT BILL 2004

First Reading

Bill presented by Ms Ley, and read a first time.

Second Reading

Ms LEY (Farrer—Parliamentary Secretary (Children and Youth Affairs)) (9.24 a.m.)—I move:

That this bill be now read a second time.

This bill gives effect to some minor policy measures in relation to child support.

Some legislative amendments and regulations made in 2000, in relation to overseas maintenance arrangements, allowed for Australia’s cooperation with certain other countries in assessing and enforcing child support liabilities across jurisdictions. To meet our international obligations in this area, especially in the time available to set down those provisions, some of the regulations were inconsistent with the principal legislation. However, it was always intended to remove that inconsistency by bringing the provisions contained in the regulations within the scheme of the principal child support legislation. This bill brings that intention to fruition. It also makes minor or consequential amendments to the family law legislation.

For the most part, the provisions are simply being relocated. However, after some years of experience with the provisions, the opportunity is also being taken to refine some aspects of the provisions.

For example, it is being clarified that the provisions apply only while one parent remains a resident of Australia—if both were overseas, Australian child support law should not apply. To reflect the basic intention of these international arrangements, it is also being made clearer that an application from overseas for assessment of child support, or registration of a liability, is generally to be made through the administrative authority of the other country. Also among the refinements being made is a structured approach towards eliminating the possibility of dual liabilities, or repeated new liabilities. These situations, which cannot occur in domestic child support cases, have proven to be difficult in overseas cases and need specific new provisions to stop them arising.

The bill also contains a series of measures to improve the equity, between the two parties to each child support case, in access to court for review of the case, and to streamline some aspects of the review process.

At present, there is a general rule that a party must lodge an objection (an internal review) before being able to apply to court. One of the improvements to be made by this bill builds upon amendments made in 2001,
so that either party has access to court if either one of them has first lodged an objection in the matter and had it finalised. This will eliminate the possibility of multiple objections on the same matter—it is better for all concerned if the matter proceeds to court without further delay.

Cases in which parentage of the child is in dispute generally have to proceed to court without going through the objection process. This bill makes sure that the few situations in which this is not currently the case receive the same treatment so that both parties have the same immediate right of access to court.

In relation to decisions to depart from the usual child support administrative assessment provisions, it is being provided that either party may choose between lodging an objection and applying to court. If both forms of review were to be sought at the same time by one or both parties, the court would determine whether the objection would proceed before the court case. Further streamlining measures in the review process are also given effect by this bill, such as allowing an application for an extension of time to lodge an objection to be made orally.

The bill provides for a number of other minor policy measures, which generally address anomalies in the current system or improve aspects of child support administration. For example, the child support secrecy provisions are being amended to allow personal information to be disclosed in two situations. The first is to allow ministers access to information so that correspondence and similar tasks may be finalised for a client who has expressly or impliedly consented to the minister having the information. For example, a minister may need to reply to representations made, on behalf of a child support client, by the client’s local member. The second is to allow the Child Support Agency to report to the police a threat made by a client to harm himself or herself, so that police may intervene, if appropriate, to protect the client.

In a further measure, the requirement to give information about an administrative assessment to both parents affected by the assessment is being rationalised. This is to make sure that only necessary information is given in each case, while still making sure that each parent has enough information to explain fully the basis for the assessment. Firstly, information given about children other than those for whom the assessment is made (for example, a child of a current relationship) is to be limited strictly to matters relevant to the legislative provisions that apply to those situations. Secondly, if a child support agreement or court order modifies an administrative assessment, only information beyond the agreement or order itself will need to be given.

The garnishee provision in the child support legislation is also being refined to recognise that the Child Support Agency will not always need to recover the full amount of a debt, or the full amount owing by the third party to the debtor. For example, if other satisfactory repayment arrangements are made, a lesser amount may be recovered under the garnishee provision.

This bill also contains some minor technical amendments.

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

Debate (on motion by Mr Burke) adjourned.

GOVERNOR-GENERAL’S SPEECH
Address-in-Reply

Debate resumed from 2 December, on motion by Mrs Markus:
That the address be agreed to

The SPEAKER—Order! Before I call the honourable member for Kingsford Smith, I remind the House that this is the honourable

CHAMBER
Mr GARRETT (Kingsford Smith) (9.30 a.m.)—I rise in the House to speak for the first time as the new member for Kingsford Smith, humbled by the honour that the people of this electorate have granted me. I begin by acknowledging the traditional owners, the Ngunnawal people, who have lived in the region around Canberra for over 20,000 years. I want to thank the electors of Kingsford Smith for giving me the opportunity to represent them in the federal parliament. I thank them for their confidence in accepting someone who has not resided with them in the past. Now, living with them, I will do my best to faithfully work in their interest.

I want to pay tribute to former members Laurie Brereton and Lionel Bowen, both of whom served with real distinction in this House. Lionel Bowen successfully contested nine elections, being deputy Labor leader for much of his parliamentary career. The positions he held included Attorney-General and Deputy Prime Minister in the Hawke government. His successor and my predecessor, Laurie Brereton, served as a trailblazing minister for industrial relations and minister for transport in the Keating government. He played a critical role as shadow minister for foreign affairs in relation to the former Portuguese colony of East Timor, where he persuaded the Labor Party and pushed the Howard government to finally provide the support the fledgling nation so urgently needed in its struggle for independence. Both men—one formerly a suburban solicitor and the other a sparky—were exemplary Labor politicians and I have greatly appreciated their support, as I have the support of the state members for Heffron and Maroubra, Kristina Keneally and Bob Carr, the Leader of the Opposition, Mark Latham, and colleagues in the House.

Members are rightly proud of their electorates; I am no exception. Kingsford Smith is graced with a series of stunning beaches, framed by headlands interspersed with ocean pools, including the famous Wylie Baths. An active community of swimmers, lifesavers and surfers cherish these special places. The Australian dream has been fully realised in this seat as successive waves of immigrants from literally all over the world—Ireland, Greece, Italy, China, Russia, the South Pacific islands, Bangladesh—have made the suburbs of Kingsford Smith their home. Kingsford Smith contributes to the social capital of the Sydney region and beyond. It is the site of a number of significant institutions, including the Sydney Children’s Hospital, the Prince of Wales Hospital—and I can vouch first hand for their skill—the University of New South Wales, Royal Randwick Racecourse and the National Institute of Dramatic Art.

Kingsford Smith includes ‘Botany Bay’—and those two words carry much historical resonance for Australians. The bay was so named on account of the huge diversity of vegetation discovered by botanist Joseph Banks when the Endeavour lowered its anchor and the English came ashore. Later, workers cottages sprung up around what became Australia’s first industrial area. Some remain, as does a community of Aboriginal people living in the suburb of La Perouse near to Captain Cook’s first landing site in 1770.

Early history records the sobering fact that, within a very short time after first contact, the local tribes were wiped out by smallpox or driven off by the new settlers. In the present, the truly appalling statistics of Aboriginal health show how much is still to be done to break free of this aspect of our past. And there are significant environment issues here too. Past industrial development has left a legacy of toxic chemical blight...
which now threatens the marine environment of Botany Bay. There is real concern about planned development on the shores of the bay and also on much-loved Malabar Headland, owned by the Commonwealth. It is our position on this side of the House that this precious parcel of land, listed on the Register of the National Estate, should be returned to the people of New South Wales to become national park and public open space. I commit to pursuing this issue in the current parliament.

It is time to place my gratitude on the record. To Labor Party members in the electorate, to the Kingsford Smith federal electorate council, to the workers in my office, to Simon Balderstone and Kate Pasterfield, to all the supporters who made my passage to the parliament possible, I offer my thanks. In particular, to my family—my wife, Doris, and my children, Emily, May and Grace, who are in the parliament today—I owe an even greater debt of thanks. They bear the burden of living with someone who set out on the public road with all the demands on a private family life this path brings.

I want also to pay tribute to my forebears, who came originally from Europe, and who, by hard work, often in hard times, made this country their home. John Garrett, my great-great-great grandfather, and Tom Garrett, his son, both served in the New South Wales parliament over a period of 30 years in the second half of the 19th century. There was more than a bit of Tory about both of them, it seems, and they were both newspaper proprietors. I want to assure the House that there is no genetic flow-on here. But it was my mother’s dad in particular who strongly influenced me. Although he was seriously wounded in the Great War, as a young boy I never heard him complain of his ailments—although they were many. He was a long-serving Rotarian and member of the RSL, who in his spare time hammered away on a special typewriter translating books into Braille for the blind, a habit he maintained into his 80s. As is often the case, it was only after he died that I came to appreciate the way he lived and to take inspiration from his example.

Naturally, I also want to thank the members of Midnight Oil whom I have worked with for many years—Rob Hirst, Jim Moginie, Martin Rotsey, Bones Hillman and Gary Morris, as well as Arlene Brookes, who worked in our office. It is simply not possible for me to fully express here the unique adventure that we had as a bunch of students who set off to conquer the local pubs and then the world, with a handful of songs about Oz and a dream to have a go at making a living out of music that was not seen as commercial or likely to succeed. And I thank all those punters who came back again and again as we journeyed through their suburbs and cities. Indeed, one of our earliest performances was at Kingsford, where some years later I find myself as the local member. Wherever we played—on beaches, at blockades or in any number of clubs and theatres, wherever our impulse took us—people showed up, and that loyalty gave us space to create and kept us alive.

I acknowledge friends and associates who work out of the spotlight in community groups and local grassroots organisations. I believe they are the best kind of Aussies—the ones who simply care about the country and its people, not about how much they can take from it. They are unsung heroes, helping those who are down and out, volunteering at the neighbourhood centre, trying to protect that remaining patch of bush or bring that local creek back to health. I see such civic engagement—from the streets to the suburbs, from local communities to nationally organised citizens groups, to the contesting of ideas in parliaments—as absolutely central to the health of our democracy. I have always
had, as I know many people have, a singular passion for Australia. I do love the sunburnt country, its ancient landscapes, its exhilarating reaches of sand and sea. And I value its traditions, none more so than the freedom to express an opinion. I have protested, sung, marched, written, organised and campaigned on those things I simply believed were important, not just to me but to the life of the nation.

I have reached that point in my life where I want to take the next step into formal politics to work as a parliamentarian and in the future I hope to work as a member of government. I also hope that the measure of how seriously I take this engagement is that I have come here with no higher objective than to make a contribution, to do my bit. The core strands of my involvement in public life are a belief in the need to strive wherever possible for equality of treatment and opportunity, to ensure all people have the means to a decent livelihood, to work for the cause of peace however remote its prospects sometimes seem, to respect the rights and interests of others and to work to preserve the living fabric of nature. I see the Labor Party as the natural place for me to continue this engagement.

Labor has a proud history, a proud record as the primary party of reform and social justice on the Australian political landscape. And I am confident in the party’s capacity for renewal. Labor has always mattered for Australia and it matters to me. Labor has an abiding commitment to fairness, to insisting that government does have a primary role in protecting the wellbeing of people, to having a foreign policy which espouses an independence of thought and action in international affairs. We in Labor are willing to put ideals as well as ideas into the political mix. All these components of the modern Labor Party are important to me, and I reckon they are important to Australia.

The Leader of the Opposition recently remarked that the environment is the ‘ultimate intergenerational issue’. I agree, and my involvement in this area has been a central part of my political life to date. It is now well understood that humans ultimately depend on the health of the planet for their wellbeing. That recognition has produced a real change in thinking in recent times. Yet our track record in Australia remains abysmally poor. The measurements of ecological health do not lie and what they tell us is that, by most standards and in most areas, we are going backwards. Lamentably, much of this has happened on this government’s watch, for we are now a continent in ecological reverse. Our river systems are sick, salted up and stressed, used beyond their environmental limits. Majestic river redgums on the Murray River are dying, literally, for a drink of water. The scourge of salinity is spreading across the land, eating away at rural communities.

I know that statistics rain down like confetti on this place, but the fact that in South Australia nearly half the flora and fauna face extinction in the next 50 years ought to give real pause for thought. After all, that is only my lifetime up to now—and that has seemed like a pretty short period. This is the rolcall of evolution happening in the space of a few generations, the greatest loss of living things that make up our biodiversity since the disappearance of the dinosaurs. And there is no sign that we are adequately responding to the unfolding tragedy. As we continue to draw down on our natural capital at a far greater rate than it is being replenished, as oil supplies dwindle and populations increase, as each single threat—whether to wetland, forest or ocean—coalesces and collides, so the task of reconfiguring our economy to harness instead of degrading nature becomes more important.
Mr Speaker, honourable members would be well aware that there is one supra issue which presents the most profound environmental and political challenge we will face in the coming century. This is the spectre of global warming. It is now accepted by most reputable, independent scientists and by most governments that massive increases of greenhouse gases into earth’s atmosphere, some 30 per cent since the pre-industrial era, are producing a corresponding increase in the earth’s temperature and that this presents a worldwide problem of immense scale. Humans remain entirely atmosphere dependent, so there is no choice but to respond to extreme climatic behaviour and its many effects. The economic costs of global warming are also rapidly rising with reported losses increasing by five times between the 1970s and the 1990s—standing at $629 billion globally for the last decade. These bills will fall on this generation and then increasingly on future generations unless resolute action is taken.

Yet the Howard government will not commit to genuine mandatory renewable energy targets, and we are talking very reasonable increases from two per cent to five per cent. The government will not move to a national carbon trading scheme, the government will not consider a carbon tax, and of course the government will not ratify the Kyoto protocol—it will not even commit to a plausible alternative program to reduce greenhouse gases by anywhere near the amount needed. The truth is that this government fiddles while Australia burns. Global warming is kicking in, with higher temperatures evaporating our precious water, stressing valuable stock and exposing us to bushfires of greater intensity. Yet we, along with the United States, are the only two developed nations staying out of this international treaty framework.

There is the claim that ratifying Kyoto will harm the economy, yet when the treaty becomes law in February of next year the government will have sidelined Australian companies from the opportunity of opening up business with countries and companies taking part in the international emissions trading framework. The environment loses, business loses and farmers lose. And if we do not enlarge our concept of national interest to include the risks our near neighbours face from the threats posed by climate change, then these marginal communities, especially in low-lying Pacific islands, will lose too.

We need to urgently move to a mixed-energy economy with a much greater emphasis on demand management, use of renewable energy and increased energy efficiency, especially in the transport, building and agriculture sectors. The agenda for the next decade must include sustainability reform. There is evidence that environmental modernisation can help drive the economy, with increased employment, innovation and capacity for additional export income. Germany and Denmark have created entirely new industries based around renewable technologies and energy efficiency. Australia, with its abundant supplies of sun, thermal energy and wind, with its existing expertise in land management and rehabilitation and with its capacity for innovation, could adapt to this path and prosper. But just one conspicuous feature of the last eight years has been the failure by the Howard government to meaningfully address these issues.

It has often been young Australians who have raised a mirror to our actions and who have seen fit to go out and protest the state of our environment—and on occasions I have gone with them. I have opposed the destruction of rainforests in a country of Australia’s relative wealth on many grounds, including loss of biodiversity, loss of beauty, loss of water catchment qualities, loss of scenic...
amenity and loss of carbon sinks—and, just as importantly, the loss of opportunity for future generations to enjoy and utilise nature, to be healed by nature, to derive long-term livelihoods from nature.

It is no coincidence that inbound nature based tourism makes a substantial contribution to our national economy, especially to youth employment. Thankfully, environmental organisations like the Australian Conservation Foundation have seen fit to contest plans by governments to allow oil exploration on the Great Barrier Reef, or to dam the Franklin River or, more recently, to destroy the rainforests of North Queensland. In due course those places became defining iconic sites drawing people from here and overseas to enjoy.

The natural world carries profoundly strong cultural connections for Indigenous communities, as well as the possibility of increasing employment prospects in their country. So degrading the environment is a question of lost opportunity for Aboriginal people as well.

The first speech of a member of parliament offers a chance to express one’s truest ambitions and hopes for the country. At this point in time, what do I think the nation needs? I believe we need to respond to the decline in our environment and the threat posed by global warming and to further modernise our economy by making it truly sustainable. I believe we need to substantively extend the idea of sustainability so that it encompasses not only environmental but social, cultural and economic dimensions. In corporate terms, our social capital must be protected.

I believe we need to reaffirm the principles that have served us well thus far: a fair go for all, including for generations to come; tolerance in our social relations; the upholding of the rule of law; and respect for diversity of opinion and beliefs, framed by an allegiance to Australia and its people. I believe we need, with Australians well informed and willing, to take the next necessary step to full independence as a nation which chooses its own head of state.

I believe we need to take a longer view when it comes to foreign policy—to take a larger view of the national interest. Of course it is important to cooperate with our traditional allies when our common interest is met. It is also important for Australia to contribute to the reform and renewal of the United Nations; to contribute generously, though judiciously, to aid for developing countries; to redouble our efforts to prevent the spread of weapons of mass destruction, including nuclear weapons; and to address the emerging class of new security threats, including transnational crime and climate change, with the prospect of environmental refugees and the spread of infectious diseases. And I do not believe a government should commit the nation to war without this parliament having the opportunity to fully debate an action of such seriousness.

Finally, I believe we need to come to a point of genuine and deep accommodation with Indigenous people. One of the most profound personal experiences I have had was to travel to the remote western desert on the ‘Diesel and Dust’ tour with Midnight Oil to sit with Pintupi and Walpiri elders and be shown the law of these peoples. It is law as significant as the Ten Commandments, unchanged over centuries—its presence a stark reminder of the act of dispossession, the results of which still reverberate today. If we are ‘the land of the fair go and the better chance’, as Paul Keating observed, then we can and must make amends for that past. I believe this requires sincere acts of real reconciliation that have the backing of the community and the government. So, too, we must redouble our efforts to provide im-
mediate support, opportunity and structures for Indigenous communities to build healthy and engaged lives. I and many other members will be watching with keen interest to see what real outcomes emerge from the government’s renewed consideration of Indigenous health issues and fundamental support to redress the undoubted disadvantage and marginalisation of Indigenous Australians. This nation really does need to get its act together on this issue.

I am proud to be the Labor member for Kingsford Smith. The Labor Party from its earliest beginnings has played a pivotal role in the development of this country from the era when we emerged as a democracy in the late 1800s, through the period of the great Australian settlement, to the present day. While I have outlined a number of very real challenges that I believe we must address, it is with a sense of confidence and knowledge of our past that I claim our future can be made better when we act with resolve and good purpose. I hope I can do that as a member of parliament, and in that spirit I thank the House for the courtesy of listening to my first speech.

Honourable members—Hear, hear!

Debate (on motion by Mr Truss) adjourned.

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

Consideration of Senate Message

Bill returned from the Senate with amendments.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.52 a.m.)—I move:

That the amendments be considered immediately.

Senate’s amendments—

(1) Schedule 1, item 1, page 3 (lines 6 and 7), omit the item, substitute:

1 After subsection 23A(2)

Insert:

(2A) A report prepared in accordance with subsection (2) can be in the form of:

(a) pay advice; or

(b) letter; or

(c) any form in which the information can be communicated effectively to the employee.

(2) Schedule 1, page 3 (after line 10), at the end of the Schedule, add:

3 At the end of section 44

Add:

(2) A report prepared in accordance with subsection (1) must include:

(a) the number of employers who have failed to pay one or more of their employees’ superannuation guarantee contributions by the date required by law;

(b) the number of employees whose employers have failed to pay their superannuation guarantee contributions by the date required by law;

(c) details of the total amount of superannuation guarantee contributions outstanding at the close of each reporting year;

(d) the number of defaulting employers who paid outstanding superannuation guarantee contributions after the payment date required by law;

(e) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions;

(f) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions that were fully or partially successful;
(g) the total amount of outstanding superannuation guarantee contributions recovered at the close of the reporting year.

Mr FITZGIBBON (Hunter) (9.52 a.m.)—One of the most significant of the many achievements of the Hawke and Keating governments was the extension of superannuation to all Australian workers. Once the domain of just a few elite workers and, of course, senior public servants, today all Australian workers have an opportunity to save for a decent retirement—no longer dependent on the age pension but looking forward to a decent retirement wage. The Labor Party is very proud of that achievement.

Earlier in the week, a bill was presented to the House which would remove what some might argue is a pretty important requirement to sustain the integrity of the superannuation initiative. The superannuation initiative is important not only to Australian workers but also to Australia’s economy in that it ensures the extension of Australia’s savings capacity. That initiative, which was set up some time ago, required employers to report to their employees when superannuation guarantee payments had been submitted to the employees’ super fund.

Why has the government sought to remove that requirement? It is simply because it carries, for small business in particular, some significant compliance costs. As you know, Mr Deputy Speaker Jenkins, small business in Australia is already significantly burdened by a range of government regulations and legislation, in particular the GST. Since the GST was introduced, the compliance burden has grown significantly. We had a debate in this place just last night about some of the effects of the new tax system. I do make the point that there is no threshold on this issue, and the removal of the obligation on employers to report to the employee applies to all businesses, not just the small business sector. The government sought to remove this fairly onerous obligation, and the opposition decided to accept the government’s initiative for a range of reasons—not just because of the compliance cost burden but also because there is not much point imposing on the employer an obligation to report to the employee that the payment has been made when the original initiative was about ensuring that the employer had met that obligation.

I will make the point in a different way: if an unscrupulous employer is going to pocket the entitlements of the employee—the money that, under the law, belongs to the employee—then that same employer is just as likely to fraudulently inform the employee that the payment has been made to the super fund. So there is not much point in the initiative in any case. It gave no employee any real security that the statutory obligation of the employer had been met. A better proposal might be to expect the superannuation fund to report to the employee, for example, when the payment has been made. Maybe there is scope to have the Taxation Office play a role in the reporting process. The Labor Party is still unsure about what might be the best initiative; but, in the absence of any immediate alternative solution, we have—reluctantly, in a sense—agreed to support the government’s bill to remove that reporting obligation.

I do put the government on notice that we are still concerned that there are too many employees who are not receiving the payments they are entitled to under the law in this country, and we will continue to work to find a good solution that does not impose too great an administrative burden on the employer, the tax office or the super fund. (Time expired)

Question agreed to.
Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (9.57 a.m.)—I move:

That the amendments be disagreed to.

Mr FITZGIBBON (Hunter) (9.57 a.m.)—I made the point that Labor agreed, somewhat reluctantly, to support this bill. I indicated that very clearly to the government when the matter was debated in this place on Monday night. Since then, the bill has been to the Senate, and that is the purpose of the debate today. In the Senate, the Democrats put forward an amendment which, to put it simply, gave the employer additional options in terms of their reporting obligations to the employee. Effectively, it said the employer could still communicate to the employee—on a pay slip or, indeed, verbally—that the payment had been submitted to the superannuation fund.

When that matter was put to the Senate last night, Labor decided that we wanted some time to think through that initiative from the Australian Democrats and to properly consider whether their proposal had merit. So we supported that amendment to provide us with the necessary time to consider it properly. That amendment is now back with us this morning, and I can advise the government, and the minister at the table, that we will not be insisting on the Democrats amendment. I appreciate the minister’s cooperation on this. We had a conversation about the merits of the Democrats amendment last night, and we agreed that the obligation to give only verbal advice to an employee could bring serious legal obligations on the employer and could leave employers exposed in a number of legal circumstances. So the amendment will not be agreed to in this place and, when the bill goes back to the Senate, the opposition will not be supporting the amendment if the Democrats still seek to have that amendment considered in the other place.

The other amendment that was put forward and supported in the Senate last night puts on the Australian Taxation Office an obligation to report on certain matters in its annual reports. There are seven matters which the Labor Party has asked be given consideration for inclusion in the ATO’s annual reports. Those matters range from reporting on the number of employers who have failed to pay one or more of their employees’ superannuation guarantee contributions by the date required by law; the number of employees whose employers have failed to pay their superannuation guarantee contributions; details of the total amount of superannuation guarantee contributions outstanding at the close of each reporting year; the number of defaulting employers who paid outstanding superannuation guarantee contributions; the number of actions taken by the ATO to enforce unpaid funds; the number of actions taken by the ATO to enforce payment of unpaid superannuation guarantee contributions that were fully or partially successful; and the total amount of outstanding superannuation guarantee contributions recovered at the close of the reporting year.

This is a simple initiative which would provide greater transparency in the process and would allow us as policy makers to better understand what is happening out in the marketplace with respect to the failure of employers to meet their statutory obligations. I have had discussions with the minister on these issues, and I again thank him for his cooperation. I understand he is about to expand on these matters, but he advises me that most of these things are indeed already done in the ATO’s annual report and he further advises me that the couple of points that I have raised that are not covered in the ATO’s annual report face some logistical difficulties in terms of the ATO’s systems et cetera. On
the basis that the minister gives a significant and acceptable explanation of those outstanding matters, I can foreshadow that Labor will not be seeking to impose those obligations upon the ATO that the ATO in logistical terms is not able to meet.

Mr BROUGHH (Longman—Minister for Revenue and Assistant Treasurer) (10.02 a.m.)—I welcome the comments from the member for Hunter, the shadow spokesman. Unfortunately, there seems to have been chaos in the Labor Party in the last 48 hours since we had the reassuring words of the member for Hunter when he said:

The bill is a genuine attempt to reduce the compliance burden on small business. Labor supports this and will support the bill.

I think that was very much the genuinely held view of those in the chamber, and particularly the shadow minister. Unfortunately, those colleagues on the other side perhaps did not see it quite the same way and we are getting a mixed message.

We saw the bill go to the other place and, quite frankly, be totally derailed, as the shadow spokesman, the member for Hunter, mentioned. The Democrats put up an amendment. The effect of that amendment was to entirely reverse the intention of the bill. I accept what the member for Hunter said; that is, that the Labor Party were taken on the hop and decided that they would give support to the amendment in the interim and deal with it later on. I welcome the fact that they now understand the implications to small business of the amendment and that they will not be supporting the Democrats should the Democrats put that amendment forward again. The bill is important because the provisions are due to commence on 1 January. It is important to businesses of all sizes and it is too important to allow it to fall victim to chaos by the opposition.

I will now move to the Labor Party’s amendment. The address by the shadow spokesman alluded to some of the provisions of their amendment, and I will provide some additional information. I think this was probably a genuine attempt by the Labor Party to provide some additional security to employees, but the fact is that most of the information they are seeking is already provided for in the ATO’s annual report. The 2003-04 annual report, for example, indicated that 9,923 employers were audited as a result of the employee notification. It also reported that 16,200 employers were audited as part of a data matching activity. It stated that 2,153 employers were identified as high risk and were contacted about their quarterly obligations before the liability actually arose. Of course that gives comfort and more security to employees that their money is going to be paid in. Other proactive activity included providing speakers at 14 industry conferences and issuing a number of ATO and other publications. The report stated that $380.8 million was raised in superannuation guarantee liabilities and $234.6 million was collected. In many instances the amounts remaining uncollected are still being pursued. The ATO estimated that employers paid $37.3 billion in superannuation contributions in 2003-04. That figure was backed up by APRA.

Much of what was in the Labor Party’s amendment is addressed in the ATO’s annual report, which I am sure will give comfort to the member for Hunter and those opposite that the ATO is in fact meeting the obligations of ensuring that the general public understand the levels that we are going to ensure not only that there is an obligation on employers to make provisions but also that those provisions are made. As I said to the member for Hunter, next year when we bring in choice and we have a major employee-employer campaign, I will be making it a
priority to ensure that every individual employee understands who their superannuation fund is and how they contact them.

We want the general public to be empowered and to have an interest in their superannuation retirement income. We want them to contribute to it through the co-contribution—and this is a good opportunity to remind those opposite that it is not too late to back the government on the co-contribution. Actually, last night, one of the speakers stood up here and castigated the government for removing the co-contribution, when it was Labor policy—

Mr Fitzgibbon—Was it a government or opposition member?

Mr Brough—It was actually an opposition member who castigated the government for removing the co-contribution, when in the recent election it was Labor Party policy to not retain the government’s co-contribution.

The government is not being bloody-minded about either the Democrats’ amendment or the Labor Party’s amendment. We have one goal in mind, and that is to simplify the paperwork for small business and business in general. This measure will go a long way towards doing that, and I urge the Labor Party and the Democrats and the other minor parties to support this measure and disallow these amendments in this place and to pass the bill in its original form in the other place.

Mr Fitzgibbon (Hunter) (10.07 a.m.)—I must say, given the conciliatory nature of my contribution in this debate this morning, I am rather disappointed by the provocative contribution of the Minister for Revenue and Assistant Treasurer, using words such as ‘chaos’ with respect to the opposition’s performance in the Senate last night. All members in this place know that in the Senate amendments are thrown upon us at short notice, and that was certainly the case with respect to the Democrat amendment last night. I think it was fair and reasonable for the Labor Party to support that amendment to give us some 12 hours to further consider its merits. We have since done so and have decided in the interests of not holding up this bill that (1) we would not be supporting the amendment and (2) we do not think it had any real efficacy about it.

The minister reminds me of a very important point and another subject we had in mind when determining to allow this bill passage through both houses of parliament. That is the imminent arrival of choice, which is going to impose a burden on small business in this country almost equal to the burden imposed by the GST. That sounds like a big statement, but it is true. I see the minister at the table nodding his head, agreeing and acknowledging that to be the case. So the decision on our part on this issue was taken in the context that there is a big superannuation issue emerging in the new year.

The big difference between the government and the opposition on this bill is that the government is putting it forward without any accompanying initiatives to deal with a very real problem which exists in our society which the minister highlighted out of the ATO’s annual report just this morning—that is, the number of employers not meeting their statutory obligation to pay the superannuation payments of their employees. Labor acknowledge that the system that has been imposed to date to deal with that issue (1) puts a significant burden on small business in particular and (2) is not effective, and I made that point earlier. Labor are also saying that we are going to develop a better model. We are not just going to brush this thing under the carpet and say that it is all too hard, which is the government’s intention; we are saying we will let through the bill today to remove the initiative that does not work but we intend to develop a policy that does work,
that does ensure that the entitlements of those employees are protected.

On the issue of Labor’s amendment, I do accept the minister’s explanation—on face value, of course. I will seeking further advice at a later date on the accuracy of his explanation of the ATO’s current requirements in terms of their annual report. On face value, I accept what the minister has had to say, which is that most of those things are already done and some of those things cannot be achieved, for logistical reasons. Labor does not have any choice here—the government in any case would use its numbers to send this bill back to the Senate in its original form—but I can advise the House that when the bill does go back to the Senate in its original form the Labor Party will be supporting it in its totality.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (10.11 a.m.)—I welcome the final comments of the member for Hunter on this bill. I would ask him to reflect on his comments about choice—that it is going to be more complex than the implementation of the GST was. I would ask him at another time to reflect on why it is current Labor policy to instruct the states, or to override the states, to make sure that every state also has choice. If it is so complex, that seems to be absolutely contradictory. This is a positive measure, and I welcome the Labor Party’s now refreshed attitude towards it.

The DEPUTY SPEAKER (Mr Jenkins)—The question is that the amendments be disagreed to.

Question agreed to.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (10.12 a.m.)—I present the reasons for the House disagreeing to the Senate amendments and I move:

That the reasons be adopted.
tions of the Australian Law Reform Commission in its report entitled *Keeping secrets: the protection of classified and security sensitive information*.

The stated aim of the legislation is to enable security sensitive information—that is, information relating to or the disclosure of which may affect national security—to be introduced during a federal criminal proceeding and, on the other hand, to enable justice to be delivered in that proceeding. I note that the Law Council of Australia, while they have been critical and I am sure at the end of the day will still have concerns about the final product, at the outset in their submission to the Australian Law Reform Commission did recognise that reform was required in this area. In their submission they stated that a bill outlining a process for dealing with security sensitive information in criminal proceedings was desirable to ensure:

The clear expression of the possible orders that may be made to ensure the appropriate balance between the public interests and the interests of justice ... The Council sees as desirable the Commission’s proposals that emphasise the wide powers courts and tribunals have to ensure the appropriate balance in the individual case.

As I go through the legislation I will underline on a number of occasions that the ultimate discretion of the trial court remains. It has been quarantined, if you like, from the effect of this legislation. The legislation is directed at how security sensitive information is dealt with ultimately in the trial.

As I mentioned, the Senate Legal and Constitutional Committee also did some excellent work in respect of this matter. They made 13 recommendations and, while the proposals ultimately voted on in the Senate, and as will be amended through the government’s proposals in this House, do not reflect word for word the recommendations of the Senate Legal and Constitutional Committee, again I think at the end of the day the measures that have been adopted in the bill do reflect the substance of concerns before that committee.

I know the Attorney-General in his second reading speech and in the explanatory memorandum to the bill goes through the procedures in some detail, but I think, for those who are interested, it is worthwhile setting out in at least rough form the operation of the bill. While the issue itself, I might say, is of some controversy, the bill in many ways is quite straightforward. How it operates is that, when a prosecutor receives a brief of evidence, they will make a decision as to whether it is likely that, in the course of preparing and presenting their case, they will be dealing with security sensitive information. The bill also recognises that that realisation may occur during the course of proceedings, at which time, both at the outset or subsequently, they have an obligation to notify the Attorney-General. The obligation to similarly notify the Attorney-General also extends to the defence counsel, appropriately.

The three categories of information that can be relevant in the national security context are: information contained in a document; evidence potentially given by a witness; or even the presence of a witness as a result of some knowledge, background or experience that they have had or are known to have had. After notification, the Attorney-General makes a decision as to whether national security sensitive information is contained in the material and the certificate issued may again, speaking in the broad, prevent the disclosure of the information, allow the information to be presented in a redacted or reduced form—if you like, blue-pencilling the relevant parts—or enable the information to be produced in a summarised form. There are obviously details in the legislation as to how that should occur and what supporting documentation needs to be provided to the court and the parties.
Upon receiving the certificate, the court has an obligation to conduct a closed hearing. That is obviously a controversial issue, but we have to bear in mind that, while there is certainly a public interest in open justice and transparency before all tribunals, here we are counterbalancing national security considerations. The court’s power in that closed hearing is complete power, if you like, over the Attorney-General’s certificate. So, while the certificate obviously is an executive act, at the end of the day it is considered by the judiciary and, in the closed hearing, the court may agree with the certificate, they may order that the certificate be modified or, indeed, they may set it aside if they do not agree that security sensitive information will be revealed in the proceedings. Appropriately, again, all parties have a right of appeal from those orders made in closed hearings. So that is a very rough sketch of the essential operation or scheme of the legislation.

Regarding those provisions recommended by the Senate Legal and Constitutional Committee which have been taken up by the government in their redraft of the bill and the amendments that have been moved in the Senate and will be moved today, it is useful to go through those. I believe, just to reassure those who have had some concern about this legislation that their concerns, if not having been addressed, have certainly been considered. I will go through the reasoning for those various proposals.

Firstly, there has been an easing in the provisions relating to the exclusion of a defendant and his or her legal representative from the closed hearing. As originally drafted, the defendant or indeed a non security-cleared counsel could be excluded from the proceedings if it was believed that their presence would prejudice national security. The legislation as currently drafted indicates that the defendant or a non security-cleared counsel may be excluded from only part of the proceedings, and that exclusion can occur only if the court decides that their presence would be likely—and I emphasise that word ‘likely’—to prejudice national security. That is quite a significant benchmark that must be satisfied before the court excludes the defendant or non security-cleared counsel. I emphasise ‘non security-cleared counsel’ because the bill makes clear that counsel who are cleared to the appropriate security level cannot be excluded from those proceedings. That again, while it is a controversial issue, is quite pivotal to the effective operation of the legislation.

I should indicate that, while those who obviously and passionately support the concept of open justice have expressed some abhorrence at a defendant not being present for all matters dealing with their prosecution, the reality is that their potential exclusion—again, when the court is satisfied that their presence is likely to prejudice national security—is actually consistent with Australia’s international obligations. That situation can often arise in respect of the provision of security sensitive information. For instance, the Law Reform Commission in their report noted that article 4 of the agreement between the government of Australia and the government of the United States of America concerning security measures for the protection of classified information provide that the information should only be given to those persons who are justified in receiving it and who are appropriately cleared to the required security level.

At the end of the day, in this legislation we are balancing these concepts of open justice, transparency of the judicial process and the public interest of Australia with accessing and indeed being in a position to provide intelligence in times when we have to recognise that intelligence can be vitally important to the security of Australians in Australia and of course abroad. They are the competing
public policy issues. I think the bill as finally worded through amendments will strike an appropriate balance.

There has been some confusion as a result of people basing their objections to this issue of security clearance on an earlier draft of the bill. In particular, there has been concern that section 39 of the bill in some way makes it obligatory for a lawyer to obtain a security clearance if they receive a notice from the Secretary of the Attorney-General’s Department that a security sensitive issue is likely to arise in the course of the proceedings. The Law Council of Australia in particular expressed great concern about that being the case—that, in other words, the presence of counsel or the ability of a defendant to instruct counsel was on that construction of the legislation seen to be subject to veto by the Secretary of the Attorney-General’s Department.

In fact, section 39 is facilitative. The Secretary of the Attorney-General’s Department issues a notification advising counsel that in their opinion security sensitive information is likely to arise, and then procedures are available for that counsel to elect to obtain a security clearance to the appropriate level. That is not obligatory, however; counsel is not obliged to obtain that security clearance. If they do not obtain that security clearance, as I indicated earlier, their right to appear in the proceedings—in the closed hearing, at least—may be restricted, at least in some part, and their access to transcripts may also be restricted.

Again, that goes back to the balancing argument I put before, but it is not a situation where the executive vets which counsel can appear in the proceedings. The defendant has a right to instruct counsel of their choice and that counsel has a right to appear. If that counsel does not obtain security clearance then certain consequences may follow. In particular, they may not be in a position to present as full and as detailed a defence as they otherwise would have if they had secured a clearance—but again I emphasise that that clearance is not obligatory for the defence counsel.

While Justice Gaudron, I think, in Nolan and Young did acknowledge the vital importance of having open courts, we need to balance the interests of justice for the defendant with the interests of the Australian community. It literally could be the case that, if there were not appropriate measures in place for dealing with security sensitive information, if it were going to prejudice information—for instance, information obtained from a foreign government—or potentially affect an ongoing source of intelligence from those governments, then it may well be that the prosecution would elect not to proceed with the prosecution of an individual. That of course would be contrary to the public’s right to justice. We need to ensure that we have a situation where all are equal before the law and our criminal laws are enforced.

I should also note that there are other jurisdictions where security sensitive information is dealt with in closed hearing procedures, including the Administrative Appeals Tribunal, the Refugee Review Tribunal, the Migration Review Tribunal and even the New South Wales Administrative Decisions Tribunal. So there are precedents for that. I should also say that while there is a closed hearing dealing with the Attorney-General’s certificate, the court must give reasons for any decision it makes in those closed hearings and those reasons, of course, as I have indicated previously, will be the subject of appeal.

I should indicate that there has also been a concern as to what effect any orders made in the closed hearing may have on the conduct of the defendant’s case. Again, in this regard,
I understand an opposition amendment will be modified in a provision to be moved by the government. While national security is paramount in the closed hearing, nonetheless, the court is required to consider whether any such order would have a substantial adverse effect on the defendant’s right to receive a fair hearing, and in particular the conduct of his or her defence. Our amendment, as picked up by the government, essentially will define ‘substantial adverse effect’ as meaning an effect that is adverse and not insubstantial, insignificant or trivial. In other words, it has to be of some moment.

I should also indicate, as I did at the outset, that this deals with the closed hearing procedure. At the trial, the court retains the ultimate discretion as to whether justice can be done. In particular, we express our appreciation to the Law Council of Australia. As a result of that consultation, we moved an amendment in the Senate which has actually been picked up by the government and is now included in the bill. I note clause 19(2) makes it clear that that power to stay proceedings is not restricted by any order that may be made in the closed hearing. Indeed, it may well be that any order to stay the hearing at trial may result from any order that has been made in the closed hearing. So that amendment is significant and appropriate.

The right to a fair hearing is guaranteed under Australia’s Constitution, as interpreted by the High Court and set out in the Dietrich case. Indeed, in Polyukhovich, the High Court confirmed that the power of a court to stay proceedings to avoid injustice is ‘an essential attribute of a superior court’ that ‘exists for the purpose of ensuring that proceedings serve the ends of justice and are not themselves productive of or an instrument of injustice’. So the bill preserves that power of the trial court to ensure that justice is delivered.

I should also indicate that the bill picked up recommendations of the Senate committee that a closed hearing process should commence if notice is given before a trial and should be commenced prior to the trial to give the defendant time to prepare their case in light of any orders that may be made at the closed hearing. I should indicate that the bill also picks up recommendations regarding the admissibility of modified, redacted or summarised evidence. The trial court still has the ultimate say as to whether, at the end of the day, that evidence is, in any event, admissible in the proceedings.

As I have indicated, the court is required to give reasons for any order it makes in the closed hearing. As a result of an amendment moved by the opposition—again, I think it will be modified in amendments to be moved by the government—that transcript will also have to be provided to defence counsel who have appropriate security clearance. Again, that provision of transcript is essential if we believe that there is to be consideration of an appeal. It is very difficult to consider and advise a party on their rights if you do not have a record of the proceedings. We note that our amendment, as picked up by the government, indeed goes back to a recommendation of the Law Reform Commission which said: ‘To the greatest extent reasonably possible, consistent with the determination of the need to protect classified or sensitive national security information used in the proceedings, the court or tribunal should ensure that all parties receive a copy of the transcript that allows them to pursue any avenue of appeal that may be open to them.’ I should say again that, while the Secretary of the Attorney-General’s Department does make a determination of the level to which a security clearance is required, the decision to make the transcript available is a decision that is actually made by the court itself, and that decision is in turn subject to appeal.
The other matters of controversy that have been dealt with in the bill include concerns expressed in the committee processes about the definition of ‘likely to prejudice national security’. In that context, the new definition now states ‘there is a real and not merely a remote possibility that the disclosure will prejudice national security’. We believe that definition is appropriate. It avoids applying a more likely than not test. The definition, as I have indicated, says ‘a real and not merely a remote possibility’.

I should also indicate that the government has agreed with submissions put before it, primarily from the Australian Press Council, that the concept of national security as originally framed in the legislation was too broad. In that context, I understand the government has removed from the definition the term ‘national interest’. That concept itself being broad, nonetheless, we agree that the existing definition of national security as contained in the bill is sufficiently broad to protect Australia’s security sensitive material. We note that the effective operation or the future protection of security sensitive information is very difficult to define in what circumstances it may be necessary, so a broad definition but not a ridiculously broad definition is appropriate.

In conclusion, we believe the legislation strikes an appropriate balance. On the one hand, it secures open justice, ensuring that counsel who appear for any Australian citizen are able to do so without fear or favour and without being vetted or restricted in their capacity to defend a client by any decision of the executive. They are obviously vitally important public interest goals that we all value in Australia. On the other hand, there is also a significant public interest goal that our authorities receive and continue to receive intelligence from overseas, and indeed that they can use intelligence that is obtained in Australia without prejudicing that intelligence—which indeed in some circumstances can have quite catastrophic effects by not only cutting off a source of intelligence but possibly literally being fatal to an agent or an informant who provides that intelligence. In these heightened times of security, while lawyers obviously want to and should vigorously advocate for the right to open justice and the right of appearance and so forth that I have outlined, they should also recognise that it is in the public interest that we receive and can appropriately manage and deal with security sensitive information. Those who call for an absolute and unfettered right of access to all material ignore that very reality.

I note the legislation is also consistent with legislation that has been introduced in the United Kingdom and Canada, as indicated in the Australian Law Reform Commission report. We believe that the quarantining of the powers of the trial court from the effect of this legislation is entirely consistent with article 14 of the International Covenant on Civil and Political Rights, which guarantees the right of a citizen to a fair trial. We say that because the discretion of the trial court to stay its proceedings in order to prevent injustice by determining the admissibility of evidence remains—its powers to ensure that justice is served remain despite this legislation which deals with how the security sensitive information is framed. At the end of the day, as I have indicated, we believe that the legislation is justified and, as a result of the detailed process of consultation, consideration and report, that it does strike the appropriate balance to which I have referred.

Finally, we note that, in their report, the Australian Law Reform Commission expressed some concern that there is not a broader regime applicable to dealing with security sensitive information and reporting of less than desirable or even criminal events that may occur in the course of their per-
performing their public service. For instance, the Law Reform Commission noted that currently the Public Service Act prohibits victimisation of or discrimination against Australian Public Service employees who have reported breaches of the APS code of conduct to their agency head, the Merit Protection Commissioner or the Public Service Commissioner. The Law Reform Commission recommended that a new scheme be introduced to overcome a number of deficiencies with the existing scheme. One of the deficiencies they noted was that the current scheme only covers APS employees, leaving out around half of the Commonwealth Public Service. It does not provide protection for disclosure to the Ombudsman or the Inspector-General of Intelligence and Security and it does not provide protection for classified or security sensitive information.

Obviously that is a broad topic, but it is one which, in light of the specific comments by the Australian Law Reform Commission, we think we should draw to the attention of the House and indeed the government for future work. It is an area that we committed ourselves to having a look at should we have been elected to government. To re-enliven that issue, which has every prospect of becoming significant, I move the second reading amendment circulated in my name:

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

“whilst not declining to give the bill a second reading, the House calls upon the Government, consistent with the recommendations of the Australian Law Reform Commission, to

(1) implement a new Federal protected disclosure regime; and

(2) include in the regime appropriate protection for persons working with security sensitive information and national security.”

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

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

Mr RICHARDSON (Kingston) (10.43 a.m.)—I rise to support the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004. These bills have three main purposes: firstly, to protect such information which, if disclosed, would be likely to prejudice Australia’s defence, security, international relations, law enforcement interests or national interests in criminal proceedings, while preventing broader disclosure of such information, including in some circumstances disclosure to the defendant; secondly, to allow certain witnesses, who just by their presence might disclose national security information, to be excluded from criminal proceedings; and, thirdly, to require that defence lawyers undergo security clearance before they can view national security information that might be relevant to a criminal trial.

With the increasing number of terrorism related criminal proceedings, for example the Jack Roche and more recently Jack Thomas, Faheem Lodhi and Bilal Khazaal cases, it will become more common for security related material to be tendered as evidence. Obviously we need a way to protect the abovementioned evidence and the methods, identities and activities of our intelligence agencies as well as those of our information exchange partners, who entrust us with their intelligence material. I believe one of the most important roles of this parliament is to ensure amendments such as these are put in place.

The existing rules of evidence and procedure do not provide acceptable protection for such confidential or sensitive information
where it may be disclosed in the course of criminal proceedings. As a consequence, the government may be forced to make a choice between accepting the damage resulting from the disclosure of information and protecting that information by abandoning prosecution. I am sure the House will agree these bills are essential to ensuring that the government is not put in this predicament when trying to prosecute federal security offences such as terrorism and espionage.

Similar bills were introduced in the previous parliament earlier this year. Those bills were then referred to the Senate Legal and Constitutional Legislation Committee, which reported on the bills in August this year. The committee supported the bills, subject to a number of amendments. However, the bills then lapsed with the dissolution of the 40th Parliament.

For the benefit of the House I would like to outline some of the amendments, which include provisions to ensure the defendant and his or her legal representative would not be excluded from the entire closed hearing and that the defendant would be able to address the court; provisions for the court to give reasons for its decision to admit or exclude information or exclude a witness; clarification that only a defence counsel who is not security cleared to the appropriate level can be excluded from the closed hearing; clarification of the relevance of the defendant’s rights to a fair trial to making orders; the provision that closed hearings of information subject to an Attorney-General’s certificate will be held by the trial court before the trial begins, rather than as soon as the trial begins; provisions that evidence in a summarised form approved during a closed hearing can be adduced without it being argued in the trial itself that the form in which the evidence is adduced is inadmissible. In all other respects the normal admissibility discretions will apply.

As has been said by the Attorney-General previously in this place, the protection of Australia’s national security is an obligation that the government takes very seriously—and I would like to add that, having formerly served as a police officer and as the federal member for Kingston, so do I. The Director-General of Security, Mr Denis Richardson, recently told the Australian Chamber of Commerce and Industry:

Sooner or later, the protection of classified and security sensitive information will be a critical issue in a terrorism trial in this country. There is always a need to balance differing public interests in matters such as these. Firstly, we have an obvious public interest in the defence and integrity of the nation, as well as the prevention of unnecessary deaths and injuries of individuals. The pursuit of this public interest involves keeping certain information from the public. This has long been a recognised fact. Secondly, we have public interest in the fairness, openness and transparency of the judicial system, given the powers the system has over individuals, especially in criminal law, where it can order the deprivation of a person’s liberty.

Openness of the system is valued as a means of ensuring scrutiny of judicial power, the development of precedential law and the education of the public on the role of the courts and the law. Ensuring openness in the court includes public hearings, publication of transcripts and decisions, and archiving of court documents. Restrictions on the use of information in open court and provisions for closed hearings involve some compromise to this principle of open justice.

Developing laws and rules for the management of national security in court cases clearly involves weighing up and balancing these competing public interests. The law already has some mechanisms for dealing with this balance. These bills balance these
interests in two ways. Firstly, they propose a scheme that will allow the prosecution to access and use national security information that may not be available for the defendant either to use or to respond to. In this way, the bills attempt to resolve the situation in which protection of national security may frustrate a prosecution. Secondly, they prioritise national security interests over open justice by providing that more information available to and used by courts will not be available to the public.

The bills mark a significant change to the way information that may affect our national security is used in federal criminal proceedings. However, it must be noted that these new measures will not prevent a defendant from receiving a fair trial. The courts will retain the power to ensure that a trial is fair and the defendant is not disadvantaged.

I support the Attorney-General’s statement on the amendments. The government has struck the right balance in protecting national security without sacrificing the independence of the judiciary and a defendant’s right to a fair trial. These bills are just one of the many measures that the Howard government has put in place to ensure security and safety of our great nation. I commend the bills to the House.

Mr KERR (Denison) (10.51 a.m.)—The legislation we are presently considering—the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004—deals with the question of how trials are to proceed in the criminal jurisdiction where components of the evidence may themselves have some national security significance. This raises very profound questions about the balance or fit of the constitutional obligations of courts to provide a fair trial to those who are charged with criminal offences, and the legitimate interests of the state in protecting matters which, if disclosed, might be a threat to the general security of the population.

In the past this issue has been dealt with by a public interest exclusion of matters which have a characteristic which might endanger national security. So, under the Evidence Act and under common law, the law already excludes matters which might endanger national security. It permits their exclusion. Also, of course, courts can move in camera so that their proceedings can be excluded from reporting. Nonetheless, within those frameworks, currently all proceedings of courts operate in an environment where the defence and prosecution both have access to the same evidence, the jury hears that evidence and takes that into account, and an appeal can proceed, all on the basis of a common access to material.

This legislation changes that framework. It does so largely as an overreaction to a case that occurred as the result of a set of allegations regarding the conduct of a person who had been formerly employed in one of our security agencies. A decision was taken not to proceed with a particular part of a prosecution when the court ruled that it would not accept evidence in a form which, in a sense, was edited so as to remove reference to a particular part of that evidence, in circumstances where the defence were able to assert that without that material they were unable to have a fair trial.

I do not want to exaggerate my comment here, but I say ‘an overreaction’ because instead of waiting for the thoughtful and well-researched report of the Australian Law Reform Commission—report No. 98, presented in May 2004 and titled Keeping secrets: the protection of classified and security sensitive information—the government drafted its response without any regard to that forthcom-
ing report. As the legislation was first presented to this House, I think it is fair to say that it contained a considerable amount of ambit. Had it been passed in that form, I think members of this House would have had much to regret, for two reasons. Firstly, I think there is a very large chance that it would have been held to be constitutionally incapable of being sustained under challenge. Secondly, were it sustained, it could have been productive of injustice.

Since that time, two things have happened. The government has had the benefit of a report from the Senate Legal and Constitutional Legislation Committee, and there has been further discussion between the shadow minister and the Attorney, whereby the government has accepted a number of further amendments so that the legislation has been substantially improved from the form in which it was first presented.

But it is important in looking at the context of this legislation to realise that there are some fundamental constitutional and legal principles that are threshold to it. The first starting point is that it is an interesting and open question as to whether or not there is a constitutionally guaranteed right to a fair trial. Certain remarks of Justice Gaudron in the case that has been referred to—Re Nolan; Ex parte Young, reported at 172 CLR 460—at 496 and other passages in that judgment, as well as remarks by Justice Kirby, suggest that it may be properly inferred from the structure and form of chapter III of the Australian Constitution, relating to the conferral of judicial power, that at least in respect of the criminal trial process there is a constitutional right to a fair trial.

Of course, if there is no such constitutionally guaranteed right, there still remains the Dietrich issue—that is, that courts do have an inherent power to stay proceedings which in their substance do not provide for a fair trial. That inherent power was the basis of the High Court’s decision in the case of Dietrich which stayed the trial of a person who was not provided with legal aid in serious criminal proceedings, until that provision was made. So there may well be an instance where simply the inherent power of a court to require its processes to operate in a way which is just and fair would lead to a court making a decision to stay its proceedings, in the exercise of its inherent jurisdiction, whether or not there is a constitutionally entrenched entitlement for a fair trial, where the way in which a matter is presented does not allow a defendant a proper basis on which to conduct their defence.

As to what might be the content of a constitutionally protected right to a fair trial, if it exists, certainly the question of an open and accessible system of justice would be at the forefront. I take the House to the remarks of Justice Gaudron in Re Nolan. On pages 496-497, Her Honour said:

The determination in accordance with the judicial process of controversies as to legal rights and obligations and as to the legal consequences attaching to conduct is vital to the maintenance of an open, just and free society. Quite apart from the public’s right to know what matters are being determined in the courts and with what consequences, open and public proceedings are necessary in the public interest because secrecy is conducive to the abuse of power and, thus, to injustice. Moreover and more directly, the judicial process protects the individual from arbitrary punishment and the arbitrary abrogation of rights by ensuring that punishment is not inflicted and rights are not interfered with other than in consequence of the fair and impartial application of the relevant law to facts which have been properly ascertained.

Another example of a court taking into account that kind of principle is the decision of the Queensland Court of Appeal which, in Re Criminal Proceeds Confiscation Act 2002, held that provisions which were put in
place by the Queensland parliament which would have allowed a court, in the absence of a person whose property was affected, to make confiscation orders without that person being heard were unconstitutional. In a unanimous decision in the Queensland Supreme Court, His Honour Mr Justice Williams said:

How could a judge possibly be so satisfied in the exercise of judicial power when the only entity entitled to place material before the court on which a judgment on that issue could be formed was the State? Similarly, how could a judge possibly determine whether or not it was appropriate to require the State to give an undertaking as to damages and costs when the only entity entitled to place material before the court was the State? Asking a judge to make a decision on such issues in those circumstances makes a mockery of the exercise of the judicial power in question. The statutory provision removes the essential protection of the citizen inherent in the judicial process. Effectively the provision directs the court to hear the matter in a manner which ensures the outcome will be adverse to the citizen and deprives the court of the capacity to act impartially.

The legislation that is currently before the House has been constructed with some care to avoid the specific defects that have been identified by those remarks, because it does preserve for a court that hears a matter an overarching discretion to stay a proceeding if the reception of material in the form that would be consistent with the security obligations that this legislation imposes would result in the trial being unfair. It also places on the court an ultimate decision, for example, as to whether to permit a lawyer who has not been security cleared to have access to parts of closed proceedings. So, in a sense, the prohibited element of the conferral of nonjudicial power on a judicial tribunal, the court, by legislation has been sought to be avoided by that mechanism. But as the Law Reform Commission report itself states at paragraph 10.30:

... it appears that legislation which gives a court discretion (as opposed to a direction) to receive secret evidence in particular circumstances may not offend Chapter III of the Australian Constitution.

It is an interesting remark. It further states: However, there is still a risk that the grant of that discretion will amount to an authorisation (as opposed to a requirement) for a Chapter III court to exercise judicial power in a manner that is inconsistent with the essential character of a court or with the nature of judicial power.

It continues:

As noted above, the High Court in Chu Kheng Lim v Minister for Immigration, and Gaudron J in Nicholas v The Queen stated that Parliament could neither require nor authorise a law which allowed the courts to act in such a manner.

As I have said, and as I think it is appropriate to recognise, although the government initially introduced legislation which was properly characterised in evidence to the Senate committee by Mr Bret Walker SC, former president of the Law Council, as a conscientious attempt to balance some very difficult things, in the upshot one of the prevailing views is that the trade-offs have gone too far. The Senate committee report certainly agreed with the views put by Mr Bret Walker SC and made a series of recommendations, a number of which have been picked up by the Attorney, to his credit. To his greater credit, a number more have been picked up following representations by his counterpart, the shadow minister for defence.

There are still, however, issues which are of concern. I will list three and address them briefly before I conclude. I think these are issues which may ultimately be the source of argument that the legislation has edged into that area which is impermissible constitutionally and they certainly will remain subject to public debate, notwithstanding the outcome of any such argument that is put.
The first point is the unwillingness of the Attorney-General to accept the Law Council of Australia’s proposition that, in considering whether or not lawyers would have access to closed proceedings without security clearance, the court has to take into account a number of factors, including the period of active practice which the lawyer has had, the lawyer’s previous experience in handling confidential information and the effectiveness of any implied or express undertaking to use that information only for the purpose of defending the accused in the relevant court proceedings.

I simply cannot understand why the Attorney-General has declined to cement those matters into the discretionary factors that a court ought to take into account. It would have satisfied some of the concerns of the Law Council of Australia and of those concerned that this legislation not be used in a way which would preclude effective entitlement of a person to counsel of their choice. I know it is said that rights to counsel of choice are preserved. But without going through the security clearance hoops and without there being some guidelines and framework for allowing non security-cleared lawyers who are trustworthy and respectable to be briefed then, in practice, the right of the accused to effective representation by counsel of choice is restricted.

Secondly, there is still an area where I cannot understand why the Attorney-General has not accepted recommendations—that is, where an application for matters to be heard and dealt with in confidence and secrecy because of their national security characteristic is refused by a court. In other words, it is where a court says: ‘There is no merit in this application. The Commonwealth has brought forward a claim for the protection of evidence. We reject that. There is not a proper national security basis advanced.’ In those circumstances, the amendment would have the result that that fact and the transcript in relation to that fact would not be published. Why that should be prevented I really do not understand. One of the key things we have to recognise is that sunlight is the best disinfectant in this area. There are numerous examples in the past where, in the teeth of national security concerns, justice has gone awry. A number of those instances are reflected in the report of the Australian Law Reform Commission, which details instances where security services in other countries have misused opportunities to bring forward secret information in secret proceedings in secret trials. We do not need much knowledge of international affairs to know that those instances have occurred even in countries like the United Kingdom, which has a tremendously important and well-regarded tradition of protection of civil liberties. When the Irish terrorism trials were on—the Guildford 7 and various other groups were prosecuted—the highest courts in the land could not believe that the police would act in the way that they did. Lord Denning, for example, felt that there was no merit whatsoever in the grounds of appeal. Later, it was found that, in fact, they had been set up. So, where a court finds that there is no proper national security basis, why not publish that finding and allow the public to see it?

The last point I will make is on access to transcripts of appeals. I do not understand why, if a lawyer is security cleared—

The DEPUTY SPEAKER (Mr Quick)—Order! The honourable member’s time has expired.

Mr KERR—If I could just finish this remark. I do not understand why, if a lawyer is security cleared, it is then permitted for the Attorney-General to appeal a decision to make available access to a transcript that would allow an appeal. That is an abuse of justice both potentially and in actuality.
Those three issues still remain, but, on balance, this legislation will pass this House. I thank the Deputy Speaker for the indulgence to conclude my remarks.

Mr SLIPPER (Fisher) (11.12 a.m.)—The honourable member for Denison always makes a very thoughtful contribution to any debate in this place, even though not everyone agrees with everything that he says. I suspect it is probably a fairly positive thing that people do not always agree with comments made by the member for Denison. However, on behalf of the government, I would like to thank him for the credit that he gave to the Attorney-General for the consultation on this legislation. The Attorney-General was prepared to consider recommendations made by the Senate Legal and Constitutional Legislation Committee. Some of those recommendations were accepted, and other recommendations were also considered and have been accepted. Ultimately, the government has to make a decision in legislation on what is the right balance, and the protection of Australia’s national security is an obligation that the government takes very seriously. I am not for a moment suggesting that those opposite do not share that aim, but sometimes the line of balance might be viewed differently from the perspective of individual people.

As the recently elected Chairman of the House of Representatives Standing Committee on Legal and Constitutional Affairs, I note with interest that the Attorney-General has considered the results of an inquiry by the Senate committee into these bills, the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004. At one of our meetings recently, we thought that we would contact the Attorney-General with a view to the House committee doing some review on legislation of a similar nature to the legislation reviewed quite regularly by the Senate committee in the past. In fact, I think that, when the member for Denison was the Minister for Justice, the House of Representatives Standing Committee on Legal and Constitutional Affairs had references into bills. I intend to discuss with the Attorney-General this matter of sharing the workload between the Senate committee and the House committee.

There would have to be some sort of informal arrangement, such as existed previously, so that when a House committee looks into a particular bill the work is not duplicated by that Senate committee subsequently, but that is really just a matter of procedure. It could be that legislation that the Attorney needs considered by the parliament could be dealt with more expeditiously by the House committee sometimes rather than simply sending everything off to a Senate committee.

The bills currently before the chamber, the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004, have a number of key purposes. They are intended to allow prosecutors and courts to use information, the disclosure of which would be prejudicial to the national interest—national security information—in criminal proceedings while preventing broader disclosure of such information, including, in some circumstances, disclosure to the defendant. They also allow certain witnesses, whose mere presence might disclose national security information, to be excluded from criminal proceedings, and they require that defence lawyers undergo security clearance before they can view national security information that might be relevant to a criminal trial. The latter point was focused on at some length by the member for Denison in his speech. I suppose it is always im-
important to make sure that there is a balance between the national interest on the one hand and on the other hand the necessity in a democracy for an individual facing a court to be given a fair trial. The legislation which is currently before the House endeavours to strike that balance as best it can.

In the Attorney’s second reading speech, he quoted the Director-General of Security, Mr Dennis Richardson, who told the Australian Chamber of Commerce and Industry:

Sooner or later, the protection of classified and security sensitive information will be a critical issue in a terrorism trial in this country.

It is therefore necessary in this legislation to sort out rules of evidence and procedure which do give the protection for that information where it may be disclosed in the course of criminal proceedings. It could be that if you had an untrammelled ability to reveal witnesses and sources in courts the national interest might be severely curtailed because those people who do not have the interests of this country at heart—terrorists—could well use the information gleaned from a court proceeding to ramp up their terrorist threats to Australia. That, of course, is not anything that anyone would like to see, but it is why it is necessary to look at the issue of evidence and matters contained in these bills with a view to balancing the right to a fair trial with the necessity of ensuring the national interest.

I mentioned that these bills were referred to the Senate Legal and Constitutional Legislation Committee for inquiry and report. As the member for Denison said, it is to the credit of the Attorney-General that a number of those recommendations were accepted. There were recommendations which were not adopted—recommendations Nos 1, 2, 4, 5, 10 and 12. It was for very good reason that those recommendations were not adopted. The committee recommended that the court retain its discretion to determine whether its proceedings are open or closed and provide a written statement outlining the reasons for holding proceedings in camera. The committee may not have been aware that the intention of the bills is to hold closed hearings only in relation to those aspects of the trial where information that may affect national security needs to be discussed with the court, not the trial itself. The trial judge retains his discretion to stay the proceedings or make other orders considered necessary to ensure fairness to the accused. The committee also recommended that the courts be allowed the discretion to determine to what extent a court transcript or parts of it should be sealed or distributed more widely and any undertakings required for people to have access to the transcript. If implemented, the recommendations of the committee would have reduced the effectiveness of the other provisions in the bills. While the government certainly considered what the committee recommended, on balance it was found that those recommendations, if implemented, would have been to the detriment of the effectiveness of what we seek to achieve through the bills currently before the chamber.

The committee also recommended that the court assume a more active role in determining whether a legal representative of a defendant requires a security clearance before he can access information, but the inclusion of such an amendment was strongly opposed by the security agencies as it could result in classified information being disclosed to persons who do not hold the appropriate security clearance. The committee also recommended that the term ‘substantial’ be removed from what is now clause 31(7)(b) of the bill. The word ‘substantial’, however, was included to ensure that the court was not restricted in making orders for the nondisclosure of information on a matter which would not substantially affect the defendant’s right
to a fair hearing. This does not mean, of course, that insubstantial matters cannot affect the defendant’s right to a fair hearing. They are some of the matters which, in the national interest, the Attorney was not disposed to accept from the recommendations of the committee.

There were, however, a number of amendments which the government was prepared to accept. The decision made by the Attorney has been to accept committee recommendations Nos 6, 7, 8, 9, 11, and 13. The effect of those amendments is to ensure that the defendant and his legal representative not be excluded from the entire closed hearing and that the defendant is able to address the court; make it clear that only a defence counsel who is not security cleared to the appropriate level can be excluded from the closed hearing; clarify the relevance of the defendant’s right to a fair trial to making orders; provide that the court must consider whether the exclusion of information or a witness would impair the ability of a defendant to make his own defence; enable a closed hearing in relation to information that is subject to a certificate to be held by the trial court before the trial begins, rather than as soon as the trial begins, to give the defendant time to prepare his defence; and ensure that evidence in a redacted or summarised form approved during a closed hearing can be adduced without rearguing the manner in which the summary or redaction has been done and approved by the court. In addition, further amendments are made to overcome some unintended consequences and technical anomalies in the bill, and there are a number of those further amendments.

These bills before the chamber do strike the appropriate balance. I am pleased that the opposition will broadly support the aims sought by the Attorney-General for inclusion in this legislation and I am pleased to be able to commend the two bills to the House.

Mr RUDDOCK (Berowra—Attorney-General) (11.23 a.m.)—I will sum up now. Firstly, I thank the members for Barton, Kingston, Denison and Fisher for their contributions to the debate. I apologise to the member for Barton that I was not here for his contribution; I had a speaking commitment in one of the Senate committee rooms and it kept me away. I did hear at least the first 20 minutes of the member’s speech, I think, but I may have missed the latter part of it. It was very measured and responsive, recognising the importance of the National Security Information (Criminal Proceedings) Bill 2004 and the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004.

In concluding, can I just say that this legislation dealing with national security information is important to the overall strategy of protecting our national security. Since September 11 the government has put in place a robust legislative framework that deals with all aspects of counter-terrorism, including the prevention, investigation and punishment of terrorist activity. We have moved also to improve arrangements to bring terrorist cases to the court, including strengthened bail laws. It is therefore appropriate that we give our courts the tools to deal with classified material that will increasingly be tendered as evidence to support prosecutions for terrorism offences.

The bills will strengthen the procedures for protecting information that may affect our national security but will also protect an individual’s right to a fair trial. A court which has found that sensitive, security related information should not be disclosed will have an alternative to simply dismissing the charge. It will be able to admit documents and information in a redacted form that protects national security but preserves the essence of the information. Consequently, the Commonwealth will no longer have to
choose between risking disclosure of sensitive information that relates to the national security and protecting this information by abandoning the prosecution, even where the prosecution relates to alleged crimes that could have very grave consequences for our national security.

The legislation will significantly change the way in which that information may affect our national security and how it is used in federal criminal proceedings; however, it will not jeopardise the very principles on which our legal system is based. The government recognises the importance of maintaining an independent judiciary and an accused person’s right to a fair trial. Hopefully this strikes the right balance in also protecting information that may affect our national security and the lives of our nationals. Yesterday I may have failed to table an explanatory memorandum and, for caution, I table one now in case it is needed.

In conclusion, I just note that this legislation has been the subject of consideration. In the development of it we were aided considerably, as the member for Barton noted, by the Australian Law Reform Commission. I thank the Law Reform Commission for their work. I note that the member for Barton is proposing the following amendment:

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

“whilst not declining to give the bill a second reading, the House calls upon the Government, consistent with the recommendations of the Australian Law Reform Commission, to

(1) implement a new Federal protected disclosure regime; and

(2) include in the regime appropriate protection for persons working with security sensitive information and national security.”

I simply make the point that, if there are additional recommendations that have import for this legislation and it is appropriate that those recommendations be introduced or responded to, we will do that.

As I have said before, I have found from time to time that careful consideration of these matters can lead to changes—hopefully changes that are beneficial—and I am prepared to maintain an open approach in relation to those matters. But I do not want to be in a position where the purpose that we are seeking to meet is undermined by amendments that are proposed just for the sake of having amendments. I will look at these matters in a considered way. I do thank the opposition for its foreshadowed support, subject to the amendments that I will be proposing. Those amendments reflect the work of the Senate committee. They reflect the contribution of my colleague opposite. I have to say that they also reflect the positive work undertaken by some of my colleagues in the backbench committee of the government. I think the idea of including the opportunity for security-cleared counsel to be able to look at and work on evidence and take notes in a secure environment that might be defined by regulations is a new development that arose from a backbench consideration on the government’s part. I think the honourable member opposite would acknowledge that it was a useful addition.

As with all of this legislation, I take the view that it is not a finished work. We may well find, as we have with other matters of this sort, that in the implementation there will be reason to come back to the House. I hope there will not be. If there is, I simply highlight the importance of this legislation and say that, as with some of the other national security legislation which we have found in implementation to not work quite as we first thought likely, we would come back for reconsideration of those matters. I do want to thank all of those who have been involved in the development of this. I want
to thank the opposition for its consideration of these matters at a time when the opposition could take a bloody-minded approach to the matter if it were inclined. I think it is important that the community knows that these important national security issues are being dealt with on both sides of the parliament in a considered way. I thank my colleagues and I hope we can resolve this matter quickly now.

The DEPUTY SPEAKER (Mr Lindsay)—The original question was that this bill be now read a second time. To this the honourable member for Barton has moved as an amendment that all words after ‘That’ be omitted with a view to substituting other words. The question now is that the words proposed to be omitted stand part of the question.

Question agreed to.
Original question agreed to.
Bill read a second time.

Consideration in Detail
Bill—by leave—taken as a whole.

Mr RUDDOCK (Berowra—Attorney-General) (11.31 a.m.)—by leave—I presented yesterday a supplementary explanatory memorandum to the bill. It is with the Clerk. I move government amendments (1) to (8), as circulated, together:

(1) Clause 7, page 5 (line 6), after “means”, insert “an effect that is adverse and”.
(2) Clause 23, page 11 (lines 28 to 30), omit subclause (1), substitute:

(1) The regulations may prescribe:
    (a) ways in which information that is disclosed, or to be disclosed, to the court in a federal criminal proceeding must be stored, handled or destroyed; and
    (b) ways in which, and places at which, such information may be accessed

and documents or records relating to such information may be prepared.
(3) Clause 23, page 12 (line 2), omit “or storage”, substitute “storage, handling or destruction”.
(4) Clause 26, page 18 (lines 18 and 19), omit paragraph (c), substitute:

(c) if subparagraph (1)(a)(iii) applies—the prosecutor, defendant and the witness mentioned in that subparagraph;

and, if the defendant is a potential discloser under any of the above paragraphs, the defendant’s legal representative is also a potential discloser.
(5) Clause 29, page 23 (lines 8 to 16), omit subclause (3A).
(6) Clause 29, page 23 (line 26) to page 24 (line 3), omit subclauses (5) and (6), substitute:

Court to make etc. record of hearing

(5) The court must:

(a) whether before or after it makes an order under section 31, make a record of the hearing; and

(b) keep the record; and

(c) make the record available to:

(i) a court that hears an appeal against, or reviews, its decision on the hearing; and

(ii) the prosecutor; and

(iii) if section 30 applies—the Attorney-General and any legal representative of the Attorney-General; and

(d) allow any legal representative of the defendant, who has been given a security clearance at the level considered appropriate by the Secretary, to have access to the record, and to prepare documents or records in relation to the record, in a way and at a place prescribed by the regulations for the purposes of this paragraph; and
(e) not make the record available to, nor allow the record to be accessed by, anyone except as mentioned in this subsection.

Copy of proposed record to be given to prosecutor etc.

(6) Before the court makes the record under subsection (5), the court must give a copy of the proposed record to the prosecutor and, if section 30 applies, the Attorney-General (each of whom is a record recipient).

Statement recipient may request variation of proposed record

(7) If a record recipient considers that making the proposed record available as mentioned in subparagraph (5)(c)(i) and allowing access to it as mentioned in paragraph (5)(d) will disclose information and the disclosure is likely to prejudice national security, the record recipient may request that the court vary the proposed record so that the national security information will not be disclosed.

Court’s decision

(8) The court must make a decision on the request.

36A Appeal against court decision under section 29

(1) A record recipient (within the meaning of subsection 29(6)) may appeal against a decision of the court made under subsection 29(8).

(2) The court that has jurisdiction to hear and determine appeals from the judgment on the trial in the proceeding has jurisdiction to hear and determine any appeal under this section.

I will talk to each of the items briefly. Item 1 amends the definition of ‘substantial adverse effect’ in clause 7 of the National Security Information (Criminal Proceedings) Bill 2004. The amendment moved by the opposition and approved by the Senate defined this term to mean not insubstantial, insignificant or trivial. The term ‘substantial adverse effect’ is referred to in clause 31(7)(b) of the bill, which provides that the court, in deciding what order to make under section 31, must consider:

… whether any such order would have a substantial adverse effect on the defendant’s right to receive a fair hearing, including in particular on the conduct of his or her defence …

Item 1 clarifies this definition by inserting the words ‘an effect that is adverse and’ and this amendment ensures that the definition encompasses the whole meaning of ‘substantial adverse effect’ rather than merely the word ‘substantial’. For this reason the government moves to amend clause 7.

Items 2 and 3, regarding the power to make regulations, amend clause 23, which currently allows regulations to be made in relation to the storage of information disclosed or to be disclosed during a federal criminal proceeding. Item 2 provides that regulations may be made in relation to accessing and preparing information as well as storage handling and destruction. It also ensures that regulations can be made to prescribe the place and manner in which a per-
son can access, prepare, store, destroy or handle information that is likely to prejudice national security. Such regulations would require processes similar to those in the *Protective Security Manual*.

Item 3 ensures that the court can make orders relating to the handling and destruction of information as well as the storage. Amendments to clause 23 will ensure that information that may affect national security is adequately protected. Thus, the government moves to amend clause 23 accordingly. Item 4, regarding a potential discloser, amends clause 26(8)(c) to clarify that the defendant’s legal counsel falls within the definition of potential discloser. This amendment ensures that both the defendant and the defendant’s legal representative obtain the Attorney-General’s certificate. In turn, this ensures that the relevant offence of unlawful disclosure extends to the defendant’s legal representative. The government moves to amend clause 26(8)(c) accordingly.

Item 5 provides additional criteria for excluding defence counsel. This amends the bill by removing clause 29(3)(a). This subclause provides that, in considering whether to exclude an uncleared legal representative of the defendant, the court should consider how long that lawyer has been in active practice without previous criminal convictions or adverse findings in disciplinary matters, the lawyer’s previous experience in handling confidential information and the effectiveness of any undertaking to the court.

Clause 29 gives the court discretion to exclude uncleared legal representatives from a closed hearing if the court considers that information is likely to prejudice national security and would be disclosed. However, clause 29(4) ensures that the defendant and his or her legal representative are able to make submissions in relation to both any claim to exclude particular material and its effect on the defendant’s ability to obtain a fair trial.

Clause 29(3)(a) does not remove the ability of a court to decide to exclude the defendant’s legal representative from a closed hearing. Uncleared representatives can still be excluded. However, this provision requires a court to consider additional criteria in exercising its discretion under clause 29(3). Clause 29(3)(a) does not add anything to the bill. It is only one criterion and it should be considered by a court in deciding whether to give an uncleared legal representative access to security sensitive information or whether such access would be likely to prejudice national security. Whether a lawyer has previous criminal convictions or adverse findings in disciplinary proceedings offers little insight into whether the lawyer is of security concern. Only an appropriate security clearance can give us that assurance. The security assurance process involves checks of many aspects of a person’s life by vetting agencies to guard against misuse of information. It is a preventive measure that enables the Commonwealth to identify as far as possible the risk posed by giving a particular person access to security sensitive information. (*Extension of time granted*)

Clause 29 does not require that lawyers be security cleared to represent a defendant. However, uncleared legal representatives cannot access information that is likely to affect national security and may be excluded from a court hearing. This requirement is true for public servants, law enforcement officers, intelligence officers and others who require access to classified material. There is no compelling reason why a legal representative who seeks access to security sensitive information should be exempted from this rule.
In addition, foreign governments may be reluctant to share intelligence important to protecting Australia if they become aware that there is a possibility that information may be provided to uncleared people. Furthermore, courts are not equipped with sufficient resources to undertake security vetting processes themselves to determine whether there is anything in a lawyer’s private life that gives rise to a risk that information that may affect national security could be misused. For those reasons, the government moves to omit clause 29(3)(a) from the bill.

Item 6 deals with the release of transcript to the public and the defence counsel. This item amends the bill in two ways through the removal of the public release of transcript. First, it removes clause 29(6). The insertion of this clause was moved by the opposition and approved by the Senate. It provides that a court must make the record of a closed hearing available to the public unless the court determines that the publication of the transcript would prejudice national security. A closed hearing is closed to the public in order to prevent the disclosure of information that may affect national security. It would not be appropriate to protect the disclosure of information all the way through the trial only to have it disclosed to the public in a transcript. This does not mean that there should be no record of proceedings. The court is required to provide written reasons for making an order under clause 31, which are made available to the prosecutor and the defendant. The transcript of the closed hearing may be available to the defendant’s security cleared legal representative in a secure environment. In addition, the public and parties to the proceedings would have access to the transcripts of the trial proceeding itself. The government moves to omit clause 29(6)—the release of transcript to the defence counsel.

Second, item 6 amends the bill by substituting clause 29(5) with a new clause that provides that the court must make and keep a record of a hearing and must make the record available to an appellate court, the prosecutor, the Attorney-General and his or her representative. The court must allow a security cleared legal representative of the defendant to have access to the record and to prepare documents or records in relation to the record in a way and at a place prescribed by regulations. This ensures access occurs in a secure environment. That is the amendment that I spoke of earlier.

The item also inserts new clauses 29(6) to 29(8) to ensure that before making a record available the court gives a copy of the record to the prosecution and, if present, the Attorney-General and his or her legal representative. If a recipient considers that making the record available to the defendant’s legal representative would disclose information that is likely to prejudice national security, the recipient may request that the court vary the record to protect the national security information. The court must make a decision on this request. For these reasons, the government moves to substitute clause 29(5).

Finally, items 7 and 8 deal with appealing the court’s decision about the record. These items insert clauses 29A and 36A respectively. Clause 29A provides that, following a decision of the court about whether to grant a request to vary aspects of the record, the recipient can also request that the court delay the making of a record available to the defendant’s legal representative. The court must grant the request. This amendment seeks to give the recipient sufficient time to appeal the court’s decision. Clause 36A then provides that the recipient may appeal against the court’s decision made under clause 29(8). The court has a jurisdiction to hear and determine appeals from the judgment on the trial in the proceeding and also
has a jurisdiction to hear and determine any appeal under clause 36A. These clauses would add a further level of protection for the use of security sensitive information in federal criminal proceedings. The government moves to insert clauses 29A and 36A into the bill. I thank the House for its indulgence.

Mr McCLELLAND (Barton) (11.41 a.m.)—The opposition will support the government’s motion. I would like to comment, however, on two of the government’s amendments. Firstly, amendment (5) deletes from clause 29 of the bill what were some additional criteria or identifying criteria that the court could consider. That proposition was advanced by the opposition and moved as an amendment in the Senate as a result of what we believed were valid representations from the Law Council of Australia about the right of non-security cleared counsel to attend closed hearings or, rather, not be excluded from parts of closed hearings. As the Attorney-General indicated, the additional criteria or identified criteria related to the period of active service of the practitioner without, firstly, previous criminal conviction or adverse finding; secondly, previous experience in handling confidential information; and, thirdly, the effectiveness of any implied or expressed undertaking to use such information only for the purpose of defending an accused in the relevant court proceedings.

In advancing the amendment we also had regard to the report of the Australian Law Reform Commission. In particular, there is a discussion in the Law Reform Commission report about how, in Lappas’s case itself, the issue as to whether relevant security sensitive information should have been provided to counsel was resolved as a result of an appropriate undertaking. At paragraph 6.107, the Australian Law Reform Commission report states:

In the ALRC’s view, the court’s power to restrict access to certain material to people holding a security clearance and to require participants in court proceedings to give confidentiality undertakings might often work in tandem. The Crown might well seek orders requiring both. The court or tribunal will be able to determine which of them, separately or in combination, provides that degree of protection fairly required by the demands of justice in each case.

I must say that, as currently framed in clause 29, we would not see the court being precluded from deciding whether—to again pick up the words of the section—‘the disclosure would be likely to prejudice national security’. On our reading of clause 29, we do not see that as precluding the court from considering, perhaps, such a combination of security clearance and undertaking as is mentioned in the Law Reform Commission report. That is something that the Attorney-General may wish to address, or at least could be addressed in the Senate, after giving consideration to that. I suppose it could be a not insignificant issue. But the purpose of our amendment went essentially to that—there were a number of things that a court might consider by way of balancing whether a non-security cleared counsel should be secured.

I should say at the outset that I personally—and this may not necessarily be the view of all my colleagues—do not believe it is an onerous thing to request that counsel appearing in defence of a person involved in a case such as this obtain a security clearance. In balancing the public interest criteria that I referred to in the second reading debate, I think it is reasonable to expect that. I think we are entitled to say to counsel: ‘Who are you defending? Are you looking at your own point of principle jealously or are you looking at the rights of the person you’re defending?’ If they are looking at the rights of the person they are defending it is not an onerous obligation, I believe, to obtain a se-
curity clearance. I conclude by noting that point.

However, going back to where I started, there is perhaps room for a balancing act that the court could perform. I will address one further amendment, if I may continue. The second and final amendment that I want to address is amendment (6). This is in respect of access to transcripts. The amendments that the opposition moved in the Senate related to giving the court power to grant access to the transcript to both counsel. *(Extension of time granted)* We saw that the ability of the court to make the transcript available not only to counsel but also to the public if the court were satisfied—and I cannot recall precisely the words that we used in the amendments adopted by the Senate—that it would not prejudice national security would be applicable, for instance, in circumstances where the court determined that no issue of national security or justifiable issue of national security had been put before it. In other words, that it made a determination on the Attorney-General’s certificate that there was no justification for excluding, reducing or summarising the information and it would give its reasons, which it is obliged to do under the legislation already. But it would also make available the transcript in those circumstances, with appropriate appeal procedures in place so that the Crown, either through the Attorney-General or the prosecutor, could appeal any such release of the transcript. We advanced that from the point of view of achieving a balance between the closed hearing and the public interest in having tribunal or court proceedings literally open to the public’s view—as I think the member for Denison said in his second reading contribution, ‘to have sunlight on the process’. You can be overly dramatic in using that terminology, I suppose.

We appreciate that there might be a need to restrict access to the transcript if national security would otherwise be prejudiced. We thought our amendments provided for that and provided for the appeal. Again I put on the record our reasons for what we believe are valid amendments. Having said that, as I said in my speech in the second reading debate, I think that generally the amendments that have been moved by the government and those that have previously been adopted in the bill as it now stands do provide a balanced outcome. We were proposing measures by way of improvement, if that is a better way of framing the points we are making at this instance. I am not sure whether my colleague the member for Denison, who was also involved in considering this matter, wants to make a few remarks in this context as well.

**Mr Kerr** *(Denison)* *(11.49 a.m.)*—I thank the shadow minister and the Attorney-General. There are three issues that I would appreciate the Attorney’s response to in his concluding remarks. One is simply a practical question, and it relates to the possibility of counsel seeking pre-clearance. *(Extension of time granted)* We saw that the ability of the court to make the transcript available not only to counsel but also to the public if the court were satisfied—and I cannot recall precisely the words that we used in the amendments adopted by the Senate—that it would not prejudice national security would be applicable, for instance, in circumstances where the court determined that no issue of national security or justifiable issue of national security had been put before it. In other words, that it made a determination on the Attorney-General’s certificate that there was no justification for excluding, reducing or summarising the information and it would give its reasons, which it is obliged to do under the legislation already. But it would also make available the transcript in those circumstances, with appropriate appeal procedures in place so that the Crown, either through the Attorney-General or the prosecutor, could appeal any such release of the transcript. We advanced that from the point of view of achieving a balance between the closed hearing and the public interest in having tribunal or court proceedings literally open to the public’s view—as I think the member for Denison said in his second reading contribution, ‘to have sunlight on the process’. You can be overly dramatic in using that terminology, I suppose.

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seek it, so that the delays that are inherent in determining whether or not—

Mr Martin Ferguson interjecting—

Mr Kerr—Yes. The Attorney and I have both had occasion to access this material without the obligation of formal clearance. That said, the issue is one that I would appreciate the Attorney’s response on, bearing in mind the fact that it will discredit the effective operation of this scheme if lawyers seeking clearance face long delays before it can be ascertained whether or not clearance can be provided. There will be instances where that is inherent in the process. It may well be best to allow those issues to be resolved earlier so that there is at least a bank of lawyers available to those who may face such charges who can be briefed without the prospect of those delays emerging.

Secondly, the issue that the shadow minister referred to is where an application by the prosecutor or the Attorney for the admission of material under the circumstances prescribed by the legislation is refused—in other words, where an unmeritorious or unsuccessful application is made. For those instances, I would like the Attorney to respond to the argument as to whether the proper balance in the public interest is to make certain that the public is aware of the fact that such a failed application was made, and the circumstances of it, to the fullest extent—that is, the transcript, the fact of its application and its failure is known—consistent with the protection of any matters which are incidentally referred to in the proceedings which may have national security content.

The reason I ask is that the Australian Law Reform Commission’s report mentions a number of instances where agencies entrusted with national security responsibilities have, not with any malice but routinely, acted in a way which really does give rise to concern. For example, I refer the Attorney to paragraph 10.6 in the report and the instances where Professor David Cole’s report—in relation to the way in which secret evidence has been used in immigration proceedings in the United States—notes a number of instances where secret evidence was used and where there was no legitimate need for the evidence to be secret, because it was improperly classified by another agency. (Extension of time granted) The evidence was overclassified and, with no review of the classification decision, the agency failed to keep any record of many of its secret evidence presentations, defeating meaningful review and other such matters.

There is a public interest in making certain that, as well as allowing in a proper instance the security agencies to have the proper opportunity of bringing forward materials and presenting prosecutions which could not otherwise proceed but for these provisions, there is certainty in this great power that we are entrusting to the security agencies and to the courts. If it is sought repeatedly in instances where the courts say that it is being pursued for improper or frivolous reasons, that is a matter that the public is entitled to know about. It is also salutary in relation to the way in which the agency itself operates. I would like the Attorney to indicate why in these circumstances, excluding any incidental matter which might be raised in those proceedings which has national security context, applications of the kind that I have described are not publicised. If the agencies are able to keep those things secret they could make frivolous applications too readily. There is no sunlight on or scrutiny of the misuse of applications to have proceedings conducted in that way.

The last point that I would appreciate the Attorney’s comment on is in relation to the very complex provisions that now apply to access to the transcript by the legal represen-
tatives of the defendant. I thank the Attorney for his remarks that this particular measure is an advance. He properly drew attention to the fact that it was a concern within the government caucus which led to its articulation in the form that it takes in the present amendment. The shadow minister at the table, the member for Griffith, presented a different form of amendment, but addressing the same issues of concern. I ask the Attorney why it is the case that we need all these complicated subsequent processes after we have the legal representative of the defendant who has been given a security clearance at a level considered appropriate by the secretary. Why do we then have a whole raft of processes that would take an enormous amount of time if brought into play, delaying the opportunity of effective access? Why are they necessary?

Let me give an example, and I ask the Attorney to reflect on it. Assume that a person, for whatever wisdom or lack of wisdom that they have exercised, has instructed counsel at their trial who is not security cleared and that counsel has been excluded from some of the closed proceedings as a consequence of this legislation. The man or woman is convicted. An appeal is brought and, naturally, a person in those circumstances with greater wisdom chooses to instruct somebody who would seek security clearance. Part of that lawyer’s responsibility would be to frame an appeal, no doubt around some of these issues which were conducted without public access. He or she would need access to the transcript.

Everyone else has access to the transcript. The court that is going to review the decision on appeal, of course has access to it. The prosecutor has access. The legal representatives of the Attorney have access to it. The provisions of the bill say that a legal representative of the defendant, who has been given a security clearance at the level considered appropriate, can have access to the record. They cannot copy it, but they can have access to that record. (Extension of time granted) It is limited access and only in a way and at a place prescribed by regulations. In other words, it properly takes into account that through this process documents are not going to be copied and therefore left in insecure circumstances. It puts into place an arrangement that the Attorney can frame by way of regulations to make certain this process does not give rise to breaches of national security responsibilities.

But with all that, having done that, there are then a series of provisions that require further assessment by the court. The opportunity for the Attorney to request the court not to make that information available and then the provisions relating to appeals could all substantially delay the opportunity of a person to put forward an appeal and could certainly mean that grounds of appeal could not be established within the time frames required. A potential substantial injustice is immediately provided there. I think it is fair to ask the Attorney whether, if you have a rule that says you require a security clearance, the level of security clearance is to a degree identified by the secretary of the Attorney’s own department. This is not a general provision. If it requires high-level security clearance, that would be identified.

The means of access to that material are to be under regulations prescribed by the Attorney. The prosecutor can have access to that information. The reviewing court has access to that information. The only person who is held out from access to the material potentially is the counsel instructed who has security clearance and would have had access to that information in the court proceedings below, had they been security cleared, because they would have been entitled to be there in those proceedings with that security clearance. But, now, on appeal, when they are seeking it, they can be held out from it
because it could not have been done if they had been security cleared in the lower court. They must have been in that process if they had that security clearance. Now they want the transcript so that they can pursue their lawful entitlements to review that decision, and there are appellate provisions which may exclude them entirely.

It seems a great inconsistency within the framework of that legislation to have these belt and braces provisions which actually can exclude entitlements on an appellate level and which are substantively conferred at first instance. The problem only arises of course where a person has not used security cleared lawyers in the first instance or wants an appellate lawyer who is different from the lawyer who conducted the case at first instance. I presume these provisions would prevent the lawyer at first instance communicating with the newly instructed counsel as to what had happened in those secret proceedings previously. I assume they would; they appear to.

I ask the Attorney three things. Firstly, can we consider a process of pre-clearance so that this does not become an obstacle course? Secondly, can we look at why, where a matter has been determined adversely to the application of the Commonwealth, matters should not be exposed to the public so that we do not have a series of wrongly contested applications, frivolous applications, without any possibility of public disclosure and with great penalty if somebody even suggests that that is the case? I do not suggest that that would happen, by the way. I am not making that accusation; that is not an accusation. It is simply a proper reflection of the fact that similar instances have occurred in other jurisdictions and we would not wish them to happen here. Thirdly, why is it the case that a lawyer who is seeking to represent a person who has brought an appeal has to undergo further limits on the access to the transcript than would occur had they been the lawyer representing that person at first instance? I ask the Attorney to respond to those matters.

Mr RUDDOCK (Berowra—Attorney-General) (12.05 p.m.)—I do not want to delay the House any longer than necessary but, if I may, I will pick up what I think are five points that have been made: two by the member for Barton and three by the member for Denison. In relation to item 5, I would simply rely on the points I made when I spoke earlier. I will examine the issues in relation to the ALRC to see whether or not there is any further matter that I need to look at. In relation to security clearances, I do not regard the process as onerous; I note that you do not regard it as onerous. The point I make is that some 76,000 security clearances were prepared in relation to airline staff, and I do not think that would be helpful. We have had some experience in relation to these matters. I do not wish to put personal affairs of individuals on the public record, but I think it is known publicly that those people representing Australians at Guantanamo Bay may need to get security clearances. I think it is safe to assume that those people who continue to represent those at Guantanamo Bay have probably done so, but they are not matters about which I can comment.
These are issues which a wide range of people are able to access. We do not want to restrict people’s entitlement to the counsel of their choice, but we are not trying to develop a panel of security cleared lawyers who will be the only people who will get to represent people in matters of this sort. That is not the objective. So I simply say: those who think they may have a need ought to approach us, and I am sure they can be accommodated.

In relation to the second matter, dealing with access to the transcript, it seems to me that there are two separate issues. One issue deals with transparency and the two public interest questions—the public interest in transparency and the public interest in terms of protecting national security. The other issue is people’s entitlement to access to material to help them properly prepare for a fair trial. We do not believe that in every case it is appropriate for unedited transcripts and sometimes even edited transcripts to be in the public arena for reasons of transparency if the national security public interest is greater. That is the reason that we sought to remove the clause, but we recognise that there is a different issue in relation to defence counsel. What we are seeking there is to give them an opportunity to be able to properly and fully represent their client.

That brings me to the third matter that was raised by the member for Denison, which again dealt with the question as to what happens when you have counsel who has not had access because he did not take security clearance, and counsel who come later. The only point I make is that the general principle is that they get access. Yes, we are going to regulate where they will get access. We think that is important, because you do not necessarily know that every person who gets a security clearance is going to have an appropriate safe and put things away in the safe and do all the sorts of things that are required if you have security related material. (Extension of time granted) The member for Denison knows and I know from experience in handling this material that there are quite onerous responsibilities that we have to observe. The general principle is that there will be access, but the point I make is that it is subject to the further matters that I think the member described as the ‘belt and braces’ provisions, which do enable in circumstances where the Attorney makes a judgment that there be an appeal in relation to the way in which that access is given. It would not be the general operation; it would be exceptional, but the provisions are designed to keep in place that capacity if a reason arises for it to be pursued.

The final point I make is that the second point made by the member for Denison is, I think, rehashing old ground. It may have been raised in the context of comments by some people who were looking at the experience of the United States, that in some way evidence obtained for security purposes and immigration decisions was used in the United States. The fact is that in Australia people are required to have a security clearance for migration. If there is not an adverse decision, the issue never arises. It only ever arises in a small number of cases, where people are rejected. I do not think there are many cases where people are rejected. You will probably find the figure in ASIO’s annual report—it numbers two or three. I know there is a capacity to test those matters, and they are tested now. In fact, there is a case going on right now which I have seen published in some newspapers. I would not say I know of it for any reason other than that I have seen it published in the newspapers. The member for Barton and I have both been quoted in the proceedings that are going on, where a person is testing a decision of the security agency, and they are doing so before our courts. They are entitled to do so before security tribunals, and they are entitled to
complain to the Inspector-General of Intelligence and Security. There are a range of methods which we have developed over time to protect the information but also to enable people who are aggrieved and who want to test these matters to get access to review—constrained review, but review.

The only other point I make is that I have found the people that I have dealt with in the time that I have been minister extraordinarily professional in what they are doing. They have regard to the rights of the people that they are dealing with, but they also have regard to their broader responsibilities, knowing that, if something were to happen and they had failed, they would be the subject of substantial criticism. And it is not as if we have not seen it. The question arose in relation to the tragedy at Bali, where the Director-General of Security said himself that it was a security failure because he, for whatever reason, was not able to give advice in relation to these matters earlier. And the people who are involved take these matters very seriously. They feel a degree of personal accountability to protect the Australian community. They work under certain constraints, but, given that the member has raised it, I want to record my personal appreciation—which I hope can be conveyed to the officers involved—for the work that they are doing in relation to these matters earlier. And the people who are involved take these matters very seriously. They feel a degree of personal accountability to protect the Australian community. They work under certain constraints, but, given that the member has raised it, I want to record my personal appreciation—which I hope can be conveyed to the officers involved—for the work that they are doing in the public interest, which I think is of fundamental importance to us all. I know they seek to do it recognising the legal framework in which they are operating and the limitations that are there.

Member for Barton, you would have worked with the director-general. You would know he has done a wide range of public service. He has served governments of different political persuasions well, over a long period of time. In words that are often used, he offers ‘frank and fearless advice’, particularly in exercising his proper responsibilities under the act. I hope these amendments can be quickly dealt with. (Time expired)

Mr KERR (Denison) (12.15 p.m.)—I thank the Attorney-General, and may I say that not only do I not cavil with what he says about the individuals but I agree. I also agree that both the Commonwealth Director of Public Prosecutions and the Commissioner of the Australian Federal Police are people of character and are outstanding public servants. That said, I do not think that ad hominem is the correct way to address principles in legislation. Even within the Australian Federal Police, which I had ministerial responsibility for and have huge regard for, it was inevitable that at some level and rank at some place in Australia, one or two members of the Australian Federal Police went off the rails either by inadvertence or simply by being people who were unfit for service in the force.

Fortunately, the institutional processes within the Australian Federal Police, ASIO, the Inspector-General of Intelligence and Security and the like have given us very strong institutions which have been able to deal with these matters effectively. But our legislation should also be strong, and I agree with the Attorney-General that there are large numbers of instances, under Australian legislation, where people routinely receive security clearances, mostly at a very low level. I raised the point that the secretary can require a security clearance for access of defence counsel to the transcript ‘at a level considered appropriate by the secretary’. I assume that routine security clearance would not be sufficient in these kinds of instances, and nor should it be. The kind of material that warrants nondisclosure in a criminal trial would be dangerous if released. It is not for routine clearance; it may require clearance at a higher level. It is not routine, and sometimes takes time.
The other point I would make by conclusion—and I would ask the Attorney-General to reflect on it—is that, to make certain that we have confidence in these arrangements, institutional arrangements do not presently have processes that cannot be disclosed. In other words, when the Bali bombings and the like took place there were processes of review. Some of those, admittedly, occurred in the in camera proceedings of the Senate committee, but there was no process that could not be referred to.

In this area we are permitting the nondisclosure of segments of important public affairs—the trial of a person on indictment for a crime of significance—where certain matters still cannot be referred to, even if a claim of national security significance is rejected by the court. Allowing a circumstance where people may make those claims too readily, without the possibility of those matters being referred to, may undermine one of the institutional safeguards that we both have high regard for.

I appreciate that the Attorney-General is not going to resile from his stand on these proposed changes that the shadow Attorney-General has put forward and discussed with him; nonetheless, I think it is important to have this discussion on the public record. It is critical for the Australian community to be aware that these kinds of debates have occurred and to recognise that the balancing considerations still require attention by this parliament.

I thank the Attorney-General for his remarks, I agree with him on the probity of the individuals he has mentioned and I share his confidence in those individuals. I know nothing adverse about them; I know much that would lead the Australian public to have a very high level of confidence in them and the institutions the Attorney-General has referred to.

The DEPUTY SPEAKER (Mr Lindsay)—The question is that the amendments be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Third Reading

Mr RUDDOCK (Berowra—Attorney-General) (12.21 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) (CONSEQUENTIAL AMENDMENTS) BILL 2004

Second Reading

Debate resumed from 7 December, on motion by Mr Ruddock:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Mr RUDDOCK (Berowra—Attorney-General) (12.22 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT (STORED COMMUNICATIONS) BILL 2004

Second Reading

Debate resumed from 30 November.

Mr RUDDOCK (Berowra—Attorney-General) (12.22 p.m.)—I move:

That this bill be now read a second time.

This bill amends the Telecommunications (Interception) Act 1979.
These measures, which were first considered by the 40th Parliament, address obstacles faced by our law enforcement and regulatory agencies.

The bill we have before us today will limit the existing prohibition against interception to real-time transit of communications by excluding communications that have been stored on equipment from the scope of the act.

The government recognises however that broader review of access to stored communications by our agencies is required.

The amendments will cease to have effect 12 months after their commencement, during which time the Attorney-General’s Department will conduct a review focusing on the most appropriate means of access to these communications.

As previously said though, the need for more comprehensive review should not preclude the enactment of amendments to address the operational concerns created by the act’s current application.

The act was drafted almost 25 years ago, at a time when the Australian telecommunications system consisted largely of land based services carrying live telephone conversations.

The act was therefore built around a core concept of communications passing over a telecommunications system.

This concept has proven more difficult to apply to modern telecommunications services such as voice mail, email and SMS messaging.

The measures in the bill are an urgent but temporary solution to operational difficulties experienced by law enforcement agencies.

The amendments will allow law enforcement and regulatory agencies prompt access to stored communications.

The amendments do not however allow unregulated monitoring of telecommunications services, such as email, voice mail and SMS.

Access to stored communications will continue to require an appropriate form of lawful access, such as consent, a search warrant or other right of access to the communication or storage equipment.

The government remains committed to ensuring that the interception regime keeps pace with technological developments.

These amendments address the operational impact of technology convergence in the immediate term, while recognising the need for further consideration of this issue.

It is important and in the national interest that this bill be expeditiously dealt with, and I acknowledge the opposition’s cooperation to date and look forward to their cooperation in achieving this outcome.

I table the explanatory memorandum.

**Mr McCLELLAND** (Barton) (12.24 p.m.)—The opposition supports the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004 and has certainly agreed to assist in its speedy passage. The bill itself is only three pages long. For those reading it, it is perhaps complex in the sense that it is expressed in the double negative, but, as the Attorney-General just said, it essentially removes stored communications from the purview of the telephone interception legislation. They obviously include email transmissions, SMS messages and multiple SMS messages—whatever the technical expression is for those. As the Attorney-General said, the fact that they are removed from the telephone interception legislation does not mean that there is not a requirement for a person accessing those stored communications to do so by way of lawful authority: the consent of the person who is storing the communication; a warrant,
for instance, issued under other legislation, be it for state police or the Australian Federal Police; or other lawful authority.

This has had a complicated history, not so much from the legal questions involved but more from the technical questions involved. The Senate Legal and Constitutional Legislation Committee has done some very good work in this area in the history of the development of this legislation and, if you like, some advances so that the Telecommunications (Interception) Act was amended to include stored communications. Complexities and difficulties regarding the definition of when a communication was stored and what it was are being rewound for a period of 12 months, as the Attorney-General noted, for the purpose of assessing just how these regulations and laws fit into the concept of new technology. I note, as the Attorney-General did, that the Telecommunications (Interception) Act was actually implemented long before these new forms of communications—emails and SMS messages in particular—came into being.

These are not insignificant issues from the point of view of law enforcement authorities. In particular, there is certainly evidence that those involved in organised crime and indeed those potentially involved in terrorism use these forms of communication, whether they are encrypted or not. I think it is fair to say that the main impetus for the winding back of the provisions has come from representations of the Australian Federal Police. I note that in their submission to the Senate Legal and Constitutional Legislation Committee they said:

The AFP welcomes this clarification and the practical solution that it provides for the effectiveness of investigations into serious Commonwealth offences, such as terrorism and people-smuggling. From the AFP’s operational perspective, the amendments will ensure that investigators are not required to obtain two warrants to conduct a single search. AFP concerns about the two-warrant scenario centred on the potential that important evidence could be put at risk. Without the amendment allowing expeditious access to stored communications, highly disposable and easily destroyed forms of evidence could have been lost during the time taken to access the requirements to obtain TI—that is, telephone interception—warrants. Obtaining TI warrants as a matter of course prior to every search would have resulted in an unnecessary and onerous burden on limited Commonwealth resources.

I will give a practical example relating to the work of the Australian Federal Police in detecting so much child pornography. Had they obtained a warrant to inspect physical premises and to remove written material but, on confronting a computer, did not have an interception warrant, they would be presented with the difficulty of having to get such a warrant and come back on another occasion. That would provide an opportunity for the information stored on the computer to be destroyed. That would be a practical example where the representations of the AFP in this case would be valid. I understand that the information in that case was tracked down substantially through the Internet, so in that circumstance they probably covered all bases. But that would be a practical example of where these complexities could arise.

Essentially the debate and the controversy concerning stored communications—and it is one that has not been resolved—is whether you regard a stored email transmission as being in the nature of a letter on someone’s desk that can be obtained via a normal search warrant or whether, because it has been sent electronically, you regard it as a telephone line type communication. At the end of the day I suspect that the answer is probably in the middle somewhere. No doubt that is something the review that the Attorney-General has committed to will consider; it
will address those competing arguments. An aspect of the review that we would like the Attorney-General to consider is the practical effect of removing stored communications from the telephone interception regime. The Attorney-General said—no doubt he was correct—that there will still be a requirement for lawful authority to access a stored communication. As I understand it, that lawful authority, at least in some instances—with respect to email transmissions and perhaps SMS transmissions—may be found in the Telecommunications Act.

The member for Banks, who has previously made some public comments in this area, has expressed concern as to the frequency with which telecommunications companies and Internet service providers provide payment account details for law enforcement purposes. That is something that needs to be monitored. The telecommunications companies and providers are required to keep a record of when that occurs, but our concern is that, in his evidence to the Senate Legal and Constitutional Legislation Committee, the Privacy Commissioner said that his office simply did not have the resources to audit those records. The media has expressed a point of concern as to the frequency with which that information can be accessed for law enforcement purposes. Clearly there is a need for oversight. I draw the Attorney-General’s attention to the recommendation of the Senate Legal and Constitutional Legislation Committee that the resourcing of the Privacy Commissioner must be looked at. I know there is an overlap here with the role of the Minister for Communications, Information Technology and the Arts in dealing with the telecommunications legislation, but certainly that is something for the Privacy Commissioner to look at.

I also note that the Privacy Commissioner expressed concern that information accessed other than through a telephone interception warrant perhaps did not have the same requirements regarding destruction when that information was no longer useful. The Privacy Commissioner noted that there were requirements for destruction under the telecommunications legislation, which I have to say I have not looked at in detail. In a submission to the committee, in summary, the Privacy Commissioner expressed concern that the information privacy principles did not contain a regime dealing with the obligation on those who had information which was no longer required or relevant to provide for the destruction of that information. So there are two important areas to look at: firstly, whether the consequences of removing stored communications from the telecommunications interception regime is going to increase the propensity of law enforcement authorities to request, and of telecommunications carriers and Internet service providers to provide, bill details and other information regarding communications; and, secondly, what requirements and resources there are to audit that and to audit the destruction of that information.

These are matters not without complexity and we appreciate that. We appreciate that this bill will enable our law enforcement authorities, particularly the Australian Federal Police, to undertake what is clearly a valuable role in the interim. But we note the Attorney-General’s commitment to conduct a review and that this legislation will sunset after a period of 12 months. On that basis the opposition will support it.

Mr TURNBULL (Wentworth) (12.36 p.m.)—I also support the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004. The bill seeks to address the changes in technology which have occurred in the field of electronic communications, but I want to put that in a little context if I may. The concept of an
email message being stored in transit is in some respects already out of date. The reality in the Internet world today is that we have ubiquitous broadband which is very cheap and storage which is very cheap. The need for any data, particularly email messages, to be stored on a person’s own computer—what you would normally call the client device—is actually gone. The reality is that we are moving into an era where most emailed messages, most data, will be stored remotely on servers held by ISPs, telcos or large corporations.

One aspect of this that will need to be considered by the Attorney-General and by law enforcement authorities more broadly is the fact that many of these servers are located outside Australia. For example, if someone is using the Google email service or, indeed, some of the Microsoft email services, those services are hosted in the United States. They can be accessed via the Web from any computer, and there is no need for the user to download any of those messages to their own personal computer, if indeed they have one. So, while there is a store of very important information—a store of messages—it is not within our jurisdiction. The Internet is annihilating geography. Anyone can connect to a server anywhere in the world through the Internet. Obviously, we have reciprocal arrangements with the United States but there are jurisdictions where we may not, and a great deal of important information could be stored there—information that is simply not practically retrievable in Australia.

I recognise that there have been concerns expressed about privacy. There has always been a distinction between the eavesdropper and the reader of other people’s correspondence. Not all eavesdroppers suffer the awful fate of Polonius, but there seems to be a distinction made about listening to a live conversation, which is regarded as being repugnant to concepts of privacy. I suppose that it is based on the sense that, if we are being overheard when we believe we are speaking in private, that obviously means we are going to conduct ourselves in a different way in that conversation than we would if we knew we were being overheard. But written documents have always been susceptible to legal process and warrants. The most intimate written documents can be subpoenaed or be the subject of a warrant. A diary, for example, is no more protected by reason of its intimacy or confidentiality than are the minutes of a meeting of a board of directors. The member for Barton suggested that email is somewhere between a live telephone conversation and regular mail—which is called snail mail nowadays. The reality is that it is mail. Everyone that creates a document does so knowing that it can be read by others and can be subject to legal process. I do not think anything turns on the fact that the document is written on a computer and sent by email, as opposed to a document written in long-hand and dropped in the letterbox.

In summary, the amendments are appropriate. They do recognise the change in technology. I do not believe that the advice from the Solicitor-General presented to the Senate committee earlier in the year, which questioned the status of in-transit emails stored at an ISP, reflects the technology as it stands today. The reason for that is that nowadays emails may sit on an ISP’s mail server; they may be downloaded and, over time, deleted from the ISP’s mail server. But more often nowadays, those emails are residing and being stored—and in many cases only being stored—on the server of the third-party provider of the ISP or telco. As I said at the outset, a big issue for law enforcement agencies in the future is going to be that many of those servers are located outside Australia, and may be located in jurisdictions where we
have difficulty accessing them through reciprocal arrangements.

For those reasons, the amendments are appropriate. They are clearly designed to be reviewed over the next 12 months. I would expect that, in reviewing it, the current state of technology will be taken into account, as will the reality that many of these stored communications may be stored in places where they cannot be readily and lawfully accessed by our law enforcement agencies.

Mr MELHAM (Banks) (12.42 p.m.)—As has been indicated by the shadow minister, the opposition will be supporting the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004. Notwithstanding that, there are a few comments that I wish to make and place on the record about the evolution of communications interception—not just of the telephone but of other forms of communication. As shadow minister for justice and customs, I issued a press release on 15 September 2002 showing that there were more telephone taps in Australia than in the United States. That was shown by looking at the number of telecommunications interception warrants that were issued by Australian law enforcement agencies in 2001. Back then, we had a total of 2,157 warrants issued, whereas in the US that figure was 1,491. The most recent report, as I understand it, shows that figure at 3,058. So it is not as if these warrants are hard to get or are not being used by the relevant authorities. Back in 2000-01, the AFP engaged in 598 such intercepts.

Whilst we look at each step and say, ‘Yes, we agree with this step,’ we need to step back at times and look at the broader picture and see the cumulative effect. I note that there will be a review of the TI act conducted in 12 month’s time. At the moment, there is actually a sunset clause in this legislation of 12 months, which is the basis upon which the opposition is supporting the bill before the House. The bill does have a bit of history—it has previously been before us with some slight differences. The Senate Legal and Constitutional Legislation committee has looked at this bill quite extensively on a number of occasions. The explanatory memorandum outlines what this bill is about. It says:

This Bill amends the Telecommunications (Interception) Act 1979 (the Interception Act) to change the way in which the Interception Act applies to stored communications. The measures in the Bill will exclude interception of stored communications from the prohibition against interception. The amendments will have the effect of limiting the prohibition against interception to the “live” or “real time” interception of communications transiting a telecommunications system. Further, the explanatory memorandum goes on to detail item 3. It says:

This item amends the Interception Act by inserting a new paragraph 7(2)(ad). Subsection 7(2)(ad) provides an additional exception to the prohibition against interception set out in subsection 7(1). The amendment provides that the prohibition does not apply to or in relation to the interception of a stored communication. The term “stored communication” is defined in a new subsection 7(3A) inserted by item 4. The exception will have effect for a period of 12 months from the date of commencement of item 3.

The practical effect of the new provisions inserted by items 3 and 4 is that it will no longer be necessary to obtain a telecommunications interception warrant, or to rely on another exception to the prohibition against interception, in order to intercept a stored communication. The amendments allow for a stored communication to be intercepted by a person having lawful access to the communication or the equipment on which it is stored. A person may have lawful access to a communication, for example, with the consent of the intended recipient. A person may have lawful access to storage equipment, for example, under a search warrant or in the person’s capacity as a network owner or administrator.
I pause to draw that to the attention of the parliament, because that is now going to be another way in which the authorities will be able to access this information. The explanatory memorandum continues:

A telecommunications interception warrant will continue to be required in order to carry out “live” or “real-time” interceptions of communications that are in transit over a telecommunications system when intercepted. A telecommunications interception warrant will continue to be required, for example, to intercept telephone calls, facsimile transmissions and internet chat sessions and any other communication that does not fall within the definition of “stored communication” in subsection 7(3A) inserted by item 4.

What we are going to now have is different regimes. In this instance, the Federal Police have won out, because they say that the current regime in effect involves some delay and they are worried about the information being deleted or destroyed or their being unable to access it after a period of time. On balance, that is where the Senate committee in effect came down. There was a difference of opinion, as the member for Wentworth points out, between the Solicitor-General and the Federal Police. I do not dismiss the Solicitor-General that lightly, and I note that the Senate committee has basically said that these are matters that will need to be looked at when the review comes up.

My concern is that too often we are getting a situation where there is a wish list from some of the agencies and, as politicians, we are basically giving them their wish list willy-nilly. We need to be fairly careful in relation to that. I notice that the Federal Police Commissioner, Mr Keelty, was out there recently talking about looking at overturning the right to silence. We had this debate in relation to the ASIO legislation. In overturning the right to silence we put in safety checks where material that was to be taken from non-suspects to assist would not be able to be used against the individuals when they gave their evidence.

The other thing that needs to be borne in mind is that it is about intelligence gathering and the best way to achieve intelligence gathering. As a result of technological change, the interception method is actually a cheap and effective intelligence tool. Technology has made it very cheap, and that is why we have seen the explosion in the number of interception warrants that have been obtained by all the authorities. The latest report is for the year ending 2003. At page 18, we see that they are now at 3,058. We certainly leave the Americans way behind in relation to our resorting to these intercepts. I suggest that with technological change you still need the protection of the legislation. It is a lot cheaper than it used to be. It is a much more effective method than a search warrant or other things.

But it is not for me to tell the police how to do business. I have a lot of respect for the agencies in this country. My only concern is that it should be done in an appropriate manner. Come 1 July next year, the government will have control of both houses of this parliament. They will be able to pass whatever legislation they like. That will not be good enough, in my opinion, in terms of the fight against terrorism and corruption. What we need is good legislation supported by both sides of the parliament, not legislation passed with the opposition of one side of the parliament.

I have always found that, as legislators of whatever political persuasion, providing the authorities can make their case, we can grant them the powers. That is why with this bill I do not accept the mild criticism that was levelled at the opposition in the second reading speech by the minister. In effect, the concerns that the opposition had were picked up by the Senate committee and changes have
been made. We are in a situation now where there is a sunset clause of 12 months and where there will be a full-bodied review. I was going to go through some more aspects of the committee’s concerns, but they are all there. The report was tabled in July 2004. When the review takes place there is also going to be a review of other legislation, a whole swag of bills that passed this parliament in relation to terrorism and ASIO, and I expect that the three-year period will pick up the same 12-month period that we are talking about here. It needs proper consideration.

I think the legislation to date has been balanced and tempered. It is not as excessive as when it was first proposed. From what I can gather, I do not think anyone has escaped through the net. So I do commend the bill, but with those cautionary tones. In our eagerness to embrace some of these amendments in totality we do not want to end up in a situation where we throw the baby out with the bathwater. One of the things we are defending against the terrorists is our values. That means that we do fetter some of the control of the authorities. We do not allow torture or a gross abuse of civil liberties to achieve a particular purpose, because historically we have seen in the past that they have produced the wrong outcomes, bad outcomes, and that innocent people were sent to the gallows.

Debate (on motion by Mr Lloyd) adjourned.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Regional Services: Program Funding

Mrs DE-ANNE KELLY (Dawson—Minister for Veterans’ Affairs) (12.54 p.m.)—Mr Deputy Speaker, I seek the indulgence of the chair to add to an answer I gave yesterday as this is the first possible opportunity to do so.

The DEPUTY SPEAKER (Hon. K.C. Beazley)—The minister may proceed.

Mrs DE-ANNE KELLY—I want to make a statement to the House regarding matters which arose yesterday at question time. I want to table a copy of my press release issued yesterday afternoon and a statement by my former DLO which outlines the facts of this matter. I also table a note from the relevant deputy secretary of my former department confirming the date and time that I signed the relevant minute relating to Horse Australia 2005 and approved the press release and letters to stakeholders. As the deputy secretary attests, the files show that I signed the minute on 31 August 2004 and annotated the time as 3.37 p.m.

I should correct one matter of fact. I had understood that the press release I approved on 31 August 2004 had been issued. I am now advised that it was not issued. My colleague the Leader of the House, having heard my answer yesterday, said today in a radio interview that he understood that an announcement had been made. I apologise to the House for this minor error, but I believe this had been the fact when I said it yesterday.

I rang the Chief Executive of Horse Australia, Heather Clelland. I refer members of the House to a report in today’s Financial Review, on page 6, in which Mrs Clelland confirms that she had been told of the grant on 31 August. What has occurred here is a clerical error by an officer who in my experience is a competent and hardworking official. I draw the House’s attention to the last two paragraphs of his statement:

A number of approved applications with accompanying letters to stakeholders already been signed by the Hon John Cobb’s office. Copies are on the file.
The letter raised in the House of Representatives this afternoon was date stamped by me 2 December 2004 and mailed last week.

Now that I have had a chance to review these matters it is timely to advise the House that on 20 and 22 October 2004, while I was a parliamentary secretary and before becoming Minister for Veterans’ Affairs, I dealt with a further batch of applications.

I am advised by my former departmental liaison officer that he has similarly date stamped those letters on the day of mailing from the Hon. John Cobb’s office. Copies are on the relevant files in the parliamentary secretary’s office. Accordingly there are other letters to stakeholders and parliamentarians that fall into the same category—that is, fully dealt with by me as parliamentary secretary but not date stamped and mailed until actioned by the departmental liaison officer in my successor’s office after I became Minister for Veterans’ Affairs.

In regard to press reports this morning that my Labor opponent, Ms Cherry Feeney, raised with me concerns that attachments to emails purporting to come from my electorate office contained viruses: I investigated this matter immediately and ascertained that the parliamentary network protects against all viruses and deletes them automatically. However, mischief-makers could obtain publicly listed addresses, such as those of members of parliament, and use them to send viruses. In an email from my electorate office, Roger Kelly assured Ms Feeney that these emails had not come from my office. I confirm again that my husband performs tasks as a volunteer in my electorate office, and that electorate office volunteers are permitted to have Australian Parliament House email addresses.

Mr Latham—On indulgence: I ask that the minister table the statement that she has just read to the House and all the relevant correspondence to which she referred for the benefit of honourable members.

The DEPUTY SPEAKER—Minister, have you got materials that you are reading that you wish to table?

Mrs De-Anne Kelly—I have my statement, Mr Deputy Speaker, which is on the public record now.

The DEPUTY SPEAKER—Is the Leader of the Opposition asking also for letters?

Mr Latham—She read word for word from the statement. It would assist the House for that statement to be tabled some one hour before question time. I would have thought that was the decent thing for the minister to do. She also referred to a batch of correspondence relating to approvals of funding grants on 20 and 22 October. It would also assist the House if the minister tabled that correspondence. She said that it was on the files within the department, but she has now mentioned these in the public arena. Surely the public has the right to know the matters to which she is referring, and the correspondence should be tabled.

The DEPUTY SPEAKER—Is the correspondence to which the Leader of the Opposition is referring the correspondence you tabled at the beginning, Minister?

Mrs De-Anne Kelly—I referred to my press release of yesterday, a statement by the departmental liaison officer, and a statement by the Deputy Secretary of the Department of Transport and Regional Services. Those have been tabled with a copy of my statement today.

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT (STORED COMMUNICATIONS) BILL 2004

Second Reading

Debate resumed.
Mr NEVILLE (Hinkler) (1.01 p.m.)—I have previously spoken on this bill, and I am happy to again address the initiatives contained in the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004. The bill rebalances our law and order needs with the ever increasing pace of communications technology. We must be responsive, if not proactive, in the matter of changing communications technology. There is no doubt that since the Telecommunications (Interception) Act commenced in 1979, our methods of communicating have changed dramatically. At the time of its commencement, the act needed to cover only live communications, that is, messages which were passed through telecommunications systems such as telephones, telexes and the like. Today we would consider those things the more passive forms of communication. Accessing stored electronic communications was not relevant in that era but—as any of us who carry a mobile telephone, a pager or a palm pilot know—those days are well and truly long gone. Rather than relying solely on landline telephones and telexes, we now use email, text messaging, picture messaging and paging. We use these on a regular basis and with increasing frequency.

Aside from changing our work environment and social interaction, this technology has ever-widening implications for national security. These days, it is easy to create an email account or fire off a text message on a mobile phone; and it is therefore relatively simple to coordinate actions and activities without having to physically meet other participants. If put to evil intent, the national security implications of this are quite frightening. If this technology can be turned against citizens, then our law enforcement agencies must have the tools to deal with these new methods of compiling, sending and storing information.

Under the current legislation, interception of stored communications is prohibited. This government is seeking to amend that law, in effect closing a loophole for criminal activity. The intent of the original legislation was to protect live communications in the process of transmission via a communications system and, in practical terms, those arrangements will still stand. The amendments contained in this bill continue the prohibition against interception of real-time communications without an interception warrant. However, communications that have been stored on equipment will be excluded from the scope of the legislation, because, as technology changes, so must our laws. Modern-day communications technology allows us to draft, edit, write and store messages and information before sending them to a recipient. We can send messages to one recipient or a number of recipients, we can recall messages after transmission, we can edit messages once they have been received, we can forward received messages to other recipients, we can store them in an in-box for an indefinite period of time and we can print them out for hard-copy storage.

Quite obviously, as technology progresses in leaps and bounds, our legislation must strive to keep pace. The sheer scope of modern-day communications and the method of their transmission is understandably very difficult for our law enforcement agencies to track. This bill does not seek to eavesdrop on all communications, but it will give our law enforcement agencies the power to access stored communications in whatever form they might be. There is a sunset clause attached to these amendments, so they will cease to have effect 12 months after their commencement. A telecommunications interception warrant, or other right of access, will still be necessary to access messages whether they are stored or in transit.
This amendment also empowers law enforcement officers who have the consent of the intended recipient of a message, or the owner of the device on which a message is stored, to intercept a communication without having a telecommunications interception warrant. The owners or administrators of a communications network will also be able to access stored messages.

To stay in step with changing technology and modes of communication, these amendments extend the time line of legal interception to include messages which have been drafted and stored—but not necessarily sent—as well as messages which are in the process of being sent and those which have been received. Accessing short message service messages, otherwise known as SMS or text messaging, and multimedia messaging service messages, or MMS, will still require a telecommunications interception warrant for live or real-time interceptions, because of their fleeting nature.

I have a reasonably clear understanding of the basis of this piece of legislation, given that a seminal event in telecommunications interception took place earlier this year in Bundaberg, in my electorate of Hinkler. An attempted murder trial in Bundaberg, which revolved around proving intent, hinged on the Crown being able to provide stored text messages as evidence against the accused. The extraordinary manuscript of more than 2,500 text messages sent over a six-week period was a crucial piece of evidence produced during that trial. Without going into the guts of the court proceedings, stored mobile telephone text messages from the mobile telephone of the accused showed that she colluded to murder an individual in late 2001. The Crown prosecutor in the case provided jury members with a print-out of the full SMS conversations between the accused and her codefendant and told the jury that they were ‘prolific texters’. To quote the prosecutor:

The devil is in the detail, it is in the detail the plan fell apart ... The transparency of evidence is almost comical.

He went on to say that the accused’s habit of sending text messages was ‘her fatal mistake’.

This is not just an isolated case. In Sweden, police and prosecutors used text messages to prove that a nanny, influenced by the pastor of a religious sect, shot and killed the pastor’s wife while she slept and then killed a neighbour next door with whom the wife was alleged to have been having an affair. In addition, police in southern Japan have examined emails and text messages as part of an investigation into a recent box-cutter killing of a 12-year-old girl alleged to have been committed by 11-year-old classmate.

The Bundaberg trial undoubtedly brought the issue of stored communications into focus not just for our own community but for the nation and, in turn—I do not deny—it has sparked various privacy concerns. Telstra’s privacy policy states that the company can disclose personal information to government or regulatory authorities as required or authorised by law enforcement authorities. But never before have law enforcement agencies been able to access content which has been stored. These amendments will clarify the powers of law enforcement agencies and give guidance to the carrier services which provide that technology.

This government also recognises that the entire communications technology phenomenon has wider implications for law enforcement and other matters of public safety, so the Attorney-General’s Department will undertake a thorough review of the Telecommunications (Interception) Act at the expiry of this amendment. Privacy concerns
are at the forefront of any legislation which impacts on personal communications, but I ask you: what price a human life? In the Bundaberg instance, a vicious attack was planned with the help of new technology, and justice was delivered with the help of that new technology. I interpose that, in fact, the sentence was appealed; the appeal judges were so appalled by it that they actually increased the sentence.

In the wake of the trial where the text messages contributed to a finding of guilty, the Federal Privacy Commissioner called for telecommunications companies to alert their customers to the fact that text messages may be stored for a length of time. Media coverage provided some degree of information to the general public immediately after the trial, but I urge telecommunications carriers to keep their customers informed about the system of communications storage as well as any future changes.

Up until the time of the Bundaberg trial, Telstra reportedly kept SMS messages sent between Telstra mobile phones for up to 28 days, Optus has reported that it only keeps full text messages for three days and Vodafone has put on the record that it does not store message content of any telephone calls, text messages or picture messages. Interestingly, text messages sent on the Telstra network at the time of the Bundaberg incident were stored as part of a billing process. The originating telephone number was contained within the message and therefore the message itself was kept. The company now operates under new guidelines, keeping text message details for only 24 hours after they have been sent before wiping them from the system.

Interception of stored communications also has implications for national security. Given the dreadful terrorist atrocities which occur on an almost daily basis throughout the world—as we know, some triggered by electronic means, bombs being detonated by mobile phones and the like—these amendments are entirely relevant and necessary. I commend the bill to the House.

Mr RUDDOCK (Berowra—Attorney-General) (1.13 p.m.)—in reply—I extend my thanks to the members for Barton, Wentworth, Banks and Hinkler, who have spoken during this debate. The Australian telecommunications interception regime performs a very significant role. It protects the privacy of users of our telecommunications system, while balancing that against the need to provide our agencies with effective tools to investigate serious criminal offences and security matters. This bill effects an important change that will ensure the protections conferred by the act do not impose an undue obstacle to law enforcement and other agencies requiring access to stored communications.

As I have said before, the government acknowledges that a broader review of regulation of access to the content of communications is required. I was interested this week to see media reports suggesting that the government had agreed to undertake a review on this issue because the Senate Legal and Constitutional Legislation Committee had recommended it. In fact, I foreshadowed a review in these terms when I first introduced these measures in the 40th Parliament. The committee, which has bipartisan representation, acknowledged my proposal to conduct such a review in its report and merely sought to ensure that the review would take place. The government has always been and remains committed to reviewing the regulation of access to the content of stored communications to ensure the regulatory framework keeps pace with technological developments.

The member for Barton noted in his comments his concern that the practical im-
plication of excluding stored communication from the interception regime be addressed in the review that we have foreshadowed. As I have previously indicated, the review will focus on the most appropriate means of access to stored communication. While I will separately announce the terms of reference for the review in due course, I agree that it would be appropriate that the review examine all relevant regulatory mechanisms, including those set out in other legislation.

The amendments contained in this bill represent a practical step forward to acknowledging the effects of advancements in technology on access to the content of communications and the need for a review of the regulation of stored communications in the light of technological developments. It needs to occur in a timely way. The reason we are taking the approach that we are here is that I did not think we could leave a situation where, in very sensitive investigations that might involve access to stored communications such as messaging, emails and the like, the authorities did not have an immediate mechanism to be able to access that material if required.

However, I also recognise that there were some differences of view about how that should proceed, and they were not going to be resolved in the short term. This is a short-term mechanism that we can put in place immediately to address the urgent need, and the review is to enable us to look at the other issues in a sensible way, taking into account the variety of interests that different bodies have and to come up with a more comprehensive solution. So the mechanism is here because of the urgency, and I have to say I am disappointed that we did not get this legislation earlier. I am disappointed that the Senate committee wanted to go back again and again and re-examine the issues each time the bill came forward. It seemed to me that this is really a short-term measure. The review that is promised in 12 months is a reasonable outcome, and it could have been dealt with earlier. It seems to me we have not suffered, but that may be more luck than good management. I hope the bill now secures a speedy passage.

Question agreed to.

Bill read a second time.

Third Reading

Mr RUDDOCK (Berowra—Attorney-General) (1.17 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

SURVEILLANCE DEVICES BILL 2004

Debate resumed from 1 December.

Second Reading

Mr RUDDOCK (Berowra—Attorney-General) (1.17 p.m.)—I move:

That this bill be now read a second time.

I advise the House that the bill before us flows from an initiative of the Leaders’ Summit on Terrorism and Multi-Jurisdictional Crime held on 5 April 2002. A joint working group comprised of Commonwealth, state and territory officials developed comprehensive model laws for all Australian jurisdictions to improve the effectiveness of cross-border criminal investigations in the areas of controlled operations, assumed identities, protection of witnesses’ identity and electronic surveillance. This bill implements the electronic surveillance model bill, tailoring it to the needs of the Commonwealth, which differ in a number of important respects from those of the states and territories.

The Surveillance Devices Bill 2004 will allow the Commonwealth to consolidate and modernise its now somewhat outdated surveillance devices laws by providing law enforcement agencies with access to the surveillance tools necessary to protect Austra-
lians and investigate crime. The bill allows officers of the Australian Federal Police, the Australian Crime Commission and a state and territory police force or certain specified state agencies investigating a Commonwealth offence to use a greater range of types of surveillance devices.

The bill will allow for data surveillance devices, optical surveillance devices and tracking devices in addition to listening devices, which are currently permitted. To restrict Commonwealth law enforcement to devices which are only capable of recording spoken words is simply not adequate to the task. As criminal and terrorist groups make use of high technology, so too must police be able to match and better them.

The bill allows for a much wider range of offences to serve as the basis for a surveillance device warrant. The current listening device provisions allow for a warrant to be obtained for only specified offences, which do not include terrorism offences, people trafficking and child sex tourism.

This bill proposes that a surveillance device warrant be available for any Commonwealth or state offence with a federal aspect which carries a maximum penalty of at least three years imprisonment as well as for certain types of financial dealings and illegal fishing in the Australian fishing zone. This offence threshold ensures that an appropriate balance is struck between the needs of law enforcement to investigate serious offences and the privacy interests of Australians. The bill will also allow surveillance device warrants to be issued where a child recovery order has been issued by a court to assist with the location and safe recovery of any child who is subject to an order.

Tracking devices can also be used by law enforcement officers with the authorisation of a senior officer of their agency, provided that such use does not involve interference with private land or the interior of a vehicle. The bill also carries over existing provisions in the Australian Federal Police Act allowing an officer or an informant to use a listening device without a warrant where the law enforcement officer or informant is party to a conversation being recorded or has the consent of the speaker.

Emergency authorisations may be given by a senior executive officer of the law enforcement agency to a law enforcement officer for the use of a surveillance device in circumstances that are characterised by urgency. However, such emergency use must be approved by a judge or AAT member within 48 hours.

The law enforcement officer may use optical surveillance devices, such as binoculars and cameras, with a warrant, provided that such use does not involve interference with private land or property. This power puts ordinary police surveillance on a secure legal footing.

The bill also brings extraterritorial use of surveillance devices into the legislative framework for the first time. Where Australian law enforcement agencies wish to use surveillance devices overseas, they will now need to do so subject to a warrant which will bring this use under the record keeping and reporting requirements of Australian law. The bill sets out the requirements for permission from relevant foreign governments and the limited circumstances in which extraterritorial surveillance can take place without such permission.

In recognition of the privacy implications raised by this bill, the bill imposes a range of strong accountability measures. The most intrusive types of surveillance must be subject to scrutiny by a judge or AAT member before the surveillance begins or, in the case of an emergency authorisation, within 48 hours of the authorisation having been given.
The subsequent use, disclosure or communication of material gathered by, or relating to, a surveillance device is subject to stringent conditions. It is an offence to communicate such material unless it is covered by one of the exceptions. The bill imposes strong record keeping requirements which ensure that all documents relevant to surveillance device use under the warrant or authorisation must be kept to establish a proper compliance paper trail.

Furthermore, chief officers of law enforcement agencies using Commonwealth warrants and authorisations must submit detailed reports, both after a warrant or authorisation has expired and also annually.

The bill contains strong powers for the Commonwealth Ombudsman to inspect law enforcement agencies. In fact, he told me today that he was looking forward to playing a role in these matters and was inquiring as to the progress of the legislation. The Ombudsman must report on a six-monthly basis to the Attorney-General, who in turn must table these reports in parliament. The Ombudsman has a power to compel law enforcement officers to answer questions or produce relevant warrants.

In summary, this bill will greatly increase the capacity of Australian law enforcement officers to investigate serious offences, including terrorism, while maintaining an appropriate respect for the privacy of all Australians.

I present the explanatory memorandum to the bill. I commend the bill to the House and I hope that, like others, we can get it through before question time.

Mr McCLELLAND (Barton) (1.23 p.m.)—I will take on board the Attorney-General’s indication. I note he went through the technical aspects of the proposed legislation. I will make my comments a little broader. Certainly, the opposition supports these measures. The Surveillance Devices Bill 2004 is beneficial in providing a framework for law enforcement agencies to utilise surveillance devices and in the protections that it contains for their use.

As the Attorney-General indicated, this is not an evil manifestation of some federal bureaucrat; it arises from a considered response to a resolution of the Council of Australian Government Leaders Summit on Terrorism and Multijurisdictional Crime in April 2002. Following that resolution, the Standing Committee of Attorneys-General and the Australian Police Ministers Council established a joint working group, which developed and subsequently released model laws for public comment in November 2003. Since then, this legislation has also been given consideration by the Senate Legal and Constitutional Committee, which once again has done an excellent job in what could otherwise be a controversial area.

This legislation does fill a gap in federal regulation. There is currently no federal legislation dealing with the use of surveillance devices. There are powers for the Australian Federal Police in their specific legislation but there is not this broader regime that applies to the investigation of federal offences or state offences that have a federal aspect to them. It is significant to note that the legislation applies to law enforcement agencies, not to intelligence agencies. It is also important to note that the protections introduced by this legislation are comparable to those that exist in the Telecommunications (Interception) Amendment (Stored Communications) Bill 2004, which the parliament considered earlier today.

With respect to the issuing of a warrant, the relevant officer must balance the gravity of the crime or alleged crime, the importance of the information, alternatives to obtaining the information other than using an intercep-
tion device, and the impact the issuing of a warrant would have on a citizen’s privacy. Those are appropriate things to balance. In addition, there is a facility for law enforcement officers to obtain an emergency authorisation, as opposed to a warrant, to deal with an urgent situation. Those authorisations are restricted under the legislation—but, again, we believe appropriately restricted—firstly, to deal with a situation where there may be an imminent risk of serious violence to a person or substantial damage to property; secondly, to urgently recover a child, subject to a family law recovery order, as the Attorney-General indicated; or, thirdly, to prevent the loss of evidence in an investigation of a specified serious offence, which I think members would agree would include more serious offences such as terrorism, serious drug offences, treason, espionage and aggravated people-smuggling.

The authorising officer granting an emergency authorisation must apply within 48 hours for retrospective approval by an eligible judge or a member of the Administrative Appeals Tribunal. If approval is not granted, there are restrictions that apply to the use of that information. There are additional circumstances where authorisations may permit the use of interception devices, as the Attorney-General indicated—for instance, binoculars, devices to assist long-distance vision and long-distance listening and, as I understand it, tracking devices that do not involve entry into premises, as set out in the legislation and described broadly in the Attorney-General’s speech. There are also provisions covering the use of interception devices overseas with the consent of relevant authorities overseas. Again, we would see that as being quite appropriate given the cooperative relations that are being established between our federal police agencies and agencies in South-East Asia.

As I indicated, the accountability regime that is introduced in the legislation is comparable to that which exists in the telecommunications interception legislation. In this legislation there are equivalent restrictions on the use, recording, communication, publication and admission in evidence of information obtained from surveillance devices or relating to a surveillance device warrant or authorisation. These restrictions are appropriate. As we would expect to be the case, information obtained without a warrant cannot be used by law enforcement authorities involved in the investigation or prosecution of an offence, nor can it be communicated to a foreign country under the Mutual Assistance in Criminal Matters Act. However, such information may be communicated to an Australian intelligence agency in circumstances that involve a risk to public safety. Again, these provisions are appropriate.

The bill also imposes obligations on the relevant law enforcement authorities to maintain a register of secure, detailed records of applications, warrants, authorisations and the use of surveillance devices and information obtained from their use; to destroy information not required for a recognised purpose under the act; to report all warrants and authorisations to the minister; and to submit an annual report to the minister for tabling in parliament. We believe these are appropriate protecting mechanisms. As the Attorney-General indicated, the bill also provides for the regular inspection of records by the Ombudsman and for a biannual report to the minister by the Ombudsman.

Once again, this legislation, in a controversial area, has been significantly improved by the parliamentary process—as, I think, the Attorney-General would concede. We note that the government will have a particular responsibility after July next year—when there will not be as stringent a check and counterbalance to proposals put forward to
the parliament—to consult and listen more broadly to obviously justified criticisms and suggestions for improvement.

This legislation is significantly different from that which was initially introduced in terms of both protections and enhancements. For instance, the bill now includes relevant state law enforcement agencies, including the New South Wales Crime Commission and the Western Australian Corruption and Crime Commission, in addition to state and territory police forces, which may obtain Commonwealth surveillance devices warrants for the investigation of Commonwealth offences; it provides for the destruction of material held for more than five years except in special circumstances; it requires that emergency warrants be approved within 48 hours rather than two business days; it provides for a citizen to obtain a civil remedy for damages in the event of misuse of these provisions, which is significant—for citizens of Queensland, it also enables the Queensland Public Interest Monitor to have a role with respect to these Commonwealth warrants; and it contains a number of improvements in respect of the use of wires—for want of a better description—where a witness may be assisting police in controlled operations.

I think all members would agree it is appropriate that the legislation allows for a child recovery order issued by a court other than the Family Court, or with respect to a child removed from another country, to be the basis for a warrant or authorisation. That is unquestionably appropriate. The bill also adds child sex tourism offences as offences for which ‘loss of evidence’ emergency authorisations may be obtained. Again, I think all members would agree that is entirely appropriate. The role of the Ombudsman, as the Attorney-General has indicated, has also been enhanced.

In addition to those improvements, from the point of view of the additional safeguards to protect the rights of citizens and the enhancements to extend the operation of the law into appropriate and significant law enforcement areas, the current bill also provides two amendments of a more technical nature. Clause 65 will provide that a warrant is not to be set aside simply as a result of a defect that is other than a substantial defect or irregularity. That is equivalent to a provision in the Telecommunications (Interception) Act—section 75—and the opposition agrees that is appropriate. The other provision applies more from the point of view of having regard to the framework that will exist for legislative instruments after 1 January. It will identify instruments made under the current bill that are not to be regarded as legislative instruments for the purposes of the operation of the Legislative Instruments Act. The opposition agrees that that amendment is appropriate.

In conclusion, I think there are times when the government can be fairly criticised for legislative overreach. Indeed, that criticism was advanced by the Senate Legal and Constitutional Legislation Committee on one occasion, in circumstances where the government had the numbers on that committee. Similarly, I think those opposing the need for legislative reform to update law enforcement powers often overstate their case. At the end of the day, commonsense and balance should determine the outcome. The opposition believes that, with the assistance of the parliamentary process, a commonsense and balanced position has been achieved in respect of this legislation.

Mr SCHULTZ (Hume) (1.36 p.m.)—I thank the House for the opportunity to stand in support of the Surveillance Devices Bill 2004. This bill will add to and strengthen a legislative regime which has, to date, consisted of a mishmash of state and Common-
wealth legislation and common-law principles. Legislation at a federal level, namely the Customs Act 1901 and the Australian Federal Police Act 1979, is outdated and certainly inadequate in the face of today’s progressively complex and covert criminal activity.

This bill will significantly widen the existing range of offences for which surveillance devices can be used as part of an investigation and the type of devices that can be used. This includes data surveillance devices, listening devices, optical surveillance devices and tracking devices which would ordinarily be prohibited under state or territory law. Under this bill, surveillance devices may be used by officers from the Australian Federal Police, the Australian Crime Commission, state and territory police forces and some non-police agencies, such as the New South Wales Crime Commission, for the investigation of Commonwealth offences which carry a maximum penalty of at least three years imprisonment. These devices may also be used to assist in the safe recovery of a child who is the subject of a recovery order or an order for a warrant of apprehension or detention of a child—for example, when a child has been unlawfully removed from Australia to another country.

This point particularly is something that interests me greatly. In another recent speech in this place I touched on the issue of children being abducted from Australia to countries not party to the Hague convention. I did this because there is one family—or one that I know of in the Hume electorate, which I represent, but there are no doubt many more around the country—which is suffering on a daily basis because their young child has been taken to Malaysia by her father, originally for a holiday but they have never returned, and there is proving to be little Australian authorities can do despite Family Court orders granting the mother sole custody. This bill will allow Australian authorities to obtain warrants to use surveillance devices overseas in some instances. Whilst this might not help the family in my case, if this legislation can be used to help other families suffering the anguish of abducted children, then I give it my wholehearted support.

In addition to applying to Commonwealth offences, this bill will allow the AFP and the ACC to investigate any state offence which has a federal aspect and meets the three-year penalty threshold. For those who may be concerned about the privacy implications of this bill, let me make it quite clear that this bill attempts to balance the concerns of privacy with those of security and the prevention of crime. I think that has to be taken in the context of the seriousness of security in this country and right throughout the world today and the need for us to ensure that crime is prevented at all costs.

Under the bill, which I might add has been the subject of a Senate committee inquiry, data surveillance devices and listening devices may only be used with a warrant issued by a judge or an Administrative Appeals Tribunal member, unless special circumstances of urgency exist involving a serious risk to a person or property, the recovery of a child or where there is a risk of loss of evidence for certain listed offences such as drug offences, terrorism, espionage, sexual servitude and people smuggling. In such cases, a member of the agency who is of at least SES level may issue an emergency authorisation, which must be retrospectively approved by a judge or AAT member within 48 hours.

Privacy is protected under the bill by restrictions on how the information can be used and by the requirement that the content of surveillance be destroyed after a period of time except in certain circumstances. So, as you can see, by implementing the legislation
we will not be giving authorities free reign to spy on and listen to people as they see fit; this bill ensures that all requests to use a surveillance device must be approved and, indeed, necessary.

In addition to this, the bill establishes a vigorous reporting and inspection regime which allows for scrutiny of the exercise of powers under the bill by the Ombudsman, the Attorney-General and, of course, the Australian parliament. Might I take this opportunity to say that this House has been criticised for passing the original surveillance devices legislation so quickly and for not adequately consulting the Australian public. However, comprehensive model laws developed by the joint working group that was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council were released in a public discussion paper to solicit feedback from groups and individuals. It should also be noted that a Senate committee conducted an inquiry into this matter and provided a detailed list of seven recommendations, three of which have been incorporated into the current bill.

Under the bill, surveillance device material held for more than five years must be destroyed unless it is still needed for a permitted purpose, an emergency authorisation must be brought before a judge or AAT member for approval within 48 hours, and there is also a provision that allows a person who has suffered loss or injury as a result of illegal surveillance by the AFP or ACC to sue the Commonwealth. I believe these and other government amendments adequately address a majority of the issues raised during preparation of this bill. The implementation of this legislation will provide law enforcement agencies with access to the surveillance tools necessary to protect Australians and to investigate serious crime.

There is absolutely no doubt that this added protection comes at a cost. Already in this year’s budget the government has set aside $14.5 million over four years to the Australian Federal Police and the Australian Crime Commission to enable them to more effectively use the new surveillance device powers provided in the bill. In addition, $2.8 million over four years will be provided to the Commonwealth Ombudsman and the Administrative Appeals Tribunal in support of these new powers. Although significant, these costs mean nothing when compared to the value of human life and the safety and security of our people and our nation.

In closing, let me say that, as criminal and terrorist groups here and around the world make use of more and more sophisticated technology, our police and other authorities must be able to match and to better them. They must be able to stay one step ahead. This legislation will allow them to do that. I commend the bill to the House and thank the House for its indulgence and for the opportunity to speak on this bill today.

Mr MELHAM (Banks) (1.44 p.m.)—The Attorney-General in his second reading speech pointed out that the Surveillance Devices Bill 2004 began as an initiative of the Leaders Summit on Terrorism and Multi-jurisdictional Crime, which was held on 5 April 2002. A joint working group of Commonwealth, state and territory officials was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers Council. The joint working group then developed comprehensive model laws for all Australian jurisdictions to improve the effectiveness of cross-border criminal investigations in the areas of controlled operations, assumed identities, protection of witness identity and the use of electronic surveillance. These model laws were released in a public discussion paper to
solicit feedback from groups and individuals on the suitability of the proposed powers.

The Surveillance Devices Bill 2004 implements the model laws on electronic surveillance, tailoring them to the needs of the Commonwealth. It also implements several recommendations of the Senate Legal and Constitutional Legislation Committee report on the earlier version of the bill, which was tabled on 27 May this year. As the Attorney said, the bill will consolidate, expand and modernise the outdated surveillance device powers available to the Commonwealth and will provide law enforcement agencies with access to the surveillance tools necessary to protect Australians and to investigate and prevent serious crime.

There was a process, and that is the way it should be. This was not a situation where this bill was introduced overnight. There was a public discussion paper, people had an opportunity to contribute and the parliament, through one of its committees, also had an opportunity to contribute. That is as it should be. I understand it takes a little bit longer but you need to give ownership of bills like this to all stakeholders. The Attorney-General has shown a willingness at times—not at all times—to take on board reasonable suggestions. That is appropriate and as it should be. None of us is the sole repository of all wisdom. In a lot of these instances it is an argument about balance and at times we do push the balance too far one way—probably against the individual. We need to structure it in such a way that the authorities are able to perform their duties but also structure it so it does not necessarily cost the individual.

I read a parliamentary Bills Digest which was produced earlier this year that goes to a lot of the details of the bill. It was a digest produced by Jennifer Norberry from the law and bills digest service on 26 May 2004. As usual, Ms Norberry has done an excellent job critiquing the legislation. I want to talk about some of her concluding comments. I understand the Attorney wants to finish this debate before question time and I am happy to accommodate him in that regard.

Ms Norberry points out that both the JWG, the joint working group, and the Attorney-General—in his second reading speech—noted that ‘it was important to protect society against crime and that surveillance technology can be an important weapon in the law enforcement arsenal’. But, the Digest notes:

In view of the intrusive nature of surveillance, they also acknowledge the need to protect privacy interests. Privacy interests have been identified as being:

- The interest in controlling entry to personal territory
- The interest in freedom from interference with one’s person and personal space
- The interest in controlling one’s personal information; and
- The interest in freedom from surveillance and from interception of one’s communications.

One reason for the Bill to protect privacy interests and regulate the use of surveillance is the limited protection given by the common law when a person is subjected to surveillance. In this context, it may be important to note—

Ms Norberry says—

That surveillance devices can intrude into the lives of third parties who have nothing to do with police investigations. Another reason for taking privacy issues into account is the obligations Australia has as a party to the International Covenant on Civil and Political Rights (ICCPR). Article 17 of the ICCPR provides:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.
It has to be acknowledged that there are various provisions in this bill that aim to address privacy issues. She points out:

For instance, warrants are issued by Judges and AAT members, restrictions are placed on the used to which ‘protected information’ can be put, there are record-keeping and reporting requirements, and inspection provisions. On the other hand, the Bill contains no general prohibition on the use of surveillance devices subject to exceptions. It enables surveillance devices to be used without warrant or authorisation in certain circumstances.

I note that it also allows for the destruction of surveillance device material when it is no longer relevant to one of the permitted uses listed in the bill. The other point that Ms Norberry makes that I wanted to come to was in relation to the right to silence, another thing I mentioned in an earlier speech:

The ICCPR also provides, in article 14, that an accused has a right to a fair trial. One of the incidents of a fair trial is the accused’s right to silence. Article 14(3)(g) of the ICCPR says that an accused person has the right ‘not to be compelled to testify against himself or to confess guilt’.

Ms Norberry contemplates:

Parliament may want to consider whether the provisions in the Bill, including the uses that can be made of information obtained without the need for a warrant, are an acceptable or an unwarranted interference with an accused’s right to silence.

They are all appropriate questions to ask and for the parliament to consider.

I, for one, believe very strongly in the right to silence. I do not believe that it should be lightly set aside. I know that we did it in relation to some legislation to do with the gathering of information. The offset was that that evidence could not be used against the particular individual. It was about gathering information. I notice that the federal Commissioner of Police has had something to say recently about the right to silence and the Attorney says he will look at it. I think there}

comes a point when it is quite wrong to go beyond a particular boundary. That is one path that needs to be trodden very carefully. We will see how events unfold.

I think that legislation such as this is appropriate. It has gone through a process; I think it has been justified by those seeking to use it; and the principles behind it on balance are more than reasonable. One can raise some objections to it, but we can do that with virtually any piece of legislation. What we need to guard against—and I again caution the parliament and legislators in the states and territories—is that in the current climate I sense a new McCarthyism, in that some authorities feel that they can use the threat of terrorism to get the wish list that they have been pushing for for years when it comes to devices that they want. I said earlier we have more telephone intercepts in Australia than there are in America. One of the reasons for that is technology; it is cheaper. Intelligence gathering is probably the best way for enforcement agencies to stop terrorism. It is not going to happen with other things that they are asking for, but that is a matter for another day.

I promised the Attorney that I would finish well before question time so that he could have this bill through the House. It is important, and I repeat it because you cannot say it enough, that when it comes to legislation like this the symbolism of both sides of the House supporting it—the government and the opposition—cannot be underestimated, because it sends a message out into the community that we are not going to play politics with this sort of legislation. Whether you change the government today, tomorrow, in three years time or in six years time, by having cross-party support the authorities know that there will not be a change of direction if there is a change of government.
This is the sort of material that we are entitled to have scrutiny of and where we are entitled to have input from all players—from not just the prosecution but also the defence authorities. In my time as a practitioner of the law, the only positive legislation that I ever saw introduced on behalf of the accused in New South Wales was the right of last address. It used to be that the defence addressed the jury, followed by the prosecution and then the judge. There has been a lot of legislation since, and the conviction rate has not gone up.

It is the same with this legislation: we can in effect bring in as much legislation as we want—and this is important legislation because it sets new boundaries—but we need to properly fund the authorities, we need to properly train them and we need to make sure that they are professional, because too often what we do not do is nurture. For instance, I can recall that in the first couple of years of this government, when they were slashing and burning, it was not just ATSIC that suffered a $470 million cut in the 1996 budget because of which the Indigenous community are still suffering; enforcement agencies also suffered some cuts. They have since been reinstated, as they should be.

I commend the bill before the House to the parliament. It is deserving of bipartisan support. And I look forward to future bills that come before the House being dealt with in a similar way—one that allows this parliament, this chamber or the other chamber, and members of the public to put their views on what is the appropriate balance that we as a parliament should strike.

Mr RUDDOCK (Berowra—Attorney-General) (1.56 p.m.)—in reply—I take the opportunity first to acknowledge the contributions of the member for Barton, the member for Hume and the member for Banks. I also want to express my thanks to those in the Senate Legal and Constitutional Legislation Committee for their deliberations on a previous version of this bill. I acknowledge that the bill has gone through a degree of discussion and, in this case, it has been helpful. I might have liked the legislation earlier, but I do not think we have been prejudiced by not having it—that may be good fortune, good luck. Nevertheless I am grateful that, having passed through the Senate, it has reached the stage of securing passage through this House, hopefully before question time.

As a bill, the Surveillance Devices Bill 2004 differs from when it was first introduced in the previous session of parliament, in March of this year. It was amended to respond to three of the six recommendations made by the legal and constitutional committee of the Senate. Three recommendations of the committee were not adopted on the basis that they were not necessary or would result in an onerous imposition on police operational capabilities. Again I would like to thank the committee for its useful work which helped to improve this important legislation.

The bill provides our law enforcement agencies, both Commonwealth and state, with important crime-fighting tools. It does so in a way that allows law enforcement officers access to surveillance technology to more effectively carry out investigations and to make real inroads into preventing and responding to serious crime while respecting the privacy of ordinary Australians. I commend the bill to the House.

Can I say to the member for Barton that, notwithstanding the change of composition in the other place, I certainly will endeavour to ensure that, in relation to important national security legislation, there is proper time for debate and consideration of the points of view that are put. We intend to use
our majority wisely and will ensure that there is effective liaison. I acknowledge the ongoing interest of the member for Hume, who I know has taken considerable interest in the questions relating to child abduction.

I know the member for Banks likes to see balance in these matters. I acknowledge his expertise and experience. I do not necessarily admit that he holds all wisdom about where the balance should lie, but I do commend him for pointing out the constructive remarks of the Australian Federal Police Commissioner. I am going to look at those issues; I have not adopted them, but I will look at them. I will not necessarily be adopting the lowest common denominator, I might make that point. But this bill is a worthy bill. I hope that it will now conclude its passage.

Question agreed to.

Bill read a second time.

Third Reading

Mr RUDDOCK (Berowra—Attorney-General) (2.00 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

The SPEAKER—Order! It being 2 p.m., the debate is interrupted in accordance with standing order 97.

MINISTERIAL ARRANGEMENTS

Mr HOWARD (Bennelong—Prime Minister) (2.00 p.m.)—I inform the House that the Minister for Industry, Tourism and Resources will be absent from question time today. He has had to leave Canberra for personal commitments. I will answer questions on his behalf.

QUESTIONS WITHOUT NOTICE

Regional Services: Program Funding

Mr LATHAM (2.00 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer to her statements in the House yesterday and again today in her capacity as Minister for Veterans’ Affairs concerning Regional Partnerships funding in Rockhampton. How and when did the minister first become aware that her letter to the member for Capricornia had not been dated and mailed until 2 December 2004?

Mrs DE-ANNE KELLY—Everything is contained in my statement that was made to the House earlier. There is no need to add to it.

Afghanistan

Mr MICHAEL FERGUSON (2.01 p.m.)—My question is to the Prime Minister. Would the Prime Minister inform the House of the government’s reaction to the inauguration of the President of Afghanistan yesterday?

Mr HOWARD—I thank the member for Bass for his question. I think this is the first question I have taken from the member for Bass. I very warmly welcome him to the House. I must say that the member for Bass and I shared one of the more memorable moments of the election campaign at the Albert Hall in Launceston.

I want to remark very briefly on a memorable moment for democracy around the world and that is the other election that was held on 9 October, the one that was held in Afghanistan and led to the election of President Karzai. It is the first time there has been a democratically installed government in Afghanistan. It is something that we very warmly welcome. It has been a long and hard march for the people of Afghanistan, and the men and women of the Australian Defence Force played a major role in the liberation of that country and the expulsion from government of the brutal dictatorship of the Taliban.

I want to wish President Karzai well as he faces the very difficult work of reconstructing his country, healing ethnic divisions and developing the democratic culture and sys-
tem in Afghanistan. Australia should be proud of the role that we have played. Not only did we contribute military forces alongside our allies to respond to the attacks in September 2001 but, since that date, we have offered assistance to Afghanistan of some $110 billion. Democracy has not been a way of life in that country and it is therefore treasured all the more by the people of Afghanistan. We wish them well. We share their moment of legitimate satisfaction and joy that democracy has finally come and we continue to assure them of our support as they tread the path of democracy and partnership with the rest of the world.

Regional Services: Program Funding

Mr Latham (2.04 p.m.)—My question is to the Minister for Veterans’ Affairs. I raise a matter not covered in any of her statements to the House concerning Regional Partnerships funding in Rockhampton. How and when did the minister first become aware that her letter to the member for Capricornia had not been dated and mailed until 2 December 2004?

Mrs de-Anne Kelly—Yesterday.

Economy: Consumer Confidence

Mr Broadbent (2.04 p.m.)—My question is to the Treasurer. Would the Treasurer outline to the House data released today on consumer confidence and housing finance? What does this data indicate about the Australian economy?

Mr Costello—I thank the honourable member for McMillan and I say on behalf of the House that it is great to see him back. Today Westpac released the consumer sentiment figures for the month of December. Whilst consumer sentiment fell by 2.9 per cent, it is up 4.4 per cent over the year and 17.1 per cent above its long run average, indicating that consumers are very confident in Australia at the moment—and why wouldn’t they be? Unemployment is at its lowest level in 27 years. Household wages have been growing strongly, consumer prices remain subdued and interest rates are at historic lows with the home mortgage variable interest rate at about 7.05 per cent.

In addition to that, housing finance figures were released today showing that the value of housing finance in October fell by 3.1 per cent. This was led by a decline in investor finance, which was down 8.1 per cent for the month and down 32 per cent over the year. We have seen quite a substantial drop in investor finance and a moderate drop in relation to owner occupied finance, which is down 7.8 per cent over the year. For about the last two years I have been indicating that you should not expect the housing market to continue increasing at the rate that it was and, what is more, if it did continue increasing at that rate, that would be unsustainable. So to see a slowing in relation to housing finance—particularly a slowing in relation to investor finance—is something that the government has been looking for. It is not unwelcome. It indicates that there is a slow down in that sector, which is confirmed by approvals and by other indicators such as auction clearance rates, and it shows that one of the hotspots of the economy—which we have been warning about for some time—is now coming off in an orderly and measured way, which will provide some durability in the sector over the medium term.

Regional Services: Program Funding

Mr Latham (2.07 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer to her statement in the House yesterday in which she stated that the 2 December letter to the member for Capricornia had been misplaced. Minister, in which office was the misplaced letter found? On what date was it found and by whom?

Mrs de-Anne Kelly—If the Leader of the Opposition refers to the statement by
the departmental liaison officer, he will find that that explains the answer.

**Foreign Affairs: Overseas Missions**

**Mrs GASH** (2.08 p.m.)—My question is addressed to the Minister for Foreign Affairs. Would the Minister outline to the House the steps the government is taking to upgrade security and protect staff and visitors at Australian missions overseas?

**Mr DOWNER**—I thank the honourable member for Gilmore for her question and for her interest. Honourable members will recall the bombing of the Australian Embassy in Jakarta on 9 September and the tragic consequences that flowed from that bombing. But one of the lessons we learned was the effectiveness of the blast proofing of the windows of the Australian embassy. As a result of that bombing, the government decided immediately to blast-proof windows at all our overseas missions—at a cost, I might say of $83 million. Although it is a lot of money, it is money worth spending. We have also been conducting an assessment of the security measures that we already have in place at our overseas missions. As a result of this, the government have now approved an additional $590 million for a new substantial package of security measures, which will commence this financial year, focusing of course on our higher threat posts. We aim to have in place new minimum and enhanced standards at all our posts.

The attack on the US Consulate in Jeddah over the last couple of days simply illustrates the importance of having good perimeter security and also hardened walls. New purpose-built chancelleries are being designed to withstand bomb blasts, with hardened walls which will provide a level of protection against assault. These initiatives build on the priority work that DFAT, the Department of Foreign Affairs and Trade, has undertaken in the last two years, spending an additional $100 million. This demonstrates the importance the government attach to ensuring the security of people who visit, as well as work in our missions overseas. This $590 million package which we have announced today will include repair work at the embassy in Jakarta, following the 9 September bombing. The package itself will be implemented over a period of five years. In this age of terrorism we just cannot be too careful in providing protection for our diplomats and officials, as well as visitors to our missions overseas. We think it is wise to spend the additional money over a five-year period, and that should give much greater confidence to officers of the Australian government who are serving overseas.

**Regional Services: Program Funding**

**Mr LATHAM** (2.11 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer the minister to this letter, her letter to Mrs Heather Clelland of Horse Australia, which is dated 26 November 2004 and was sent to Mrs Clelland during the period in which the minister has served as the Minister for Veterans’ Affairs. Minister, when was this letter actually signed by you and what explains it not being date stamped until 26 November?

**Mrs DE-ANNE KELLY**—The answer to that question was contained in a statement I made to the House.

**Trade: India**

**Dr SOUTHCOTT** (2.11 p.m.)—My question is addressed to the Minister for Trade. Would the minister update the House on Australia’s growing commercial relationship with India?

**Mr VAILE**—I thank the honourable member for Boothby for his question and for his ongoing interest in the importance of increasing Australia’s export effort into the markets of not just East Asia but South Asia as well. It is well known that Australian merchandise exports to India are increasing at a
steady rate. In fact, we now export $4.8 billion worth of merchandise to India. India is now our seventh largest merchandise export market and one that we pay particular attention to. There has been an 88 per cent increase in our merchandise exports to India in the last year. In fact, in the last decade there has been a 400 per cent increase in those merchandise exports, led by exports of gold, copper ores, coal and wool.

With two-way trade now standing at $5.8 billion, India is a significant bilateral trading partner. The potential exists, given the size of the population of India, for significant growth in the commercial relationship between Australia and India. India’s growing prosperity is attracting a surge in Australia’s services exports. So it is not just commodities; it is also services that are growing. Australia is the third largest supplier of education services to the Indian market. Over 13,000 Indian students trained and received education in Australia last year. That is a 32 per cent increase in the services sector since 2002.

India is also Australia’s eighth largest overseas investor. In the last year we have invested over $1 billion into the Indian economy. Yesterday BlueScope Steel announced that it would invest $100 million to construct three new manufacturing facilities in India to service the growing building and construction industry. As these statistics demonstrate, Australia’s trade and investment relationship with India is growing at a good rate. At the recent meeting in Vientiane, the Prime Minister held a very productive meeting with India’s Prime Minister Singh, talking about the prospects of enhancing the already strong economic relationship between Australia and India. In the coming months the government will be exploring the most effective way to further strengthen that trade and investment relationship that exists between our two countries.

Regional Services: Program Funding

Mr Latham (2.14 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer to her statement in the House at 1 p.m. today when she apologised to the House for providing misleading information. She also said that she understood that the press release approved on 31 August 2004 in relation to the Horse Australia project had in fact been issued. How does the minister explain the contradiction between this statement and the fact that the minister’s letter to Mrs Heather Clelland, which the minister asserts she signed on exactly the same day, 31 August, tells Mrs Clelland to keep the news of the grant confidential because Senator Boswell, a National Party colleague, would be making arrangements for the public announcement?

Mrs De-Anne Kelly—I have made a full and comprehensive statement. Thank you.

Family Services: Family Payments

Mr Wood (2.16 p.m.)—My question is addressed to the Treasurer. Has the Treasurer seen evidence that the government’s family payments, announced in the last budget, are providing real economic assistance to families across Australia? Are there any other alternatives?

Mr Costello—I thank the honourable member for La Trobe for his question and his interest in family matters—and I congratulate him on his engagement, which occurred not so long ago—and, no doubt, his future interest in the maternity payment. Can I say that the government introduced in this year’s budget a $600 per child payment, which is available to those families which are eligible for family tax benefit part A. Before 30 June, 2.1 million Australians were able to share in that payment. In relation to reconciliation of tax returns, for the year ended 30 June you were eligible for another $600. I can inform the House that 1.6 million
Australians have now reconciled their 30 June tax return and entitlement and, accordingly, are eligible for that $600 payment. That is of real assistance to families that are struggling and need help with raising the children.

Are there any other alternatives? The Labor Party maintains that this $600 does not exist. Wayne Swan told the AM program on 2 September 2004, ‘That $600 is not ongoing.’ Try telling that to 1.6 million Australians who have now qualified. He told the John Faine program on 6 September, ‘That $600 is not continuing.’ Well, try telling that to the 1.6 million Australians who have now put in their reconciliation. The Leader of the Opposition told listeners at his policy launch on 7 September, ‘That $600 supplement is not real.’ That is funny—it goes into bank accounts, it comes out of bank accounts, it buys goods and services at the cash register, it cost the government $2.2 billion, but it is not real. Is it any wonder that Labor lost the campaign because it had no economic credibility? One of the first steps in the long march—and I am sure members of the Labor Party would be familiar with the long march—to economic credibility would be to recognise that when you pay people $600 the money is real.

Can I just say that apparently the Labor Party policy is still to abolish the $600. The Labor Party policy still does not acknowledge that $600. There are some voices of economic reason now clamouring for a change of policy but, unhappily, they do not include the member for Lilley. They include his factional opponent the member for Lalor, done in for the shadow treasurership but far more responsible. She told the Age newspaper on 1 November 2004—

Mr Albanese—That’s consistent!

Mr Costello—It is true: she is far more responsible than the members of the rooster brigade that did her over. She told the Age on 1 November 2004:

In some of our traditional booths we saw swings against us ... I think probably the $600 played a role in that.

Listen to this:

I think we’ve got to be frank and say there were a lot of people who received $1200 or $1800 ... in a lump sum and they were pretty keen to keep it, and they identified needing to vote for the Howard Government as the way of keeping it.

Well, they were right about that. She was right about that. Her economic credibility— notwithstanding Medicare Gold, a subject we will return to in due course—in relation to that $600 is better than any rooster that crowed over her damaged body in relation to the shadow treasurership. Until the Labor Party can come to grips with itself and until we find that the member for Lilley can come out and acknowledge that when you pay $600 it actually exists, that long march to credibility will not have begun, Labor will not be ready to rehabilitate itself, and people will have to continue voting for the Howard government to get their $600 entitlement.

Regional Services: Program Funding

Mr Latham (2.21 p.m.)—My question is to the Minister for Veterans’ Affairs. Why did the minister tell the House earlier today that she believed that the Horse Australia project press release had been issued when in fact, on the same day, 31 August, she signed a letter to Mrs Clelland stating:

I have written to Senator Ron Boswell advising of the funding approval and asked that he liaise with you about suitable arrangements to announce the provision of the funding publicly. I ask your organisation to keep the approval of funding confidential until this has occurred.

How does the minister explain this contradiction in the information she has provided to the House?
Mrs DE-ANNE KELLY—There is no contradiction. If the Leader of the Opposition would read the tabled statements carefully, he will find the answers to his questions.

Workplace Relations: Australian Workplace Agreements

Dr JENSEN (2.22 p.m.)—My question is addressed to the Minister for Employment and Workplace Relations. Would the minister describe the government’s firm commitment to Australian workplace agreements? Are there any alternative policies?

Mr ANDREWS—I thank the member for Tangney for his question and welcome him to the House. As he knows, almost 600,000 Australian workplace agreements have been approved since 1997. They have now become an integral part of the workplace in Australia.

Mr Bevis—How many?

Mr ANDREWS—I say to the member for Brisbane and others opposite that they are here to stay. Workers in Australia have voted with their feet and entered into Australian workplace agreements. The member for Perth has recently raised the possibility of the ALP reviewing its policy. He said about Australian workplace agreements:

... the AWA issue is an issue that parts of business are very hot to trot on, so that forms part of the policy review.

It seems that the member for Perth has finally conceded that his party’s opposition to AWAs is in fact anti business. Maybe he has been spending some more time in his electorate. If he goes to his electorate, he will find that currently there are 4,127 existing AWAs in operation in his electorate. If he goes nearby to the electorate of the member for Fremantle, he will find 6,007 of them. If he goes further afield, to the member for Cowan’s electorate, he will find 8,264 AWAs in operation. When the member for Perth was saying, ‘We’re going to review this policy,’ presumably he wanted to be a little more pro business.

But overnight he got a different message. In fact, what the Labor unions told the member for Perth overnight was to take a Bex and lie down. We had Dougie Cameron out overnight. I understand Mr Cameron is around the House today, no doubt knocking on the door of the member for Perth. Yesterday he threatened the Labor caucus if it changed its policy. He said: ‘Unions are as one in opposing Australian workplace agreements.’ No wonder the member for Perth was out doing a doorstop, flip-flopping, this morning. He said this:

I’m under no illusions about the very strong view that is held by the union movement about this issue.

He went on:

Our starting point is clear, our policy is unaltered ...

The member for Perth having said recently, ‘We’re going to review all this, and we’re going to be friendly to business,’ Dougie Cameron comes out and says, ‘Don’t you dare do that.’ And the member for Perth was out doing a doorstop this morning saying, ‘Our policy is unaltered.’ That is the reality: it is a Clayton’s review of policy, because the Leader of the Opposition predetermined the position on 20 November, when he said:

... we don’t see the need for the AWA’s, our policy is unaltered.

Of course it is unaltered. It will remained unaltered until there is fundamental reform of the Australian Labor Party.

Regional Services: Program Funding

Mr KELVIN THOMSON (2.25 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer the minister to her statement in the House today in which she reveals that there were further letters on her letterhead as parliamentary secretary which were date stamped and posted after she became Minis-
MRS DE-ANNE KELLY—My statement and that of the departmental liaison officer, coupled with that from the deputy secretary of the department, answer all of these questions.

Medicare

Mr PROSSER (2.26 p.m.)—My question is addressed to the Minister for Health and Ageing. Would the minister inform the House how the government is investing in Medicare to make it even better for older Australians? Is the minister aware of any alternative policies?

Mr ABBOTT—I thank the member for Forrest for his question. Obviously, the government accepts that older people do face higher health care costs than the rest of the community. This is why the government provides concession card holders—which includes most people over 65—with access to the Medicare safety net at a lower threshold. This is why the government is proposing to increase the private health insurance rebate for people over 65.

When it comes to the health budget, the Howard government understands that there is no magic pudding. The Howard government understands that governments cannot spend less and actually get more. Unlike this government, the member for Lalor was at it again this morning, peddling the Whitlamite fantasy known as Medicare Gold. She may be more responsible than the roosters—but not much more responsible than the roosters. In the paper this morning she referred to Medicare Gold’s extraordinary ‘electoral potency’. If Medicare Gold was so electorally attractive, why didn’t more electors actually vote for it?

If the Labor Party lost the election despite Medicare Gold, what does that say about the electability of Mr Twenty-five Per Cent sitting in the chair opposite, whom front-benchers are now describing as the Doc Evatt impostor roaming around the Labor Party caucus. Medicare Gold is a dud, and members opposite know it. The member for Melbourne has said that Medicare Gold destroyed Labor’s economic credibility. The chief of staff of the member for Brand has said it was a strategic disaster. The incoming President of the Labor Party has called Medicare Gold a turkey. The intellectual-in-chief, Mr Botsman, has said that Medicare Gold was a cross between a donkey and a wombat. It is certainly a wonky, shonky policy.

The Labor Party’s arguments over Medicare Gold are really just a proxy fight over the leadership of the Labor Party. Let me make this prediction: Medicare Gold will not outlive the Leader of the Opposition by one day. Mr Speaker, let me make this very clear: there will be no fool’s gold from the Howard government; there will be no Medicare magic pudding put forward by the Howard government. What there will be is sensible investment in making a good health system even better.

Regional Services: Program Funding

Mr LATHAM (2.30 p.m.)—My question is to the Minister for Veterans’ Affairs. I refer to her statement in the House yesterday. When the minister was sworn in to her current portfolio in October, did she inform the Prime Minister or Deputy Prime Minister of the conflict of interest of her staff member, Mr Ken Crooke, in the A2 milk matter, as she was obliged to do under the ministerial code of conduct? If not, how does the minister justify Mr Crooke’s role on her staff, initially approving the A2 milk grant, and his directorship and financial interest in the Asia Pacific Corporation, a lobbyist for A2 milk?
Mrs DE-ANNE KELLY—There is a statement that I have issued on this matter.

Education: Funding

Mr VASTA (2.31 p.m.)—My question is addressed to the Minister for Education, Science and Training. Would the minister inform the House of the government’s initiatives to improve standards and values in our schools for the benefit of Australian children and their parents?

Dr NELSON—I thank the member for Bonner for his question. He is the first member of the federal parliament from the electorate of Bonner which was named in honour of the great Australian and former Liberal Senator, the late Neville Bonner. Last night in this parliament, historic schools legislation was passed that will deliver not only $33 billion to schools over the next four years but, for the first time, will demand that there will be a common starting age for schooling right across Australia; there will be national standards in schooling; plain language reports to parents about the progress of their children; the national values framework for schooling will be adopted and displayed in Australian schools; there will be available to parents and prospective parents of schools the real performance of a school at a local level; literacy and numeracy testing benchmarks will be reported to Australian parents right across Australia; and, of course, school principals—which might seem unremarkable to many here—will have a say over who actually teaches in the school for which they are responsible.

In relation to the schools policy, on 1 December last week the Courier-Mail reported on Labor’s schools policy and said:
But despite trying to convince Australians it was learning from the past, the Opposition has endorsed the controversial ‘hit list’ of private schools that would be stripped of public funding under a future Labor Government.

So the hit list of private schools was endorsed. In fact, the story said:
A caucus spokeswoman denied the decision meant Labor would again take a hit list of private schools to the next election.
I thought, right, they are not going to take a hit list to the next election, but they have endorsed the hit list! That is the sort of stuff that inspires John Cleese. The story went to say:
But she admitted ‘there will be redistribution’, meaning some schools would lose funding.
The reality is that the Labor Party we now know has endorsed its schools policy. The Prime Minister said during the election campaign that hit lists never shrink, they only grow. Labor’s hit list initially proposed to slash the funding to support the education of 160,000 Australian children in 178 schools. I heard some Labor people saying, ‘The Prime Minister’s going to say that sort of thing: that the hit list would only grow.’ In fact, the Prime Minister and people on this side have actually read Labor’s policy and many Labor caucus people have not. You need to go to the footnote on page 17. Labor’s policy of course says that once you hit the hit list threshold of funding—above and beyond which Labor says, ‘Parents should not be paying any more for the education of their children; stop making sacrifices; we in Labor want to punish you’—it says on page 17 at footnote 2: ‘This funding will be indexed against a weighted average of wage cost index and CPI.’ The average person would think: what does that mean?

In plain language, it means that under this government funding to support the education of the one million kids in Catholic and independent schools increases each year by around six or seven per cent. Under Labor, it would increase by three per cent. On 16 September, at the Catholic education forum in Brisbane that I also addressed, in answer to a
question from the Catholic Education Office.

The Deputy Leader of the Opposition admitted that over a six-year period the Labor Party’s policy would take not 178 schools, but every one of those 2,650 schools onto Labor’s hit list. The reality is that the Labor Party has a vendetta, particularly led by the Leader of the Opposition, against parents who make sacrifices for the education of their children. Under the current Leader of the Opposition, ‘ALP’ means ‘Against Learning Privately’. I can assure you, Mr Speaker, under this government’s literacy programs by 2007 every Australian child, every one of those 1.1 million children in Catholic and independent schools and their parents, will be able to read Labor’s hit list and will understand that every child in the system is vulnerable if the Labor Party ever comes to government.

Regional Services: Program Funding

Mr Latham (2.36 p.m.)—My question is to the Minister for Veterans’ Affairs. Can the minister confirm that the Prime Minister’s ministerial code of conduct requires that:

At the time of commencing their employment, ministerial consultants and members of ministers’ staff ... are required to complete statements of private interests on forms supplied by MAPS. The employing minister endorses the statement in writing after satisfying him or herself that there is no conflict of interest.

On what date did Mr Ken Crooke lodge a statement of private interest? When did he sign that statement and when did the minister endorse that statement in writing?

Mrs De-Anne Kelly—There is a statement in the public arena from me and from Mr Crooke.

MINISTER FOR VETERANS’ AFFAIRS

Motion

Mr Latham (Werriwa—Leader of the Opposition) (2.37 p.m.)—I seek leave to move the following motion:

That this House censures the Minister for Veterans’ Affairs for:

1. failing to provide any proper explanation of the fundamental contradiction between her claims that on 31 August she believed a press release announcing the grant to Horse Australia 2005 had been issued and that on the same day she signed a letter to Mrs Health Clelland of Horse Australia asking that she keep the grant confidential to enable her National party colleague, Senator Boswell to announce it;

2. her failure to table every letter that has been sent on her Parliamentary Secretary letterhead in the time she has been Minister for Veterans’ Affairs;

3. purporting to act as Parliamentary Secretary to the Minister for Transport and Regional Services while no longer entitled to;

4. improperly continuing to deal with arrangements in respect of funding under the Regional Partnerships Program; and

5. refusing to provide any proper explanation of her role as Parliamentary Secretary in relation to the grant to A2 Milk Marketees and her employment, in breach of the Ministerial Code of Conduct of Mr Ken Crooke, a person with a clear conflict of interest.

The Speaker—Is leave granted?

Leave not granted.

Mr Latham—I move:

That so much of the standing and sessional orders be suspended as would prevent the Leader of the Opposition moving forthwith:

That this House censures the Minister for Veterans’ Affairs for:
(1) failing to provide any proper explanation of the fundamental contradiction between her claims that on 31 August she believed a press release announcing the grant to Horse Australia 2005 had been issued and that on the same day she signed a letter to Mrs Health Clelland of Horse Australia asking that she keep the grant confidential to enable her National party colleague, Senator Boswell to announce it;

(2) her failure to table every letter that has been sent on her Parliamentary Secretary letterhead in the time she has been Minister for Veterans’ Affairs;

(3) purporting to act as Parliamentary Secretary to the Minister for Transport and Regional Services while no longer entitled to;

(4) improperly continuing to deal with arrangements in respect of funding under the Regional Partnerships Program; and

(5) refusing to provide any proper explanation of her role as Parliamentary Secretary in relation to the grant to A2 Milk Marketeers and her employment, in breach of the Ministerial Code of Conduct of Mr Ken Crooke, a person with a clear conflict of interest.

I think the Minister for Veterans’ Affairs would be more believable and more effective in the House if she just said, ‘The dog ate my homework’—if she came up with a cliched explanation instead of her blatant refusal to answer any of the questions put to her in the House. In this House of Representatives I believe a minister who cannot defend herself—a minister who cannot answer a single question, a minister who is incapable of providing any information to the House—should go. A minister who has no greater capacity than coming in at one o’clock, an hour before question time, and reading out a prepared statement to the House and then, in question time itself, answering every single question by saying, ‘Refer to the statement,’ is incapable of being a minister. She is so incompetent, so incapable, she should go.

She has tried to have the House believe today that the matters raised in the letter dated 26 November to Heather Clelland were raised in the statement. There is no mention of that letter of 26 November in the statement. She would try to have the House believe that the conflicts of interest of Mr Ken Crooke, on her staff, are dealt with in the statement issued to the House at one o’clock this afternoon. There is no such thing. She is dealing in a fantasy world where she is trying to believe that she can come in at one o’clock, an hour before question time, make a statement, read out a statement prepared by the Prime Minister’s office—and that gets her off the hook. She has no other responsibility to the people of Australia, no other responsibility to the House, than to walk up time after time and say, ‘It is all in the statement.’ Minister, the matters raised today about the letter of 26 November that you dated and wrote to Heather Clelland were not mentioned in your statement. Minister, the matters about Ken Crooke are not dealt with in the statement.

This minister is incapable of defending herself and, what is more, she has consistently contradicted herself in the House. Yesterday she came forward in relation to the letter that was sent to the member for Capricornia and said it was her belief that the Horse Australia press release had been announced and that the material had gone out. She told the House that the announcement had been made—so much so that the hapless Leader of the House went on radio this morning and said, ‘No worries about it. The letter was signed on 31 August and the press release went out.’ He was asked on the AM program, ‘Can you give us a copy of the press release that was boxed and issued?’ He could do no such thing, so he and the Prime Minister then had to force the Minister for
Veterans’ Affairs to come into the House and try to correct the record at one o’clock this afternoon. In doing that she just made things worse. She made things worse for herself because, having said to the House, ‘Look, I thought that press release went out but in fact it was never issued. I wanted it to be issued but it never went out,’ she overlooked the fact that on that self same day, 31 August, she signed a letter to Heather Clelland, Secretary of Horse Australia Rockhampton, which read as follows:

I have written to Senator Ron Boswell, advising of the funding approval—the $220,000 grant—and asked that he liaise with you about suitable arrangements to announce the provision of the funding publicly. I ask that your organisation keep the approval of funding confidential until this has occurred.

So this is the fantasy world of the Minister for Veterans’ Affairs. On one hand she makes a statement at one o’clock where she is trying to have us believe: ‘On 31 August I was under the impression the release had gone out, that the world knew about the $220,000 grant to Horse Australia Rockhampton.’ That is what she told the House less than two hours ago. She believed the world knew on 31 August about this funding grant, yet on the same day she writes to the recipients of the grant saying, ‘Keep it under wraps. Hush it up. Keep it confidential until Ron Boswell’—one assumes in the election campaign—‘comes to Rockhampton and makes the announcement.’ The minister is dazed and confused. She is living in a fantasy world where black is white and white is black. She cannot have it both ways. She cannot be telling the House 1¼ hours ago that she was under the impression the world knew about the grant and on the same day write to the recipient of the grant saying, ‘Keep it confidential. Senator Boswell will be coming your way. We will be rolling out the pork in the election campaign and all the arrangements will be made for that purpose.’

So the minister is doubly damned. The minister yesterday misled the House and compromised the Leader of the House with the information that was proven to be wrong. She comes in today and makes another mistake and gets herself further tangled up in this sham arrangement under the regional funding rorts. She cannot have it both ways. She has misled the House twice. Instead of just saying, ‘It is all in the statement,’ she should be obliged by the House to come to the dispatch box and give an explanation. The fact that she cannot defend herself, the fact that she cannot answer a question and the fact that she has no capacity to fulfil her responsibilities to the Australian people as minister, mean that she should be censured by the House and this suspension motion should be carried.

Of course, we have the further fantasy that somehow she has tried to explain away the fact that she signed all these letters on 31 August—someone lost them, someone put them under a piece of paper under a filing cabinet in her office—and they were not date stamped until 2 December for the member for Capricornia and until 26 November for the recipients of the grant. She tries to come in here and say, ‘It is all the fault of the departmental liaison officer.’ Haven’t we heard that excuse plenty of times. She is reading right out of the Prime Minister’s playbook. He is the master of blaming staff, the master of saying, ‘No, it is the public servants who got it wrong. They misled me. Something went wrong up in the department.’ So the minister has fallen back on the standard Howard government excuse of blaming departmental staff.

No-one in their right mind could believe that a departmental officer, someone respected and well regarded by the govern-
The Australian people would want that conflict of interest to be exposed. They would have expected De-Anne Kelly, upon becoming the Minister for Veterans’ Affairs, to fill out the forms and say to the Prime Minister: ‘If you want to upgrade me from being parliamentary secretary to the Minister for Veterans’ Affairs you can do that, but I have to be honest with you. I have to comply with the ministerial code of conduct and let you know this fundamental truth: I have had a bloke on my staff called Ken Crooke who has also been lobbying for a grant recipient. He has been walking both sides of the street, pushing the grant through in the parliamentary secretary’s office while also taking some private money for lobbying on behalf of that particular company.’ She could have said that to the Prime Minister and the Prime Minister could have said, ‘You have such a clear conflict of interest that I cannot make you a minister.’ But now that the Prime Minister knows that fact, he should be saying that she is out.

She has not provided the information to the Prime Minister. She has misled her Prime Minister about the conflict of interest. She has not complied with the ministerial code of conduct. She has not been able to explain the contradiction in the letters. She has not been able to give an adequate explanation to the House on any of these matters. She is just a ministerial robot who walks up and says, ‘It is all in the statement.’ None of it has been in the statement today. She is hopeless and incompetent. She is misleading the House and the Prime Minister, and breaching the ministerial code of conduct. She should go, and the Prime Minister should do that straight away.

The SPEAKER—Is the motion seconded?

Mr KELVIN THOMSON (Wills) (2.47 p.m.)—I second the motion. Just yesterday we learned that Minister Kelly’s love affair
with regional pork rorts had not stopped with the election and her elevation to Minister for Veterans' Affairs. The member for Capricornia received on Monday a letter from the minister, 'Calamity' De-Anne, dated 2 December and signed off as Parliamentary Secretary for Transport and Regional Services, announcing a $220,000 grant to Horse Australia.

We have heard the government's explanation of this matter. It is totally inadequate to send off a letter purporting to act as a parliamentary secretary once you have ceased to be a parliamentary secretary. It is simply not lawful. If anyone doubts this, try this at home, kids: Minister Kelly says that she signed this letter on 31 August but someone else put a 2 December date on it and sent it off then. I invite anyone listening to this debate to fill out their tax return on 31 August, not date or send it until 2 December and then see how you go with the tax office.

Let us use a ministerial example. If former National Party Minister Larry Anthony had signed off a grant as children’s services minister before the election but it was not dated or sent off until last Thursday, would it be legally valid? No. Would the department do such a thing? No way, Jose. What if Larry Anthony had been immigration minister instead and had signed an order to deport someone, but it was not dated or sent off until last Thursday? Would that order be legally valid? The Federal Court would whack such a document out over the grandstand. It is no good for Minister Kelly to avoid parliamentary scrutiny by saying, 'I am no longer responsible for this area.' If you are no longer responsible for this area, why are letters going out in your name announcing grants?

Up until now this story has not been pleasant, but from here on in it starts to get really crook. We have the National Party state secretary, a hangover from the Bjelke-Petersen days—the days of the white shoe brigade and money for political favours. Mr Crooke becomes a lobbyist for the company A2 Dairy Marketers then he goes to work for the member for Dawson, 'Calamity' De-Anne. Mr Crooke says that he ceased to lobby on behalf of A2 Dairy Marketers after he joined Minister Kelly’s staff, but we know that he met with the Queensland Minister for Primary Industries and Fisheries after he joined Minister Kelly’s staff in the company of two directors of A2 Dairy Marketers and handed over the business card of the Director of the Asia-Pacific Corporation, lobbyists for A2 Dairy Marketers.

This in itself is a serious breach of the Prime Minister’s code of ministerial conduct. Staff members must resign as directors where the potential for conflict of interest exists. Minister Kelly says that she did not know that Mr Crooke had visited the Queensland minister. I do not know about you, but, if one of my staff was visiting a minister of a government, I would probably be told about it. Indeed, Minister Kelly told ABC Radio on 17 September that, ‘Now Mr Palaszczuk is a strong supporter of the project.’ Given that Mr Palaszczuk had made no public statements at the time concerning the A2 project nor had he discussed it with the member for Dawson, on what basis did she make that claim? Might it not be because someone on her staff—Mr Crooke, perhaps—had said to her that Mr Palaszczuk was a strong supporter of the project? Her claim that Mr Crooke did not tell her he was meeting Minister Palaszczuk is simply not believable. The Prime Minister’s code of ministerial conduct has unquestionably been breached. The question is: what is the Prime Minister going to do about it?

Then a strange and beautiful thing happened. On the day that the election was announced—a Sunday—Parliamentary Secretary Kelly authorised a grant under the Re-
gional Partnerships program of $1.27 million of taxpayers’ money to a private company. You guessed it—it was A2 Dairy Marketers. Fancy that! We should all be so lucky! A National Party lobbyist turns staffer and his boss announces a $1.2 million grant for the company he has been lobbying for—aин’t life grand!

Mr ABBOTT (Warringah—Leader of the House) (2.52 p.m.)—Mr Speaker—

Opposition members—Where’s De-Anne?

Mr ABBOTT—the normal procedure with a suspension motion is that it is responded to by the Leader of the House, and that is precisely what is happening today. The Minister for Veterans’ Affairs made a very full and complete statement to the House earlier today. She made a statement to the public on Thursday last week. The Minister for Veterans’ Affairs has more than fully answered the questions that have been put to her, and it is very appropriate that the Leader of the House should be responding to this suspension motion.

Let me say that what we have seen today is an understandably frustrated and disappointed opposition lashing out at a minister who has done no wrong. What we have seen today is a classic case of displacement therapy. That is what the opposition are engaging in. They are displacing the frustration and self-hatred they understandably feel against various of their own members, particularly the Leader of the Opposition. They are displacing that onto the Minister for Veterans’ Affairs, a good minister who has done no wrong.

Let me put this question to the House: is there anything at all wrong with the grant that the minister quite properly approved on 31 August? Of course there is not. The grant was widely welcomed in the electorate of Capricornia. As far as I am aware, it was even welcomed by members opposite. But the fact of the matter is that it was a perfectly reasonable thing that she did, and she has provided all the explanation possible and necessary in response to questions from members opposite.

As I said, this is a classic case of an opposition lashing out in despair, frustration and anger against a perfectly innocent minister because of the self-hatred and self-loathing in their own ranks. Hasn’t the Leader of the Opposition had a diabolical couple of months? He loses the election that he thought he was going to win and he has suffered nothing but obloquy, not from us—

Mr Beazley—Mr Speaker, I rise on a point of order. This is a motion before the House to suspend standing orders. The argument is about the suspension of standing orders. This is clearly unrelated to the topic that is before the House. I ask you to direct the Leader of the House to come back and be relevant to the topic before the House.

The SPEAKER—In calling the Leader of the House, I remind the member for Brand that the Leader of the Opposition did have a fairly broad-ranging motion. In moving for suspension, he did cover quite a lot of ground.

Mr ABBOTT—The Leader of the Opposition has just had the unhappiest first birthday any Leader of the Opposition in memory has ever had. As a way of trying to cope with this, he is now lashing out at anyone he can find. He has lashed out at you, Mr Speaker, and now he has lashed out at the Minister for Veterans’ Affairs. We all know what this is really about. This is really about the Leader of the Opposition desperately trying to shore up his position. He has had a succession of frontbenchers undermine him repeatedly since the election. He has had Senator Conroy admit on the record that he has referred to Senator Faulkner as ‘Frankenstein’—
Mr Albanese—Mr Speaker, I raise a point of order on relevance. The Leader of the Opposition, in moving for a suspension so as to allow a motion of censure of the Minister for Veterans’ Affairs, clearly outlined why in his view that motion should be debated. The minister opposite, the Leader of the House—

The Speaker—The member for Grayndler will resume his seat, and I will rule. The Leader of the Opposition, in moving his motion, made some fairly wide-ranging remarks. I call the Leader of the House.

Mr Abbott—The truth is that members opposite have made a very wide-ranging attack on the government as part of the debate on this suspension motion. It is only appropriate that the motivation of members opposite be examined as part of the response. The fact of the matter is that, as the Treasurer has pointed out, since the election Senator Conroy has launched his jihad against the dead parrot, and that is precisely why they are squawking.

Mr Albanese—Mr Speaker, I raise another point of order on relevance—

The Speaker—The member for Grayndler will resume his seat. You have raised your point. I am sure that the Leader of the House will come back to the suspension motion.

Mr Abbott—The reason why this suspension motion has been moved is that members opposite are so unhappy amongst themselves. We have the member for Lyons describing the member for Grayndler as a mangy dog.

Mr Albanese—Mr Speaker, I raise a point of order. I realise that the Leader of the House has got you into some difficulty over the past week—

The Speaker—The member will come to his point of order!

Mr Albanese—The Leader of the House was asked by you to go back to the question before the chair. He refused to do so. He is now showing contempt for your ruling—

The Speaker—The member for Grayndler will resume his seat, and I will rule. The Leader of the House has come back to the motion, and I am sure he will continue to talk to the motion.

Mr Abbott—As the Minister for Veterans’ Affairs has made very clear today, both in her statement and in the documents that she tabled, the fact is, as her then DLO made very clear in the statement tabled by the minister earlier today:

The Hon. De-Anne Kelly, as the relevant parliamentary secretary, approved the application and signed the relevant papers and letters to stakeholders on 31 August 2004.

All of the relevant letters, any relevant press release—all approved by the then parliamentary secretary on 31 August. Mr Speaker, this is a good and conscientious minister—who was a good and conscientious parliamentary secretary—who had before her a perfectly reasonable application for funding. She dealt with it in a perfectly reasonable and correct way, in accordance with the standard procedures under which these matters are dealt with by government. Yes, we all know—because the minister has told us—that the relevant letters were not dispatched at the right time. It was an honest mistake by a hardworking and conscientious DLO who, sadly, made a mistake. But the fact of the matter is that this is something which is being seized upon by a desperate Leader of the Opposition—desperate to distract the people of Australia and, most of all, his own party from his own shortcomings. This man is un-electable.

Ms Gillard—Mr Speaker, I rise on a point of order. Can I refer you to page 327 of House of Representatives Practice, which
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deals with the topic of debate on suspensions, which is what we are doing now. I can specifically refer you to the following sentence:

The Chair has consistently ruled that members may not use debate on a motion to suspend standing orders as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended.

That is the guidance from *House of Representatives Practice*, Mr Speaker. I would ask you to apply that rule, upheld over many years by other chairs, to the contribution of the Leader of the House.

**The SPEAKER**—The Leader of the House is responding to the motion. I call the Leader of the House.

**Mr Abbott**—Finally, let me make this prediction, Mr Speaker. The Minister for Veterans’ Affairs is a lot more likely to be in her position in three years time than—

**Ms Gillard**—Mr Speaker, did I hear you rule on my point of order? I do not think I did.

**The SPEAKER**—I called the Leader of the House to come back to the motion of suspension.

Question put:

That the motion *(Mr Latham’s)* be agreed to.

The House divided.  [3.07 p.m.]

(The Speaker—Mr David Hawker)

Ayes............ 59
Noes............. 84
Majority......... 25

**AYES**

Adams, D.G.H.  Albanese, A.N.
Andren, P.J.  Beazley, K.C.
Bevis, A.R. Bird, S.
Bowen, C.  Burke, A.E.
Burke, A.S.  Byrne, A.M.
Corcoran, A.K.  Crean, S.F.
Danby, M. * Edwards, G.J.
Elliot, J.  Ellis, A.L.
Ellis, K.  Emerson, C.A.
Ferguson, L.D.T.  Ferguson, M.J.
Fitzgibbon, J.A.  Garrett, P.
Georganas, S.  George, J.
Gibbons, S.W.  Gillard, J.E.
Grierson, S.J.  Hall, J.G. *
Hatton, M.J.  Hoare, K.J.
Irwin, J.  Kerr, D.J.C.
King, C.F.  Latham, M.W.
Lawrence, C.M.  Livermore, K.F.
Macklin, J.L.  McClelland, R.B.
McMullan, R.F.  Melham, D.
Murphy, J. P.  O’Connor, B.P.
O’Connor, G.M.  Owens, J.
Pilcher, T.  Price, L.R.S.
Quick, H.V.  Ripoll, B.F.
Roxon, N.L.  Rudd, K.M.
Sawford, R.W.  Sercombe, R.C.G.
Smith, S.F.  Swan, W.M.
Tanner, L.  Thomson, K.J.
Vanvakinou, M.  Wilkie, K.
Windsor, A.H.C.

**NOES**

Abbott, A.J.  Anderson, J.D.
Andrews, K.J.  Bailey, F.E.
Baird, B.G.  Baker, M.
Baldwin, R.C.  Barresi, P.A.
Barrett, K.J.  Billson, B.F.
Bishop, B.K.  Bishop, J.J.
Broadbent, R.  Brough, M.T.
Cadman, A.G.  Causley, I.R.
Ciobo, S.M.  Cobb, J.K.
Costello, P.H.  Downer, A.J.G.
Draper, P.  Dutton, P.C.
Elston, K.S.  Entscht, W.G.
Farmer, P.F.  Fawcett, D.
Ferguson, M.D.  Forrest, J.A. *
Gambur, T.  Gash, J.
Georgiou, P.  Haase, B.W.
Hardgrave, G.D. Hartsuyker, L.
Henry, S.  Hockey, J.B.
Howard, J.W.  Hull, K.E.
Hunt, G.A.  Jensen, D.
Johnson, M.A.  Jull, D.F.
Keenan, M.  Kelly, D.M.
Kelly, J.M.  Laming, A.
Ley, S.P.  Lindsay, P.J.
Lloyd, J.E.  Markus, L.
McArthur, S. *  McGauran, P.J.
Moylan, J. E.  Nairn, G. R.
Question negatived.

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

PERSONAL EXPLANATIONS

Ms MACKLIN (Jagajaga) (3.10 p.m.)—Mr Speaker, I wish to make a personal explanation.

The SPEAKER—Does the honourable member claim to have been misrepresented?

Ms MACKLIN—Yes.

The SPEAKER—Please proceed.

Ms MACKLIN—In question time the Minister for Education, Science and Training misrepresented me when he said, ‘She’, meaning the Deputy Leader of the Opposition, ‘admitted that over a six-year period the Labor Party’s policy would take every one of those 2,650 schools onto Labor’s hit list.’ This is a complete untruth. I said no such thing. Labor’s policy would have seen 2,500 non-government schools getting increased funding.

Ms LIVERMORE (Capricornia) (3.11 p.m.)—Mr Speaker, I wish to make a personal explanation.

The SPEAKER—Does the honourable member claim to have been misrepresented?

Ms LIVERMORE—Yes.

Ms LIVERMORE—in today’s Rockhampton Morning Bulletin, I have been accused by editor John Schalch of failing to properly represent my electorate, by putting at risk the funding for Horse Australia 2005. This is completely untrue and shows a lack of understanding of the point of yesterday’s debate. In fact, my support for local projects and my success in delivering them for my electorate has been publicly acknowledged previously by the Deputy Prime Minister and more recently by the Minister for Veterans’ Affairs herself in her answer to my question yesterday.

DOCUMENTS

Mr McGauran (Gippsland—Minister for Citizenship and Multicultural Affairs) (3.12 p.m.)—Documents are presented as listed in the schedule circulated to honourable members. Details of the documents will be recorded in the Votes and Proceedings and I move:

That the House take note of the following documents:

Australia-Japan Foundation—Report for 2003-04

Department of Transport and Regional Services—Report for 2003-04

Debate (on motion by Ms Gillard) adjourned.

MATTERS OF PUBLIC IMPORTANCE

Regional Services: Program Funding

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

The abuse by National Party Ministers and Parliamentary Secretaries of the Government’s Regional Partnerships Program.
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—

Mr KELVIN THOMSON (Wills) (3.13 p.m.)—The Regional Partnerships program is nothing more than a Nationals slush fund, a $150 million pork barrel administered by the Leader of The Nationals himself and his faithful sidekick. Is she the member for Dawson, is she the parliamentary secretary for regional services or is she the Minister for Veterans’ Affairs? Let’s just call her Calamity De-Anne.

The DEPUTY SPEAKER (Hon. I.R. Causley)—I remind the member for Wills that you cannot attack an individual member in a matter of public importance; it can only be done by a substantive motion.

Mr KELVIN THOMSON—Thank you, Mr Deputy Speaker. Australians are indebted to the Independent member for New England, Mr Windsor, for first blowing the whistle on how this program operates. The House will recall that the member for New England had the audacity to try to secure money for his electorate under the Regional Partnerships program—the regional pork rorts program—by applying for funding for the Tamworth Equine and Livestock Centre, and this message came back from the government: ‘No, no, we are not funding that project while it has Tony Windsor’s name on it.’ They had to make some changes to the project before they could get it approved. But the change the government really wanted was to take Tony Windsor’s name off the application. The message was, ‘We in The Nationals get the credit for these projects, nobody else does.’ When Minister Anderson was asked about this, he said that the reason they demanded that Tony Windsor’s name came off the application was that they did not want the program to be political. He treats the Australian people as fools.

We started examining this program, and what did we find? We found the Eidsvold Bush Centre in Queensland, in the National Party seat of Hinkler. The bush centre had $4 million announced for it during the election campaign. Afterwards, it turned out that it had not even filled out an application form to get the money, much less been checked out by the department or assessed by an area consultative committee. The minister said that they had written to him about it. We demanded he produce the documentation. Last Thursday, he did. The letter was four pages long. The bush centre got $1 million per page—nice work if you can get it! I wonder how all those applicants for government funding in the aged care area feel about this as they drown in paperwork and red tape.

Then we came across the Tumbi Creek dredging project. There was $740,000 announced after an assessment, and then another $740,000 announced just a few weeks later. The local area consultative committee expressly said that this was not a high-priority project and that there were better things that could be done with this money.

We raised these issues in the parliament. In particular, we asked about the six so-called regional icon projects announced during the election campaign—a cool $27 million in election promises for a handful of projects which had not been subjected to proper scrutiny. Mr Anderson responded in question time about these projects:
For reasons of convenience and probity, many of those will be channelled through the expertise of the Regional Partnerships program section maintained in my department.

This clearly implied that there would be—I guess on the ‘better late than never’ principle—some measure of assessment of these regional icon projects. If this assessment is meaningful and not some departmental whitewash, one would have to think that there is a possibility that one or more of these projects might not pass the tests and that their funding is not a foregone conclusion.

This was not good enough for the member for Dawson. Last week, she declared on ABC radio Mackay that one of these regional icon grants—an $8 million grant for a Mackay science and technology precinct—would go ahead. The House may wish to know that this is a grant that she personally approved while Parliamentary Secretary to the Minister for Transport and Regional Services, during the caretaker period and using the so-called SONA guidelines, which are secret guidelines which were revealed only after the opposition started asking questions in the parliament. They say there is no ‘I’ in team; when the National Party sets up a project called regional icons there is no ‘i’ in icon, either—it is just ‘regional cons’. They fly through under the radar, using the SONA, to land in the place of maximum political advantage.

Not only was the minister contradicted by his former parliamentary secretary about the review process but he contradicted his current one, Mr Cobb. Mr Cobb told ABC radio that the Regional Partnerships program projects announced in Calare during the election campaign were yet to be formally approved, as they had to go through due diligence tests and the department had not checked them out. He was subsequently contradicted by Minister Anderson, who told the Australian Financial Review that Mr Cobb was mistaken and that the projects had been formally approved before the start of the caretaker period. They keep tripping each other up over the question of process—that is because there is no proper process.

This story simply goes from bad to worse. I mentioned to the House earlier the fact that we have had the entrance of Ken Crooke, the former Queensland National Party state secretary. Mr Crooke had become a lobbyist for the company A2 Dairy Marketers and then went on to work for the member for Dawson. He said that he had ceased to lobby on behalf of A2 Dairy Marketers yet he was involved in a meeting at the office of the Queensland Minister for Primary Industries and Fisheries and, at that meeting, handed over a business card indicating that he was acting as a director of the Asia Pacific Corporation, lobbyists for A2 Dairy Marketers. As I indicated to the House before, this is a serious breach of the Prime Minister’s code of ministerial conduct. Staff members are required to resign as directors where the potential for conflict of interest exists. I also said that I do not accept the claim made by Minister Kelly that she did not know that Mr Crooke had visited the Queensland minister. We have a situation where Minister Kelly told ABC radio on 17 September that Mr Palaszczuk is a strong supporter of the project, and yet there is no way that she could know such a thing unless she had heard it from someone—we suspect Mr Crooke, who in fact had gone to that meeting with Mr Palaszczuk. Her claim that Mr Crooke did not tell her he was meeting Minister Palaszczuk is simply not believable.

The Prime Minister’s code of ministerial conduct has unquestionably been breached and the question now is: what is the Prime Minister going to do about it?

I also indicated to the House that on the day the election was called the minister was able to sign off on a $1.27 million grant for
the very same company that her staff member had been acting as a lobbyist for. That might have been a wonderful thing for him and for that company, but it was not so grand for the milk company already operating in the Atherton Tableland, who feared that the new competitor would put them out of business. Indeed, the Regional Partnerships guidelines are supposed to knock out grants to private companies which could give them a commercial advantage. Indeed, just yesterday the Minister for Revenue and Assistant Treasurer said in a press release:

It is an important principle that taxpayer-funded assistance is not used to provide a competitive advantage to any one company ...

That is not a bad observation, but it did not in fact seem to deter the Minister for Veterans’ Affairs. It did cause the Cairns Post to start asking questions. Minister Kelly admitted to the Cairns Post that the application had been fast-tracked, but she insisted that all due diligence tests had been passed. I do not know exactly what these tests were but, three weeks later, A2 Dairy Marketers was convicted on three counts of false and misleading advertising in relation to the health benefits of its product.

The government then withdrew the grant. It turns out the company was crook. Shortly afterwards it went into liquidation—

Mr Crean—No, that was the adviser.

Mr KELVIN THOMSON—Yes, him too. It went into liquidation; it is now in receivership—so much for Minister Kelly’s due diligence tests. The Dairy Farmers cooperative Corporate Affairs Manager, Mr Stuart Silver, and Atherton Tableland dairy farmers were sufficiently concerned that they expressly raised the issue—

The DEPUTY SPEAKER (Hon. I.R. Causley)—Order! The member for Lindsay and the member for Flinders, if you want a conference you can do so outside.

Mr KELVIN THOMSON—Thank you, Mr Deputy Speaker. They were sufficiently concerned that they expressly raised the issue of whether the government intended to fund the A2 milk project with Minister Anderson at a dinner in Innisfail on 3 September. Mr Silver has confirmed that the Deputy Prime Minister told him on 3 December that ‘nothing would happen while we are in caretaker mode’. The fact is that the Deputy Prime Minister has told this House that this project was formally approved on 29 August—several days earlier. There are only two possibilities here: either the Deputy Prime Minister was misleading the Atherton Tableland dairy farmers or he simply did not know that the project had already been approved by his parliamentary secretary. When he said, ‘Nothing would happen while we are in caretaker mode,’ he reckoned without that little black duck. She is probably the most active caretaker ever, writing cheques during the campaign period so fast—

The DEPUTY SPEAKER—The member for Wills will come back to the MPI.

Mr KELVIN THOMSON—her arm gets tired, her head starts to spin and she even forgets to date them. When Minister Kelly was questioned about her decision to fund the project at the time she told ABC radio, ‘There was always an argument not to do things.’

The DEPUTY SPEAKER—The member for Wills will be sat down if he does not come back to the MPI.

Mr KELVIN THOMSON—I am speaking to the MPI, Mr Deputy Speaker.

The DEPUTY SPEAKER—A substantive motion was moved against the minister. This is an MPI.

Opposition members interjecting—
The DEPUTY SPEAKER—If the member wishes to have a cold shower he can have one.

Mr KELVIN THOMSON—I am speaking directly to the matter of public importance in the terms in which I wrote to the Speaker. Minister Kelly said there was always an argument not to do things. That is true, of course. People are just trying to hold her back. You all know what they say: ‘We’re just going into caretaker mode—we shouldn’t be binding an incoming government. This company is facing criminal charges. I’ve got a man on my staff who’s been acting as a lobbyist for them.’ These pitiful excuses—I’m not falling for them, Calamity De-Anne!

The DEPUTY SPEAKER—The member for Wills will resume his seat. I call the Minister for Agriculture, Fisheries and Forestry.

Mr KELVIN THOMSON—Mr Deputy Speaker, on a point of order: I am speaking to—

The DEPUTY SPEAKER—The member for Wills will resume his seat.

Mr Latham—Mr Deputy Speaker, I rise on a point of order. The member for Wills is addressing a matter of public importance that reads:

The abuse by National Party Ministers and parliamentary secretaries of the government’s Regional Partnerships Program.

He has been addressing the letter of that matter of public importance for the past 13 minutes. He has not gone outside it for a moment. For you to sit him down is, quite frankly, outrageous.

The DEPUTY SPEAKER—The member for Werriwa would be well aware, having been in this parliament long enough, that you cannot attack a member of this House—only by substantive motion. The member for Wills said quite clearly about the member for Dawson ‘Calamity De-Anne’. He had said it before and I had warned him. I have sat him down. I call the Minister for Agriculture, Fisheries and Forestry.

Debate interrupted.

DISSENT FROM RULING

Mr LATHAM (Werriwa—Leader of the Opposition) (3.26 p.m.)—I move:

That the Deputy Speaker’s ruling be dissented from.

If it is not bad enough for The Nationals to be dispensing the pork, if it is not bad enough to have a Nationals minister who cannot give a decent explanation in the House of Representatives, if it is not bad enough to have a Nationals minister who twice misleads the House, we now have the ridiculous situation of a Nationals Deputy Speaker trying to censor debate—

The DEPUTY SPEAKER (Hon. I.R. Causley)—If the Leader of the Opposition wishes to reflect on the chair I will name him.

Mr LATHAM—I am moving a dissent motion. I am reflecting on the chair’s ruling, because for you, sir, to sit down the member for Wills is a betrayal of democracy. It is a betrayal of this member’s right to move and address his matter of public importance. His matter of public importance is:

The abuse by National Party Ministers and Parliamentary Secretaries of the Government’s Regional Partnerships Program.

Now, Mr Deputy Speaker, you might not like criticism of the member for Dawson. You might expect members to come up and say, ‘She’s wonderful’. You might expect members to come up and share your point of view, but that is not how a democracy works. The member for Wills has got the right to criticise her and he has the right to introduce his matter of public importance saying that
she has abused her ministerial responsibilities.

The DEPUTY SPEAKER—I remind the Leader of the Opposition that this is a dissent motion.

Mr LATHAM—Did anyone say when he moved the matter of public importance that it was out of order?

The DEPUTY SPEAKER—This is a dissent motion, not a debate. It is a dissent motion on my ruling.

Mr LATHAM—I am dissenting from your ruling, Mr Deputy Speaker.

The DEPUTY SPEAKER—You are now debating.

Mr LATHAM—Are you in the debate? Are you in the debate or can I have my say? I have moved a dissent motion on your ruling because, quite frankly, it is undemocratic and outrageous for you to sit down the member for Wills when he was debating and moving his matter of public importance. If someone thought it was out of order to move a motion that talks about abuse by National Party ministers they should have done it at the start of his speech. For 13 minutes, time after time, he outlined the abuse by this National Party minister of the government’s Regional Partnerships program. Mr Deputy Speaker, you might regard the member for Dawson as wonderful, but on this side of the House we do not share that opinion. We expect the capacity in this House to make the criticisms, to ask the questions, to move the matters of public importance and set out, chapter and verse, the abuse by the National Party minister. What the member for Wills did was comply with the matter of public importance. Rarely in this House have I seen a member stick to the matter of public importance so strictly. Time after time he was outlining the abuse by Minister Kelly, the abuse in her office to have Mr Ken Crooke on staff while he was acting as a paid lobbyist for a grant recipient.

The DEPUTY SPEAKER—That has nothing to do with the dissent motion.

Mr LATHAM—He has been outlining the abuse of the minister with regard to these letters that were signed but never dated, the abuse by the minister to mislead the House of Representatives yesterday in saying that the grant had been announced when in fact it had not, the abuse of the minister today in misleading the House in saying that she thought the grant had been announced and it was public knowledge—

The DEPUTY SPEAKER—Can I remind the Leader of the Opposition—

Mr LATHAM—even though she was writing a letter to the grant recipients saying, ‘Keep it confidential.’ So the member for Wills, moment after moment, minute after minute—

The DEPUTY SPEAKER—Can I remind the Leader of the Opposition that the ruling was on the fact that you cannot attack another member in this House—only by substantive motion. He is now debating the whole issue. That is the dissent. I ask him to come back to the dissent.

Mr LATHAM—I again remind you about and urge you to read the discussion of matter of public importance. It reads as follows:

The abuse by National Party Ministers and Parliamentary Secretaries of the Government’s Regional Partnerships Program.

You say the member for Wills has no capacity in that MPI to attack the Minister for Veterans’ Affairs. He is talking about an MPI that is accusing her of abuse of a government funding program—and you are saying he is not allowed to attack her! That is why I am dissenting from your ruling. By sitting him down, saying he had no right to attack her, even though the MPI talks about her abuse of...
the funding program, you have in fact outlined the reason why the dissent should be carried, because clearly you did not understand the wording of the MPI.

The member for Wills had every right to attack the member for Dawson, the Minister for Veterans’ Affairs, on issue after issue, grant after grant, misleading after misleading, maladministration after maladministration. Of course he had every right in this democratic chamber to attack her. We are not here for a haircut. We are not here for some mutual gratification society. We are not here for a stroll in the rose garden. We are not here to pat her on the back and say, ‘Oh, good on you De-Anne: you’ve sortied the programs, you’ve had the abuses, the conflicts of interest, you’ve misled the House a couple of times. So, good on you, De-Anne, the daughter of Joh: you are a Nationals true blue.’ We are not here for any of those purposes, Mr Deputy Speaker.

The DEPUTY SPEAKER (Hon. I.R. Causley)—The Leader of the Opposition will come back to the dissent motion.

Mr LATHAM—We are here, elected by our constituents, to hold the government to account for the proper expenditure of public money. I have 130,000 people in my electorate, most of whom work hard to pay their taxes. When they see money being abused this way in the public arena they expect me and every single member on this side of the House to stand up and say, ‘That is wrong; it is a maladministration.’ In fact—

Mr Martin Ferguson—that is corrupt.

The DEPUTY SPEAKER—The member for Batman will withdraw that remark.

Mr Martin Ferguson—What, for saying it is corrupt?

The DEPUTY SPEAKER—Will you withdraw the remark?

Mr Martin Ferguson—to facilitate debate I will withdraw it, but you and I know it is right.

The DEPUTY SPEAKER—that is not a withdrawal. The member for Batman will withdraw it.

Mr Martin Ferguson—I withdraw on an unconditional basis to facilitate the debate. There are more important matters at stake at the moment.

Mr LATHAM—Our constituents expect us to stand up and say it is wrong, to say it is a maladministration, to say it is an abuse, and the member for Wills has done that. He stood up in the House and introduced this MPI about the abuse by the minister of the Regional Partnerships program. He has done nothing more in his presentation to the House than stick to the MPI. He has not personally abused the minister. He has not done anything other than outline his matters of concern set out in the MPI under the banner of abuse. Your intervention earlier on to say that he is not allowed to attack the minister other than by a substantive motion is just nonsense. I am dissenting from that ruling because surely in an MPI, when you are talking about the abuse of public money, you are allowed to attack the minister. It is just commonsense.

What other purpose can we have in the MPI other than be critical of a minister who twice has misled the House. Time after time today she could not defend herself at the dispatch box. We have seen the conflict of interest of the aptly named Mr Ken Crooke. We have seen the minister with this fanciful explanation that somehow she signed the letters but they were never mailed—they were lost under the filing cabinet and she did not know anything about it. All of these things do not make any sense and any reasonable person, any reasonable taxpayer,
I listened very carefully to what the member for Wills was saying. He addressed those matters in the same terms as my suspension motion earlier on and in the same terms as his contribution seconding that suspension motion. Under an MPI he is allowed to make those points. It would not be in order and he would not be meeting his responsibilities as an MP if he introduced an MPI talking about funding abuse and then stood up and tried to pretend that everything is okay. It is true that we on this side of the House lost the last election and that we are still in opposition. But it is also true that we have been elected here by our constituents with the democratic right to have our say and with the democratic expectation that those who occupy the chair will give us a fair go.

We heard from the Speaker the rhetoric about ‘firm but fair’. We want to see you, Mr Deputy Speaker, in your discharge of the responsibilities of Deputy Speaker, give people a fair go. The member for Wills was entirely within the terms of his MPI. You warned him a couple of times. We thought this was just an attempt to try and disrupt his rhythm and his speech, but when it got to the point that you sat him down and denied him his right and capacity to finish his MPI, I could reach no other conclusion than that, as a member of The Nationals, you are trying to cover up for De-Anne Kelly. You are trying to cover up for your mate.

Mr Truss—Mr Deputy Speaker, I rise on a point of order. Only seconds before you cautioned the Leader of the Opposition that he was not to refer to members other than by their titles.

Mr Latham—Mr Deputy Speaker, it is a dissent to the chair’s ruling, and I am certainly reflecting on the chair’s ruling and the reasons why I believe it has been made. You need to understand the seriousness of this. I know you think you have got the numbers over there and they are all going to walk in like robots and do the right thing, just as De-Anne Kelly comes to the dispatch box like a robot. If this motion gets up, you are out. If this motion gets up then you would be obliged to resign, so it is a very serious matter.

Mr Truss—Mr Deputy Speaker, I rise on a point of order. The Leader of the Opposition repeatedly refers to the Minister for Veterans’ Affairs by her name, not by her title. That is clearly out of order.

Mr Latham—Mr Deputy Speaker, I rise on a point of order. The Leader of the Opposition repeatedly refers to the Minister for Veterans’ Affairs by her name, not by her title. That is clearly out of order.

The Deputy Speaker—Members know they have to refer to people by their seat or by their title. I remind the Leader of the Opposition that even though this is a dissent in the ruling of the chair he cannot reflect on the chair and he cannot make those imputations.

Mr Latham—Mr Deputy Speaker, it is a dissent to the chair’s ruling, and I am certainly reflecting on the chair’s ruling and the reasons why I believe it has been made. You need to understand the seriousness of this. I know you think you have got the numbers over there and they are all going to walk in like robots and do the right thing, just as De-Anne Kelly comes to the dispatch box like a robot. If this motion gets up, you are out. If this motion gets up then you would be obliged to resign, so it is a very serious matter.

Mr Truss—Mr Deputy Speaker, I rise on a point of order. The Leader of the Opposition will refer to members by their seat or by their title. They are the standing orders.

Mr Latham—There are the standing orders, of course, Mr Deputy Speaker, and there is also House of Representatives Practice, which states as follows at page 560:

The MPI is one of the principal avenues available to private Members to initiate immediate debate on a matter which is of current concern. However, although Members on both sides of the House are entitled to propose a matter for discussion, it now appears taken for granted that the opportunity is, on the whole, a vehicle for the Opposition. In practice the great majority of matters discussed are proposed by members of the opposition executive and are usually critical of government policy or administration (or such criticism is made in the discussion itself).

Your ruling, Mr Deputy Speaker, is inconsistent with House of Representatives Practice, which says nothing more than what we have seen here today. A member of the opposition,
the member for Wills, has introduced his MPI. It is critical of the government. The wording is about funding abuse. He has set out, chapter and verse, the funding abuses in each and every case. You have made a judgment, and a ruling earlier on, that attacking a minister is out of order under the terms of the MPI.

That just sets an appalling precedent. It is inconsistent with the practice. It is not something that can be regarded as fair or democratic in the chamber. We can go right through this dissent, but I think the best thing, Mr Deputy Speaker, is for you to reconsider what you have done, to understand that fair-minded people in the House, and the public, would say that trying to gag a member of the opposition for talking about the funding abuse in the MPI—according to the standing orders and according to House of Representatives Practice, you have just got it wrong. We will excuse you the mistake. You have the capacity to say now that the member can have his time back and finish his speech, and we can get on with the MPI. But as an opposition we are not going to wear for a moment a National Party Deputy Speaker sitting down one of our members who is doing nothing more than exercising his democratic rights, consistent with House of Representatives Practice, consistent with the standing orders and consistent with the traditions of this House.

It will not take me my full time to make these points. They are self-evident. Sir, you are now obliged to admit that you have made a mistake, that it was just plain wrong. If you do not, we will have a shocking precedent in this House in that, according to your ruling, members of the opposition will not be able to attack ministers in an MPI. That makes an absolute farce of this House. It takes away our principal avenue for criticising the government each day. We ask the questions—which, by implication, can be critical—but we have no other capacity under the standing orders of a regular sitting day than to introduce an MPI that criticises a government minister.

In my 11 years here I have never seen someone sat down for criticising a minister during an MPI. You might not have enjoyed the criticism, you might not have agreed with them, but that is not your job as Deputy Speaker. Your job is to be impartial and to allow members to get on with their business of exercising their democratic rights under the standing orders and House of Representatives Practice. So I strongly urge you to reverse your ruling, to recognise that you have made a mistake and have set a horrible precedent in this place. While you might be a supporter and defender of the minister, surely when you sit in that chair you are a lot better than that.

Ms GILLARD (Lalor) (3.39 p.m.)—I second the motion of dissent and, in view of the approach taken by the Leader of the Opposition, I reserve my right to speak and echo his words to you about reversing this ruling.

The DEPUTY SPEAKER—I listened to the Leader of the Opposition very carefully and I remind him that, even though I may be a member of this House, in the chair I do not occupy a seat; nor am I a member of a party when I am in this chair. I think reflections on that are grossly disorderly. Quite frankly, it is the chair. The ruling I made is clear. It is my understanding that, under the standing orders of this House, if you want to attack another member of this House it must be done by substantive motion. You can do it at no other time and you cannot do it under an MPI. The ruling stands.

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (3.40 p.m.)—Mr Deputy Speaker Causley, the government supports you in your ruling. The
reality is that the member for Wills was warned by you on a number of occasions and he simply failed to heed those warnings. Even if you wanted to concoct some kind of an argument that the Deputy Speaker’s ruling was not accurate, the reality is that the Deputy Speaker gave warnings, repeated those warnings and the member for Wills ignored them. The Deputy Speaker then, quite correctly, warned the member for Wills that if he persisted with abusing the forms of the House he would sit him down. From memory, I think he gave that warning on two occasions. You were completely fair in that regard, Mr Deputy Speaker, yet the member for Wills persisted in defying your ruling. Then you took what was the only course open to you. It was the only course open to a Speaker wanting to maintain the dignity of the House and assure the authority of the chair: you exercised your threat and asked the member for Wills to sit down. I believe you acted perfectly reasonably in that regard. The member for Wills received the only possible treatment for somebody who was persistently defying your ruling.

Mr Deputy Speaker, let me go to the actual basis of your ruling. You were obviously making that ruling on the basis of standing order No. 90, which says:

All imputations of improper motives to a Member and all personal reflections on other Members shall be considered highly disorderly.

If you turn to page 490 of House of Representatives Practice, you will see that it points out quite clearly that the interpretation of that therefore is that, if you want to make personal attacks of this nature on an individual member, it must be by way of a substantive motion. So the comments that you made and the basis of your ruling were correct. You correctly interpreted the standing orders as they are written, and your ruling was faithfully based on past practice as outlined in House of Representatives Practice. You acted correctly. The member for Wills persistently defied you. You asked him to sit down. That was a perfectly reasonable thing for you to do and the government therefore supports you in your ruling.

Ms GILLARD (Lalor) (3.42 p.m.)—Having reserved my right to speak, I will seek to exercise it now. The position we are in here is that the opposition, specifically the member for Wills, has sought the MPI. That went by letter to the Speaker in the usual course. I would refer you to page 561 of House of Representatives Practice, which is one of the pages that deals with matters of public importance in this place. I specifically refer you to the paragraph which says:

A matter is put before the House only if the Speaker has determined that it is in order...

Indeed, Mr Deputy Speaker Causley, as you may well know, this is one of the determinations of the Speaker that is beyond challenge. The Speaker’s selection of the MPI—because competing MPIs may be filed—is beyond challenge in this place. In fact, oppositions in the past have sought to challenge the Speaker’s selection of an MPI, and it is specifically made clear in House of Representatives Practice that this is a matter that falls to the Speaker and falls to the Speaker alone.

The member for Wills did what is required by the standing orders today—that is, he sent a letter to the Speaker. The Speaker made two very important determinations, having received that letter. He determined that the matter was in order and he determined that it was the matter of priority that should go forward for debate today on the matter of public importance. I do not know whether other letters were filed with the Speaker, and I suspect neither do you, Mr Deputy Speaker, but if contending letters were filed then the Speaker would have ruled that this was the matter of importance to go forward.
The DEPUTY SPEAKER—I remind the member for Lalor that this is a motion of dissent. It is on the dissent.

Ms GILLARD—Exactly, and I am explaining to you, relying on House of Representatives Practice, why your ruling is wrong.

Mr McMullan—Mr Deputy Speaker Causley, on a point of order: you are entitled to remind other people about the standing orders. You should remember them. You are not participating in this debate; you are supposed to be chairing it.

The DEPUTY SPEAKER—I am reminding the member for Lalor about what the dissent motion is. It is not a debate; it is a dissent.

Mr McMullan—It is a debate on a motion.

The DEPUTY SPEAKER—It is a dissent from the ruling.

Ms GILLARD—Thank you, Mr Deputy Speaker. My point to you is this, and it is relevant to the dissent motion: the Speaker must have ruled that the question about the abuse by Nationals ministers and parliamentary secretaries of the government’s Regional Partnerships program was in order. He must have ruled that the question was in order or it would not be before us now as the matter of public importance, distributed on everybody’s seats, on the blue. It may be that if you, Mr Deputy Speaker Causley, were the Speaker, and you had been presented with that letter from the member for Wills, you may have formed the view that that was not in order and ought to be something that should be done by way of substantive motion. But the truth is that your judgment about that matter is not strictly relevant. The relevant judgment is the Speaker’s and it has been exercised, and the question has been ruled in order or it would not be before the parliament this afternoon.

Having come before the parliament ruled in order by the Speaker—the question about the abuse by Nationals ministers and parliamentary secretaries of the government’s Regional Partnerships program—then it must be in order for the member for Wills and opposition members who speak in this debate to put before the House substantive argument as to why that is the case. If the question is in order then it must follow that standing at the dispatch box and putting down evidence about how Nationals ministers and parliamentary secretaries have abused the government’s Regional Partnerships program is in order. That is precisely what the member for Wills was doing in his contribution—no more, no less. He was going grant by grant, program by program, evidencing—in what I would say was a most convincing fashion—the fact that there has been abuse of these various programs by Nationals ministers and parliamentary secretaries.

Mr Truss—But he defied the Deputy Speaker.

Ms GILLARD—I am not assisted by the minister at the table, who clearly, like the Leader of the House, has not been supplied with a copy of House of Representatives Practice. On another point, it does disturb me that for some reason we are all in possession of copies and the government never seems to be, when copies were put in people’s boxes. Clearly, the Leader of the House did not get one and I do not think the minister at the table did either. But it may be that you, Mr Deputy Speaker, took objection to a phrase used by the member for Wills in the debate.

Mr Truss interjecting—

Ms GILLARD—I am talking about this big book.

Mr Martin Ferguson—It hasn’t got pictures, has it, Warren?
The DEPUTY SPEAKER—The member for Batman!

Ms GILLARD—I will be awaiting a new initiative from the Leader of the Opposition which will be ‘Reading to The Nationals ministers from House of Representatives Practice’. No doubt, I will be required to participate in that program myself, but if we are going to get through this big book page by page we will probably have to do more than one story a night. In today’s story for Nationals ministers out of the big book that they have apparently never seen, may I say this: it may have been that you, Mr Deputy Speaker, thought the term ‘Calamity De-Anne Kelly’ was inappropriate.

The DEPUTY SPEAKER—The member—

Ms GILLARD—I am quoting for the purpose of illustrating the dissent. It may have been that you thought that term was inappropriate. If you formed the view that that term was inappropriate then the course you ought to have taken is to have asked the member for Wills to withdraw that remark, or you may have chosen to remind the member for Wills of his obligation to refer to members in this House by either their seat or the highest office that they hold.

If you had taken that course then the approach I would have taken would be to say that I could understand why you took that course, and I would wonder why that course was not more frequently taken by holders of the chair when, apparently, it is routinely ignored when government ministers in question time get up time after time and refer to members of the opposition by anything but their proper titles. If you find these matters offensive and you are looking for some reading—and if you accumulated it, it would be a big book—I would invite you, Mr Deputy Speaker, to read Hansard. You might want to do some searching on the number of names the Leader of the Opposition has been referred to in question time, even in the short number of sitting days that we have been back since the election. I am not going to refer to any of those names, but if we are all honest with ourselves then we know that, when the Leader of the House gets up or perhaps when Treasurer Costello gets up to answer a question, it will be inevitable—

Mr Truss interjecting—

Ms GILLARD—He always comes to listen to me because he knows he might learn something. I did say, as we moved across the chamber today, that he would be well advised to get himself a copy of this book, but he appears to not have one yet—certainly not with him.

The DEPUTY SPEAKER—The member for Lalor will refer to members by their seats or by their titles.

Ms GILLARD—What I am saying is that if you had determined to say to the member for Wills that that reference to the Minister for Veterans’ Affairs was not a reference by her proper title then that may have been an appropriate course, but it would be a course that we would want consistently applied. I ask you to reflect on question time today, where I would have to say that I personally, in the course of a couple of answers by Treasurer Costello and the Minister for Health and Ageing, was referred to by anything but my proper title. If we are going to get precious about those things—and perhaps we should, to lift the standards of the House—then we would anticipate that, every time any member of the House rises to their feet and uses a term other than ‘the Leader of the Opposition’ or ‘the Manager of Opposition Business’ or ‘the Deputy Leader of the Opposition’ or ‘shadow Treasurer’ or whatever it may be, they would be asked by the Speaker to withdraw the remark and to only refer to the person by their title. You know
that does not happen and I know that does not happen. It may be a standard that you would seek to enforce, Mr Deputy Speaker, but if you are going to seek to enforce it then you would need agreement across the Speaker’s panel and from the Speaker that that was going to occur, because it certainly has not occurred today.

But, as we know, Mr Deputy Speaker, the course you took was not that—a course that we may have interpreted as within the standing orders but whose constant application in the House we might have wondered about. The course you took was to sit the member for Wills down and to prevent him from continuing his contribution. It is from that ruling that we dissent, and it is in that ruling that, with all due respect, Mr Deputy Speaker, you have erred. You have erred because all the member for Wills was doing was making a contribution that was within the bounds of the MPI. That MPI invited him to do exactly as he did, which was to detail the abuse by Nationals ministers and parliamentary secretaries of the government’s Regional Partnerships program.

What I heard him to be saying during the course of the MPI is that the government has operated a Regional Partnerships program. Within it there is a subset program known as SONA. There are questions about the way in which those grants have been distributed. There are questions about who those grants have been distributed to. There are questions about conflict of interest pertaining to staff members who were on a parliamentary secretary’s staff when grants were distributed. There have been questions about the paperwork, who it was issued by and whether it was issued by a government minister who had appropriate authority to issue it. These were matters about which we were seeking clarification in question time today, and the member for Wills was doing no more and no less than laying before the parliament the case which makes out the proposition of the MPI—that there has been abuse of the government’s Regional Partnerships program by Nationals ministers and parliamentary secretaries.

We do not expect the government, or members of it, to agree with that proposition—although, curiously, in the corridors you never know what might be said. As a matter of general rule, we of course do not expect the government to agree with that proposition. But that is what the MPI is all about. If the government does not agree with that proposition then it gets to have its say, and it gets to have an amount of time to have its say that is equal to that of opposition speakers.

Where this has all gone off the rails—and off the rails quite spectacularly—is that, in taking the course of conduct that you have and in ruling the way you have, you have effectively put the House in the position where the member for Wills was precluded from having his full time on the MPI debate. The member for Wills was precluded from laying out the case he sought to put on behalf of his constituency and on behalf of the opposition generally. You have precluded him from completing that case. You have protected the government from a continuation of that debate. But I do not understand that the same course will be taken when the government minister speaks—the government minister will get the full 15 minutes to defend the government. How can it be right that a ruling is made that cuts short the time of the member for Wills for laying out the case which he passionately believes in and which is supported by members of the opposition? Apparently you object to that, even though it is within the bounds of the MPI as moved, and then you are going to let the government minister at the table have the full 15 minutes.
I say to you, Mr Deputy Speaker, that the ruling you have made is not within the way in which MPIs are known to go on both sides. If these MPIs are going to be brought to an end when there are reflections on other members, which is what you have done today, then I must say I can well remember the day I was the mover of the MPI in my capacity as shadow minister for health and I believe that the Leader of the House, the current Minister for Health and Ageing, started his contribution by walking to the dispatch box and saying, 'What a streak of misery she is!' I remember that day. I took it as a bit of a compliment at the time that I might have been making the minister for health miserable. I do not recall, but I believe you may well have been in the chair, Mr Deputy Speaker, because you so routinely are for matter of public importance debates. I do not recall you, at that stage, forming the view that, if the minister for health wanted to put that case—which is of course absurd and could not be argued—he had better do it by way of substantive motion.

The ruling you have made is wrong. It is wrong in relation to standing orders, it is wrong as a matter of House of Representatives Practice, it is wrong vis-a-vis the ruling the Speaker has made about this proposition being within order and it is certainly contrary to the way in which this House has functioned on MPIs in the past. (Time expired)

Question put:
That the motion (Mr Latham's) be agreed to.

The House divided. [4.01 p.m.]

(The Deputy Speaker—Hon. I.R. Causley)

Ayes.............  58
Noes...............  81
Majority..........  23

AYES
Adams, D.G.H. Albanese, A.N.
Andren, P.J. Beazley, K.C.
Bevis, A.R. Bird, S.
Bowen, C. Burke, A.E.
Burke, A.S. Byrnes, A.M.
Corcoran, A.K. Crean, S.F.
Danby, M. * Edwards, G.J.
Elliot, J. Ellis, A.L.
Ellis, K. Emerson, C.A.
Ferguson, L.D.T. Ferguson, M.J.
Fitzgibbon, J.A. Garrett, P.
Georganas, S. George, J.
Gibbons, S.W. Gillard, J.E.
Grierson, S.J. Hall, J.G. *
Hatton, M.J. Hoare, K.J.
Irwin, J. Kerr, D.J.C.
King, C.F. Latham, M.W.
Lawrence, C.M. Livermore, K.F.
Macklin, J.L. McClelland, R.B.
McMullan, R.F. Melham, D.
Murphy, J. P. O'Connor, B.P.
O'Connor, G.M. Owens, J.
Plibersek, T. Price, L.R.S.
Quick, H.V. Ripoll, B.F.
Roxon, N.L. Rudd, K.M.
Sawford, R.W. Sercombe, R.C.G.
Smith, S.F. Swan, W.M.
Tanner, L. Thomson, K.J.
Vamvakianou, M. Wilkie, K.

NOES
Abbott, A.J. Anderson, J.D.
Andrews, K.J. Bailey, F.E.
Baird, B.G. Baker, M.
Baldwin, R.C. Barresi, P.A.
Bartlett, K.J. Billson, B.F.
Bishop, B.K. Bishop, J.I.
Broadbent, R. Brough, M.T.
Cadman, A.G. Ciobo, S.M.
Cobb, J.K. Downer, A.J.G.
Draper, P. Dutton, P.C.
Elson, K.S. Entsch, W.G.
Farmer, P.F. Fawcett, D.
Ferguson, M.D. Forrest, J.A. *
Gambaro, T. Gash, J.
Georgiou, P. Haase, B.W.
Hardgrave, G.D. Hartsuyker, L.
Henry, S. Hockey, J.B.
Hull, K.E. Hunt, G.A.
Jensen, D. Johnson, M.A.
Jull, D.F. Keenan, M.
Kelly, D.M. Kelly, J.M.
Laming, A. Ley, S.P.
Lindsay, P.J. Lloyd, J.E.
Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (4.06 p.m.)—This is a very sad MPI, which reflects the Labor Party’s ongoing bitterness towards rural and regional Australia. This is not about The Nationals; this is about Labor’s continuing attack on rural and regional Australia. The Labor Party has, for a long time, made no secret of its belief that rural and regional Australia should be regarded as second-class citizens. The Leader of the Opposition told his biographer, Michael Duffy, that he has ‘never forgotten the country voters who jeered the then Prime Minister Gough Whitlam’ at Mr Latham’s school in 1973. The chip is still on his shoulder. The reality is that the Leader of the Opposition has been involved in a constant attack on rural and regional Australia and he is determined to make sure—

Mr Kerr—Mr Deputy Speaker, I rise on a point of order. This is an extraordinary situation. You have sat down the opposition member who moved this motion—and the minister at the table uses offensive language attacking the Leader of the Opposition and you take no step against him.

The DEPUTY SPEAKER (Hon. I.R. Causley)—The member for Denison will resume his seat. My understanding was that it was a quote.

Mr Latham—Mr Deputy Speaker, I rise on a point of order. If you thought that, you were mistaken. He is not quoting me; he is paraphrasing something that is a fantasy in his own brain. He is not quoting me, so perhaps you would like to reconsider—

The DEPUTY SPEAKER—The Leader of the Opposition will resume his seat. My understanding was that the minister said he was quoting. Can the minister clarify that.

Mr TRUSS—I was referring to an extract from the biography by Michael Duffy of the Leader of the Opposition, where he made certain comments about his time at school and the way in which country people treated the Prime Minister of the day.

Ms Gillard—Mr Deputy Speaker, I refer you to page 490 of House of Representatives Practice, also referred to as ‘the big book’. In the big book it says—

The DEPUTY SPEAKER—If the member for Lalor wishes to reflect on the chair, I will deal with that.

Ms Gillard—I am reflecting on the book, but I am also quoting from it. It says: It is not in order to use offensive words and so on against another member by means of quotation or by putting words in someone else’s mouth. So whether or not it is a quote is completely irrelevant to this point. If it is offensive, then it is offensive and ought to be withdrawn. Given the standard you set for yourself with your ruling in respect of the member for Wills, what you ought to do now is tell the minister to resume his seat and call the next speaker in the MPI.

The DEPUTY SPEAKER—Having considered the point that the Manager of Opposition Business refers to, I uphold her point...
of order. The minister will withdraw that quote.

Mr TRUSS—I withdraw—I am not quite sure what, but I withdraw it.

Mr Latham—Mr Deputy Speaker, I rise on a point of order. You required the minister to withdraw unconditionally—

The DEPUTY SPEAKER—I thought he did.

Mr Latham—He said, ‘I withdraw—I do not know what for.’ That is not an unconditional withdrawal. He knows exactly what he is withdrawing and should make—

The DEPUTY SPEAKER—The Leader of the Opposition will resume his seat. The minister will withdraw unconditionally.

Mr TRUSS—It was, of course, unconditional. My comment was that I was not sure what it was that the opposition found offensive. But let us leave that aside. Let us talk about the opposition’s complete failure during its 13 years in office to do anything to support rural and regional Australia. Labor has had no sympathy whatsoever for regional areas. The Leader of the Opposition has frequently been on the record, in writing, making comments derogatory of rural and regional Australia. That has been the type of philosophy he has taken through life and, in particular, during the last election campaign. That is a philosophy that is common within the Labor Party. We see it also in the various state governments. They are happy to close down country rail services, country schools, country hospitals and country services because they are very citycentric. Everything needs to be done for the suburbs. If you question me on that I can just simply quote again from the Leader of the Opposition—I hope he does not find his own quotes offensive, because he wrote in the Daily Telegraph on 5 March 2001:

A new chant can be heard across Australian politics, a mantra for every MP in front of a microphone. It is called ‘rural and regional Australia’. If only I had a dollar for every time it was trotted out in the nation’s capital last week. This campaign, however, is based more on perception than reality. The most disadvantaged and powerless Australians do not live in the bush. They live in the outer suburbs of our major cities. Suburban Australia has become the forgotten part of our national debate. It receives only a small fraction of the media coverage and government dollars dished out to country electorates.

Members opposite are agreeing. It seems as though that is still the Labor Party’s view. They ignore the fact that people in the cities enjoy the privilege of having a choice of stadiums where they can see the various sporting events of the day. They have a choice of art galleries; they can go to concert halls and opera houses. There are plenty of fountains built in their cities, and other places for them to enjoy.

Mr Laurie Ferguson interjecting—

The DEPUTY SPEAKER—I remind the member for Reid that he has now been called to order three times.

Mr TRUSS—They have a choice of universities, hospitals, social services and entertainment that country people can only see on television or an occasional city visit. People in cities have subsidised public transport, they have industry, they have enormous population growth, they have much higher incomes, they have employment choices; they have advantages. I do not take any of that away from cities. It is wonderful that, under a coalition government, this kind of progress is being made for our urban areas and that we have been able to deliver such services and facilities for so many people in the cities.

But our government is concerned that rural and regional areas do not share in some of those privileges. It is quite clear that there are many parts of country Australia that suffer significant disadvantage. You only have
to look at the lists published by the Parliamentary Library of the areas of socio-economic disadvantage and of electorates in Australia ranked according to their incomes, level of unemployment and socioeconomic disadvantage, and you will find that the vast majority of the poorest electorates in Australia are rural and regional. Eight out of 10 of the poorest electorates in Australia are in rural and regional areas. Eight out of 10 of the electorates with the highest levels of unemployment are in rural and regional areas. There are also areas of very significant social disadvantage in rural and regional Australia.

I think it is important that a government addresses areas of disadvantage. We often hear members opposite talking about inequality and social injustice. (Quorum formed) I was referring to the social disadvantage that is faced by many in rural and regional areas and observing that the Labor Party, who often claim that they want to give equal opportunity to all Australians, have not been prepared to do anything to help support those rural and regional communities. Indeed, when the government introduces a program like Regional Partnerships which is actually creating jobs, which is helping to build regional and rural communities, they are constant critics. They are never out there supporting programs which might do something about the imbalance that they created during their 13 years in government that is constantly being reinforced by the activities of the state Labor governments.

The Regional Solutions Program is about providing new opportunities in rural and regional areas. The criticism of those opposite is that more of these grants go to areas held by coalition members of parliament than to areas held by Labor members. That is not surprising, because the coalition holds nearly all of these rural and regional seats. The fact is that the city electorates are not the specific target of this program; it is rural and regional areas, and it is natural therefore that there would be a larger concentration of approved projects in those areas.

It is interesting to note, however, that the Labor Party not only criticise this program but fail to even support it in their own electorates. There were some 567 projects put forward from coalition electorates for funds under the Regional Partnerships program, compared with only 148 nominated by Independent and Labor electorates. So it is not surprising that there would be more of these projects delivered in rural and regional areas. It is significant as well that the approval rates for projects submitted by Labor electorates and coalition electorates are about the same.

It is also interesting to note that during the election campaign—because we are being accused of somehow using this as a kind of a campaign tool—$57 million worth of new commitments were made through Regional Partnerships. Of this amount, $27 million went to coalition seats, $20 million to Labor seats and $11 million to seats held by Independents. Can you get fairer than that? In fact, you might even argue that we have been unduly generous to Labor seats and far too generous to Independent seats.

Today we have listened to this extraordinary tale whereby the opposition have endeavoured to concoct some kind of a conspiracy that, in order to get electoral advantage, the Minister for Veterans’ Affairs waited until three months after the election to announce a grant to a Labor electorate, a safe Labor seat. This is clearly a load of nonsense. (Quorum formed) (Time expired)

Ms KING (Ballarat) (4.21 p.m.)—It gives me no pleasure to second this motion today, no pleasure at all. I share a certain disgust about the administration of the Regional Partnerships program with the 14 members who represent hardworking regional communities on this side of the House. I expect
the three members of the crossbenches feel exactly the same way.

We are disgusted with the National Party and the former parliamentary secretary when they think it is legitimate to use the Regional Partnerships program, taxpayers’ funding, to blatantly pork-barrel, acting as though this fund is their personal piggy bank. We are disgusted that fellow regional MPs in the National Party, whose great claim to fame is to represent regional and rural Australians, believe it is a legitimate practice to discriminate against some regional areas purely on political grounds. That is exactly what has happened, and the numbers show it. There is a distinct pattern emerging in the way the National Party does business—a brown paper bag pattern that seems endemic.

Let us look at what we have learned over the last 10 days alone. First, we heard the alarming claims from the member for New England regarding the process of funding the equestrian centre in his seat. That funding was almost made conditional on him not being on the board. Second, serious questions were raised about the funding for the ethanol plant in Gunnedah in the Deputy Prime Minister’s electorate, with the project failing to meet the published funding criteria and after three other funding sources were explored and either rejected or not pursued.

Mr Truss—Wrong; that was wrong.

The DEPUTY SPEAKER (Hon. I.R. Causley)—Order! The minister will desist from interjecting.

Mr Truss interjecting—

The DEPUTY SPEAKER—I warn the Minister for Agriculture, Fisheries and Forestry!

Ms KING—Third, we heard questions over the $1.5 million allocated to the Tumbi Creek dredging project in the marginal electorate of Dobell—a project that was rejected by the area consultative committee, the body the government has charged with advising it about these applications. Fourth, we had the A2 milk scandal which the then parliamentary secretary announced during the election campaign, claiming all due diligence tests had been met, only to see it fail these tests a short three weeks later. Then, of course, there was the former Joh Bjelke-Petersen staffer, Mr Ken Crooke, who was lobbying for A2 in July whilst he was on the payroll of the parliamentary secretary responsible for funding decisions.

Just yesterday we had the former parliamentary secretary trying to tell us that the reason that the member for Capricornia received a letter announcing funding for a project in her electorate dated well after the minister ceased to have any portfolio responsibility for regional funding was because the letter got lost. To continue the pork analogy—pigs might fly. How are we expected to believe that a letter which was signed three months ago announcing a $220,000 project in a marginal seat The Nationals were trying to win off Labor was lost? Yesterday the minister wanted us to believe that the project was announced by someone but she could not tell us who. Today the story changed yet again.

The DEPUTY SPEAKER—The member for Ballarat is now starting to infringe the ruling. You can talk generally; you cannot talk about individuals.

Ms KING—Thank you. The media release was apparently announced on 31 August. That contradicted the fact that there was a letter to Ms Heather Clelland, which the minister asserts was signed on the same day, asking Ms Clelland to keep the grant to Horse Australia confidential because Senator Boswell, a Nationals colleague, would make the public announcement later. How can that
be believed? There is a stench coming from The Nationals and it emanates from the top.

When the Regional Partnerships program was introduced the government promised to make it easier for local communities to gain access for local projects. It introduced one program and it promised one set of guidelines and one simple application form. What regional communities were not told was that there was a whole other set of shadow SONA guidelines that were never advertised and for which applications were never going to be sought. The departmental document on the guidelines said, ‘SONA is not an advertised element of the program and applications cannot be lodged under it—the department uses it as a mechanism to provide the government flexibility in relation to nationally significant projects, emerging needs or significant events.’ These guidelines were kept secret from the parliament and the public.

If the government wanted to change the guidelines for Regional Partnerships or introduce a separate category for projects then why didn’t it just say so? Why not be honest about it? Why keep the SONA guidelines a secret? Because the National Party wanted to use the Regional Partnerships program as their own election slush fund. This program has been abused by the National Party to favour National Party seats and to favour their mates. Under the SONA guidelines we have had $2.2 million for a beef show in Capricornia, a seat the National Party believe should be theirs; $12 million for the national sugar industry assistance package; $10 million for a sugar co-generation plant in the National Party seat of Page and former Nationals seat of Richmond; $1.5 to dredge Tumby Creek in the marginal Liberal electorate of Dobell; $1.2 million for an ethanol project in the Deputy Prime Minister’s electorate of Gwydir; and $600,000 for a rail line in the safe Liberal seat of Forde. This is not a partnership; it is a rort.

The Deputy Prime Minister tried to claim on the Sunday program that the Regional Partnerships program does not discriminate against parts of the country at all. But it does discriminate against communities that are not of interest to the coalition or the National Party. Even Liberal MPs in safe seats have had enough. This week the member for Hume showed some courage that shames members of the National Party in this place and spoke up for regional communities, and it is not the first time he has done so. He did it on Telstra and now he is coming out against the National Party rorting of road funding. I look forward to the member for Hume’s support in this debate.

It is pretty clear that the absolute distortion of this program—the corruption of its purpose—is not solely revealed in the list of funded projects. Many local governments and community organisations have been dissuaded from applying because they were told that they would not fit the guidelines. They have not even applied because they were told that they would not fit the guidelines and that funding was going to be too tight. That is why there have not been as many applications as there should have been.

A look at the successful project list reveals what a farce the Regional Partnerships program has become. Over $3 million of the Regional Partnerships program funding has leaked away from regional and rural seats and been allocated to metropolitan seats. The minister was here before trying to say: ‘What’s wrong? We’re funding these poor regions,’ which is a good end in itself, but $3 million of the Regional Partnerships program is leaking away from regional and rural seats and going to metropolitan seats. My absolute favourite is the $220,000 for the marine discovery centre in the seat of Wentworth. Can anyone explain to me how Wentworth, Bondi is regional and how the wealth that is exhibited in the seat of Wentworth goes anywhere
near the economic disadvantage experienced by many regional communities? You cannot. Don’t tell me that this Regional Partnerships program is not about pork-barrelling when you are funding the seat of Wentworth with $220,000.

We have seen football and soccer clubs fare particularly well in the seat of Makin. The coin operated telescope got some support in the target seat of Kennedy, held by a former National Party MP who had had enough of his old party’s gutlessness and who has paid the price by becoming a political target. The church in Makin got $187,000, as did a church in Capricornia. In Gwydir, the Regional Partnerships program has been used to pay for the accreditation of child-care workers. There are many others. They may all well be very worthy projects, but nobody in this place can tell me that, of all of the football clubs in the Central Highlands Football League and the Ballarat Football League, none of them have projects that need money. You cannot tell me that the 150-year-old church in Buninyong and the historic St Patrick’s Cathedral in Ballarat could not do with some funding. You cannot tell me that the child-care centres in my electorate are not struggling with funding for accreditation. You cannot tell me—or the 14 members on our side of the House who represent regional and rural communities, many of them the poorest in this country—that we do not have football clubs, scout halls, churches, community centres, child-care centres, senior citizens clubs, skateboard parks, war memorials or tourist railways that could enhance their regional economies.

The Regional Partnerships program is a $408 million program. In 1994, we had a more economically diligent shadow minister, Mr Costello, who put the following argument in this place:

If governments get the idea that they can spend $30 million to buy elections, that is the end of open, fair and honest elections in this country.

What would he say today when faced with this $408 million National Party rort? Today he is in government, and we have been deafened by his silence. It is time for a bit of honesty and a bit of integrity. The people of my electorate and the people of regional Australia deserve an apology, not the pathetic excuses that we have had so far.

Mr CIOBO (Moncrieff) (4.31 p.m.)—

Over the past week we have seen the anguish and pain on the faces of all of those opposite. We have heard stories about mangy dogs, dead parrots, roosters, pigs and pork-barrelling. I have one more analogy to put on the wood fire—lemmings. What I see today is an opposition so moribund when it comes to policy, and in such a state of disrepair, that they are forced to engage in the kind of farce that we saw in this chamber yesterday, and that we see played out again in the chamber today. We see the lemmings on the opposition benches hurl themselves into the abyss, hoping that in some way they will be able to score some cheap political point. The opposition leader can try as much as he likes to lay a finger of blame on the various National Party ministers and parliamentary secretaries in this MPI, but he has proved himself to be wholly and unspectacularly unsuccessful. (Quorum formed)

I am pleased to have an audience, because it is important that the truth is not only told but also heard. People listening to previous speakers in this debate may have become confused with the kind of spurious accusations we have heard coming from the member for Ballarat and the member for Wills. I cannot but think that what we are hearing and seeing from the Australian Labor Party in this debate is the same kind of flawed logic that says they can go out to the public domain and claim people getting fam-
ily support of $600 are not getting real money. In this debate we have members of the Australian Labor Party standing up and putting forward two contentions. The first contention is that the Regional Partnerships program is a political pork barrel. They claim this on the basis that the majority of the money flows to National Party electorates. But they fail to accept and acknowledge that the vast majority of regional and rural Australia is represented not only by the National Party but also by Liberal Party rural and regional members. So, as a matter of pure logic, the majority of funds do flow to coalition seats. It is a matter of simple logic.

In addition to that, another point that seems to escape the Leader of the Opposition and the Labor Party is the fact that, when it comes to the actual funds that are flowing into regional centres, what you are actually seeing are approval rates that are consistent across coalition and Labor Party electorates. So let us look at these allegations of political bias. Of 451 pre-election projects providing funding of some $102 million to worthwhile community projects, the majority of funds—$65 million—do flow to coalition electorates, as I outlined, and that is simply because these are electorates that are in regional Australia, more of which are held by coalition members. And what is more, more applications are received from communities in these electorates, which simply underscores one indisputable fact in this whole debate, and that is that coalition members are more in touch with their communities, foster a greater sense of entrepreneurial ability among their communities and do more to make sure that Australians can benefit from the kinds of programs the Howard government provides to the Australian people.

What we witness in coalition seats is that coalition members have put forward 567 projects compared with Labor and the so-called Independents who put forward a miserly 148 projects—so there were 567 from coalition members compared to 148 from the Australian Labor Party. But, when you look at the allegations of bias, what you see is the approval rates between electorates do not support the notion so dishonestly put forward by the Australian Labor Party and the Leader of the Opposition today. What you see is that 76 per cent of projects in Labor electorates are approved, and the figure in coalition seats is 79 per cent. So there is no pork barrel here. There is simply an adequate and true reflection of the fact that more coalition members represent regional Australia, and long may they do so.

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elled up to the community in Richmond and said to them, ‘If you elect’—

Mr WINDSOR (New England) (4.32 p.m.)—The events of the last few days and even the events of today suggest to me that the Senate has made a correct decision to have an inquiry into some of the funding arrangements and political preconditions on funding that the government has put in place. I think that inquiry is probably more urgent than ever, because what we are seeing now is an uncovering of various allegations of various programs where applications have not been made in the correct form. We have seen the Minister for Veterans’ Affairs unable or unwilling to answer questions in relation to the performance of some of her duties as the parliamentary secretary at the time. There is a whole range of questions that really do need to be answered. The appropriate way to do that in terms of Regional Partnerships is to have the inquiry that the Senate has put in place, where all people—whether they be the Minister for Transport and Regional Services, the parliamentary secretary that has now changed, or the Minister for Veterans’ Affairs—can take the opportunity to put their points.

Mr John Cobb interjecting—

Mr WINDSOR—And the parliamentary secretary responsible for regional services has just interjected. It is an odd thing that he did not participate in this debate. Maybe he is going to participate after me. It is a very odd thing that he has been one of these people that have been saying one thing at home and another thing in the electorate in relation to the distribution of funds in the Regional Partnerships program as to whether those funds have been expended, been approved and had due diligence done. These are the sorts of issues that need to be addressed and answered for the government’s sake as well as everybody else’s sake. So I encourage the member for Parkes, the so-called parliamentary secretary—I think that indicates the abuse of the National Party to put a person like that into a parliamentary secretarial position and indicates just how desperate they have become—to participate in this debate. I would be very interested to hear him speak on the next available occasion, which will be after me in about seven minutes.

Mr John Cobb—The chickens are coming home to roost, are they?

Mr WINDSOR—I would encourage all members of parliament, including the interjector from the electorate of Parkes, to participate in the Senate inquiry. These people are saying that they have nothing to hide on the political conditions that have been placed on various members of parliament and on the various arrangements that have been put in place. Yet they seem to want to hide when an open inquiry is going to be held in the Senate. It will be very interesting to see who turns up in relation to this particular issue. I may be asked to attend and I will be requesting that I attend. To say that House of Representatives members do not have to attend is nothing but nonsense. Those who have clear consciences in relation to the issues and the various allegations that have been made should not be afraid of attending. In fact, they should be there to preserve their so-called integrity and credibility. I do not think it is any secret that, in relation to a number of issues that I have raised, there are witnesses to various conversations.

Mr John Cobb—No, it is under privilege.

Mr WINDSOR—It is under privilege; I admit that. There are witnesses to various conversations who are more than willing to attend that Senate inquiry and give evidence in relation to not only the Australian Federal Police inquiry—and I am glad that the member for Parkes has brought me around to this
issue by way of interjection—but also other
meetings, conversations and telephone con-
vversations that took place on the Regional
Partnerships funding and the preconditions
that were put on the proponents of the equine
centre in my electorate, which is a very good
proposal and always has been. It has been
politicised to the extent that the Deputy
Prime Minister made it very clear to a num-
ber of people that it would not be funded
whilst I was on the board as the member of
parliament. I bet the Deputy Prime Minister
was not saying that to the member for Hin-
kler on their application or to many other
members within this parliament. The Senate
inquiry is about the political conditions that
are being placed on the distribution of funds
and the political preconditions on the an-
nouncement of those funds.

Another example that has occurred in my
electorate and which, in my view, will go
before the Senate inquiry has to do with a
blatant abuse of the political powers of a
senator—in this case, Senator Macdonald. In
this case pressure was applied to staff at the
University of New England not only to make
sure that their local member was never men-
tioned—even though their local member was
the one who brought 67 other community
groups within the electorate together to sup-
port their attempts to gain a very worthy
maths and science centre—and was removed
from the proposal altogether but also to de-
mand that the university pay for political
advertising that was scripted in one Senator
Macdonald’s office. These political precon-
ditions and pressures are the sorts of issues
that will be raised, and a number of statutory
declarations will be made to that Senate in-
quiry from individuals who have been pres-
sured. That is why we need this inquiry. I
think it is very important that we have the
inquiry.

Another abuse of process that has oc-
curred in relation to regional solutions fund-
ing, in a sense, occurred only recently and
involved the same senator. I read this into
Hansard last week. Uralla council was asked
by Senator Macdonald not to have its local
member attend the official party for the
opening of an aged care facility. Madam
Deputy Speaker Bishop, as a result of your
previous experience with aged care you
would be well aware of the efforts that local
members make. This gets to the heart of the
abuse that the Nationals have made in rela-
tion to these issues. The previous Liberal
Minister for Ageing, Kevin Andrews, and the
current Minister for Ageing have been excel-
llent exponents of this particular project. The
previous Liberal minister for regional ser-
vice, Wilson Tuckey, who administered Re-
gional Solutions, was an excellent proponent
of the availability of funds to go into that
project. About 11 sources of funds went into
that project. This is not about knocking the
government; it is about abuse by The Na-
tionals and the placement of political pre-
conditions on various arrangements that have
been put in place. I will just read for the
benefit of Hansard a press release that was
put out by the Mayor of Uralla last week. It
says:

Since Senator Sandy Macdonald has now advised
parliament that it is a matter for Uralla Shire
Council to determine whether or not to include
Mr Tony Windsor as part of the official opening
of the Grace Munro Centre in Bundarra, the
Mayor of Uralla council, Councillor Ron Filmor,
has decided to invite Tony Windsor to be part of
the official party and to speak at the function. He
stressed—
That is, the mayor stressed—
that Uralla Shire Council has never had a problem
with including Tony Windsor in the official party.
His earlier decision not to include him was made
in the light of a request from Senator Macdonald.
That is an abuse of process and I am sure
that the Prime Minister will have taken Sena-
tor Macdonald to task on that. That is not
what the Prime Minister of this land, in my view, represents. It is not what the Liberal Party represents. There seems to be a pattern that needs to be investigated in the way that not only funding and some of the processes have been abused but also that conditions were placed on various members of parliament within the broader electorate as the election approached. I think that is why we really do need this Senate inquiry to take place.

Mr John Cobb interjecting—

Mr WINDSOR—The next speaker, the member for Parkes, is champing at the bit to get up and speak to this issue, so I will only be another minute and then he will be able to do that. It is well known, and this will be brought out in the Senate inquiry, that the Deputy Prime Minister has said to a number of people throughout the electorate that the equine centre, great project though it is, would not be funded while the local member was on the board. He has said on a number of private and public occasions that it would not be funded while the local member had anything to do with the project. If that is not an abuse of process, of Regional Partnerships and of the very right of a member to represent their constituency, I do not know what is. (Time expired)

Mr FORREST (Mallee) (4.52 p.m.)—I will take up a few moments at the closure of this MPI debate to respond to contributions made by the member for Ballarat and the member for New England, who continues to come into this House under the protection of parliamentary privilege—a cowards’ castle—and make all sorts of assertions. If what he believes is true, why doesn’t he have the guts to say it outside? I have been around this place for quite some time now, and it is the worst abuse that I have ever seen. He continues to make assertions which an independent inquiry has already proved have no basis. He has hopes that a Senate committee inquiry with a majority of opposition members is going to provide him with an independent inquiry. I think his assertions again here today have to be refuted, and that is why I am on my feet.

In her contribution, the member for Ballarat made all sorts of assertions and insinuated that her division has not been fairly treated in terms of the Regional Partnerships program. The member for Ballarat is my near neighbour, and I take an active interest in what happens down there. I have to put on record that the division of Ballarat has already received funding for six important projects—a total of $922,570. That is more than the division of Mallee has received. I am much more interested in fighting for projects of a much lesser value and therefore getting more of them, because my communities are smaller. I also understand that there are another seven projects in the pipeline for the division of Ballarat. I suggest to the member for Ballarat that she does what coalition members do—they get in there and support their communities and fight for programs which the community have decided suit their needs. That is the beauty of the way that Regional Partnerships operates.

I will provide an example of a project in my constituency that I was really thrilled about. It was for the establishment of a GPS satellite base station in the township of Beulah. Beulah is a small community of fewer than 300 people. We succeeded in getting seed funding via Regional Partnerships for an amount of $16,500. From that we were able to leverage the same contribution from the state and a similar contribution from local government, and the farming community who use that service contributed too. We ended up with a project worth in excess of $55 million. The fillip to the Beulah community is that this government cares—it wants to facilitate us as primary producers moving
into the IT age and using technology for greater efficiency. That is the kind of project that I have been actively supporting, and I would urge the member for Ballarat to do the same. I am advised that she has seven other projects in the pipeline. She should get in there and support them and stop wasting the parliament’s time with spurious MPIs like that we have just had to put up with for the last hour and a half.

The DEPUTY SPEAKER (Hon. B.K. Bishop)—Order! The discussion is now concluded.

AUSTRALIAN PASSPORTS BILL 2004
Report from Main Committee
Bill returned from Main Committee without amendment, appropriation message having been reported; certified copy of the bill presented.
Ordered that this bill be considered immediately.
Bill agreed to.

Third Reading
Mr PYNE (Sturt—Parliamentary Secretary to the Minister for Health and Ageing) (4.56 p.m.)—by leave—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

AUSTRALIAN PASSPORTS (TRANSITIONAL AND CONSEQUENTIALS) BILL 2004
Report from Main Committee
Bill returned from Main Committee without amendment; certified copy of the bill presented.
Ordered that this bill be considered immediately.
Bill agreed to.

Third Reading
Mr PYNE (Sturt—Parliamentary Secretary to the Minister for Health and Ageing) (4.58 p.m.)—by leave—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 3) 2004
Report from Main Committee
Bill returned from Main Committee without amendment, appropriation message having been reported; certified copy of the bill presented.
Ordered that this bill be considered immediately.
Bill agreed to.

Third Reading
Mr PYNE (Sturt—Parliamentary Secretary to the Minister for Health and Ageing) (4.59 p.m.)—by leave—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

**AVIATION SECURITY AMENDMENT BILL 2004**

**Report from Main Committee**

Bill returned from Main Committee without amendment; certified copy of the bill presented.

Ordered that this bill be considered immediately.

Bill agreed to.

**Third Reading**

Mr PYNE (Sturt—Parliamentary Secretary to the Minister for Health and Ageing) (5.00 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**COMMITTEES**

**Public Works Committee Reports**

Mrs MOYLAN (Pearce) (5.00 p.m.)—On behalf of the Parliamentary Joint Standing Committee on Public Works, I present the fifth, sixth, seventh, eighth and ninth reports for 2004 of the committee relating to the proposed development of land at Lee Point, Darwin, for defence and private housing; the fit-out of new leased premises for the Department of the Prime Minister and Cabinet at 1 National Circuit, Barton, ACT; the fit-out of new leased premises for the Attorney-General’s Department at 3-5 National Circuit, Barton, ACT; the new East Building for the Australian War Memorial, Canberra; and the development of a new collection storage facility for the National Library of Australia at Hume, ACT.

Ordered that the reports be printed.

Mrs MOYLAN—by leave—These reports deal with matters which were considered in the last parliament but they were not tabled prior to the dissolution. I will deal briefly with each report. The first of the reports deals with the proposed development of land at Lee Point in Darwin for the Defence Housing Authority. This work seeks to provide fully serviced allotments to allow for the construction of community standard housing to satisfy Defence’s accommodation requirements and to allow for an integrated community development by offering dwelling sites for public sale. The estimated cost of the proposed project is $41,381,480. The committee has agreed that the work should proceed. However, it has made a number of recommendations, including the possibility of providing a purpose-built community centre within the development, investigation of design measures which might minimise the use of airconditioning in houses, the development and implementation of protocols for the efficient use of energy in tropical regions, the placement of details of the planning and execution of the development on DHA’s web site, a program of community consultation and the provision to the committee of periodic information on design and costs as the project progresses.

The committee’s sixth report of 2004 examined the fit-out of the new leased premises for the Department of the Prime Minister and Cabinet at 1 National Circuit, Barton, ACT. The purpose of the work is to provide increased space and security in the new leased premises. (Quorum formed) The committee considered the fit-out only, not the lease of the building, which under the PWC Act does not come under the scrutiny of the committee.

The estimated cost of the fit-out is $23 million. A number of issues were explored by the committee in the public hearing, including: the compliance of the roof with National Capital Authority requirements; traffic management; fire safety and evacuation procedures in the design of the fit-out; the extent
of staff consultation and the provision of child-care facilities; the degree of energy efficiency in the design and compliance with the standards of the Australian Greenhouse Office; and the capacity of the design to accommodate growth in staffing over the 15 years of the lease of the building. The committee was satisfied with the responses of the department to its questions and recommended that the work proceed.

The committee’s seventh report deals with very similar work to the sixth report: that is, the fit-out of new leased premises for the Attorney-General’s Department at 3-5 National Circuit, Barton, ACT. This work is also a fit-out for a 15-year lease at a cost of $23 million. Again the committee was not looking at the lease but the value of the fit-out itself. The work was presented to the committee at a very early stage and the committee expressed concern at the lack of detail in relation to both cost and design that was available to it at that stage. The committee, therefore, has formally requested that it be updated on cost and design at a time closer to construction. With the provision that the department keep the committee informed, it has recommended that the work proceed.

The eighth report for 2004 deals with work for the construction of a new east building for the Australian War Memorial. This building will accommodate 65 staff, provide storage for the research centre collections and facilities for the photographic laboratories and workshop. The new area will free space in the existing building for the War Memorial’s displays. The estimated cost is $11.6 million.

A number of issues were discussed, most notably those affecting the place of the War Memorial as a premier national institution within the designated area of the National Capital Plan. The National Capital Authority was concerned that, in the exterior cladding and roofing materials, the War Memorial use high quality materials that would be in keeping with the situation and significance of the existing building. The committee recommended that the Australian War Memorial and the National Capital Authority continue to liaise on this matter.

Other matters considered by the committee included: consultation with staff on the fit-out design; the need to consult with the Australian Greenhouse Office; occupational health and safety features of the design; and the contractual arrangements for the delivery of the project. The committee satisfied itself on these matters and therefore recommends that the proposed works for an extension to the Australian War Memorial proceed at the estimated cost of $11.6 million.

The last report that the committee is tabling today is report No. 9 for 2004, which concerns the development of a new storage facility for the National Library of Australia at Hume, ACT. The primary aim of the proposed work is to construct a facility with the capacity to support the National Library’s ongoing storage needs. Current storage facilities are full and the library informed the committee that it needs storage that has appropriate insulation and air conditioning, in order to protect the collection.

The estimated cost of the proposed works is $9.9 million. A variety of issues were raised with the library at the public hearing, including: the capacity of the library to acquire the land at Hume from the ACT government; compliance with the National Capital Development Control Plan; and the siting arrangements for the proposed building with regard to fire protection and security. Being satisfied with the library’s responses to its concerns, the committee recommends that these works proceed.
Madam Deputy Speaker, I would like to take the opportunity to thank all my committee colleagues and all those involved in the secretariat for their support in getting through all of the above inquiries. I commend the reports to the House.

SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) BILL 2004

Consideration of Senate Message
Message received from the Senate acquainting the House that the Senate does not insist on its amendments disagreed to by the House.

TAX LAWS AMENDMENT (SMALL BUSINESS MEASURES) BILL 2004

Returned from the Senate
Message received from the Senate returning the bill without amendment or request.

TAX LAWS AMENDMENT (LONG-TERM NON-REVIEWABLE CONTRACTS) BILL 2004

Cognate bills:
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—CUSTOMS) BILL 2004
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—EXCISE) BILL 2004
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—GENERAL) BILL 2004

Second Reading
Debate resumed.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.12 p.m.)—The Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 seeks to provide a transitional phase for businesses engaged in long-term contracts which will be subject to the GST from 1 July 2005. The non-reviewable contracts and most lease contracts for property in existence prior to the implementation of the GST in 2000 were exempt from the new taxation regime.

On 1 July 2005 this transitional arrangement for non-reviewable contracts will expire. This bill will provide a mechanism for business to negotiate with the recipients of the contracts to take into account the tax implications. From 1 July 2005, a business will
pay a GST component calculated on these non-reviewable pre-existing contracts. The transitional rules in the GST Transition Act allow suppliers under contracts entered into before a relevant date—generally 8 July 1999—to remain GST free until a review opportunity arises.

The GST will apply normally to those suppliers from that point as suppliers will have had an opportunity to adjust prices to take account of GST or their prices will reflect a market with GST inclusive prices. The transition period ends on 30 June 2005, at which point remaining supplies would, under the legislation as it currently stands, become subject to the GST in the normal way. Either these contracts need to be renegotiated or, if this is not feasible, rules need to be adopted to determine which parties will pay the GST. The bill provides meaningful provisions to cover this situation. However, these complex matters are still being considered by the opposition.

This is another example of the government’s mismanagement of its legislative program. I was contacted by the Minister for Revenue and Assistant Treasurer, who is at the table, earlier in the week, and the opposition was asked to give consideration to this bill. First of all, it was asked for agreement to allow this bill to be introduced into this place this week, and then it was the government’s hope that the opposition would facilitate its passage through this chamber and the Senate. This is an extraordinary thing to impose upon the opposition. This is a request for the opposition to circumvent all of its party processes—in other words, there is no opportunity for this bill to go to the shadow cabinet, no opportunity for this bill to go to the relevant caucus or party committee, and no opportunity for this bill to be considered by the caucus. This is a big ask of the opposition on the government’s part. While I agreed, after some consultation on this side, to facilitate the introduction of the bill today and to give passage to the bill in this place today, I indicate again that the opposition is not prepared to give the bill passage through the Senate until we have had adequate time to properly consider it and, of course, adequate time to go through those party processes, which we see as being so important.

This might not seem like a very complex bill per se, but it is very complex. It has serious implications for a large number of people doing business in this country. The Labor Party wants to make sure that the government has it right. I do acknowledge that there has been extensive consultation with industry and business, and we do live in hope that the transitional arrangements in the bill do reflect the outcomes of that consultation process. Having acknowledged the consultation process, one of the things that angers me with respect to the government’s request that we deal with this this week is that the government has known since at least 1999, if not earlier, that these transitional arrangements would need bedding down. So we have waited since 1999, effectively, to see these transitional arrangements come forward. Here we are, on the second last sitting day of the parliament for 2004, on the eve of the Christmas period, being asked at a very busy time to consider a complex bill with significant potential implications for all sorts of people and businesses. It is absolutely unreasonable. While we are happy to facilitate it through this place, we are not going to cop it in the Senate. The government is going to have to lift its game, get its house in order and ensure that business is complete in the Senate well and truly before 1 July 2005.

The opposition does not fear any charge that it is some way holding up the progress of this bill. I know that business will agree that it is extraordinarily inappropriate for the government to be asking us to consider, with only a few hours notice, a bill that has such
significant implications for business and individuals. It is worth noting that this is yet another GST bill. During a debate on another matter in this place yesterday I made the point that the limited resources of opposition have not allowed me the time this week to check how many GST bills or amendments we have had in this place since we completed the first tranche of bills which gave effect to the GST. But they would be numerous, and they are more numerous than is necessary—firstly, because of the government’s failure to properly design the new tax system and, secondly, because of its failure in various ways in terms of the administration of that system since.

We hear on a regular basis in this place about what a wonderful thing the GST is. Day in, day out, the Treasurer comes into question time crowing about being awash with money—crowing about the enormous amount of money being raised by the GST—and excited about the fact that it is raising so much more than was originally predicted, without any thought that that might be having some impact on consumers. I am surprised to hear the Treasurer so regularly boasting about being the highest-taxing Treasurer in Australia’s history. To me, it seems a very strange mantra to be running, in terms of its political implications. I also said in this place yesterday that I believe—and I am probably amongst the majority in believing this—that the introduction of some form of consumption tax in this country was inevitable, simply because of the rising dominance of the services sector in this country. But I am highly critical of the design of the GST system we have—it is too complex and unnecessarily so. The compensation which was provided to consumers with the introduction of the GST has eroded by way of bracket creep, but, of course, the GST effect on prices is compounding each quarter.

Increasingly the tax is becoming regressive and it is falling hardest upon those who can least afford to pay: pensioners, low-income earners and low-income families. So we do not want to hear any more of the crowing about what a wonderful thing the GST is. You only need to ask any small business person how they are faring with the GST. Let us not have all this crowing about what a wonderful thing it has been for small business. I have not talked to any small business person in my electorate who thinks the GST is a wonderful thing, I can tell you, Madam Deputy Speaker.

Mr Nairn interjecting—

Mr FITZGIBBON—The member for Eden-Monaro says that the majority of small business people in his electorate think that the GST is a good thing. Would I be putting words into his mouth, Madam Deputy Speaker, or is he nodding his head? I see him nodding his head. He believes the majority of small business people in his electorate think the GST is a good thing. I put it to you, Madam Deputy Speaker, that the member for Eden-Monaro is out of touch with his small business constituency if he believes that the majority of small business people in his electorate think the GST is a wonderful thing.

Let me make a point on this business of being out of touch. Last night in this place we had a debate about a government initiative, which I think was announced in the budget but was certainly ramped up during the election campaign, that will allow small firms some minor relief from the GST by allowing them to report annually rather than on a quarterly basis. The extraordinary thing about that initiative is that, having conceded that the GST—

Honourable members interjecting—

The DEPUTY SPEAKER (Hon. B.K. Bishop)—Order! The member is entitled to be heard.

CHAMBER
Mr FITZGIBBON—Thank you, Madam Deputy Speaker. Very rude they are on that side.

The DEPUTY SPEAKER—I think it was coming from your own side as well.

Mr FITZGIBBON—Having conceded that the compliance cost burden on small firms as a result of the GST has become too great, they wheeled into this place yesterday a bill to offer some relief—not much relief, I have to say. But guess what? When the government decided that it was time to finally give small business a break, they did not decide all small firms deserved a break; they decided that only firms with an annual turnover of $50,000 or less deserved a break. There is no relief at all for those on a turnover of $51,000 annually. There is certainly no relief for those with a turnover of $100,000, $300,000, $400,000 or even half a million dollars annually. I know I do not need to tell you, Madam Deputy Speaker, that a small firm with a half million dollar turnover but a low profit margin is not a very big firm; it is very much what would constitute a small business. But there is no relief for them whatsoever.

Let me now go to the confusion that is flowing out of the government on these issues. The government does not have any idea what a small business is anymore. As I said yesterday in another debate, this is why their decision to cut funding for the small business longitudinal study was such folly, because it was the first opportunity for government in this country to properly understand what a small business is; what the aspirations of the small business are; what it is that causes one small business to seek to grow—in volume terms, not profit terms—and another to not want to grow; what the barriers to small business are; what the things are that help small business grow; and what the constraints to financing small business are. They are all things we could have had as a result of that five-year longitudinal study, but in the final year the government just cut the funding. In its first budget in 1996 it said, ‘We don’t need that anymore.’ Around the country a whole group of academics and PhD students had the rug pulled out from under them, because they were relying on that final year of the business longitudinal study to complete some very important academic work which would have assisted us, as policy makers, in determining how best to help small business.

It would have also helped us define what a small business is now. But this government obviously has no idea. It has a $50,000 turnover for the new GST relief initiative, which went through this House yesterday. It has a million dollar turnover for a small business wanting to qualify for the simplified tax system, which allows a small business to use the cash accounting process and a simpler and more profitable depreciation regime. So it is a million dollars for the simplified tax system. Then when we go to the government’s so-called fair dismissals legislation, the definition of a small firm is 20 employees or fewer. It used to be 15 employees or fewer when the government first attempted to get that ridiculous legislation through this place, and now it has gone to 20 without any real explanation. The government is confused about what a small business is, let alone how best to help small business.

Mr Brough interjecting—

Mr FITZGIBBON—I hear the minister interjecting and suggesting that this bill is not about small business. Of course it is. It will touch on small business people who entered into long-term contracts prior to the introduction of the GST, so what I am saying is entirely relevant. I am making the point that we are dealing with a cumulative effect from all these bandaid measures we have
been dealing with on such a regular basis since the introduction of the GST. So much of it is just so unnecessary. Adding to that cumulative effect next year, of course, will be the arrival of choice superannuation which, as I said in this place yesterday, will pose for small business almost as significant a compliance cost burden as does the GST. So there is an impact. We are highly critical of the government, as a result, and I think we are entitled to be. We will allow this bill to pass in this place; we are happy to help the government and facilitate the passage of these important matters, which have come about, of course—

Mr Brough—How are you going to stop it?

Mr FITZGIBBON—The minister asks how we are going to stop it. This is the sort of hubris you get from the government.

Mr Ripoll—It is arrogance!

Mr FITZGIBBON—Arrogance is probably a better word, I agree. I will tell the minister how we could have stopped it: by not agreeing to have it in this House in the first place. The minister knows we have certain mechanisms available to us, some of which have already been on display since the MPI today, to frustrate the government’s progress in this regard. We have been most cooperative on this issue, as we have been most cooperative on an earlier bill which dealt with the way in which the GST impacts upon elderly people in retirement villages—another example of the government’s incompetence.

Four and a half years after the introduction of the GST and after 4½ years of fear and uncertainty in the aged community, the government wheels in a bill—again, with very little notice—and expects us to facilitate it through the House and support it. The government says to us, ‘You’ve got to deal with this this week.’ It has had 4½ years to correct the problem. It spent the first three years denying there was one and then the Treasurer was finally rolled in the party room in an informal sense. We get a bill in the House this week and the government says, ‘You’ve got to pass this through both houses otherwise it is going to be a catastrophe for aged residents in retirement villages.’ They are the same aged residents that have been living with this fear and uncertainty and, in some cases, the impost of the GST on services they receive in the aged care facility, but we have to fix it in a week. Now the government has finally decided to move on this issue. This is the sort of stuff we have to deal with.

Let me say this: we have been doing all we can to facilitate the progress of the superannuation reporting bill, which was also in this place yesterday, if not the day before. We passed it in this place. The government was surprised that we were prepared to support that superannuation reporting rule, but it should not be a surprise. We just came to the conclusion that expecting the onus to be on the employer to report that he submitted the employee’s superannuation guarantee to the fund is a bit silly because, if he is game enough not to pay it, he is going to be game enough to write to the employee and say he has paid it. We did not see any point in the regime and we have foreshadowed our intention of finding better, more efficient and more effective ways of protecting the entitlements of employees in those situations—that is, the statutory right to a superannuation payment.

Honourable members interjecting—

Mr FITZGIBBON—I am going through the process here. I am giving examples of the government’s incompetence and the way in which it calls upon the opposition to dig it out of its hole on every occasion. I will tell you now, Mr Deputy Speaker, why I go back to the superannuation reporting bill. We have done all we can to facilitate that bill. The
Democrats moved an amendment to the bill in the Senate—and, of course, in the Senate things get messy; things are done in a rush—and the opposition wanted to have a look at the amendment, which is eminently reasonable. So we supported the amendment in the Senate knowing that that would force the bill back to this place, giving us 12 hours or more to properly consider the amendment. By the time it came back here, we had come to the conclusion that the amendment was not necessary. We sent the bill back to the Senate in its original form and we have indicated that we will do all in our power to facilitate that bill through the Senate. There are regular examples of our goodwill and preparedness to facilitate the progress of these important bills through the parliament, notwithstanding the fact that they are constantly thrust upon us at the last moment.

I welcome the Minister for Human Services to the chamber. I know he has a deep-seated interest in the incompetent approach of the government to these GST issues. I suspect that is why he got out of the tax and economic portfolios and ran off to the social portfolio. That was probably a wise decision on his part. He learnt only too well throughout the HIH collapse how one can be burnt with respect to some of these economic issues.

Mr Brough—Mr Deputy Speaker, I rise on a point of order. We have been listening to this diatribe for the last 20 minutes. We have had probably two minutes on the bill of non-reviewable long-term leases. We have had everything on superannuation, unfair dismissal—all the failings of the opposition. Could I please ask you to bring the member back to the bill before the House?

The DEPUTY SPEAKER (Hon. A.M. Somlyay)—The member for Hunter will address the bill.

Mr FITZGIBBON—To the contrary, Mr Deputy Speaker, I suspect the member for North Sydney came into the House just to listen to what I have to say, because I know he shares my views on these issues. I know that, secretly, he knows the GST has been mismanaged and that is why he has gone off to a social portfolio. That is the very point. You could not claim by any stretch of the imagination that the issues I am raising are not relevant to this bill. This is another GST amendment thrust upon us, giving us no scope for proper consideration. All these matters are relevant to the bill before the House and I am entitled to raise them with this House. I know the government think that democracy is now dead and they should be able to ram everything through both houses—and I know that they look forward to doing so after 1 July. Forget all these lines about them being responsible, about not letting their heads run away with them, about not abusing their new-found power in the Senate; just have a look at the legislative program for next year and see how many weeks we are sitting prior to 1 July next year. That will give you a very good indication of the government’s intention in this regard.

Mr Hockey interjecting—

Mr FITZGIBBON—No thanks, Minister. I will leave it all to you. You look like you need it more than I do. Again, the opposition are doing their best to be cooperative. We are being cooperative. We will be cooperative on this bill, as we were on the two earlier bills that the government thrust upon us. I will say one extra thing. I had an email this afternoon from an industry association with a deep-seated interest in the passage of not only this bill but also the bills considered earlier in the week. I cited the example of the super reporting bill. I gave the story, and I will not put you through it again. The email I got from an industry association this afternoon went roughly like this: ‘We understand that the
opposition is opposing the super reporting bill in the Senate and we appeal to you to reflect on your decision and to consider reversing it.’

That is not true. The opposition did not oppose the super reporting bill in the Senate. We had no intention of ever opposing the super reporting bill in the Senate. It is true, as I pointed out earlier, that we did support an amendment to give us the scope to more properly consider that legislation, but there was never any intention to oppose the bill. I wonder where that industry association got that idea. Where would an industry association, between now and yesterday, get the idea that the opposition are opposing an issue that they see as being so important to them in terms of small business compliance issues? I wonder where. Of course, it is fairly obvious. It came from the government side. So here we are, the opposition, being cooperative on these matters and the government are out there playing politics with the issue.

If they want to play politics with these issues that are important to business and, in particular, small business, we can play those games as well. So I say in that regard, ‘Bring it on, Minister.’ I have done my best this week to do the right thing by you, by the parliament and by the businesses who are hanging on for some of these changes. But we will not be ridden roughshod over and we will not just sit back, having been cooperative, and allow ourselves to be stitched up out there in the very business communities to which we are trying to lend assistance.

Again, we are happy to provide passage of this legislation through the House, through this place, but there is no way in the world, on such a complex issue and an issue that has been coming since 1999, that we are going to agree to give such important legislation and such complex matters passage through the Australian Senate. It will just have to wait until next year, until we have had an opportunity to properly consider it. If that causes any grief for the business community or indeed any individual who might have entered into a long-term contract prior to the introduction of the GST, it will be quite clear where the fault lies. It will not be with the Australian Labor Party; it will be very much laid at the feet of the government.

Mr BOWEN (Prospect) (5.39 p.m.)—I rise to support the comments of the honourable member for Hunter. The Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and cognate bills are very important. This bill seeks to provide a transitional phase for businesses engaged in long-term contracts which will be subject to the GST from 1 July 2005. As the honourable member for Hunter pointed out, the GST came into force in the year 2000. So the government have known since 1999 or perhaps 1998 that this bill would be necessary. They have known that this transitional phase would need to be introduced. Yet they introduced this bill this morning and have asked the opposition to provide our cooperation to allow the bill to pass through the House today and also to pass through the Senate as soon as possible.

The opposition recognise that things happen, that sometimes legislation needs to be rushed through. We are always willing to be cooperative, to try to assist in these matters, but we need to have good reasons. We need to hear from the government why this legislation is so important. We need to hear why it is so urgent. The Minister for Revenue and Assistant Treasurer, who appears to have left the chamber, provided that explanation in his second reading speech, and I have to say it was a good one. He said that July 2005 is coming quicker than we thought. Last time I checked, it was coming exactly when we thought it would—and that is after June and just before August in 2005. It is coming ex-
exactly when we thought it would. It came ex-
actly when we thought it would in 1998,
1999 and 2000, when the GST came in, and
all through this year, yet the government is
rushing the legislation through. I think this
shows a deeper problem. What this shows is
a contempt for the processes of this House
and a contempt for parliament. We saw in
question time today and in the MPI contempt
for this House.

Mr Price—And arrogance.

Mr BOWEN—And arrogance from a
government that has just been re-elected. We
often see arrogance from a government that
has been re-elected, but you see it more and
more at the beginning of the last term of the
government. It is the arrogance which comes
back to get the government in three years
time. I say to the government: ‘If you want
to be arrogant, keep going and we will keep
telling the Australian people just how arro-
gant you are being.’

Mr Hockey—Who’s this kid?

Mr BOWEN—The Minister for Human
Services can interject all he likes, but this is
an important matter before the House.

Mr Hockey—You don’t look like Janice
Crosio.

Mr BOWEN—If the minister wants to
make light of it, if he wants to crack a joke
and get personal that is fine. This is an im-
portant bill before the House. Obviously, the
minister does not like the fact that the op-
opposition is taking the opportunity to speak
about it, to bring the issues to the attention of
the people who are affected.

Mr Price—Just let it roll through, that’s
what they want.

Mr BOWEN—They just want to rush it
through, push it through the House in the
arrogant and contemptuous manner that they
have treated the parliament today. The mem-
ber for Hunter pointed out that we have seen
lots of pieces of legislation about the GST,
and he is right. He also pointed out that the
GST is a big issue for small business. It is
important that we get this legislation right.
As I said in the House last week, I have spo-
ken to lots of small businesses in my elector-
ate. None of them has raised with me the
need for unfair dismissal exemptions. What
has been raised with me is the need to have
the burden of GST compliance lifted from
the shoulders of small business. Small busi-
nesses say that the GST is far too complex
and that it creates extra work. They say, ‘We
have to have a full-time employee just to
deal with the GST.’ In some of these compa-

ties that is the only employee they have. In
small operations, perhaps a husband and wife
operation, they have one employee, and what
is that one employee’s job? To comply with
the GST. This legislation may well be fine. It
may well be good legislation. Or it may well
be disastrous legislation. We have only just
seen it. I think the member for Hunter has
been more than cooperative.

Mr Brough—How can you speak about it
if you haven’t seen it? You don’t know what
you’re talking about.

Mr BOWEN—The minister sits there in
his normal arrogant and contemptuous way
in this House and interjects. He looks bored
and very angry that the opposition are daring
to take the time to debate the matter. He
looks angry that we are daring to represent
small business in this House. Those opposite
think that they have a monopoly on small
business.

Mr Brough—Mr Deputy Speaker, I rise
on a point of order. The bill is not about
small business. I draw to the member for
Prospect’s attention that the bill is in fact
about non-renewable long-term leases. I un-
derstand that he does not recognise that. I
bring him back to the question before the
House. Please draw his attention to the fact
that that is the bill before the House. The shadow minister said that this bill is all about punishment. This parliament is not about punishment; it is about legislating. You people ought to get out there and start acting responsibly.

The DEPUTY SPEAKER (Hon. A.M. Somlyay)—Order! The minister has made his point of order. The member for Prospect will return to the bill.

Mr BOWEN—I am sure small businesses in my electorate will be glad to learn that this bill has nothing to do with them, according to the minister. They can ignore it. They can relax. They do not need to worry about complying with this bill when it becomes law. But, as I was saying, this bill raises more questions than it answers. It could well be good legislation—we do not know. We reserve the right in the Senate to properly investigate this legislation and consult with the relative stakeholders, including the Property Council of Australia and other business groups, to have conversations with those groups and see if this legislation meets with our approval.

The member for Hunter, as our spokesman on this matter, has been more than cooperative with the government in ensuring its passage through the House this evening, but the government seems to be still upset that I and, I suspect, another member or two after me, dare to speak on this bill. We might find more members coming to the House to speak on this bill. When they hear that it is such important legislation they might pester the Chief Whip and say, ‘Excuse me, can I speak on this bill?’ Members on this side are getting more and more fed up with the arrogance and contemptuous nature of this government—as the Australian people are—as we saw today in question time and in the MPI.

The DEPUTY SPEAKER—Order! The member for Prospect will return to the bill.

Mr BOWEN—I will. Thanks for your reminder. I will conclude by saying that I recognise that this is an important bill. The transitional rules and the GST transition act allow suppliers under contracts entered into before a relevant date—generally July 1999 but, where the recipient would not have been entitled to a full input tax credit, it is 2 December 1988—to remain GST free until a full review opportunity arises. This bill deals with that matter and deals with the opportunity for a review. I just repeat that our support for this bill in the House should not be misread by the government or anybody else as meaning that we fully support all the provisions contained therein. We may well have to review our position in the Senate, consult with appropriate stakeholders and consult with small business, as we do regularly—as the honourable member for Hunter does in his capacity, as the honourable member for Watson does in his capacity as shadow minister for small business and as all of us do as members of parliament representing seats with a considerable small business component. I know the minister says this is not about small business. As I said, I am glad he says that. I am sure that small business will be very pleased to hear it. I support the bill on the basis outlined by the honourable member for Hunter.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.48 p.m.)—in reply—Mr Deputy Speaker, in summing up this bill I make it very clear—

Mr Ripoll—Mr Deputy Speaker, on a point of order: I believe that I rose to my feet first. I wish to speak on the bill before the House. As there are no further members on the government side of the House wishing to speak but there are further members on the opposition side of the House, as a member of this place I wish to speak on this bill now.
Mr Fitzgibbon—Mr Deputy Speaker, I rise on a point of order. The standing orders are quite clear and are confirmed by *House of Representatives Practice*. We are on the second reading debate and, as long as no member on the government side is seeking the call to debate the second reading, members on our side are, of course, entitled to the call and take precedence.

The DEPUTY SPEAKER—I understood that there was an arrangement on the number of speakers. I call the member for Oxley.

Mr RIPOLL (Oxley) (5.49 p.m.)—I have risen in this place many times to speak about—

Mr Brough—On a point of order: did I have the call, Mr Deputy Speaker? I still want the call.

Mr RIPOLL—On the point of order?

Mr Brough—No, not on the point of order. I rose to speak and you gave me the call, Mr Deputy Speaker. Has that now been overruled?

The DEPUTY SPEAKER (Hon. A.M. Somlyay)—I thought you rose on a point of order.

Mr Brough—I did, subsequent to that, but the original point was not.

The DEPUTY SPEAKER—The honourable member for Oxley has the call.

Mr RIPOLL—As I was saying before the government tried to cut me off from speaking in this debate on the *Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004* and cognate bills—which I find most offensive, I have to say—members come into this chamber with an expectation and a belief that they will get a fair hearing from the government. We just had another example today, not only in question time but right now, with me coming here to speak on this bill. We had examples yesterday. Government members sit here and laugh—and they always do this—because they are uncomfortable; they laugh because they try to relieve some of the pain that they are experiencing on these matters. Now I am going to be interrupted again because government members do not want to hear us speak. It is just not good enough. This is a place of democracy. We are entitled to speak.

Mr Nairn—Mr Deputy Speaker, I rise on a point of order. The member for Oxley has been speaking for about 90 seconds at least, which is a fair while, and he has not even come anywhere near talking about this bill. He came in here and has admitted across the table that they are to waste time. He needs to talk about the bill.

The DEPUTY SPEAKER—I ask the member for Oxley to return to the bill.

Mr RIPOLL—Mr Deputy Speaker Somlyay, while I have this opportunity, I want to congratulate you personally on your elevation to your position. Many people in this place have a lot of respect for you, as I do, and I welcome your appointment to the position.

I will speak on a range of issues that are related to the *Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004*. But I think it is within my right—past practice would show me and past experience would tell me from the many times I have risen in this place, as has the member for Eden-Monaro and other members—and it is not unusual or uncommon, to rise and make some points on the introduction to a bill, which I have done.

Any idea that the government has that it is uncomfortable about the process that we are embarking on of making comments on this bill is absolutely frivolous and uncalled for. This is a bill that we support, but we also want to speak on it. What is unconscionable is the action of this government, which believes that it has a born-to-rule right, that it can just drop a bill on the table on any given
morning, not observe any of the practices contained in either the big book or any other standing order—

The DEPUTY SPEAKER—Order! The member for Oxley will address the bill.

Mr RIPOLL—and not allow members to observe longstanding practice and procedure in relation to this bill. That gives me some trouble.

This bill is important because it seeks to provide a traditional phase-in to business engaged in long-term contracts which will be subject to the GST from 1 July next year. Unlike the minister—and I will not go on about this point for too long—who made the point, and I think it is significant and now part of the Hansard record, when excusing the process by which these bills were delivered into this place today that somehow 1 January 2005 or even 1 July 2005 is coming a lot quicker than expected. It certainly sent me back to my textbooks about just how many days are in a normal calendar year. The fact is that the government has known about the provisions for this in relation to GST and long-term non-reviewable contracts for an ample amount of time. In fact, if you examine the passage of time, we are talking about not weeks or months but years. The government has had years. But the government seeks to cut short the time the Labor Party, as the opposition, has to consider this legislation in detail.

I want to put on the record a number of things that I think are extremely important. When a government is re-elected, it does have a right to govern, and I respect that right. But, by the same token, when opposition members are re-elected, as we have been, we also have rights in this place: a right to participate, a right to be part of the democratic process. You can see the eyes rolling in the heads of the government ministers, because they do not believe that those rights exist. You may have bought government, but you do not own it. You hold it only for a short time.

It is important that we get this legislation through, and Labor will facilitate—as we always do, despite the protestations on the government side—the processes of this House. We do allow the bills to go through. We do comprehend that the government cannot get its act together and therefore has to come crawling to our side to say, ‘Can you please help us out? We need your support.’ We are prepared to give it with this legislation. We are prepared to give it to facilitate the processes of the House and get this much-needed legislation through. But do not think you can come into this place and restrict our ability to speak or somehow cut short our opportunity to make a contribution on these bills—and, as the member for Hunter pointed out, many other bills this week—or any other bills.

As was mentioned by the shadow minister, we will support the legislation. We believe it is important. We just ask the government to get its act together and get on with the job.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.56 p.m.)—I commend the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 to the House.

Question agreed to.

Bill read a second time.

Third Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.56 p.m.)—by leave—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—GENERAL) BILL 2004

Second Reading

Debate resumed, on motion by Mr Brough:

That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.57 p.m.)—by leave—I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—CUSTOMS) BILL 2004

Second Reading

Debate resumed, on motion by Mr Brough:

That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.58 p.m.)—by leave—I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—EXCISE) BILL 2004

Second Reading

Debate resumed, on motion by Mr Brough:

That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (5.59 p.m.)—by leave—I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

NATIONAL WATER COMMISSION BILL 2004

Consideration of Senate Message

Bill returned from the Senate with an amendment.

Ordered that the amendment be considered immediately.

Senate’s amendment—

(1) Clause 44, page 23 (lines 20 to 25), omit the clause, substitute:

44 Public availability of assessments

(1) The NWC must make its assessments and recommendations under subsections 7(2) and (3) available to the public unless the Minister does not agree.

(2) The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.

(3) If agreement is not given under subsection (1), the Minister must advise the NWC of the reasons why agreement has not been given. The NWC must make these reasons available to the public.

Mr NAIRN (Eden-Monaro—Parliamentary Secretary to the Prime Minister) (6.00 p.m.)—I move:

That the amendment be agreed to.

The government supports the amendments to clause 44 of the bill which have been agreed by the Senate. The amendments simply clarify how the commission will publicly release...
information. The amendment to subclause 44(1) makes it clear that the assessments and recommendations prepared under subclause 7(2) and 7(3) will be made publicly available, unless the minister does not agree. The reports which may be publicly released under the amended subclause include assessments of progress in implementation of the National Water Initiative, the performance of the water industry against national benchmarks and the 2005 assessment of progress by the states and territories in the implementation of the 1994 COAG Water Reform Framework, amongst others.

The amendment to subclause 44(2) provides that advice and recommendations prepared by the commission under other parts of the bill, particularly 7(1), may be made publicly available by the commission if the minister agrees. However, it would not be appropriate to release the confidential advice to the minister or sensitive, commercial-in-confidence project proposals under the Australian water fund. This information will be protected and the provision allows for this. If the minister declines to approve the release of the assessments and recommendations referred to under subclause 44(1), he will be required under the new subclause 44(3) to provide the commission with the reasons for doing so, and these reasons must be made public by the commission. The commission will do this in a timely and appropriate fashion.

In agreeing to these amendments, the government has demonstrated its commitment to transparency and accountability in the operation of the commission and in the implementation of the National Water Initiative. The National Water Commission will be instrumental in ensuring that water issues in Australia continue to capture the public’s imagination and energy in working towards practical water solutions. The importance of water to securing Australia’s economic, environmental and sustainable future cannot be overstated. We need to move forward now with this important reform agenda to improve Australia’s water management.

Question agreed to.

WORKPLACE RELATIONS AMENDMENT (AGREEMENT VALIDATION) BILL 2004

Debate resumed from 6 December.

Second Reading

Mr ANDREWS (Menzies—Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service) (6.04 p.m.)—I move:

That this bill be now read a second time.

This government is committed to a workplace relations system that works. Agreement making under the Workplace Relations Act 1996 has benefited Australia economically, socially and industrially. The Workplace Relations Amendment (Agreement Validation) Bill 2004 will provide certainty to those employers and employees who have entrusted their working arrangements to the federal agreement making system.

The bill responds to the High Court’s recent decision in the Electrolux case that federal certified agreements must only contain clauses that pertain to the employment relationship. The government agrees with the High Court’s findings in Electrolux and welcomes the ruling that a union bargaining fee, forced upon non-union workers, cannot form part of a certified agreement.

The majority judgements in Electrolux suggest that existing agreements that contain provisions that do not pertain to the employment relationship may not be valid because the Australian Industrial Relations Commission did not have jurisdiction to certify them. There has been some confusion among the unions and business community about the implications of this decision.

CHAMBER
The government is determined to address the concerns of employers and workers across Australia in putting forward this bill. Not to remedy the uncertainty raised by the Electrolux decision would be unjustifiable, particularly in the lead-up to the Christmas holiday period.

The bill will put parties to an agreement in the position they would have been in, had they complied with the Electrolux decision when they made or varied their agreement.

The bill will ensure the validity of certified agreements and Australian Workplace Agreements (AWAs) which were certified, approved or varied under the Workplace Relations Act prior to the High Court’s ruling in Electrolux. While Electrolux is concerned with certified agreements and contains no direct reference to Australian Workplace Agreements, the government believes that there is an equivalent need to ensure validity, and hence certainty, for the parties to AWAs.

The bill will provide that, where an agreement was certified, approved or varied prior to 2 September 2004 but contains matters that do not pertain to the employment relationship, these matters will not be considered to affect the validity of the agreement’s certification, approval or variation. The bill will only validate agreements certified prior to 2 September 2004, the date on which the High Court handed down its decision in Electrolux.

Consistent with the Electrolux decision, matters which do not pertain to the employment relationship but which are incidental or ancillary to that relationship, or machinery provisions, will be validated.

The bill will not validate those parts of an agreement that do not pertain to the employment relationship. To do so would go beyond the decision in Electrolux that an agreement must only contain matters that pertain to the employment relationship. The High Court ruling was consistent with the legislative intent of the Workplace Relations Act and with many years of court and Australian Industrial Relations Commission decisions that have required other industrial instruments to contain only matters pertaining to the employment relationship.

It will be up to the parties to determine how to address the aspects of their agreement that do not pertain to the employment relationship. If the parties to an agreement wish to honour non-pertaining matters, they are free to do so through formal or informal arrangements.

The bill will also not remedy other defects in the certification process. If an agreement is invalid as a result of some other flaw in its making, certification or approval, this bill will not render it valid.

The government is determined to ensure agreements entered into by businesses are upheld and enforced and that unions are not able to exploit the potential invalidity of agreements. Unions have publicly discussed a campaign to use potential invalidity as a trigger to reopen negotiations with employers regarding their members’ terms and conditions. Unions in the electricity and construction industry have already tried to take advantage of uncertainty caused by the Electrolux decision by pressuring businesses to renegotiate agreements. This bill will ensure that employers and employees who have negotiated and operated under agreements in good faith will not be left vulnerable to industrial action and coercion.

The government considers it unlikely that anyone would sue in respect of past industrial action which was unprotected due to Electrolux. However, in the interests of securing urgent passage of this bill, the government has accepted an amendment moved by the Democrats in the Senate that will
validate past industrial action, to the extent that it is constitutionally possible.

The bill will validate past industrial action that was taken on or before 2 September 2004 which would have been protected action except that it was taken in support of a claim that included a non-pertaining matter. The amendment addresses uncertainty over whether industrial action previously thought to be protected could later be ruled unlawful in the courts. The bill will not remedy other failures to comply with the requirements of the act in relation to protected action, nor will it validate industrial action which has been found by a court not to be protected action prior to the commencement of this act.

There is currently some uncertainty in the community about the validity of working arrangements set out in both collective and individual agreements. This government is determined to ensure the certainty of current arrangements for employers and employees. I commend the bill to the House and I present the revised explanatory memorandum.

Mr STEPHEN SMITH (Perth) (6.09 p.m.)—Labor supports the purpose of the Workplace Relations Amendment (Agreement Validation) Bill 2004 in providing certainty for those certified agreements rendered potentially invalid as a result of the decision of the High Court in Electrolux. The bill amends the Workplace Relations Act 1996 to validate agreements which were certified, approved or varied prior to the Electrolux decision, where the offending provision or provisions do not pertain to the employment relationship, nor will the bill validate those parts of an agreement that do not pertain to the employment relationship, nor will the bill
remedy other defects in the certification process. If an agreement is invalid as a result of some other flaw in its making, certification or approval, this bill will not render it valid, nor does the bill validate any protected industrial action that was taken in relation to matters not pertaining to the employment relationship. The bill was referred to the Senate Employment, Workplace Relations and Education Legislation Committee. A hearing took place in Melbourne on Thursday, 25 November. The report of the committee was tabled in the Senate on Monday, 29 November.

The decision of the High Court in Electrolux has created uncertainty in the application of many existing certified agreements. The High Court ruled that an enterprise agreement could only be certified by the commission if all of its provisions related directly to the employment relationship between a particular employer and its employees. If any provision offends that test, the whole agreement is rendered invalid. While the decision itself was largely confined to a particular provision relating to bargaining fees, the decision has much wider ramifications. There has been considerable speculation and debate since as to which provisions commonly included in enterprise agreements might fall foul of those provisions of the Workplace Relations Act that limit the matters that may be so included. Because many enterprise agreements which have previously been certified by the commission are likely to contain a provision that potentially does not pertain to the employment relationship, many agreements may now be technically invalid.

As a matter of general principle and as a starting point, employers and employees should be entitled to freely and voluntarily reach agreement on whatever matters they want to, provided it is lawful to do so. That should be able to occur without unnecessary legal hindrance or bureaucratic complexity. Because of this, the capacity post Electrolux for ongoing hairsplitting by courts and tribunals in relation to what might be and what might not be matters pertaining to the employment relationship is an unwelcome development. As for Electrolux, it is imperative that the uncertainty caused by the decision be resolved before parliament rises this year. A ‘do nothing’ approach is not a viable option. The real question before the parliament is what form such a validation should take.

The government’s bill proposes to resolve the uncertainty by retrospectively validating all those parts of certified agreements that pertain to the employment relationship, but only those parts. The problem with the government’s bill is that there will be for some time considerable uncertainty as to which provisions of certified agreements remain valid and which do not. This is because many provisions are yet to be considered authoritatively either by the full bench of the Industrial Relations Commission or by the Federal Court or, indeed, even by the High Court. Until each contentious provision is properly and authoritatively considered, it will remain unclear which parts of certified agreements are enforceable. Employers and employees will know that the agreement stands, but they will not necessarily know which clauses are in and which clauses are out.

Labor believes that the better approach would be to validate the whole of existing certified agreements, allowing each provision to continue to have effect until the expiry date of the agreement. Agreements already certified by the commission have been made in good faith between employers and employees. In approving these agreements, employers and employees have agreed on the entirety of their terms. Labor believes that if there is to be any validation—and the arguments in favour of providing certainty in this
area are compelling—then parliament should give effect to the whole of the agreements reached voluntarily between the two parties on the basis of the substance that each considered reasonable and appropriate for their individual circumstances.

For these reasons, Labor moved amendments to the bill in the Senate which would have provided for greater certainty. It is in our view unfortunate that the government rejected those amendments. It is not proposed to move those amendments again in this place, firstly, because the government’s position is well known and, secondly, because, in the last sitting week before the end of the parliamentary year, time is at a premium. Nevertheless, Labor takes the view that the method of validation proposed in the bill is better than no validation at all.

The bill as originally presented to the parliament also failed to give certainty in relation to the legal status of industrial action taken in support of claims in certified agreements that may subsequently be ruled as not pertaining to the employment relationship. Given the considerable uncertainty in relation to which matters may and may not be included in collective agreements and the serious penalties that apply to the taking of unprotected action, it is appropriate that certainty is provided in relation to protected industrial action already taken. Unions and their members who took industrial action in good faith, believing on reasonable grounds that it was protected, should have legal protection from any action which might, however unlikely, subsequently be taken against them.

For these reasons, Labor moved an amendment in the Senate to provide certainty in relation to protected industrial action that has already taken place. As the Minister for Employment and Workplace Relations has outlined, the government subsequently agreed to an amendment moved by the Australian Democrats and supported by Labor which had substantially the same effect as the amendment proposed by Labor. Labor welcomes the agreement to that amendment by the minister and the government.

In conclusion, Labor supports the purpose of the bill in providing certainty for those certified agreements rendered potentially invalid as a result of the decision of the High Court in Electrolux. The bill before the House as amended by the Senate is not a perfect instrument. Labor believes that the way in which the bill goes about providing certainty could be improved. However, certainty in the form provided by the bill is far better than no certainty at all. For these reasons, Labor supports the passage of the bill prior to the parliament breaking for this year. I commend the bill to the House.

Mr RANDALL (Canning) (6.17 p.m.)—It is really refreshing to see that in this House we have an industrial relations spokesman from the other side who has seen the light and decided that, in the best interests of business in this country, the Labor Party is going to actually do something about workers and their entitlements, which will mean a good Christmas for many workers who have faced a situation not of their own making. The previous opposition spokesman on industrial relations in this House said that they would never, ever deal with this government on any industrial relations issues. It is good to see that has changed. Craig Emerson, the member for Rankin, said categorically that they would oppose anything brought into this House by this Howard government. So obviously a new mentality was brought to them by the reality of a stunning and crushing election campaign, which saw them devastated. There is nothing like a good hanging to sharpen the mind. I suppose that is what has happened here.
The Electrolux case that we are talking about today in terms of this Workplace Relations Amendment (Agreement Validation) Bill 2004 was generated by the fact that the unions decided to include in certified agreements bargaining agents’ fees. In the case of Electrolux, $500 would be charged to non-union members for these bargaining agents’ fees. Part of the agreement would see non-union members being forced to pay these. We know that previously in this place legislation was enacted with the support not of the opposition but of Senator Andrew Murray and some of the Democrats in the Senate. They supported the legislation to outlaw these illegal fees which were being put on people who had decided they would not be members of a union.

However, the Electrolux case was taken to the High Court because the Australian Industrial Relations Commission, unbelievably, sanctioned these arrangements. They had been supported by some of the residual Labor appointments in the Federal Court. I do not know, but I suspect somebody like Justice Tony North is the sort of person we would be talking about. So these agreements were validated through the Federal Court. When challenged in the High Court of Australia, except for the one activist judge, Justice Kirby, six judges to one saw that this case needed to be fixed to bring certainty to the thousands of workers in this country whose agreements were going to be brought into some degree of uncertainty.

This is what this bill is setting out to achieve today. It not only addresses certified agreements but also goes to the case of workplace agreements. We know that the other side are not too fond of workplace agreements because their union mates tell them that workplace agreements are not a good idea. We know that, on the other side in this place, they are very beholden to the unions. That is why the member for Perth is treading a very fine line, as was discussed in the *Australian* newspaper today. It said that the member for Perth was putting himself up for a fair belting from the union movement.

Let me just set out, as I have said in this place before, that workplace agreements are the choice of workers, because they do better. They can negotiate a better deal. A better deal means more money and better conditions. What the opposition fails to tell you all the time is that workers will not be worse off—there is the safety net of the award. But they can actually do better with a workplace agreement and, as I said, the safety net of the minimum wage.

Just to put this in perspective, in Western Australia, the state that I come from, once the Gallop Labor government got into power they reviewed the government’s IR laws and in 2002 introduced what they called EEAs—that is, employee-employer arrangements. These were basically pattern-bargaining mechanisms put in place by the unions. I will tell you how successful they have been. The EEAs have been an absolute, dismal failure, and this was said just recently by the WA Minister for Consumer and Employment Protection, John Kobelke, as quoted in an article in the *West Australian* by Kim Macdonald last Friday. EEAs have been a dismal failure because, in the 2003-04 period we are talking about, only 210 EEAs have been registered in Western Australia. In the same period, believe it or not, 75,000 workplace agreements have been registered. This is in Western Australia alone. What does that tell you about workplace agreements compared to the union-generated type of agreements?

The greediness of the unions has brought this matter to the House and through the courts, because they try to include in their certified agreements a whole raft of other issues which have nothing to do with the employee-employer relationship. Where
these go, nobody knows. We know that they wanted more than 20 allowable matters, and they included things like picnics. We know what the old wharfies picnic is about—you do not see the wharfie going off on the Sunday with his family having a picnic; it is straight down to the local pub. With respect to these local agreements, including other matters, where do you go? How many other agreements do you want to include?

A Financial Review editorial of 6 September this year put it all into perspective. The opening paragraph says:

The saga of the bargaining agents’ fee dispute at Electrolux has been put to bed by the High Court, and with it the dangerous idea that unions can strike with impunity over anything they claim as part of an enterprise agreement. But the case reminds us that Australian Industrial Relations Commission officials, helped by some Federal Court judges, tend to take an expansive view of their powers and the kinds of matters that can be included in enterprise agreements. In this there is a powerful warning that Labor’s assurances that its plans to re-empower the AIRC won’t curtail workplace flexibility and productivity need to be taken with a grain of salt.

We know that on the way to the last election the Leader of the Opposition said, ‘We didn’t want workplace agreements.’ They do not want a flexible work force in Australia; they want a rigid, dominated work force. And we know that in this case one of the reasons why the unions have a different position from the Labor Party at the moment—and I am surprised that the Labor Party in this case are taking the stand that they are taking—is that the ETU and the CFMEU are opposing this in a big way. The basic reason why unions are supporting them is that we notice in their submission that Senator Marshall and Senator Wong are two former officials of these unions. They are beholden to the union people who put them in there. They rely on these unions for their preselection, so of course they are going to support the union line here.

It will be interesting to see how the bill goes when it reaches the Senate.

At the end of the day, the High Court has done the right thing. The parliament needs to legislate to give certainty, to show what really are pertaining matters in these cases. We know that the unions wanted to put in a raft of pertaining matters which included issues such as unions’ right of entry and other issues that are not pertaining. We know that issues that are not pertaining such as child care et cetera will not be legitimised, because they can be arranged as either an unregistered agreement or an unofficial agreement and because they are not part of the employee-employer relationship. These can be tested or organised as an adjunct to the agreements.

It is very important that ultimately these agreements are certified, and any agreement before 2 September 2004 where the arrangements are employee-employer arrangements will be validated—those that are not will not be. Anything from then on will have been determined by law. I think this is good legislation. It gives certainty to the thousands of workers around Australia, particularly before Christmas. It is important that it pass both chambers before the parliament rises for the year, and I commend the bill to the House.

Mr ADAMS (Lyons) (6.28 p.m.)—I would like to point out that the honourable member who just resumed his seat, the member for Canning, made some remarks indicating that you would never see wharfies going on a picnic with their families. Let me assure him that I know wharfies who go on picnics with their families. I think trying to stereotype people in their employment is a very bad practice, and it should not occur in this House.

The Workplace Relations Amendment (Agreement Validation) Bill 2004 proposes
to amend the Workplace Relations Act 1996 and to ensure the ability of agreements which were certified, approved or varied under the WR Act prior to the decision of the High Court in Electrolux Home Products Pty Ltd v. Australian Workers Union & Ors [2004] HCA 40, known as the Electrolux case. The case concerned whether bargaining agent fees where employees are required to pay a fee to a union as a contribution to the costs of negotiating a certified agreement could be included in the certified agreements, the CAs, made under the Workplace Relations Act. However, this caused a problem: the interpretation was very narrow and left quite a bit outside the ‘pertaining to’ area. The government is seeking to try and clarify this further; thus the bill arose out of the uncertainty after the High Court’s decision. The first finding reaffirmed a test that had been used by previous courts to determine the allowable content of awards and agreements, now called the ‘pertaining to test’. What was included is the non-pertaining side of the decision. That then left people wondering what other types of matters might be non-pertaining, and this began a discussion in the media about union rights and responsibilities and the role of contractors.

The government have been hell bent on exempting small enterprises from unfair dismissal laws and on quarantining contractors from union influence. The government are keen to ensure, when they bring in this legislation later next year, that some of these questions are sorted to their satisfaction. So this poses some questions for the trade union movement to deal with. However, from what I can understand, this bill proposes to resolve the uncertainty by retrospectively validating all those parts of the certified agreements that pertain to the employment relationship, but only those parts.

The bill will remove the uncertainty remaining after the Electrolux decision and there will be no legal barriers preventing employers and employees from reaching separate agreements on common law or on matters not pertaining to the employment relationship. But there are concerns for Labor here and, although we are not opposing this bill, it will have a bearing on how other legislation is crafted to deal with the bigger issues of unfair dismissal and the lessening of a union’s ability to be in touch with their members and potential members.

In Tasmania I am finding that more and more people are being classed as types of contractors when they are actually employees working under some sort of franchising or contracting arrangements. This has some severe implications. There are some severe implications for occupational health and safety in allowing contractors to employ people and operate machinery when there has been no training or experience in those areas. The Minister for Human Services, who is sitting at the table, thinks that that is probably a good thing and that it will drive productivity. A number of workplaces have been the sites of serious industrial accidents. This has come about from this practice of subcontracting out all sorts of different tasks. This in itself is not wrong, but we are seeing more grey areas as to who is responsible for what actions in the workplace.

A good case in point was a recent accident involving a 16-year-old boy on work experience with a contractor. He was put in a forklift that he had never operated before and he drove it off a ramp; it turned over and he was killed. This boy was from a family that were keen to ensure that their children had an opportunity to work rather than go on the dole. The contractor was a friend of the family and was attempting to help them; this was the disastrous result. There has been a long drawn-out period in which the matter has been before a court to decide who was responsible for this young fellow’s death and
whether compensation can be asked for and paid. It should be about who is going to pay: the original company, the contractor—who? Under these circumstances, once the coroner has done the autopsy—

Mr Hockey—Mr Deputy Speaker, I raise a point of order. I do not mean in any malicious way to interfere in the points being made by the member for Lyons, but just to assist him I would remind him of the rules relating to sub judice. If there is a matter before the court he may not want to in any way prejudice it by attributing blame or discussing the particular issues relating to that matter.

The DEPUTY SPEAKER (Mr Wilkie)—I thank the minister. I am sure the member will take those matters into consideration.

Mr Adams—I certainly would not be going into that or wishing to jeopardise anything in that regard. Of course, paying for a funeral can be expensive and this family had very little money even to pay for that. This is not an isolated case and the responsible minister, the Minister for Employment and Workplace Relations, needs to make sure that this legislation does not lead to many more families losing loved ones because nobody knows who is responsible for the health and safety issues. Those issues need to be given good consideration.

There have also been two incidents which have occurred in the mining industry. In one incident young, inexperienced people were in a mine in a place they should not have been and they were killed by a rock fall. Shortly after, the mine closed, leaving the relatives in the difficult situation of not knowing who was going to be prosecuted and when the results of the autopsies were going to be made known. That incident involved a machine with two lengths for working in deep and dangerous areas. The machine had not been repaired and people were made to use it. That is when there is an argument about responsibility.

A host of other problems has arisen because of the uncertain position that applies to contractors. Unions are often left out of the equation, because many of the people who may have wished to become members are classified as self-employed and earn an income that precludes them from being able to afford things like union dues and private medical cover. We have to work out the legal distinction between contractors and employees. Although the government is saying that the next part of the legislation will not include sham arrangements that disadvantage employees, this will be very hard to control once this part of the legislation allows for so much deregulation.

Just think of the truck drivers. I would have to agree with the New South Wales spokesman for the Transport Workers Union, Scott Connolly, who said that the use of independent contractors in the long-haul trucking industry has resulted in a race to the bottom for safety standards. He is right. I had an example of this detailed to me when I was told about a matter that occurred in Queensland. There was an accident and the solicitor representing the driver said that he had been driving a death trap. He was killed and the police report recorded serious deficiencies in the braking of the unregistered Western Star prime mover and Hallmark trailer. The truck’s brakes were working at only 50 per cent capacity. The report went on to show some of the difficulties involved. When you break down the regulations these things happen. The truck in this incident was unregistered, but in many areas trucks that are very unsafe and well past their use-by dates are being used. So Scott Connolly was right in stating that there needs to be far more protection, not less, because of the link between
contracting standards, competition and safety standards.

The minister can argue for increased productivity in this country, but it should not be at the expense of working people. There are many uncertain areas now. Do we really want to increase them? I do not believe we should. It seems the only way that ordinary people can obtain assistance is through the law courts. That puts up the cost and is a nice earner for lawyers. It does not do anything to help ordinary people and, of course, takes an enormous amount of time.

The Labor Party would like to see an alternative approach to this particular bill. That alternative would validate the existing certified agreements, allowing each provision to continue to have effect until the expiry date of each agreement. Agreements already certified by the commission have been made in good faith between employers and employees. Of course, this government has removed bargaining in good faith from the act now.

There is a public policy argument which says that the parliament should give effect to the whole of an agreement which has been reached voluntarily between two parties, on the basis that each considers it to be reasonable and appropriate for their individual circumstances. So there may be a need to look at some amendments, such as when the validation date should be—or the transitional arrangements for addressing agreements that have been agreed upon but not certified.

There seems to be some mind-set on the other side of the House that the role unions play is against the interests of employers. Yes, unions do support employees but they also protect employers and link them to a fair arbitration system so that workers’ concerns can be addressed by a standard set of rules. Union involvement can help business, by identifying actions that put employees at risk, leading to expensive workers compensation claims, and by having a structure that resolves disputes and people’s grievances. Unions do not want to put businesses out of work; they just want a fair go for employees so that everyone can get a fair day’s pay for a fair day’s work, whether they are a worker or in management.

Unions have been an integral part of the workplace since the turn of the century and before. The first strike was in 1791, when convicts struck to have their daily rations improved. The first union was formed in 1830. It was the Shipwrights Union. Having organisations that will go in to bat for ordinary working people is an important part of the Australian way.

The experience of the 1890s convinced unionists that legislation establishing the arbitration and conciliation courts was required. During the period to 1904 the Australian Labour Federation was formed, the first Labour government in the world was elected—in Queensland—and the first federal Labour government was formed. This year we celebrated the Watson government in a good way on this side of the House.

I believe the union record for supporting the work force is excellent. Over the years unions have built a nation that is envied around the world for its fairness and equity for all working people, whether they work in offices or out in the bush or anywhere in between. Unions should not be seen as ogres and destroyers of businesses. That is just not true. Look at what has been achieved by union activity: the right of workers to form unions which elect their own independent representatives; awards to ensure that employers observe minimum wages and working conditions; equal pay; long service leave; pay loading for evenings, night shifts and weekends. Australia is known for its weekends, a right won by union participation. Of course, some of that has changed with modern flexi-
bility in the workplace. What about the future?

As well, thanks to unions we have the following: paid public holidays; periodic wage increases; maternity leave, adoption leave and parental leave; annual leave; leave loading; protective clothing and equipment provided by employers; and, of course, occupational health and safety laws. Also there is the right to compensation for injury, occupational superannuation, and the right to be given notice and to be consulted about changes at work—for example, new technology, planned retrenchments, new working arrangements. There is also personal carers leave.

So in the broader debate any actions that deregulate workers’ conditions leave the workplace confused and concerned. That is not a good way to increase productivity and create a happier, healthier work force. So I say to the minister: do not try to improve the productivity of Australia at the expense of working people. If you drive conditions down and drive us down to the lowest common denominator, you will probably increase productivity but it will be at the expense of the quality of life of ordinary working Australians.

Mr SCHULTZ (Hume) (6.45 p.m.)—The passage of the Workplace Relations Amendment (Agreement Validation) Bill 2004 is important to end the uncertainty in relation to Australian workplace agreements and federal certified agreements that were certified or approved prior to the High Court’s Electrolux decision. On 2 September 2004, the High Court handed down its Electrolux decision. This judgment was based on section 170LI of the Workplace Relations Act, which provides:

(1) For an application to be made to the Commission under this Division, there must be an agreement, in writing, about matters pertaining to the relationship between:
(a) an employer who is a constitutional corporation or the Commonwealth; and
(b) all persons who, at any time when the agreement is in operation, are employed in a single business, or a part of a single business, of the employer and whose employment is subject to the agreement.

The High Court found that it must be wholly about matters pertaining to the relationship between the employer and the employees in their capacity as employees, other than provisions that are incidental or ancillary to the employment relationship or machinery provisions. The judgment in Electrolux suggests existing agreements which contain provisions that do not pertain to the relationship between an employer and employees may not be valid because the Australian Industrial Relations Commission—the commission—did not have jurisdiction to certify them.

With the High Court’s decision, it is imperative that each party to an AWA or a certified agreement is clear on where their agreements stand. Both employees and businesses deserve clarification on the validity of their AWAs. Small businesses can ill afford lengthy legal battles with unions and a disgruntled employee over the wording of the High Court’s ruling. Similarly, employees should not lose opportunities that they may have been given if their employers had not lost confidence with their agreements due to this recent decision. The Australian Industry Group’s Chief Executive, Heather Ridout, has described this bill as:

... a sensible and practical initiative which deserves the support of all political parties. It is in the interests of both employers and employees that existing enterprise agreements remain valid and enforceable.

The last thing that the Australian economy needs is uncertainty between employers and employees. The years of strong economic
growth and low unemployment that we have experienced under the Howard government could be jeopardised if employers were to lose the confidence to hire new workers. The opposition parties have a strong opportunity with this bill to show that they are committed to employer confidence and lower unemployment. This is a golden opportunity for the Labor Party to say to their constituents that they are for business confidence and pro job creation and that they will do the right thing by decent, hardworking Australian workers even if some of their union mates disagree. It is of serious concern—but not surprising to someone like me who has experienced union thuggery as both an employee and an employer—to hear reports that unions in the electricity and construction industries have taken advantage of the post-Electrolux uncertainty to push businesses into signing up to new agreements.

Agreements between employers and their workers are important, as they set clearly defined boundaries as to what the collective responsibility of each party is. This bill is essential, as it clarifies the previously understood position that an employee’s agreement with their employer covers them in their capacity as a worker. This bill does not seek to extend the power of an employer over the employee in a non-work environment; it merely seeks to illuminate what has long been understood and say that the agreements set down in AWAs can be relied upon and not subject to court challenges if one party becomes disgruntled. It is up to employees and employers to determine how to address any aspects of their employment agreements that do not pertain to the employment relationship.

This bill will ensure that employees remain entitled to the wages and employment conditions provided for in enterprise agreements. Australian workers who have signed a federally certified agreement or an Australian workplace agreement deserve the security that a proven validated agreement gives them. Good, honest, hardworking Australian workers who are willing to put in a hard day’s work and who are recognised for their efforts should not be disadvantaged by union opportunism any longer. If the unions and the Australian Labor Party continue to push small businesses around and make workplace agreements uncertain documents that can be easily challenged in court, the outcome of that irresponsible action will be that fewer workers will be hired. Australian workers are willing to put in a hard day’s work and quite rightly expect to be rewarded for their effort—that is why they sign Australian workplace agreements in the first place and why they are signing up at an increasing level. When a worker signs an AWA it shows that they are willing to do the hard yards and strive for their employer, knowing that in return they will be rewarded for their effort. The campaign by the unions and the Labor Party to undermine AWAs must cease. Australian workplace agreements are a great way for a large number of Australian workers to get more out of their jobs. It is time for their efforts to be recognised. AWAs are great for Australian workers; it is time the Labor Party recognised that and it is time that it supports this legislation to ensure their validity.

Small businesses are the backbone of the Australian economy, and the Liberal Party has long been the party that best represents their interests. I am privileged to know a large number of small business owners in the electorate of Hume whom I have the honour of representing. Many of these small business owners use Australian workplace agreements, as do many business owners all around the country. Small businesses provide a large number of jobs in the Hume electorate. I believe that politicians should not be looking to create uncertainty for small businesses but should be supporting them for
their valuable contribution to this country. I have spoken to many small business owners who are extremely concerned about the Labor Party’s refusal to pass unfair dismissal legislation. It would be a further burden on small business if the AWA agreements that they have signed with their employees were called into question. In the current environment it is not uncommon for small businesses to want to hire more workers—what is often stopping them is the fear of the unnecessary cost of a battle with a former disgruntled employee who is frivolously claiming unfair dismissal. If the Australian Labor Party refuses to pass this bill and calls into question the agreements made between workers and their employers, business confidence will be eroded, along with any sign of economic credibility from the Labor Party.

The Australian Industrial Relations Commission has determined a number of certification applications since the Electrolux decision. Areas which fall outside the immediate employer-employee relationship should be determined by the Australian Industrial Relations Commission. This bill is not about stepping in and setting those guidelines. Instead, this legislation will ensure that decisions made by the AIRC are indeed not only sensible and fair to both parties but are also valid and enforceable.

The passage of this legislation is essential for business confidence and to ensure Australian workers who voluntarily enter into AWAs are not punished for being involved in these agreements. The High Court’s Electrolux decision has created uncertainty in terms of AWAs and certified agreements but this uncertainty can be addressed with the passage of this legislation. It is important that this legislation be passed not just for employees and employers but also in the interest of maintaining a strong economy and our ability through the small business sector to continue to offer employment by remaining viable and profitable. I thank you, Mr Deputy Speaker, for the opportunity to make my small contribution to this very important debate.

Mr BRENDAN O’CONNOR (Gorton) (6.53 p.m.)—The Workplace Relations Amendment (Agreement Validation) Bill 2004 unamended will not be good law. It is true to say that the bill is a response to the Electrolux Home Products v. AWU decision by the High Court, and it is true that the High Court indeed set out to make certain some uncertain areas of law with respect to the Workplace Relations Act 1996. That was the intention of the justices of the High Court when they sought to make a decision upon appeal. However, the fact is that the decision itself, with all due respect to the justices of the High Court, makes law uncertain. The fact is that we now have a situation where terms of current certified agreements are under question. It is also the case that previous industrial action once thought protected is also uncertain. Therefore, any potential liabilities arising from such action are unknown. I do not think that any High Court decision of this land, whether it is one I agree with or disagree with, should leave uncertain many of the areas of law which it is supposed to rectify or indeed interpret—in this case when it comes to Workplace Relations Act.

I also think it is clear the justices have decided to narrow the interpretation of what we believe to be matters pertaining to the relationship between an employer and employee or employers and employees. Since 1983, since the social welfare act, it has been very clear in this land, pursuant to that decision by the High Court, that the term ‘industrial dispute’ would be given a popular meaning. So, 21 years ago, the justices of the High Court made it very clear that the term ‘industrial dispute’ would have a popular meaning—in other words, a wide interpretation so as to
make clear for parties to industrial matters that they go about their business and know exactly where they stand in relation to clauses in awards or, as it now turns out pursuant to the current act, certified agreements or Australian workplace agreements. That was the intention of the justices of the High Court in 1983. I have to say, with due respect to the justices of the High Court in relation to this decision, they have failed in doing that. In failing to do that, they have also narrowed its construction; they have narrowed the idea that matters pertaining to an employer and employees should have a popular meaning.

That has now necessitated action from the government, and I accept that there was a need. Indeed, it is clear that the members of the government and the opposition agree that there has to be some legislative rectification of the decision of the High Court. We agree that we have to, in some way, legislate to overcome the deficiencies of the decision made by the High Court. I consider it important that we do. Unfortunately, whilst it is clear that this bill is seeking to validate terms of agreements that currently exist, if pertaining to matters between employers and employees, there is no provision in this bill to rectify or make certain what could happen in the circumstance where it is alleged that industrial action that took place preceding a current certified agreement was valid or not valid—that is, was protected or unprotected action. Therefore, that leaves those employees and, in the case of a lockout, those employers, uncertain as to their own potential liabilities if the matter were brought to another court.

I think it was unfortunate that the justices of the High Court failed to do that. I think it is also unfortunate that the government has failed to make certain that matter in any way. It is also unfortunate that we failed to properly consider the concerns as to what would be valid and what would not be valid. The fact is that by the time the appeal was before the High Court the government had already acted to proscribe bargaining agency fee clauses, so the decision, to the extent that it went to the bargaining agency fees clause, was a moot point. By the time the justices of the High Court got round to considering that matter, the parliament had decided that certainly at least those future clauses would no longer be allowable in certified agreements. However, what the court has failed to do is clearly enunciate what indeed is a matter pertaining to an employer and employee and what is not. That is the failing, unfortunately, of the decision and, from my reading of this bill, there has been no effort by the government to overcome that problem. That is certainly one of the major concerns that I have with this bill.

It is clear to me that some very certain principles have been determined and enunciated by the High Court in the Electrolux case. As I have said, certified agreements can contain only matters which pertain to the relationship between employers and employees. Any CA which contains matters which do not pertain to the employment relationship is invalid, and any action taken in support or advancement of a proposed agreement which includes non-pertaining matters is not protected action. They are the three principles of the court’s decision. We are only seeking to rectify one of the uncertainties that has emanated from the decision.

It is incumbent on the government to consider the amendments moved by the opposition in relation to this matter. What we are seeking to do today and through the course of this debate is to convince the government that they should accede to the amendments being proposed by the shadow minister concerned—in particular, the amendments in the area of the previous industrial action taken by any party to a certified agreement or an Australian workplace agreement. We are ask-
ing the government to consider the potential danger of leaving people’s liabilities in question. To date, the government do not seem interested.

As someone belonging to the political party that actually introduced certified agreements, I have to say that we do not need lectures from the government about collective bargaining. We introduced them in this place. The Labor government were the first to amend the Industrial Relations Act 1988 to ensure that workers and employers could negotiate outcomes and register agreements before the Industrial Relations Commission at the workplace level. Throughout the whole period of time that the Prime Minister was Treasurer in the late 1970s, the Liberal-Country Party governments failed to move away from the central wage fixing system in any way. They failed in their duty to consider the need to have some flexibility.

However, having been elected after the Hawke-Keating period, this government has sought not just to embrace the notion of collective bargaining—which I think is an important part of our industrial system—but, in the case of Australian workplace agreements, to also break that collective bargaining down to the unfair balance between one employer and one employee or to remove all the protections that were afforded to those employees in negotiating agreements, whether they be collective or individual. The government has sought to remove entitlements afforded to employees, which to me are the very important protections required by employees in the process of negotiating these agreements.

The government embraced collective bargaining. They did not initiate the collective bargaining process but, in embracing it, they have torn away the safety net and the protection. You can see that in the way in which they have redefined the no-disadvantage test that is incorporated in the Workplace Relations Act. You can see that in the way in which they have introduced legislation to force the commission, when it is making a decision in the national wage case about whether there is going to be any safety net increase to the lowest rates of awards in this country, to consider other matters as to whether it should provide the lowest of increases for a safety net. In every area of industrial law, this government go about trying to dismantle collective bargaining by disaggregating the agreements down to an unfair bargaining situation in which the employer sits opposite the employee. At the same time, the government want to remove all those protections afforded to unions and their members or, indeed, just employees in non-union agreements in the process of collective bargaining.

I know there are occasions on which an employee can stand firm and, you could say, stand with almost equal, if not equal, power in negotiating his or her outcome with the employer, but they are few and far between. Some people, because of their particular expertise or the scarcity of skills that they have, are able to sell their labour in the marketplace at a price that cannot be exploited, but the majority cannot do that. That is why the Labor Party will not accede to those in the community who wish us to accept Australian workplace agreements.

If Australian workplace agreements were so appealing to employees, why is it that, after eight years, Australian workplace agreements operate for less than four per cent of all jobs in this country? Why is it that, with the government pushing departments, agencies and particular employers to embrace Australian workplace agreements, there has been resistance? How can it be that, when we are told that unions are irrelevant and that strikes and industrial action in this country are down to a negligible level, em-
ployers have not been able to place their employees onto Australian workplace agreements? How can it be that the employees in the Department of the Prime Minister and Cabinet are under a certified agreement? It is because their boss, the Prime Minister of this country, cannot convince his own employees to get onto Australian workplace agreements.

I do not find that surprising, because most employees, whether they are unionised or not, know that they are placing themselves in peril industrially and leaving themselves exposed by having to negotiate directly with their employer one on one, without their colleagues or without a union or an agent of any sort to step in and act on their behalf if they so wish. That is the reason why. We hear the minister get up time after time and rattle on about the success of AWAs. Why is it that they are at four per cent in this country? After eight years of the government pushing that ideological pursuit, pushing away to make AWAs the common instrument in the workplace, they have failed abysmally.

I hope that the government considers our proposed amendments to this bill. I think it is significant that we have some uncertainty. With all respect to the justices of the High Court, I have to say that I think they have created some of that uncertainty, firstly by suggesting that one invalid clause could invalidate a whole certified agreement. It has sent employers, employees and unions into apoplexy to suggest that all existing certified agreements might have one dodgy provision that might not be enforceable and might actually make null and void all other terms of the agreements. With all respect to the justices of the High Court, I have to say that they have been mistaken in relation to that matter.

Even if we pass this bill, uncertainty is still left about the protected action or otherwise that has been taken by employees—or, as I have said, employers—leading to current certified agreements. If it is found that the action taken by a party to a dispute is not protected because of one provision that they reached agreement upon, one provision that may be invalid because it does not pertain to the relationship between an employer and employees, that will leave open a minefield. That will be great for lawyers. You can be assured that many lawyers will be lining up to say to employers, unions and employees, ‘We can help you out there, surely, but we’ll just see where we can take it.’ The fact is that the legislation provides no certainty, and the government has failed to fix that deficiency.

Having read what is a very long judgment on the Electrolux case, I am surprised that the justices themselves did not see that—or, I should say, the majority of the judges did not see that. It is worth saying that Justice Kirby, in dissent on that High Court decision, indicated his concern about the protected action. He said:

To expose an industrial organisation of employees to grave, even crippling, civil liability for industrial action, determined years later to have been “unprotected”, is to introduce a serious chilling effect into the negotiations that such organisations can undertake on behalf of their members.

On this occasion, Justice Kirby was correct on that matter. With all due respect to the other six justices, they were wrong in allowing the uncertainty to exist.

I am therefore very surprised that the government has not realised that—or, indeed, it may have realised that, I will be cynical for a moment. I do not want to be, but I might have to be sceptical and cynical, because I think the government knows that the matter is uncertain. I think the government knows that, if protected action that may have been taken to lead to a current certified agreement leaves uncertainty, it places stress on employees and greater stress and demand on their representatives. It is done deliberately,
it is done wilfully and it is done malevolently. The government should consider that. If it really wants to be fair about certified agreements and it wants to establish certainty, it should accept the amendments to be moved by the opposition.

This government talks about workplaces. This government talks about allowing the parties to industrial matters to make the decisions. But it is quick to disallow certain clauses of agreements that are made between those parties. It is a little ironic that, when you hear a government rail against third parties intervening in matters between employees and employers, as soon as those employers and employees make a decision between themselves the government comes in and proscribes certain clauses in those agreements. There is some irony in that. It is about time the government took its ideological blinkers off, dropped its hatred for and enmity towards unions and considered that.

I will have more to say in the future about a number of other things to do with this legislation—particularly about collective bargaining and about this minister. I sincerely believe that he is a strong Catholic. He invokes his Catholicism when it comes to stem cell research. In relation to the Catholic teachings on collective bargaining, vis-a-vis AWAs, I want him to seriously consider his current position. If he wants to come into this House and raise his religion in other matters, if he wants to invoke it when he talks on other bills, he should consider that the Catholic teaching on this matter has always suggested—certainly for over 100 years—that individual contracts, by their very nature, are not fair. Collective bargaining is the way to go. (Time expired)

Mr ANDREN (Calare) (7.13 p.m.)—The Workplace Relations Amendment (Agreement Validation) Bill 2004 stems from the High Court’s decision, as we have heard, to rule out the inclusion of a clause that provides for the employer to collect bargaining fees from non-union employees in a certified agreement between management and employees at Electrolux, known as the Electrolux decision. Given Electrolux’s presence in my electorate, I have a special interest not only in this matter but in the industrial relations processes within that company. I have a continuing interest in seeing that those recently retrenched workers at Electrolux in Orange are treated fairly in obtaining post-Electrolux retraining and re-employment. Some of them who have worked at the former Email and then Electrolux for up to 30 years are going to find it very difficult to re-enter the employment market in the central west. I have called on the Prime Minister and the government to consider some special packages for those people, in line with those offered to the Mitsubishi workers in Adelaide.

It has been argued that the employment situation is far more benign in the central west, but I would argue that the special circumstances of these particular employees demand special processes similar to those afforded the Mitsubishi workers to absolutely ensure that they are not severely disadvantaged by their retrenchments. The fact that they are being, if you like, dribbled out into the employment market diminishes the immediate impact of mass retrenchments but, nevertheless, there are going to be people who will fall through the cracks unless they have special assistance that, to this point, has not been forthcoming to a sufficient degree.

The Workplace Relations Act states that an agreement can be certified only if it is about matters pertaining to the employment relationship between employers and employees. This is the basis for the court’s decision. Bargaining fees charged to non-union employees by a union for its negotiating work
are not regarded as part of the employment relationship, I might add, whatever their merits for meeting legitimate negotiating costs from which all employees benefit. The High Court decision also means that any certified agreement that contains a matter that does not pertain to the employment relationship is invalid, and that any industrial action taken in support of that proposed agreement which includes a non-pertaining matter is not a protected action and, therefore, is open to challenge in the courts and the Industrial Relations Commission, which can result in civil penalties such as fines and compensation or liability claims.

Protected action is industrial action that occurs only in the designated bargaining period to reach a certified agreement—that is, in support of employees’ claims for inclusion in that agreement. The court decision did not specify what other types of matters might be designated as not pertaining to the employment relationship and therefore not able to be included in the certified agreement, which means that any number of existing certified agreements prior to 2 September 2004, when the High Court decision was handed down, may now very well be regarded as invalid. If a certified agreement is determined to be invalid it opens up the possibility of industrial action, because an invalid agreement would have to be renegotiated and industrial action is protected during negotiation of a certified agreement. This is the uncertainty that the government is wishing to address with this bill: the invalidation of current agreements and the potential for industrial action as a result.

The bill validates all certified agreements made prior to the Electrolux decision by making any matters that are not pertaining to the employment relationship unenforceable. So, rather than validating the whole of current agreements that have been reached and certified in good faith, it removes the non-pertaining matters to ensure the rest of the agreement remains valid. The government is seeking the best of both worlds to protect against industrial action and remove certain aspects of agreements—like training leave for union delegates, right of entry for union officials, deduction of union dues, the hire of casual workers, non-union contract employees and labour hire—that have been agreed to by both parties. Certified agreements that have been negotiated in good faith and where the terms have been agreed to by both parties—whether they are considered to be within the employment relationship or not—should be validated for the remaining period of the particular CA.

Both the ALP and the Democrats have moved amendments which will basically validate all current agreements in total, allowing the agreements to continue until expiry. This will determine that any industrial action that may have taken place in the course of reaching the agreement will remain protected. If the amendments are not accepted, at any time in the future if another particular aspect of a certified agreement is found to not pertain to the employment relationship, then the whole agreement and any other agreements will be deemed invalid. If industrial action was undertaken in the course of negotiations this action could be challenged and, if found to be unprotected, civil penalties could be imposed.

So I support the inclusion of the proposed amendments. They will provide certainty across the board with agreements and will validate complete agreements rather than quarantine, if you like, the non-pertaining matters as unenforceable. As for future agreements that may be found to contain other matters that are non-pertaining to the employment relationship, the parliament should be addressing this uncertainty by determining that when found such matters are made unenforceable but the agreements re-
remain valid, as suggested in the Bills Digest. It would apply the same treatment to future agreements as is being applied by this bill, in its unamended form, to pre-Electrolux certified agreements.

It is difficult to ensure certainty over what can or cannot be included in a future certified agreement without a comprehensive list of matters that do not fit within the definition of an employment relationship or until the courts or the AIRC have ruled particular matters out of the employment relationship, which could be many years in the process. So, in order to address the immediate situation and provide comprehensive validation of existing certified agreements, I support the amendments to the bill. Because of the High Court decision the need for the bill is obvious, whether the amendments are accepted or not, but I believe that without the amendments that have been suggested by the Democrats and the ALP the bill remains inadequate.

The member for Gorton made some valid points about AWAs and their lack of take-up in the marketplace, and some other points about representation of employees under a rapidly deregulated workplace. I must put on the record my grave concerns about exploitation in the cleaning industry—especially of female workers—where contracts are provided by fax, spurious reasons are given for termination and no provision is made for proper entitlements. I have referred these particular cases to the federal government and, in one case, the state government for clarification of some of these matters. These contractors are working for some of our largest retail organisations. As I said, I am seeking more information about these practices and will have more to say when I have that information. But I would like to underline the dangers of too much flexibility in the workplace, where the negotiating playing field is so unlevel. With those comments, I commend the bill to the House, particularly with those added amendments if the government is agreeable.

Debate (on motion by Mr Dutton) adjourned.

TAX LAWS AMENDMENT (RETIREMENT VILLAGES) BILL 2004
Consideration of Senate Message

Bill returned from the Senate with amendments.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (7.23 p.m.)—I move:

That the amendments be considered immediately.

Senate’s amendments—

(1) Schedule 1, item 2, page 3 (lines 17 to 29), omit subsection 38-25(3B), substitute:

(3B) The Aged Care Minister must set by determination the way in which the levels of care services required by residents are to be assessed.

(2) Schedule 1, item 2, page 3 (lines 30 to 32), omit subsection 38-25(3C).

(3) Schedule 1, item 3, page 4 (lines 18 to 23), omit paragraph 38-25(4A)(c).

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (7.24 p.m.)—I move:

That the amendments be disagreed to.

The House of Representatives does not support the amendments put forward in the Senate on two fronts. First, the suggested amendments restate a rule that is already contained in the bill—that is, the ability for the minister for aged care to make a determination on the levels of care service required by residents which are to be assessed. So that is already there.

Second, and more importantly, the amendments proposed will remove the requirement to assess whether residents of serviced apartments are in fact in need of ongo-
ing daily assistance, which is fundamental to what this whole bill is about. If these amendments were carried, it might require the ATO to assess eligibility of residents based on their individual needs. The ATO does not have the expertise to make such assessments. Potentially, its having to make rulings on this matter would be fraught with danger given that it is not its area of expertise, and it is not what the industry wants. It would create uncertainty.

This bill has been designed specifically to remove the uncertainty that arose from the potential for the ATO to make a ruling which was contrary to what the legislation was designed to provide for when the GST was implemented. I suggest strongly that the House now disallow these amendments and that we send them back to the other place to ensure that we can have this issue dealt with.

Mr FITZGIBBON (Hunter) (7.26 p.m.)—The Minister for Revenue and Assistant Treasurer has just demonstrated a bit of sleight of hand in respect of the impact of the opposition’s amendments. The opposition’s amendments are supported by the sector and are designed largely to remove the uncertainty retirement village residents have been living with for the last 4½ years.

Having said that, I can inform the minister that Labor will not be insisting on the amendments in the Senate. The big difference between Labor and the government on this issue is that we are prepared to be creative and innovative. It is not our intention to have the ATO finding another path into the lives of elderly Australians, but it is not our view that it is appropriate that the minister retain the discretion to determine what is and what is not a service for the purposes of this bill.

I will not labour it too much, because much to the chagrin of the minister I have laboured this point a couple of times already in this place, both yesterday or the day before and indeed again this evening on an earlier bill, but I will remind the House of a bit of the history of this bill. Effectively, many elderly residents of retirement villages have been living with a degree of uncertainty with respect to the GST for 4½ years now. People in so-called serviced apartments within a retirement village have lived with great uncertainty as to whether GST should apply to some of the services they receive from the body that runs the retirement village.

In some cases it has simply been a case of fear and uncertainty for aged care residents because the retirement village has taken a decision, at great risk to itself, not to impose the tax. In other more extreme cases, over a 4½-year period elderly residents in these serviced apartments have had imposed upon them the impact of a GST on those services. It is just extraordinary that it has taken the government 4½ years to determine whether or not these people should be liable for the GST. They are amongst the most vulnerable in our society, and we as a parliament collectively should be constantly working hard to ensure that those people are taken care of appropriately. It is very sad that originally the government was in denial and refused to concede there was a problem and then finally, after pressure from the opposition and indeed some pressure from the government’s own backbench, the government finally conceded there was a problem.

It is a sad indictment of the government that it has taken the government this long to introduce this legislation. It is an even sadder indictment that after all this time, it has been incapable of introducing legislation into this place that has the support of the sector and the people who represent and seek to care for those elderly Australians about whom we are talking this evening. It is very sad and Labor in the Senate tried to pick up on the concerns of the sector and improve this bill. Labor still
remain unconvinced that our amendments in the Senate would not have improved this bill, but the sector made it pretty clear to us that this was not a huge issue for it—that is, the spirit of our amendments. After 4½ years of an unnecessary impost and after 4½ years of uncertainty for both residents in these retirement villages and the operators of those retirement villages, it is time to put this bill through the parliament. On that basis, Labor will not be insisting on our amendments in the Senate. But it is regrettable that the government has made such a hash of this for such a long period. It is a shame that it took the opposition and, indeed, some of the government’s own backbenchers to force an embarrassing backdown on the part of the government.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (7.31 p.m.)—I wish to clarify the issue and finalise this matter. The reality is that the Labor Party needs to understand that the ATO is a statutory authority and, as such, it interprets both the explanatory memorandum and the legislation that is put before it. It was only in recent times that it became imminently clear that it was intending to make a ruling and that, in the industry’s view, that ruling would have created incredible uncertainty. Yesterday in this House, I quoted the letter to me from the Hon. John Brumby in relation to this matter in which he said that all we are seeking to do is to ensure that the law that we set out in the first place is mandated. That is what we are here for. I thank the opposition for their support as flagged in the other place.

Question agreed to.

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (7.32 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.

ADJOURNMENT

Mr BROUGH (Longman—Minister for Revenue and Assistant Treasurer) (7.32 p.m.)—I move:

That the House do now adjourn.

Regional Services: Program Funding

Ms GEORGE (Throsby) (7.32 p.m.)—The abuse by this government of the Regional Partnerships program to shore up their political stock in the last federal election is, in my view, a travesty of justice and an attack on the fundamentals of good public policy. The coalition, as we know, promised to pump millions upon millions of dollars into scores of projects in marginal seats, with a strong bias to some of those most hotly contested. Top of the list of course was the critical marginal seat of Bass, which was promised $12 million. It was followed by $11.7 million which was directed to the seat of New England, where the government and in particular the National Party were very intent on defeating the capable Independent MP, Tony Windsor. And now we learn a marine discovery centre at Bondi Beach received $221,000 to upgrade its facilities. Since when has Bondi been considered a regional centre? But there are no prizes for guessing the seat, are there? It is in the seat of Wentworth where the incumbent MP, Peter King, was defeated by the Liberal member, Malcolm Turnbull, in an intense contest.

While all this largesse was being dispensed to shore up political mates, genuine and pressing cases for government assistance were ignored. The requests that I refer to came from projects operating in suburbs in my electorate that were listed in the most recent research study by the Jesuit social research centre as among the 40 most disadvantaged in New South Wales. Have their
cases been ignored because they were for funding projects in a Labor seat?

In the case of Coomaditchie, an Aboriginal housing reserve at Kemblawarra, the application was for $85,000 to enable a range of successful community projects to continue. The long-term goal of this Indigenous community in my electorate is to establish their own economic independence through the development of a multipurpose cultural centre and tourism facility at Coomaditchie. The other request for continued financial assistance that went to government came from Barnardos South Coast and the Albion Park Neighbourhood Association. They wanted to be able to continue providing community development services on three disadvantaged public housing estates in my electorate.

Both these organisations have developed models of service which have been widely acclaimed within the community sector. Their federal funding is coming to an end as I speak tonight. As we all know or should know, when disadvantage has become entrenched in a community, short-term funding cannot perform miracles. It takes time to turn around the legacy of disadvantage. The communities I refer to—the three public housing estates—are some of the most at risk communities in our region and in my electorate. Why is it that the government cannot accept that, for every dollar spent on early intervention programs to assist children and their families, $7 or more can be saved downstream?

I have written in support of these applications to the relevant minister seeking an urgent response and approval for funding. To date the requests have been ignored. How can it be that the government see great merit in funding building works at a marine centre in a wealthy electorate like Wentworth and, at the same, they are turning their backs on genuine human need? The $221,000 provided to help a Liberal mate in the seat of Wentworth would fund the three projects that I have referred to with money left over. It is clear that marginals, not the marginalised, are all that matter to this government.

**Wentworth Electorate: Waverley Cemetery**

Mr **TURNBULL** (Wentworth) (7.37 p.m.)—On the sandstone cliffs between Bronte and Clovelly lie more than 100 years of Australian history, wrought in stone and marble. Waverley Cemetery was established in 1868 and since then the remains of more than a quarter of a million Australians have been interred in its acres. The cemetery is not a mournful place but a serenely peaceful one. The grave monuments range from the boisterously gothic and Victorian, with angels flying heavenward and broken pillars, to reminders of the deceased’s own life such as the racing car driver carved in sandstone, goggles on tight, hands gripping the steering wheel, gazing down the racetrack of eternity.

The graves include the remains of some of our greatest poets—Henry Lawson, Henry Kendall, Victor Daley and Dorothea Mackellar—the great newspaper genius who employed them all, Jules Francois Archibald, the founder and editor of the *Bulletin*; and the other great radical newspaper editor of that day, Daniel ‘Dangerous Dan’ Deniehy, the ‘voice of the south’. They are all at Waverley. I should disclose that, like my predecessor but three, Peter Coleman, I am a graduate of what used to be called the ‘New Hellas School of Journalism’, from the restaurant to which the *Bulletin* staff habitually repaired, so I am very partial to these great *Bulletin* scribes who are at Waverley. Chief justices are there: Sir James Martin of Martin Place. Benefactors are there: Thomas Fisher of Fisher Library. Lawrence Hargrave, the pioneer of aviation, is forever grounded at
Waverley. Business is not forgotten: Edmund Resch of brewery fame; the Alberts of the Boomerang mouth organ; and George and Charlotte Sargent, after a lifetime dedicated to the great Australian meat pie, sleep at Waverley. Most poignant of all, perhaps, is the beautiful monument to the Irish martyrs, which lists the names of Irish patriots from 1798 to 1981.

Now this peaceful and historic cemetery is nearly full. Within a decade the cemetery will have little income. Waverley Council, which operates the cemetery, is concerned that it will have to put its hand in its pocket to maintain the cemetery, although it has no problem maintaining other parks and reserves. As a result, there has been a strong push from the council to build a crematorium at Waverley Cemetery to generate additional income. The residents of the surrounding area, which I remind honourable members is part of the most densely settled electorate in the Commonwealth, are overwhelmingly opposed. Public meeting after public meeting has been held demanding that the crematorium proposal be dropped. At the recent council election, 11 out of the 12 councillors pledged that they would not vote for a crematorium, yet the Labor and Greens controlled council has continued to investigate the crematorium option, with much expenditure on consultants.

Focus groups have been held in the area to try to persuade locals that they really would be better off with a 20-metre smokestack, able to be lowered during daylight hours, sitting atop a cremator just across the street from their homes. The local community has felt that it is part of a surreal political farce. The more that councillors promised they opposed the crematorium, the more intense was the work by council officers proving the feasibility and desirability of one. In April, Liberal councillors endeavoured to remove the crematorium as an option for consideration. They were outvoted.

In the course of the debate, I made the obvious point that Waverley Cemetery is a tranquil, sacred and historic site. You cannot save it by destroying its amenity. It is unique. Not only does it contain more than a century of our history, not only is it sacred to the memory of more than a quarter of a million Australians whose descendants would be numbered in the millions, but it is sited on the cliffs of Bronte, one of the most beautiful and most visited coastal domains in Australia.

If the council is not minded to keep the grass mown and the fence intact then the enormous number of Sydneysiders with relatives interred at Waverley could be called upon to contribute to a charitable trust devoted to the cemetery’s preservation. State and federal governments have significant funds for preserving our heritage; they can be approached. Yet no attention has been paid to this obvious alternative. So committed are the proponents of the crematorium—so oblivious to the opinions of residents, so determined to deny democracy—they march on as though in a blinkered robotic trance towards their fixed idea, their own great monument: a crematorium at Waverley, topped by a 20-metre smokestack. Next Tuesday the council will consider the report prepared by council officers which will recommend a crematorium. I urge the council on behalf of the residents and on behalf of all Australians who care about our history to vote as they promised the residents they would vote and say no to the crematorium.

Family Services: Child Care

Ms PLIBERSEK (Sydney) (7.42 p.m.)—The issue of child-care cost and availability is one that this government needs to deal with. From evidence before us this week it is an area that the government is going to re-
fuse to deal with; it is a problem that the government is prepared to ignore until the situation gets even more desperate. The opposition asked two questions on this issue this week, one of Minister Hockey and one of Minister Patterson. We asked Minister Patterson whether she was concerned about the fact that ABC Childcare was going to merge with or buy out Peppercorn, and her response was completely inadequate. She said that she was absolutely not interested in the issue of the merger:

There is a question before the ACCC about the merger. I am not going to discuss that. The merger and competition is not an issue for my portfolio.

She went on to say:

Who runs them is not the most important issue; how they are run is the most important issue. Of course who owns a centre impacts on how that centre is run—there is no question about that. Otherwise we would let completely unsuitable people run child-care centres. We would say, ‘It doesn’t matter who runs them. It doesn’t matter if we’ve got a child abuser running a centre; it is how it is run that is important.’ And of course that shows what an absurd proposition it is to say that it does not matter who runs them.

The second question we asked was to Minister Hockey. We asked what advice he could give to Kelly from Mount Druitt, who could not go into the work force because she could not find child care for her child. Minister Hockey said that Kelly, who he claimed might have been a fictional character—she was not very happy with that—‘now has a choice that was not available to parents in the past’. The only choice that Minister Hockey is giving Kelly is the choice of not going into the work force at all, because she cannot afford child care. It seems to me that that is very clearly a diminution of Kelly’s choice rather than any sort of legitimate provision of choice to Kelly.

Since raising these issues in parliament I have had a flood of emails, letters and phone calls from people who are experiencing many of the same problems that we raised in Kelly’s case. We have had one from a woman who prefers her real name not to be used, so I will call her Linda. She has twins. She has a son in school and two girls who are below school age. Unfortunately, she has cancer and she needs to have chemotherapy. She wants to access care for her girls while she is having the chemo and for those few days afterwards, when she is feeling too unwell to care for them. She cannot get a job in the town she lives in. Family day care are flexible, but they cannot fit around the times she needs and they cannot keep the twins together. For these girls, who are going through this very difficult period, that would be absolutely imperative. Very young twins like that do not want to be separated. That is just one of half a dozen cases that have come in just in the last few days. This government must address the issues of availability and cost of child care.

Greenway Electorate: City of Blacktown Boys’ Squadron

Mrs MARKUS (Greenway) (7.45 p.m.)—I rise tonight to acknowledge and honour the work of a wonderful organisation, the City of Blacktown Boys’ Squadron, which is a branch of the Australian Air League. I had the pleasure of attending the 66th prize presentation night of the City of Blacktown Boys’ Squadron on Friday, 3 December at the L. H. Irwin Memorial Hall in Kildare Road, Blacktown. The hall is named after Mr L. H. Irwin, who was a prominent local and member of the Australian Flying Corps.

The Australian Air League was established in 1934 to foster and develop a spirit...
of aviation in the youth of Australia, promote good citizenship, promote the ingenuity and resourcefulness of its members and develop the physical and mental abilities of its members. It does this through a number of activities including participating in drill, engaging in physical activities, learning aviation history, understanding meteorology, building model aircraft and attending weekend camps and leadership courses, including participation in the Duke of Edinburgh’s Award scheme.

Obviously, many of the cadets have a driving desire to learn to fly. Pilot training is also available through the Air League, with training commencing at age 14 for gliding and at age 16 for powered aircraft. I am very proud to note that the City of Blacktown Boys’ Squadron is, in fact, one of the oldest squadrons in the league, having been opened four years after the league’s establishment in 1938 at Blacktown Public School. The squadron was immediately embraced by the community. The next year, in 1939, the Blacktown company provided a guard of honour at the new council chambers. In the 66 years since, the squadron has had a very distinguished history and has provided wonderful training, experience and discipline for generations of Blacktown’s youth.

The City of Blacktown Boys’ Squadron is a part of Kerr Wing, which covers Western Sydney and includes squadrons at Parramatta, Mount Druitt, Richmond, Penrith and Katoomba. The wing is named after Robert Kerr, a past cadet from Parramatta squadron. Robert was one of the original flying scholarship winners from 1937. He went to serve in the RAAF in Europe during the Second World War. During this conflict he was killed in action and the wing was renamed after him.

Tonight I would particularly like to acknowledge the work of the current officer commander of the squadron, Wing Captain Raymond McKenzie. Wing Captain McKenzie has held that position for almost 20 years, having been appointed in 1985. His tireless work and dedicated commitment to the squadron are deeply respected and admired throughout the community. He is a role model for all community minded individuals and I would like publicly to thank him for his diligence and integrity. Wing Captain McKenzie took over from Squadron Captain Noel Fairburn, who served in the post for 15 years and after whom the Fairburn Shield is named. The shield honours all of the members of the Blacktown squadron who learned to fly with the Air League. This includes some wonderful and inspirational young pilots, including Corporal M. Leonard and Corporal R. Laves, who are now flying for the Royal Australian Air Force.

More recently, the Fairburn Shield honours two very impressive young men, Travis Kolek and Jeremy Sequeira. Travis and Jeremy both had the honour of being named New South Wales Boys Group Cadet of the Year in 2002 and 2003 respectively. Travis was also awarded the Australian Air League Diploma, which is the highest educational achievement that can be obtained by Air League members. A cadet from the Blacktown squadron has won Australian Air League Senior Cadet of the Year six times since 1994—a remarkable achievement which shows the amazing work that Wing Captain McKenzie and his team do year after year.

I would also like to congratulate Sergeant Ryan Barnes who in 2002 won the solo drumming competition. As the lead drummer for the City of Blacktown band, Ryan was acknowledged as the best cadet drummer in the Australian Air League and has a great future ahead of him. The Australian Air League is an extraordinary organisation and I am very fortunate to have such an out-
standing squadron based in my electorate of Greenway. I commend the league to all members as an excellent way to develop the aviators and leaders of tomorrow.

Regional Services: Program Funding

Mr GAVAN O’CONNOR (Corio) (7.50 p.m.)—Strange things happened in the House of Representatives at question time today. I have not quite seen the like of it in my whole 10 years in the parliament. As the member for Dawson, the Minister for Veterans’ Affairs, strolled to the dispatch box and began answering questions on her involvement in the regional rorts scandal, I swear a porker flew around the House of Representatives. It was flying around this chamber.

Mr Speaker, you are a country boy like me. Out in the country on a summer’s night, when there is a full moon and you are sucking a bit of moonshine—and the member for Soloman knows what I am talking about—and as the night wears on, we all swear that we saw the cow jump over the moon. I tell you that we have a lot of witnesses who saw a big porker flying around in the House of Representatives today. It happened mid-afternoon in the House of Representatives, with one day and one question time to go before the end of the year.

This whole issue is about the administration of a government program. I see the honourable member for Corangamite has entered the chamber—old Captain Zero has come to join us. I am happy for him to hear about rorting by The Nationals, because the honourable member for Corangamite plays a straight bat and he knows what I am talking about, as does the honourable member for Hume. The member for New England knows all about this. He is a former member of the state parliament of New South Wales and he has respect on all sides of the House. He blew the whistle first on the rorting of this program. I must say that he has received shabby treatment from the government on this matter.

Of course, you cannot engage in this activity, this maladministration, without some damage being done to your reputation. I have to say that the Deputy Prime Minister, who once had a halo up around his head, is now wearing it down around his ankles as he wanders about the House.

We are all country boys here in the House tonight—the member for Corangamite, Mr Speaker, me and the member over there. The member for Kalgoorlie is here; he knows. When we on this side of the House heard the snorts, we knew there would be rorts. It is as simple as that. The Nationals are like a bunch of old porkers at feeding time. They literally trample over each other to get their snouts in the trough.

We have had the A2 milk scandal, and that was exposed by the shadow minister for regional affairs in the parliament today. Now we have a major horsing event in the seat of Capricornia that is the subject of some scrutiny by this House. When the minister came to the dispatch box today, we knew the old technique: come into the House at one o’clock, deliver a statement and then toddle up to the dispatch box in question time to say nothing. We know all about that defence. We know what is going on with this particular grant. It was for a major horsing event, and today we heard the equine defence: ‘Nay, nay, I know nothing,’ said the minister as she came to the box. It does not wash with us and it does not wash with the Australian public.

The problem is that the minister has really misconstrued the ministerial code of conduct. When the Prime Minister handed her the document, the minister thought she was reading the ministerial manual for misconduct. That is what she thought she was reading. Of course, now she has got herself in
deep water over this rather fanciful grant that has been given up there in the seat of Capricornia. The member for Hume, the newly appointed—(Time expired)

**Cultural Tolerance**

Mr FAWCETT (Wakefield) (7.55 p.m.)—I am pleased to say that there are some in Australia whose enthusiasm probably exceeds that of the member for Corio. They are the children around the country who are looking forward with great anticipation to Christmas Day. In fact, this is true all around the world. I recall living in Thailand as a young person, going to Bangkok with my parents to buy presents and being amazed to see not one but two Santa Clauses holding hands, strolling through a shopping complex.

The other thing that stands out from my time living in Thailand is the confidence with which they celebrate their customs and traditions as a predominantly Buddhist country. While they acknowledged Christmas and the importance of it to the minority of us, they had no hesitation in ordering the life of their community around the festivals significant to the religious majority that had shaped much of their nation. Furthermore, having the opportunity to live among a society that so openly celebrated its heritage added to the significantly rich and diverse experience of living in a mixed culture.

I regret to say that in Australia we appear to have lost this confidence, particularly with respect to Christmas. This has come about largely through the well-intentioned but often misguided notion of political correctness which aims, among other things, to foster tolerance and cultural integration. In practice, this approach means that school teachers, child-care workers and organisers of community events are frequently counselled, indeed sometimes directed, to omit all reference to the reason for the season—that is, the Christian festival celebrating the birth of Christ. To quote an executive of the Islamic Council of Victoria, Waleed Aly, this approach is a ‘farce’. In an excellent article he wrote for the *Australian* on Tuesday this week, Mr Aly said:

Driving Christmas underground only erodes this treasured Australian norm and that is far more troubling to me than any Christmas celebration.

He went on to say:

This is where political correctness loses the plot; what purports to inspire tolerance instead inspires hostility and intolerance ... Denying the Christianity in Christmas or, worse, doing away with it altogether helps no one.

The point that Mr Aly makes is that cultural tolerance does not imply or require denial of one’s own heritage or beliefs.

This was reinforced by two naval officers from Qatar and Oman whom I had the pleasure of serving with over a number of months at the Royal Australian Naval Staff College. Toward the end of their stay, they commented that there was one aspect of our culture that made them feel most uncomfortable. It was the way that many Australians felt obliged to bend over backwards to avoid any possibility of giving offence, to the extent where these gentlemen said that at times they did not really know who we were or what we stood for.

If visitors to Australia and the leaders of one of the minority groups in our society can grasp the fallacy of political correctness so clearly then the proponents of political correctness, who purport to speak on behalf of these minorities, should surely take stock and consider the negative impact of their current approach. Australia will enjoy a more inclusive and stable community far more readily when we are all able to speak about and celebrate our heritage without fear of condemnation or ridicule.

So, as we approach this Christmas time, I wish to encourage the teachers, care workers,
parents and indeed all Australians to feel free to joyfully celebrate Australia’s Christian heritage with confidence and grace. To you, Mr Speaker, and to the people of Australia: a blessed Christmas to you and yours.

Question agreed to.

House adjourned at 8.00 p.m.

NOTICES

The following notices were given:

Mr Anderson to present a bill for an act to provide for the funding of projects related to land transport matters, and for related purposes. (AusLink (National Land Transport) Bill 2004)

Mr Anderson to present a bill for an act to amend laws, and to deal with transitional matters, in connection with the AusLink (National Land Transport) Act 2004, and for related purposes. (AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004)

Mr Anderson to present a bill for an act to amend the Navigation Act 1912, and for related purposes. (Navigation Amendment Bill 2004)

Mr Brough to present a Bill for an Act to amend the Trade Practices Act 1974, and for related purposes. (Trade Practices Amendment (Personal Injuries and Death) Bill 2004)

Dr Stone 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 land at Lee Point, in Darwin, for Defence and private housing.

Dr Stone 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: Fitout of new leased premises for the Attorney-General’s Department at 3-5 National Circuit, Barton, ACT.

Dr Stone 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: Fitout of new leased premises for the Department of the Prime Minister and Cabinet at 1 National Circuit, Barton, ACT.

Dr Stone 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: New East Building for the Australian War Memorial, Canberra, ACT.

Dr Stone to move:

That, in accordance with the provisions of the Public Works Committee Act 1969, the following proposed work be referred to the Parliamentary Standing Committee on Public Works for consideration and report: Maribyrnong Immigration Detention Centre (MIDC)—additional accommodation and related works.

Ms Vamvakinou to move:

That this House:

(1) recognises that the English language is the most common and unifying language amongst Australians;

(2) recognises and supports immigrants and indigenous Australians who speak languages other than English and encourages them to
retain these languages as they acquire English;

(3) recognises the profound and lasting benefits of second language learning for individuals and for the nation: intellectual development, cultural sensitivity, greater equality and enhancement in trade and diplomacy;

(4) recognises that despite successive government policies on the matter of language learning we have not really succeeded in reaping the maximum benefits of the multi-lingual resources of the Australian people;

(5) recognises that Australia should base its national policy on languages on the principles of 'English Plus' which can be expressed as the four 'E's: enrichment, economics, equality and external; and

(6) recognises that Australia needs to elevate the recognition of the importance of language as a skill and resource, both for individuals and as a nation in domestic and international domains.
The DEPUTY SPEAKER (Hon. I.R. Causley) took the chair at 9.40 a.m.

STATEMENTS BY MEMBERS

Shortland Electorate: Sights and Sounds of Christmas

Ms HALL (Shortland) (9.40 a.m.)—Last Friday I was privileged to visit the Sights and Sounds of Christmas, which was presented by the Anglican Parish of Belmont North and Redhead. Sights and Sounds depicted the true story and meaning of Christmas. It presented a vision of Christmas that highlighted the birth of Christ and love and compassion. There was a skit performed by Kath and Kim, and there was a media tunnel. There was a nativity scene and a glimpse of what Christmas is like in Holland. Each scene challenged the commercial and popular media interpretation of Christmas.

I have here a little bit of the extra information about it. Twelve hundred children from various schools in the electorate have visited the Sights and Sounds sessions between 30 November and 3 December. As well as that, about 400 adults have come through. There were 65 volunteers for each session and 28 sessions a day—15 sessions for the public and the rest for schoolchildren. They needed 2,795 volunteers overall. Some of the jobs, of course, were done by the same people in each session. Most of the volunteers came from the parishioners and their families and from some of the other Anglican churches within the diocese. The driving force behind the whole production was the Reverend Maree Armstrong and her husband, Terry Armstrong.

Every schoolchild who left took a take-home bag. Included in that was a colouring sheet; stickers; activity books; craft items, which were butterflies; free tickets to come back at night; individually wrapped sweets; and a thankyou acknowledgment sheet with the service times for carols that would be conducted over the Christmas period.

There were a number of people who contributed to the success of this, and there were many volunteers from the community: Shane Garland from CiviLake; Redhead Surf Lifesaving Club; Coca-Cola; Jewellstown Newsagency; My Bakery at Jewellstown; Lakeside School, which provided a school bus; Lakes Junior Football Club; Kuta Lines; Energy Australia; Newcastle Permanent; Jewellstown Butcher; McCloys; Lake Macquarie City Council; Belmont 16 Foot Sailing Club; Pooh’s Place; Young People’s Theatre; Julie Black; Richard Payne; with scout tents; Jewells Tavern; Belmont North Brownies; and Hunter Water, which provided some stickers.

This was a true community event. It depicted the true meaning of Christmas and had the support of the whole community. It is these kinds of events that really bring home the message of Christmas and really provide the meaning of Christmas to young people in our community. I congratulate the church on its activities and I commend it to the House.

Petrie Electorate

Ms GAMBARO (Petrie—Parliamentary Secretary to the Minister for Defence) (9.43 a.m.)—In its fourth term the Howard government is in a historic and unique position—one led by the Prime Minister, John Howard—which will work towards strengthening Australia’s economy and national security. Australia has maintained a very strong economy and created

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more jobs while recording real wage rises and also maintaining and achieving falling unemploy-
ment as well as low inflation and interest rates. That is the reason that the Australian peo-
ple gave the Prime Minister and the coalition an overwhelming and rare mandate to continue
our work.

In Petrie, I was humbled by the confidence that the people of Redcliffe, the peninsula and
the north Brisbane area have placed in me, and I dedicate myself to representing them and the
interests of our unique community. I was especially honoured to be returned with an increased
margin and a majority of 7.92 per cent, two-party preferred, an increase of 4.4 per cent from
the 2001 result. I would like to thank not only the community but the many people who gave
their time to work on my campaign. There are too many to name, although I will name a
few—I would like to especially thank them: director John Hodges; Gary Roberts; Terry
Rogers; Ken Fry and his wife, Margaret; Bill Richardson; Don Lewis; Buck Rogers; John
Stopford; Ian Clout; Bobby Robins and Ian Fraser, who pounded the pavements with me; Joan
and Ray Evans; Joan White; Terry Ryan; Elisa Gambaro; Shirley Lehmann; Vova Ozolans; An-
drea Garcia; Rosa and Tony Sirriani; Helen Weldon; John Hart; Lorraine Goldspink; Loris
Barloy; Anita Wyndham; Henk Horscher; Denbeigh Morris; Max Mathers; Ozzi Weldon; Pe-
ter Maxwell; David Stopford; and many others. To the wonderful volunteers and supporters:
thank you very much for your great support of me.

In the Petrie electorate, people told me that they were concerned about their future, interest
rates, a sustainable Medicare system and additional assistance for families and older Austra-
lians. The people I spoke to before the election, and indeed those I have spoken to since, have
all said that they respect the coalition for their strong commitment in the areas of education,
skills development and small business. The people of my electorate also tell me that they re-
spect a government which is able to let them get on with making their own decisions and
choices.

It is my very great pleasure to continue to attend functions in the electorate as the federal
member. The recent Remembrance Day commemorations were very moving and it was with
great pride that I watched our Defence Force cadets, not only as the local member but also as
the Parliamentary Secretary to the Minister for Defence. The cadets took part in the ceremony
at Redcliffe, and they did their units and the Australian Defence Force cadets proud. Attend-
ing the Redcliffe carols by candlelight ceremony on Saturday was also a pleasure. While tak-
ing part in the nativity play and the carols, I had the opportunity to again witness the great
community spirit which exists not only in Redcliffe but throughout the communities that
make up the wonderful and unique Petrie electorate.

Prospect Electorate: Haj, Mr Joseph

Mr BOWEN (Prospect) (9.46 a.m.)—I rise today to bring to the attention of the parliament
a particularly concerning matter for a constituent of mine, Mr Joseph Haj of St Clair. Mr Haj
approached me during the election campaign, and he has approached several other members
over the last few years. He is an importer and exporter of fruit, and several years ago he sent
to Kuwait a consignment of fruit worth several thousand dollars—in fact, almost $100,000.
The problem is that he was not paid for that consignment. He approached several members of
parliament and Austrade. Austrade did their best to help him. However, he received a commu-
nication from Austrade, of which he has given me a copy, which says, ‘Unfortunately, you are
dealing with a member of the Kuwaiti royal family and your chances of being paid are slim.’
This lack of payment has sent Mr Haj out of business. He is simply no longer able to conduct his business, given that he has sent $100,000 worth of fruit to Kuwait and over several years has not received payment. I wrote to the Kuwaiti Ambassador several months ago, before I was elected to this House, seeking his assistance in resolving this matter, and as yet I have received no reply. I think this is an outrageous situation, and I call on the Kuwaiti Ambassador to reply to my letter. I will continue to raise this matter publicly, both in the media and in this House, until Mr Haj receives justice. I will continue to raise it with the ambassador and with any other person who may be able to help Mr Haj, because it is an outrageous situation that somebody has been sent out of business because he has not received payment. It would appear that the only reason why he has not received payment is that the person he had the misfortune of doing business with is a member of the Kuwaiti royal family.

Gilmore Electorate: Jameson, Mr Joseph

Mrs GASH (Gilmore) (9.48 a.m.)—Joseph Jameson is an old digger and he is one of my constituents. Joseph Jameson is a courageous Australian, not because he performed any individual act of bravery, like running into a burning building or saving someone who was drowning—he did neither of those things. Instead, he did something which is truly admirable, and he has been doing it for a long time.

Joseph Jameson is 86 and a survivor of Changi and the infamous Thai-Burma Railway of World War II. About a month ago, all Australians paused on Remembrance Day. It was on this day that I was given the honour of presenting him with a certificate of appreciation on behalf of the Nowra TPI association. It was at this point that I gained some insight into the man. The certificate recognised his dedication to fellow veterans and those incapacitated through war. He has worked tirelessly for their benefit, putting their interests ahead of his own. The certificate said it was for meritorious service, and the merit was in his humanity and not so much his work—although I have no doubt he worked tirelessly.

Mr Jameson is patently a humble man who prefers to talk about others, and on the day I made the presentation all he wanted to do was talk about the contribution of our settlers and pioneers. It was his belief that it was they who laid the grounds for who we are today. He spoke about their courage and sacrifice and the fact that we owe so much to their dedication. We can only guess what he himself went through as a young man, a prisoner of the Japanese, trying to survive in a harsh and deadly environment. To survive that and then turn to helping others takes considerable strength of character, and Mr Jameson has more than amply demonstrated that. It is the quality of his contribution that cements our society, for, without characters like Joseph Jameson, what are we? We need to be able to stand up and say to Mr Jameson and citizens of his ilk, ‘Thank you for showing us how it should be done.’

Mr Jameson looks much younger than his 86 years. He does not show the rigours of his imprisonment and if he has any bitterness he masks it well. In fact, he looks like someone who has risen to a higher plateau. We can all learn from people like Mr Jameson, but only if we take the time to stop and listen. He has had a lot of experience gained by doing it tough and if we had the patience to listen we could perhaps save ourselves a lot of hardship. But, humans being human, we are destined to repeat past mistakes. Mr Jameson serves as a model for what we could strive to be: compassionate, humane, understanding and forgiving. In my eyes he is a hero and should be regarded as such. We need to encourage our younger generation to show respect towards their elders, but we can only do that by setting the right example.
ourselves. I salute you, Joseph Jameson, and we in Gilmore are proud and richer because of your presence.

Roads: Safety

Mr ADAMS (Lyons) (9.50 a.m.)—Earlier this week I spoke to a motion in private members’ business on road safety, and I wish to continue supporting the need to do something about the terrible carnage on our roads. Before, I spoke of the culture of driving, particularly with young people, who believe they are immortal and can get away with a dangerous driving attitude, and how this can be tied up with alcohol consumption and the image of driving. It is this that is at the forefront of the problem. So we need to address the attitude of drivers, try and encourage a more responsible approach, and make it financially worth their while to adopt a much better approach.

But there are a few other practical things that can be done. One suggestion was made by a constituent of mine, Gary Bates, who used to be a road safety training officer in Queensland and who has now retired to Tasmania. He has suggested that all cars should be fitted with automatic daytime running lights. Overseas evaluations have concluded that these lights are effective in reducing multiple-party crashes and that there are safety benefits associated with use of DRL lights. The reasoning behind this is that failure to see another vehicle has been shown by many studies to contribute to a considerable proportion of collisions. The lights are designed to increase the contrast between the brightness of the DRL equipped vehicle and the brightness of the vehicle’s background. They are not dipped lights but special lights that have an intensity of 1,200 candelas. I know that my car has an automatic light system that comes on in conditions of low ambient lighting, which is a start, but that does not cover the grey days when many car colours appear to meld in with the road surface.

A few years ago while travelling in Sweden I noticed that all vehicles were driven with their lights on. On inquiring, I learnt that cars built in Sweden and those imported to that country are required to have their lights wired so that whenever the ignition is on the lights are on. It was recognised over most of northern Europe that daylight hours in winter can be very short and that keeping the lights on allows greater safety. This is partly backed up in a review of the literature on daytime running lights which was sent to me by Gary Bates, whom I mentioned earlier. The review went through the European experience and looked at the situation in Australia—and, while dipped lights were not proved as suitable during the daytime, the DRL were seen as being useful in reducing daytime crashes. Australia apparently is awaiting the outcome of the studies in Europe and it would certainly be worth while following up their deliberations.

So, if we are to be successful in curbing the accident and death rates in Australia, we must have a look at our patterns of behaviour, starting with adults. If our children see us doing irresponsible things, they will copy. They say that movies and advertising do not affect our behaviour much but, when it comes to the image of fast and furious cars and chases, it does make it hard to say that we should not do this. Young people believe they are immortal. (Time expired)

Medicare: Policy

Mr LAMING (Bowman) (9.54 a.m.)—Today marks an important milestone for two reasons. First of all, private health insurance coverage had fallen at nearly two per cent a year.
until the Howard government’s three initiatives that have managed to improve those levels. I believe that this year would have marked the year where private health cover as we know it ceased to exist in this country had those reforms not occurred.

It is also 70 days since Medicare Gold raised its head in the election campaign. It is a measure of what went so terribly wrong with that policy that we should return to look at it today. It is incredibly important to note that this policy was effectively triage by age rather than clinical need and was also immensely wasteful. In its simplest form, Medicare Gold can be described as being designed to effectively deliver private health cover to all Australians, with an additional cost minus some potential savings both in the public hospital system and in reduced 30 per cent PHI rebate payouts to people in that age cohort.

The opposition’s claim was that our state hospitals are completely overrun by category 4 and 5 patients who cannot get in to see a GP, but we have the figures, particularly in Queensland. We know that, in the Redlands Hospital in my electorate, it takes only about two doctors to look after category 4 and 5 patients in the entire hospital. These are not large numbers and we know that Australians have predominantly chosen GPs as their primary source of clinical care, and they continue to do so. Medicare Gold was also economically irresponsible. The policy should have been submitted to Treasury and Finance in plenty of time. It often seems that the policies of two political parties can be hard to distinguish, but one way of determining the difference is that one side continually refuses to submit them for costing, and that is not something that we should ever be frightened of doing.

Private health insurance would have been eroded in the age group to have been covered by Medicare Gold, and this is something we have worked very hard to build. It is a little known fact that between the ages of 79 and 85 and beyond private health cover falls away from 40 per cent to 20 per cent. It does so for good reason: people in that age group can expect the finest of care from our public hospitals. There is no need to put $5.6 billion into the care of that age group, because the public system in this country is already providing exemplary care. My grandmother Violet is in ward 5B of Princess Alexandra Hospital today with a very severe and serious condition. She is under the care of fantastic nursing and medical staff. She does not need a private room, nor does she care about having a view or fancy food. She is publicly covered. The care she is receiving is excellent. She knows that if she really wanted a private room it would be there if she chose to invest in it. She has chosen not to. She knows there is no wait and she knows she is cared for according to clinical need, and that is the one thing that can never be subverted or changed—that is, the provision of a scarce resource like health according to need, not according to any other criteria.

The DEPUTY SPEAKER (Hon. I.R. Causley)—Order! In accordance with standing order 193 the time for members’ statements has concluded.

AUSTRALIAN PASSPORTS BILL 2004

Cognate bills:

AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004
AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004

Second Reading
Debate resumed from 2 December, on motion by Mr Downer:
That this bill be now read a second time.

Mr RUDD (Griffith) (9.57 a.m.)—The package of legislation before us, the Australian Passports Bill 2004 and cognate bills, was originally introduced into the House of Representatives on 24 June 2004. We are here today because while the Australian Passports Bill 2004 passed through the House of Representatives on 4 August it reached only the second reading stage in the Senate before the proroguing of the parliament for the most recent federal election. It was reintroduced into the parliament on 2 December. As we are all becoming more familiar with, House of Representatives Practice dictates that when the House is dissolved or prorogued all proceedings come to an end and all bills on the Notice Paper lapse. If a bill that has lapsed following the dissolution of the parliament is to be proceeded with, a new bill must be introduced—there being no provision for proceedings to be carried over from parliament to parliament. It is for this reason that the Australian Passports Bill 2004 is being reintroduced in the current session.

I would like to note that this legislation comes into the parliament at the same time as reports that Australia’s electronic passport has been endorsed by US authorities after a week of inaugural trials at Baltimore/Washington International Airport. Those trials involved 16 countries, including New Zealand, Finland, Germany, the Netherlands, the UK, Italy, Japan, Canada, Austria, Belgium, Sweden, France, Singapore, Brunei and Australia. We on this side are pleased to see that the new Australian passport meets international standards and is compatible with US border control equipment, although I note that there have been some teething problems. I understand, however, that these problems are associated with the reading equipment rather than the passport technology itself. It is important, in our view, that the government continues to ensure that Australia’s travel documents stay at the forefront of document security. We will be watching closely the outcome of these trials. We are concerned, for instance, that the firm providing the encryption technology securing the chip data in the new passports has said that while the risk posed by the threat of fraudulent passports because of this technology has been reduced, it will not be reduced completely.

Two of the bills within the package of legislation are exactly the same as previously introduced. The Australian Passports Bill 2004 has had some minor amendments made to it in the period since August and so there are some small changes that need to be noted. The Australian Passports Bill 2004 will replace the Passports Act 1938 and provide an entirely new passports act. The new passports legislation will repeal the Australian passports provisions of the 1938 act. The purpose of the Australian Passports Bill 2004 is to introduce a modern legal structure to (1) maintain access by Australian citizens to passports of the highest integrity; (2) ensure passports law complements national security, border protection, Australian law enforcement measures and international law enforcement cooperation; and (3) ensure consistency with family law, privacy and administrative law principles.

This package of legislation will ensure that Australian travellers are protected by more stringent laws. This, in turn, means that Australia will be better protected. The Australian Passports (Transitionals and Consequentials) Bill 2004 makes the necessary amendments to repeal provisions of the 1938 act that have been superseded, and renames that act the Foreign Passports (Law Enforcement and Security) Act 2004. When this bill first passed through the House of Representatives in August this year, I made a number of comments about the opposition’s support for the various provisions governing Australian travel documents.
I will not repeat all those comments, but in summary we are satisfied that many of the changes to the law governing Australian travel documents involve clarification and restructuring of the language, with minimal substantive change. As well, there are several improvements to the law governing Australian travel documents that should be noted. These include:

1. There is, for the first time, a clear statement of the entitlement of Australian citizens to a passport;
2. There is an increase in the penalties for passport fraud to 10 years imprisonment or a fine of $110,000;
3. Legislation is introduced as a framework for the use of technology;
4. There will be exceptions to the requirements for either both parents’ consent or a court order for a child to travel internationally which will make it clear that disputes between parents should be dealt with by the courts;
5. The changes will improve the mechanism for the refusal or cancellation of a passport on the grounds of law enforcement or if a person is likely to engage in harmful conduct;
6. There will be improved measures to minimise the problems caused by lost and stolen passports; and
7. There are privacy related measures including a transparent mechanism for obtaining information for identity and citizenship verification and to regulate the disclosure of passport information for other limited purposes.

There are also several key substantive changes, namely

1. Allowing the Minister for Foreign Affairs to adopt particular methods or technologies for identification or other purposes under the bill;
2. Changes to the grounds and processes for refusal and cancellation of passports;
3. The addition of new offences and substantially increased penalties; and
4. New measures concerning the use of information and the privacy procedures surrounding them.

I do not need to repeat in detail Labor’s views on these measures: suffice to say that we support these initiatives because they are, in the main, sensible and long overdue in updating the important provisions of the Australian passport system.

One area I will touch on relates to authorisation by the minister for the use of particular methods and technologies as they apply to passports. When this package of legislation passed through the House of Representatives in August, the opposition sought an amendment to division 2, clause 47. Labor sought the insertion of defining language to reflect the purpose of the ministerial determination, the level and nature of personal information being recorded, and the length of time that such information was to be stored. The government indicated its support for amending clause 47 to reflect this. I thank the government for doing so. The provisions of the reintroduced bill have incorporated the opposition’s amendments to clause 47 of the bill.

The minister’s determination for the use of technologies must now specify the nature of the personal information to be collected and the purpose for which it may be used.

Labor has always been supportive of strengthening the technology aspects of the Australian passport system. The amended clause 47 will allow for the introduction of new technologies, including biometrics, for the enhanced security of the Australian passport system, while maintaining the community’s confidence that their personal information will be adequately protected.

In the intervening period since the introduction of the legislation in the previous parliament, I understand that DFAT have sought further to amend the text of the bill which passed the House of Representatives on 4 August. These amendments are minor and in the main we regard them as sensible. Briefly, the reintroduced bill clarifies that a passport may be cancelled administratively when a replacement passport is applied for, in addition to the requirement in the bill introduced in the previous parliament which specified that a passport would
be cancelled when a replacement passport is issued. Clause 22(2)(a) of the previously introduced bill provides for cancellation of valid documents on issue of another document. In ordinary practice, however, passports are physically cancelled when presented with an application for a new passport, usually when the existing one is about to expire. We understand, therefore, that amending existing clause 22(2)(a) to reflect an additional reason to cancel an Australian travel document, being that it is still valid at the time when the person applies for another document, would more accurately describe the current practice.

Two other changes go to the privacy provisions in the legislation. The first clarifies arrangements for requesting information from private sector organisations. Noting that many of the obligations on the disclosing organisation under the Privacy Act 1988 do not apply, the addition of the reference to national privacy principles, covering business organisations, would make clear that a person who is requested or directed to provide information is authorised to provide this information. This provision will enable the person who holds information which is subject to the Commonwealth Privacy Act 1988, or similar laws or arrangements, to provide information in accordance with the ‘authorised by law’ exceptions—information privacy principle 11(1)(d) and national privacy principle 2.1(g).

The second change removes the specific reference to disclosure of passport information for national security purposes—clause 46(d)—which is an area covered specifically by the Privacy Act. The Privacy Act 1988 does not apply to the Australian Security Intelligence Organisation, ASIO, or to the Australian Secret Intelligence Service, ASIS, which are covered by the Inspector-General of Intelligence and Security, IGIS, and the Parliamentary Joint Committee on ASIO, ASIS and DSD. We understand that, while clause 46 sets out clearly the statutory regime for a specified range of disclosures, the Privacy Act 1988 provides sufficient clarity as to the laws for disclosure for national security reasons, and therefore its presence is duplicative and creates an unnecessary ambiguity.

Finally, in the period since its introduction into the previous parliament, the government has sought to ensure that the legislation more closely aligns with administrative law principles. The bill previously introduced set out a detailed regime for the notice of decisions, repeating the provisions of the original 1938 act. We understand that the government now wishes to delete clause 49 so as to ensure greater consistency with current administrative law principles. This is because a general obligation for the minister or a delegate to provide notice of a decision made under Commonwealth law is set out in the Administrative Appeals Tribunal Act 1975, sections 27A, ‘Notice of decision and review rights to be given’, and 27B, ‘Review—Code of Practice’. Accordingly, clause 49 would have covered some of the same requirements as contained in current sections 27A and B of the Administrative Appeals Tribunal Act 1975. We agree with the government that it is a sensible procedure to remove unnecessary duplication, but we are critical of the government for not having the due diligence to check this prior to the package of legislation being introduced into the parliament back in June. Passport legislation, given that it affects so many Australians, should be subject to the keenest and most intense scrutiny prior to being introduced into the parliament.

On a matter as profoundly important as the legal instruments that govern the administration of this country’s travel documents system, we are frankly disturbed that the government did not originally bother to do an assessment of what other legislation exists to cover these areas.
The Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitio-

tionals and Consequentials) Bill 2004 remain unchanged based on our advice.

Fundamentally, the reason we are here today is passport security. Passport security has al-

ways been a fundamental matter of national security. In today’s uncertain international envi-

ronment, passport security has taken on a renewed focus. The scourge of international terror-

ism and the devious means by which terrorists seek to mete out their carnage on innocent ci-

cilians globally mean that we can never relent in the pursuit of new technology applications to

improve and tighten security around our passport system—consistent, however, with this na-

tion’s longstanding traditions of civil liberties.

It is in this context that we must not disregard global cooperation in pursuit of eliminating

international terrorism root and branch. Terrorism is one of the several subjects of the United

Nations report on UN reform prepared by UN Secretary-General Kofi Annan’s high-level Panel

on Threats, Challenges and Change, which reported recently. One of the members of

that panel was the former foreign minister of Australia Gareth Evans. That report, delivered

on 2 December, adds to the current debate on the future direction of the United Nations and

the broader multilateral order. It recognises that today we live in a global environment where

new challenges threaten and confront us all. It articulates that a cooperative response is the

most effective way forward.

In coming to its recommendations, the panel recognised that global security today is not

one-dimensional in character and not best responded to purely through the use of force. It rec-

ognises, sensibly, that among other things today’s security threats are linked closely to the

challenges of transnational organised crime, communicable and infectious diseases such as

HIV-AIDS, environmental degradation and poverty.

In addressing these challenges, the report makes a number of recommendations. Firstly, it

recommends a major initiative to build public health capacity throughout the developing

world at both the local and the national level; building on the success of regional organisa-

tions; developing strong norms to protect governments from constitutional overthrow and to

protect minority rights; and working collectively to find new ways of regulating the manage-

ment of natural resources, a source of ongoing conflict around the world.

Secondly, it recommends preventing the spread and use of nuclear, biological and chemical

weapons by creating incentives for states to forgo the development of domestic uranium en-

richment and reprocessing capacity. In addition, it urges negotiations for a new arrangement

to enable the IAEA to act as guarantor for the supply of fissile materials to civilian nuclear

users, as well as calling on governments to establish a moratorium on the construction of new

enrichment and processing facilities, matched by a guarantee of the supply of fissile materials

by present suppliers. Thirdly, it recommends that the United Nations develop a system or a

strategy of counter-terrorism respectful of human rights and the rule of law. The report urges

that such a strategy must encompass coercive measures where and when necessary while also

seeking the creation of new tools to help member states address the threat posed by terrorism
domestically.

It should also be noted that the report calls on the UN General Assembly to overcome its

divisions and to conclude a comprehensive convention on terrorism. On that question, I note

from an additional report that in a statement by the Secretary-General he notes that one of the
panel’s signal achievements was to offer a definition of terrorism agreed to by all members of his panel. According to the Secretary-General, it would define terrorism as:

... any action intended to kill or seriously harm civilians or non-combatants, with the purpose of intimidating a population or compelling action by a government or international organisation.

The Secretary-General went on to say:

States should use this definition to build consensus and strengthen the UN’s response to this deadly scourge.

Fourthly, noting also that terrorists use organised criminal groups to transmit funds, operatives and materials around the globe and that governments and rebel groups sell resources through criminal groups to finance ongoing conflict, the report recognises that combating organised crime is essential for assisting states to build their capacity to exercise their sovereign responsibilities.

The report is noteworthy in particular because it addresses the contentious issue of how to address threats when prevention fails. Article 51 of the UN Charter provides a clear framework for the use of force, while customary international law makes it clear that states can take military action so long as the threat is imminent, no other action would prevent it and the action is proportionate. While the UNSC has the authority to act preventively, it has rarely done so. The report argues that the Security Council may need to be more proactive in the future and that the Security Council may need to take decisive action earlier before a crisis becomes imminent.

As well, I should point out that the report endorses the emerging norm of international law concerning the protection of civilians from large-scale violence. The report advocates particular criteria which should be applied in these circumstances. The report also argues that developed states have responsibilities to do more to transform their militaries into units suitable for deployment to peace operations, particularly if the UN system is to successfully meet the challenges of humanitarian work into the future. This also applies to post-conflict peace building.

In order to meet these challenges the report has recommended the development of a peace-building commission—a new commission that would be created within the UN system—and to work closely with regional organisations and international financial institutions as appropriate. We will look closely at the detail of this proposal because its merits and the aspects arising from it have profound implications for the future of the international order. At face value it looks as though such a commission, if constructed well, could fill an important space by giving appropriate and necessary attention to countries emerging from conflict. This deserves further consideration.

Finally, I should note that the report also recommends the strengthening of the secretary-general’s role in peace and security, arguing that the secretary-general should be given more latitude in the internal operations of the secretariat. As well, the report recommends expanding the UN Security Council and reconfiguring the UN’s regional groups for the purpose of council elections. These are serious propositions that merit serious consideration in the period ahead. We on this side will be looking closely at and consulting with relevant stakeholders in the future to formulate our response to the report’s recommendations. I note also that the government has said that it will look closely at the report’s recommendations. We await the gov-
The Government’s formal response to what is arguably the single most important document on UN reform which has been produced in the last quarter of a century.

The proposed amendments in the Australian Passports Bill 2004, which was reintroduced into the House of Representatives on 2 December, in context are minor and sensible but they do form part of this country’s overall response to the problems of international security and international terrorism which are so much the subject of debate in the international community today and form part of the background setting to the proposals which have been put forward in the secretary-general’s most recent report.

We say to the Department of Foreign Affairs and Trade that they have done well in clarifying amendments prior to the passage of legislation through both houses of parliament. In our view this has been a sensible path to take and it will save further amendments, we hope, to the legislation in the future. However, we on this side are curious that the government was prepared to introduce legislation which, by the department’s own admission, was in need of further amendment. Yes, the amendments may be minor, although the one which we recommended earlier on was not in fact minor. And, yes, in several instances the amendments arise because elements of the legislation are duplicative of existing legislation elsewhere. But that does not diminish the failure of the government to rigorously assess this legislation against existing legislation to avoid such duplication.

Notwithstanding these criticisms, which in the main lie at the margin, of the government’s failures in properly vetting this legislation for duplication consistency with current administrative principles, Labor continues to express its support for this legislation. We support the minor amendments now being introduced by the government to further streamline the legislation. We believe that making these amendments now, at the time of the bill’s reintroduction, will hopefully save the reintroduction of legislation into the parliament in the future to make further amendments which may then be necessary. I thank the government again for accepting our substantive amendment on the question of the proper protection of security information obtained in the course of vetting applications for passports in the first place. On the basis of those observations, we on this side of the House provide our support for this legislation.

Mr Baird (Cook) (10.18 a.m.)—I rise today to support the government’s Australian Passports Bill 2004 and the associated bills, the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004. The legislation is a significant upgrade of a 66-year-old piece of legislation dating from 1938. One would say that it is about time the legislation was updated. Sixty-six years is a time frame in which most legislation goes through many changes, bearing in mind the type of environment we live in today, with world terrorism and changes in biometrics relating to the assessment of identity. Of course these changes are appropriate. The bill contains a number of provisions relating to the new basis on which identities can be established. It reaffirms the rights of Australian citizens to have their own passports. It provides additional provisions to allow for biometric identification. It also provides penalties for those who abuse the use of their passport. It has a provision taking away passports from those who are under investigation for or have been convicted of serious crimes. It also emphasises again the security environment of Australia and the need for vigilance across the board.

That is the basic aim of the legislation. It is well worth while. The tougher penalties are also welcomed. We regard it as the absolute right of Australians to hold a passport. We regard
the integrity of the passport system as paramount, and therefore we believe those who willingly abuse this right should attract penalties for misuse of their passport.

We have a strengthening of the Australian passport and identity establishment systems. Australian passports are regarded as part of the international benchmark in terms of how passports should be used and developed. Our moves in terms of appropriate ways of measuring identity put us at the forefront of new technology. In this climate of global terrorism and people-trafficking crime, emphasising the need for the global community to establish the highest possible levels of antifraud controls for citizenship and identity recognition documentation is very significant.

The bill incorporates the basic right of every Australian to hold a passport, as guaranteed under the original act, while introducing new measures to ensure the integrity of the passport. I will go through the key aspects. First is establishing identify. Incorporated in this bill is the guarantee for the incorporation of changes which will facilitate the future introduction of biometric identification assessment. Government has helped the Australian biometric technology industry develop into the class of world leaders. Through industry partnerships, tied to tourism and the transport industry, the government has been able to maintain cost economies while developing cutting-edge biometric identification measures.

The bill contains the procedure whereby, in the near future, there will be analysis of biometrics, particularly of the irises and facial structure. I understand the tests that were carried out initially were at New Jersey’s Newark airport, where they just used the iris. This proved particularly effective. It is almost impossible to carry out fraud. I am sure that, if one introduces this measure, people will find ways to avoid true identification, but in the interim, until such means are identified, this is an appropriate way to go forward.

The tourism industry is very supportive of these measures. They of course want to ensure a greater number of people come to Australia but, at the same time, if we improve the security measures and identification then the 99.9 per cent of absolutely genuine travellers—who have nothing to hide and are very happy to have their own identity established—can continue to come.

This measure is particularly important in terms of those who come claiming asylum and who have destroyed their passport and identity papers en route. I think the wilful destruction of their identity papers is one area where those genuine asylum seekers do not assist their case, as it therefore takes so long to establish the identity of the individual. As we move in this area of iris and facial feature identification, we can eliminate much of the concern and many of the problems that have occurred in that area.

As I mentioned before, the bill also provides for wider policy issues of law enforcement, border protection and national security. The bill provides a new procedure for the cancellation and refusal of passports, as well as the introduction of new, harsher penalties for those abusing passports. The bill provides the means of removing the right to travel from Australia’s most serious criminals—especially those operating on an international level. The new act will specifically allow for the refusal or cancellation of a passport if an Australian is likely to engage in, is charged with or has been sentenced for a specified serious crime. From my point of view, I am a bit surprised that we do not have that provision already.
Crimes that will experience the harshest levels of penalty will be those relating to drug trafficking, child sex tourism, sexual slavery, people smuggling and terrorism. The fact that we can find those under investigation for child sex tourism up in Cambodia et cetera is a major concern. So that is appropriate and long overdue, it would seem to me. There are increased and strengthened penalties for fraudsters and new controls for persons identified as being reckless or abusive in regard to the protection of passports. As I understand it, there are a number of people who go through multiple passports. They supposedly lose several in a year. Of course, considering the worth of passports on the black market—

Mr Slipper—They flog them off, do they?

Mr Baird—The legislation does not actually outline what happens to them. We presume they might. What the legislation does is go after those who are consistently losing them. We are all subject to having them lost or stolen, but it reaches a point where you have to say, ‘Hello, what is happening here?’ The legislation goes to that and introduces appropriate penalties, as it should if there is a possibility for abuse and where passports can fall in the hands of terrorists who can come into Australia on the basis that they appear to be Australian. Under the Australian Passports Bill 2004 penalties for violation of passport law will be increased from $5,000 or two years in jail to $110,000 or 10 years in jail, bringing those penalties into line with those for similar offences such as people-smuggling. It is part of integrating the legal system to ensure consistency of passport law with family, privacy and administrative legal principles.

This also specifically extends to conditions under which children may be granted passports and provisions within the court system for settling disputes between parents regarding children’s travel. As we know, that often becomes a hot issue. A child can suddenly disappear overseas although there was a requirement for the court to agree to the child travelling overseas where this was appropriate. The legislation maintains current arrangements relating to parents. However, it now ensures that, where conflict exists, judgments relating to travel will be made by the Family Court. I think that is the appropriate place. That will significantly strengthen current arrangements relating to a child travelling abroad and further limit the risk of child abduction. The fee structure also has changed. That is to insure the $100 million financial liability associated with the issuing of passports.

The legislation is welcome. There are significant changes to the 66-year-old act of 1938. The legislation provides new penalties for those who abuse the system. It provides protection for children travelling overseas through reference to the Family Court. It ensures the right of every Australian to hold a passport. It also provides for new biometric methods in order to make a more appropriate and accurate assessment of the identity of those coming into the country and also Australians travelling overseas. It is a welcome move and I congratulate those who have put together this legislation.

Mr Slipper (Fisher) (10.28 a.m.)—It is unfortunate that, when the election was called, the bills that had previously been passed by the House of Representatives lapsed. Therefore, it has been necessary to reintroduce the Australian Passports Bill 2004, the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004 currently before the chamber. They are largely similar to the bills that were passed prior to the election, with a number of fairly minor amendments which were outlined by the Minister for Foreign Affairs when he delivered his second reading speech in this place. It is
also important, of course, in view of the changed international environment, for all aspects of Australian law to be updated. As the honourable member for Cook mentioned, this bill will replace an act which is some 66 years old. It is important to make sure that, as a nation, we have an appropriate regime with respect to the issue of Australian passports.

The purpose of these bills is to introduce a modern legal structure to maintain access by Australian citizens to passports of the highest integrity which establish the identity and citizenship of the bearer; ensure that the passport system complements national security, border protection, law enforcement measures and international law enforcement cooperation; and ensure consistency with family law, privacy and administrative laws and principles.

The 1938 act has served Australia well over many years, but it really is important to recognise that the world of 2004 is quite a different place from the world of 1938. Some would say it is not necessarily a better place, but it certainly is a different place. The international environment and the challenges confronting the Australian government have changed over the years.

The new elements of Australian passport law and policy which will be introduced in the Australian Passports Bill 2004 are: a clear statement of the entitlement of an Australian to a passport; an increase in penalties for passport fraud from two years imprisonment or $5,000 to 10 years imprisonment, $110,000 or both; a framework for the use of technology such as facial biometrics for e-passports; an improved mechanism for the refusal or cancellation of a passport on law enforcement grounds or if a person is likely to engage in harmful conduct; measures to minimise the problems caused by lost and stolen passports; exceptions to the requirement, or either both parents’ consent or a court order for children to travel internationally, which will make clear that disputes between parents should be dealt with by the courts; and privacy related measures which include a transparent mechanism to obtain information to verify identity and citizenship and to regulate disclosure of that information for other limited purposes.

The member for Cook in his contribution pointed out that children will be protected. One of the aspects of the bill that I find particularly significant and worthy of support is the improved ability for the refusal and cancellation of passports of Australian citizens issued by the government in cases involving specified serious crimes. As the minister mentioned in his speech, these crimes will include child sex tourism, child abduction, child pornography, sexual slavery, drug trafficking, people-smuggling and terrorism. He pointed out that the improved mechanism can operate in a number of circumstances, including where a person has been convicted and sentenced for a serious crime or charged with a serious crime and where a person is suspected of being likely to engage in a serious crime. In each case there must be a balance between the community good and the rights of the individual. The bills endeavour to strike that balance appropriately, and it is my considered view that the government has that balance right.

The Australian Passports (Application Fees) Bill 2004 will establish a simpler structure to deal with changes in the costs and validity of passports. A simpler structure will enable the government to respond rapidly to demands by Australian travellers for different types of travel related documents. It is interesting that one million Australian passports are issued every year and that 40 per cent of Australians hold a passport—and I suspect that many in the community would not be aware of this. We look at the statistics of people coming to Australia as tourists
and we look at the number of Australians who go abroad for various purposes but I do not believe that most of us appreciate that 40 per cent of Australians have a passport and one million passports are issued annually. Passport services cost $100 million annually.

The changes to the bill that was previously passed by the House of Representatives in the bill currently before the chamber are: an amendment to the biometrics enabling provision, to respond to a request by the opposition—the government has been prepared to cooperate with the opposition in this particular matter—for a clarification of the administrative cancellation arrangements relating to replacement passports; changes to the privacy provisions relating to requesting information from the private sector and providing it for national security purposes; and the removal of the notice of decisions provision which overlaps with the Administrative Appeals Tribunal Act 1975.

These changes are particularly important. The government supports this legislation, and I am pleased that the legislation appears to have strong backing from both sides of the chamber. There are, as often occurs with legislation, a number of minor technical amendments. It is always important to dot the i’s and cross the t’s, but this legislation is important. It does substantially update the Australian Passports Act 1938. The legislation currently before the chamber does correctly strike the balance between individual rights and desirable community outcomes, and I am particularly pleased to be able to commend these three bills to the chamber.

I was given a signal by the clerk. I thought that meant that I was supposed to conclude my speech, so I was naturally prepared, in the spirit of cooperation that occasionally pervades this place, to wind up, but what she actually wanted me to do was to get worked up and keep talking, because presumably we are waiting for the next speaker. We were advised that speeches in the parliament today, being the second-last day before the Christmas recess, ought to be of a 10-minute duration rather than a 20-minute duration, and that was the basis on which I limited my contribution to debate on these three bills—the Australian Passports Bill 2004, the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004.

It would be of substantial benefit if some indication could be given as to when the next speaker is going to arrive in the chamber, but I am prepared in the meantime to reiterate that this is a very important series of bills. The world in 2004 has changed substantially from 1938, and I think it is a credit to both the government and the parliament that these bills are being debated as priority bills in the first couple of weeks after the re-election of the Howard government. It is important, with so much legislation awaiting passage by the parliament, to make sure that bills of high priority, such as the bills currently before the chamber, are passed so that the very many benefits which will flow to the community as a result of the passage of these bills are able to be passed on.

Whenever you have changes of this substantial nature, it is important to consult widely in the community, to ensure that members of the community are aware of what the bills seek to achieve and to ensure that we do have desirable community outcomes. The three bills we are debating today—the Australian Passports Bill 2004, the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004—have the support of the community and the parliament. Now that the Parliamentary Secretary for Foreign Affairs and Trade has joined us, I am more than happy to once again formally
commend these three bills to the chamber. I invite the parliamentary secretary to sum up the bills, and hopefully the compelling words and pearls of wisdom he is about to utter and cast forth and will not dissuade the opposition from their predetermined position, which is at this stage to support the bill.

Mr BILLSON (Dunkley—Parliamentary Secretary (Foreign Affairs and Trade)) (10.38 a.m.)—I am delighted to sum up the debate on the Australian Passports Bill 2004, the Australian Passports (Application Fees) Bill 2004 and the Australian Passports (Transitionals and Consequentials) Bill 2004, which, as previously mentioned by members, were debated in the House prior to parliament being prorogued. I particularly thank the member for Fisher for his insightful remarks that enabled a sporting-injured me to get here a little slower than usual. I also thank the member for Griffith and the member for Cook. The member for Cook is a great advocate of the tourism industry. Each year Australians undertake four million journeys to overseas destinations, and the member for Cook recognises that that and the inbound tourism market are very important for our country, economy and people. For our people travelling overseas, a crucial precondition is that they have a passport—one that is valued, respected and well received by their destination countries. Part of what we are talking about today is establishing stronger passport laws and making sure that our travel document, long regarded as world’s best practice, continues to be so.

The member for Griffith and I had a good conversation about this last time when we were talking about the security features of our system and the very small number of passports that end up going astray, given that one million a year are distributed. Last time we debated just how big an issue that was. One passport going astray is one too many, but the good thing about our particular passport is that the inbuilt features and security provisions that are part of the document itself, and the capacity to readily cancel and therefore render useless a passport that may have fallen out of the hands of the person for whom it has been issued, make it a very important part of our overall program of security for our country in delivering security of identity and making sure that our travel document is respected and well received around the world.

As we have discussed, these bills replace the Passports Act 1938. The package of legislation was passed in the House of Representatives on 4 August but lapsed when parliament was prorogued. Clearly the key objectives of establishing tougher passport laws are to meet the market, meet the expectations of destination countries, and ensure that in these times, when identity fraud is an issue, we have as secure, as credible and as functional a document as possible so that when an Australian turns up at an overseas destination they can put forward a world-class travel document that is recognised for its credibility, its security and its identity features. That is what this bill is seeking to facilitate: ongoing development of our passport system to make sure that it remains at the leading edge and in fact is a model for other documents in other countries. I will talk about that a bit more later.

The laws themselves will ensure that Australian travellers are protected by a system that ensures that the passport document they have is tough, secure, fair and credible in the eyes of people overseas. The key part of that is making sure that the way in which they are issued emphasises identity security. These reforms before the parliament increase penalties for passport fraud to 10 years imprisonment or a $110,000 fine from the current two years or $5,000 fine. The measures are aimed at minimising problems caused by lost or stolen passports, and
some of that has been ably discussed and canvassed in the second reading speech by the minister and touched on by some of the other speakers. It also clarifies powers to refuse or cancel a passport if a person is likely to engage in or is charged with or sentenced for a serious crime. A range of those crimes are reflected in the legislation, including child sex tourism, child abduction, child pornography, drug trafficking, people-smuggling, sexual slavery and terrorism. It also provides a platform for embedding emerging technologies such as facial biometrics to combat identity fraud.

There are a couple of changes to the original bill that was passed through the House of Representatives. Those amendments pick up the Labor Party’s valid concern—not something that is currently an issue but that may emerge in the future—to ensure that if information is collected, particularly around biometric technology, for the purposes of issuing a passport and of identity recognition for travel then that is the application to which it is put. There are some provisions that have been introduced there to ensure that personal information, if it is collected for that purpose, is used for that purpose and not used for other ideas. That has been constructive input from the opposition and we welcome that input. As I undertook to do when we last debated that point, we have embraced that proposition and have included appropriate amendments.

The reintroduced bill also clarifies and codifies the practice when an unexpired passport may be cancelled and particularly when this is provided for at a time when an application has been lodged for a fresh passport. That has been ongoing practice and is uncontroversial, but we are just making sure that the legislative regime reflects that ongoing uncontroversial practice.

A couple of other provisions relate to privacy. They are aimed basically at simplifying and clarifying this legislation so that it sits comfortably within the broader privacy legislation that operates within the federal jurisdiction. The 1938 Passports Act includes some administrative issues that allow for appeal processes; they are provided within the act itself specifically for passport decision making. Now we have a broader Administrative Appeals Tribunal framework. Rather than replicating or seeking to mirror that framework by trying to put some separate regime forward and thereby leaving open the possibility of some contradiction or conflict, which is not the intention, this legislation refers to that workhorse piece of administrative appeal framework. We have simply pulled those provisions out of this legislation and let the Administrative Appeals Tribunal framework operate as it does for other forms of administrative decision making.

A similar concept applies to privacy. The view taken, on reflection and after discussion last time this package of bills was brought before the House, was again not to try and replicate or repeat provisions relating to privacy, such as the provision of information to security organisations or the opportunity and requirement to check and validate claims with other agencies—that is, if someone says they have a bank account with a certain bank and there is a need to verify that, that is a legitimate process. Again those things are provided for within the broader privacy framework. Given that is so specifically covered in the Privacy Act, it is not necessary to cover it again in this package of legislation.

Basically, that is what is in the legislation. It should reinforce to Australian travellers the importance of the passport system. Over one million passports were issued last financial year. On average, each passport is issued within the 10-day period, which is our goal as set out in
the Department of Foreign Affairs and Trade’s service charter as it relates to passport activities. Twelve million Australians hold or have held an Australian passport. So there are a large number of these out there, and that is why it is absolutely fundamental to make sure that this principal tool of identity verification is valid, sound and secure. These are the goals that are being pursued through this legislation.

As for passport services themselves, Mr Deputy Speaker Scott, some citizens from up your way—as a recent example—were a little frustrated with the process one needs to go through to obtain a passport. Occasionally some concerns of that kind are referred to me. The issue is one of a balancing act. These are fundamentally significant security documents and therefore, because they are of such importance, one cannot be reckless or lax in issuing them. Having said that, though, there is a need to try and meet customer expectation. So in addition to the nine passport offices around Australia, most of which are in the capital cities, there are 1,700 agencies throughout the country and about 100 other places overseas where you can get a passport. Those 1,700 agencies within Australia are Australia Post outlets, where we try to make passport processing convenient, notwithstanding the important requirements that need to be met.

People look at some of those requirements and get a little frustrated—‘Why does it matter that the photo is a certain size?’ Let me assure the Australian public that these requirements are not there just to irritate people; they are there because they are fundamentally important. If those photographs are not of the right size and, therefore, are not an appropriate basis on which to validate someone’s identity overseas and if they do not sit neatly alongside biometrical information, then we have a problem. If those biometrical data sets do not match up to the photo or there is too much manipulation of a photograph to make them match up, then again we are undermining that identity verification process and that will lead to confusion.

Where will that confusion play out? That confusion will not play out in Australia; it will play out at an overseas entry point. The last thing Australians want when travelling to another country is to be frustrated or greatly inconvenienced because their travel document—provided by our government in support of them as Australian citizens and as the issuing authority—does not meet the market requirements in overseas countries. It that occurs, the grief is going to be experienced by the travelling Australian. That is not our goal. We are trying to make sure that those many journeys undertaken by Australians each year are as hassle free as they can be. Crucial to that is a passport or travel document that withstands, respects and upholds the requirements of destination countries.

So I say to people who get a little bit frustrated that they need to fill out paperwork with a pen of a particular colour, again, that is done to make sure that the computer reading of that data is as simple and hassle free as it can be. We do not want to have people applying for a passport, waiting for a couple of days and then having the application sent back because it has not been able to be read by the technology. No-one wants that, so we try to make it as simple, straightforward and hassle free as it can be, notwithstanding the million passports, for instance, that were issued in the last financial year.

In closing, it is important to emphasise that Australia is a world leader in its passport documents, and other countries around the world look to us for guidance on world-class passports. That is something we should be pleased about. We are also at the leading edge of new passport technologies. The trials of biometrics involve Australia. A lot of the insights gained
about the international specifications come from our people. So we should be quite pleased that Australia is at the leading edge of these new developments. Again, that is important so that when Australians travel it is as convenient as it can be and we are minimising the hassles and the frustrations of our travellers when they get to overseas destinations. The department has been conducting e-passport and biometric research and development since 2001. The M series of passports issued in December 2003 contained patented security features, notably the jumping kangaroo that is in the laminate. If you mess with the laminate you will mess with the fabric of the passport and it is destroyed. So there is another security feature that has been recognised internationally. Our database, the passport issue and control system database, which has been in operation for 20 years, efficiently and securely holds Australian passport records. A look at the Australian passport system beyond the document to the systems that are in place illustrates why we need to maintain a modern and legal environment for the issuing of passports. That is what these bills seeks to achieve.

More Australians than ever are travelling overseas. A world-class travel document helps to make that journey convenient and simple, particularly when people arrive at their destination countries. They will not have people like your good self, Mr Deputy Speaker Scott, the Deputy Leader of the Opposition or me as local advocates to help solve problems so we try to make sure that when people arrive at their overseas destinations their travel documents are in as good a shape as they can be. That is what we aim to achieve with the passports reform. Most countries are tightening up their entry requirements since the events in September 2001 and the things that have followed, and therefore passports are subject to even greater scrutiny than ever before, and that is why we need to have a world-class system. There are international standards relating to the size of the photographs and their compatibility with biometric information. As I mentioned earlier, we are at the leading edge of that work as well.

Identity related crime is a big issue and that is a reason why we need to make sure that passport holders and their identities are protected, and that is what this framework aims to deliver. We need to ensure that the application process in the lead-up to the issuing of the passport is as secure as the passport itself. We have a few passports that go astray. About 500 went astray out of a million in the last financial year. Okay, that is 500 too many, but we are continuing to look at those systems. About 50 go astray in the mail each quarter, but let us think about the alternatives; do we not post them out by registered mail because some do go astray, and therefore force citizens from your community, Mr Deputy Speaker Scott, to go on trips to Brisbane to pick up passports? So we are always trying to find a balance between as secure a system as we can have and unnecessarily inconveniencing the people that we are trying to assist.

The bills here contain measures that address many of these contemporary demands. It is a good package of enhancements on an already world-class system. I congratulate the passports team in the Department of Foreign Affairs and Trade. They are not only leading the way here but they are also providing an excellent example for authorities overseas. I commend the bills to the House.

Question agreed to.

Bill read a second time.

Message from the Governor-General recommending appropriation announced.

MAIN COMMITTEE
Ordered that the bill be reported to the House without amendment.

AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004
Second Reading
Debate resumed from 2 December, on motion by Mr Downer:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.
Ordered that the bill be reported to the House without amendment.

AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004
Second Reading
Debate resumed from 2 December, on motion by Mr Downer:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.
Ordered that the bill be reported to the House without amendment.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 3) 2004
Second Reading
Debate resumed from 17 November, on motion by Dr Nelson:
That this bill be now read a second time.

Ms MACKLIN (Jagajaga) (10.56 a.m.)—It is astounding what a difference being on the other side of an election makes. Only last year we had the Minister for Education, Science and Training implementing changes to Australian universities, including fee deregulation and massive fee hikes for students and their families. At the same time we had him declaring that his changes were going to bring a new era for Australian universities. The minister had been travelling the length and breadth of the country, telling Australians that our universities were not performing. His favourite expression at the time was that Australian universities were ‘on a crash course with mediocrity’. Sometimes there were a few variations. Sometimes the universities were following ‘a recipe for mediocrity’ or ‘a prescription for mediocrity’, but the message was always the same, and we heard it over and over again. Back in June 2002 the minister said:
A one-size funding model ... is a prescription for mediocrity.
Just the next month he said:
It’s a prescription, in a sense, for mediocrity ...
In the parliament a few months later he went on again:
If we do not undertake change now, this sector will be on a collision course with mediocrity.
In a media statement in July 2003 he was still at it, saying:
Australian universities risk sinking into a quicksand of mediocrity.
After that, he firmed up on his language. Month after month our universities were just ‘on a collision course with mediocrity’—and that continued right through until the legislation was in the Senate. The minister was saying then:

... if these reforms are not passed within five years, certainly within seven, Australian higher education will start to suffer the accusation of mediocrity.

In a speech in November he was at it again:

This may sound grim but the stark reality is that our universities are on a collision course with mediocrity.

A few days later at a press conference, the minister said:

... if we don’t adopt the best practices for the way we run universities then unfortunately they’re on a collision course with mediocrity.

I am sure you are beginning to get the picture. Our universities were going to crash headlong into a wall of mediocrity and this education minister was determined to fix that. Never mind the world-class teaching and research that many Australian universities undertake as a result of the hard work and international recognition of Australian university staff and students. Never mind all the fabulous work that those people do; this minister was hell-bent on spending his time talking down our universities, humiliating the people who work and study in them.

One of his favourite strategies, and we have seen this over and over again in the parliament over the last three years, is to play the politics of envy and division. Time and again we have had to listen to the minister talking down the aspirations of our young people, telling us how the labourers and the metal workers do not get any benefits from universities, even though they contribute to their financial support. The minister says that the children of labourers and metal workers do not belong in universities, that they belong in a ‘quiet pond’ and that they should resent students from overseas who pay full fees to go to university in Australia. He has been trying his hardest to ignite resentment towards people who value education.

After all this minister’s rubbishing of universities over the last few years, it was no surprise, when the university legislation finally went through the Senate, to find the education minister trumpeting the changes and heralding them as the saviour of Australian higher education. Here is a sample of some of the things he had to say:

Today is a historic day for higher education, and it is also an extremely important milestone in the economic and social development of our country.

In case there was any doubt, the minister was also crystal clear that the risk of crashing into the wall of mediocrity could now be averted. He also said:

Australia’s universities are in desperate need of reform. They are on a collision course with mediocrity.

It was back again. He continued:

The Government’s Backing Australia’s Future package provides the solution.

But of course this was all before the election, when the minister thought that he could convince Australians that slugging them with higher fees and limiting HECS places was a good thing, but the minister and the government discovered that massive fee hikes had all the electoral appeal of a dead cat. So the coalition’s campaign headquarters figured it out. It became very clear very early in the election campaign that the minister had instructions to keep his head down. The coalition wanted to avoid talking about higher education at all costs. The
minister certainly seemed to be an unwelcome liability in the coalition’s campaign. Higher education in fact was glaringly absent from any of the coalition’s campaign materials, and I must say that sighting the minister on the hustings on higher education was a very rare event. Whenever I did see him, he wanted to talk about anything other than higher education.

The coalition did not release a higher education policy during the election campaign. That is how much they wanted to avoid talking about the issue of universities. It seemed that the government had decided that they had done their damage to our universities and now they were going to go to great lengths to avoid reminding voters of just how destructive their handiwork was.

Of course, now we are on the other side of the election and things are different. Very shortly after the election the minister was—to his mind, I think—still stuck in a portfolio that he was trying to escape and he had lost responsibility for most of the election commitments to a new junior minister. So he was looking for a few things to say. Not four weeks after the election—remember we had not had any higher education policy in the election campaign—the minister had some big announcements to make. What were they about, do you think? They were about universities. There was no mention of this during the election campaign, but apparently four weeks after the election the minister again discovered that our universities were in big trouble, were not performing and were at great risk of—what do you think it might be, Mr Deputy Speaker?—crashing into a wall of mediocrity, yet again. He told the Courier-Mail on 2 November:

It is a prescription for mediocrity to have the Queensland Government, for example, having the enabling legislation and administrative arrangements for universities, whereas the Australian Government is the primary funder and policy driver.

In the Age on the same day, he was quoted as saying:

… it is a prescription of long-term mediocrity to have one tier of government responsible for their enabling legislation, and another primarily responsible for policy and funding.

Apparently the minister had not delivered our universities from disaster after all. After all that huffing and puffing, our universities are still facing long-term mediocrity unless this minister comes to their salvation. So, in yet another blaze of originality, the minister was claiming that a looming crash into the wall of mediocrity was back on the table and, by Jove, once again he was determined to do something about it. The minister has put a number of very radical changes on the table—not changes we heard about in the election campaign but changes he has decided on since then: federal government control over universities, cuts to research funding, coercive industrial relations conditions and an end to automatic membership of student organisations, and so it goes on.

Not four weeks since the election campaign—when the coalition had not released a single higher education policy—the minister was threatening to push through radical university changes to advance his agenda to save universities from the damaging wall of mediocrity. One thing is for sure: this is early evidence that this government is going to arrogantly misuse its Senate majority to once again hurt Australian families and the economy. Not a word was said to the Australian people during the election campaign, and yet within weeks of that election the minister has said that he will be pushing through changes—and to heck with what the public or anybody else has to say.

MAIN COMMITTEE
Here we are again with yet another bill to amend the flawed legislation passed through the Senate just over a year ago. The Higher Education Legislation Amendment Bill (No. 3) 2004 was previously introduced in a slightly different form prior to the election. We are pleased to see it reintroduced in this modified form and, as a consequence, we will be supporting the bill. The bill is essentially technical. It is the third round of amendments that has been required to fix some of the more immediate problems flowing from the fundamentally flawed Higher Education Support Act that went through just over a year ago. The changes in this bill include clarifying the status of students enrolled on a cross-institutional basis, clarifying the access of Open Learning Australia students to loans under FEE-HELP and giving students studying at an overseas campus of an Australian university access to OS-HELP loans.

A number of universities have made representations requesting that the portion of this bill dealing with summer schools be passed urgently to allow its operation over the next three months. I hope the government will give this priority today and tomorrow to make sure this gets through so that students can get the benefits from it. This portion of the bill will allow universities to continue to offer summer schools on a full-fee basis for HECS students seeking to catch up units or accelerate their degree. This is the arrangement that has operated for a number of years. I am happy to inform universities that we will do everything we possibly can to ensure speedy passage of these measures.

The bill also includes two other funding measures. Firstly, it includes $1.6 million for radiation oncology places at the University of Newcastle and RMIT in 2005 and 2006, funding which was previously provided through the Department of Health and Ageing. Secondly, the bill legislates funding for the 2007-08 financial year through changes to the Australian Research Council Act 2001.

But by far the most noteworthy aspect of this bill is not what it includes but what it omits. As I indicated earlier, this bill is almost identical to the bill of the same title introduced in the last sitting fortnight before the election was called. But it does differ in one important respect. The clause proposing the inclusion of Melbourne University Private Ltd as a table B provider in the act, which would give it direct access to public funding, has been omitted. We welcome the government’s decision to remove this clause and to allow the non-controversial elements discussed earlier to pass without impediment. However, I would have to say I am still unclear as to the thinking behind the minister’s decision, as he has not elaborated his rationale or his future plans in relation to Melbourne University Private. We look forward to an explanation.

The decision to omit this clause is a good lesson in the value of the Senate and its inquiries. Within a month of the introduction of the initial bill, in August, the Senate referred the bill to a committee, received submissions, held public hearings and presented a thorough and important report to the parliament. The inquiry and subsequent report raised very serious concerns about this clause of the original bill which must be substantially addressed before this issue is reconsidered. This process is indicative of the valuable role the Senate provides to the legislative process and it is certainly an important way that we can ensure the executive justifies its actions and continues to be held to account. So it would be useful if the minister could make clear the government’s intentions about the omitted clause.

If the government have listened to the concerns of the Senate inquiry then they certainly are to be commended. However, if it is the case that the government are simply leaving this proposal in the bottom drawer until after July next year—when they can avoid public scrutiny...
and do as they please without justifying their actions—that would be even more evidence of
the arrogance of this government in doing whatever they want, whenever they want, without
justifying themselves to anyone.

The minister’s position on this issue has implications for the government’s broader plans
for universities, including one of the latest suggestions from the minister about the possibility
of teaching-only universities. Now that the government have been re-elected without any
higher education policy or any real purpose in this area, the minister is again looking at in-
flicting some of the policies the government had dropped in the last parliament. We have from
this minister proposals that the government are once again going to reignite: heavy-handed
industrial relations changes in universities and reintroducing voluntary student unionism. An-
other proposal the minister is looking at, which he ruled out in the last parliament, is teaching-
only universities. You have to ask: when on earth is it going to stop? The minister says one
thing before the election and something else afterwards.

There is no doubt that abolishing universal membership of student organisations will mean
the closure of essential services that support students. Hundreds of jobs will be lost and, in
some ways probably more important than anything else, we will see the death of campus life.
The coercive industrial relations conditions the government want to impose on universities
have absolutely nothing to do with universities’ core functions of teaching and research. They
are yet another example of this government’s transparently ideological agenda and, according
to the universities, they comprise untenable forms of micromanagement.

Unfortunately, when the government gets its majority in the Senate in July next year, it will
only be a matter of time before we see HECS fees go up again, and I think it is more than
likely that we will also get more full fee $100,000 degrees. It is just like Groundhog Day.
Once again we have the minister’s road map to mediocrity, and once again we have his straw
man mantra of diversity. Let us get it absolutely straight: we all support a diverse university
system where we have different universities focusing on their research and teaching strengths
in their areas of excellence. But what the minister neglects to mention in his doom and gloom
prophecies is the success of our universities in achieving this.

Labor is opposed, however, to diversity being used as an excuse to justify a steeply hierar-
chical system in which the quality of education you receive is determined by the amount of
money you pay. This will be the outcome of deregulating fees: the greater the price differen-
tial, the greater the disparity in resources and the greater the gap in quality. The Minister for
Education, Science and Training has used the mantra of diversity before in order to obscure
his true intentions. This is what he told us last year about why it was important to deregulate
fees. It was, he said:

... not because some universities will get extra money for teaching and supporting students by increas-
ing HECS charges in some courses but because it goes to the heart of quality and differentiation.

He also told us, quite extraordinarily, that deregulation did not mean and would not mean
huge HECS hikes. He said in the parliament:

... the HECS charge for most courses in most universities will not change at all.

How wrong he was! Of course, it is the case that deregulating fees has not led to differentia-
tion. It has not contributed to diversity. In fact, what has happened is that most universities
have hiked up their HECS fees for next year. Many of the remainder are likely to follow suit
now that the election has passed and universities have been denied the extra funding that Labor was offering.

Another area that the minister has come upon since the election—it also did not get any mention during the election campaign—is amending the national protocols that exist to define our universities. He is talking about creating teaching-only universities. He seems to suggest that somehow these changes will increase quality. By contrast, we take the view that Australians are fortunate indeed that the good reputation of our university system means that our qualifications are actually held in the highest regard around the world. A very important reason for the integrity of our qualifications is that we have protected the name ‘university’ and ensured that it has real meaning. We do not suffer from the problem that some other countries have where members of the public are unsure as to what a real university is and what it is not.

The national protocols were a very important breakthrough in cooperation between all Australian governments in defending the good reputation of our universities. The minister himself said some pretty similar things in the parliament just two years ago. He said:

The National Protocols for Higher Education Approval Processes were agreed to in 2000 by the states, the mainland territories and the Commonwealth. The protocols were designed to ensure consistent criteria and standards across Australia in the field of higher education accreditation.

The next bit is the important bit. This is the minister saying this. He says:

These national arrangements for accreditation give confidence to students, parents, employers and governments that the quality of Australian higher education is being assured.

I agree.

**The DEPUTY SPEAKER (Mr Lindsay)**—Member for Jagajaga, if I could kindly suggest it, I do not think I have heard any reference to the bill in the last 20 minutes and there is a standing order in relation to that. Can I gently remind you of that.

**Ms MACKLIN**—The bill is about the funding of universities and these issues go to the heart of what will or will not be defined as a university. The minister’s comments since the election seem to contradict what he had to say in the parliament in 2002. He now seems to be determined to undermine this commitment to quality assurance in higher education in Australia. His suggestion that teaching and research be separated has not been welcomed by senior academics. Professor Di Yerbury, writing in the *Australian Financial Review*, said:

... the Guthrie report ... backed the Australian Vice-Chancellors Committee’s position that the approach of all universities to learning should be embedded in the fundamental interrelationships between teaching and learning, research and scholarship and outreach.

She went on to note:

... the ‘research and teaching’ university model serves the nation well—and, given proper funding, will continue to do so.

Let us not forget that the minister himself held this view not so long ago. During the review of higher education he categorically ruled out the creation of teaching-only universities. But, once again, of course, that was before the election. Now we have a government planning to do what it always wanted to do but did not want to talk about before the election.

I remind the House what the minister said in the foreword to one of his discussion papers in 2002. He said:

**MAIN COMMITTEE**
A recreation of the binary model of ‘research’ and ‘teaching’ institutions is not a realistic option. Nor is it desirable.

Later in 2002, he said:

… Australia would not be returning to a two-tier university system with some becoming ‘teaching only’.

It certainly is ironic that a minister who is claiming that there is too much focus on universities to the exclusion of other forms of education, is now arguing that more and more providers should be able to call themselves ‘universities’. This minister clearly needs to make up his mind.

It is also worth considering the impact that the minister’s proposals would have on our research effort. Just this morning, there was an article in the higher education supplement in the Australian quoting Professor Simon Marginson, in which he was warning of the damage which the introduction of teaching-only universities would have on the research effort. He stated:

Nations with many teaching-only institutions and a large private sector tend to have a weaker than expected research capacity. This group might include Australia in the future.

That would be a very sad day indeed. Of course, there may always be room for improvement to university protocols, but the minister has not gone close to demonstrating a problem that should be fixed, much less how exactly he would propose to fix it.

In the absence of this justification, it looks like we have once again got a government that is seeking a way to avoid the problem of 20,000 qualified Australians who are missing out on a university place every year just because this government will not provide the funding for those extra places. It looks like an attempt to shuffle the deckchairs on the Titanic by renaming more providers ‘universities’. That would, according to this government, make the problem disappear. Unfortunately, it would be disappearing because of this minister’s sophistry, not because we would be expanding the university system.

Ms GEORGE (Throsby) (11.22 a.m.)—I am pleased to be able to contribute to this debate on the Higher Education Legislation Amendment Bill (No. 3) 2004, and I certainly concur with the comments made by the member for Jagajaga. Wherever I went during the course of the election campaign, I did not hear too much mention of this government’s and this minister’s so-called reform agenda in the area of higher education. I did not actually hear any government member say, ‘Please vote for our party—the party that is going to slug you further and make sure that families and students bear an ever-increasing financial burden to get through the front door of a university.’ I did not hear any of that. So much for honesty on the other side of the chamber. Somehow, the higher education policies just slipped under the radar.

What we have got today is another patch-up job to a very unfair universities package. In the course of the last year or so, the opposition members have, in a very analytical way, gone through the proposals that have been pursued by the minister on behalf of the government and pointed out the detrimental effects that they would have on this sector. Wisely enough, the bill that is before us today—the third attempt at a patch-up—does not contain the previous controversial proposal, which would have added Melbourne University Private as a university eligible to receive public funding. You can see what is going to happen in this sector. The
funding arrangement in the schools sector, which has propelled the growth of non-government schools and the drift to them, is going to be the model in years to come for the higher education sector and the changes that the minister wants to introduce.

As the member for Jagajaga has indicated, the bill before us today has our support. But I think it is important that we reassert our fundamental difference with the government’s approach to this very important sector. I do not think we have any reason to resile from expressing very forcefully those differences in philosophy. We will keep pointing out these differences to the community. I think the community clearly understood the contrasting positions of both major parties. It boils down to a simple proposition. This government and this minister—as we have seen often in the contributions he makes in the House—see the benefits of university education as primarily conferring a private benefit. That mistaken view has propelled the government into rationalising an even greater shift of the financial burden onto individual students and their families. But none of that was said during the course of the campaign. They should have ‘fessed up and said: ‘Please vote for us. If you are struggling families whose students aspire to get a university education, vote for us. You can be assured that we will make it harder for you to gain access.’

Why didn’t the government tell the community the true history of their record in higher education over the past several years? Why did the minister not tell the community that the Howard government had cut $5 billion in public investment from Australian universities? Why did the minister and members of the government not tell the community that there are insufficient HECS funded places—so that each year we are turning away about 20,000 eligible students? Why did this government not tell the community that the debt burden on students has nearly doubled? The average HECS fee has nearly doubled since 1996, resulting in student debt increasing from $4 billion to $10 billion. Why did government members not say to the community: ‘Please vote for us, because by doing so you will see your local university increase HECS fees by a further 25 per cent’? Why did the government not tell the community that, under their watch, students with lower marks are able to buy a place ahead of better qualified students if they or their parents have the means to pay full fees of $100,000 or more?

The truth of these changes was not put to the community. So here we are today giving legislative effect to a package which has disastrous outcomes for many of the people in our community. Why did the Prime Minister not reassert the statement he made in 1999 when he said in this parliament:

There will be no $100,000 university fees under this government.

I did not hear that repeated by the Prime Minister during the course of the election campaign. But in August the Minister for Education, Science and Training had a very memorable interview—which I am sure he wishes he had never conducted—with Jon Faine of the ABC in Melbourne. In that interview, the minister conceded:

We have got about 16 of those courses that have fees of around $100,000 or more, needless to say veterinary science, dentistry and so on.

Faine, the interviewer, then asked: ‘Medicine?’ Dr Nelson replied:

Well Medicine not yet, but that’s coming in, and we know that Notre Dame will be about $125,000 and we have heard that Melbourne will be about $200,000.
So much for the Prime Minister’s assurances to this House and to the community that, under his watch, there would never be university fees in the order of $100,000. It just so happened that the minister for education let the cat out of the bag.

The community is not going to be fooled about these issues. That is why the election campaign was conducted with hardly a mention of these disastrous higher education policies. The government did not tell the truth to the Australian community about what it had done to dismantle this sector and it did not tell them what its real agenda for the future would be. Bruce Chapman, the architect of the HECS arrangements that were instituted by a Labor government, recently estimated that one in 10 Australian students will be paying fees as high as $210,000 by 2008.

Mr Gavan O’Connor—It is disgraceful.

Ms GEORGE—It is absolutely appalling. Bruce Chapman went on to say:

Unless you’ve got rich and generous parents, you are in trouble.

What an indictment of this government that, after all the years of talking about increasing educational opportunities and the importance of investing in human capital and education as a driver of future productivity in economic growth, we are now facing the situation in our country where some students are going to be hit by fees as high as $210,000 across a range of courses.

Labor make no pretence in saying that we find the situation totally appalling. Our approach to university education is totally different to the government’s in that we see the possibility of being educated at university not just as an issue of conferring private benefit; we see that a whole host of public benefits accrue from investment in the sector. It is a shared investment which has significant public as well as private and personal benefits. Central to our view is our desire—and it has always been such—to see a wider distribution of benefits through increasing opportunities for all potential students and ensuring that cost and financial means are not a barrier to access and participation. It is this issue of access and equity that I want to deal with in some detail today. I am extremely concerned about the government’s philosophy and direction in this sector and the impact this is having and will have on students from lower socioeconomic backgrounds in electorates such as mine. Some recent data and trends should certainly be ringing alarm bells for all of us.

I will say something about the global picture, which was not explained to the Australian community. Since 1996, under the watch of this government, student contributions to the cost of a degree have increased by over 85 per cent. Student fees and charges now make up nearly 40 per cent of the income of universities. When the government was first elected that contribution was 25 per cent. By comparison, Commonwealth funding—our public investment in our university institutions—has fallen from about 57 per cent when the government was first elected to 44 per cent, and the situation can only get worse under the proposals that the government has made.

Australian students and their families are already paying some of the highest study costs in the world. If you take $5 billion of public investment out of the sector and you continue to compound the financial problem through a totally inadequate indexation formula that applies to operating grants, it is no wonder that the country is left with a lack of adequate places at universities for students who qualify. In that scenario, it is no wonder that there is little option
for universities other than to increase fees and to keep expanding the number of full-fee paying places to make up for the government’s funding shortfall. The burden continues to shift onto students and their families.

You do not have to be a genius to understand that the impact of the shift of funding arrangements disproportionately affects those with the least capacity to pay. In a survey of 7,000 students in years 10 to 12 conducted by Richard James in April 2002, those concerns about the cost of university education were summarised in the following terms:

A significant proportion of students in the study indicated the anticipated cost of higher education is a genuine concern for them. Students from lower socioeconomic backgrounds were the most likely to report concerns about costs. They were more likely to believe the cost of university fees may stop them attending university and that their families probably could not afford the costs of supporting them at university. Well over one-third of lower socioeconomic background students indicated they would have to support themselves financially if they went to university.

In response to the statement, ‘The cost of university fees may stop me attending’, roughly four in 10 senior high school students from lower socioeconomic backgrounds replied in the affirmative.

Not only is the cost of university education an increasing barrier to access, but it is actually affecting the nature of courses that students from backgrounds like the ones I have described are undertaking. Figures released by the department show that the share of males from a low-SES background in the HECS band 3 courses—the most expensive ones—declined 38 per cent following the introduction of the differential HECS charges in 1997. Cost obviously matters, and it matters particularly to students from poorer backgrounds, many of whom live in my electorate. If you do not believe me, you need only to look at the figures that were released yesterday which show a drop of more than 2,000 applicants to attend university in New South Wales and the ACT this year as compared to last year. The government is only fooling itself if it believes that increasing HECS is not going to act as a significant deterrent to participation in further education.

As far as my own electorate is concerned, I was able to get some useful data in answer to questions on notice that I put on the Notice Paper last year to try and ascertain the impact of HECS debt in my electorate. The total amount of HECS debt in the electorate of Throsby in June 2003 stood at roughly $22 million, with 4,228 people in my electorate having that debt. As members would be well aware, many of these debtors are young people who have graduated from university and are trying to get a start in life and cope with an increasingly costly property market. The average debt was $5,203, and the two suburbs with the highest level of debt—of around $6,300—were listed in recent research conducted by Professor Vinson which identified the top 40 most disadvantaged postcodes in New South Wales.

Students in my electorate are also opting out of more expensive courses. In the whole of the electorate of Throsby, in 2002 only eight local students were enrolled in medicine and four in vet science, with the overwhelming majority enrolled in the far less costly arts courses. The increasing costs and financial burden imposed on students and their families help explain why my electorate has one of the lowest rates of university participation, with fewer than 3,000 students attending a university—roughly two per cent of the population of Throsby. So place and money do matter in terms of access and opportunity. Let me give you one small example. In the minister’s own seat of Bradfield, 43 per cent of people have tertiary qualifications,
compared to 9.7 per cent in Throsby. That makes the minister’s electorate the second highest on that score and mine the fifth from the bottom. It is a tragedy that in a country as rich as ours where you live and your socioeconomic background continue to be strong predictors of educational opportunity and outcome.

I want to refer members to a recent analysis of equity groups in higher education which was released by the department. It shows some really interesting trends. The current access rate for students under 25 from the low-socioeconomic group is 15.7 per cent of commencing students. While that rate has remained relatively stable, it is well below the 25 per cent population share for that group. Very alarmingly, the most recent 2004 percentage figure for students from that background is the lowest in the past eight years. The trend is downwards at both the national and local level. The figures from the University of Wollongong paint a very bleak picture. The access rate for students under 25 from the low-SES group has dropped from 11.5 per cent to 7.6 per cent over the past eight years, with the rate of participation at the University of Wollongong now about half the national average. Low-SES students are particularly underrepresented in the high-status areas of medicine, dentistry, law and economics.

I am pleased that the member for Gilmore is in the chamber as I make these comments, because she will know and appreciate, as I do, the wonderful efforts of the University of Wollongong. It is a top-rate institution with a really visionary vice-chancellor. I think the vice-chancellor at that university is acutely aware of and empathetic to the issues of access and equity. I am sure that these concerns were reflected in the decision of Wollongong university to not rush in to increase the HECS fees by 25 per cent when a lot of other institutions did—so too are the vice-chancellor’s strong views about the negative consequences of increasing full fee paying courses. Despite this, no institution operates in a vacuum. The University of Wollongong’s student pool is affected by the financial and political environment in which the university operates and the capacity of local students and their families to fund a university education.

I will pursue this issue further because I am very concerned about the downward trend in the representation of students from lower socioeconomic backgrounds at our institution, and I anticipate a sympathetic response. As I say, the vice-chancellor was acutely aware of the impact of rising costs on participation and was one of several who stood out and deliberately chose not to increase the fees by 25 per cent at the time. I guess in this current situation he has little option.

So, after almost a decade of effort, the equity performance in Australia has not improved and, in fact, the trends are in the negative. As a nation we could take a leaf out of the book of the British government in their commitment to allocate approximately five per cent of funding for universities for equity performance, compared to 0.5 per cent of Australian grants.

In conclusion: I am thankful that I have had the opportunity to raise these issues. I think they are issues of concern to all Australians. We need to do better as a nation to ensure that we do not return to the pre-Whitlam era, where university study was the preserve of the privileged and those with financial means.

Mr GAVAN O’CONNOR (Corio) (11.42 a.m.)—I rise to speak on the Higher Education Legislation Amendment Bill (No. 3) 2004. In doing so, I commend the thoughtful, informative and incisive contribution by the member for Throsby, who preceded me in this debate. Her record in this parliament in contributing to education debates is a substantial one and, as a
former educator, the member for Throsby has a complete understanding of the adverse im-
pacts of the Howard government’s policies on the access to a good education by the sons and
daughters of working people and the profound equity issues that are raised by the govern-
ment’s policy.

This bill will amend the Higher Education Support Act 2003 and, according to the explana-
tory memorandum, will vary the level of maximum grants under the Commonwealth Grants
Scheme to reflect the assumption of funding responsibility by the Department of Education,
Science and Training for radiation oncology places. It will extend access to assistance under
the OS-HELP scheme, which provides student loans for overseas study. It will enable higher
education providers to continue to operate summer schools as they have in the past. It will
also enable students who are enrolled on a cross-institutional basis to be Commonwealth sup-
ported students, and will make a number of other minor and technical amendments. The bill
also amends the Australian Research Council Act 2001 to adjust appropriations to reflect re-
vised forward estimates. It is this aspect of the bill that I would like to address in this debate.

Much has been written and spoken about Australia’s overall research and development ef-
fort, or lack of it, over the past decade. It is clear that, given Australia’s advanced state of in-
dustrial development and the increasing competition coming from similar countries and from
emerging industrial powers, our future economic survival will largely depend on our research
and development effort. It will depend on our capacity to innovate and it will depend on our
skill in bringing new products and processes to the marketplace to generate jobs and wealth
for all Australians.

There is a consensus that there are massive shortfalls in the first proposition and that we are
relatively good at the second and pretty poor at the third. Indeed, our persistent failure to build
the skill and infrastructure necessary for an effective bridge between the second and third
propositions has been referred to in the past as our economic Achilles heel. For Labor, Austra-
lia’s research and development effort is central to the maintenance of our existing standard of
living and to the creation of new skilled jobs for Australians in a whole range of occupations.

As shadow minister for agriculture and fisheries I am acutely aware of the importance of
Australia’s research and development effort to the maintenance of productivity growth that
the sector has enjoyed over the past 20 years and its sustainability into the future. Regrettably,
Australia’s overall performance in this area has lagged badly behind our industrialised com-
petitors in the OECD. However, much excellent research is funded by the taxpayers of Austra-
lia through institutions such as CSIRO, our universities, our state and federal government de-
partments and our rural research organisations.

In my electorate of Corio, which is based in Geelong, we are particularly well blessed with
key institutions undertaking important research, such as CSIRO’s textile division in Belmont,
which happens to be located in the electorate of the honourable member for Corangamite.
That facility is undertaking important research for the wool industry, and Animal Health Aus-
tralia in my electorate is in the front line of exotic pest and disease research in this country. In
addition to these two institutions we are very fortunate that Deakin University has expanded
its research effort. I note in its research report for 2003 that the number of its publications in
the national research collection have shown steady improvement and its external research in-
come now exceeds $20 million.
Given the importance of our universities in the overall research effort in Australia and the particular growth in Deakin University’s research expenditure and external research income, I was concerned to hear in recent discussions—only last week—with Professor Pip Hamilton, Deputy Vice-Chancellor of Research at Deakin University, that Deakin is currently being financially penalised for its better performance in the research area. While Deakin’s research effort is coming off a low base, it has shown considerable annual growth in recent years.

Following the government’s green and white paper process in 1999, the government moved its funding for research, currently at around $790 million per year through the universities, to a performance based system implemented through two basic schemes—the Institutional Grants Scheme, the IGS, and the Research Training Scheme, the RTS. Without going into the finer details of the administration of these schemes, particularly the placement of caps and later floors on the levels of research funding, the simple outcome of the government’s policy has been to protect some universities from their weak performance and penalise universities like Deakin for their good performance. In Deakin’s case it has been penalised to the tune of around $600,000 in 2002, $1.3 million in 2003, $2.1 million in 2004 and $1 million in 2005.

Here we have the rather stupid situation of a university effectively being penalised for implementing government policy. The government has taken great pains to encourage universities like Deakin to lift their research performance overall and to go into the marketplace to earn external research dollars—and I think that is an eminently reasonable policy for the government to pursue. Deakin University has done what the government has asked it to do. It has done the right thing by the community and by the taxpayers of Australia, and it is getting penalised for it. What bureaucratic genius comes up with a policy of performance based research grants and then proceeds to penalise those who take the policies seriously and perform?

The minister needs to address this anomaly now. The minister is a reasonable man and I am sure he is genuinely impressed with Deakin University’s performance in this very important area. So my challenge to him is to reward performance in accordance with the policy that he has announced, not penalise it. There is something structurally wrong with a policy that protects universities who do not take the government’s policies seriously enough or who do not perform but then goes and penalises the ones who do.

Deakin University is like every other university when it comes to funding: dollars are not easy to come by in the tertiary education sector. The bottom line is simply that performance has to be rewarded. Deakin University has ambitious plans for the refurbishment of its buildings and the expansion of its existing programs on offer. The university is currently seeking funds to complete the wool stores refurbishment at the Geelong waterfront campus, a process and a project that was begun by Labor when it was in office. Deakin University is now a very important part of that whole waterfront development. We have a heritage building that needs refurbishment. It is in an ideal location, and Deakin University is seeking appropriate partnerships to complete the task.

When it is completed, it will greatly expand the educational opportunities for students in the Geelong community and it will also add to the cultural, social and economic life of inner Geelong. At the same time, it will complete the restoration of one of Geelong’s great heritage buildings on the waterfront. I invite you, Mr Deputy Speaker, when you are on your travels, to come to Geelong, in my electorate. I know you enjoy good wine and good scenery and you have a deep interest in cultural and heritage matters, and we would be delighted to host you.
The DEPUTY SPEAKER (Mr Hatton)—Member for Corio, I will take you up on that.

Mr GAVAN O’CONNOR—I am pleased at such an instant response. While you are in the electorate, Mr Deputy Speaker, you will be able to see how important that Deakin wool stores redevelopment is not only to Deakin University but to Geelong.

It is important that the funding anomaly I have referred to is addressed sooner rather than later by the government. If the university is to keep its staff focused on growing the university’s research base then it must provide incentives for them to engage in this task. That is the fundamental principle underpinning the performance based funding and it is one I would have thought the government would have an understanding of and would appreciate. As it has been explained to me, this funding scheme has real structural weaknesses, with too much lag in the system and a disconnection between funding and actual performance.

I have raised this matter in this debate because this bill does relate to research funding of universities, and I have raised it in the genuine spirit of attempting to get this funding to do what it is supposed to do—reward university researchers at Deakin and their administration, which has provided a strategic focus for their efforts and has produced a framework which has produced good performance. It is my view that that good performance ought to be rewarded.

This may not be a large sum of money in the scheme of things, but I think there is an important principle here: when performance based funding schemes are instituted by government, those who succeed under that policy ought to be rewarded and those who do not succeed ought to bear the brunt of their own performance. The financial responsibility for poor performance ought not to be borne by those who perform well; it is as simple as that. I fervently hope that the minister addresses this issue, sooner rather than later, in the interests of all concerned. I support the bill.

Mrs GASH (Gilmore) (11.56 a.m.)—I would like to add to the member for Throsby’s comments regarding the University of Wollongong. I very much support the University of Wollongong, particularly the Shoalhaven campus in my electorate of Gilmore. We also have a campus at Moss Vale. I fully endorse the member for Throsby’s comments in regard to the university’s Vice-Chancellor, Gerard Sutton.

I would also like to remark upon the member for Throsby’s comments in relation to the increase in HECS fees. The government gave universities the opportunity to increase HECS; we did not make it mandatory. Some universities chose to do so, and others did not. The University of Wollongong did not increase HECS fees. I would also like to ask why the opposition are always so very negative in regard to this. The government put our policies out to the community. We gave the public every opportunity to read those policies, and they voted on those policies. I also want to mention the HECS repayment thresholds. You might recall that the thresholds for students to repay HECS debts have been increased and that they now have other options. We now have wonderful employment opportunities for students leaving university, which we did not have eight years ago.

Dr NELSON (Bradfield—Minister for Education, Science and Training) (11.57 a.m.)—in reply—I thank ‘Professor’ Gash for her outstanding contribution to the debate. I also thank all the other learned members. Whilst I do not agree with everything that has been said, there are a few points that are worth reiterating in relation to the Higher Education Legislation Amendment Bill (No. 3) 2004. The legislation is necessary to update the appropriation
amounts for 2005-06 in the Higher Education Support Act 2003 and the Australian Research Council Act 2001. It also introduces a number of new policy initiatives, including higher education providers being able to operate summer schools—as they currently do. Quite a few Australian students wish to accelerate their progress through their degrees by undertaking summer programs, and they do so on a full fee paying basis. The view of the higher education sector is that that ought to be maintained, and that is what this bill will do.

Several of the measures in the bill, especially the amendments that relate to summer schools, were developed in response to, and in consultation with, the sector. The amendments demonstrate the government’s willingness to refine its reforms in light of sectoral comment. There has been major reform in the sector. Obviously, if you undertake reform in anything in life, it requires adjustment from time to time—particularly in response to the sector itself.

The Australian government is also taking this opportunity, before the commencement in 2005 of the majority of the provisions in the Higher Education Support Act 2003, to make a number of technical amendments to enhance effective implementation and give certainty to providers. A number of these amendments will immediately benefit students from January 2005, particularly in relation to OS-HELP assistance and cross-institutional study in summer schools. OS-HELP is the new soft loan, or income contingent loan, of up to $10,000 which is being made available to students to spend two semesters during their undergraduate degree studying in another country. One of the observations that needs to be made is that about four per cent of undergraduates in OECD countries spend a period of time studying overseas, whereas in Australia it is only 0.8 per cent.

The bill amends the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 to provide for transitional arrangements for the repayment of special purpose grants made under the Higher Education Funding Act 1998. This is an important amendment to ensure that Commonwealth funds are used appropriately. This bill, together with legislation passed last year, will deliver vital new funding and improvements to Australia’s higher education sector for the benefit of students, institutions and indeed Australian society as a whole.

I would like to thank the opposition for agreeing to support the bill and ensuring its timely passage through the parliament. Again I thank all the members who made a contribution, although there were one or two contributions from the other side which were not entirely in accordance with either facts or the direction we ought to go. Nonetheless, I thank you for the support.

Question agreed to.
Bill read a second time.

Message from the Governor-General recommending appropriation announced.
Ordered that the bill be reported to the House without amendment.

AVIATION SECURITY AMENDMENT BILL 2004

Second Reading

Debate resumed from 2 December, on motion by Mr Anderson:
That this bill be now read a second time.
Mr RIPOLL (Oxley) (12.01 p.m.)—I had the opportunity to speak on the Aviation Security Amendment Bill 2004 in this place just a few days ago and I appreciate the opportunity to speak again in continuation. In the 11-odd minutes that I have, I want to make a few points very clear in relation to the bill and its purpose, Labor’s support for the bill and some concerns that arise from the bill for people in the industry, such as pilots and so forth, about the cost, the bureaucracy, their civil liberties and other transport industries which could be roped into a bill of a similar description. I also want to highlight a very important issue—one of a breach of security—which, if you take it on its own, highlights the problem we have in the aviation industry in terms of security and why this government needs to sit up, wake up and take notice of what is currently happening and where the big, gaping holes in security actually exist and where legislation such as this will do absolutely nothing to reassure the travelling public or do anything in particular for aviation security.

On Friday, 23 July 2004, a passenger was able to board Emirates airlines international flight EK421 without going through any correct screening or security checking procedure. That information may come as a shock to some people; it certainly did to me. I think this is a massive security breach, one which needs to be investigated fully. On top of that, the passenger was an unlawful non-citizen. The aircraft was still on the ground when the relevant authority, Skystar Airport Services, was advised of the breach of security, customs and immigration checking procedures.

The staff member of Skystar Airport Services who made the error of judgment was employed on a casual basis and was still on her three-month probationary contract at the time this incident took place. Once aware of her error, she advised her supervisor of the problem and what had occurred. Skystar Airport Services began to investigate the issue, with several senior employees involved in that investigation, while the aircraft was still on the ground. No action was taken to prevent the aircraft taking off or to rectify a potentially serious security problem.

The fact that nothing did happen is good news and good fortune, but it should not excuse the actual process and procedures that took place. This is why I believe some serious action and investigation needs to take place into (a) how this could happen—human error is always understandable—and (b) what processes need to be put in place: what government regulations or laws need to be changed and what assurance we can have that something like this can never happen again.

Once the aircraft was in the air, Westralia Airports Corporation, Group 4 airport security contractors, Skystar Airport Services, Emirates airlines and DOTARS, the Department of Transport and Regional Services, met and discussed the problem. The aircraft was not directed to return to Perth. Some in-air security procedures were then carried out, as well as background checking with the on-ground agents at the aircraft’s destination.

It is alleged that the passenger was apparently a Kenyan national and an unlawful non-citizen. This became known through a number of processes. The alleged status of that person raises even more concerns. It highlights the fact that, when it comes to security, 99.9 per cent of the time the many tens of thousands of travellers that go through are of no concern. However, there are special circumstances where extra security or the proper security needs to be in place to ensure that we do not have people of concern actually boarding aircraft. The depart-
ment, DOTARS, and the Federal Police have, I understand, investigated this issue, specifically with regard to elements of collusion.

Skystar Airport Services is an aircraft ground-handling company contracted to deliver aviation related services to several airlines operating out of Perth international airport. They are responsible for Emirates airlines ground handling. This includes the full check-in agents procedures. The mere fact that something like this could take place is of concern. That an unsupervised junior staff member, having realised she had made an error, a human error, proceeded to notify her supervisors and the correct authorities of the error and nothing was then done by that company is of concern to me and it should be of concern to every person in the travelling public, as well as to the government and all other relevant bodies.

What troubles me is that that person was then disciplined some time shortly after that and her employment was terminated. It is my understanding that that person was told not to speak of this incident, not to report it, and that other staff were warned not to speak of this incident, to keep it quiet, because of management’s notion that, if it were discovered that they had allowed a security breach, they could lose their contract or risk future contracts. If you really think about that in terms of the way this company has acted and perhaps other companies that we do not know about have acted, it means that, if there is a problem and they discover it, they are not going to tell us. We will not be made aware of security breaches in the air.

The only reason we know today of this particular security breach is because a person who was an unsupervised trainee realised an error had been made and notified people, had their employment terminated and sought to correct the record and make this known to the general public. To me this is an unbelievable set of circumstances, and I cannot understand why the government is not taking some stronger action on it. Labor believe this is an alarming incident and, as I have said, one that we believe should be investigated thoroughly. It raises serious concerns and questions about whether or not there have been other security breaches in recent months and what the government is doing about aviation security in this country.

The Howard government’s approach to aviation security in recent years has been piecemeal. This is just one example of a simple error leading to a gross failure in our aviation security regime. The Howard government have been aware of the need to upgrade the country’s aviation security procedures for a number of years—as I said in my previous contribution on this, some six years—but have been very slow to respond. Let us hope that, now that they have been made aware twice in the parliament of this security breach, there is a serious investigation to ensure, to guarantee, to reassure people that this (a) has not happened in the past and (b) certainly will not happen in the future. The Australian public has always, justifiably, had high expectations of the federal government that it will provide a stringent aviation safety and security regime.

This leads me to mention that, while this breach was at a major capital city airport, at Perth, one of my and Labor’s concerns has been that of security at regional airports, where you would expect that security would not be as tight or they would not have the resources or capacity to screen every single passenger and so forth. If there was going to be some sort of a breach that is where it would be more likely to occur. But it occurred at a major international airport—not to mention the fact that it involved a person who is an unlawful non-citizen in this country.
It gets worse. I am also led to understand that there was a warrant for the arrest of this person on top of all of those things. The circumstances around the person getting on the aircraft were simply that they alleged they had a broken leg in a cast and put on a show, screaming and yelling about being late and needing to get on the aircraft otherwise they would miss their flight. Unfortunately, as I said before, a human error was made by an unsupervised person who obviously did not know quite how to handle the situation and who allowed that person to board the aircraft. That was an error and that person has paid a high price. Their employment has been terminated.

But the greatest error of all was not that. It was that, once they had immediately reported that mistake to the relevant supervisors and so forth and the department and the airport authorities were notified the plane was then allowed to take off. It had not yet left; it was still sitting on the ground. That person was not removed from the aircraft and their baggage was not removed. Given the normal procedures that all of us here expect when we travel, the small inconvenience of that extra time is well worth the wait. I cannot understand how all of those authorities at that point basically kept this quiet and allowed that aircraft to take off, then did some sort of very basic rudimentary in-flight check on who this person was.

This was a person known to the authorities and of concern. It does not take a hugely imaginative mind to figure out that, if you were intent on doing some harm, you would not be one of the regular people checking through with everybody else and having full security checks. You would take the risk of putting on some sort of a turn—running late, perhaps faking a broken leg with a cast. You do not need to be a fiction writer to come up with a scenario. That is what concerns me. All of the alarm bells should have been ringing for all of the authorities. There is no legislative framework in place that can deal with this situation when we have private contractors who take it upon themselves not to report it. That is a major security problem in this country and one that needs to be seriously dealt with by this government.

As I said earlier, I have spoken about the bill in my previous contribution, but I want to mention that Labor supports the increased regime in the Aviation Security Amendment Bill and the new authority and power given to CASA in relation to that. We also support the application of a fee for background checking and a strengthened regime to ensure, or at least go some way towards ensuring, that we have a much more stringent security regime for aircraft, airport services and people working within airports. There is no question of our support for that.

I also want to particularly mention that this nation’s security regime needs are not restricted to major airports. They also involve the some 146 regional airports in Australia. The example that I have raised here highlights the concern I have that, if this can happen at a major international airport with a person of concern who is of note, what guarantee do we the travelling public have that something will not happen in other areas?

I want to deal briefly with the issue of cost. There is a cost attached. It is my view that we all have to pay a price for an increased security regime. Unfortunately, some of that cost will have to be borne by pilots and prospective pilots, including some bureaucracy. There has been talk about this by senators in the other place in terms of civil liberties. As I have said before, and I maintain, there is an unfortunate new environment that we all live in, and we have to share some very small and inconvenient losses of our own civil liberties. There is nothing un-
usual or strange about background checking, licensing and having to pay a fee. While I do understand people’s concern and complaints about that, I do not believe they are warranted.

While this bill deals specifically with the aviation industry I think there is scope and room for the government to examine other transport industries that may be of concern. There is no doubt in my mind that the trucking industry and other transport industries, such as road and rail, also need to be looked at. If we look around the world in terms of security breaches, we see that rail is right up there being targeted by terrorists. If we are serious about aviation and passenger and transport security we should also be serious about transport in other areas, including rail and road. I do commend this bill to the House and Labor’s support of it but believe it does need to go further and to look at other measures.

Mr BAIRD (Cook) (12.15 p.m.)—I am grateful to the member for Oxley for his speech. I thought there were some interesting points at the end of his speech that were worthy of comment in relation to the testing of other transport regimes in the areas of rail and road transport. There was some suggestion that the driver of a truck that caused a fatality on the Central Coast just two months ago may be involved in taking some illegal substances beforehand. There is the question of random drug testing and whether, in the area of aviation security following September 11, you move to checking pilots for psychiatric issues or links with terrorist organisations. I do not know whether you would want to go that far, but regular random tests for drugs and alcohol are obviously worth while.

I support the Aviation Security Amendment Bill 2004 because we have seen a significant shift in global security following September 11. EgyptAir flight 990 was flying off the coast of Nantucket in Massachusetts and went into the sea. Moments before impact, the copilot of the aircraft made repeated extremist religious comments before switching off the aircraft’s autopilot and sending the plane into a suicidal nosedive. It is repeatedly stated in the NTSB report on this incident that the pilot of flight 990 made several attempts to pull the plane out of the dive but the copilot would not assist in regaining the flight’s control and forced the plane into a suicidal dive, killing all on board. That goes to the very heart of what was involved on this flight. This occurred two years prior to September 11, and it in many ways highlighted the danger. Normally, in a suicide there is one person involved; if this involves a pilot of an aircraft and there are ties with religious fundamentalism then there is an unbelievably lethal and toxic mix.

There was also some suggestion that an aircraft flying for SilkAir, a subsidiary of Singapore Airlines, which went into the sea south of Singapore was the result of a suicide. That does highlight in practical terms why we need this bill in terms of the background check of pilots and possible linkages to terrorist organisations. It is possible that proper background checks similar to those enabled by this legislation could have saved the lives of the passengers and crew on flight 990. The changes to aviation security contained in this bill will help prevent a similar catastrophe from occurring on flights servicing Australians in the future.

Australians are dependent on flights because of the large distances we have to travel in Australia, and because of the number of people who travel regularly overseas—I think close to four million Australians a year travel internationally by air. So the importance of security for us is probably greater than for most people. It is said that some 80 per cent of Americans do not actually have a passport. That is not true in Australia; the reverse is true. We, more than anybody, are dependent on international aviation and international aviation security, so we
take more than a passing interest in it, although it is true to say that the worst example of
global aviation security occurred within the United States.

In terms of global terrorism, we have seen that an aircraft can potentially be used as a lethal
weapon. The bill exemplifies the response of the government to the new phenomenon of truly
global terrorism through the improved use of our world-class intelligence screening analysis
infrastructure. The best defence Australia possesses to frontal terrorist attacks such as Sep-
tember 11 and flight 990 within our nation is our ability to manage information and from that
information identify those individuals who present the highest levels of risk to our national
security.

So what does this bill do? This bill introduces background checks for airport staff, particu-
larly those with high levels of access to aircraft, such as flight crew. The background assess-
ment will then be used by the Civil Aviation Safety Authority, CASA, to grant prescribed li-
cences or authorisations. The background checks introduced by this bill are the direct enact-
ment of policy based on the findings of the comprehensive review of aviation security that
was part of the revised threat assessment issued by the Australian Security Intelligence Or-
ganisation, ASIO, in July 2003. We can also think about what would have been the situation if
appropriate checks had been carried out of those who were undertaking flying training in the
United States prior to September 11. It was part of ASIO’s review and highlighted the incred-
ible tragedy of not taking that basic step.

As a result of the ASIO review, the government announced a major expansion of the na-
tion’s aviation security regime on 4 December 2003. This was a result of the overhaul of Aus-
tralia’s aviation industry security, including the Aviation Transport Security Act 2004, as well
as the amendments contained in this bill. The system is designed to complement the aviation
security identification card without which access to secure airport areas such as tarmac and
security facilities will not be granted. The proposed changes will expand the security back-
ground checks to cover individuals holding prescribed licences and authorisations from
CASA.

This legislation introduces the next step in strengthening the security regime by covering
those individuals with high levels of access to aircraft that do not have access to officially
designated security-restricted areas at airports, such as pilots, trainee pilots and flight crew. It
also complements the antitheft measures introduced by previous bills. There is a transition
within the role of CASA from covering safety to covering security based assessments.

The bill protects Australians from three types of people: (1) those who possess an adverse
criminal record; (2) those who are considered to constitute a threat to aviation security; and
(3) an unlawful citizen. The bill will provide for the identification of individuals considered
‘high risk’, as well as empowering CASA to take action to remove these individuals from po-
sitions that may present risks for the public.

The coalition is committed to aviation security in its many forms—to 100 per cent of bags
being screened at the airport, the screening of all carry-on luggage, the introduction of hard-
ened doors to passenger aircraft cockpits and, most importantly, the coordination of security
across all sectors of the aeronautical industry. The government has recently committed an ad-
dditional $114 million to assist airports of private aviation operators and regional commercial
operators to comply with the industry’s newly strengthened security standards. This ensures
that those in the private sector of the industry will benefit from the changes as well as those
with the capacity to pay, who will meet the cost of these changes. However, small operators and private operators can receive assistance when it is needed. The government has also signalled its commitment to the reorganisation of the interaction between the Australian Federal Police, ASIO, the Australian Customs Service and the Department of Transport and Regional Services.

In conclusion, this bill is about ensuring greater security in aviation and ensuring appropriate background security and psychiatric checks of pilots and those with access to aircraft. I believe it is appropriate and that, when we consider the incredible risk to global security and the tragedies that have occurred through inadequate checking in the past, this is worthwhile legislation. There is always going to be change as we move forward in understanding global terror, but I believe this is a significant step forward in the process.

Mr MARTIN FERGUSON (Batman) (12.25 p.m.)—Thank you, Mr Deputy Speaker Hatton, for the opportunity to speak on the Aviation Security Amendment Bill 2004. The opposition—and I had responsibility for this for some time as a shadow minister for transport—have always sought to adopt a bipartisan co-operative approach to transport security matters in the national interest. In that context we have clearly indicated that we support this bill.

I think we all appreciate that the events of September 11 dramatically changed the way nations around the world deal with aviation security. It created new challenges, which demanded not only response by industry but also leadership at a government level in putting in place a proper regulatory environment that appropriately protected the travelling public. If there has been any criticism from industry, it has been to the effect that industry and in turn the travelling public have borne the cost of changes in regulation whilst the government has escaped. I think this criticism is appropriate given the spending spree by the Howard government during the recent federal election campaign. I find it strange that the travelling public is always expected to carry the can for additional security costs when you consider that the Howard government misused taxpayers’ hard earned dollars for their own political purposes during the election campaign.

I note that the minister responsible for aviation security, the Minister for Transport and Regional Services, John Anderson, is also responsible for what I consider was a serious misuse of taxpayers’ money during the recent election campaign. It was just plain wrong to selectively support projects in coalition marginal seats using taxpayers’ dollars in an endeavour to buy votes during the six-week campaign leading up to October 9. One must always consider these issues, because some of us get sick and tired of being lectured by government on our responsibility to bear the costs on a user-pays basis of changes in aviation security. If the government has money to waste on projects in seats such as Gwydir for their own political gain then it is about time the government also put its hand in its pocket to meet some of the additional costs of changes in aviation security arising from the events of September 11, Bali and a range of other issues.

For many years the aviation sector has accepted that it has to operate in a highly regulated security environment, despite the fact that it was previously highly regulated, and that there was a need for increased security because of the events of September 11. I give credit to the industry because I think it has cooperated with the government in seeking to sort out these problems. It has also been willing to not only offer advice but also react over a very short time span to facilitate changes in regulations to protect the travelling public.
It has not been so much the industry that has been tardy; if anything it has been the Howard government. I raised the issue of September 11. It was not until March 2004, some 2½ years after the tragic events of September 11 in the United States, that the Howard government finally pulled its finger out to get the new Aviation Transport Security Bill through the Commonwealth parliament. That is unacceptable when you think of the tragic events of September 11 and the fact that other nations such as the United States were able to react in a cooperative and constructive way over a far shorter time span. Perhaps if the Minister for Transport and Regional Services had been paying more attention to these challenges rather than delivering the SONA guidelines in March this year to facilitate rorting during the federal election campaign, we would have made more progress on the aviation security front.

That aside, I go to the parts of the Aviation Transport Security Act which are yet to become operative but which will become so in March 2005. This means that in essence aviation security is still regulated through the air navigation regulations—including, I point out to the House this afternoon, the ad hoc provisions to pick up the changed environment in which the industry is operating. Here we are, only a matter of months after the passage of the bill, having to consider further amendments to the bill. In addition, major work is under way to rewrite the aviation transport security regulations. The problem is that, before they have even commenced, it is clear that they are not up to the task and that there is a need to effectively rework them. I contend that that brings into question just how serious the minister for transport has been about aviation security. Despite the continuous public rhetoric, we just do not seem to be able to get it right, because there is not a clear determination to do so. It is almost as if, in some instances, aviation security is an afterthought by the Minister for Transport and Regional Services.

It is important. We must appreciate that it is not just about getting the acts and regulations right. The travelling public not only expects us to get the acts and regulations right but to make sure that, in working out these changes, we are all prepared to pull our weight in terms of who bears the cost of changes in aviation security. One must appreciate that the aviation market is a highly competitive market. There have been dramatic changes in the nature of the industry since September 11, with a range of companies going bankrupt; trading under chapter 11 in the United States—which is akin to trading bankrupt; actually collapsing, such as occurred with Ansett, or merging. That means that we now operate in a very tough competitive environment, not only domestically but also internationally. We as a community therefore have to have regard to the cost arising from changes in regulations, be they for aviation security or any associated issues, that create the environment in which the aviation industry must operate.

Aviation security is a major cost to the industry. It is therefore important that we get the balance right between industry development and the security framework in which the industry has to operate. If the balance is not right, we put security at risk or we impose unnecessary costs on industry, therefore increasing costs to travellers and ultimately threatening the supply of services. Since September 11, the facts show that the world aviation industry has, as I have referred to, been under serious threat. I think it is fair to say that we have been rather fortunate in Australia, despite that serious threat and the collapse of Ansett.

Our aviation sector has managed to defy the trend over the past three years, but we must always have regard to the nature of the industry and, as a nation that depends on the aviation
industry for travel not only internally but also internationally, we must go out of our way to maintain the competitiveness of our players. Transport security therefore has to be enhanced in the context of enhancing the efficiency and effectiveness of the industry because it is through the safe and secure movement of goods and people that we are able to operate as a nation. We should be very careful about not inhibiting the further development of the aviation industry, because we as a nation depend so much on its effective operation.

I therefore suggest that we as an opposition, as is our responsibility to the Australian people, must continue to monitor the security framework to ensure that the balance between what is practical and required, the real security needs, is maintained correctly.

As a large island-nation Australia is reliant, as we all appreciate, on the aviation sector for both the international and the domestic movement of passengers and freight. As the shadow minister for transport, I say that the aviation industry is exceptionally important, as transport is one of the engine rooms of jobs growth in Australia. If I have any criticism of the tourism industry at the moment, it is about the need to do more on the training front—and that, in turn, points the finger at the Howard government because of the huge skills shortages that have emerged in recent years in Australia. Putting that aside for another debate, I acknowledge that the chaos that resulted at the time of the demise of Ansett demonstrated the major impact there is on the community when airlines are not able to operate competitively. That again reminds us that, in developing security guidelines and in making changes in the regulatory environment in which the aviation industry operates, we always have to have regard to the highly competitive nature of aviation not only domestically but also internationally. However, at the forefront of our considerations must always be the safety of the travelling public.

It is obviously to our advantage as a nation to have a burgeoning aviation industry. We can never afford to put the industry at risk, either through security threats or overly complicated regulation. For that reason, I was also highly critical of the government’s handling of national airspace reform, because I do not think it was done on the basis of proper consideration of air safety issues but rather on the basis of political considerations in terms of the clout that Dick Smith carried in the coalition room. It is obviously something on which we will have more to say over the ensuing months.

Despite our endeavours to assist the government in getting the security framework right, and in the face of the rhetoric from the Minister for Transport and Regional Services, some inconsistencies still exist in the Howard government’s aviation security framework. I refer, for instance, to air navigation regulations introduced by the Howard government which require all airports served by aircraft fitted to carry 100 or more passengers to provide full pre-flight screening for passengers. This requirement surprisingly does not extend to smaller airports, and this is an area where I think the government should be spending some of our hard-earned dollars so as to assist the smaller airports in protecting the travelling public.

I refer to the fact that on 4 December last year, just on 12 months ago, the government announced a number of aviation security initiatives. These included a $14 million grant, later increased to $35 million, to help eligible small airports to improve security. On that, I want to add that I have placed a question on notice to the Minister for Transport and Regional Services seeking further advice on how that money has been spent, where it was spent and the nature of the approval process for that expenditure. I remind the minister of that because it is important in terms of public accountability. Serious questions have now been raised about the
administration of the portfolio from a propriety point of view, and those questions should be answered as a matter of urgency.

For that reason, I say that paradoxically the purchase and installation of passenger-screening equipment is not eligible for funding under this program. Many regional airports—many of which, following privatisation, are now owned and operated by local councils—are, for a variety of financial reasons, unable to purchase and install this equipment.

On 23 August of this year, the Howard government announced an airport security package that, surprisingly, yet again, does not address the absence of permanent passenger screening facilities in key regional airports. This is a government that suggests that it is the voice of rural, remote and regional Australia. Its proposal on that occasion for on-demand passenger screening would provide airports with—guess what?—hand wand metal detectors. I just shake my head when I drive around Parliament House at the moment and see the huge expenditure of taxpayers’ dollars on putting in place permanent barriers and bollards to protect politicians. Yet when it comes to regional airports the government does very little other than suggest that it will provide airports with hand wand metal detectors, not permanent facilities such as walk-through metal detectors as are installed at all the entrances to Parliament House, and only in cases when alert levels change. So you lock it in the cupboard until you get a notice that there is an alert level.

I just scratch my head and worry very seriously about how committed this government is to aviation security, especially in regional Australia. These are very serious issues, as you and I know, Mr Deputy Speaker Causley, as people who are in and out of regional airports on a very regular basis. I am exceptionally worried about making sure that people such as you, Mr Deputy Speaker, are protected to guarantee that you are able to attend parliament, because I actually enjoy engaging in debate about these serious matters with fine parliamentary representatives such as you. These measures seem more aimed at capturing votes than securing our aviation industry and looking after the travelling public.

When I spoke about the primary legislation which this amendment relates to—coincidentally, just over a year ago—I moved a second reading amendment calling on the government to agree to a post-implementation review of the legislation, to be conducted 12 months after its implementation. I again seriously raise this issue on this occasion. The purpose of the review would be to hold the parliament, the government and the industry accountable and to ensure that it has achieved the right balance between safety and security and industry development.

This review would be conducted as part of a new initiative. Why should we always defer to the Senate? I suggest it is about time our own House of Representatives committees were given some real work in terms of the consideration and review of legislation. I therefore suggest that such a review should be conducted by the House of Representatives Standing Committee on Transport and Regional Services. The House of Representatives should be doing this work itself rather than always deferring to the other house. Given that we are back in this House after the recent election, addressing the passage of the primary legislation to which these amendments relate, I again call on the government to establish a formal review process. This would allow all the industry participants—airlines, unions, service providers and passengers—to monitor and report on the implementation of the legislation.
As to the specifics of the bill, the opposition representatives have clearly indicated that we support the amendments, not only to the Aviation Transport Security Act but also to the Civil Aviation Act. It is right that background checking be conducted on existing and potential pilots, and that we have provisions to enable the transition of certain security programs approved under the Air Navigation Act as transport security programs under the Aviation Transport Security Act 2004. Background checking is currently undertaken by a range of industry participants, and the issuing of identity cards is delegated to employers. Clearly this cannot be extended to pilots, as many are recreational pilots or self-employed.

A new regime was required. On that basis, the government correctly needed to accept that the implementation of transport security matters cannot be one size fits all, and the government needed to think laterally about how to include other security participants from the aviation industry in the framework. The legislative amendment correctly extends the role of the Civil Aviation Safety Authority to play a role in aviation security measures. I support that. As the transport security framework continues to develop across all elements of the transport sector, it is incumbent upon government to remain flexible in its approach and ensure that the framework balances industry development, the rights of workers and the security of the travelling public. I commend the bill to the House and again request the review that I have raised during the course of today’s contribution. (Time expired)

Mr HATTON (Blaxland) (12.45 p.m.)—I am happy to follow the member for Batman and other opposition members in supporting the Aviation Security Amendment Bill 2004, because it contains a series of measures necessary for the security of people who work in airports, people who live around airports and people who are far removed from the operations of the airports themselves. This is particularly important for me because my electorate is in the geographical heart of the city of Sydney. In fact, the very epicentre of Sydney is Bankstown Airport, the largest general aviation airport in the Southern Hemisphere. Currently, we are down on our flights—in the order of 250,000 or so a year. The number of movements is progressively moving back up, and our all-time record is in the 400,000s.

The questions of airport security, and particularly regional airport security—because Bankstown Airport is still seen as being under that aegis, although it is directly in the middle of Bankstown—are extremely important to me. Further, they are even more important at the moment because the preliminary draft master plan which outlines the Bankstown Airport Corporation’s vision—it is not just a general vision but a practical, implementable vision for Bankstown Airport for the next 20 years—has been the subject of consideration, debate and discussion for some period prior to the last federal election and indeed up until now. By 15 December this year the Bankstown Airport Corporation is due to present its draft master plan to the Minister for Transport and Regional Services, the Hon. John Anderson. He will then have three months to make his determination in relation to that master plan.

In submissions that the honourable member for Banks and I made, as the two representatives of people living in the city of Bankstown—in all, 165,000 souls—our representations in regard to this went to running a campaign in part based on our significant fear that the questions of security for Bankstown Airport had not been properly seen or addressed so far and certainly that what was presented in the preliminary draft master plan did not give us a guarantee that adequate security measures would be taken in relation to Bankstown.
The core purpose of this bill is to amend the Aviation Transport Security Act 2004 and the Civil Aviation Act 1988 to allow background checking to be conducted on existing and prospective pilots. As other speakers have explained, up until now companies who are responsible have issued aviation security identity cards to their employees, whether they are pilots or other employees, who are working in security restricted areas. It has been a responsibility of companies and of Airservices Australia. The Department of Transport and Regional Services has delegated the authority to issue ASICs to those companies, and the companies have to apply to the department in order to be given such authority.

ASICs cannot be issued to a person who (1) has an adverse criminal record, (2) is considered by the secretary to constitute a threat to aviation security or (3) is an unlawful citizen. That has been the situation up until now within the airline industry, and it goes no further than that. One of my nephews works as a Qantas engineer at the main Qantas base at Sydney airport. He has been through these processes and has been permitted to gain an aviation security identification card. But this bill recognises that we have to do a great deal more, not only at our domestic and international airports but at regional airports.

The member for Oxley argued that we need to be particularly aware that there was a major breach of security at Perth international airport when an unlawful noncitizen gained access to an Emirates flight. They were sitting there ready to take off when the people who are responsible for ensuring that only people who should be getting on the aircraft do so were awoken to the situation. They then proceeded to take steps to deal with the fact that that person was there. The person had had no screening, simply because they created a great deal of trouble for a staff member who was not particularly experienced.

This extension will deal in particular in the general aviation area with pilots and trainee pilots who do not have access to officially designated security restricted areas at airports. Members from our side and also the member for Cook on the government side have mentioned the situation with the training of pilots in the United States and elsewhere who later became the chief al-Qaeda terrorists who succeeded in ploughing into the twin towers, the Pentagon and almost the United States Congress—that plane was brought down in Pittsburgh. There were a series of security alerts. From memory, one of the terrorists had trained in Florida at a small general aviation company. The people there were somewhat wary of this person’s reasons for training and particularly the sorts of things they wanted to do.

This formalises an approach where people who want to learn to fly will have to go through a series of security checks. For the first time the Civil Aviation Safety Authority will have to worry not only about aviation safety issues but also about aviation security. Not everybody is happy with the prospect of this happening by and large because there is an associated cost. The member for Batman quite rightly argued that people within the industry who will be impacted by this are made to pay over and over again. There seems to be nothing that the government is willing to contribute from the general revenue to cover this.

There is also another implication. The member for Cook argued in response to the last part of the member for Oxley’s contribution to this House that we need to be aware not just of aviation but of road, rail and seafaring. That raises a whole series of questions about how to deal with people, particularly those who are mentally unstable. The question of licensing people who could do great injury to others in a terrorist act could be particularly difficult. I have
had an email directly pertinent to the matters raised here from a person not in my electorate but in general aviation, who puts both points. The person says:

I would like to express my objection to the proposed charge to be placed on the Aviation industry in the form of a fee for security checks. This is a completely unnecessary burden to place on the Aviation industry in this country. This industry is already under stress with this legislation adding another nail.

You as a Member must remember this issue has incensed outrage and is seen as a knee-jerk reaction targeting a small group, leaving more obvious risk groups e.g. trucks/vans/stationwagons/runabouts etc. without any checks at all.

On this issue don’t think for one minute that the Australian public will only have a 2 year memory with elections at 3 years, the outrage will remain to the next election.

That is indicative of the fact that there is a great deal of sensitivity on the part of people in the general aviation industry because there have been a large number of imposts placed on them. It also indicates our problem in dealing with security issues. They are broader than aviation and they raise a series of difficulties because we do not really know where the next attack will be coming from. It could be from someone with a petrol tanker; it could be, as the member for Brand argued recently in the House, that the key attack could come from a ship registered overseas using Australian ports, loaded with ammonium nitrate and fuel, and that large bomb could do enormous damage to people in Sydney, Newcastle or Port Kembla. We have to change our whole approach to dealing with these matters.

This is an important set of changes, in particular because the whole question of counter-terrorism and how we deal with it is significant. Indeed, in September 2003 Bankstown Airport, my airport, was identified as a gaping hole in Sydney’s security fence by the executive committee of the national counter-terrorism council. The New South Wales government has issued two formal requests for Bankstown Airport to be given the same top-level security as Sydney airport. At that point the federal government had allocated no funds to build security fences around Bankstown Airport, install security screening and video cameras or recruit guards. As the member for Batman quite correctly pointed out, hand-held security wands for regional airports are about all that is offered by this government.

During the election campaign the government announced its Securing Our Regional Skies package, which included $48 million of funding for regional airports for regional Australian Federal Police Protective Service rapid deployment teams and new screening capabilities, but largely only the hand wands for 146 regional airports. There was to be a joint training exercise program, closed-circuit television, improved security training for regional airline workers and airport staff, further funding for hardened cockpit doors and so on. But at Bankstown Airport we have not seen too much coming from the federal government to make that enhancement. In December 2003 the government invested $93 million in airport security through the enhanced aviation security package, and a further $21 million to boost security measures at regional airports was announced in the 2004-05 federal budget. The key questions I have to ask relate to how much of that has gone to the general aviation airport in the centre of Sydney, just 11 kilometres from Sydney’s Kingsford Smith airport and 22 kilometres from Sydney’s GPO. Someone who breaches Bankstown Airport security and takes a plane, either during the day or at night, would be able to do damage either to Kingsford Smith and its operations or to any number of security targets throughout the city of Sydney.
When the government announced that security package and said that there would be a regulatory regime covering airports servicing passenger and freight aircraft and a requirement for all employees to be issued with an aviation security identity card, I raised serious questions about just what the situation was at Sydney airport. The company actually concerned with doing the checking of people going through Sydney airport has subcontracted its work to smaller companies—in fact, one is from my electorate—but the people who are working on a subcontract basis have not had a significant and sufficient amount of background checking. We were assured by the minister, in debate in the House prior to the election, that those people have been adequately security screened, but I express again my concern that, from the information available to me, that has not adequately been done. Indeed, the basis of the company has not been adequately gone into either.

The real questions about Bankstown Airport security that I put and that the member for Banks put have been reinforced by questions that I put on the Notice Paper to the minister just recently. I asked the minister, firstly:

In respect of the Government’s Securing Our Regional Skies package announced during the election campaign—

(a)— have any funds from this package been earmarked for security projects or measures at Bankstown Airport—

(b)— if so, what security projects or measures have been identified for Bankstown Airport.

Secondly, I asked:

In respect of the Government’s Enhanced Aviation Security package announced in December 2003, have any funds from the $35 million grant program to assist eligible smaller airports with security measures been allocated to Bankstown Airport; if so—

will the minister reveal the total amount in grants that have been made to Bankstown Airport to assist with security measures. Thirdly, I asked the minister whether he would reveal:

What are the details of the security measures that (a) have been completed at, (b) have commenced at, and (c) are planned for, Bankstown Airport.

Fourthly and finally, I asked:

What other action has the Government taken to improve security at Bankstown Airport since September 2003.

To my knowledge that has not been the case. The only people taking new security measures are the Bankstown Airport corporation, and that has been under the impress of the argument from me, Daryl Melham as the member for Banks and the 4,000 people who signed up to the letters that we suggested they might send—letters that encompass all of the difficulties with the preliminary draft master plan. That highlighted the general aviation nature of Bankstown Airport and the federal government’s requirements that the only security coverage available to it would be that which is demanded at regional airports. It simply mistook the situation of an airport in the very heart of the city.

I am glad to report that Bankstown Airport corporation, in its latest newsletter giving an update of what has been happening with that draft master plan preparation, said that new security measures will be introduced and covered in more detail in the final draft master plan.
These will include a new security program for the airport and improved security infrastructure. That had not been properly addressed before. I know there have been measures taken by Bankstown Airport corporation, because they have outlined them in that newsletter to the people who live in Georges Hall and Condell Park. They say:

Bankstown Airport has security measures that far exceed the Federal Government’s requirements for a General Aviation Airport.

I indicate, though, that the problem here is that even if they exceed that it does not deal with the nature of this airport in the very heart of the city. They go on to say:

We have recently upgraded our security across Bankstown Airport with ... keypad entry points, security pedestrian and vehicle gates and security fencing.

The NSW Police has conducted a risk assessment of the security measures and procedures in place at Bankstown Airport, and concluded the Airport is well equipped to deal with an incident should it arise. Bankstown Airport Duty Operations Officers regularly patrol the perimeter of the Airport and monitor general business activities on the site. Our Duty Operations Officers are trained security guards and are supported by an on-site permanent NSW Police presence.

They need to be, because most of that security presence clocks off at eight o’clock at night. What happens between eight o’clock at night and when people rock up for work in the morning in terms of the security at Bankstown Airport? It has been enhanced somewhat by the measures that have been taken at Bankstown Airport, but it does not fully take into account the fact that access to Bankstown Airport is relatively open for those people who would seek to misuse it and that the measures taken so far have been taken by a privatised entity which fundamentally owes no final responsibility to the Australian people, as the previous full owners of that airport, the Commonwealth government did. So the Commonwealth, in putting itself at arm’s length from the security measures necessary for Bankstown Airport, as yet has not come up to the mark in securing that airport in the strongest way it possibly could. It has left the people of Bankstown and the people of Sydney with no real underlying certainty that their security is completely enhanced and completely ensured, because a series of measures that should have been taken have not been taken.

But I do commend the aspects of this bill that go to checking the backgrounds of people who train as pilots at Bankstown Airport—and it is a most significant part of our business to take in people from overseas, from areas where Jemaah Islamiah is active in Asia and from other areas around the world where there have previously been security concerns. The checking of the backgrounds of those people is vitally important not only for Australian residents but for the trainees we take in to Australia, so that everyone in Sydney—our greatest, most prominent and best-known city—can be assured that the opposition, the government and the operators of the airport have done everything they can to secure their safety.

Mr John Cobb (Parkes—Parliamentary Secretary to the Minister for Transport and Regional Services) (1.05 p.m.)—As I rise I would like to make mention of the fact that on 2 December, and again today, the member for Oxley referred to an aviation security incident involving the departure of a Kenyan national on board an Emirates airlines flight from Perth international airport without undergoing the necessary security screening. I would like to place on record that the Deputy Prime Minister and Minister for Transport and Regional Services, Minister Anderson, is aware of an incident on 24 July 2004 whereby a woman of Kenyan nationality departed on an Emirates airlines flight from Perth international airport without
undergoing necessary security screening. The incident was dealt with at the time by the Department of Transport and Regional Services and Emirates airlines management. The minister is not aware of any outstanding arrest warrants in this case. Whilst his department is checking this with the AFP, matters relating to outstanding arrest warrants are matters for the relevant policing agency.

In summing up, I would like to make mention of the fact that the Aviation Security Amendment Bill 2004 amends the Aviation Transport Security Act 2004 to allow the secretary to declare a person as having adverse security status, with the result that that person’s flight crew licence must be cancelled or that, in the case of a new application, their licence would be refused. The bill provides for regulation-making powers which will detail the processes which are to be followed in relation to such a decision. A decision such as this would ordinarily only be taken where the checks by ASIO, the AFP or DIMIA highlight an issue of concern. This will integrate background checking and licensing and will thereby minimise the associated costs.

The bill repeals subsection 9(5) of the Civil Aviation Act 1988. This subsection currently prevents the Civil Aviation Safety Authority, CASA, taking responsibility for aviation security. The repeal of this provision, together with the regulation-making powers of the bill, will allow the function of background checking of pilots to be given to CASA, either immediately or in a gradual way. The bill will also have the effect of allowing CASA to collect fees for the purpose of background checking. The bill does not make CASA a security agency. It ensures that the Civil Aviation Act does not prevent CASA contributing where necessary to the security outcomes that the government desires and that are obviously very necessary in today’s world for the Australian nation and people. The government believes that maintaining a strict separation of functions is no longer appropriate since September 11. It is important that the various government agencies can pull together and work together to achieve security outcomes. The change in the Civil Aviation Act will make this possible and will achieve it.

The government considers that it is not unreasonable for pilots to be asked to pay for background checking simply as part of a licensing process. Other aviation industry participants have already paid for background checking through the aviation security identification card—ASIC—scheme. Those costs will be kept as low as possible to the individual.

This bill also deals with a legal issue which has arisen in relation to security checks provided by ASIO. It will ensure that checks provided by ASIO in relation to pilots are security assessments under the ASIO Act and will therefore attract the necessary protections in the Security Appeals Division of the Administrative Appeals Tribunal, AAT, in the case of them being challenged. It will still be possible to challenge adverse findings under this division at the AAT.

In addition, the bill makes some very minor amendments primarily of a transitional nature. These will enable regulations to be made which enable airport security programs, ASIC programs and international cargo security programs approved under the Air Navigation Act 1920 to continue under the ATS Act. It also amends a minor oversight to ensure that contractors of Airservices Australia are aviation industry participants under that same ATS Act.

Under the Air Navigation (Aviation Security Status Checking) Regulations 2004, applicants for flight crew licences are already required to undergo background checking. The transitional provision in item 3 of schedule 2 extends the same protection for appeals to the AAT. The
provision will serve to ensure that anyone who receives an adverse or qualified assessment from ASIO has proper appeal rights, as well as ensuring that such appeals are conducted in the proper forum, thereby protecting sensitive information.

These alterations to amend the act are very necessary in the light of recent events. I do not believe that pilots around Australia can take exception to being security-screened. They are, after all, in today’s world, along with most public transport spheres, a very important cog in a machine that obviously has a very big security impact upon Australia.

Question agreed to.

Bill read a second time.

Ordered that the bill be reported to the House without amendment.

Sitting suspended from 1.13 p.m. to 4.30 p.m.

FISHERIES (VALIDATION OF PLANS OF MANAGEMENT) BILL 2004

Debate resumed from 30 November.

Second Reading

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (4.30 p.m.)—I move:

That this bill be now read a second time.

The Fisheries (Validation of Plans of Management) Bill 2004 will provide certainty about the validity of certain plans of management determined, amended and/or revoked by the Australian Fisheries Management Authority under division 2 of the Fisheries Management Act 1991. The bill also provides certainty about things done under or for the purposes of those plans.

Plans of management are an essential tool for the effective management of Commonwealth fisheries. They set out the arrangements under which the resources are to be managed in those fisheries. This may include the area of the fishery, the fishing method and type of gear, the fishing capacity, and the target species. The plans may also describe the system of statutory fishing rights or other fishing concessions, and the procedures for selecting people to whom fishing concessions are to be granted.

Plans of management have been in place for a number of years in some of the significant Commonwealth fisheries. They underpin the operation of these fisheries and, as such, it is important that nothing can call into question the current arrangements for accessing the resources.

In this respect, a legal audit has identified that there is a potential argument that there may have been an inconsistency in the process by which plans of management were determined, amended or revoked before July 2003 by the Managing Director or the Acting Managing Director of the Australian Fisheries Management Authority. This potential inconsistency may encourage some to challenge the validity of these plans.

Legal advice has confirmed that the risk of a successful challenge is slight. The Australian government is of the view that all current plans of management are valid and were formulated correctly, with due regard to the proper consultation and review processes. The government is confident the plans will withstand any challenge.
However, it is important for industry that these plans are certain, as the consequences of a successful challenge could be significant.

This bill will provide that certainty. It will ensure that all existing plans of management determined, amended and/or revoked, and things done under or for the purposes of those plans, are valid and taken always to have been valid as if they had been made by the Australian Fisheries Management Authority.

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

Mr GAVAN O’CONNOR (Corio) (4.32 p.m.)—The Australian fishing industry is one of our great regional industries, and I am very pleased to speak on the Fisheries (Validation of Plans of Management) Bill 2004. As you know, Mr Deputy Speaker Quick, I have been to your electorate on many occasions, and the fishery industry is very important to Tasmania and to many electorates in that state. All across Australia the fishing industry sustains communities, generates income and creates employment. It is an industry with a gross value of production of around $2.3 billion annually from a total catch of 249,000 tonnes, and $1.84 billion worth of product is exported. So it is a very significant industry indeed.

The primary focus of this legislation is the management plans that enable sustainable fisheries to be put in place for the benefit of the nation, for our domestic consumption and for exporters. The fishing industry generates economic activity worth about $10 billion, much of it in the coastal regions of Australia. Australia’s fish catch is worth $856 million. Other key commodities include rock lobsters, which are worth $460 million annually; prawns, which are worth $355 million; tuna, which is worth $305 million; and abalone, which is worth $212 million.

While fish farming and aquaculture play an important, valuable and growing role in this industry—including in my electorate of Corio—the basis of the vast bulk of the industry remains the commercial exploitation of the fish stocks around our coastline and in the oceans. These resources are important community assets, for which there are competing uses such as Indigenous fishers and recreational fishers as well as the commercial industry. It is therefore vital that they be managed in an effective and sustainable way.

Management of our fisheries is a responsibility shared between the Commonwealth and the states, and the federal agency charged with this responsibility is of course AFMA, the Australian Fisheries Management Authority. Labor set up AFMA back in 1992 with the statutory responsibility for the efficient management of Commonwealth fisheries. These are largely fisheries on the high seas within the 200 nautical mile Australian fishing zone. The chief tool that is used by AFMA to regulate Commonwealth fisheries is the development and issuing of plans of management.

The Fisheries (Validation of Plans of Management) Bill 2004 makes a number of amendments to the Fisheries Management Act 1991 designed to ensure that certain decisions made by the Director or Acting Director of AFMA are not open to legal challenge. This bill makes it clear that decisions taken by the Director of AFMA prior to June 2003 to revoke or amend plans of management are valid and should be taken as having the same effect as if the determination were made by AFMA itself. A legal audit of the operations of the Fisheries Management Act last year identified a small risk—nevertheless one that must be attended to in legislation—that it may be possible to challenge decisions made by the Director or Acting...
Director of AFMA in relation to plans of management. This bill closes off any opportunity to challenge those decisions. While the risk of a successful challenge was always slight, the consequences for the industry of a successful challenge could have been great.

Our fish stocks are indeed important community assets, and it is important that the community can have confidence in the structures put in place to manage them. It is also important that the community has confidence in the procedures and practices put in place to protect our fish stocks from those who have no respect for structures or management plans. I was deeply concerned to learn earlier this week that last Friday the minister responsible for fisheries, Senator Ian Macdonald, the Minister for Fisheries, Forestry and Conservation, admitted to the Natural Resource Management Ministerial Council—and I quote from the document that was distributed by the minister to the council—that:

Illegal fishing activity appears to be increasing in Australian fisheries.

This honest assessment of a very disturbing situation, given in private to a ministerial council, completely contradicts the public stance taken by the minister. We of course know the capacity of illegal fishers to greatly upset the carefully considered management plans that are the subject of discussion in this particular bill.

Since taking over responsibility for fisheries, Senator Ian Macdonald has issued 134 press releases claiming victory over illegal fishers, with titles such as ‘We are winning the war’—this sounds a bit like Iraq—‘on illegal fishing’ and ‘Illegal fishers cop a caning’. I think they have been slapped with the wet fish there. Nevertheless, we have two positions from the minister: one for public consumption that we are winning the war against illegal fishing; and an honest, frank, private admission that, far from winning the war, the situation is actually getting worse.

We are debating a bill here today that gives certainty to the plans of management issued by AFMA, but valid plans of management cannot achieve their aim of ensuring that our fish stocks are managed sustainably when illegal fishing is becoming more common. It is typical of the government that they maintain one position in public, that they are winning the war against illegal fishing, and another in private, that the position is getting worse. When Labor raised this matter in question time in the Senate yesterday, the minister maintained the fiction that the government are still winning the war against illegal fishers and then turned around and admitted that the situation in our northern waters is getting worse.

We know that there is a catch and release policy up there with regard to illegal fishers on the part of the government, but the minister is trying to have it both ways on illegal fishing. Effective sustainable management of our fisheries requires not only that appropriate legislative and management structures are put in place—and that is what we are on about here today—but also that our waters are effectively policed to put a halt to illegal fishing. I understand that the piece of legislation we are discussing has the support of the major associations that represent the interests of the fishing industry.

Everyone concedes the necessity of well considered and developed management plans for the sustainability of our fisheries resources. Fishers, people in the value-adding chain, coastal communities and local, state and federal governments all agree that these management plans are necessary. However, it is not only the plan itself that is important; how it is developed is critical to the general industry and public acceptance of the plan in its implementation phase.
To be accepted by all stakeholders, any management plan must reflect not only good sustainability principles but also integrity in the process of development.

Following the election, I travelled to Ayr in Queensland and held discussions with Mr Neil Green, the Senior Vice-President of the Queensland Seafood Industry Association. In the course of our discussions, he outlined his far-reaching concerns about the consultation processes of the Great Barrier Reef Marine Park Authority—commonly known as GBRMPA—in the development of the representative area program. Mr Green has 31 years in the industry: 20 years in commercial fishing and 11 years in the wholesale and retail aspects of this industry which is very important to his community. He knows a bit about the industry and he knows about the players. He said that his family has fished in the Ayr region for a long period of time; they know it intimately, and they have fished to sustain the resource and have complied with previous management plans designed to give legal effect to the sustainability of the resource.

Mr Green had a lot to say about the consultation processes of GBRMPA and the development of the representative areas in his community. He claimed that fishing has been condensed into very small areas as a result of the management plan that has been developed and that this will inevitably lead to some overfishing in other areas. I think we need to understand this dimension of the sustainability argument. It is all very well to develop a management plan, but when that management plan has the effect of displacing effort into another fishery and putting pressure on it, then we may have compromised the sustainability objective. Mr Green also had some very real concerns about the government’s compensation package and the emphasis that is being placed on licence buybacks. According to Mr Green, not enough emphasis is being placed on the loss of income and compensation for capital equipment items by fishers.

The whole tenor of the discussions that I had with Mr Green was that the consultation processes in the development of the management plan really lacked some integrity. I think it is a shame when people in an industry, who have contributed to it for most of their lifetimes, as have their parents, are faced with a consultation process that, at the end of the day, they have little confidence in. I think that is a real shame, and it is an indictment of the processes that have grown up around the development of these very important management plans that we are debating in this legislation.

I certainly hope that as government members raise this matter, as I am doing in this debate today, the Great Barrier Reef Marine Park Authority pays more attention to and treats more seriously its consultative processes, takes on board the advice of those key stakeholders who know the fisheries which are under discussion intimately and incorporates their sensible suggestions in the management plans. Only then can we get a consensus between the stakeholders in those communities. Such a consensus will enable these management plans to be effectively implemented without adverse implications either for the fishing industry or the communities in which it operates.

I have said it before and I say it again: these management plans are very important to creating sustainability in these fisheries. However, they must be developed through a consultation process that takes due account of the good advice and the extensive knowledge that is possessed by the fishers in the local communities. They are the ones who know intimately the capacity of the fishery under discussion. They know the areas in which they fish. They know
the areas they need to leave alone. Their knowledge should be a prime source for any authority in the development of any management plan.

This is a very important amendment bill that we are discussing here today. The legal audit brought to the attention of the government that a failure to act as we are acting today through this legislation may well compromise these very important management plans, plans that at the end of the day must ensure the sustainability of these particular resources. The opposition will be supporting the bill.

Mr ADAMS (Lyons) (4.47 p.m.)—The Fisheries (Validation of Plans of Management) Bill 2004 makes a number of amendments to the Fisheries Amendment Act 1991. It is designed to ensure that certain decisions made by the director or acting director of the Australian Fisheries Management Authority are not open to legal challenge. This bill makes it clear that decisions taken by the director of AFMA prior to June 2003 to revoke or amend plans of management are valid and should be taken as having the same effect as if the determinations were made by AFMA itself.

The legal audit of the fisheries act last year identified some small risks and that is why this bill is now before us. It closes off any opportunity of challenges to those decisions. While I understand the risk of a successful challenge might be slight, the consequences for the industry of a successful challenge could be very great.

Labor established AFMA back in February 1992 to manage the Commonwealth fisheries resource on behalf of the Australian community. It works with the states in relation to that, managing the fish that cross those magical lines. That has been a quite successful arrangement with the state governments. It is clear that there could be a legal reason for this bill. The fisheries are very important to part of the economy, and AFMA has been around now since 1991.

I remember that the report I was involved in—Managing Commonwealth fisheries: the last frontier—which we brought down in 1997 went to a lot of different issues to improve the management of fisheries in Australia. That was a very good exercise, a lot of good things came out of it and a lot of recommendations were put up. I would hate to see any of those taken out of the management opportunities.

I note that in the Tasmanian paper the Mercury this morning there was a story on a ban on recreational fishers laying nets overnight, although commercial fishermen can still place theirs overnight. The reason for this ban is that recreational overnight gill netting is unsustainable, because a lot of unwanted fish are caught in the net and die overnight. It is a very bad practice. I am sure that you, Mr Deputy Speaker Quick, and I are going to hear a lot more about that over the Christmas period. From that little article, I am sure that many more issues will come forward from recreational fishermen, and there are often these arguments.

The previous speaker, the shadow minister for fisheries, the member for Corio, mentioned the Queensland situation, and we probably all touched on that. It is an issue because fishing is being prevented in this area and it is putting pressure on other areas. I think that is an area under the management of AFMA. Making management plans that take areas out of production or out of fishing is a bit of a mockery, because either we have sustainable fishing areas where the management is right and based on science or we do not. We have to face up to the fact that either we are doing it properly or we are not doing it properly. It is a bit of a reflection on AFMA that we are taking areas right out of fishing production.
There has been a lot of criticism of the sort of consultation that takes place with the fishers in these areas, and of course it is their livelihoods that get affected and it is those communities and people who have been in the fishing industry for an awfully long time that end up getting knocked out. It is important that the regulations that govern AFMA and its activities are simple and straightforward and there is no room for ambiguity. Therefore, I believe it is important that we make the legislation work properly, and that is why this bill will have the support of the Labor side of the House.

Mr TRUSS (Wide Bay—Minister for Agriculture, Fisheries and Forestry) (4.52 p.m.)—in reply—I thank those members who have contributed to this debate on the Fisheries (Validation of Plans of Management) Bill 2004. I do not know whether any substantial issues have been raised about the legislation itself. However, there were some comments about fishing management issues. The member for Corio was obviously provided with a copy of the papers from the last Primary Industries Ministerial Council meeting. While those papers are supposed to be for the ministers, no doubt with a full team of state Labor ministers there are any number of suspects from whom he may have obtained those papers.

It is interesting that he selectively quotes from those papers. Perhaps not surprisingly, he chooses those pieces that he thinks might be to his advantage in the story that he is telling on the day. He did not, of course, say anything about the response of the state Labor ministers when there was a suggestion that there ought to be compensation for fishers who are losing access to their resource. We listened to a couple of members today talk about the compensation arrangements for fishers affected by the marine park arrangements on the Great Barrier Reef, where the Commonwealth is moving to provide some significant support for fishers, their families and the fishing businesses that are clearly adversely affected by those planning arrangements. However, the really striking thing about the support being provided for the fishermen in that region is the fact that the state Labor government has not been prepared to do anything at all to help the fishers who are affected by its closures, which are having quite significant impacts on the industry in that region.

It is somewhat disingenuous of the member for Corio and the member for Lyons to make comments about the financial support that the Commonwealth is providing when their Labor state colleagues have not been prepared to provide compensation really in any instance to support fishers whose resources are being taken away from them. It is important for us to recognise that sometimes community standards change and that there are alterations made in management plans, not just for sustainability reasons. The industry accepts that, in circumstances where management plans have to be altered for sustainability reasons, the industry has to wear that and do so without compensation, but in circumstances where, because of community values and a desire for higher conservation standards to look after natural resources for reasons other than merely sustaining them for their commercial capabilities, the community must bear the cost associated with those decisions and not expect those involved in the industry to bear all that load. I would argue that a similar principle should apply in relation to vegetation management or for that matter the flow of additional water into the Murray-Darling system. If the community wants more water to meet environmental objectives—and those objectives can be perfectly reasonable and honourable—the community must wear its share of that cost and not expect those who have been using that water to have it taken from them leaving them without any capacity to continue their livelihood.
In the fishing industry, when changes are made or restrictions are placed on where fishing can occur, that inevitably is going to have a devastating effect on the livelihoods of many people. We are seeing that particularly in the state fisheries because, as the member for Corio mentioned, they are generally the ones closest to the shore. In those circumstances, the burden placed by the various state fishing plans on particularly the commercial fishing industry but also on the recreational fishing industry in some places has been quite severe. When governments make those sorts of decisions for reasons other than sustainability, they have to accept some responsibility for their decisions.

That concept was not embraced at the ministerial council meeting in Melbourne last week. I would not normally refer to what individual ministers have said at those meetings because I think ministers need to have the capacity to make their views known in those kinds of fora. I will not mention names today but it has been obvious for the last three or four ministerial council meetings that the papers prepared for ministers are immediately delivered to the opposition here in Canberra because they quote from them. Usually the opposition is able to tell us what juicy things are in them before the meeting occurs. That is the advantage of having all Labor state ministers: they make sure that their federal colleagues are well informed about what is going on, or selectively informed in accordance with their own objectives.

As all speakers have said, the fishing industry is one of Australia’s great industries. It involves the employment of thousands of Australians. It is a particularly important regional employer—many of the jobs are in regional locations—and there are some spectacular examples of extraordinarily successful Australian fisheries with innovative businesses and operators who are prepared to challenge new frontiers. The technology used in fishing in Australia is now second to none. I would argue that our management strategies are also world leading. The management decisions that AFMA has had to make over the years have sometimes been very difficult. There is always pain and hardship when a scarcely available resource has to be shared among a lot of people who are making their living out of fishing.

Sometimes people who enter the fishing industry do so because of the romance and adventure that is traditionally associated with fishing. I know of people who have given up professions where they were earning good incomes because they wanted to go fishing. They have gone into an industry where their capacity to earn anything like what they were earning in their profession is highly problematic, but they have done it for lifestyle reasons and because many Australians feel drawn to the sea.

So there have been probably too many people attracted into the fishing industry over the years, some without effective business plans and without having a full understanding of what they aim to achieve in their business operations. Nonetheless, there are others where the careful management and the industry has shown the ability to resolve disputes associated with the sharing of the resources, and indeed on occasions to close fisheries when there is a need to rebuild resources and to effectively manage them in such a way that the resource will be sustainable for future generations. I know there are a number of Tasmanian fisheries, for instance, that you would be aware of and interested in, Mr Deputy Speaker Quick, where long closures have been necessary to rebuild stocks in scallops and the like so that the industry can be sustainable for the future.

I guess I have strayed somewhat from the subject material and now might be an appropriate time for me to get back to the bill. With that in mind, I thank those who have contributed to
the debate and acknowledge the support the opposition is offering to this legislation. As all have mentioned, it is technical and possibly not even necessary, but it is a safety measure that everyone is taking to ensure that the fisheries management plans are validated and decisions that have been made can be honoured and their effect carried through. I commend the bill to the Main Committee.

Question agreed to.

Bill read a second time.

Ordered that the bill be reported to the House of Representatives without amendment.

FAMILY LAW AMENDMENT (ANNUITIES) BILL 2004

Debate resumed from 30 November.

Second Reading

Mr RUDDOCK (Berowra—Attorney-General) (5.01 p.m.)—I move:

That this bill be now read a second time.

I thank my colleague for facilitating this opportunity. The Family Law Amendment (Annuities) Bill 2004 is a part of the Howard government’s continuing reform of the family law system. This bill, which was introduced into the House of Representatives on 11 August 2004, lapsed with the proroguing of parliament prior to the election.

This bill extends part VIIIB of the Family Law Act 1975, which provides a regime by which future superannuation payments can be split on marriage breakdown, to certain annuity products that are like superannuation.

The commencement of part VIIIAA of the Family Law Amendment Act 2003 on 17 December 2004, combined with the passage of this bill, will fulfil the government’s promise in the 2001 election to ensure that life products that are very similar to superannuation can be split by parties on divorce, in the same way that couples are able to split superannuation interests.

Ms Roxon—You’re an election late.

Mr RUDDOCK—The honourable member intrudes into a second reading speech, which is a little unusual. This is being progressed, along with the complexity of the issues that necessitated a good deal of consideration, as quickly as possible. I would not want to reflect upon the competent officials who work so hard achieving these outcomes and advise me on those matters. I have found them to be very sound in their efforts to ensure that the bills will do the job for us.

The annuities dealt with by this bill are a financial investment product primarily designed for use as retirement income. They receive similar tax concessions and preferential treatment for social security income and asset test purposes as superannuation products. It is therefore appropriate that the family law superannuation regime applies to those products that are like superannuation, to provide both certainty and consistency in the treatment of these products.

The key distinction between superannuation and these annuity products is that annuities are a contractual rather than a legislative product and annuities fund managers are not subject to the same regulation that applies to superannuation fund managers.
This bill provides extension of part VIIIB to both immediate annuities, that is those already in the payment phase, and deferred annuities, which are those where payment of an income stream is yet to commence.

Annuity products are often purchased because the particular superannuation fund from which the money has come only allows for a lump sum payment and an individual wants to receive the money as an income stream. Alternatively, an individual may have purchased an annuity product when they left a place of employment and the particular superannuation fund to which they belonged did not allow for retention of funds.

Annuity products are a way to keep the money within the superannuation system and to continue to benefit from the concessional tax and income security treatment of these products.

While immediate annuities continue to exist as a product that can be purchased, deferred annuity products are no longer available. This is primarily because changes to superannuation legislation in recent years mean that superannuation funds now generally allow for retention or roll-over of money within the fund.

Australian Prudential Regulation Authority data shows that in December 2003 there was approximately $13 billion held by what is classified as ‘annuities and other miscellaneous funds’ within the superannuation system. This represents about 2.3 per cent of all superannuation assets.

The appropriate treatment of annuity products was first raised as an issue by the financial services sector in 2001, towards the end of consideration of the Family Law Legislation (Superannuation) Amendment Act 2001, which ultimately passed the parliament in June 2001. At that time it was decided not to include these products in the superannuation regime, primarily due to difficulty in defining these products, as I mentioned before.

Concerns about the treatment of annuity products were also raised during the parliamentary consideration of schedule 6 of the Family Law Amendment Act 2003. Schedule 6 inserts a new part VIIIAA into the Family Law Act 1975 to allow the court in property proceedings to make orders binding on third parties. The financial services sector in particular was concerned that there was uncertainty surrounding how orders made about annuity products by the courts under the new part VIIIAA would affect its members.

The commencement of schedule 6 was delayed for 12 months from royal assent, until 17 December 2004, to allow time to consider further the concerns that had been raised by the financial services sector. Following consultations with the financial services sector, the legal profession and the courts, this bill addresses the concerns raised and will provide certainty about the orders that the court can make. That demonstrates very positively the extensive consultation that was involved and the difficulties in drafting on this issue and explains why it has taken so long.

This bill will add a class of eligible annuities to the categories of ‘eligible superannuation plans’ which part VIIIB of the Family Law Act 1975 covers and remove that class of annuities from part VIIIAA of that act.

In order to ensure that the scheme is limited to products that are like superannuation a definition of an ‘eligible annuity’ is proposed using the meaning of the term ‘annuity’ under the Superannuation Industry (Supervision) Act 1993. Under this definition the annuity must be
treated for the purposes of division 14 of part III of the Income Tax Assessment Act 1936 as being purchased wholly out of rolled-over superannuation amounts.

It is intended that this regime will cover the majority of annuity products. For any other non-superannuation-like annuity products, the court could continue to make orders under part VIII or VIIIAA.

One distinction in the operation of the current superannuation regime for annuity products is that the bill does not contain a provision requiring the preservation of the non-member spouse’s entitlement once splittable payments have commenced to be paid in respect of a deferred annuity. A preservation requirement is usually something like the attainment of retirement age or invalidity.

For immediate annuities this is not an issue as the member’s spouse must have already met one of the preservation requirements and the money would have already been part of the household income prior to the marriage breakdown. In these circumstances there is no requirement to withhold the splittable payments to a non-member spouse who has not satisfied a preservation requirement.

For superannuation moneys which are in the growth rather than the payment phase, there is currently a requirement to preserve the non-member spouse’s entitlement to a splittable payment until they satisfy a statutory preservation limit, such as the attainment of retirement age. The major purpose behind this requirement is to retain such moneys within the superannuation system to be used as retirement income.

This different treatment for deferred annuities is appropriate because in the case of a deferred annuity there is only a contractual and not a legislative requirement for an annuity provider to only commence payments once a member spouse’s preservation requirement is met. Without a statutory regime to enforce preservation, it is not appropriate to seek to preserve the non-member spouse’s entitlement. The effect of this may be that in some cases a splittable payment will be made to a non-member spouse who has not satisfied a preservation requirement, such as retirement age.

Amendments will be required to the Family Law (Superannuation) Regulations 2001 in relation to annuity products between the passage of this bill and commencement. The Family Law (Superannuation) Regulations 2001 set out requirements mainly relating to valuation and information matters in relation to superannuation interests held by parties to a marriage on marriage breakdown.

The bill contains a provision to take annuity products out of part VIIIAA from the time it commences on 17 December 2004. This will mean that the provisions that currently apply to them will continue to apply until the rest of this bill commences. The court can already make an order under part VIII of the act in property or spousal maintenance proceedings that a spouse pay income he or she receives under one or more of these products to the other spouse. However, the court cannot bind third parties when making those orders.

The bill also contains a provision to make it clear that annuity products will not become a part of part VIIIB until commencement on proclamation or six months from royal assent. This will ensure appropriate time to finalise the necessary regulatory regime.

While the effect of the bill will be to remove superannuation-like annuities from the provision of the new part VIIIAA, this is not expected to have an overall negative impact on cou-
...pleases that have interests of this type. That is because orders under the new part VIIIAA are not expected to be made often. Also, by bringing superannuation-like annuities within the provisions of part VIIIB, it will be possible for parties to have such annuities dealt with as property where property settlement has been sought. The court will be empowered to make splitting orders even where the annuity has not yet vested in a party in the same way that it is now possible for other superannuation-like products.

The government is committed to enhancing and making more accessible and efficient the family law system and this bill is part of that commitment.

Full details of the measures contained in this bill are contained in the explanatory memorandum to the bill. I do not know how they could be any more complex. I commend the bill, and I commend and present the explanatory memorandum.

Ms ROXON (Gellibrand) (5.11 p.m.)—I would like to indicate, as has been indicated in the other place—the Family Law Amendment (Annuities) Bill 2004 having been introduced there—that Labor does support this bill. However, I indicate my surprise at the minister’s additional comments that, although this was a 2001 election commitment, it has taken until the first sittings in parliament after the 2004 election for it to be delivered on. I might say—particularly as the member for Fowler is here, and the Attorney would be aware that she has a particular interest in other family law reform matters—that there would be a large number of people in the public concerned if we were indeed going to have to wait until after the next election for commitments that were made at this election, which are also in very complex areas of law, to be delivered on. But I digress in terms of the content of the bill, which Labor does support.

Mr Ruddock—There was a bill that you could have supported before the parliament was prorogued.

Ms ROXON—It is a bill that we did support before the parliament was prorogued. This bill, which the minister does not seem to be very enthusiastic to debate—it is a shame that the Hansard does not record the tone of dismay with which the Attorney approached this bill that is before the parliament—amends the Family Law Act 1975, and it enables the Family Court of Australia to divide certain annuities as part of a property settlement between separating couples in the same way as the court currently divides the parties’ superannuation interests. Division of property following marriage breakdown is of course a matter that is governed by the Family Law Act. I think everyone in this country, let alone in this House, agrees that the Family Law Act and the family law system need to be flexible enough to deal with the varying types of assets that are now held by parties to a marriage.

The Family Law Legislation (Superannuation) Amendment Act 2001, supported by Labor, reformed the act so that assets held as superannuation could be fairly divided between the parties following a marriage breakdown. This act remedied the uncertainty faced by parties to a divorce proceeding, their legal representation and the courts where the rights of a third party—for example, the trustees of a superannuation fund—would be affected by an attempt by the courts to divide the superannuation benefit. The passage of the particular bill that we are debating today follows logically from those changes made in respect of superannuation in that earlier act. This bill will bring the treatment of superannuation-like annuity products into line with the treatment of other superannuation products under the act as it was earlier amended.

MAIN COMMITTEE
While of course there is a clear difference between superannuation and annuity products—superannuation being primarily a legislative product while an annuity is a contractual one—the logic in maintaining a distinction between the two for the purposes of the Family Law Act cannot be sustained. Both annuity and superannuation products are assets preserved until retirement age and designed to provide a retirement income. Both are important assets created during a marriage and need to be equally subject to division upon a marriage’s dissolution. It is therefore logical that they should be subject to similar principles when dividing assets as part of a marriage separation. This bill will provide the courts with the certainty that they need to be able to make orders in respect of these different types of products.

The bill may create an anomaly in that the spouse who was not originally a contractual party to the annuity—the non-member spouse—may become entitled to a share of the annuity upon separation, even though the purchaser of the annuity product has not satisfied the contractual preservation requirements such as the retirement age. This may require an annuity provider in some cases to make a split payment to a non-member spouse who has not satisfied that preservation requirement.

The government has stated that it consulted the financial services sector, the legal profession and the courts about the need for this bill and, given the time frame, I am sure that that was done thoroughly. Labor have considered the minor impact on life insurance companies and other providers of superannuation-like annuity products and, since they have had an extended period of consultation in which to raise any significant concerns or issues with the government, we are confident that their matters have been taken care of.

Labor believe that this bill will be beneficial to a number of people—to those who are of retirement age, who have superannuation like annuity savings or who undergo a marriage breakdown. Marriage breakdown is difficult for anyone and we have an obligation in this parliament to ensure that the Family Law Act is flexible enough to handle situations of this kind. The ability of the courts to make definitive orders and for the law to provide appropriate guidance to parties is important in order to avoid unnecessary and impractical trading-off of assets to cope with annuities that are tied up until retirement and beyond the reach of family law. It is for these reasons that Labor support the bill. It is a sensible amendment and we welcome the fact that the government has taken action to bring these products into line with superannuation products.

Mr SLIPPER (Fisher) (5.16 p.m.)—I am pleased that the Family Law Amendment (Annuities) Bill 2004 is one of those bills which seems to enjoy the support of both sides of politics, although the gratuitous comments by the honourable member for Gellibrand with respect to the delay in introducing this legislation may have been somewhat unfair, given the workload that has been placed on the desks of the responsible officers. But I have to say that, in general terms, I often get concerned when governments of either side take a considerable amount of time to introduce legislation. I do not fully understand why it seems to take as long as it does, but in this case I understand that, given the explanation of the Attorney-General, the delay is well and truly justified.

The Attorney is in the House and so I will be necessarily brief, because the Attorney no doubt has other matters of greater moment to deal with than the summing up of this legislation. I think that this is important legislation. The fact that it has received the support of both sides of the parliament indicates that it is appropriate legislation. As the Attorney indicated in
his second reading speech, this bill was previously introduced into the parliament. It lapsed when the election was called. It was introduced into the other place on 28 November. Quite surprisingly, we have seen a burst of activity from the Senate, and in fact it was passed on 29 November. That indicates that the Senate sees this as being worthwhile legislation. I therefore think—

Mr Ruddock—It was a strategic effort on my part.

Mr SLIPPER—Indeed, Mr Attorney—that it is important that we deal with the Family Law Amendment (Annuities) Bill 2004 in the expeditious manner in which both sides of politics seem to be prepared to deal with it.

As the Attorney indicated, the bill completes the government’s election commitment in the 2001 election to ensure that life products can be split by parties on divorce in the same way that couples are able to split superannuation. Divorce is of course a tragedy and, as the member for Gellibrand indicated, we do have an obligation to try to make the situation as fair and reasonable as we can for the parties concerned.

The bill extends part VIII B of the Family Law Act 1975, the regime in the act for splitting future superannuation payments on marriage breakdown, to annuity products purchased wholly out of rolled-over superannuation amounts. I think that, quite appropriately, this legislation recognises that these products are so similar to superannuation that they should be treated in the same way. The bill affects an important but quite small sector of the superannuation market. It is interesting that the Australian Prudential Regulation Authority has data indicating that there was approximately $13 billion in December 2003 in what is classified as ‘annuities and other miscellaneous funds’ within the super system. This represents about 2.3 per cent of all superannuation assets.

Politicians often get accused of talking for a living and talking because one has 20 minutes in the chamber, but I think this is commonsense legislation that is supported by both sides and it is important that it pass the House as quickly as possible.

Mr RUDDOCK (Berowra—Attorney-General) (5.20 p.m.)—in reply—I thank the honourable members for Gellibrand and Fisher for their contributions to this debate. The government welcomes the opposition’s support for the Family Law Amendment (Annuities) Bill 2004. I will not be too gratuitous, because I may want the opposition’s support again sometime, but, if the opposition attaches such importance to it, it may have been a matter that with cooperation we could have facilitated before the election. I simply note that the bill was introduced in August.

It is a bill that will bring annuity products, which are very much like superannuation products, under the Family Law Act for splitting purposes and it will be beneficial to couples by allowing more flexibility. It will play a part, even in a relatively small way, in addressing the issue of post-retirement incomes for women. The amendments proposed by the bill will allow a married couple to split an annuity payment on marriage breakdown or divorce, thus allowing the spouse without superannuation or with less superannuation—often a woman—to gain access to this type of retirement related income.

I note that the opposition has suggested that the measures in the bill could have been included in the passage of the superannuation-splitting provisions back in 2001. But the suggestion that part VIII B could have been extended—having been first raised in April 2001 towards
the end of the consideration of the Family Law Legislation Amendment (Superannuation) Act 2001, which was passed in June—was itself a very difficult issue. As I mentioned when introducing the bill, there was a difficulty in defining annuity products, as they are contractually based and available for purchase with non-superannuation money as well as with rolled-over superannuation amounts. In addition, there was a concern in 2001 about how these products might fit within much of the detail of the super-splitting reforms contained in the family law superannuation regulations. Proposals for those regulations were developed against a background of trust or on the legislative basis on which most superannuation benefits are provided.

As I mentioned, these annuity products are contractually based. These issues on the detail of how family law superannuation regulations might be adjusted for annuity products are ones on which the government have been having consultations with the financial sector, the legal profession and others in recent months. They simply, I think, reflect the difficulty and the complexity of an issue like this—and you need to get it right. If you do not get it right, you are potentially disadvantaging people. Certainly, the government want to give effect to our promises during the term following an election. That is our objective. That is why we got the legislation into the last parliament. I regret that with opposition cooperation we could not get it passed in the last parliament, but sometimes these matters, particularly when you have other minority interests in another place, present some difficulties.

Now we are dealing with this legislation in a way which, as I said, is strategic. The very reason this bill was presented to the Senate first was that we knew the Senate would not have much on its plate and could find time to deal with it. That meant that the bill could come back here when we were struggling perhaps to find things to deal with. As I said, it was a strategic approach to get it through as quickly as possible; I do not apologise for that. Again, I thank the opposition for facilitating the bill’s passage now. I just wish we could have done it earlier, as the shadow minister apparently would have liked.

Question agreed to.

Bill read a second time.

Ordered that the bill be reported to the House without amendment.

Main Committee adjourned at 5.25 p.m.