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The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 12.30 p.m., and read prayers.

PRIVILEGE

The PRESIDENT (12.30 p.m.)—On 5 December 2000, Mr Stephen Skehill was appointed by resolution of the Senate to examine whether various documents seized by the Australian Federal Police in reliance on three search warrants issued under the Crimes Act 1914 were immune from such seizure by being protected by parliamentary privilege. These documents had been delivered to the Clerk of the Senate on 29 September 2000 in paper and electronic form, following an order of the Federal Court of Australia made on 18 February 2000 in the matter of Crane v. Gething. On 8 August 2001, the Senate varied the original resolution by determining that Mr Skehill should determine whether any of the documents were additionally immune from seizure by being beyond the scope of those search warrants. On 23 August 2001, I received a statement from Mr Skehill pursuant to paragraph 8 of the resolution of 5 December 2000, together with a covering letter. I table both the statement and the letter for the information of honourable senators.

Senator CRANE (Western Australia) (12.32 p.m.)—Madam President, I seek leave to make a very short statement now, and I would like to continue my remarks at another date in more detail.

Leave granted.

Senator CRANE—I thank the Senate for this opportunity. I also want to thank you, Madam President, and, in particular, Mr Skehill for the manner in which he has conducted this matter on my behalf as well as on the Senate’s behalf but at the instruction of the Senate. There are a couple of issues I wish to raise about this, because I was subjected to a scurrilous campaign prior to pre-selection with regard to my using this parliamentary privilege issue to hide particular documents. At this point, I would like to make a couple of comments as to why I did that.

To begin with, as is well known in this place, I have always been very unhappy about the scope of the warrant. The scope of the warrant for my office in Parliament House was abused to the extent of taking 4½ years of documents out of my office. That is one of the reasons I used parliamentary privilege. I want to ask why that was done. Concerning the warrants for my electorate office and my farm, all documents—bar one group of documents, which was very small—were released to the public by Justice French in the statement that he made in early 2000, following the hearings. I put all of the documents down at that particular time, other than those that were here which I could not because they were on disk and I did not have access to those disks.

When you go through this issue of parliamentary privilege and look at the documents that have been returned to me, only six per cent of the total documents are outside parliamentary privilege or within the scope of the warrant in terms of being released. All the others attract parliamentary privilege or are outside the scope of the warrant. Some of the advice that was given to me suggesting that I should have released them all can, I think, be put to rest now. With respect to the warrant and the way in which it was handled—the way in which documents were taken, whether they were on the hard disk of a computer or otherwise—there was a responsibility, I believe, on the AFP to conduct themselves in a manner which reflected the warrant. I can accept that there would be one or two on one side of the line or the other—I think that is how life is—but 4½ years worth, which were used so scurrilously against me, is beyond the pale.

The other question that I wish to ask at this time or put on the table, which I will deal with in more length at another time, is why these documents, when they were handed to the justice minister at that particular time, were not subjected to an administrative review. If they had been, as I stated the last time I spoke in this place, the letter of the Hon. Bob McMullan, who authorised those flights at that particular time, would have been discovered and there need not have been this terrible burden on
my shoulders that I have had to carry now for over three years—I think quite unfairly, very vindictively and as a result of actions by a number of people, and I will get to them on another occasion. It has caused an enormous amount of unfairness to my family.

Having said those things, today, I would like to read a letter that I wrote to Mr Skehill relating to an unattainable document. I read this because I just want to prove to the Senate and to the people of my state how much we cooperated in getting these documents released. We provided virtually every code to get in there, and some of my staff even went and opened documents which Mr Skehill could not open. But there was one called ‘table and chairs’—and, if the Senate is happy, I will table this letter; otherwise I will read it—that we could not open. The experts could not break it. Even so, I have given that document to the Federal Police and I have asked that, if ever they find a way of opening it—it has probably been corrupted; I do not know because I am not an expert in that sense— they treat it in a reasonable and proper manner and have it subjected to scrutiny to ascertain whether there are any documents on there which do attract parliamentary privilege. The other documents, I do not care about. I have no fear of them.

Finally, over the weekend we were able to go through the 1,400 pages of documents—not 100 per cent but we checked all the things on travel we believed were relevant. We believe that, other than three pages, which are to do with some charter that was set up from the office here—which is above board; there are no problems with that—every one of those documents is identical to the documents that were taken from my place. They are part of the package of documents which were agreed to with Justice French when I put the documents down on the table in the Federal Court.

This thing has gone on for too long. It could have been dealt with the day that we put all the documents down, if not before, by administrative review. I appeal to the AFP to get on now, finish looking at the documents and clear my name. It is time. I seek leave to table this letter.

Leave granted.

Senator CRANE—I seek leave to continue my remarks so that I can put down a much more detailed statement in the future.

The PRESIDENT—There is no motion before the chair at this stage.

Senator ROBERT RAY (Victoria) (12.38 p.m.)—by leave—I move:

That the Senate take note of Senator Crane’s statement.

The opposition have shown Senator Crane, on two public statements, a fair amount of leeway, because one assumed he was going to the technical aspects and not to the defence of the charges against him. On both occasions he has trespassed into that, but one has to show an understanding to a senator in a difficult position that it would be almost impossible to resist that. I was concerned with one aspect of what Senator Crane had to say. He said this is more about the scope of a warrant than it is about privilege. What Senator Crane has received on this occasion is special treatment in that case, because the average citizen does not have much recourse to the scope of warrants. I would have to agree that, given Mr Skehill’s work on this subject, there is no doubt that the warrant by the AFP was too wide—it is self-evident if so much material was excluded, but I am not sure that the methodology for getting rid of that scope in warrants should concern us. It came up inadvertently in the inquiry. We all agreed that, while Mr Skehill was being paid a fair amount of money to determine what was privilege and what was not, if the AFP agreed they might as well determine what was within the warrant and what was not. So, if you like, we killed two birds with one stone. That is to Senator Crane’s advantage, I guess.

But this was about parliamentary privilege, I say to you, Madam President, and, through you, to Senator Crane. It was not about the scope of the warrant. If you have got problems with the scope of the warrant, you take that to the court, as would any other citizen. You do not put yourself in a special position—not that you tried to. If you are an average citizen out there, you have a warrant served on you and that warrant goes to far more issues than it should otherwise go to, what defence do you as a citizen have? You
go to the court, I assume—maybe some of the better legal minds here can assist me, but I assume you go to the court—and you seek an injunction against the warrant. But Senator Crane has gone to court and claimed parliamentary privilege. That court—and I do not think Senator Crane would have objected—referred the matters back to the Senate. It is up to this chamber, basically, to find in these circumstances what documents can be covered by parliamentary privilege. It is quite obvious, especially with the electronic documents, that the amount of material seized by the Federal Police was far in excess of the warrant. That should be of concern to all senators here.

The employment of Mr Skehill was a deliberate process. All senators here could have sifted through all this material and determined what was privileged and what was not. I ask: do you think any senator here wanted to do that? I suspect the answer is categorically no—there might have been a bit of voyeuristic thrill for the opposition to look through Senator Crane’s files, and that would have stopped the moment you looked through one of our files—so we had to get someone independent. Senator Hill was the one who suggested Mr Skehill, but his appointment was not doubted by anyone else and I think Senator Crane is happy with his work. But, because of the electronic documents, I suspect the bill to employ Mr Skehill has gone up tenfold because none of us understood how many documents would be referred to in the electronic form. So we have that difficulty and you, Madam President, will have to scrimp and save to find the money in the budget. But we do know about the contingency fund, so it will be okay!

But this is, at the moment, an issue about warrants and about the scope of warrants, not so much about parliamentary privilege. I have to say—and I have said so in this chamber on a number of occasions; I do not think that Senator Crane has tried to do so—that you cannot use parliamentary privilege to protect yourself. If you are accused of wrongdoing, and we do not make an assumption there, and it is an administrative matter and there are administrative documents, they can never attract privilege to protect the parliamentarian.

Senator Crane interjecting—

Senator ROBERT RAY—I am sure you do not want to do it, Senator. But there has for a long time been a concern that we cannot get a definition of which documents are automatically covered by privilege and which ones are not. Do not think this is the first case; there have been several cases along these lines. I think it is the view of all senators that some documents are not covered by privilege. Clearly others, those documents created for the purpose of use in the Senate, are covered by privilege and we must always protect that particular point.

Senator Crane has again quoted the McMullan letter. We all have views on that. Some of us would say that that allows you to charter rather than to use commercial fares in returning to your home. People have done that. A lot of us would argue that it is nothing to do with your charter allowance. But we will leave that to the police and, if it ever gets to that point, Senator Crane can defend himself. Another point is that Senator Crane says that this material, the rumour and the innuendo have been used against him in pre-selection. I do not know the truth of that. I will take Senator Crane’s word for it. He should consider whom he has been associating with for the last 20 years if they stoop that low.

I seek leave to continue my remarks. I suggest to the manager that Senator Crane, on reading all this, might at some stage like this matter to be resurrected for a few minutes so that he can further comment on it—maybe on a Thursday afternoon or some other time when it will not affect the government program.

Leave granted; debate adjourned.

MEASURES TO COMBAT SERIOUS AND ORGANISED CRIME BILL 2001
Second Reading

 Debate resumed from 4 April, on motion by Senator Ian Campbell:

That this bill be now read a second time.
Senator BOLKUS (South Australia) (12.45 p.m.)—The Measures to Combat Serious and Organised Crime Bill 2001 contains a variety of measures, some of which are directed towards fighting, others of which are about clarifying the rights of suspects and child witnesses during questioning and trials. This bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry. That committee tabled quite a substantial report on the bill in June. The Labor senators of that committee produced a dissenting report which, while agreeing with many of the recommendations of the majority, made recommendations of its own. There have been main areas of disagreement between the government and the opposition, and in respect of those areas there have been some quite productive discussions between officers over the last 10 days or so. I believe, and it is also the view of the Minister for Justice and Customs, there has been a raft of amendments which addressed the concerns that Labor had with the bill and which the government has now been able to accept and, as such, we may have a lot of common ground once we get to the committee stage of this legislation.

There are some quite important issues in this legislation. I will commence by covering some of the main ones. There is the issue of extending controlled operations. A controlled operation is an investigative method in which a law enforcement agency becomes involved in a specifically illegal activity involving the participation of an informant, agent or undercover police officer. Importantly, in these circumstances, law enforcement officers are not allowed to entrap the suspect, but merely to facilitate the conduct. Historically, covert operations have been a legitimate and common policing method in relation to the investigation of a wide range of offences. However, before 1995, controlled operations were conducted in the absence of any legislative approval. As a result, evidence obtained from those operations was subject to the exercise of judicial discretion to exclude it on the grounds of public interest at any subsequent trial, and the operatives involved had to rely on the favourable exercise of prosecutorial discretion so that they were not charged with any criminal offences arising from their work.

In order to give certainty to the collection of evidence, legitimacy to the actions of the law enforcement officers and—arguably, most importantly—transparency and accountability to these operations, a legislative regime was put in place in 1995 by the then Labor government for the conduct of controlled operations in relation to narcotic offences. At present, the legislation exempts from criminal liability law enforcement officers who commit narcotic drug importation offences in the course of obtaining evidence that may lead to an importation offence. Since 1995, it has been widely accepted, both domestically and internationally, that organised criminals have become more sophisticated in the way they operate and have branched out into crimes other than drug trafficking. The United Nations Convention Against Transnational Organised Crime, of which Australia is a signatory, provides for the appropriate use of controlled delivery. The Financial Action Task Force, an international intergovernmental body which focuses on money laundering and of which Australia is a member, recommends the use of controlled operations for white-collar and financial crime.

Consequently, Australian law enforcement agencies have called for a framework in which to conduct controlled operations into serious crimes other than drug trafficking. Labor have always acknowledged that controlled operations are important tools for law enforcement. But, because controlled operations allow law enforcement operatives—sometimes working undercover under assumed identities—to themselves break the law, we have always taken the position that they should be strictly managed and never lightly undertaken. With inadequate supervision, they present dangers to both law enforcement agencies and to innocent citizens and they provide fertile ground for corruption.

The Joint Parliamentary Committee on the National Crime Authority report Street legal looked in great detail at the issue of controlled operations and possible extensions to the existing regime. All government and Labor members of that committee signed up to
the report and the recommendations. Unfortunately, the bill we are debating today, as it is drafted, reflects the fact that the government accepted the NCA committee’s recommendations for extending controlled operations without also accepting its recommendations for complementary oversight and accountability mechanisms. In contrast, the opposition believe that these oversight and accountability mechanisms are essential.

As drafted, this bill will allow the AFP, the NCA and Customs to conduct controlled operations in relation to all Commonwealth offences. Labor will not support two aspects of this extension. Firstly, we do not support that controlled operations should be conducted for all Commonwealth offences. As I said, controlled operations are a special law enforcement tool, to be used in situations where a covert operation is essential to pursue organised criminals and serious criminal activity. The opposition will move amendments in the committee stage which will restrict the NCA to conducting controlled operations relating only to those offences which are set out in the National Crime Authority Act and will similarly restrict the AFP with the addition of a number of other serious offences.

Secondly, we do not accept that Customs needs the power to conduct controlled operations independently of the involvement or knowledge of the two Commonwealth law enforcement agencies—the AFP and the NCA. Customs has both regulatory and facilitating functions. It is responsible for protecting Commonwealth revenue and preventing movement of prohibited imports and exports. However, it is clearly not a body which has the role of seeking out and suppressing organised crime. It is not a law enforcement agency. It does not have the institutional structure, the culture, the tradition, the training facilities, nor the oversight and accountability mechanisms.

During the Senate committee inquiry, it was argued that the CEO of Customs is already prescribed under New South Wales legislation, and therefore should also be prescribed under the Commonwealth legislation. We do not find this argument forceful. We are dealing with a different situation altogether. Put simply, we are not convinced that the work of Customs is of a type which requires the use of controlled operations. The shadow minister for justice endorses the position of Labor senators on the Senate legal and constitutional committee when they said: The ACS has powers of search and seizure, and the ability to apply for and use listening device warrants. ... these powers have been granted so that the ACS can locate and seize either prohibited imports/exports, or documentation which would reveal that Commonwealth excise is being evaded. These powers are necessary to facilitate and regulate people and goods moving across Australia’s borders. They have not been given to the ACS so that it can conduct long term investigations into organised criminal activity. This, properly, is the jurisdiction of the AFP.

The other point that needs to be made here is that, through the bill, the government is trying to give the ACS the power to use one of the more contentious law enforcement tools—controlled operations—without having conducted adequate public consultation. If Customs is to become a fully-fledged law enforcement agency, rather than an agency which has some law enforcement related activities, there should be a proper, robust public discussion as to whether this is necessary or appropriate. This government, unfortunately, has not embarked upon that course, and will not do so.

During discussions between the shadow minister and the Customs minister’s office, it became clear that Customs itself does not believe that it needs these extended controlled operations powers. What Customs currently does, and wishes to be legislatively empowered to continue to do, is, on occasion, rather than immediately confiscating a prohibited import, allow it to be delivered to a recipient so that that person may be apprehended. We believe that this is a proper role for Customs and that it should continue to operate in this way. As the opposition understands it, Customs is anxious to ensure that it is clear that Customs officers are acting in a lawful way despite a technical breach of the customs legislation and some relevant state legislation. The opposition has drafted amendments which we will move in the committee stage to provide that certainty for Customs,
without having to grant them inappropriate and unnecessary law enforcement powers. We believe that the government is now in a position where it will support these amendments.

As I mentioned earlier, the bill reflects the government’s approach to Street legal, the 1999 report of the Joint Parliamentary Committee on the National Crime Authority. A number of substantial recommendations from that report are not adopted in the bill. They include recommendations that longer-term controlled operations should be subject to an external approval process; that the Ombudsman be given the jurisdiction to oversee the way in which controlled operations are carried out; that the period for controlled operations be extended to three months before an application for renewal of the certificate must be made; that controlled operations should be extended to cover an enumerated list of offences (similar to those for which the NCA has jurisdiction), not simply all Commonwealth offences; and, finally, that provisions allowing for civilians to be involved in controlled operations should exclude police informants. The opposition believes that, as a result, the bill contains an unbalanced and unacceptable approach.

The recommendations I have mentioned provide increased scrutiny and accountability to offset an extension of the scope of controlled operations. The opposition will move amendments in the committee stage which will implement these recommendations. Briefly, the opposition’s amendments will establish a tiered system of authorisation for controlled operations, with high-level internal authorisation for controlled operations, the highest level internal authorisation for major controlled operations, and compulsory external authorisation for extended operations. Under our amendments, a major controlled operation conducted by the Australian Federal Police—defined as a controlled operation that is likely to involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than seven days, continue for more than three months or be directed against suspected criminal activity that includes a threat to human life—can only be authorised at first instance by the AFP Commissioner or a deputy commissioner. I must say that is the longest sentence I have contributed to this Senate! A similar NCA controlled operation may only be authorised by one of three NCA members. Once any controlled operation has been active for just over two months, it must be reviewed by the agency. If the agency then wants to continue with this operation, authorisation must be sought from the Administrative Appeals Tribunal, which will conduct its own review before granting such authorisation. The authorised continuation from the AAT cannot be for more than an additional three months.

The opposition’s amendments will also give the Ombudsman the jurisdiction to oversee controlled operations by being supplied with the same reports as are given to the minister and by being given the responsibility for inspecting law enforcement records in relation to controlled operations. We believe that these amendments are essential to ensure that legislatively sanctioned controlled operations remain an effective and acceptable law enforcement tool and are not corrupted or misused in any way. Just as importantly, these amendments will allow the public to see that controlled operations are not corrupted or misused.

It should be noted that these amendments have been drafted following considerable negotiation between the offices of the minister and the shadow minister, negotiations which we believe were conducted in a spirit of good faith. We firmly believe that the amendments, which represent the end result of such negotiations, substantially improve the bill and will give law enforcement agencies greater powers to fight crime while ensuring that these powers are subject to accountability and scrutiny. The opposition will move these amendments and also move additional amendments which, if passed, will implement a number of other recommendations of the NCA report which the government has rejected. I will discuss these amendments in the committee stage.

Another major area covered by this legislation is assumed identities. The bill contains a legislative regime for the authorisation of
granting and use of assumed identities by Commonwealth and state agencies and departments. Once again, the opposition does not believe that Customs needs to be included in the list of agencies nominated as authorising agencies under this regime. If situations arise where Customs officers need to obtain false documentation, then it is not unreasonable to require that Customs request the AFP to authorise the granting of such documentation. Likewise, the opposition does not believe that the Australian Taxation Office needs to be included in the list of authorised agencies. Similarly, there is no reason why the DSD or DIO should have been included in the assumed identities regime. The position was put to the minister that, as far as the opposition is aware, there is no operational or other reason why the Defence Signals Directorate or DIO need to use assumed authorities. The response from the office of the Minister for Defence was that the opposition was correct—that there is no need for these agencies to be included—and that in fact the Minister for Defence was not aware that his agencies were in the bill. It is good to see he does not know what is happening at home, let alone abroad. I understand that there will now be government amendments which will remove DSD and DIO from the assumed identities regime.

The third area which I would like to mention is listening device warrants. Currently, under the Customs Act and the Australian Federal Police Act, a listening device warrant in relation to narcotics offences and specified serious offences can be obtained only in respect of a particular person or particular premises. The bill amends both acts to allow the use of listening devices in respect of a particular item where a particular person cannot be identified. The opposition accepts that, in some circumstances, the power to place a listening device in a thing—such as a bag or a container—will be invaluable in tracing the transit of illicit substances and gathering evidence regarding the people involved. However, we are aware that allowing such use of listening devices has the possibility of widening the net of people whose private conversations are caught by the listening device. It is important in a civilised society that individuals’ civil liberties—the right to privacy—are respected as much as possible when giving law enforcement agencies the power to eavesdrop.

This issue has always concerned legislators when considering the sanctioned use of ‘bugs’. However, for some anomalous reason, although there have been a number of reviews of the telecommunications interception policy, there does not appear to have been a complementary review of listening device warrants. There is no reason why we should be more concerned about the privacy and civil liberties implications of intercepting a person’s telephone conversation than we are about intercepting a person’s face-to-face conversation.

The opposition will not oppose the use of specific item warrants as set out in this legislation. However, we do believe that the time is right to instigate a thorough review of all legislation and practices which allow for the recording of a person’s conversations without that person’s knowledge or consent, with a view to ensuring that the privacy and civil liberties of innocent persons are not unduly trespassed upon. Other countries have recognised this issue. For example, in the US and Canada, law enforcement agencies have to tell any innocent third party that their conversations have been intercepted once law enforcement requirements of secrecy are out of the way. Further, as technology is changing, there is an increasing range of new tools which law enforcement agencies want to use. The opportunity should be taken now to consider what provisions we could or should have in place to account for individuals’ civil rights. The opposition will move in the near future—in opposition or in government—for such a reference to be given to the Senate Legal and Constitutional References Committee.

There are other sections of the bill. There are other initiatives contained in the legislation which were the subject of the Senate committee inquiry. I understand that the government will be moving a number of
amendments based upon the committee’s recommendations. I will leave those aspects of the bill to the committee stage. As I said, there has been a substantial amount of work done on this legislation over the last 10 to 14 days—work which has, we believe, produced some quite constructive amendments which may obviate the need for protracted debate in the committee stage of the legislation. At the end of the day, we will be moving further amendments to those agreed to by the government and we look forward to the Senate supporting those as well.

Senator GREIG (Western Australia) (1.02 p.m.)—This bill proposes a variety of changes to the existing legislative framework governing activities by Commonwealth law enforcement bodies. It amends the law relating to controlled operations, the use of assumed identities, the obligations of Commonwealth investigating officials, the classes of listening device warrants available to law enforcement bodies and the evidence of child victims and witnesses in Commonwealth sexual offence proceedings.

In many respects, this bill proposes to expand the powers of Commonwealth law enforcement bodies. Despite its title, the bill in its current form is not limited to ‘serious and organised crime’. This was a matter raised by the Senate Legal and Constitutional Legislation Committee and, I understand, is a matter the government has acknowledged must be amended. It is important to recognise that strong measures that may be justified in the investigation of sophisticated, organised crime may not be justified in other law enforcement operations.

In its submission to the Senate Legal and Constitutional Legislation Committee, the Victorian Bar made the point that:

Legislation which would in effect allow a branch of the executive to choose which laws to enforce, and which laws to break, substantially diminishes the potential for independent judicial control of the exercise of police power.

The bar pointed to a number of High Court decisions which are underpinned by a judicial reluctance to countenance police activities that are unlawful. The court has repeatedly excluded evidence on the basis of public policy considerations, even where the police activities in question have been in pursuit of legitimate law enforcement objectives. In various cases, the court has sought to protect the right of society to insist that those who enforce the law respect it. It has sought to protect citizens from improper or unlawful treatment by authorities. It has defended the right of the courts to protect the integrity of their processes by not granting implicit approval for wrongdoing by admitting evidence obtained through unlawful conduct by police. Part of the purpose of this approach is to
maintain public confidence in the administration of justice.

Judicial misgivings about state sanctioned illegality in law enforcement activities were brought into sharp focus by the 1995 decision of the High Court in what has been known as the Ridgeway case. Chief Justice Mason and justices Deane and Dawson addressed the view that law enforcement agencies may legitimately break certain laws in conducting their operations, and said the following:

It is arguable that a strict requirement of observance of the criminal law by those entrusted with its enforcement undesirably hinders law enforcement. Such an argument must, however, be addressed to the Legislature and not to the courts. If it be desired that those responsible for the investigation of crime should be freed from the restraints of some provisions of the criminal law, a legislative regime should be introduced exempting them from those requirements.

The court acknowledged that controlled operations are necessary in certain circumstances. However, it also identified the need for a legislative regime that structured and controlled the conduct of controlled operations. The vital feature of such a regime is that it can stand for the values the courts have traditionally sought to enforce: it must protect public confidence in the administration of justice; it must protect the citizen against the exercise of arbitrary power by the state; and it must insist that those who enforce the law respect it. In real terms, this means that officers must be constrained in the laws which they can break in the course of their duties, and it also means that the process by which they are authorised to engage in illegality is rigorous and protects the community against the granting of excessive power. The Democrats do not believe that the Measures to Combat Serious and Organised Crime Bill, in its current form, fully satisfies those requirements.

In 1999, the parliamentary Joint Statutory Committee on the National Crime Authority looked in detail at some of the issues of controlled operations and legislation. Some of the measures proposed in this bill are based on recommendations from that report. One recommendation not reflected in this legislation is that a two-tier system for authorising controlled operations be established, with minor controlled operations being approved internally and major operations being subject to an external approval process. The committee took the view that in-house approval, while convenient and appropriate to some kinds of controlled operations, is neither necessary nor appropriate to all controlled operations. The Democrats share that view.

Another contentious issue has been the inclusion of the Australian Customs Service in this legislation. Customs are generally not considered to be a law enforcement body in the same sense as the Australian Federal Police. While the broad powers in this bill may be necessary in some cases for the AFP and the NCA to successfully infiltrate sophisticated criminal organisations, Customs do not engage in such operations and do not require such powers. Customs require the power to collect controlled deliveries—that is, the delivery of prohibited items. Often, when a prohibited item arrives in the country, Customs are unable to determine who the intended recipient is. In that circumstance, they will deliver the item to the relevant address and the offender can be apprehended when he or she takes possession of the item.

In importing and delivering a prohibited item in this way, Customs officials commit an offence. It is reasonable that they be indemnified against prosecution in such circumstances, subject of course to proper authorisation and accountability procedures. Customs do not need the broader powers given to the NCA and to the AFP to conduct controlled operations. We do not believe that giving Customs the same extensive powers adequately accounts for the differences between these organisations. Law enforcement and related organisations should only be given the powers they reasonably need in order to exercise their functions. The limitations that ought to be placed on the role of Customs will be considered in greater detail at the committee stage.

In considering this legislation, we have consulted at length with the office of the Minister for Justice and Customs and, through the office, with Customs and the
AFP. I thank the Minister for Justice and Customs, Senator Ellison, and his office for their cooperation in that regard. The Democrats recognise that combating serious and organised crime requires the granting of adequate powers to law enforcement agencies to ensure that they are effective. However, we also take the view—and we balance that notion subject to reality—that the powers of law enforcement agencies ought to be appropriately limited and be subject to proper accountability mechanisms. We will be pursuing an approach that, we believe, strikes a fair balance between the competing interests of those two matters raised in the Measures to Combat Serious and Organised Crime Bill 2001.

In conclusion, I express the view, on behalf of the Democrats, that we are supportive of the broad thrust of the legislation but see that there are important and competing interests in terms of accountability and civil liberties. We have proposed a range of amendments which, in some ways, are similar to— if not the same as—those that Labor is advocating. I think that is a healthy sign, given that both sets of similar, perhaps competing, amendments were produced independently. I look forward to some broader debate on the finer points in the committee stage.

Senator LUDWIG (Queensland) (1.12 p.m.)—With the understanding of Senator Cooney, I will speak before him. It is a case of leaving the best until last, I suspect. Prior to making my substantive submission on the Measures to Combat Serious and Organised Crime Bill 2001, it is worth commenting on the disparate elements that have been drawn together in this bill. This is best highlighted by looking broadly at a couple of areas. The case of Ridgeway v. The Queen relates to a released prisoner who got caught up in some nasty work which the police then, obviously, had an interest in. The main issue in this was whether or not the law enforcement agency involved had a legitimate right to be part of the offence. The High Court quashed Ridgeway’s conviction. What happened was that, effectively, a police informer, who was a former associate of Mr Ridgeway—to cut a long story short—got involved in the trade of drug trafficking. The High Court quashed the conviction, and it is worth reflecting upon the joint judgment of Mason CJ, Deane and Dawson JJ, who said:

In these circumstances ... grave and calculated police criminality; the creation of an actual element of the charged offence; selective prosecution; absence of any real indication of official disapproval or retribution; the achievement of the objective of the criminal conduct if evidence be admitted—combine to make the case an extreme one in which ... favouring rejection of evidence on public policy grounds are extremely strong.

The conclusion they came to was that, on public policy grounds, it was a case that should be quashed, where the law enforcement agency in effect got involved in the criminality. I had the opportunity to be on the Senate Legal and Constitutional Committee, which examined this piece of legislation. We were told by a number of witnesses, including the government, that this is one area where, unless you are running as hard and as fast as the criminals, it is extremely difficult to catch them or even to catch up with them to find out how it is all being done. That is where the idea of extending the controlled operations legislation came from: to allow the law enforcement agencies the tools to be able to catch the criminals or at least to run as hard and as fast as them.

Perhaps the best way of describing the Measures to Combat Serious and Organised Crime Bill 2001, in some respects, is as an omnibus bill. It includes areas addressed by a 1999 report from the Joint Parliamentary Committee on the National Crime Authority. That report, entitled Street legal, made a number of recommendations that went to controlled operations. The government at that time did not pick up all of the recommendations out of Street legal, and that was a matter that the Senate Legal and Constitutional Legislation Committee commented on. It is disappointing, from a committee’s point of view, to find that your recommendations have not been fully picked up.

The omnibus bill also goes to the area of dealing with child witnesses and an examination in that area. What I am trying to develop is a feel for how the bill is being pulled together. The title of the bill does not ‘measure up’ to what is actually contained within
the bill. The area of child witnesses in the bill really came from, as I understand it, recommendations relating to children’s evidence made by the Australian Law Reform Commission in 1997. They made a range of recommendations which I will not go to this afternoon. Effectively, the bill picks up some of the stronger elements of that. However, it should be noted that, during the inquiry of the Senate Legal and Constitutional Legislation Committee into the bill, there was a strong argument against supporting these particular parts of the proposed legislation. It basically revolved around the court processes: that participants in the court processes, particularly the defendant’s barrister, may not be able to range widely and sharply in this area. It is a policy question, at the end of the day, whether that should or should not be allowed.

The omnibus bill has picked up an area which relates to schedule 5 or listening device warrants. It, too, came out of a case—Nicholas v. The Queen. It is obviously one of those areas where the High Court has been making it particularly difficult for the law enforcement agencies, as I have said, to run hard and fast. As a consequence of the High Court decisions, some of these areas have then been sought to be placed in bills to address what is perceived as a deficiency in that area—some quarters might see it as a deficiency; others might see it as a removal of the rights of the individual.

The bill also touches upon broader areas. The predominant area that I want to speak to this afternoon relates to the major areas—that is, expanding the offences in the area of drug enforcement or section 233B of the Customs Act 1901 and, additionally, giving persons other than law enforcement officers who take part in Commonwealth controlled operations the same immunities and indemnities available to law enforcement officers. This bill also deals with immunities and indemnities available to law enforcement officers where they undertake controlled operations. It also seeks to add the Australian Customs Service to a list of Commonwealth agencies whose senior officers can authorise Commonwealth controlled operations. It also seeks to increase the duration of a controlled operations certificate from 30 days to a maximum of six months and to put in place a statutory regime for the acquisition and use of false identities by law enforcement officers. So we can see that false identities and the use thereof have been put into the bill.

The bill is entitled Measures to Combat Serious and Organised Crime Bill 2001. One of the early questions that went to the government from the Senate Legal and Constitutional Legislation Committee was, of course, which serious crimes were being referred to in the bill. As we have heard Senator Bolkus refer to, the bill went to all Commonwealth offences; it was not curtailed to serious and organised crime. It is heartening to see that the government, in some small way, has acknowledged the report by the committee that dealt with that particular area and has tried to circumscribe the offences that might be otherwise covered by this bill.

As I have said, the bill was referred to the Senate Legal and Constitutional Legislation Committee. The Selection of Bills Committee requested that the committee not look at the entire bill but look at and consider a number of issues. Those issues included the extension of the scope of the controlled operation, the use of assumed identities, provisions for the production of child victims and witnesses in sex offence proceedings and a number of other issues that I will not go to here.

The report was predated by the 1995 consideration of controlled operations—particularly 1AB, and the current bill seeks, as I have said, to extend those provisions—and also Street legal, which I referred to earlier, the report by the Joint Parliamentary Committee on the National Crime Authority. That report considered in detail the use of controlled operations by the NCA. It is particularly worth highlighting that the parliamentary joint committee recommended that there be an independent oversight body to monitor the management of controlled operations. This matter has not been dealt with in this bill.

In relation to one aspect of this bill, controlled operations, this bill extends the powers of law enforcement officers. Presently, controlled operations are limited to narcotics
offences, and the bill will allow, as I have said earlier, controlled operations in respect of all Commonwealth offences. I understand there will be more said about that during the committee stage. The AFP informed the committee that the bill will allow the controlled operations technique to be used for fighting serious criminal activity, like money laundering, people smuggling and trade in illegal firearms. The bill also increases the number of agencies that can be used in controlled operations. These provisions in the bill are very worrying. There is little discussion on whether all Commonwealth offences, rather than serious offences, are included in the bill and why the use of controlled operations has been expanded to a range of Commonwealth agencies, notably Customs and the others that Senator Bolkus has gone to.

The Labor senators, in their dissenting report, considered the controlled operations should not be extended to all Commonwealth offences. Also, the Labor senators believe that the Australian Customs Service should not have these powers. It is not a case of saying forever; it is a case of saying why the debate needs to be had before there is an extension of these powers to the Australian Customs Service. It is clear from Senator’s Bolkus’s submission to the Senate today that in fact the Australian Customs Service is not a law enforcement agency as such. Certainly, the submissions given to the Senate Legal and Constitutional Legislation Committee persuaded me that it was a law enforcement agency with the necessary skill, expertise, funding and all the other bits of paraphernalia that go to help a law enforcement agency fight crime.

The Labor senators noted that the recommendations in Street legal have not been completely picked up in the bill. Notably, the recommendation that a two-tiered system for authorising controlled operations be established was not picked up, as was the issue of minor and major externally approved matters, although, as I understand it, in the committee stage some of that will be addressed. Hopefully, it will be addressed in a positive light. A further recommendation was that the Commonwealth Ombudsman should have an oversight of controlled operations.

As I understand it, Senator Greig has a slightly different view about this. As I understand from Senator Bolkus’s speech today, there has been considerable movement by the government in that area as well. We will wait to see how that matter turns out. I should, in fairness, indicate that parts of the Street legal recommendations have been included in the bill. That is worth praising. The Street legal report by the joint parliamentary committee was a meaningful report and it is encouraging to find that the bulk of those recommendations were picked up and utilised in legislation.

There are also, as explained in the second reading speech, provisions as to false identities adopted to facilitate investigative functions or infiltration of a criminal, hostile or insecure environment with a view to collecting information and investigating offences. Law enforcement and intelligence agencies require assumed identities to protect officers and others in the course of performing their function. The majority report also went into an outline of the use of immunities or identities from prosecution for law enforcement officers. This area is also interrelated with the other two areas that I mentioned earlier, which went to controlled operations and assumed identities. There does not seem to be any cogent argument progressed by the government to substantiate why both controlled operations and assumed identities should be extended to the Australian Customs Service in total.

The majority report, as I have indicated, stopped short of supporting this proposition. In fact, in regard to the majority report, if I can make a criticism it is that the recommendation really missed the point. It spoke of relevant Australian Customs Service officers, at the direction of the Australian Federal Police, undertaking appropriate training to ensure that officers are appropriately qualified to participate in controlled operations. But that is to miss the germane matter that was raised—they are not a law enforcement agency. They do facilitate a range of activities and they do regulate a range of activities in relation to that important area, but law enforcement should remain with the law enforcement agency. I do not think it is an an-
swer to simply say that the AFP should ensure that their training and work is up to scratch, because I think it comes with a range of issues. A law enforcement agency, as was said by Senator Bolkus, does have a particular culture and training and equipment and facilities to fight crime, in contradistinction to the Australian Customs Service.

With great respect, this really ignores the issue. The issue is whether or not the Australian Customs Service is a law enforcement agency and whether or not the extension of the powers under the Customs Act could, without the appropriate checks and balances, be misused—not on purpose, I suspect, but we can all follow down a path without understanding the true nature of what we are doing until such time as someone pulls you up and says, ‘Excuse me, I think you may have overstepped your mark.’ The Australian Federal Police have a number of checks and balances within their organisation, as we are reliably told, to ensure that those powers cannot be trammelled. So on the one hand we have concerns that there was little consultation with the states as well and the extension of these powers—that is, controlled operations and assumed identities—and little explanation as to why the extension was needed in such a wide form as it was not better targeted to address serious crime. That is one of the areas that has to be looked at. The government put together what can only be described as an omnibus bill, with a number of disparate areas brought together in one area; they then came back with a range of amendments to try to address the concerns raised by both the committee and, I suspect, the shadow minister. Perhaps some of this could have been dealt with had they consulted more widely with state governments and with other law enforcement agencies.

I also want to turn briefly to the following area: as I said earlier, the bill also addresses the protection of children in proceedings for sexual offences. This area, as I have said, is completely unrelated to the earlier mentioned parts of the bill. It is, however, no less important an area, but it does not fall within the area covered by measures to combat serious and organised crime. I wonder why an important area such as that ends up under ‘measures to combat serious and organised crime’. With a title like that, it certainly might be a difficult place to find it. This is about the protection of child witnesses in respect of Commonwealth offences, and I can only recommend that those people who have the time and inclination should refer to the 1989 report of the Australian Law Reform Commission. In keeping with the area, what we have are a number amendments and monitoring processes which were highlighted by Senator Bolkus during his speech in the second reading debate and which we support.

Senator COONEY (Victoria) (1.32 p.m.)—Some of us in our life have broken road traffic laws by going faster than we should, although lots of people say they have not. I remember years ago there was a judge who used to ask people coming before him in court charged with exceeding the speed limit whether, if they had not exceeded the speed limit on the occasion in question, they had ever done so in the past. Judging by Senator Abetz’s smile, he understands the significance of that question: if people denied they had broken the speed limit, their credibility was much tainted; on the other hand, if they said they had broken the speed limit, he was inclined to say, ‘Why are you complaining that you have been proceeded against on this occasion, when you have not been proceeded against on others?’

It is important to make sure that road traffic laws are obeyed. I do not know whether this still occurs but in the past, to ensure that the speed limit was adhered to and that people did not go through red lights and that they stayed on the right side of the road and did not cross double lines, you had not only police cars which were quite clearly identified as police cars on the road but also cars known as Q cars. Q cars were cars that were not identified as anything else, but was not identified as a police
car. Therefore, the police came at you in a way that enabled them to get you in a true situation. Had they come at you in a police car, you would have slowed down and the offence that you were going to commit would not have been committed. That was a means, of course, of ensuring that the road traffic regulations were adhered to.

It is thought that with much more serious crime a similar approach should be taken. In other words, if you have crimes such as the trafficking of drugs occurring, then, for the police to get evidence about that, they need to join in the adventure, if I can use that term, in a way that does not advertise that they are in fact police but makes them seem to be of some other identity. Therefore, the person who is going to commit the crime goes ahead and commits it, and evidence is obtained and proceedings taken. That was a course of conduct the police pursued, prior to the case Senator Ludwig talked about. What is the name of the case?

Senator Abetz—Ridgeway.

Senator COONEY—Thank you, Minister. On the coming of Ridgeway, this whole issue arose, because what happened there was that the police had carried out a controlled operation, which is an operation which enables them as law enforcement authorities to get into a position where people carry out criminal acts which they would not otherwise carry out in that circumstance; a person who would otherwise not be arrested is thereby arrested. In the Ridgeway case, the High Court said, quite properly in my view—and there has been some reference to the High Court—‘If a police officer goes into a situation where he or she is seeking evidence and, in order to obtain that evidence, breaks the law, that is reprehensible, if it is done without permission from parliament.’ What happened in Ridgeway was that the police force had carried out an operation which was against the law and had not been approved by parliament. Therefore, the evidence that would otherwise have been admitted was not admitted, and thereby Ridgeway was acquitted. Indeed, there was a danger that a lot of other people would be acquitted as well, but parliament stepped in at that time and made legislation which protected that position.

You can see from what I have said so far that there are a number of issues involved in this. We do not want crime committed; we do not want people going through red lights at 100 kilometres per hour, importing drugs that they should not import, laundering millions of dollars which they should not launder or committing offences against the tax act, which they should not do. If any of these things happen, they ought to be detected. In other words, if we want to have a decent society, we have to have a police force that can enforce the law so that people are not exploited.

Talking about exploitation, this legislation contains provisions about evidence being led against people who are accused of child sex offences. If people want to know what exploitation is, the exploitation of children—whether here or overseas—for sexual purposes is an example of what gross exploitation consists of and the sort of thing that we do not approve of as a society. Indeed, I do not think that even people within the jail system approve of sex offences against children. There is a term for perpetrators of sex crimes against children—I do not whether it is still used but it used to be in the old days—and that is ‘rock spiders’. If they are put in jail, they are treated in a very robust way by other prisoners.

In this legislation, we are talking about bringing into operation the community’s response against people who exploit this community for their own ends and who do so in a criminal way, as I have explained. This legislation has the noble purpose of ensuring that people who prey upon our society, who exploit us or who use what they see as their arbitrary power to gain reprehensible ends are brought to justice. Everybody would approve of people being brought to justice who do those sorts of things. There are a couple of points that I want to make at this stage. One is that we have to ensure that the people who are brought before the courts and are convicted are in fact the perpetrators of the deed. In other words, we have to ensure in our system that the right people are brought to justice. It would be a fearsome thing to
have somebody convicted of a sexual offence against a child, imprisoned, labelled a rock spider and treated accordingly in the jail system if that person in fact was not guilty. That is what we have to ensure against. It is not only the physical disability that a person goes through when he or she is convicted but also the social disgrace that follows—their reputation is ruined and it is the end of a life. So it is very important that we get the right person before the courts and convicted.

The second thing I want to say is that any civilised society will go about the task of gaining evidence in a civilised way. We are a civil society. In other words, we are a society which says that there are certain things that we would not do. We do not torture people, we do not put them on the rack, we do not have thumbscrews to get evidence from people and we do not assault people in police stations to get evidence—an accusation that was made in the old days. We must ensure that that does not happen. The two points I want to make are: first, when we get any evidence, we want to ensure that the evidence is true and accurate and, secondly, we want to get that evidence in a decent and civilised way.

This legislation recognises the sorts of things that I am saying here. In proposed new section 15IB, the Measures to Combat Serious and Organised Crime Bill 2001 says: ... a law enforcement officer’s conduct relating to a controlled operation meets the requirement of this subsection if ...

That is, it is lawful. At this point, I should say that the conduct that is approved would be criminal conduct if it were not approved by parliament. This is a very positive approach to law. In other words, it does not look at the moral situation but looks at what parliament says and does not say. Then it goes through a number of tests. It also says about the conduct approved of that that ‘conduct does not involve the commission of a sexual offence against any person or an offence involving the death of or serious injury to any person’. In other words, it says that there are some things which people should not do, even if their action is aimed at getting evidence to convict the most serious of criminals. That is understood.

A series of provisions has been discussed by those who spoke before me. Those provisions seek to strike a balance in what is reasonable conduct in obtaining evidence to get people convicted. We have fearsome crimes out there, but at the same time we have to get some balance into the legislation; otherwise we will have a society that becomes harsh and oppressive in the conduct of its law enforcement. The best guarantee we can have for the solution of crime in the community is a good police force. If we do not have law enforcement authorities that are competent and skilled and have a sense of what is right and decent, then we are in trouble. There have been problems with our police forces from time to time. In the 1970s there was the Kaye inquiry in Victoria, followed by the Beach inquiry, and there have been inquiries in other states since then. So there is this problem of ensuring that the law enforcement authorities themselves do not become oppressive and arbitrary and do not go about their business in a way that we would not like.

There is a temptation for that to happen. Take the example of a young constable who is put on an intersection to control the traffic for the first time: the traffic is coming towards him, he puts up his hand full of trepidation and, lo and behold, the traffic stops. He puts up his other hand, and again the traffic stops. He then starts to lose his trepidation, and after a while he thinks, ‘I rule this intersection; I hold up my hand and the world stops,’ which it does. There can be the temptation to go from being a person who is conducting the traffic at an intersection with some trepidation to being a person who does it with great authority to being a person who does it in an oppressive fashion so that he or she berates people going through the intersection and uses the intersection in an untoward way. So there can be a problem in all this. This legislation comes in the line of a long tradition of trying to get this balance between the need to bring criminals to book and to ensure that society is protected from them and the need to weigh that against ensuring that our law enforcement is of a civilised kind and carried out by people of the highest integrity.
There has been a lot of discussion about this piece of legislation, mainly based on those considerations that I have been talking about. What is often forgotten in legislation like this is the work done by those in the Public Service, those who are there to help us, as a community, get to the right result. I notice in the advisers box today Mr Geoff McDonald, who is an eminent figure in the drawing together of legislation in the area of criminal law. I see with him Sarah Chidgey and Karl Alderson, who may have learnt at his feet but who have now gone beyond his feet and become very prominent figures in their own right. I should not go on without embarrassing Annie Davis, from the Australian Federal Police, who has come to listen to what we have to say. She has given great advice in this area. The Australian Federal Police understand the need to balance the competing interests in this area.

We have a piece of legislation here that extends the powers of the police quite extensively. There are controls such as those from the Ombudsman, who is to look at the way these controlled operations are to be carried out, but clearly there is concern in this area. We are all made up of forces of light and dark. When the forces of light are working, we are very good as law enforcement people—if I can use that in a generic sense again and use that term in the sense of the community acting through their police officers, through their law enforcement authorities—but, at the same time, there are all sorts of real problems with powers of the sort that we are going to give our law enforcement agencies here, and we have to make sure that they are properly controlled. It is appropriate that parliament make laws giving powers but, at the same time, put tests around those powers which must be met before the powers are exercised. In that way, we get good law enforcement, we get a good society and we go forward as a community.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.51 p.m.)—The Measures to Combat Serious and Organised Crime Bill 2001 is an extremely important piece of legislation. If our law enforcement agencies are to tackle organised crime, they will need the powers set out in the bill. There are other provisions in this bill, such as the child witness provisions, which also relate to serious crime, albeit not in the tackling of organised crime.

Firstly, looking at the provisions dealing with controlled operations, the current situation is that controlled operations are limited to 30-day operations that involve narcotics importation and exportation which have proved to be inadequate for the task. Controlled operations can play a crucial role in the investigation of other forms of crime, including money laundering, official corruption, child pornography and people smuggling. The need for broader provisions has been recognised by the parliamentary Joint Committee on the National Crime Authority in its Street legal report and by the Senate Legal and Constitutional Legislation Committee in its report on this bill. These crucial amendments will place our federal law enforcement agencies in a much better position to pursue and prosecute the organisers and financiers of crime who stand back and let the couriers and intermediaries take the fall.

There were a number of matters raised during the debate in relation to controlled operations. Firstly, I will refer to Senator Ludwig’s comment that the government had failed to justify the expansion of controlled operations. Our proposed legislation is based on precedent in New South Wales, Queensland and South Australia. The Street legal report by the Joint Committee on the National Crime Authority also endorsed this course of action, as did the recent report by the Senate Legal and Constitutional Legislation Committee. The Finlay report in New South Wales, carried out by a superintendent of police, also recommended this course of action. So we approached this matter with these precedents in mind and the fact that this very important aspect had been canvassed broadly and in detail by other reviews.

Senator Bolkus suggested that the bill ignored the accountability mechanisms in the Street legal report. The government considers that this bill contains appropriate accountability for controlled operations, including more detailed authorisation criteria, more detailed reporting requirements and no
retrospective authorisation. It was that last aspect which was recommended by the Street legal report, but the government did not feel that that was an adequate extension of the power and that a retrospective authorisation was not appropriate. I think that demonstrates that the government has approached this in a rational and even-handed manner, bearing in mind the need for strong law enforcement countered with checks and balances to ensure that inappropriate powers are not given away.

This bill also provides for assumed identities. To date, there has been no proper legal framework for the obtaining of Commonwealth identity documents or for the use of identity documents by Commonwealth agencies for law enforcement and national security purposes. These powers are essential, because the use of a false identity provides vital protection for those called on to infiltrate criminal groups. At the same time, this regime brings accountability to the obtaining and use of assumed identities, with a framework for attention and auditing of records to be supplemented under government amendments with a reporting regime. Again, I stress that we have been mindful of the checks and balances that are required in providing such a power as assumed identities to our law enforcement agencies.

Another provision, which I mentioned earlier, relates to child witnesses. Organised transnational sex crime is an area of serious crime to which the Commonwealth has directed increasing attention in recent years. There was some query raised—I think it was by Senator Ludwig—as to why these child witness provisions should be included in such a bill. The child witness provisions do relate to serious crimes carrying penalties of up to 17 years jail. I also remind the Senate that, in including these provisions, we drew from the model Criminal Code provisions. We are also mindful of the strong support that we have received for these provisions. In particular, I would refer to the evidence given before the Senate committee by the New South Wales Commissioner for Children which supported the inclusion of these provisions. These provisions are important and, as I think Senator Cooney said, play an important role in the administration of criminal justice. This bill is an opportune vehicle to carry this forward. That point, I might say, was also raised by other senators, and I would address their concerns in the same manner.

Senator Bolkus, I think, referred to listening device warrants and this bill does have an important provision relating to listening device warrants. This is much needed, because it directs that warrants can be allowed to be directed at particular items in addition to persons and premises. These amendments will ensure that this vital investigative tool is not rendered unavailable merely because the name of a suspected offender is not known. I refer to a case—I think it was in South America—where agents with the drug enforcement agency found some $35 million in cash suspected of being the proceeds of narcotics trafficking. In such a situation, where there might be no known person under investigation or suspected of committing the offence, finding the money is an important means of getting to those people, and the attachment of a listening device could well be an essential tool in carrying forward that investigation. So what we have here is a step forward in providing modern law enforcement agencies with an essential power in investigating organised crime.

There was a concern in relation to a review of the exercise of this power. I point out to the Senate that listening device warrants are primarily within the responsibilities of the Attorney-General and the government is currently examining the question of how existing listening device laws fit together. I think that this is a very important aspect. I note, however, that the opposition does support the inclusion of this provision in this bill. I also acknowledge that there has been constructive discussion with the opposition in relation to a number of amendments.

Debate interrupted.

**QUESTIONS WITHOUT NOTICE**

**Goods and Services Tax: Queensland**

**Liberal Party**

Senator CONROY (2.00 p.m.)—My question is to Senator Kemp, representing
the Treasurer—that well-known Carlton fan. Does the minister recall the Treasurer telling a Launceston press conference on 24 August that no GST input tax credits had been claimed by the Liberal Party for his Toowoomba fundraiser on behalf of the Minister for Small Business, Mr Macfarlane? Doesn’t the press release dated 24 August from Lynton Crosby state that the Liberal Party did claim GST input tax credits—$826 worth, in fact? Can the Assistant Treasurer provide the Senate with even one example of where input tax credits can be legitimately claimed without the GST having been paid on the end service, such as tickets to a fundraiser?

Senator Kemp—I thank Senator Conroy for that question. I am not aware of the exact details—

Senator Conroy—Why not?

Senator Kemp—Hold on—of the fundraiser that Premier Bracks went to in Victoria and the GST arrangements that applied on that particular evening. You have asked me to quote an example and I was a bit tempted to think about what happened at that Labor Party fundraiser which Premier Bracks went to in Victoria. That leads me to the conclusion about whether in fact the Labor Party should adopt the approach that the Liberal Party has been prepared to adopt on this issue and call for an audit of the arrangements of the Labor Party in Victoria.

Senator Conroy is going to ask me a supplementary question on this. The Liberal Party has been quite up front. The PM has indicated that there will be an audit of the branch. But I do think, Senator Conroy, in view of the problems of the Labor Party—

Senator Conroy—One example!

Senator Kemp—I notice that Senator Conroy ducked the issue that I called on him to respond to. Let me quote from the press statement that was issued by the Prime Minister. It states: I call on the Leader of the Opposition to request a taxation audit of the affairs of the Victorian
branch of the Labor Party given the queries raised some months ago concerning proper compliance with GST legislation in relation to fundraising events attended by the Victorian Premier, Mr Bracks.

We want to see whether the Labor Party actually has an issue of principle here or whether the Labor Party is just involving itself in political stunts. If you are genuinely concerned, Senator Conroy, there was an issue. I concede that it may not involve your faction of the Labor Party. It may well have been Senator Kim Carr’s faction. No, he is shaking his head, so it was presumably your faction, Senator Conroy. (Time expired)

Health: Funding

Senator BRANDIS (2.06 p.m.)—My question is directed to the Leader of the Government in the Senate, Senator Hill. Will the minister inform the Senate how the Howard government has been able to provide record levels of Commonwealth funding for Australia’s public hospitals? How does the current level of funding compare with that provided under previous health care agreements? Are there any alternative proposals for the funding of public hospitals and what would be the impact of these proposals?

Senator HILL—It was the Labor Party last week that said that health policy was to be the issue of the week. It was not announced, of course, by Mr Beazley, because he wanted to get off the roll-back agenda—

The PRESIDENT—Mr Beazley, Senator.

Senator HILL—That is what I said—Mr Beazley, because he wanted to get off the roll-back agenda. Rather, he had Mr McMullan go out and say last week that the issue was going to be health. So the people of Australia were assuming that they would hear a serious debate on alternative health policies: what is the government’s record on health; what is the opposition’s alternative for health? That was to be the issue of last week. What was the bottom line of that at the end of the week? The best thing that Mr Beazley could say was that on public health they would have to hold a summit. Almost six years after coming into opposition, the only policy they could come up with in relation to health was that, if they fell into government, they would hold a summit—they would talk with the states, they would talk with the people and they would work out what they were going to do. The best that Labor could offer after nearly six years of deliberation in opposition was that, if they came to government, they would hold a summit to work out what to do. What a pitiful alternative for government in this country.

Look at what this government has delivered on health. They want the debate on health; they can have the debate on health, because this government has delivered on both the public health and the private health systems. In relation to public health, in the last Commonwealth-state agreement we provided a record $31.7 billion for public hospitals—that is, a 28 per cent increase in real terms over that of the previous Labor government. So for public hospitals there has been a very substantial increase of money from the Howard government—record money being put into the public health system by the Commonwealth government.

There are complaints at a state level about the delivery of services, but those complaints need to be taken to the deliverer of the services. The Commonwealth, for its part, has provided the money that enables the services to be provided in full.

In relation to the private health system, honourable senators will remember that, after Labor had walked away from it, the private health system was really on the brink. There was a serious question mark over whether the private health system in this country would survive. It did because the Howard government is committed to private health. It brought in taxation incentives and it brought in some taxation penalties as well for those who could afford private health insurance. That blend was to get the private health system back to a position of sustainability. The result therefore is that this government’s record on health is a very good one—the public health system strongly supported and the private health system rebuilt to a position of strength. We could do that only because of sound economic management. Labor could not deliver because it ran a huge budget deficit. It did not have the funding to be able to pay. This government
The Liberal Party has provided sound economic management. It has gotten rid of the deficit and repaid the debt so that the Commonwealth can afford to invest more money on public health, which is exactly what it has been doing.

Concerning private health, there was just a hint from Labor recently when they said, ‘We may retain your taxation incentives.’ Those who suspect Labor might tell the truth for a first time would be warned to consult with the AMA in Western Australia which has already seen a failure of the Labor government in that state to deliver on pre-election promises. (Time expired)

Groom Federal Electorate Council of the Liberal Party

Senator COOK (2.11 p.m.)—My question is to the Minister representing the Treasurer, Senator Kemp. Is the minister aware of the numerous statements over the weekend by the Prime Minister and the federal director of the Liberal Party that GST has been paid on the Costello fundraising dinner for the Groom FEC? Minister, how and when has the GST been paid on the $18,350 total ticket sales for this fundraiser and just when was a cheque for the $1,668 GST, which is due on these proceeds, forwarded to the Taxation Office?

Senator KEMP—I do not think Senator Cook is aware of how the debate has proceeded in recent days. Let me quote some comments from the Prime Minister which show the approach that this party is taking. I will be returning to this in the last part of my answer. This is very different from the approach the Labor Party is taking. The government has asked the Commissioner of Taxation to conduct a full audit of the Queensland division of the Liberal Party’s compliance with the requirement of the GST legislation since its commencement on 1 July 2000. That is our approach. Allegations have been made. So that is the Liberal Party approach. As I said, I contrast this with the Labor Party’s approach. Senators will be aware that the Prime Minister called on the Leader of the Opposition, Mr Beazley, to request a full taxation audit of the affairs of the Victorian branch of the Labor Party given queries raised some months ago concerning proper compliance with the GST legislation in relation to fundraising events attended by the Victorian Premier, Mr Bracks. In the first question I received today from Senator Conroy, he asked me whether I was aware of any fundraising events where input credits had been improperly claimed—and we are all aware of the debate which has continued. I was not quite sure of the arrangements that the Victorian ALP made in relation to its fundraising. I suggest that Senator Cook—

Opposition senators interjecting—

The PRESIDENT—Order! There are so many senators shouting on my left that I am finding it difficult to hear the answer.

Senator Jacinta Collins interjecting—

Senator KEMP—Not a hope in hell, Madam President, said Senator Collins.

The PRESIDENT—Senator Kemp, I have called you to order. There are far too many senators on my left shouting and behaving in a disorderly fashion.

Senator KEMP—The Liberal Party approach is very clear. What is also unfortunately clear is the totally contrary attitude of the Australian Labor Party. Senator Collins called out when I said the ALP should call for a full audit by the ATO into the GST compliance of the Victorian branch of the Labor Party—(Time expired)

Senator COOK—Madam President, I ask a supplementary question. I point out that the minister has not answered at all the question
that I asked him. The Prime Minister and the Federal Director of the Liberal Party say that the GST has been paid. The question was: when was the cheque for $1,668 of GST due on these proceeds, forwarded to the tax office? Will the minister answer that question? And can he confirm to the Senate that, without a payment of the GST liable on the total ticket proceeds, neither the Queensland state division nor the Groom FEC are entitled to claim the GST input tax credits? They are precise questions, and I ask for precise answers.

Senator KEMP—I thought I gave a precise answer. I am rather distressed that Senator Cook feels that way. I refer Senator Cook to the statement made today by the director of the Liberal Party, Mr Crosby. Senator, you should have a close read of that. I also notice that, in relation to the matters that I have raised, there is great interest by the ALP in the affairs of the Queensland branch of the Liberal Party in relation to GST compliance but no interest whatsoever in the activities of the Victorian branch of the ALP and its fundraiser that the Victorian Premier, Mr Bracks, attended. I wonder whether we are seeing a bit of the old dual standards here.

Family Assistance: Sole Parents

Senator PAYNE (2.18 p.m.)—My question without notice is to Senator Vanstone, the Minister for Family and Community Services. Is the minister aware of recent research which highlights the positive effect of the government’s reforms to family assistance for sole parents? Will the minister inform the Senate of the increases to the disposable income of sole parents as a result of the introduction of family tax benefit? Finally, will the minister also advise the Senate who else has benefited from the government’s commitment to Australian families?

Senator VANSTONE—I thank Senator Payne for the question because it gives me the opportunity to highlight the very positive research done by the National Centre for Social and Economic Modelling, otherwise referred to as NATSEM. NATSEM confirms that this government is the most family-friendly government Australia has ever had. The Labor Party do not like to recognise this. They have no policies in relation to families, they do nothing but nitpick, and they are very disturbed to find that an independent body such as NATSEM has given us such a big tick. The results are a ringing endorsement of what the government has done. For Senator Payne’s edification, every family studied increased their disposable income. Sole parents were clearly the biggest winners. A sole parent, two-child family that is fully dependent on government assistance has gained $59 a week, a 19 per cent increase in disposable income in the past five years. Lower income families and single earner families have fared better than higher income or dual earner families. It is not just the government that endorses the NATSEM research. Stephen Gianni, the director of Social Action and Research at the Brotherhood of St Laurence, said that the changes that have occurred have really benefited families, and the government should be congratulated.

In this climate when people would like politicians to agree when something good has been done, do we have any congratulations from the Labor Party? No. Associate Professor David Johnson, who is the Deputy Director of the Melbourne Institute of Applied Economic and Social Research, says quite plainly:

“It’s unequivocal that the last five years have been good for families”...

It is undeniable that as a result of the government’s actions fewer children are now living in poverty. We heard a promise about that once from the Labor Party, which they never delivered on. Independent people are saying that fewer children are now living in poverty. Bettina Arndt asked the question: ‘Why isn’t this better known?’ It is perfectly simple: Labor are consistently out in the electorate trying desperately to mislead Australian families. The most recent example of this is the valiant but somewhat ill-informed attempt by Michael Costello, Mr Beazley’s chief of staff, to defend the Labor Party. It is interesting that they send out the chief of staff rather than a member of parliament. His own aspirations, of course, came to the fore: he wrote not on ‘Office of the Leader of the
Opposition’ letterhead but on ‘Leader of the Opposition’ letterhead.

Firstly, Labor claim the report does not take account of the GST. That is simply wrong. The director of NATSEM has made that clear. Secondly, Labor claim the report uses unrealistic assumptions about the families’ incomes. That is wrong as well, because average weekly earnings is a very fair figure to use because it includes part-time workers. Separate modelling by my own department confirms that low income families have benefited even more. Thirdly, Labor argue that sole parents are worse off when they share the care of their children. What are Labor saying? Are Labor saying that they will reverse the shared care arrangements and leave the non-resident partner to bear the burden of the cost of providing a room and care for children?

Senator Carr interjecting—

Senator VANSTONE—Is that what we are entitled to go and say to the non-resident parents around Australia—that Labor will turn that back? I do not think so. That is why they used a staffer and not a member of parliament to make these claims.

Further, reference is made to health funding cuts when we have in fact increased funding to health, and reference to cuts in education when we have increased by 79 per cent the number of traineeships and apprenticeships available—

Senator Carr—Nonsense. Complete nonsense.

The PRESIDENT—Senator, persistent interjecting is disorderly.

Senator VANSTONE—to the sons and daughters of blue-collar workers around Australia.

Goods and Services Tax: Queensland Liberal Party

Senator SCHACHT (2.22 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware of Minister Macfarlane’s claim that the GST scam resulted from a misunderstanding by the Queensland division of the Liberal Party about the way the new system worked? Has the Assistant Treasurer seen the memorandum circulated by state director Graham Jaeschke on 14 June 2000, just before the commencement of the Howard-Costello GST in which Mr Jaeschke spells out very clearly the taxation obligations of Liberal Party branches? If Minister Macfarlane did misunderstand the situation as explained in the Jaeschke memo, how can the minister claim to understand the application of the GST to small business and how can he explain the GST to small business?

Senator KEMP—Again the Labor Party is back on its current theme. It saves the Labor Party speaking about policy, and that is accepted. That is the general approach of the Labor Party. What we have, and I think it is very important that we underline this, because there is a very different approach between the Liberal Party and the Labor Party on this issue—

Senator Schacht—Absolutely. You’re corrupt and we’re not.

Senator KEMP—Let me tell you what the approach is.

Senator Schacht interjecting—

The PRESIDENT—Senator Schacht, you have asked the question. You should not be continuing to shout.

Senator KEMP—in the light of the debate last week and over the weekend, we have asked the Commissioner of Taxation to conduct a full audit of the Queensland division of the Liberal Party’s compliance with the requirements of the GST legislation since its commencement on 1 July. Like all other sections of the community, divisions and branches of political parties must fully comply with taxation laws.

Senator Schacht—Did they comply or didn’t they?

Senator KEMP—you stand up and you make—

Senator Schacht—Report it to the ATO.

The PRESIDENT—Order!

Senator KEMP—I am coming to the latter part of your question, but I am dealing with the first part of your question.

Opposition senators interjecting—
The PRESIDENT—Order! There are senators on my left persistently shouting. You know it is disorderly and should cease.

Senator KEMP—Thank you, Madam President. Let me make the point that we have noted the allegations which continue to be raised. This party is quite happy to have a full audit, an ATO audit, of the taxation affairs—of compliance with the GST—of the Queensland branch about which various allegations have been raised. Senator Schacht, there will be a full audit. You should have no worries about that.

However, as I have said a couple of times before, there is an issue about a fundraising event in Victoria with the ALP. All we are saying is that, because of all the huffing and puffing that is going on here—from two Victorian senators in particular, Senator Robert Ray and Senator Steve Conroy—there seems to be one standard that we are prepared to adopt, which is to have a full audit when allegations are raised, and another standard that the Labor Party adopts. As Senator Collins said, we have not a hope in hell of the ALP calling an audit into the compliance activities of the ALP branch in Victoria in relation to the GST. Let me make that point: there is a very different approach, and the dual standards are typified by question time today.

Senator Schacht stood up and spoke about small business. When small business look at the Labor Party, they are looking, when they come to the Senate, at 100 per cent union bosses. An ordinary rank and file member of the Labor Party cannot get preselection to the Senate. This is the retirement home for union bosses. We know about the Labor Party. When small business view the Labor Party, they do not see a political party; they see the trade union movement.

Senator SCHACHT—Madam President, I ask a supplementary question. If Minister Macfarlane’s defence that he misunderstood the application of the GST is to be accepted, will small business be able to use the Macfarlane defence to avoid prosecution by the tax office? Come on, tell us. Get up and tell us.

The PRESIDENT—He cannot tell you until I call him to do so, and it is not your place to sit and shout out in that fashion.

Senator KEMP—I think Senator Schacht thinks he is in one of his trade union bosses meetings when he behaves like that, calling out and shouting across the chamber. Let me make it clear that everyone is required to comply with the law—the Liberal Party and the Labor Party. Everyone is required to comply with the law. As I said, our party is quite up front. We have called for an ATO audit to ensure proper compliance, and I must say there has been a complete silence from the Labor Party on whether we should be looking at the Victorian branch and looking at various GST fundraising activities, in particular the function that Premier Bracks attended.

Goods and Services Tax: Queensland Liberal Party

Senator MURRAY (2.30 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Has the Prime Minister requested the Australian Taxation Office to tax audit the Queensland Liberal Party or all Liberal Party divisions? If only Queensland, why not all the other divisions? Does the ATO audit include an audit of all associated entities including trusts, foundations and clubs associated with the Liberal Party such as the Greenfields Foundation?

Senator HILL—As I understand it, the audit is being conducted of the Queensland division of the Liberal Party. In relation to the extent of the audit, I assume that that is in the hands of the Commissioner of Taxation.

Senator MURRAY—Madam President, I ask a supplementary question. I thank the minister for the answer. I hope that means
that the minister does not object to the auditing of other associated entities. Would the government favourably consider extending the ATO tax compliance audit to all political parties and ensuring that it covers all associated entities including trusts, foundations and clubs? In other words, would you go the full monty on all political parties?

Senator HILL—We thought that the Labor Party would volunteer an audit of its Victorian division to clear up the Bracks matter. Apparently, no such offer has yet been forthcoming. Senator Cook might like to show a bit of initiative now, but apparently not; there is silence on the other side of the chamber. The Prime Minister is obviously of the view that, in the circumstances, an audit is warranted in relation to the Queensland division of the Liberal Party. I think it would be wrong to assume, as a result of the need to audit one division, that that would automatically mean that all divisions of all parties should be subject to such an audit. I think these matters should be addressed according to need.

Goods and Services Tax: Queensland Liberal Party

Senator FAULKNER (2.32 p.m.)—My question is addressed to Senator Kemp, representing the Treasurer. Can the Assistant Treasurer confirm whether it is the Treasurer’s normal practice, when presented with evidence of an alleged tax rort, to immediately refer the matter to the alleged perpetrator of the scam rather than to the Taxation Office? Why didn’t the Treasurer send the allegations made by Mrs Watts in her letter to him dated 21 February 2001 straight to the tax office? Why have we had to wait more than six months for the Prime Minister to do what the Treasurer should have done back in February—that is, refer the matters to the tax office for proper investigation?

Senator KEMP—They have not. They have chosen, as they tend to do, to duck the Treasurer, for obvious reasons. The Treasurer, it has to be said, is not particularly kind at times to the Labor Party. I guess they find it hard at times to get someone to ask a question of him. Senator Faulkner, you asked about the Treasurer. I said that the Treasurer had made a number of comments on this particular issue and I referred you to those comments. The Treasurer is an individual who always acts with the greatest of propriety. As I said, if this is such a pressing issue in the Labor Party, it is a bit surprising that they have sent Senator Faulkner into this chamber to attack the Treasurer. I admit that Senator Faulkner is a bit safer attacking the Treasurer in this chamber rather than in the House of Representatives. This government always acts with the greatest of propriety. Because of the allegations which have been raised about this matter there will be an ATO audit in relation to the Queensland division and its compliance with the GST.

Senator Murray raised the issue of whether there should be an ATO audit in relation to the Labor Party. I would confine that more—essentially for reasons that Senator Cook gave—to the Victorian division of the ALP. But because we have senators from Victoria such as Senator Robert Ray, Senator Stephen Conroy and Senator Collins, I would have to say that the chances of the ALP agreeing to that are remarkably slim. In order to avoid the accusation of double standards, Senator Faulkner, one would have thought that the demands you are making on the coalition would be very similar to the demands that you would wish to make on the ALP. Apparently, that is not the case. Senator Murray, in his comments, drew our attention to the hypocrisy of the ALP on this issue.

Senator FAULKNER—Madam President, I ask a supplementary question. The question goes to Minister Kemp who, as Assistant Treasurer, has responsibility for the Australian Taxation Office under the ministerial arrangements. I ask him whether he can confirm the approach that is taken when a government minister is presented with evidence of a tax rort. I ask whether the ap-
proach of the government or the minister responsible is to refer the matter to the alleged perpetrator of the tax rort rather than the tax office itself. That is the question, Minister. Is that your approach or Mr Costello’s approach on these matters? If it is, you might tell us whether that occurred in this particular case, because it was his own political party—the Liberal Party—that was the culprit.

The President—Order! The question should be directed to the chair and not to the minister directly—as the answer should be, Senator Kemp.

Senator Kemp—Madam President, you always know when Senator Faulkner is in trouble, because he goes red in the face and starts to shout at people. This government has very high standards of propriety, in contrast to the former government, with its behaviour on a whole range of issues, and prides itself on its propriety and always takes—

Senator Faulkner—Madam President, on a point of order. The Assistant Treasurer, Senator Kemp, now twice, has been asked directly what the government’s approach is when the government has evidence of a tax rort brought before it. Does it refer it to the perpetrator of the rort or does it send it to the ATO? Surely, that question is simple enough for even this Assistant Treasurer to try to provide an answer. If he does not know, he ought to take the question on notice.

The President—I draw your attention to the question, Senator Kemp.

Senator Kemp—Madam President, I am not sure that you listened to my response. I said that the government will always act with the greatest of propriety, will always take action and will always ensure that action is taken when—

Senator Faulkner—So what do you do? You send it off to the rorter!

The President—Order!

Senator Kemp—Madam President, it is a bit hard to answer a question if, as you start to answer it, Senator Faulkner goes red in the face and starts shouting again. I am urging Senator Faulkner to note that this government will always take appropriate action and will always ensure that there is proper compliance with the law—which this government has done and always does. (Time expired)

Commonwealth Grant: Experimentation on Human Embryonic Stem Cells

Senator Harradine (2.39 p.m.)—Madam President, my question is to the Minister for Industry, Science and Resources, Senator Minchin. It refers to the Commonwealth grant for a project for experimentation on human embryonic stem cells. Does the government support the laws of South Australia and of Victoria which prevent the extraction of stem cells from human embryos to their destruction? Weren’t these laws circumvented by the beneficiaries of this grant? Do the human embryo stem cells to be used come from Singaporean human embryos? What were the ethical guidelines surrounding the extraction of stem cells from those Singaporean human embryos? Does the minister regard the treatment of Singaporean subjects in a manner that would not be permissible in the case of Australian subjects as acceptable in this post-colonial era?

Senator Minchin—Last week I announced the outcome of the government’s deliberations in relation to its Major National Research Facility program. I also announced last week that I accepted my expert panel’s recommendations in relation to the grants to be made under that program, after a highly competitive selection process in which there were some 87 applications and grants were made to some 15 proposed science facilities around the country. One of the successful applications was for a national centre for advanced cell engineering, which has been granted $5.5 million out of the $155 million funding for major national research facilities.

I stress to Senator Harradine that this centre, along with all reproductive science and medical health centres in Australia receiving federal government support, must operate in accordance with the NHMRC’s National Statement on Ethical Conduct in Research Involving Humans. My department will be entering into a contract with the proposed new centre, and one of the conditions will be that they comply with that and with all prevailing ethical requirements in relation to
medical research in this area. Of course, the centre, and all medical and scientific research of this kind, must comply with prevailing state and Commonwealth laws. The primary and obvious constitutional responsibility in this area rests with the state governments. Victoria, South Australia and Western Australia, specifically, have legislation that bans cloning and they have laws regulating embryo research.

As Senator Harradine would know, the government has taken this issue very seriously. It is one that is causing some ethical dilemmas for many people around the country. I am very conscious of the Catholic Church’s pronouncement on this matter, and I note that Archbishop George Pell had something in the press over the weekend on this matter. The government initiated—as Senator Harradine will recall—a process of consideration of this matter under the auspices of the Council of Australian Governments. At the COAG meeting on 8 June 2001, the council committed itself to achieving nationally consistent provisions in legislation to prohibit human cloning, and it also agreed that jurisdictions would work towards nationally consistent approaches to regulate assisted reproductive technology and related emerging human technologies.

In that vein, and consistent with that clear determination to achieve nationally consistent legislation and regulation in this area, the council has sought a report from health ministers by the end of this year on this matter to achieve a nationally consistent approach in all jurisdictions by June 2002. Also, the matter of cloning is being considered by the House of Representatives Standing Committee on Legal and Constitutional Affairs, and it is expected to table its report shortly. That report, I think, will have a profound influence on the ultimate nationally consistent approach to this matter, which I am pleased that COAG has committed itself to introducing by no later than June 2002. I make the point to Senator Harradine that this proposed national centre for cell engineering will have to comply with all prevailing laws and will have to enter into contractual arrangements—(Time expired)

**Senator HARRADINE**—Madam President, I ask a supplementary question. The minister did not answer the question. Minister, what ethical evaluation took place by your department before recommending this grant? Please table all of the documents before us. Secondly, a major beneficiary of this is ES Cell International because of its ownership of intellectual property. What is ES Cell International? Who owns ES Cell International? Isn’t it mostly owned by the Singaporean government? Are our ethical standards going to be established by what the Singaporean government determines? Why not fund the more efficient and compatible research on stem cells obtained from the patient? Answer those questions instead of carrying on with nonsense which, when you analyse it, is really coming from your department, which I know has not engaged in any ethical evaluation of the project. (Time expired)

**Senator MINCHIN**—My responsibility was to appoint a panel of distinguished experts in the field of science to advise me on the ways in which the government could best, in the national interest, establish major national research facilities, on the clear understanding that all grants made by my department in relation to medical research are and must be in accordance with the guidelines issued by the National Health and Medical Research Council, which governs all medical research, and, of course, on the understanding that they must be conducted in accordance with all those ethical requirements.

**Goods and Services Tax: Queensland Liberal Party**

**Senator CHRIS EVANS** (2.46 p.m.)—My question is directed to Senator Hill in his capacity of representing the Prime Minister. Will the Prime Minister seek an undertaking
from the Queensland branch of the Liberal Party that the full results of the tax office audit requested by the Prime Minister will be made public no matter what the result? Will the government guarantee that all of the audit results will be made public before the election is called?

Senator HILL—The fact that the Prime Minister has called in the tax commissioner is evidence that he does not intend to hide anything in this matter. It is an endeavour to demonstrate public confidence. In relation to the detail of the question, I will refer that to the Prime Minister.

Senator CHRIS EVANS—Madam President, I ask a supplementary question. I thank the minister for his answer but, as I understand it, under the tax legislation the tax office cannot make public the results of an investigation without the concurrence of the client, which in this case is the Queensland Liberal Party. So I ask again: will the Prime Minister seek an undertaking from the Queensland branch of the Liberal Party that the full results of the tax office audit requested by the PM will be made public no matter what the result?

Senator HILL—I would have thought that there would be no better way to demonstrate public confidence than to call in the taxation commissioner. However, as I said, I will refer the question to the Prime Minister.

Goods and Services Tax: Families

Senator LIGHTFOOT (2.48 p.m.)—My question is directed to the avuncular Assistant Treasurer, Senator Kemp. Will the minister inform the Senate of independent confirmation of the success of the coalition government’s new tax system in lifting Australian families out of poverty? Is the minister aware of any alternative approaches, and, if there were, what would be their impact if implemented?

Senator KEMP—I thank Senator Lightfoot for that question. I think it is an important question and I congratulate Senator Lightfoot on returning the Senate to some real political issues. Since the government was elected, a number of reforms have been implemented to assist Australian families. These include the family tax initiative introduced in 1997, tax cuts and increased family assistance delivered as part of tax reform. Through the government’s good management of the economy, interest rates have also been kept low, and that is a very important plus. This government has been able to deliver some very real benefits to Australian families. When Australian families contrast the interest rates that they are paying now on their home mortgages—in the order of perhaps 6.8 per cent—they think back to the bad old Labor days when interest rates were 17 per cent and going north. While Senator Faulkner and Senator Cook were on the front bench, this was the performance.

In 1997 the government, as I mentioned, introduced the family tax initiative, which gave a very substantial increase in the tax-free threshold for each dependent child in almost two million low- and middle-income families. The families package, as part of tax reform, increased assistance to families by $2.4 billion per year to over two million families. This is in addition to families sharing in tax cuts worth over $12 billion a year through both reductions in marginal income tax rates and higher income thresholds. So we have been able to assist families through lower interest rates, we have been able to assist families through some tax initiatives and we have been able to assist them through various family packages.

So it is not surprising that there has been some research which has praised the government for its performance in this area. I would like specifically to mention some recent modelling that was discussed in the weekend newspapers. This modelling was conducted by the National Centre for Social and Economic Modelling, NATSEM, at the University of Canberra. That research, it was reported, compared the disposable incomes of families in 1996, the last year of the previous government, with those of March 2001. This research is very important, and some people in the wider community may have missed this. The report found:

Every family studied ... showed increases in disposable income.

The director of social action research at the Brotherhood of St Laurence was quoted in
the article regarding the NATSEM analysis. He said:

The changes that have occurred have really benefited families. The Government should be congratulated.

I think he is quite right. There has been a great deal of work and good management, and we have been able to deliver very real benefits to Australian families. Senator Lightfoot, if there is anything more you would like to know in relation to this report, please feel free to ask me a supplementary question.

Senator LIGHTFOOT—Madam President, by way of a supplementary question, could the minister amplify those points that indicate either there is an alternative policy—and, if so, what it is—or if there is in fact no alternative policy?

Senator KEMP—The analysis, Senator Lightfoot, contrasts with an earlier NATSEM study which reported on the economic fortunes of children between 1982 and 1985—this broadly coincides with the government of the Labor Party—and the report concluded that the losers during this period were children living in couple families where only one of their parents worked. Single income families showed a four per cent drop over this period after inflation.

What we are seeing here is that this government has had a focus on assisting families and this government has delivered for families. This is in very sharp contrast to the absolutely abysmal performance of the Labor Party. Whether you are looking at taxation, whether you are looking at interest rates or whether you are looking at the rises in real earnings, which as Senator George Campbell has pointed out, were practically stagnant during the 13 years of the Labor Party, this government—(Time expired)

Goods and Services Tax: Queensland Liberal Party

Senator CARR (2.54 p.m.)—My question without notice is to Senator Kemp. Given that today he has expressed pride in the fact that the Prime Minister has referred the Queensland Liberal Party division’s GST tax activities for inquiry by the Taxation Office, isn’t it a fact that this was only done after the Labor Party exposed these matters in parliament last Thursday? Minister, why were these matters not referred to the tax office for inquiry prior to last Thursday? Further, I would ask the minister: is it not an undeniable fact that Ministers Costello and Macfarlane failed in their public duties to refer these matters, knowing—as they did—about these matters for six months?

Senator Cook interjecting—

Senator KEMP—Again Senator Cook is trying to cover up for the lack of substance by shouting and yelling, as Senator Faulkner does. It is a very bad example to follow, Senator Cook. Madam President, Senator Carr should look very closely at the statement that the Prime Minister put out at the weekend in relation to the tax audit. He should further read very closely the statement that was put out today.

Senator Carr interjecting—

The PRESIDENT—Senator Carr, don’t shout.

Senator Carr interjecting—

The PRESIDENT—Senator Carr, come to order.

Senator KEMP—Madam President, he should also look very closely at the statement that was put out by Mr Lynton Crosby, the Federal Director of the Liberal Party, and he would see how poorly based his question was. I do not know who drafts these questions; I used to blame Senator Cook for the poor quality of questions, but I think probably this is a bit unfair. Senator Carr, this looks entirely like your own work, and all I can say is that the implications and the assumptions on which that question has been asked are not correct, and you should read the statement that Mr Lynton Crosby put out today.

Senator CARR—Madam President, I ask a supplementary question of the minister. Why did both Ministers Costello and Macfarlane fail in their public duties for a period of six months in regard to these matters? Given that you have made such play today of the Bracks fundraising dinner in Victoria, I would ask you: what is the difference between the Bracks fundraiser and the
Liberal Party fundraiser celebrating the Prime Minister’s fifth anniversary in office?

Senator KEMP—We would want to know the full facts of the Bracks fundraiser, and that is why there should be an audit. One thing is for sure, Senator Carr: you do not know the facts of the Bracks fundraiser. So that is why the issue has been raised. It should be referred to the tax office for an ATO audit. That is what the point is. You have missed the whole substance of the debate in question time today. You are seeking to impose on the Liberal Party a standard which you are not prepared to impose on the Labor Party. Accusations have been raised about the Liberal Party, and the commissioner will be conducting an ATO audit. Accusations have been raised regarding the Labor Party, and what happens: all you get is Senator Faulkner going red in the face and shouting and Senator Carr also jumping to his feet and trying to—(Time expired)

World Heritage Area: Great Barrier Reef

Senator BARTLETT (2.58 p.m.)—My question is to the environment minister, Senator Hill. Does the minister agree that the latest outbreak of crown-of-thorns starfish has spread to areas of the Whitsundays with greater severity than has previously occurred and will result in reefs such as Bait Reef and surrounding areas being eaten out by the end of this coming summer? Is the minister aware of claims by the Association of Marine Park Tourism Operators that funding currently provided is inadequate to meet this significant threat? Will the minister agree to provide the extra funding to ensure that this damage does not occur? Has his department or the marine park authority done estimates of the economic loss that has occurred from the continuing outbreaks of crown-of-thorns starfish?

Senator HILL—I was pleased to see the Australian Democrats yesterday discover the crown-of-thorns starfish. They have in fact been around for a very, very long time. In fact, they are regarded as a natural phenomenon on the reef. Having said that, there is evidence in recent times that infestations are intensifying and are occurring more often. That obviously causes anybody concerned with the world heritage values of the reef considerable concern.

However, despite the fact that the Commonwealth is spending some $13 million on research on the crown-of-thorns starfish, there is still not a lot known about the science of the starfish. It is suspected that this intensity in invasions, particularly as it relates to the inner reefs, may be related to the reefs being damaged by coral bleaching and also suffering somewhat as a result of increased sedimentation and nutrients and perhaps also suffering as a result of loss of the predatory fish, which have been significantly reduced in numbers.

As a result of that, GBRMPA, the marine park authority, has been concentrating its efforts in these three areas of cause, particularly those within which it has some capacity to influence outcomes—water quality and also line fishing where there is evidence of overfishing. The authority and the Commonwealth will continue their funding support. We have recently announced another $700,000 in support of the AMPTO program to physically remove the starfish from selected tourist sites. We also look forward to the recent research that has been conducted—or financially supported—by the Queensland government.

The bottom line is that we do regard the issue seriously. We are significantly funding an ongoing research program. We are also supporting the tourist industry in funding the physical removal of the starfish from their sites. We are also, as I said, attacking what we believe to be the causes of the intensity of the recent infestations and the fact that they seem to be occurring more often than historically.

Senator BARTLETT—Madam President, I ask a supplementary question. Minister, the funding that you have acknowledged has been provided to the marine park tourism operators has been clearly indicated by them in their own research as being inadequate to meet this immediate threat of the expanded and increased outbreak of crown-of-thorns. Will the government commit to provide that extra funding to ensure this immediate threat is met? Given that the minister has acknowledged the growing severity and frequency of
outbreaks and likely causes such as overfishing and water quality, is it not the case that water quality continues to decline in the inner reef area? Why will the government not step up its powers to ensure that it acts to prevent the ongoing land based activities that are leading to this continuing decline in water quality?

Senator HILL—The authority is tackling the issue of water quality in a way that is new for Australia on the reef. We are about to publish suggested targets for sediment run-off and the major nutrients and pollutants. We will use that as an information base to support the Prime Minister’s national action plan as it addresses the root cause of these problems in terms of land management. So we are tackling what we believe to be causes of the increased intensification of the starfish, and that, we think, is the best way to approach it. We will, as we have done in the past, continue to provide adequate funding to best address this particular issue. Madam President, I ask that further questions be placed on the Notice Paper.

QUESTIONS TO THE PRESIDENT
Information Service Cuttings

The PRESIDENT (3.03 p.m.)—I wish to respond to two matters which were raised with me after question time on Thursday, 23 August 2001. The first relates to a question from Senator Knowles, who asked why the Senate press cuttings for that day did not include a number of press reports on the matter relating to Mr Beazley’s daughter. The press cuttings are provided to the Department of the Senate under contract by Media Monitors Pty Ltd. The cuttings are selected by electronic search, using keywords based on subjects specified under the contract, with some human intervention to overcome problems involved in keyword searches. The purpose of the press cuttings is to cover information about the Senate. The following subjects are therefore specified for search:

- references to the Senate or Senate committees or joint committees
- references to senators
- references to the House of Representatives as an institution, but not reports of all events in the House of Representatives
- references to state parliaments as institutions, but not reports of all proceedings in the state houses
- references to constitutional matters, including constitutional judgments of the High Court.

In accordance with these criteria, the matter was covered by the press cuttings insofar as the reports referred to the Senate and senators, but the cuttings did not cover all the related events in the House of Representatives. The particular report referred to by Senator Knowles in the Daily Telegraph did not contain any reference to the Senate or senators. Similarly, the press cuttings of Friday, 24 August 2001, did not contain many reports of the matter of the Queensland Liberal Party and the GST input credits, because most reports referred only to events in the House of Representatives.

Members of the House of Representatives have a press cutting service covering events in that House. If the Senate cuttings were extended to events in the House of Representatives or political affairs generally, the volume of the cuttings and their cost would increase enormously. Currently, the Senate press cutting service costs about $130,000 per year: $30,000 for the service and $100,000 for printing costs. Because of the need to contain this large cost, overselection of cuttings has to be avoided. The keyword search sometimes lead to overselection. For example, the press cuttings recently included reports of events in the Sydney University Senate, because those reports included the word ‘Senate’. Media Monitors were therefore asked to take steps to avoid overselection of this kind.

The second matter I wish to respond to relates to a question by Senator Ray. Senator Ray that asked whether it was in order for questions to be asked of the President after question time and referred to a ruling which he said that I had made to the effect that questions should be asked of the President during question time. I indicated that I did not recall this ruling and an intensive search of Hansard has failed to find it. The proce-
dural situation is that a question may be asked of the President during question time but, if asked at any other time, other than on a point of order, may be asked only with leave.

Senator ROBERT RAY (Victoria) (3.07 p.m.)—by leave—I move:

That the Senate take note of the statement.

Madam President, thank you for the explanation on the clippings. In fact, I looked at the clippings on Friday and I think I am right in saying that all the major articles on the Macfarlane-Costello thing from the Age, the Sydney Morning Herald, the Financial Review and other newspapers were missing. It was not censorship. As you have explained, there is a methodology used. Senator Knowles was equally disappointed that some other clippings were missing on Thursday. I think the answer to this is that we should invoke some commonsense. Some of us—I think on all sides of the chamber—have found some very interesting articles missing and some very boring IT articles constantly appearing for no good reason. I think we need to do a survey of senators and their interests—maybe even have several senators mark up the newspapers without looking at the clips on a particular day to give guidance to those people. There are several critical articles keen to our interests on both sides of the chamber that we are missing out on and there is some esoteric stuff getting in that is of little value.

It is hard, I understand, to put forward any criteria at all but I think we should attempt it at some stage. It may be time to revisit the publication costs. We had a proposal four years ago to electronically transfer the clippings. I am still concerned that every one of us will just press the print button, transferring the costs away into our own offices.

Finally, if in fact I am wrong and I did not take a point of order three years ago—also on Senator Knowles—I will apologise to the chamber, but I have a distinct memory of taking a point of order and saying, 'Look, some people are forced to ask questions of you during question time and they blow a question, and if we set a precedent to do it after question time, I am happy to live with it. The only problem is that I do not want to see it artificially exploited, as has happened in the House of Representatives, where the Speaker is asked questions after question time. It is a good way to get your name in print.' Senator Knowles was not trying to do that the other day but, if we are entitled to ask you questions after question time, I am certain we will need a bit of self-discipline so that it does not turn into a circus. I thank the Senate for its tolerance.

The PRESIDENT (3.09 p.m.)—I was not suggesting that the previous incident had not occurred; I just have not found it. I think the other suggestion with respect to clippings is sensible, and we will take note of that.

Question resolved in the affirmative.

ANSWERS TO QUESTIONS WITHOUT NOTICE
Goods and Services Tax: Queensland Liberal Party

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.10 p.m.)—I move:

That the Senate take note of the answers given by the Assistant Treasurer (Senator Kemp) and the Minister for the Environment and Heritage (Senator Hill), to questions without notice asked by opposition senators today relating to taxation and a Liberal Party fundraising dinner.

I will leave to others the issue of Mr Macfarlane, the member for Groom, and his misleading of parliament on Thursday—his ever-changing story about when he knew about the tax scam and his acceptance of fraud on the basis that it was merely a mistake which was, to use his words, ‘outside of the parameters’ of Australian tax law.

The question which underpins all of this extraordinary behaviour is: if the GST is so good, why does the Queensland Liberal Party not want to pay it? Is this just another case of one rule on the GST for Mr Howard’s Liberal Party and another rule for the rest of us in Australia? Why didn’t Mr Costello refer the matter of this GST fraud to the Australian Taxation Office in February? I want to remind the Senate that, in the House of Representatives on Thursday, this is what Mr Costello said:

If the member for Hotham wants to make an allegation against any person that they have breached
the law or otherwise, if he were genuinely interested—
and this is the emphasis that he placed—
he could give me evidence and I most certainly
would refer it to the Australian Taxation Office.
Mr Costello later backed up those remarks
by further saying:
If the member for Hotham or anybody else wants
to say that they have not paid their taxation li-
abilities, they can give evidence, which I would
pass across to the Australian Taxation Office.
Clearly, the message that Mr Costello deliv-
ered in answer to those questions was that
evidence of rorting or fraud should go
straight to the Australian Taxation Office for
investigation and, importantly, if Mr Costello
received such advice, he would do that
forthwith. But—and here is the pay-off—in
his press release on Thursday night after
question time, he confirmed that in fact he
had been informed of the scam that we were
complaining about in late February by some-
one who was probably in a good position to
know what was going on, that is, the former
treasurer of the Groom FEC. On one hand,
we have the Treasurer saying in the House
that, if he were given evidence of a rort, it
should be referred to the Australian Taxation
Office, but then he admits that he had evi-
dence in February and did not refer it to the
Australian Taxation Office until it was ex-
posed by the Labor Party last week, and that
is why he is guilty of misleading the parlia-
ment. An attempt has been made to turn the
question back on us with reference to the
ALP’s conduct. We notified the Australian
Taxation Office shortly after we received
advice of the scam. (Time expired)

Senator BRANDIS (Queensland) (3.15
p.m.)—The parliament has been misled on
this issue by none other than three Labor
senators: Senator Robert Ray, Senator
Faulkner and Senator Cook himself. Let me
explain why. When these allegations were
first aired in the Senate last Thursday after-
noon, those who made the allegations—in
particular, the three senators I have named—
said, ‘We have the minutes.’ With a great
flourish, Senator Robert Ray in particular
said, ‘We have the minutes, and they reveal
that these statements were made and these
admissions were made at a meeting of the
Groom FEC on 20 March.’ Senator Robert
Ray in his supplementary question said:
Madam President, I ask the minister a supple-
mentary question. Just when and how did Treas-
urer Costello ‘carpet’ Minister Macfarlane, as is
noted in the Groom FEC minutes? Is the Assistant
Treasurer aware that Minister Macfarlane told a
meeting of the Groom FEC on 20 March this year
that ‘if news of this got out it could bring down
the government’?
In the time that was available to me last
Thursday, I was not able to get hold of the
minutes of 20 March, but I did say that the
allegations were unauthenticated and wrong,
as indeed they are.
Opposition senators interjecting—

The DEPUTY PRESIDENT—Order!

Senator BRANDIS—The minutes upon which the entire opposition case was constructed last Thursday—and which it has sought to revive today—contain no such evidence whatsoever. The minutes of that meeting, which were tabled in the other place on Thursday evening, provide no support for the allegation that was made.

Senator Conroy—That is not what the tax office said.

The DEPUTY PRESIDENT—Order! Senator Conroy!

Senator BRANDIS—The parliament was misled by Senator Ray, Senator Conroy and Senator Cook when it was told that the minutes of the Groom FEC provided evidence that those statements had been made. Since last Thursday afternoon, I have obtained a copy of the document from which Senator Ray, Senator Conroy, Senator Faulkner and Senator Cook were quoting. It was a document they trawled around the press gallery on Thursday afternoon. It is also a document that has been tabled. The document which they represented to be the minutes of the Groom FEC, represented to be an official record of the Liberal Party, is nothing of the sort. It is the document I have in my hand. First of all, the document is not a minute; it is a collection of dates and memoranda against those dates. Secondly, it is not an authorised Liberal Party document—

Opposition senators interjecting—

The DEPUTY PRESIDENT—Order!

Senator BRANDIS—Thirdly, Senator Carr—just wait to hear it—it is an anonymous document.

Senator Carr interjecting—

The DEPUTY PRESIDENT—Order! Senator Carr!

Senator BRANDIS—It is an unsigned, anonymous document. It could have come from anywhere. It could have been cooked up in your office, Senator Conroy, for all we know.

Senator Conroy—Shame on you!

The DEPUTY PRESIDENT—Address the chair, please, Senator Brandis.

Senator Cook—Madam President, on a point of order: is the speaker saying that Margaret Watts, the treasurer of this branch of the Liberal Party, did not make those notes?

The DEPUTY PRESIDENT—There is no point of order. Senator Brandis, before you continue: Senator Cook, Senator Carr, Senator Conroy and anybody else who has been having a go at interjecting, would you please desist. Senator Cook, you have had your speaking time, and others will have the opportunity later if they wish to jump.

Senator BRANDIS—It is a serious and grave thing to say to the parliament, 'We can make these allegations because official Liberal Party records document and prove them,' when those records, the minutes of the meeting upon which reliance was made, prove nothing of the sort. It is a serious and grave thing to take an anonymous document, entirely unsourced, and say, 'These are the minutes and this is what they say.' The document upon which the entire Labor Party case rests is a document with no provenance, no name to it—no official status whatsoever. One can understand the disappointment of the Australian Labor Party. Today, they came into this chamber after the matter had been entirely addressed by the Prime Minister, by the Federal Director of the Liberal Party, Mr Crosby, and—for those who heard it—by the statement of the minister in the House of Representatives during question time, and they have nothing new to say. The only person who has something new to say about this issue today is me. The statement that has been made against Mr Macfarlane by the Australian Labor Party on the basis that minutes record certain things to have been said was a false statement. Labor senators who made the allegations knew the statement to be false, and it ought to be withdrawn.

Senator SHERRY (Tasmania) (3.21 p.m.)—The claim by Senator Brandis that the documents are not authentic has no credibility, particularly when the acknowledged then treasurer, Ms Margaret Watts, ascertains that
they are authentic documents. They are clearly Liberal Party documents. For Senator Brandis to attempt to allege that Senator Conroy, for example, had written them up, how would he possibly know the officials, the meeting places, the times and the dates of a Liberal Party FEC in Queensland? He would not. Senator Brandis is just making an outlandish claim to attempt to defend the embattled Minister for Small Business, Mr Macfarlane. What we do know is that Mr Macfarlane has admitted being at the meetings of the FEC on those dates. He has admitted being there when the discussions took place to attempt to dodge the GST.

Senator Brandis interjecting—

The DEPUTY PRESIDENT—Order! Senator Brandis, you have had your turn.

Senator SHERRY—The Minister for Small Business, Mr Macfarlane, since the introduction of the GST, has been central to its implementation, particularly its impact on small business in Australia. That is part of his small business duties. He has put out some nine press releases since July last year talking about every aspect of the GST and its impact on small business, and they certainly illustrate a clear understanding of the GST, but now the central defence that Mr Macfarlane puts forward is that he misunderstood the application of the GST? Here is a minister of the Crown saying that he cannot understand how the GST applies to small business when he has put out nine press releases on it. In fact, in one of them, he actually takes credit for the changes to the implementation of the GST via the BAS administration. How can his argument stand up to claiming the input tax credit on the catering arrangements but also going to not paying GST on the tickets sold. That is why Senator Cook asked that question in question time, to which we received no answer, as to whether the Liberal Party FEC of Mr Macfarlane’s electorate of Groom paid GST on the tickets sold. They attempted to claim the credits, but have they paid the GST on the tickets? Mr Macfarlane, the Minister for Small Business, puts this all down to a misunderstanding. He knew what was going on—he has admitted to that.

Apparently today we have got two more according to the wire service: the FECs for Lilley and Leichhardt. Leichhardt is the FEC of the Parliamentary Secretary to the Minister for Industry, Science and Resources, Mr Entsch. Does Mr Entsch know about GST tax avoidance arrangements, if any, that have gone on in his electorate council?

Senator Conroy interjecting—

Senator SHERRY—Apparently there is another one. These claims are not sustainable. Mr Macfarlane knew he was a party to the tax minimisation, to the tax avoidance, and that is the reason he should stand down.

Senator MASON (Queensland) (3.26 p.m.)—Last Thursday, senior members of the opposition led the Senate to believe that the
minutes of the Groom FEC of 20 March this year—

Senator Carr—Jeez, they’ve left you high and dry again, haven’t they?

Senator Conroy—Is that the best you’ve got?

The DEPUTY PRESIDENT—Order! Senator Carr and Senator Conroy, come to order!

Senator MASON—discovered and showed that the Liberal Party was involved in a rort. What they argued—Senator Cook, Senator Faulkner and Senator Ray—

The DEPUTY PRESIDENT—Address the chair, please, Senator Mason, and do not answer their interjections.

Senator MASON—The argument was put that these minutes displayed that the Queensland Liberal Party—the Groom FEC in particular—was involved in rorting the GST. The best reflection that could be put on that is gilding the lily. The worst that can be put on it is that the Senate has been misled. Senator Cook said last Thursday:

Given the clear evidence of the FEC minutes that the state director had also used his GST avoidance strategy in at least two other FECs across Queensland, including the electorate of Lilley, and had advised the FEC that this was an endorsed strategy for bills over $2,000 ...

Senator Conroy—Wasn’t it?

Senator MASON—The fact is that this is not included—there is no allusion at all in the minutes of the FEC regarding that at all.

Senator Cook—That is a fact.

Senator MASON—Hold on. Let me pick out another one. Senator Faulkner said last Thursday:

The minutes also reveal that the matter was brought to the attention of the federal Treasurer, Mr Costello, and that Mr Costello carpeted the small business minister, Mr Macfarlane, over the issue.

Senator Carr—Is that true?

Senator MASON—None of this is true.

The DEPUTY PRESIDENT—Order, Senator Carr!

Senator MASON—There is no indication in the minutes of the FEC of the Groom Liberal Party of anything to do with GST rorting. This was a very clever little argument—a bit of sophistry, the sophistry of nomenclature—used last week by the Australian Labor Party. The opposition deliberately misled the Senate by arguing that this particular document that Senator Brandis has referred to was the minutes of the Groom FEC. That is not the case.

Senator Carr interjecting—

The DEPUTY PRESIDENT—Order!

Senator MASON—In fact, what has happened is that they have now been exposed. This entire farce was predicated upon these minutes, Senator Carr, and the bottom line is that you have now been exposed. Now no-one wants to talk about the minutes; no-one wants to actually talk about the facts of the case. All they want to talk about now is subterfuge and conjecture. There are a couple of things that matter here, both of which were mentioned today in parliament. First of all, Mr Macfarlane said in his statement to the House of Representatives that there was an auditor’s report on the books of the Groom FEC from 1 July 2000 to 30 March 2001 and that no concerns were expressed at the financial operations of the Groom FEC.

Secondly, and importantly, the Prime Minister has requested that there be a full audit of the Queensland division of the Liberal Party. Who knows: maybe later there will be one of the Victorian division of the Labor Party. But they are the two remedial actions. What is disgraceful about this is the deception of this house of parliament by senior members of the opposition referring to documents that they knew were not minutes of the Groom FEC and arguing that they were—unattributed, unsigned.

Senator Conroy—Unattributed?

Senator MASON—What was that, Senator Conroy? Unsigned and unattributed documents: that is the fact of the matter. Now, of course, no-one wants to discuss that at all. It is all a cover-up and an absolute irrelevance. It is not good for parliament to have people of the calibre of Senator Ray, Senator Faulkner and Senator Cook, senior members of the opposition, running around
last Thursday saying that documents that are unattributed and unsigned—the minutes—

Senator Cook—They are the minutes.

Senator Mason—They are not, Senator Cook. They are not the minutes of the Groom FEC, and that is the lie. They told the Senate that they were, and they knew that they were not, and that is not acceptable conduct in a place like this.

Senator CONROY (Victoria) (3.31 p.m.)—The truth here is that the facts are admitted. The two lawyers on the other side of the chamber have tried to smear and confuse the debate, but the bottom line here is that the facts are admitted. They are admitted by the Queensland Liberal Party; they are admitted by Sandy Sharman, the Groom electorate council chairwoman. All of the facts in this case are admitted. The facts are that they called in the Taxation Office to try and clear themselves. Why? There is no reason to call them in, but they are called in because the GST input credit claim by the state Liberal Party office in Brisbane was fraudulent. Yes, the Groom FEC may have been exonerated, but the problem was that it was not the Groom FEC that claimed the GST input credit. That is the problem. The problem is that the state office claimed falsely an input tax credit for GST that was not charged. You see, you are only allowed to claim an input credit if you charge GST on the service, and they did not.

Senator Hill interjecting—

Senator CONROY—The problem here that Senator Hill has—he still does not understand what the debate is about—

Senator Hill—Changing your line, oh yes!

Senator CONROY—The problem here is that Senator Hill keeps trying to say that the GST was paid, but it was not.

Senator Hill—The GST was paid.

Senator CONROY—The state division claimed it but did not charge it. That is the fraud. It is pure and simple. The problem that the Groom FEC have is that, when it was drawn to their attention by their own treasurer, who did not want to pay the cheque in the fashion that she was forced to, their own treasurer said, ‘This is fraud; I have got tax advice that this is fraud.’ That is what the problem here is—and the real killer is that Macfarlane knew.

Senator Mason interjecting—

Senator Brandis interjecting—

The DEPUTY PRESIDENT—Order! Mr Macfarlane, thank you.

Senator CONROY—This comes from a state branch that is an embarrassment to—

Senator Mason interjecting—

Senator Brandis interjecting—

The DEPUTY PRESIDENT—Order! Senator Brandis and Senator Mason, you have had your turns to speak. I would ask you to cease interjecting. Senator Conroy, address the chair, please.

Senator CONROY—This comes from a state division which is an embarrassment—

Senator Ian Campbell—On a point of order, Madam Deputy President: I think Senator Conroy may not have heard you when you asked for him to refer to the minister by his correct title, not his name.

The DEPUTY PRESIDENT—He has now.

Senator CONROY—This comes from a state division which is an embarrassment to its own party. Here is Lynton Crosby, the federal director, in a report on the Queensland division:

... federal director Lynton Crosby said a culture of blind ambition had meant factionalism had limited the party’s effectiveness in Queensland for years.

He said:

... the disunity was not born out of ideological or policy differences, but through a preoccupation with “their careers or ambitions”.

This is from the party that gave us the raffle they had to return the money on. This is from the business branch in Tucker. This is from the now infamous Brandis rule. Yes, the Brandis rule gets a guernsey today. This is the rule that lets party members in Hong Kong come along to the meeting in Ryan and
muster up the numbers on the day to give themselves a vote. You just turn up and vote in the preselection. But I could not say it any better than Graham Young, a former vice-president of the Queensland Liberal Party, who said in the Financial Review that this is the faction which:

... controls the party, holds regular meetings and elects leadership, and the rest, a cottage industry-style network of personal spheres of influence.

The faction monsters the rest—just like it did the treasurer in Groom—and puts its interest before anything else. In the four years it has been in control, it has been completely incompetent, reducing the State Liberal Party from 15 State members of parliament to a three-person rump and running up at least $400,000 of unpaid campaign debts.

This is the party that has given us the dash for cash. They are in full revolt, Brandis and Mason—

**The DEPUTY PRESIDENT**—Senator Conroy, would you address the chair.

**Senator CONROY**—Senator Brandis and Mason. There is full revolt against the Prime Minister, who is having to bring legislation into parliament to stop them getting their grubby little hands on their money. What has happened? They have been up in the party room—they are big men in the party room—but when they get their chance in there what do they do? The dash for cash is on. There are hundreds of thousands of dollars of Electoral Commission money that the Prime Minister is terrified to put in these people’s hands because he knows they will waste it. We have the extraordinary proposition that they cannot manage their own money and we need legislation to stop them getting access to their own money. Guilty as charged. (*Time expired*).

Question resolved in the affirmative.

**World Heritage Area: Great Barrier Reef**

**Senator BARTLETT (Queensland)** (3.36 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Hill) to a question without notice asked by Senator Bartlett today relating to the number of crown of thorns starfish in the Great Barrier Reef.

The Australian Democrats have campaigned long and hard over many years to protect and enhance the health of the marine park on the Great Barrier Reef because it is, of course, a major environmental asset as well as a major economic asset to the people of Queensland, and North Queensland in particular.

Amongst the many threats to the health of the reef, and certainly there are a number of them, the crown-of-thorns starfish is only one, but the increasing frequency and severity of outbreaks of the starfish is such that the environmental damage is a matter of great concern as well as the economic loss that will occur through lost tourism revenue. It is worth putting it in perspective. If you look at the resources that are put into preventing the spread of diseases in agricultural produce when problems occur in that area—and that is certainly an appropriate activity—and you look at the value to the economy from various agricultural industries, very few of them approach the level of value that the tourism industry has for Northern Queensland, yet the amount of resources that is put into preventing plague outbreaks on the reef compared with disease outbreaks in agricultural produce does not stack up terribly well. It is often the case that inadequate resources are put in to prevent immediate damage from occurring, and that is the concern that is being raised and that the Democrats have raised at the moment. There is a new outbreak in the Whitsunday area that is of much greater severity than outbreaks in the past, and if immediate action and resources are not provided above those already put in then there will be massive environmental and economic loss as a consequence.

It is important also to highlight the broader range of threats to the marine park, some of them linked to the increased outbreak of the crown-of-thorns starfish, including issues such as overfishing and water quality. This is one of the often unnoticed consequences of the continuation of severe land clearing in Queensland. The clearing of land in the Barrier Reef catchment certainly has a significant negative impact on the water quality in the inner areas of the marine
park. If you add that to other aspects such as agricultural run-off and the like, then you do get significant problems in terms of water quality. Those problems are severe and getting worse. Despite the minister’s answers today, quite clearly if we are still going in the wrong direction then not enough is being done to address that problem. Water quality is a severe problem for the health of not just the reef itself but the many other valuable ecosystems that occur in the marine park.

It is worth noting that the marine park is a lot more than just the Barrier Reef. There are some incredibly important ecosystems in other parts of the marine park and in the coastal areas and, indeed, on the ocean side of the reef as well that also need protecting for reasons of biodiversity. That is why other threats such as exploration, seismic testing, shipping traffic, pollution from ships, dumping of waste and coral bleaching are all of significant concern. That is why we need to redouble our efforts to protect this incredibly valuable environmental and economic asset. It is clear that not enough is being done in relation to that, and that is why the Democrats will be keen to highlight this as an important election issue.

There are major ongoing threats. The government’s failure to address issues such as climate change is significantly threatening the reef through increased problems with coral bleaching. There is any amount of evidence of the severity of that. There are ongoing problems with damage caused by trawling and inappropriate levels of fishing that still need to be worked on much more strongly than they are. We are still at a stage where there has been inadequate assistance and effort put into protecting this resource. There still needs to be greater political will at both federal and state levels to protect and improve the health of the marine park and the reef. It is certainly an issue that the Democrats will continue to highlight and emphasise, because we believe that it is an asset that not just Queenslanders but all Australians treasure for its environmental values as well as for its economic ones. 

(Welcome legislation)

Question resolved in the affirmative.

HEALTH LEGISLATION AMENDMENT (MEDICAL PRACTITIONERS’ QUALIFICATIONS AND OTHER MEASURES) LEGISLATION

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.42 p.m.)—I seek leave to incorporate a government response to a question on notice asked by Senator Harradine in the course of Senate debate on 28 June on the Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001.

Leave granted.

The government response read as follows—

Senator Harradine (Tasmania) on Thursday 28 June 2001 at 11:36pm asked:

This legislation relates to pathology services, and in the context of increasing corporatisation of medical services, including pathology, I believe it is essential that there be some sort of process of review to ensure that the public funding of pathology services does not become the prime revenue raising target for the for-profit companies. More and more these services are being supplied by medical corporations, I believe it would be very important for the minister to outline to the committee what steps are being taken to ensure that the public funds that are spent on pathology services cannot become a prime revenue raising target for the for-profit companies. Presumably, within the Department of Health, there will be some sort of monitoring of this, and I would like to hear either now or if you could take it on notice, the Government response on this matter.

Government response:

The funding of health services in Australia is shared between the Commonwealth and the State and Territories. The Commonwealth Government funds pathology services through two main mechanisms. One is through the provision of funding to each of the State and Territory Governments through the Australian Health Care Agreements (ACHAs) to meet the costs of providing public hospital services including pathology services. These services are provided free to public patients i.e. no charge is levied on the patient. It is a matter for each State and Territory Government to allocate these funds to meet public hospital resource needs specific to their circumstances. In recent times, some State and Territory Governments have begun to open their
services to competitive tendering processes, resulting in the contracting out, or privatisation, of services previously performed by public pathology providers. The Commonwealth Government has a role in ensuring that such services are maintained at a particular level but does not have a role in determining the providers of such services.

The second mechanism for funding is through the Medicare Benefits Scheme (MBS) which provides financial assistance to the Australian public, towards the cost of necessary medical services, through the payments of Medicare benefits. In practice, this means that services provided to privately admitted patients of public and private hospitals and approved day surgery facilities, and patients in the community setting who consult with medical practitioners in a private capacity, are entitled to Medicare benefits for expenses incurred in their treatment. Private as well as public pathology providers are able to participate in Medicare with private pathology providers providing a major portion of Medicare pathology services. It should be noted that medical corporations have become prominent in providing Medicare pathology services through the purchase of large private laboratories in a number of States and Territories. All pathology services for which Medicare benefits are claimed are monitored by the Health Insurance Commission to detect fraud or inappropriate practice by a requesting practitioner or pathology service provider.

As a result of major structural changes in the provision of private pathology services under Medicare in Australia in recent years, and under the terms of the Commonwealth Government’s agreement with the pathology industry, the Government has commissioned a review of the framework in which Medicare pathology operates. The Government has sought and received comment on the review from both public and private pathology providers. A report is expected to be released within the next few months.

Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001 provides the legislative framework for the introduction of new specimen collection centre arrangements under the Medicare Benefits Scheme. The new arrangements replace and enhance upon the existing Licensed Collection Centre Scheme arrangements by introducing a national approval system for specimen collection centres that is fair and open and encourages competition, permits public sector pathology provider involvement, emphasises the aspect of quality in specimen collection services and moves from a strictly regulated licensing environment to more simplified administration. Similar to the existing LCC Scheme, the new specimen collection centre arrangements provide an incentive for rural and remote service provision.

This legislation does not affect the capacity of public hospitals to operate specimen collection centres on the premises at which they provide their core business ie hospital treatment to patients, be they inpatient or outpatient. Nor does it prevent the public sector from opening and operating collection centres for the collection of specimens for public pathology services ie those for which a Medicare benefit is not sought. The intention of the proposed arrangements is not to regulate the collection of specimens for public pathology services but to introduce new arrangements for pathology specimen collection centres for which a Medicare benefit is sought.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Commonwealth Grant: Experimentation on Human Embryonic Stem Cells

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

That the Senate take note of the answer given by the Minister for Industry, Science and Resources (Senator Minchin) to a question without notice asked by Senator Harradine today relating to the extraction of stem cells from human embryos.

The question that I directed to the Minister for Industry, Science and Resources, Senator Minchin, involved very grave issues indeed which are to affect the whole of humankind. The comment made by Senator Minchin at the beginning of his answer did disturb me somewhat. He talked about what certain other people had said and what the Catholic Church said. I felt insulted, as though I represented the Catholic Church here in the parliament, as though this matter was not of importance to people other than those in the Catholic Church. This is a matter which goes to the heart of human nature. It is the tinkering that is going on with the very essence of human life, a matter of great importance to everybody—of religion or of no religion at all.

I asked very clear questions about what has happened with this grant of taxpayers’ money to reward those who had acted unethically. I asked the government whether they supported laws in Victoria and South
Australia which banned the extraction of stem cells from human embryos. The people who are benefitting from this grant of taxation money circumvented those laws by importing stem cells obtained from Singaporean human embryos. Senator Minchin said that an expert committee within his own department recommended this grant of taxpayers’ money. Where were the ethicists on that expert committee? Were there any? I believe there were none. I again ask: what ethical considerations were given to this grant by members of his department and by the board before they recommended it? There are not only ethical considerations but also other considerations. For example, the professor who extracted those stem cells from Singaporean human embryos continues to use human serum products imported from Europe. Was that of concern or interest to the minister’s department, given the projected use of those embryonic stem cell lines in human therapy in this country? What precautions are envisaged to preclude the introduction of CJD prions, given the recent reports of inadvertent use of serum from CJD positive donors in some overseas IVF clinics?

These questions were not even considered by the minister’s department. They should have been considered and so should the question of what, if any, research protocols and ethical guidelines governed the extraction of stem cells from the Singaporean human embryos. For example, was paragraph 1.21 of the national statement on ethical conduct in research involving humans observed? There is a whole host of questions which remain unanswered. What about some funds for medically more compatible and efficient research on stem cells that are ethically obtained from the patient? (Time expired)

Question resolved in the affirmative.

NOTICES

Presentation

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

That the Community Affairs References Committee be authorised to hold a public meeting during the sitting of the Senate on 28 August 2001, from 5 pm till 7 pm, to take evidence for the committee’s inquiry into nursing.

Senator Bourne and Senator Bartlett to move, on the next day of sitting:

That the Senate—

(a) notes the proposed meeting of Australian Prime Minister, Mr Howard, and United States President, Mr Bush, on 10 September 2001;

(b) recalls its resolutions of 29 June 2000 and 1 March 2001 in regard to missile defence issues;

(c) notes the substantial international efforts made by successive Australian governments to promote the ratification and entry into force of the Comprehensive Test Ban Treaty;

(d) considers the proliferation of weapons of mass destruction and ballistic missile delivery systems to be a most serious international security issue;

(e) notes the possibility that the deployment of a missile defence system may undermine the integrity of the 1972 Anti-Ballistic Missile Treaty and thereby lead to a renewed nuclear arms race; and

(f) urges the Prime Minister to uphold the integrity of Australia’s joint facilities, namely that these facilities should only be utilised in the context of the anti-ballistic missile defence treaty, the comprehensive test ban treaty and the non-proliferation treaty.

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

That the Senate—

(a) notes that:

(i) ten years have now passed since the Baltic nations of Estonia, Latvia and Lithuania re-established total independence from the Union of Soviet Socialist Republics, which had, as the result of a secret pact between the regimes of Joseph Stalin and Adolph Hitler, forcibly and illegally occupied the Baltic countries for half a century since World War II,

(ii) during those 50 years of Soviet occupation the Australian Government gave significant support to the Baltic peoples at international forums and during bilateral contacts with other countries and was, in August 1991, among the first to give formal recognition to the Baltic nations upon
their re-establishment of independence, and
(iii) since the restoration of independence the Baltic nations have demonstrated their commitment to democracy, human rights and the rule of law and have actively pursued full integration into global and European political, economic and security organisations; and
(b) in this year of Australia’s Centenary of Federation, congratulates the Baltic peoples on their achievements and expresses a sincere hope that the independence of Estonia, Latvia and Lithuania will never again be threatened.

Senator Watson to move, on the next day of sitting:
That the time for the presentation of the final report of the Select Committee on Superannuation and Financial Services on prudential supervision and consumer protection for superannuation, banking and financial services be extended to the last sitting day in March 2002.

Senator Stott Despoja to move, on the next day of sitting:
That the Senate—
(a) notes that:
(i) 19 to 25 August 2001 was Hearing Awareness Week,
(ii) the theme for Hearing Awareness Week in 2001 was ‘It’s Caption Time’, and
(iii) legislative requirements now ensure that all programs broadcast on the ABC, SBS and commercial networks, between 6 pm and 10.30 pm, are captioned, providing access to the 1.7 million Australian who have a hearing impairment; and
(b) looks forward to future advances in captioning.

Senator Mackay to move, on the next day of sitting:
That there be laid on the table by the Minister for Communications, Information Technology and the Arts, no later than immediately after motions to take note of answers to questions without notice on 30 August 2001, the Telstra document, or series of Telstra documents, containing substandard plant reports and known as the E71 database, which Telstra undertook to prepare at the estimates hearing of the Rural and Regional Affairs and Transport Legislation Committee on 7 June 2001 and which, according to Telstra Director of Finance, John Stanhope, is being provided to the Minister’s office during the week beginning 26 August 2001.

Senator Brown to move, on the next day of sitting:
That the Senate—
(a) notes that the Prime Minister (Mr Howard) will be discussing a United States-Australia free trade agreement with President Bush in Washington D.C. on 10 September 2001; and
(b) calls on the Australian Government to rule out any consideration of relaxing Australia’s media content, media ownership, Foreign Investment Review Board rules or changes to the Pharmaceutical Benefits Scheme in any such free trade agreement.

Senator Bartlett to move, on 29 August 2001:
That the Senate—
(a) notes:
(i) repeated concerns expressed by many sections of the community about the conditions in Australia’s detention centres and the treatment of some asylum seekers in those centres,
(ii) plans announced by the Minister for Immigration and Multicultural Affairs (Mr Ruddock) to build three new detention centres,
(iii) statements made by the President of the Law Council of Australia that the practice of mandatory detention is questionable in the light of several international conventions and that mandatory detention is excessive and not necessary for all asylum seekers; and
(b) calls on the Australian Government to immediately reconsider its policy of mandatory detention and to save taxpayers’ money by scrapping plans to build extra detention centres.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.48 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in *Hansard*.

Leave granted.

The statements read as follows—

**COMMONWEALTH ELECTORAL AMENDMENT BILL 2001**

**Purpose of the Bill**

To amend the Commonwealth Electoral Act 1918 (the Act) to provide that public funding which would, under the current provisions of the Act, normally be paid to the agent of the relevant State/Territory branch of the Liberal Party, be paid instead to the agent of the Federal Secretariat of the Liberal Party, unless the agent of the Federal Secretariat of the Liberal Party has lodged with the AEC, prior to polling day, a notice setting out the proportion of the public funding for a particular State or Territory that is to be paid to the relevant State/Territory Division of the Liberal Party and the proportion of the public funding for a particular State or Territory that is to be paid to the Federal Secretariat. As the Federal Secretariat of the Liberal Party is responsible for federal election campaigns, it is appropriate that all or part of the public funding be paid to the agent of the Federal Secretariat.

**Reasons for Urgency**

The Government wishes to have these amendments in place prior to the next federal election.

(Circulated by authority of the Special Minister of State)

**DISABILITY SERVICES AMENDMENT (IMPROVED QUALITY ASSURANCE) BILL 2001**

**Purpose of the Bill**

The Bill will give effect to a 2001 Budget initiative to establish a new quality assurance system in relation to the provision of Commonwealth-funded employment services for people with disabilities.

**Reasons for Urgency**

This initiative is to commence on 1 January 2002. It is critical that the Bill be passed in the 2001 Spring Sittings ahead of the commencement date.

(Circulated by authority of the Minister for Family and Community Services)

**FAMILY ASSISTANCE ESTIMATE TOLERANCE (TRANSITION) BILL 2001**

**Purpose of the Bill**

This Bill allows the waiver of up to $1,000 of certain debts that arise for the first time from July 2001 under family tax benefit and child care benefit income estimate provisions and family tax benefit shared care estimate provisions.

**Reasons for Urgency**

The subject debts arise and are subject to recovery from July 2001 under the family assistance law. Passage of legislation to allow for the waiver is therefore required as a matter of urgency.

(Circulated by authority of the Minister for Family and Community Services)

**LEAVE OF ABSENCE**

Motion (by Senator Bartlett)—by leave—agreed to: That leave of absence be granted to Senator Ridgeway for the period 28 August to 30 August 2001 on account of parliamentary business overseas.

**NOTICES**

**Postponement**

An item of business was postponed as follows: General business notice of motion no. 1006 standing in the name of Senator Brown for today, relating to security arrangements and the takeover of Optus by Singtel, postponed till 28 August 2001.

(Quorum formed)

**BUSINESS**

**Government Business**

Motion (by Senator Ian Campbell) agreed to: That intervening business be postponed till after consideration of government business order of the day No. 2 (Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000 and a related bill).
COMMITTEES
Economics References Committee
Extension of Time
Motion (by Senator O’Brien, at the request of Senator Murphy) agreed to:
That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of Australia’s stock exchanges be extended to 30 August 2001.

SCIENTIFIC RESEARCH: FUNDING
Motion (by Senator Bartlett, at the request of Senator Stott Despoja) agreed to:
That the Senate—
(a) congratulates the Federation of Australian Scientific and Technological Societies on Science meets Parliament Day; and
(b) calls on the Government to heed the calls of scientists for additional resources for research and development, education, and public institutions such as the Commonwealth Scientific and Industrial Research Organisation.

COMMITTEES
Privileges Committee
Report
Senator ROBERT RAY (Victoria) (3.54 p.m.)—I present the 98th report of the Committee of Privileges relating to a person referred to in the Senate.
Ordered that the report be printed.
Senator ROBERT RAY—I seek leave to move a motion relating to the report.
Leave granted.
Senator ROBERT RAY—I move:
That the report be adopted.
This report is the 37th in a series of reports recommending that a right of reply be accorded to persons who claim to be adversely affected by being referred to, either by name or in such a way as to be readily identified, in the Senate. On 7 August 2001, the President referred a letter from Alderman Dr John Freeman to the Committee of Privileges as a submission under privilege resolution No. 5. The submission responded to remarks made by Senator Brown in the Senate on 20 June 2001. The committee considered the submission at its meeting on 23 August, and recommends that a response in the terms included in the report I have just tabled be incorporated in Hansard. The committee has always reminded the Senate that, in matters of this nature, it does not judge the truth or otherwise of statements made by honourable senators or persons who seek redress. I commend the report to the Senate.
Question resolved in the affirmative.
The response read as follows—
APPENDIX ONE
RESPONSE BY ALDERMAN DR JOHN FREEMAN AGREED TO BY ALDERMAN FREEMAN AND THE COMMITTEE OF PRIVILEGES PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE OF 25 FEBRUARY 1988
I wish to refer to statements made by Senator Brown in the Senate on 20 June 2001 (Official Hansard, p. 24678) on a supposed statement of mine. Senator Brown attributes to me, “Well what’s a couple of hectares? There’s another twenty hectares behind this block”. At no stage have I ever made a statement remotely resembling the words attributed to me, which he then describes as “frivolous and offhanded”, and goes on to suggest that I will not be concerned until “the last developer has put their hand up to get more land”.
The quote that he made is totally untrue. I have never made any statements which in any way resemble the supposed quotations and challenge him to produce such quotes. This quotation from Hansard has been widely circulated in Hobart and obviously reflects on me.
The history of this matter is that the six hectares of land on Mount Nelson was purchased by the Hobart City Council in 1967 for “community purposes”. This means it could be used as anything from a shopping centre to a sports ground. In 1995 council decided to advertise a part of this land for use as an old peoples home and three applications, but no objections, were received to this use of the land. At the same time a new planning scheme for the area was being prepared and again no objections were received to this proposed use.
The area is six hectares of which two hectares are proposed for the aged peoples home and the re-
The remaining area will become a nature reserve at my suggestion. The money received from the sale will go to the council’s bushland fund for the purchase of bushland in the city, and again this was in the motion that I proposed to council. Thus it should be clear that council has been aware of the conservation values and has wished to strike a balance between the needs of people and conservation. I should add that the area in question contains between twelve and twenty Eucalyptus Ovata trees and that these are not the primary but a secondary feeding source for the Swift parrot; thus the risk to the parrot’s feeding is infinitesimal.

In fact the process has proceeded for over five years in full public view, without protest until recently. I and the council have striven to obtain a balance and to have false statements attributed to me and use these false statements to ascribe motives to me that I have never espoused I find deeply offensive. This is particularly so when as I have explained the whole process has been open and transparent.

To circulate these untrue statements widely in Hobart is, in my view, an abuse of parliamentary privilege and I would be grateful for your consideration of this matter.

John Freeman
14 Dresden Street
Sandy Bay 7005

National Crime Authority Committee
Report

Senator GEORGE CAMPBELL (New South Wales) (3.56 p.m.)—I present the report of the Parliamentary Joint Committee on the National Crime Authority entitled The law enforcement implications of new technology, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

(Quorum formed)

GOVERNMENT AGENCY CONTRACTS

Return to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.58 p.m.)—by leave—I want to deal with a response to an order for the production of documents made by the Senate. Firstly, in relation to an order made on 20 June this year about departmental and agency contracts, I have a detailed response on the government’s handling of that order, which we are complying with. It is in some detail, and I have sought agreement—only from the opposition at this stage—to incorporate the response in Hansard. I seek leave to do so.

Leave granted.

The response read as follows—

SENATE ORDER ON GOVERNMENT AGENCY CONTRACTS

GOVERNMENT RESPONSE

On 20 June 2001, the Senate made an order requiring Ministers to table, twice yearly, a letter of advice stating that all FMA agencies for which they have responsibility place on the internet a list of contracts of $100,000 or more which had not been fully performed or which had been entered into in the previous 12 months.

The list is to indicate:

- the contractor details and the subject matter of each contract;
- whether the contract includes confidentiality provisions; and
- the reasons for confidentiality.

Finally an estimate of the cost of complying with the order is to be provided.

The Government has been advised by the Australian Government Solicitor that the order is probably beyond the Senate’s power because it requires information to be provided to the public and not the Senate or a Senate Committee.

However, as the Government is committed to transparency of Commonwealth contracts, it will, in principle, comply with the spirit of the order on the basis that:

- agencies will use the Department of Prime Minister and Cabinet guidelines on the scope of public interest immunity (in Government Guidelines for Official Witnesses before Parliamentary Committees) to determine whether information regarding individual contracts will be provided;
• agencies will not disclose information if disclosure would be contrary to the Privacy Act 1988, or to other statutory secrecy provisions, or if the Commonwealth has given an undertaking to another party that the information will not be disclosed; and

• compliance with the Senate order will be progressive as agencies covered by the Financial Management and Accountability Act 1997 refine arrangements and processes to meet the requirements.

These terms take account of advice to Government that it is likely that the Parliamentary Privileges Act 1987 would not provide absolute privilege in respect of the publication of information on the Internet and the legal implications of complying with the order.

The Government notes that the Auditor-General has agreed to evaluate a sample of the contracts listed for the appropriate use of confidentiality provisions in line with the request in the Senate order. The Australian National Audit Office has advised that it will commence the first of the audits in late August 2001, with a report to be tabled in Parliament in February 2002.

Senator IAN CAMPBELL—I thank all honourable senators for their courtesy in allowing the incorporation of that document.

GREAT BARRIER REEF MARINE PARK AUTHORITY

Return to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.59 p.m.)—by leave—I would like to respond on behalf of Senator Hill to an order made by the Senate, order No. 15, which was agreed to on the last sitting day, which was 23 August. The order refers to a report to be prepared by the Great Barrier Reef Marine Park Authority in relation to water quality. The report which has been ordered to be tabled by the Senate was requested by the Great Barrier Reef Marine Park Authority ministerial council and is still in the process of being finalised. Senator Hill undertakes to table it as soon as possible. It is obviously not possible to table it until it has been finished.

CUSTOMS TARIFF AMENDMENT BILL (No. 5) 2001

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

TREASURY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL (No. 2) 2001

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.01 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.02 p.m.)—I table a revised explanatory memorandum relating to the Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001 and move:

That these bills be now read a second time.

Leave granted.

The speeches read as follows—

CUSTOMS TARIFF AMENDMENT BILL (No. 5) 2001

The Customs Tariff Amendment Bill (No. 5) 2001 contains approximately 800 amendments to the Customs Tariff Act 1995 (the Customs Tariff). These amendments implement changes resulting from the second review of the Harmonized
Commodity Description and Coding System, commonly referred to as the Harmonized System. The Harmonized System provides a hierarchical system of headings and subheadings to uniquely identify all traded goods and commodities. It is reviewed periodically by the World Customs Organization with changes resulting from the first major review being implemented in 1996.

Australia’s commodity classifications for traded goods have been based on the Harmonized System since 1988, with most other countries in the world having now also adopted the system.

As a signatory to the International Convention, Australia and other signatory countries are required to implement the changes arising from the second review, from 1 January 2002.

The second review of the Harmonized System has focused on deleting those headings and subheadings where there are low levels of international trade.

The review also introduces amendments to reflect changes in industry practices and technological developments.

It provides new headings and subheadings to allow signatory parties to separately identify new products such as certain categories of waste, including chemical and clinical waste and narcotic substances.

Finally, many of the amendments are designed to clarify existing descriptions and terminology in the Harmonized System.

While giving effect to the changes to the Harmonized System, the Customs Tariff Amendment Bill (No. 5) 2001 also ensures that existing duty rates and levels of tariff protection for Australian industries and margins of tariff preference accorded to Australia’s trading partners are preserved.

The Customs Tariff Amendment Bill (No. 5) 2001 will also align Australia’s tariff structure with the international standard.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

The purpose of this Bill is to amend certain offence provisions in the Agriculture, Fisheries and Forestry portfolio to harmonise them with Chapter 2 of the Criminal Code.


A key feature of the Criminal Code is the division of each criminal offence into physical elements of conduct, circumstance and result, each of which has an attaching fault element. Fault elements are either directly prescribed in the body of an offence provision or are imposed by default by the Criminal Code in the absence of express provision. The standard fault elements dealt with in the Criminal Code are intention, knowledge, recklessness and negligence. To prove an offence, the prosecution is required to prove both the specified physical elements and the related fault elements. The purpose behind this structure is to provide clarity in relation to the scope and effect of each offence, which has been an uncertain matter since the beginning of the common law system, and to give consistency as to how criminal offences are to be interpreted by courts.

An important component of the Bill is to provide clarity about the application of strict liability to some offence-creating provisions. Under the Criminal Code an offence must specifically identify strict liability, or the prosecution will be required to prove fault in relation to each element of the offence. This is necessary to ensure that the strict liability nature of some provisions is not lost in the transition to application of the Criminal Code’s general principles. If relevant offences are not adjusted in this manner then many will become more difficult for the prosecution to prove, which will therefore reduce the protection which was originally intended to be provided by the offence. It should be noted that it is not proposed to create any new strict liability offences in this Bill.

In addition the Bill makes a number of other amendments, including:

- Applying the Criminal Code to AFFA portfolio Acts except, in some cases, the part of the Code dealing with corporate criminal liability;
- Clarifying provisions that use the phrase ‘for the purpose of…’;
- Amending fault elements which, when applied to certain physical elements, are inconsistent with the Criminal Code;
- Putting defences into separate provisions to clarify that they are defences rather than elements of the offence; and
- Replacing references to old Crimes Act provisions with references to the corresponding Criminal Code provisions.
The amendments in this Bill will ensure that existing criminal offences and related provisions in the Agriculture, Fisheries and Forestry portfolio continue to operate after application of the Criminal Code as they do at present.

TREASURY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL (No 2) 2001

The purpose of this bill is to make consequential amendments to certain offence provisions in legislation administered by the Treasurer to reflect the application of the Criminal Code Act 1995 to existing offence provisions from 15 December 2001.

The bill proposes amendments to the range of taxation legislation, the Superannuation (Resolution of Complaints Act) 1993 and aspects of the Trade Practices Act 1974 that required consultation with the States. For reasons of convenience, the bill also includes proposed amendments to the Trade Practices Act 1974 in relation to provisions administered by the Minister for Communications, Information Technology and the Arts.


This bill provides for amendments that clarify the physical elements of an offence and corresponding fault elements (where these fault elements vary from those specified by the Code) and specify whether an offence is one of strict or absolute liability. In the absence of such an amendment, offences previously interpreted as being one of strict or absolute liability would be interpreted as not being one of strict or absolute liability. In addition, any defences to an offence are being restated separately from the words of the offence. Use is being made of this opportunity to convert penalties expressed as dollar amounts to penalty units.

The bill does not change the criminal law. Rather, it ensures that the current law is maintained following application of the Criminal Code Act to Commonwealth legislation.

Debate (on motion by Senator O’Brien) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

GENERAL INSURANCE REFORM BILL 2001

First Reading

Bill received from the House of Representatives.

Motion (by Senator Ian Campbell) agreed to:

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

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.03 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

Leave granted.

The speech read as follows—

I rise today to introduce a bill that will modernise and strengthen the prudential supervisory regime for general insurers operating in Australia.

This bill is the most significant reform to the Insurance Act 1973 since its inception nearly 30 years ago.

The amendments contained in this bill will place Australia at the forefront of international best practice, and bring the general insurance regime into line with changes that have already occurred in authorised deposit-taking institutions and life insurers.

Unlike the current blunt and prescriptive arrangements, the new regime will be responsive to the individual risk profile of each insurance company. General insurers underwriting higher risk insurance will be required to hold a commensurate level of statutory capital.

The failure of HIH has highlighted the serious and wide-reaching ramifications of a general in-
The amended Act will provide policyholders with an unparalleled level of confidence in this vital industry. The pivotal reform to the current regime is granting APRA the power to make, vary and revoke prudential standards. These standards will be subordinate to the Act and disallowable instruments. They will be subject to Parliamentary scrutiny. They will provide flexibility to the new regime, allowing it to adapt over time to developments in the market and improvements in supervisory techniques.

It is proposed that there will be four prudential standards on liability valuation, capital adequacy, reinsurance arrangements and risk management. These are in the final stages of preparation by APRA after consultation with stakeholders and careful calibration. They replace the outdated prudential supervisory requirements currently contained within the Act. These new prudential standards will see minimum statutory capital requirements increase for most insurers, particularly those underwriting in riskier insurance markets, such as reinsurance. Further, the minimum level of capital for general insurers will be raised from $2 million to $5 million.

- Risk weighted capital adequacy, similar to that used in banking regulation will be introduced, allowing different insurance product lines to require different amounts of capital to be held by the insurer. For example, reinsurance capital requirements will be significantly higher than significantly less risky home & contents insurance.
- Currently, life insurance minimum capital is $10 million, banks require $50 million and building societies require $10 million. Approved trustees for superannuation require capital of $5 million.
- However, given the industry as a whole holds capital some 2.6 times above the current statutory requirements, most insurers will not need to increase their capital buffers.

Other key reforms contained in the bill include:
- strengthened fit and proper tests for the Board and senior management of general insurers;
- a requirement to appoint, except in limited cases, an APRA approved actuary to advise the Board of a general insurer on the valuation of the companies liabilities;
- obligations on auditors and actuaries to report to APRA on both a routine and non-routine basis. The purpose of these obligations is to provide an independent check on the internal control processes of a general insurer; and
- strengthened enforcement powers.

The Government is expecting to have the new regime commence on 1 July 2002. The bill provides a further two-year transition period before full compliance with the capital adequacy standard is required.

Regulatory change of the magnitude in this bill cannot be developed overnight or taken lightly. The bill represents the culmination of extensive industry consultation and development by APRA. It is an important bill that will enhance Australia’s position at the forefront of financial sector regulation.

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

Debate (on motion by Senator O’Brien) adjourned.

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

INTELLIGENCE SERVICES BILL 2001
INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001
CYBERCRIME BILL 2001

Report of Intelligence Services Committee

Senator SANDY MACDONALD (New South Wales) (4.03 p.m.)—I present an advisory report of the Joint Select Committee on the Intelligence Services on the Intelligence Services Bill 2001, the Intelligence Services (Consequential Provisions) Bill 2001 and certain parts of the Cybercrime Bill 2001, together with the Hansard record of the committee’s proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

Senator SANDY MACDONALD—I move:

That the Senate take note of the report.

Senator SANDY MACDONALD—I seek leave to have my tabling statement incorporated in Hansard.

Leave granted.

The statement read as follows—
The Intelligence Services Bill 2001 makes an historic contribution to the development of the Australian intelligence community. For the first time, the functions of both the Australian Secret Intelligence Service and the Defence Signals Directorate are provided for in legislation.

The findings of the 1995 Commission of Inquiry into the Australian Secret Intelligence Service provide the basis for the IS Bill. One of the key recommendations of the Commission of Inquiry was the need for a legislative base for ASIS.

The key features of the IS Bill include the provision of immunities for both ASIS and DSD, the provision of rules to protect the privacy of Australians, and the creation of a Parliamentary Joint Committee on ASIO and ASIS (PJCAA).

The focus of the review was the accountability mechanisms applying to the use of the immunity provisions under clause 14 of the Bill. The examination of the IS Bill identified a number of unintended consequences. The Committee’s recommendations, however, will eliminate these concerns and ensure that the accountability framework is effective.

Madam President, I shall discuss individually the key clauses of the IS Bill which require amendment.

Clause 6 - the functions of ASIS

Paragraph 6(1)(e) provides a degree of flexibility for the Government in its tasking of ASIS by allowing ASIS ‘to undertake such other activities as the responsible Minister directs’.

The accountability provisions applying to 6(1)(e) include the need for the responsible Minister to consult with other Ministers, and make the direction in writing which would be made available to the Inspector-General of Intelligence and Security.

In addition to this, the Committee recommended that if the Minister gives a direction under paragraph 6(1)(e), he or she must, as soon as practicable after the direction is given to the head of ASIS, advise the Parliamentary Joint Committee on ASIO and ASIS of the nature of the other activity to be carried out.

Clauses 8 and 9 - Ministerial directions and authorisation

Madam President, the privacy of Australians is paramount. Recommendations 2 and 7 will enhance accountability of the operation of the agencies. Recommendation 7 seeks to amend Clauses 8 and 9 of the Bill to require authorisation by the responsible Minister for any activity specifically directed towards obtaining intelligence concerning Australian persons or Australian organisations overseas.

In addition, the Minister in giving such an authorisation must be satisfied that the Australian person or organisation overseas is engaged in, or is reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to Australia’s national security. An authorisation of this nature will have effect for six months, whereupon it will lapse unless renewed by the Minister. Recommendation 2 makes a similar requirement in relation to the operation of Ministerial directions made under paragraph 6(1)(e).

Clause 11 - Limit on agencies functions

Paragraph 11(2)(c) of the Bill provides for ASIS or DSD, in carrying out their functions, to communicate to the appropriate law enforcement agencies any intelligence that is relevant to serious crime.

There were some concerns about the accountability mechanisms applying to this provision. Under the nationality rules which apply to ASIS and DSD, both agencies are required to record instances of collection and reporting on Australians, and provide the records to the IGIS.

Recommendation 4 will strengthen this accountability mechanism by requiring the responsible Minister in relation to ASIS, and the responsible Minister in relation to DSD, to consult with the Attorney-General before making the rules relating to the communication and retention of information concerning Australian persons.

Clause 14 - Liability for certain acts

Clause 14, relating to immunities for both ASIS and DSD, proved to be the most contentious provision in the Bill.

Madam President, the Committee’s scrutiny of this clause was rigorous and thorough. The examination revealed an unintended consequence of clause 14 which would have permitted ASIS to conduct certain activities beyond its requirements.

The implementation of recommendation 6 will remove this possibility and provide a framework which ensures that immunities are only granted in cases where an activity is done in the proper performance of a function of the agency.

In addition, recommendation 5 requires the development of protocols to guide the operation of clause 14. In particular, recommendation 5 states that clause 14 should not come into effect until the protocols are provided in writing to the IGIS.

Parliamentary Joint Committee on ASIO and ASIS

Madam President, I conclude by focusing on the role and functions of the proposed Parliamentary
Joint Committee on ASIO and ASIS. The history of Parliamentary oversight of the Australian intelligence community is a chequered one.

The IS Bill, together with the Committee’s amendments, will herald a new era of Parliamentary oversight of Australia’s key intelligence agencies.

The PJCAA will replace the existing Parliamentary Joint Committee on ASIO. The PJCAA will examine the administration and expenditure of ASIO and ASIS, and will be required to provide the Parliament with an annual report of its activities.

In addition, the Committee has proposed a range of amendments which enhance Parliamentary scrutiny through expanding the powers of the PJCAA. These additional powers include:

- the requirement that the Minister advise the Committee of the nature of any direction made under paragraph 6(1)(e) regarding ASIS undertaking such other activities as the responsible Minister directs;
- the requirement to be briefed by the IGIS on the protocols relating to clause 14, and the privacy rules made under clause 15; and
- the requirement that DSD be subject to scrutiny by the Committee.

Madam President, the Committee’s recommendations will enhance the Intelligence Services Bill 2001 by providing an effective accountability framework which will provide confidence for the Parliament and the Australian public.

In conclusion, Madam President, I would like to express the Committee’s appreciation for the efforts of those who gave evidence to our inquiry. I would especially like to acknowledge the excellent advice and guidance provided by Hilary Penfold, Head of the Office of Parliamentary Counsel, in the latter stages of the inquiry.

I would also like to thank the members of the committee for their time and dedication in conducting this inquiry. Finally, I thank the secretariat staff who were involved in the inquiry: — Grant Harrison, Katie Hobson and our inquiry Secretary, Stephen Boyd.

Madam President, I commend the Report to the Senate.

The significance of this legislation is obvious. Whilst it is not in essence party political, the recognition and oversight of ASIS is intensely political and I commend the Labor Party, particularly Senator Ray, for the constructive way in which they approached the work of the joint select committee—the first joint select parliamentary committee that I can recall in my time in this place. I hope that if the roles had been reversed, the coalition would have been as constructive as the Labor Party have been on this occasion.

The first obvious aspect of this legislation is that ASIS, set up by executive order in 1952, is put on a statutory footing. That alone suggests greater accountability. It will still operate secretly because that is the very nature of security and intelligence organisations. Identifying our security intelligence organisations, as MI6 or CIA are identified, will not weaken their capacity to deliver; in fact, it will do the opposite, because with a quality staff and a substantial budget, which is around $54 million annually, presently the only financial accountability is a one-line entry in the budget of the Department of Foreign Affairs and Trade.

The changes this legislation proposes give a much more formal structure and identity to the people who work in ASIS. In my experience, people want to work in an organisation for something or somebody. They want that for their own personal job satisfaction and they want it when things go wrong, which they inevitably do from time to time in intelligence gathering and similar security work. It needs to be emphasised, however, that ASIS is no paramilitary organisation. Where it needs otherwise illegal activities to be carried out in Australia for legitimate security operations, it relies on the warrants provided to it by its sister operational organisation, which is ASIO.

ASIO, as all senators would know, has operated a warrants system under the Attorney-General for many years. It has operational integrity and also integrity from the people who operate in ASIO. Its reputation remains on the line every day, and so it should do. But my experience of the people involved in ASIO is that they are dedicated, and they are very aware of the responsibilities they have and of the particular and difficult role that they have to play in Australian society.

The second obvious aspect of the proposed legislation is the limited indemnity provided for what might otherwise be criminal acts ‘committed” in Australia. This re-
quires careful review, and the committee was somewhat reassured by the process proposed. There can, perhaps, never be absolute satisfaction here because we are dealing with high emotions and theoretical crime situations on which the conspiracy theorists and exponents of other ratbag ideas like to prey. But, overall, I am satisfied with the legislation and I approve of the changes that the committee has recommended.

The third and final aspect that I wish to comment on is the oversight provisions provided by the proposed joint committee on ASIS and ASIO. I have been on the parliamentary Joint Committee on the Australian Security Intelligence Organisation for the past four years or so, and I have seen what was, in theory, a toothless tiger committee become, partly through the force of character of the two chairmen, former Senator David MacGibbon and Mr Jull MP, a much better committee than could have been envisaged under the old ASIO legislation. Under that legislation, the existing ASIO committee can conduct specific but very limited inquiries, provided that the minister or a house of parliament refers a particular aspect of the activities of the organisation to the committee for review. The new committee will have additional ongoing powers to review the administration and expenditure of ASIS and ASIO, and it is intended that this be done on a yearly basis and that the committee have the powers that the estimates process has provided in areas of Senate investigation, that is, it would have estimates type powers to investigate the ongoing financial processes of ASIS and ASIO. Further, there is a proposed role for the Auditor-General.

I am attracted to much of what former Senator MacGibbon said to the committee concerning even more oversight capacity, because I believe in greater accountability of the operation and personnel sides of the organisations. I do not think that anybody can really argue with that. The question is: how do you provide that increased oversight and maintain the integrity of the security organisations involved? I believe in greater accountability for two reasons: one—the obvious one—it is good public policy and, two, it reassures the organisations. If things go wrong, they can share the blame with the parliament and not be hung out to dry alone. But these things take time. We certainly pushed the envelope in the old Joint Committee on the Australian Security Intelligence Organisation and I expect that the same will happen in the new joint committee on security services. One of the ways this is done is through the personalities of the parliamentarians involved and the credibility that they have with the security organisations.

I look forward to the opportunity to be on the new committee—as I hope I am—and to work in an all-party sense for what most sensible people who understand the essential requirements of security organisations believe is necessary to make intelligence and security organisations even better than they are now—which in our case is pretty good, but there is always room for improvement. I bring to the Senate’s attention that, without any doubt at all, increased recognition of the structure of ASIS and of the oversight provisions of ASIS and ASIO is good and proper and should be endorsed by the parliament.

Senator ROBERT RAY (Victoria) (4.12 p.m.)—I thank Senator Sandy Macdonald for the remarks he made today and I also acknowledge the application he has given to these issues over his time in the parliament, especially while serving on the Joint Committee on the Australian Security Intelligence Organisation. The proposed legislation to give a legislative basis to ASIS and DSD is nothing really new. It has been around for six years. It came out of the Samuels Codd review. Indeed, legislation was drawn up for presentation to this parliament in 1995 but it never proceeded. This was due partly to the government’s term being curtailed by the electorate and partly to one controversial aspect in the bill that Senator Evans put in and, finally, to a hope that D-notices could be properly resurrected.

There was some indication given to the committee that former defence minister Mr Ian McLachlan spent a fair time trying to resurrect D-notices. It is here, I must say, that I am at fault, and I have to apologise to him. In the handover from one defence minister to another, we mentioned many problems—where bodies may be buried—but I forgot to tell him that D-notices were becoming an
him that D-notices were becoming an effective waste of space. In 1995, I convened a meeting of talented editors and representatives of proprietors from around the country up at Russell Hill, and we discussed D-notices. Guess what? Every one of those editors agreed with me in the macro that D-notices were a terrific idea. Guess what? Everyone disagreed in the micro. I cut that meeting short after 1 1/2 hours, and they were all a bit aggrieved. They thought I did not take them seriously. But the fact is that none of them were going to sign up to D-notices if they had a good story. They would all agree with it unless they got an exclusive. Then they were going to say, ‘Stuff Australian security. We’re going to put that story out.’ The worst one of all was the Australian Broadcasting Corporation. There was no cooperation from Mr Brian Johns or from anyone else.

So, rather than waste my time over weeks and months, I just said, ‘Well, that’s it; that’s the end of it.’ I regret that apparently this legislation was held up for a couple of years while the incoming government tried to sort out D-notices. And what is the result of that? D-notice No. 4 will no longer exist and this bill will penalise newspaper proprietors and journalists who disclose the names and activities of DSD officers. Well done, Fourth Estate! Going from moral sanction, now you have legislative sanction: now you can get jailed, now you can get fined, because you did not cooperate six years ago. Bad luck.

However, finally the legislation has appeared. Having read the legislation, I have to say that it is basically good legislation. It is legislation that recognises what the role of these security services has to be, while at the same time trying to counterbalance civil libertarian viewpoints. The select committee has found a few ways of strengthening this legislation. Reading through those recommendations at the front of the report, I do not think that the government will knock many, if any, back. Remember, it is pretty hard to get a unanimous report—there is no dissenting report here, I read. It is pretty hard to get a unanimous report from 15 people with some of the contentious issues that were addressed. Most of the modifications suggested in this report strengthen the bill rather than weaken it.

What is interesting is that we had DSD, ASIS and ASIO before us on several occasions. Did they adopt an adversarial role in this? Absolutely not. They fully cooperated with the inquiry. Any time that a difficulty was put to them, they did not go on the defensive. Rather, they said, ‘Well, that’s interesting; let’s see if we can work through a solution.’ For example, they would say, ‘The ambit of this clause is too wide; let’s try to restrict it.’ The amount of cooperation that we got from the three key agencies and the Inspector-General was very gratifying from a government point of view—that is, for proper governance of this country.

There are probably four major changes that this report recommends. Firstly, 6(1)(e) of the bill is a necessary part of the bill. It says, ‘Here are all the functions of ASIS but it may just be that government, through unexpected circumstances, has to give them a new function.’ You need that flexibility in legislation. The problem is that every other guarantee in the bill might be abrogated by an injudicious use of 6(1)(e). So the government, the committee and the agencies have agreed—I think we have an agreement—that this instruction will be given in writing and that the Inspector-General will know. We are suggesting that the parliament should know by having the new committee appraised of what the new function is—not the operation but the function—so that everyone will see all the little ducks in a row, if you like. I think that will be accepted by government. It was certainly not objected to by ASIS, and I commend them for it.

But, of course, the most controversial aspect is when you are granting an agency immunity—that is, immunity from prosecution, from breach of the Australian law. That is a pretty substantial thing for the parliament to do, yet it has been so defined in the act, and so restricted in the act, as to fit within the core function of ASIS. Initial concerns that it might in fact reinforce breaking and entering or telephone intercepts locally have all been assuaged. Now these are only coincidental acts with the planning and execution of acts overseas. They have so defined it and so re-
stricted it that I think the whole committee eventually came to accept that new definition of clause 14 of the legislation.

A third suggestion from the committee—and I have no indication whether the government will accept this yet—is that really it is about time that, this legislation having given DSD a legislative base, they came within parliamentary scrutiny. It is true that DSD did not agree to this during the committee hearings. They did put up a few reasons why they should not. I will not belittle DSD by repeating those here; they were pretty inept in their defence. You might say that I am a hypocrite: why didn’t I put DSD under legislative scrutiny when I was defence minister? In 1995, I said to them that it was coming. The moment I saw the ASIS legislation, I said, ‘It’ll come for you, and it’ll come for DIO as well.’ I put the point of view to them that it was better that they be under parliamentary scrutiny than not, because at least when something goes wrong you can blame the people up on Capital Hill as well. Unfortunately, the corporate knowledge of that has disappeared: we have a second or third generation of people through in DSD and Defence and they do not agree with it. But I think that a wise government would, at this stage, include DSD. In fact, I think that over the long term ONA and DIO will come within its orbit, and the Defence Imagery and Geospatial Organisation, being a collection agency, should come too. We have been informed that there has to be some specific legislation on the latter organisation, and at that point I think we might move an amendment to bring it within the ambit of the new committee. We do not seek to do so at this stage.

One of the things that we are most concerned about is to get this legislation right, not out of a lack of trust. What we have at the moment with the heads of ASIO, ASIS and DIO are three very outstanding people, not only intellectually bright but with a high sense of probity. That is reinforced by the very talented Mr Blick as Inspector-General. We put as our bottom line this proposition: what if we did not have such good people in charge for some reason? Let us have the legislation right to protect people. I think that by adopting any of these changes we will certainly get that.

One final point: I want to thank former Senator MacGibbon, not only for the work he has done in this particular area of trying to increase parliamentary scrutiny of our various security agencies but also for coming down, even though he does not want to be in the limelight anymore, and putting those views forcibly to the committee. It was very helpful to the committee’s judgment. The one point on which I disagree with him—and it is not one that he pressed hard—is that he would like all members of this committee to be subject to security clearances. There is no way that I am going to be subject to a security clearance when the Minister for Defence, the Minister for Foreign Affairs and the Attorney-General are not. I do not believe that I should have to. And, by the way, I have already seen most of the hidden silverware over the six years I was on the Security Committee and, so far, I do not think that I have ever betrayed any of it, even by way of a hint. That is the one area where I do not agree with him.

I commend this report; it is a great bipartisan effort. A terrific job was done by Chairman Jull, and a terrific job was done by the secretariat. All the staff involved in the secretariat brought in a report in record time. They are to be commended, as is the chairman, David Jull. I seek leave to continue my remarks.

Leave granted; debate adjourned.

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT BILL 2000

Second Reading

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

That these bills be now read a second time.

Senator JACINTA COLLINS (Victoria) (4.22 p.m.)—We are speaking on the Occupational Health and Safety (Commonwealth
Employment) Amendment Bill 2000 joined with the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000. I will deal firstly with the occupational health and safety bill. This bill seeks to amend the provisions of the Occupational Health and Safety (Commonwealth Employment) Act 1991. The amending provisions contained within this bill fall into three categories: firstly, amendments to section 16 of the principal act to eliminate union involvement in matters of occupational health and safety; secondly, amendments designed to improve the enforcement and compliance regime of the act, principally by including provisions for civil remedies and sanctions supplementing the current regime of criminal penalties and breaches; and, thirdly, by extending the application of criminal and civil penalties to Commonwealth employees. The major issue of disagreement between the government and the opposition with this bill is the removal of unions from the processes regulating occupational health and safety in Commonwealth employment, and I will deal with that matter firstly.

Currently, section 16 of the act requires an employer to develop an occupational health and safety policy and agreement in consultation with involved unions. This bill will replace that provision with a requirement that an employer is to develop, in consultation with their employees, safety management arrangements that will apply at the workplace. Whilst removing the current role for unions, amendments will permit employees the right to be represented in consultations with their employer by an employee association that has a principal purpose of protecting and promoting the industrial interests of its members in the workplace. Comcare will be able to issue an authority for a union representative to be involved in OHS consultations.

It is the opposition’s contention that those aspects of this bill removing unions from an active role in occupational health and safety matters are, firstly, poorly motivated, resulting from this government’s ideological obsession with disempowering unions. That motivation is reflected in some serious definitional problems within the bill. Secondly, those aspects of this bill are lacking any reasonable or rational justification and, on the contrary, run counter to the hard evidence of real benefits when unions are involved in occupational health and safety matters. Turning firstly to the issue of motivation, this government has had an unhealthy ideological obsession with the union movement since the day it came to office. It changed the rules governing industrial relations to make it tough for unions to organise. It, to use the words of the Prime Minister, ‘stabbed’ the Industrial Relations Commission in the stomach to make it tough for unions to represent their members. When it could, it cheered on employers in their campaigns to take on unions, even coordinating one notable campaign with Patrick’s. When employers did not join such campaigns, it berated them for their weaknesses, as the former minister did with the construction industry.

Amazingly, coalition members and senators still say with straight faces that there is no bias in their party room against union activism. The current minister claims a history as a union radical, in his attempt to portray himself as even-handed. But provisions such as these place in stark relief this government’s obsession with reducing the role of unions in our society and illustrate the irrationality, the foolishness and the danger of this obsession.

Research proves that unionised workplaces have a better occupational health and safety outcome than non-unionised workplaces. The Australian Workplace Industrial Relations Surveys of 1990 and 1995 showed that if there is no union only 19 per cent of workplaces will have a health and safety committee, compared to 59 per cent of unionised workplaces, and that a workplace is twice as likely to have undertaken a health and safety audit in the last 12 months if the workplace is organised. Research funded by Worksafe Australia shows that workplaces with effective health and safety committees have fewer workers’ compensation claims. The research is borne out by experience. This legislation deals with the Commonwealth public sector, which is the best performing jurisdiction in the country in the area of occupational health and safety. The
Comcare scheme has the lowest premium rates in the country and work related accidents have been declining since the original occupational health and safety act commenced. So in the words of the current minister on the subject of the monarchy, ‘if it ain’t broke, don’t fix it’.

The other aspect of concern with these changes relates to the composition and functioning of occupational health and safety committees. Currently, a health and safety committee must be established for employees at a particular workplace if the number of employees at that workplace is normally not less than 50. The bill requires that an employer must establish a health and safety committee if the total number of employees across all workplaces is not less than 50. An employer must establish a committee for employees within a given state or territory if the number of employees within the state or territory is not less than 50 and a reasonable request has been made in writing by the health and safety representative. There is a real possibility that this is a less stringent requirement than the current provisions. For instance, if the employer has multiple workplaces, each with more than 50 employees, the employer would only be required to establish one committee. This represents a very serious contraction of effort in regard to addressing health and safety matters and would most certainly lead to a reduction in safety standards at a workplace level.

I want to turn now to deal with those amendments dealing with the compliance and enforcement regime contained within the act. One of the weaknesses of the original legislation that its operation has revealed has been in the area of compliance and enforcement provisions. A range of remedies and sanctions are being introduced through this bill, along with significant increases in penalty levels. The bill is amending the current regime of criminal liability under the act to one based on both civil and criminal penalties for contravention of the act. The bill also includes an amendment to extend civil and criminal penalties to Commonwealth employees and employees of Commonwealth authorities, ensuring that a Commonwealth employee will be accountable where they have acted wrongfully. Commonwealth officers or employees will continue to have the protection of the Commonwealth’s policy on indemnification where they have acted reasonably and responsibly in the course of their duties. Those aspects of this amending bill enjoy the support of the Labor Party, with one minor extension focusing on risk management, which I will address by amendment during the committee stage.

I want to turn now to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000. Some of the more important proposed changes are as follows. The bill proposes amendments to the Safety, Rehabilitation and Compensation Act 1998—the SRC Act—and the Industrial Chemicals (Notification and Assessment) Act 1989—the ICNA Act. Firstly, with respect to self-insurance, the SRA permits an employer to self-insure against liability, but they must be licensed to do so. The bill proposes to amend the act’s current licensing arrangements to replace the current five categories of licence with one generic licence. The bill also contains other consequential amendments to the licensing arrangements.

In regard to rehabilitation, the SRA currently provides a system of rehabilitation which relies on the services of approved rehabilitation providers. The act currently gives Comcare the responsibility of ensuring
that rehabilitation providers have the qualifications, proven effectiveness, availability and cost efficiencies to deliver quality services to employers and employees. The current approval provisions require that persons providing treatment and services meet acceptable standards. The bill proposes amendments to the current processes for approving new rehabilitation providers by providing a statutory basis for existing guidelines, by enabling a fee to be charged to cover the costs of the application process—proposed to be $400—and by ensuring that the approval can be revoked if a rehabilitation provider is no longer able to meet the standards required.

The bill contains a number of amendments to improve some scheme benefits, clarify the circumstances in which compensation is payable under the act and clarify the amount of compensation payable. Improvements to the scheme benefits include providing greater access to compensation for employees who suffer hearing loss. Presently, an employee must have a hearing loss of more than 20 per cent before the loss is compensable. The bill will reduce this to 10 per cent, which is comparable to Victoria, Tasmania and Western Australia—although South Australia, Queensland and the Northern Territory have a five per cent threshold level, with New South Wales at six per cent. We will seek to improve the bill in that respect.

Other improvements to the scheme benefits include ensuring that all employees covered by the act can receive compensation beyond the age of 65—if they are injured over the age of 63, such workers are presently excluded from receiving compensation—and enabling claimants to seek the costs of treatment from a wider range of health practitioners than they can at present without having to seek a referral from a medical practitioner; for example, for physiotherapy and occupational therapy. Other amendments will standardise the basis by which compensation is calculated for the first 45 weeks of a claim and clarify that dependants of deceased employees have access to common law. The bill will also ensure that compensation payments for former employees are maintained at 70 per cent of indexed normal weekly earnings and that normal weekly earnings of former employees are updated to a prescribed index—proposed to be the ABS wage cross index.

Moving next to those amendments relating to disease and injury where the Labor Party has major problems, the bill includes a proposal to amend the circumstances in which compensation is payable under the SRA by amending the definitions of ‘disease’ and ‘injury’. The SRA presently requires a material contribution to a disease by employment before compensation is payable. The 1988 second reading speech for the bill indicated that there needed to be a close connection between the employment and the disease. However, subsequent court decisions indicate that only a connection between employment and the disease is required before it is compensable. The bill includes an amendment which requires that an employee’s employment is not to be taken to have contributed in a material degree to his or her disease unless there is a close connection between the employee’s employment and the disease. We will be opposing that, and I will come to that in a moment.

The SRA also currently prevents compensation claims being used to obstruct legitimate management action and contains an exclusionary provision. It provides that compensation is not payable in respect of an injury that arises from reasonable disciplinary action taken against an employee or a failure by the employee to obtain a promotion, transfer or benefit in connection with employment. The bill seeks to extend this provision to include other activities that are to be regarded as normal management responsibilities; for example, an injury resulting from a reasonable appraisal of the employee’s performance, any reasonable counselling action—whether formal or informal—any reasonable suspension action or a failure by the employee to obtain a reclassification in connection with his or her employment. The amendment arises from court decisions which have held that the exclusionary provisions refer only to formal disciplinary action. The amendment would ensure that the specified disciplinary actions attract
the exclusion, but Labor believe they go too far.

A further amendment relates to the interaction between disease and injury. Currently, the SRC Act sets out separate tests for establishing entitlements to compensation for diseases and injuries. Employment must be making a material contribution to a disease before that disease is compensable whereas for an injury to be compensable it is only required that that injury should have occurred at work. Court decisions have held that a natural progression of a disease which causes an injury at work is compensable—for example, if a claimant has a history of heart disease not caused by work but, while they are at work, this work causes a heart attack, this would be compensable under the act. The bill includes an amendment to overcome these decisions so that, where an injury occurs at work which is the natural progression of a disease, the injury will be deemed not to be an ‘injury’ for the purposes of the act. We are opposing this amendment because we do not believe it is quite as clear as that when you are dealing with the natural progression of disease and we believe some of those factors would be very difficult to delineate.

Moving to some further amendments in the bill, the bill proposes an amendment to extend to all claimants the requirement that any earnings by a claimant may be taken into account in the calculation of the claimant’s weekly incapacity payments. Court decisions have interpreted that earnings refer only to Commonwealth income, so that if a claimant returns to work in non-Commonwealth employment that income could not be used to offset benefits received under the act. The proposed amendments ensure that the claimant is not being overcompensated under the act.

Another amendment states that there is no automatic entitlement to payment for non-economic loss for employees who suffered a permanent impairment before the SRC Act commenced. The bill also contains a number of technical amendments to the SRC Act that are essentially of a policy or technical nature, including some amendments which address regulatory matters.

Turning to the Labor Party’s position on this bill, in the second reading speech given by Minister Reith on 7 December 2000 the government justified this bill on the basis that it needs to:

... improve the operation of the Commonwealth workers compensation scheme while at the same time ensuring that the act reflects the government’s commitment to balancing the costs of work related injury with access to fair compensation and effective rehabilitation for injured workers.

However, this is typical of this government. The concern over budgetary implications regarding this scheme is exaggerated and can clearly be seen as an attack on Commonwealth employees’ access to workers compensation. In fact, this bill represents the second time around. I think in earlier discussions I described it as a wolf in sheep’s clothing when the department, in relation to the last bill addressing these issues, sought to say, ‘No, we took into account the committee’s deliberations.’ As I mentioned in my earlier comments concerning the occupational health and safety bill, claims accepted as a percentage of employee numbers have reduced since 1996 and the Commonwealth fund has the lowest premiums in Australia. This is not the time to be restricting access further. In its own most recent annual report Comcare boasts that it has:

Reduced injury frequency rates per 100 employees a further 6 per cent;
Met the majority of the Commission’s claims management performance indicators, and improved performance on others;
Introduced a new OHS self-assessment and audit tool for employers (SafetyMAP);
Exceeded the national average durable return to work rate by 10 per cent

The provisions relating to the amendments to the definition of injury or disciplinary action exclusions ought to be opposed. While the government has argued that these amendments are consistent with Labor’s statements back in 1988, the operation of the scheme since then has provided no compelling justification for supporting amendments that will result in a more restrictive approach to compensable injuries and diseases than that of the states. At the time that Labor proposed
the provisions, Commonwealth expenditure on workers compensation had increased by over 700 per cent in a 10-year period. However, the workers compensation scheme is now self-funded, the premiums are the lowest in Australia—they are presently less than one per cent—and claims are falling; therefore, those amendments are not necessary. This very good performance of the fund is partly related to the passing in 1991 of the Occupational Health and Safety Act, the legislation that the SRC is linked to. This is proof of the importance of union involvement in health and safety management.

I have mentioned that the bill will provide greater access to compensation for employees who suffer hearing loss. Presently, an employee requires a hearing loss of more than 20 per cent before the loss is compensable. The bill will reduce this to 10 per cent, which is comparable to Victoria, Tasmania and Western Australia—although South Australia, Queensland and the Northern Territory have a five per cent threshold and New South Wales is at six per cent. Labor will move an amendment to reduce the required amount of compensable hearing loss to the five per cent mark, in line with many of the other jurisdictions. Labor will also be opposing government attempts to have a requirement that, after an initial claim for hearing loss, a claimant must suffer a further five per cent hearing loss before they can claim. We do not consider that, just because an initial claim is made, a worker who suffers a further four per cent loss should be precluded from claiming.

The final comment I want to make regarding these bills is on the issue of consultation. The explanatory memorandum reads that ‘a level of consultation did occur before the bill was introduced’. This was not our experience through the committee consideration of these bills. The ACTU advise that they were not provided with effective consultation and, in fact, the committee has not been provided with effective responses about some definitional problems, which we will go to in the second reading stage. (Time expired)

Senator MURRAY (Western Australia) (4.43 p.m.)—I rise to speak to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000 and the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000. The first bill consists of nearly 100 pages and the second bill is over 50 pages, which indicates that there is a fair bit of legislation before us. The numbers of amendments so far are relatively light. That leads me to the conclusion that substantial portions of these bills are technical and administrative and that the areas of controversy are likely to be relatively limited.

The purpose of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000 is to tighten the definition of injury and disease and to restrict access to compensation, to restructure deductions from benefits in relation to income from suitable employment, to restrict access to compensation for non-economic loss before 1 December 1988, to expand the regulatory regime for rehabilitation program providers, to rationalise the categories of licence in the associated regulatory regime, to expand the formulae for calculating premiums and to introduce regulatory contributions. Its purpose is also to amend the Industrial Chemicals (Notification and Assessment) Act 1989, to relax the publication and regulatory arrangements for synthetic polymers of low concern, to align the primary and secondary notification for priority existing chemicals and to increase discretion in the public consultation processes for secondary notification.

The purpose of the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000 is to increase flexibility in the design and implementation of workplace safety arrangements, to increase flexibility in the application of civil and criminal remedies for breaches and to increase freedom of association in negotiations and monitoring arrangements. We see merit in many aspects of these bills. Some will prove to be more efficient by improving the operation of these systems in a technical and administrative sense. They represent two sides of the same issue, which is the provision of a healthy workplace with fair compensation for the injured or ill.
It is pleasing that both the health and safety and compensation systems in the Commonwealth public sector have generally worked well since the current legal regime was established, I believe, in 1988. The health of these schemes is reflected in the stable compensation costs within the Commonwealth over recent years and the compensation premium rates which are the lowest in the country. Given some of the controversy attaching to the state schemes, that is no mean boast. While that low rate in part reflects the occupational composition of the Commonwealth service, it is also testament to a health and safety regime that works well and a compensation system that also functions efficiently and effectively.

In this light, there does not appear to be convincing evidence to support changes that do other than improve the efficiency of the system. The Democrats do not see any evidence that suggests that the rights of either employees or the Commonwealth as employer need changing in any material respect. On balance, the fairness of the system and the balance of rights seems appropriate. We do not see a case for reducing employees rights to compensation, especially where that reduction is likely to result in expensive litigation testing new meanings: for example, the meaning of ‘closely connected’ or increasing the exemptions related to poorly defined management actions.

There is no evidence that stress claims, for example, are a real problem in this system of compensation. There is, however, a growing body of work that suggests that management activities can make an important difference to the incidence of work related stress. Management practices that increase employee autonomy and consultation are associated with better health outcomes. The Whitehall studies in the United Kingdom, for instance, found this result. In this light, it is important that the Commonwealth compensation system fairly recognises illness and disease that arises or is exacerbated by working life and encourages managers to manage in ways that minimise it. Our current law appears to do this without creating an unworkable scheme or an unfundable liability. So the general approach of the Democrats to these bills is to support changes that will improve the administration and efficiency of these systems without changing the balance of rights.

We support the improvements proposed by the government in relation to hearing loss and see merit in further reviewing hearing loss criteria. This area of the scheme deserves general improvement and we welcome the government attending to it. We also support the change in relation to income earned from suitable employment inside or outside the Public Service. The Occupational Health and Safety (Commonwealth Employment) Amendment Bill makes changes to the treatment of offences. Under the current act, offences are treated as criminal offences. It has been suggested that this penalty approach has contributed to a very small number of prosecutions since 1992, even though 28,000 incidents have been reported.

The bill proposes to change this enforcement regime to one relying on both civil and criminal penalties for contravention of the act with many of these matters currently dealt with as criminal offences becoming civil actions instead. This seems a sensible adjustment that will enhance the effect of the act. For very serious offences that result in death or serious bodily harm, criminal penalties will continue to apply. It is also appropriate that the courts are given the power to grant injunctions to prevent the occurrence, or recurrence, of a breach of the act and to make remedial orders in the case of serious offences such as these.

However, the bill makes a raft of other amendments to the management of health and safety in the Commonwealth. It attempts to remove unions from processes, it weakens the role of employees and their representative bodies—where they have them—so that employers must simply consult with them rather than negotiate suitable agency approaches to health and safety management and it is much less prescriptive about the framework within which health and safety is to be managed in the workplace.

The current act sets out clear arrangements that require an employer to make an agreement with employees, through their unions, about appropriate mechanisms for continuing consultation on health and safety.
It is up to these parties and the agency to work out what is useful in their environment and local circumstances. While the act gives responsibilities to employers and a role to the unions, it is up to them to work out what is going to work in their particular and specific agency. This provides considerable local latitude as to what arrangements to establish within a broad framework that makes the employers’ duty of care and the employees’ specific responsibilities clear.

It is true that in some cases there may be arguments for taking a critical look at whether unions misuse their involvement in health and safety processes in workplaces. My views about actions by employers or unions that are mischievous in an attempt to misuse or circumvent laws such as this are well known in this place. Some unions may indeed manipulate rights to entry in relation to health and safety matters for ends that are not related to health and safety. I am opposed to this misuse and once again I will refer the Senate to the very good Standing Committee for the Scrutiny of Bills report on rights to entry and warrants and other matters which helpfully lays out principles that should be attended to.

Senator Cooney—A good report!

Senator MURRAY—It was an excellent report. For the purposes of the Senate I record the fact that the chair who managed that process, Senator Barney Cooney, is present in the chamber. However, there is no suggestion that the misuse of rights of entry in relation to health and safety matters is widespread or a problem in the Commonwealth public sector. It is my view that any misuse of that sort is not best attended to through legislation such as this but through other means. The government is, nonetheless, keen to change the balance of union rights in relation to health and safety and to give over to employers total control of health and safety processes, subject to undefined ‘consultation’ with employees.

In some industry sectors, union membership may be so low as to make unions less relevant to processes. This is not the case for the most part in Commonwealth government workplaces. The current act does allow for the circumstance that no union is present in a workplace. It establishes mechanisms through the commission to permit the election of health and safety representatives, nonetheless—and I refer to section 25(4). More significantly, however, in the great majority of Commonwealth public sector workplaces, unions have a presence, and a strong one. With union density in the public sector hovering at about 50 per cent on average, there are reasonable arguments in favour of continuing union involvement in health and safety structures in these workplaces.

There is good research in Australia that suggests that a union presence is associated with improved health and safety outcomes. I refer to the findings of the Australian workplace industrial relations survey, with its analysis in 1990 and 1995 that showed a positive association between the presence of union delegates and better health and safety structures. Those studies show that where there was no union, only 19 per cent of workplaces had an OH&S committee. In most unionised workplaces—59 per cent—there is a union involvement in an occupational health and safety committee. Research that has been funded by Worksafe Australia shows that workplaces with effective health and safety committees have fewer workers compensation claims. The effectiveness of the current arrangements, as reflected in the low compensation scheme costs, attests to the active role of a web of trained health and safety representatives and an effective union role in helping to put in place such representation and ensure that it works.

It seems to me that this bill is hostile to union involvement, with little evidence in support of this hostility and the changes it gives rise to. There is, in fact, evidence the other way: that the presence of union representation is associated with better outcomes in this field. Of course, these outcomes are very beneficial to employers who experience lower rates of injury, illness and lost time at work as a result. The case for weakening union involvement, and particularly a loss of the right to reach agreement on the best approach in any single agency, rather than be merely consulted, has not been made. There is not a case for giving the overwhelming control of health and safety in the Common-
wealth to employers and reducing the role of employees through reduction in the role of unions. Further, this bill, if passed on this basis, would allow government departments that are subject to it to have one committee for an entire state. This seems an inappropriate approach to local issues and to the important local involvement of employees. It is also contradictory to the principles that the government espouses of enterprise bargaining. The whole purpose of enterprise bargaining is that you attend to the issues that relate to the enterprise concerned. When you translate that into this bill, you really wish to relate the issues to the agency concerned in its geographic situation. In this light the Democrats have sympathy for a number of amendments that have been foreshadowed by Labor. The government benches will note, therefore, where there is a joint opinion on these matters.

However, we want to ensure that there is no discrimination between unionists and non-unionists—a principle that is embedded in the workplace relations bill and which the Australian Democrats strongly espoused in their support of the 1996 act. We believe that both unionists and non-unionists should have the right to nominate and be elected for representative roles in the system that exists, without differential treatment. To this end we will be moving an amendment to the bill that clarifies that both union and non-union members should have the same rights to nominate and be selected for health and safety representative positions, without discrimination. We consider this an important principle: that any employee should—with adequate interest, skills and the support of their co-workers through an election—have the right to take on such positions.

We support the idea that criminal penalties should apply to careless behaviour that results in death or serious injury. However, we believe that careless actions that might result in such an outcome should also attract serious penalties. We do not believe it is appropriate to wait for someone to die or be seriously injured before imposing a penalty where careless behaviour is occurring. We share Labor’s view on this issue and we hope the government will see merit in our reasoning on this. Behind it is the basic principle that you do not punish people for somebody getting hit on the head with a brick: you punish people if they do not wear the hard hat which prevents them getting hurt when the brick hits them.

Finally, we note a growing interest in the literature and research about a connection between health and safety and hours of work. My office—and those of other senators—have had strong representations, for instance, over a long period from people such as long-distance truck drivers and doctors. Both of these groups hold the safety of the community in their hands. Both of these groups are a danger to others if they work unsafe hours. Both of these groups have a long history in Australia of being required to work unsafe hours. We finally think it is time, in some legislation, to attempt to take a stand on these issues.

Recent material from the AMA, for example, draws attention to the unsafe and systematic nature of long hours and unsafe rostering practices that affect junior doctors in the public health system. We note the growth in average hours in Australia, especially at the upper end of the long hours spectrum. In 1981, 21 per cent of Australians worked long hours of more than 45 a week and this has now reached 26 per cent. I refer to the ACIRRT research paper 2001:5. The largest absolute increase in hours worked is in the 50 to 59 hours group in Australia. The Australian Medical Association provides evidence of the risk this creates for long hours workers and their clients, with one young doctor reporting a period of 63 hours on continuous hospital duty. How can this possibly be safe, for the individual, for co-workers and especially for the patients?

Long hours affect employees in both the private and public sectors, and we think there is now a case for ensuring that the hours issues are taken into particular consideration when ensuring that workplaces and employees are as safe as is humanly possible.

To this end we will propose an amendment—and it has been circulated—that draws employers’ attention to this need and encourages them to ensure that employees do not work very long hours—no more than,
say, 60 hours per week. We have chosen that figure because the largest absolute increase in hours worked, as I have said earlier, is in the 50 to 59 hours group in Australia. We have asked in our amendment that that be not allowed over two weeks in a regular pattern unless there is some kind of emergency. Plainly, if there is a major train crash, and all the trauma that goes with it, and doctors have to work extraordinary hours, all of us would accept that that is desirable. You have to allow for the emergency provisions. We believe that with these amendments that we propose overall the two bills will make a worthwhile contribution to improvements in health and safety systems in Australia and are intended with a good purpose and for a good outcome.

Senator COONEY (Victoria) (5.00 p.m.)—I must add to what Senator Murray so eloquently said about doctors and young doctors. There is no doubt that young doctors, particularly since they have no ability to get a provider number until they have done years of training, have become very vulnerable. They are, in effect, used to subsidise the public purse by doing work above and beyond the call of duty. I think the Australian Medical Association is to be congratulated for the work it has done in bringing to our attention the terrible hours—and I use the word ‘terrible’ advisedly—that these young doctors have to work. It does bad things to their health and also threatens their ability to give us proper treatment when we go to them as patients. They also have families to look after and civil lives to lead. We must remember that.

So the question of long hours, as Senator Murray has said, is a very big issue. He has used young medics as a means of illustrating what he means, but it is an issue that affects us all. Indeed, in this chamber tribute should be paid to Senator Herron, who reduced the hours of the Senate from the very long hours we used to work, bringing us back to a reasonable working day, if you call going until 10 o’clock tonight a reasonable working day. So we ourselves understand the problems of long working hours.

These are bills which address issues which will need addressing from now on in. They address issues that have been dealt with many times in the past, both at a state and a federal level. The bills deal with the issues of work and these, I think, come down to three things. As far as safety is concerned, the first thing to do is to ensure that accidents do not happen. Accidents can be not only the direct infliction of a wound but also the infliction of stress related diseases such as those of the heart and the head. They can be injuries to the general health of a person. Therefore, it is important to be a civil society. We are not simply here to work; we are here to occupy our places as people in a reasonable society, going about our work, certainly, but also going about our play and our recreation and going to church, if we are so inclined, and so on.

That is the thing: when we approach this issue of work, we have to put it in the context of what a civil society is all about. It is not a good thing that we have people working extraordinarily long hours. If someone works 100 hours a week, that is not a good thing. I heard a terrible story—it did not happen in the Commonwealth—of a woman who returned to work five days after delivering her child. I think she worked for an accountancy firm or a legal firm, and they all sat and clapped her as she came in. I thought that was a dreadful business, first of all, because of the terrible thing that was done to her health and, secondly, because of the child. As you would understand, Mr Acting Deputy President, this is not only about the need to produce children but also grandchildren, and it is important that they not only be produced but that they be brought up as decent citizens of this country and of the world generally.

The bills before us are of great importance. The wording of the title of one of the bills perhaps sums up what the situation should be in the workplace. It talks about safety, rehabilitation and compensation, and that is what ought to exist. Safety is the primary issue. If there is safety, it means that people are not injured. If people are not injured, their quality of life is preserved. If they are not injured, nobody has to pay compensation in any event. If a person is injured, real effort should be made to rehabilitate
them, to get them back to work and to their social life—or their civil life, as I have been calling it. If they are injured, and they are rehabilitated but not rehabilitated in time, or if they cannot really be rehabilitated, then the system has to give them proper compensation.

Those concepts of safety, rehabilitation and compensation flow through the history of this area. Workers compensation, it is suggested, was begun by Bismarck back in the 19th century in Germany. The remark he is said to have made is that industry should bear the blood of the worker. He was a chancellor who believed in blood on the battlefield too, but he said about workers compensation or whatever he called it—that was what he meant—that the compensation for that should come from industry; it was industry that took the person’s health away and it should be industry that supported it. So that is a concept that has been there for a very long time. The other thing about that is that it is also industry that should take the responsibility of ensuring that people are safe.

Senator Collins and Senator Murray have addressed the issue of how an occupational health and safety policy should be developed. It is said that it should not be developed through the unions anymore; it should be developed in consultation between the employer and the employee. That is a very strange approach to take in this area. Are we to conduct our road laws by having safety committees in each street, so that in one street a group of citizens will come to an agreement that cars should be able to proceed down that street at 80 kilometres per hour, whereas when you get to the next street there is another agreement between the residents of that street and the law enforcement authorities that cars will go at 40 kilometres per hour? In other words, safety can be fluid, depending on who makes the arrangements. That is the sort of thing that is done here. It is as if the road traffic regulations are going to be arranged by a conference between employers and employees. In my view, safety is absolute. You cannot say, ‘Look, we’ll agree not to have guards on these machines. If the machines gobble up limbs, then you’ve got to have guards on them, and it’s the employer’s responsibility to see that they are there.’ If you have floors upon which people slip, it is the employer’s responsibility to make sure that they are not slippery for any time that would allow an accident to occur. If you have a vat of caustic soda, you have to properly guard it.

Going back to the old days again, we have seen some very bad injuries that have occurred to people, where scalps have been torn off, where fingers have been lost and where limbs have been lopped—all because there has not been proper attention to safety. In my time, in any event, the obligation was on the employer to ensure that there was safety. As I said before, the safety is directed not only at injuries that are in the nature of a wound or of the lopping of a limb but also injuries in terms of heart attacks, stress and so on. An employer just simply cannot discharge his, her or its obligations by saying, ‘Look, we had a conversation with the employees and have agreed upon a set of rules.’

The reality is that you can get employees to agree to take guards off machines to get their work done more quickly, you can get employees to agree to have slippery floors, you can get employees to allow front-end loaders to go into areas in a storage room where they should not go and it is true that you can get employees to agree to long hours. I see Hansard here—we might even get Hansard staff to work longer than the many long hours they already work. But that is not the point. We have to look, not at the agreement, not at what suits everybody, but at what is safe. That is the big issue about which we have to ask ourselves. The provisions that we have in this legislation do not address that. I refer to the second reading speech on the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000. It says:

In relation to the employer’s duty of care, amendments are proposed to section 16 of the act to replace the current prescriptive elements of the section requiring an employer to develop an occupational health and safety policy and agreement in consultation with involved unions; instead, employers will be required to develop, in consultation with their employees, safety management arrangements that will apply at the workplace.
Unions are responsible bodies set up under the Workplace Relations Act and their officials are elected by their members to carry out duties on their behalf. If it is any sort of union at all, one of those duties is to ensure that safety prevails. It is much easier for the officials of a union outside the workplace to ensure that safety is carried out in the workplace, rather than that duty being undertaken by the employees, who are subject to all sorts of pressures from the employer, in terms of hours, wages and what will be allowed to get a job done quickly. You do not have to be any great genius to understand that a union outside the workplace is going to have more strength to ensure that there is safety within the workplace. The material that we have been given here shows the number of instances that occur in the workplace because of the lack of safety. The idea of asking employees—vulnerable people who can be tempted by way of wages and other advantages to concede issues—is going to lead to a much less safe workplace than the present situation. This is very interesting: the second reading speech also says:

Improved outcomes can also be achieved by encouraging employers and employees and others with responsibilities under occupational health and safety laws to voluntarily comply with their statutory obligations. Other amendments in this bill therefore provide greater encouragement for voluntary compliance.

Hopefully, you are going to have a voluntary compliance with safety provisions, but that is not the point. It is a lapse in that voluntary compliance for 10 minutes that can at times lead to disaster. If we are serious about having a decent, safe workplace, then we have to do more than have a voluntary system in place to ensure that it operates. To think that we can go around and be discretionary as to whether or not there should be safety is a nonsense. What if you went to the football grand final and the organisers said that it did not matter how many people you crowd into the stadium or into the ground and it was up to the people who came in as to whether or not they sat on the field or occupied the corridors that would otherwise be used for people to come and go, as long as it was all done voluntarily, as long as it was understood by everybody? When you put that proposition forward it indicates just how great a nonsense it is.

I want to say a few words about rehabilitation. A lot of good people do rehabilitation, but we have to ensure that those who are rehabilitators are up to the mark. I should pay tribute to somebody here: over the years I have listened to the wisdom of Mrs Dawn Vincent, who has had much to say on rehabilitation, particularly at the Commonwealth level. There is always scope to ensure that rehabilitation can be done better than it is. It needs people who understand the position, it needs proper resources and at times it needs patience. I think there ought to be an assurance that proper rehabilitation takes place.

There have been discussions here about civil and criminal penalties. I think there are times when a civil penalty imposed on someone for what they have done wrong is more appropriate than a criminal penalty that milks that person not only of the money that they might have but also of their reputation—because of the criminal conviction. If an act has the characteristics of a criminal act, then people should be punished for a criminal offence. If safety is not looked to properly, then I think that is reprehensible, because all sorts of terrible injuries can occur through the lack of safety. There is a passage on page 3 of the second reading speech that I think indicates a good thing:

The improvements to scheme benefits will provide greater access to compensation for employees who suffer a hearing loss, ensure that all employees covered by the Act can receive compensation beyond age 65 if they are injured over the age of 63 years and enable claimants to have the cost of treatment from a wider range of health practitioners than at present reimbursed, without having to seek a referral from a medical practitioner.

That passage deals with the recognition that people can go on after 65. I think allowing that to happen is an act of wisdom. People have to come to the realisation that people over 65 still have a lot to contribute and that if they are injured then they ought to be compensated in a way that perhaps they have not been in the past. As medicine and attitudes change, I think we will have people who are vigorous at the age of 80. Mr Acting Deputy President, you will no doubt be
looking forward to that in years to come. There is no doubt of the understanding in this legislation of the significance of safety, rehabilitation and compensation. Those concepts are there, but the way those concepts are going to be put into practice, how they are going to be executed, is what is amiss.

Senator BUCKLAND (South Australia) (5.20 p.m.)—I rise to speak on the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000 and the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000 being debated concurrently. The safety, rehabilitation and compensation legislation is applicable to employees under 65 years of age, employees of Commonwealth departments and authorities and of licensed corporations. The Safety, Rehabilitation and Compensation Act 1988 provides a framework for compensation and rehabilitation for injuries and diseases that result in death, incapacity or impairment. The act is administered by Comcare, under the auspices of the Safety, Rehabilitation and Compensation Commission, and it provides for such things as weekly incapacity payments, lump sum compensation for permanent impairment, lump sum compensation for non-economic loss, lump sum compensation and benefits for dependants of deceased employees and provisions for household and attendant care services and rehabilitation for injuries and diseases connected with or arising in the course of work. It is a fairly thorough and comprehensive act.

Experience shows that quite a lot of providers—those people who are there to assist injured workers re-enter the work force—are not even-handed; that is, the care of the worker is often a secondary consideration, the primary consideration being getting that person back to work in some form as quickly as possible. This is not always done thinking of the best interests of the worker. Quite often, rehabilitation means extensive periods away from the workplace, but pressure is placed on providers by agencies who feel, ‘If we can get the worker back to work for a little while each day, perhaps licking stamps for envelopes or something, then we can say that that worker is not losing time.’ I fear that it can happen within Comcare the same as it can within the state workers compensation jurisdictions where there is undue pressure put on the provider to doctor the books. I make no claim against any particular department; it is an observation that I have made over a number of years dealing with workers compensation claims. The government of the day should give great consideration to this to ensure that these providers are providing genuine care rather than just trying to narrowly fulfil the legislation. The benefits I spoke of are based on the degree and duration of incapacity. Compensation for economic and non-economic loss is based on the degree of impairment and extent of loss.

The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000 aims to amend the Safety, Rehabilitation and Compensation Act 1988 and the Industrial Chemicals (Notification and Assessment) Act 1989. Labor supports the majority of the amendments, as they do improve some of the benefits. There are also some amendments of a simply technical nature to keep us up to date with the current working environment. However, Labor opposes the provisions relating to the amendments to the definition of injury or disease. We do that because a number of Labor senators in this place have had experience with some of the definitions and the difficulty of actually trying to work through those in representing individual workers. To be compensable under the act, an employee must demonstrate that his or her work contributed ‘in a material degree’ to the contraction of the disease. There is uncertainty over what is added by the phrase ‘in a material degree’. I myself have tried to work through that and I still have some difficulty with it. I think I know where it is trying to take us, but I am not sure that it is actually doing it in a way that is understandable and practicable in operation.

Another important concern relates to the distinction between ‘diseases’ and ‘injuries’. The 1971 act defined an injury as any physical or mental injury, including aggravation, acceleration or recurrence, but not a disease. A disease was defined to include any physical or mental ailment, disorder, defect or
morbid condition. Courts have held that a natural progression of a disease which causes an injury at work is compensable: for example, a claimant who has a history of heart disease not caused by work and while at work it causes a heart attack would be compensable under the act. The bill includes an amendment to overcome these decisions so that, where an injury occurs at work which is the natural progression of a disease, the injury will be deemed not to be an injury for the purpose of the act. But an employee will not be prevented—and this is one proviso that helps somewhat—from seeking to establish that his or her employment contributed in a material degree to the contraction of the disease itself and that the disease would then be compensable.

But this is a little difficult because, while a worker could have a physical injury such as a broken leg or a back injury and is in the course of rehabilitation—trying to re-enter the work force or retrain for alternative work if they are not able to go back to their former occupation—it is becoming more and more the case that the system that they are working within is creating a mental disability and this secondary mental disability is the one that takes over the actual injury itself. Most workers will have difficulty trying to work through that and argue their case to say, ‘Well, the mental disability I now have—the depression, the anxiety that I am suffering—is a result of the injury but also the result of the manner in which my employer is putting pressure on me to return to work.’ On many occasions, employer pressure on workers or providers aggravates their condition. This overcomes them and it is very difficult to actually argue around that.

I am pleased to say that the very last workers compensation case that I argued before the tribunal—and I hope I never have to argue another one in any form in my life—was a case where we had to prove that, although the anxiety was not caused by the injury, the injury and the manner in which it was dealt with by the provider and the employer caused the worker, from memory after some three years, to suffer this secondary injury, and thus that it was compensable and so could be properly satisfied. So there are real difficulties with the term ‘in a material degree’ that is being proposed. I am not really sure that it will do all that the government is seeking it to do in these bills.

Labor feels that the amending provisions will result in an absolute nightmare for workers who are attempting to prove their claims. No doubt the connection between the injury or disease and what comes later will need to be proved. When you are trying to deal with a multitude of medical experts—doctors, psychologists and psychiatrists on many occasions—it is very difficult to establish whether the claim is compensable. That in itself is a further aggravation for a person returning to full fitness and to their prior employment. Quite often the medical evidence is so conflicting that it really does create an absolute bonanza for lawyers. While looking at this legislation over the last week I sometimes thought it could well have been designed by lawyers who thought that there was money to be made through it. In my view, it is not all the fault of state Liberal governments. Certainly I have been critical of the approach of state Labor government to workers compensation in some of the amendments. You certainly do need a very skilled lawyer to argue your case. I do not think that is really what it should be all about.

The evidence provided to us at the moment does not establish that a serious financial problem for workers compensation schemes will emerge from the current definition of injury and disease. The justification that certain injuries related to employment are excluded from entitlements to workers compensation on the basis that they are caused by normal management actions could be extended to a range of situations. Currently, anecdotal evidence is such that poor management is a major contributing factor towards stress in the workplace. In the case I mentioned earlier there were real problems with management practices. The company has now been taken over, so hopefully that has been sorted out, but that was a contributing factor not only in that case but also in a number of other cases that were before the tribunal. It seems entirely inappropriate to limit an entitlement to compensation which
may have resulted from poor management simply because it is a management practice. These provisions attack one of the fundamental underlying assumptions of the Australian workplace, in this case the assumption that if you are injured at work you get compensation—the ‘no fault’ provision under an insurance based scheme.

The bills will provide greater access to compensation for employees who suffer hearing loss, and I think that is extremely important. Presently, an employee is required to have a hearing loss of more than 20 per cent before the loss is compensable. In my own state of South Australia the limit is five per cent, and it varies between six per cent and 10 per cent in the other states. I ask senators to support the amendments to be put forward by Labor, particularly the amendment to reduce the required amount of compensable hearing loss to five per cent. As I have said, that is in line certainly with South Australia and not out of keeping with other jurisdictions. Labor will also be opposing the government’s attempt to have a requirement that, after the initial hearing loss, a claimant must suffer a further five per cent hearing loss before they can make another claim. Labor does not consider that just because an initial claim has been made a worker who then suffers a four per cent loss should be precluded from claiming.

In the short time I have left I will turn to the occupational health and safety component of these bills being debated today. As I see it, the bills seek to sideline the important role that unions play in occupational health and safety matters. I do not think there would be many employers out there, particularly small business employers, those in small operations, who would actually disagree with me. This is one area where unions have absolutely shone through their involvement in the workplace. Large and small industries that I have many dealings with—because I like to keep in touch with my past as much as look to the future—see as an absolutely essential component an involvement of their workers with their unions.

Research funded by Worksafe Australia shows that workplaces with effective health and safety committees have fewer workers compensation claims. Whilst the government attempts to justify its reductions in benefits under this scheme, in the OH&S bill the government is about to dismantle positive, safe working outcomes for workers. This will only increase the difficulties that we have with the rehabilitation and compensation bill. So I really do not know what the government is on about here. But if there is one area in which unions need a lot more credit than they are given by the government it is occupational health and safety.

For nearly two decades the Safety, Rehabilitation and Compensation Act provided a compensation and benefit regime. At the time, the incidence of occupational death, injury and disease was considered to be unacceptably high. Time does not allow me to go through a couple of cases where I have had the displeasure of attending sites where, sadly, workers have lost their lives. In my view, the government has not thought this issue through, because the proposed amendments will put the onus on the employer with no right of challenge by the employee as to the safe working conditions in which they and their colleagues must operate. They will not have a say in it. There can be no better way of knowing if a practice is safe or unsafe than finding out from the people who are doing the job day by day. They are able to report back and say, ‘Something which happened today could have led to a serious injury or death. If we make this small modification, we will have a safer and better place in which to work.’ The occupational health and safety legislation was designed to complement the mechanisms of reducing occupational injury and disease that give rise to unacceptable human and economic costs. Simple things, through the involvement of the workers and of the unions through their experience with their members, can contribute substantially to industry—(Time expired)

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.40 p.m.)—I would like to thank all honourable senators for their contribution to the debate. I look forward to a more detailed consideration of the issues during the committee stage. I
commend the second reading of these two bills to the Senate.

Bills read a second time.

In Committee

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

The bill.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.41 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000. The memorandum was circulated in the chamber on 22 August. I also table a supplementary explanatory memorandum relating to government amendments to the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000, which was circulated on the same day last week. I seek leave to move government amendments (2) and (3) on sheet DJ218 together.

Leave granted.

Senator IAN CAMPBELL—I move government amendments Nos 2 and 3:

(2) Schedule 2, page 30 (before line 4), before item 26, insert:

25A Subsection 4(1) (definition of approved program provider)

Repeal the definition, substitute:

approved program provider means a person or body approved under section 34F or 34H as a rehabilitation program provider and includes a person or body so approved whose approval is renewed under section 34L.

(3) Schedule 2, page 39 (before line 26), before item 28, insert:

27A Subsection 37(2)

Repeal the subsection, substitute:

(2) A rehabilitation authority must not make arrangements for the provision of a rehabilitation program to its employees other than by an approved program provider.

These are purely technical amendments.

Amendments agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.43 p.m.)—by leave—I move government amendments Nos 4 to 96:

(4) Schedule 2, item 37, page 43 (line 3), omit “Secretary of a Department,”, substitute “principal officer of an Entity.”;

(5) Schedule 2, item 37, page 43 (line 8), omit “Department”, substitute “Entity”;

(6) Schedule 2, item 49, page 46 (line 23), omit “eligible entity”, substitute “eligible applicant”.

(7) Schedule 2, item 49, page 48 (line 9), omit “entity”, substitute “applicant”.

(8) Schedule 2, item 49, page 48 (line 11), before “applicant”, insert “eligible”.

(9) Schedule 2, item 49, page 48 (line 17), before “applicant”, insert “eligible”.

(10) Schedule 2, item 49, page 48 (line 20), before “applicant”, insert “eligible”.

(11) Schedule 2, item 49, page 48 (line 26), before “applicant”, insert “eligible”.

(12) Schedule 2, item 49, page 49 (line 7), omit “entity”, substitute “applicant”.

(13) Schedule 2, item 49, page 49 (line 9), omit “entity”, substitute “applicant”.

(14) Schedule 2, item 58, page 63 (line 17), omit “a Department”, substitute “an Entity”.

(15) Schedule 2, item 58, page 63 (line 21), omit “Department”, substitute “Entity”.

(16) Schedule 2, item 59, page 63 (line 29), omit “a Department”, substitute “an Entity”.

(17) Schedule 2, item 59, page 63 (line 33), omit “Department”, substitute “Entity”.

(18) Schedule 2, item 69, page 69 (line 27), omit “Departments”, substitute “Entities”.

(19) Schedule 2, item 69, page 69 (line 31), omit “Departments”, substitute “Entities”.

(20) Schedule 2, item 69, page 70 (line 4), omit “Departments”, substitute “Entities”.

(21) Schedule 2, item 69, page 70 (line 6), omit “Departments”, substitute “Entities”.

(22) Schedule 2, item 69, page 70 (line 15), omit “Departments”, substitute “Entities”.

(23) Schedule 2, item 72, page 71 (line 21), omit “a Department”, substitute “an Entity”.

Amendments agreed to.

Question resolved in the affirmative.
Monday, 27 August 2001

(24) Schedule 2, item 72, page 73 (line 10), omit “Departments”, substitute “Entities”.  
(25) Schedule 2, item 72, page 73 (line 13), omit “Departments”, substitute “Entities”.  
(26) Schedule 2, item 75, page 74 (line 12), omit “Department”, substitute “Entity”.  
(27) Schedule 2, item 75, page 74 (lines 16 and 17), omit “a Department”, substitute “an Entity”.  
(28) Schedule 2, item 75, page 74 (line 22), omit “Department”, substitute “Entity”.  
(29) Schedule 2, item 75, page 74 (line 26), omit “a Department”, substitute “an Entity”.  
(30) Schedule 2, item 75, page 74 (lines 29 and 30), omit “Department of”, substitute “Entity or”.  
(31) Schedule 2, item 75, page 75 (line 2), omit “Department”, substitute “Entity”.  
(32) Schedule 2, item 75, page 75 (line 6), omit “a Department”, substitute “an Entity”.  
(33) Schedule 2, item 75, page 75 (line 9), omit “Department”, substitute “Entity”.  
(34) Schedule 2, item 75, page 75 (line 12), omit “Department”, substitute “Entity”.  
(35) Schedule 2, item 75, page 75 (line 16), omit “a Department”, substitute “an Entity”.  
(36) Schedule 2, item 75, page 75 (line 18), omit “Department”, substitute “Entity”.  
(37) Schedule 2, item 75, page 75 (lines 20 and 21), omit “a Department”, substitute “an Entity”.  
(38) Schedule 2, item 75, page 75 (line 25), omit “a Department”, substitute “an Entity”.  
(39) Schedule 2, item 75, page 75 (line 32), omit “a Department”, substitute “an Entity”.  
(40) Schedule 2, item 75, page 75 (line 34), omit “Department”, substitute “Entity”.  
(41) Schedule 2, item 75, page 76 (line 7), omit “a Department”, substitute “an Entity”.  
(42) Schedule 2, item 75, page 76 (line 12), omit “Department”, substitute “Entity”.  
(43) Schedule 2, item 75, page 76 (line 15), omit “a Department”, substitute “an Entity”.  
(44) Schedule 2, item 75, page 76 (line 17), omit “Department”, substitute “Entity”.  
(45) Schedule 2, item 75, page 76 (line 28), omit “Department”, substitute “Entity”.  
(46) Schedule 2, item 75, page 76 (line 35), omit “Department”, substitute “Entity”.  
(47) Schedule 2, item 75, page 77 (line 30), omit “a Department”, substitute “an Entity”.  
(48) Schedule 2, item 75, page 78 (line 8), omit “Department”, substitute “Entity”.  
(49) Schedule 2, item 75, page 78 (line 14), omit “a Department”, substitute “an Entity”.  
(50) Schedule 2, item 75, page 78 (line 23), omit “Department”, substitute “Entity”.  
(51) Schedule 2, item 75, page 78 (line 29), omit “Department”, substitute “Entity”.  
(52) Schedule 2, item 75, page 78 (line 31), omit “a Department”, substitute “an Entity”.  
(53) Schedule 2, item 75, page 78 (line 34), omit “Department”, substitute “Entity”.  
(54) Schedule 2, item 75, page 79 (line 5), omit “Departments”, substitute “Entities”.  
(55) Schedule 2, item 75, page 79 (line 9), omit “Departments”, substitute “Entities”.  
(56) Schedule 2, item 75, page 79 (lines 19 and 20), omit all the words from and including “Secretary” to and including “Commonwealth authority”, substitute “principal officer of each Entity or each Commonwealth authority”.  
(57) Schedule 2, item 75, page 79 (line 22), omit “Department”, substitute “Entity”.  
(58) Schedule 2, item 75, page 79 (lines 25 and 26), omit all the words from and including “Secretary” to and including “authority”, substitute “principal officer of an Entity or a Commonwealth authority”.  
(59) Schedule 2, item 75, page 79 (line 31), omit “Department”, substitute “Entity”.  
(60) Schedule 2, item 75, page 80 (lines 6 and 7), omit “a Department to the Secretary of the Department”, substitute “an Entity to the principal officer of the Entity”.  
(61) Schedule 2, item 75, page 80 (line 12), omit “a Department”, substitute “an Entity”.  
(62) Schedule 2, item 75, page 80 (line 14), omit “Department”, substitute “Entity”.  
(63) Schedule 2, item 75, page 80 (lines 16 and 17), omit all the words from and including “Secretary” to and including “Commonwealth”, substitute “principal officer of an Entity or a Commonwealth”.  
(64) Schedule 2, item 75, page 80 (line 19), omit “Department”, substitute “Entity”.  
(65) Schedule 2, item 75, page 80 (lines 20 and 21), omit all the words from and including “Secretary” to and including “authority”, substitute “principal officer of an Entity or an authority”.  
(66) Schedule 2, item 75, page 80 (lines 23 and 24), omit all the words from and including
“Secretary” to and including “authority”, substitute “principal officer of an Entity or a Commonwealth authority”.

(67) Schedule 2, item 75, page 80 (line 25), omit “the Secretary or”.

(68) Schedule 2, item 75, page 80 (lines 28 and 29), omit all the words from and including “Secretary” to and including “Commonwealth authority”, substitute “principal officer of the Entity or the Commonwealth authority”.

(69) Schedule 2, item 75, page 81 (line 1), omit “Department”, substitute “Entity”.

(70) Schedule 2, item 75, page 81 (lines 9 and 10), omit all the words from and including “Secretary” to and including “Commonwealth”, substitute “principal officer of the Entity or the Commonwealth”.

(71) Schedule 2, item 75, page 81 (lines 12 and 13), omit all the words from and including “Secretary” to and including “Commonwealth”, substitute “principal officer of an Entity or a Commonwealth”.

(72) Schedule 2, item 75, page 81 (line 15), omit “Department”, substitute “Entity”.

(73) Schedule 2, item 75, page 81 (line 16), omit “Department”, substitute “Entity”.

(74) Schedule 2, item 75, page 81 (lines 22 and 23), omit “a Department”, substitute “an Entity”.

(75) Schedule 2, item 75, page 81 (lines 25 and 26), omit all the words from and including “Secretary” to and including “authority”, substitute “principal officer of the Entity or authority”.

(76) Schedule 2, item 75, page 81 (line 28), omit “Secretary or”.

(77) Schedule 2, item 75, page 82 (lines 8 and 9), omit all the words from and including “Secretary” to and including “authority”, substitute “principal officer of the Entity or the Commonwealth authority”.

(78) Schedule 2, item 75, page 82 (line 13), omit “a Department”, substitute “an Entity”.

(79) Schedule 2, item 75, page 82 (line 18), omit “Department”, substitute “Entity”.

(80) Schedule 2, item 75, page 82 (line 20), omit “Department”, substitute “Entity”.

(81) Schedule 2, item 75, page 82 (line 28), omit “a Department’s”, substitute “an Entity’s”.

(82) Schedule 2, item 75, page 83 (lines 3 and 4), omit “a Department’s”, substitute “an Entity’s”.

(83) Schedule 2, item 75, page 83 (line 11), omit “Department”, substitute “Entity”.

(84) Schedule 2, item 75, page 83 (lines 20 and 21), omit all the words from and including “Secretary” to and including “Commonwealth”, substitute “principal officer of the Entity or the Commonwealth”.

(85) Schedule 2, item 75, page 83 (line 27), omit “a Department”, substitute “an Entity”.

(86) Schedule 2, item 75, page 83 (line 32), omit “Department”, substitute “Entity”.

(87) Schedule 2, item 75, page 83 (line 33), omit “Department”, substitute “Entity”.

(88) Schedule 2, item 75, page 84 (line 1), omit “a Department”, substitute “an Entity”. 

(89) Schedule 2, item 75, page 84 (line 5), omit “Department”, substitute “Entity”.

(90) Schedule 2, item 75, page 84 (lines 21 and 22), omit “a Department”, substitute “an Entity”.

(91) Schedule 2, item 75, page 84 (line 23), omit “Department”, substitute “Entity”.

(92) Schedule 2, item 76, page 85 (line 7), omit “Department”, substitute “Entity”.

(93) Schedule 2, item 77, page 85 (line 18), omit “a Department”, substitute “an Entity”.

(94) Schedule 2, item 78, page 85 (lines 30 and 31), omit “a Department”, substitute “an Entity”.

(95) Schedule 2, item 78, page 86 (lines 7 and 8), omit “a Department”, substitute “an Entity”.

(96) Schedule 2, item 80, page 86 (line 25), omit “a Department”, substitute “an Entity”.

These are technical and consequential amendments relating to entities. Unless there are any questions on them, I do not intend to delay the chamber.

**Senator JACINTA COLLINS** (Victoria) (5.43 p.m.)—Senator Campbell, can you clarify what you mean about these amendments pertaining to entities? I thought that they pertained to the implementation of this bill and problems with timing.

**Senator IAN CAMPBELL** (Western Australia)—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.45 p.m.)—The Public Service Act 1999 made changes to the definition of ‘department’ which have had unforeseen consequences for definitions in the Safety, Rehabilitation and Compensation
Act and the Occupational Health and Safety Act. The definitions in the SRC and OHS acts needed to be changed before Comcare calculated premiums for departments and agencies for the coming financial year. The changes to the definitions have been made to the acts by the mechanism in the Public Employment (Consequential and Transitional) Amendment Act 1999 which has a provision to allow regulations to be made to amend other acts to make changes consequential on the making of the new Public Service Act. Those amendments remove references to ‘department’ and ‘secretary of a department’—that is what ‘entities’ are, I guess—in those two acts and replace them with a the new terms ‘entity’ and ‘principal officer of an entity’. In other words, they became non-specific as opposed to specific. However, the bills presently before the parliament had to be drafted on the basis of the acts as they were at the time of introduction, as the regulations had not been made. This means that the PECTA regulations have changed references in the acts but some of the bills in their current form were changed back to the old references. Government amendments to the bills will be made to change the references back again, consistent with the changes made by the PECTA regulations. That would make a very good script for Yes, Minister.

The CHAIRMAN—I will have to divide the question here because amendment 97 seeks to remove items Nos 96 to 99 on pages 90 and 91. I will first put the question that amendments Nos 4 to 96 be agreed to.

Question resolved in the affirmative.

The CHAIRMAN—The next one seeks to delete items 96 to 99 on pages 90 and 91. I put the question that items Nos 96 to 99 on pages 90 and 91 stand as printed.

Question resolved in the negative.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.47 p.m.)—by leave—I move government amendments No. (1) on sheet DJ218 and Nos (1) to (33) on sheet DJ230 together:

(1) Clause 2, page 2 (line 11), omit “2001”, substitute “2002”.

(2) Schedule 2, item 59, page 63 (lines 30 and 31), omit “or 1 July 2000”, substitute “1 July 2000 or 1 July 2001”.

(3) Schedule 2, item 69, page 69 (line 29), omit “2001”, substitute “2002”.

(4) Schedule 2, item 69, page 69 (lines 32 and 33), omit all the words from and including “either” to and including “2000”, substitute “one or more of the financial years starting on 1 July 1999, 1 July 2000 or 1 July 2001”.

(5) Schedule 2, item 69, page 70 (line 3), omit “2001”, substitute “2002”.

(6) Schedule 2, item 71, page 71 (line 2), omit “2001”, substitute “2002”.

(7) Schedule 2, item 72, page 71 (line 18), omit “2001”, substitute “2002”.

(8) Schedule 2, item 72, page 71 (line 27), omit “2001”, substitute “2002”.

(9) Schedule 2, item 72, page 71 (line 21), omit “2001”, substitute “2002”.

(10) Schedule 2, item 72, page 72 (line 29), omit “2001”, substitute “2002”.

(11) Schedule 2, item 72, page 72 (line 35), omit “2001”, substitute “2002”.

(12) Schedule 2, item 72, page 73 (line 12), omit “2001”, substitute “2002”.

(13) Schedule 2, item 72, page 73 (lines 14 and 15), omit all the words from and including “either” to and including “2000”, substitute “one or more of the financial years starting on 1 July 1999, 1 July 2000 or 1 July 2001”.

(14) Schedule 2, item 73, page 73 (line 21), omit “2001”, substitute “2002”.

(15) Schedule 2, item 73, page 73 (line 23), omit “2001”, substitute “2002”.

(16) Schedule 2, item 73, page 73 (line 27), omit “2001”, substitute “2002”.

(17) Schedule 2, item 75, page 74 (line 14), omit “2001”, substitute “2002”.

(18) Schedule 2, heading to section 97B, page 76 (line 27), omit “2001”, substitute “2002”.

(19) Schedule 2, item 75, page 76 (after line 33), after paragraph (b), insert:

or (c) the financial year starting on 1 July 2001;

(20) Schedule 2, item 75, page 77 (line 20), omit “2001”, substitute “2002”.

(21) Schedule 2, item 75, page 77 (line 28), omit “2001”, substitute “2002”.
in the following terms:

material degree by the employee

or aggravation that was contributed to

presently defines disease to mean an ailment

Safety, Rehabilitation and Compensation Act

a bit more detail at this stage as well. The

cant problem with this bill, but I will go into

tribution because they are the most signifi-

part these issues in my second reading con-

compensable disease and injury. I covered in

the item which removes those provisions in

This amendment to oppose part 1 deals with

only a connection between employment and

the disease before it is compensable. There-

fore, amendments are proposed to require a

stricter connection between disease and the

injury to reflect the original intention of the

act and to reduce costs, according to the ex-

planatory memorandum. New subsection

5A(1) defines ‘compensable disease’ to

mean:

(a) any ailment suffered by an employee; or (b)

the aggravation of any such ailment; that is an

ailment or an aggravation to which the em-

ployee’s employment by the Commonwealth or a

licensed corporation contributed in a material
degree.

New subsection 5A(2) provides employment

is not to be taken to have contributed in a

material degree to a disease unless there is a

close connection between the employee’s

employment and the disease. Subsection

5A(2) goes on to list a number of specific

factors that may be taken into account in de-

termining whether employment contributed

in a material degree to the disease. These

factors include, but are not limited to, the

duration of the employment, its nature and

the particular tasks involved, the nature of

and particular tasks involved in the employ-

ment, any medical predisposition of the em-

ployee to the disease, activities of the em-

ployee not related to his or her employment,

and any other matters affecting the em-

ployee’s health.

Labor do not support this narrowing of the

definition of disease. It must be remembered

that, even if the amendments are required to

reflect the original intention of the act, Labor

proposed that at a time when the fund was

under extreme cost pressures, which is not

the case today. At that time, Commonwealth

expenditure on workers compensation had

increased by over 700 per cent in a 10-year

period. However, the workers compensation

scheme is now self-funded. The premiums

are the lowest in Australia—they are pres-

tently one per cent—and claims are falling.

Therefore, we argue that the changes to the

definition of disease are not necessary.

Let us look, for instance, at claims re-

ceived and accepted between 1996-97 to

1999-2000, a somewhat brief period. The

number of claims received in 1996 was
28,807. This has declined to 19,512. The number of claims accepted went from 25,442 down to 16,372. Claims received as a percentage of employee numbers—if we take into account the decline in numbers of employees in the public sector over the period—still declined from 6.99 to 6.36. Claims accepted as a percentage of employee numbers were 6.18 down to 5.34. If we also look at workers compensation premiums, we can compare this present figure of less than one per cent to the ACT government figure of 3.1 per cent, with Western Australia three per cent, South Australia 2.9 per cent, New South Wales 2.8 per cent, Victoria 2.2 per cent, Queensland 1.8 per cent and the Commonwealth less than one per cent.

At this stage I will also deal with the issue of stress claims and reasonable employer actions. The SRCA currently seeks to prevent compensation claims being used to obstruct legitimate management action and contains an exclusory provision that provides that compensation is not payable in respect of an injury which arises from reasonable disciplinary action taken against an employee or a failure by the employee to obtain a promotion, transfer or benefit in connection with employment. The bill seeks to extend this provision to include other activities which are to be regarded as normal management responsibilities, for example ‘an injury resulting from a reasonable appraisal of the employee’s performance’, ‘any reasonable counselling action (whether formal or informal)’, ‘any reasonable suspension action’ or a failure by the employee to obtain a reclassification in connection with his or her employment.

The government justifies the amendment on the basis that the court decisions have given the phrase ‘disciplinary proceedings’ an extremely limited meaning which has overriden the original intent to exclude claims resulting from a range of legitimate management actions. The provision has been interpreted as confined to injuries arising as a result of formal disciplinary action prescribed by the Public Service Act or action taken pursuant to an award or certificate agreement.

Labor has a number of concerns. Firstly, advice received indicates that, although early court decisions interpreted this exclusion to mean formal disciplinary action, subsequent decisions have led to Comcare and the AAT adopting a very different stance. In fact, the decision referred to in the department’s submission to the committee, Comcare v. Chennahall, is actually a 1992 decision. They are now applying the exclusion to mean any management action in order to maintain discipline in the workplace, and discipline is taken in the sense of maintaining an air of order and not in the punitive sense—that is, reasonable disciplinary action is being taken to mean reasonable management action. The current practice is therefore that any stress claim or anxiety disorder which involves a relationship between the employee and the organisation is being rejected by Comcare subject to the employee being able to demonstrate that their treatment was unreasonable. Therefore, once the employer says that the action was reasonable, the onus is on the employee to rebut that. This is obviously difficult to do and provides additional stress and anxiety for the claimant. On this basis, Labor does not support the proposed amendment in the bill.

If I move on to disease and injury, also relevant to this part, a further amendment related to the interaction between disease and injury. Currently the SRC Act sets out separate tests for establishing entitlements to compensation for diseases and injuries. A disease requires employment to be a material contribution before it is compensable whereas an injury is only required to occur at work. Court decisions have held that a natural progression of a disease which causes an injury at work is compensable. For example, if a claimant has a history of heart disease not caused by work but whilst at work it causes a heart attack, this would be compensable under the act. The bill includes an amendment to overcome these decisions so that, where an injury occurs at work which is the natural progression of a disease, the injury will be deemed not to be an injury for the purposes of the act. But an employee will not be prevented from seeking to establish that his or her employment contributed to a material degree to the contraction of the dis-
ease itself, and the disease would then be compensable.

The difficulty that Labor has with this proposal is that the amendment will result in uncertainty for workers attempting to prove their claims. No doubt the need to prove the connection between employment and the injury or disease will come down to medical evidence. Quite often, this medical evidence is conflicting, resulting in uncertainty for workers and a further bonanza for lawyers. The evidence provided to this point does not establish that there is a serious financial problem for the workers compensation scheme emerging from the current definition of injury and disease.

Senator MURRAY (Western Australia)
(5.57 p.m.)—Through you, Madam Chair, I have a question for Senator Collins. Items 10 and 11 of the bill, which you are opposing, refer to section 7(7), which says that an employee would not be entitled to a compensable arrangement if he or she knowingly and falsely represented that they did not suffer or had not previously suffered from that disease. That is a question of honesty, and I assume the words ‘knowingly and falsely represented’ imply the usual circumstances of law, that you have to be able to be proven to have done that. I would like your commentary on why you want those two thrown out.

Senator JACINTA COLLINS (Victoria)
(5.58 p.m.)—My understanding of our concern with respect to those words—an employee ‘knowingly and falsely representing’—was, firstly, a lack of certainty about what the government actually meant as to how they would apply at law, and indeed how they may ultimately be interpreted at law and utilised against an employee’s claim. Probably the safest way to describe it is ‘When in doubt, reject.’

Senator MURRAY (Western Australia)
(5.59 p.m.)—I would appreciate it if the parliamentary secretary therefore responded to that. The explanatory memorandum says with regard to item 10 that it concerns the effect of false representations. This seems to me to exist separately from everything else that the Labor amendment has been referring to. What would be the effects of not agreeing to this? Why is it essential? Before Senator Campbell responds, I should point out—and that is probably why Senator Collins’s drafters put it this way—that the explanatory memorandum says that the amendment is consequential. I just wondered if it was.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.00 p.m.)—I am informed that it is consequential to the Criminal Code and that is one of the reasons the amendment is there—to provide consistency with the false representation provisions found in the Criminal Code. To that extent, it is quite desirable to have it. The amendments to the definition of injury and disease proposed by the government are, in our view, good housekeeping. Part of the government proposal is aimed at remedying judicial interpretation of the act. In a way, Senator Collins is saying that the interpretation may be unclear. We are saying that it will actually remedy judicial interpretation, particularly regarding the definition of disease and restoring the original intention proposed by the previous government.

The other part of the proposal is designed to clarify one of the exclusions under the act regarding what circumstances constitute reasonable disciplinary action. The provisions in the bill are responsible housekeeping and are in line with similar changes to workers compensation schemes in other jurisdictions. That probably clarifies the main reasons why we are keen on the structure of this bill. We do not want to strike the clause out. We contend that the Comcare scheme is in good financial health. Maintaining the financial viability of the Commonwealth workers compensation scheme requires vigilance, and these amendments are part of the finetuning that must occur periodically to keep the scheme running smoothly. It is better to undertake incremental changes rather than wait until the workers compensation scheme is in crisis before taking radical measures.

Senator MURRAY (Western Australia)
(6.02 p.m.)—I want to clarify something. It may be apparent elsewhere in the explanatory memorandum, but in its dealings with items 10 and 11, it makes no reference to being consequential to amendments to the
Criminal Code, in which case I would have an interest in it. It seems to be very specific. Item 10 says it is consequential to item 2, and item 11 says it is consequential to item 4. I presume, on that basis, I need to regard it as integral.

**Senator Jacinta Collins (Victoria)**
(6.03 p.m.)—To assist Senator Murray further on this matter, let us go back to the act—and I refer to my earlier comments about being concerned about precisely what the government intended here in comparison to what currently applies in the act which, further to our amendment, would be what remains in force. I refer you to section 7(7) of the act. The language there is: ‘made a wilful and false representation’. In our view, given that we know what the current provision is—we have not had complaints about its inadequacy—we have a preference to remain with the current regime in terms of dealing with such representations. In other words, a remedy for such means already exists within the act and we see no rationale for why that needs to be adjusted.

**Senator Murray (Western Australia)**
(6.04 p.m.)—Thank you for your assistance, Senator Collins. The Australian Democrats will therefore support your amendment.

**The Chairman**—The question is that part 1 stand as printed.

Question resolved in the negative.

**Senator Jacinta Collins (Victoria)**
(6.04 p.m.)—The opposition oppose the following in schedule 2:

(2) Schedule 2, Part 4, page 27 (lines 2 to 11), **TO BE OPPOSED**.

Item 21 of the bill states that there is no automatic entitlement to payment for non-economic loss for employees who suffered a permanent impairment before the SRC Act commenced. The government argues that this provision ensures the original intent of the act—that such employees would not be compensated for such loss. However, Labor does not support any reduction in benefits to injured employees when the financial soundness of the scheme does not justify it. It is taking away the entitlements to a group of employees that have been in place for some period now. Even if it was originally in error, the scheme does not really need to resort to that level of means to sustain itself. The current regime should stand.

**Senator Ian Campbell (Western Australia)**—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (6.06 p.m.)—I want to make it clear that I do not think there is any disagreement about the fact that the intention of the parliament when it put in place these laws was to draw a very clear line in the sand—to use the vernacular—and that the effect of this amendment would be to give people who have waited more than a decade after their impairment has become permanent to make a claim. It should be clear to the Senate that that is what they are voting for. I understand that there is support for this in a majority of the chamber but I think the Senate should be well informed about what it is doing when it does it. We think it is entirely reasonable and that ultimately you do need to draw a line in the sand with these things. That is what the previous government and the previous parliament wanted to do. This is entirely fair.

**The Chairman**—The question is that part 4 stand as printed.

Question resolved in the affirmative.

**Senator Jacinta Collins (Victoria)**
(6.07 p.m.)—by leave—I move opposition amendment Nos 3 and 4 on sheet 2308 together:

(3) Schedule 2, item 53, page 61 (line 10), omit “10%”, substitute “5%”.

(4) Schedule 2, item 53, page 61 (line 17), omit “10%”, substitute “5%”.

The opposition will oppose the following item in schedule 2:

(5) Schedule 2, item 55, page 61 (lines 23 to 30), **TO BE OPPOSED**

I will deal firstly with opposition amendment Nos 3 and 4 that are proposed to government item 53. The government’s bill improves the access to compensation for employees who suffer hearing loss. Presently, an employee requires a hearing loss of more than 20 per cent before the loss is compensable. The bill improves the access to compensation for employees who suffer hearing loss. Presently, an employee requires a hearing loss of more than 20 per cent before the loss is compensable. The bill will reduce this to 10 per cent. Although Labor commends the government for the reduction in the threshold with respect to
hearing loss, we note that the workers compensation schemes in South Australia, Queensland and the Northern Territory have a five per cent threshold level, with New South Wales at six per cent. Accordingly, and with particular regard to the outstanding success of the Commonwealth scheme—if any scheme can afford it, it would seem that this one could benchmark most successfully in relation to hearing loss—Labor moves an amendment to reduce the threshold level to five per cent.

With respect to item 5, amending government item 55, the government’s bill proposes to require an additional five per cent hearing loss in order to claim for hearing loss after an initial application has been made. We propose to delete that provision so that an additional claim for hearing loss can be made at any time. This will ensure that those workers affected by additional hearing loss, which does not exceed five per cent, are not precluded from making a legitimate additional claim.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.09 p.m.)—I will make it clear why the government will not support these opposition amendments. Amendment No. 3 proposes to reduce the threshold for payment of lump sum compensation for all permanent impairments from 10 per cent to five per cent. This amendment will require, on conservative estimates—and I do not think the opposition would argue with this—the premium pool to rise by two per cent or $2 million. This estimate is based on the current claim records. However, the cost could be even higher, because lowering the threshold in this way can be expected to encourage a higher rate of claiming for permanent impairment. This is because the amendment will change the focus of the scheme and, inevitably, the behaviour of workers. Currently, the Comcare scheme features income support and rehabilitation, rather than the buying out of a person’s injury. Changes to the permanent impairment threshold will change the focus of the scheme so that employees are more likely to seek a lump sum compensation payment for permanent impairment.

Opposition amendment No. 4 would lower the threshold for compensation for hearing loss from the current 20 per cent binaural hearing loss and the proposed government amendment of 10 per cent to only five per cent binaural hearing loss. Reducing this threshold to five per cent would add a further one per cent to premium costs. It would also cost the Comcare scheme an additional $1 million per annum on top of the $3.6 million which will result from the government amendment. The heads of the workers compensation authorities supported a nationally uniform threshold of 10 per cent. Victoria, Western Australia and the Northern Territory all have the 10 per cent threshold. The opposition amendment would add a further, unplanned expenditure burden on the scheme which would be contrary to the uniform threshold agreed to by the heads of workers compensation authorities.

Senator MURRAY (Western Australia) (6.11 p.m.)—I was surprised at those estimates of the additional cost of moving from 10 per cent to five per cent. Those figures have not been advised to me prior to now. How accurate are those figures? Is this some kind of thumb suck or is it an actuarial assessment or is it based on precedent somewhere? You are saying that if you move from a 10 per cent to a five per cent level, you are going to be subject—this is what I thought you said—to $2 million extra cost and then to a further $1 million extra cost. Where do those figures come from?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.12 p.m.)—The misunderstanding is with the way the amendment has been drafted—I perhaps should have stressed that; I was going to stress it slightly more in the next amendment. The problem with the opposition amendment, with the way it is drafted, is that it will apply to all permanent impairments, not just to hearing. It has been poorly drafted and it would have that effect. They are Comcare estimates. It is not a finger in the wind.
Senator MURRAY (Western Australia) (6.13 p.m.)—If I understood Senator Collins’s motivation correctly, she was clearly approaching the issue of hearing alone.

Senator Jacinta Collins—Yes.

Senator MURRAY—That is correct. So, if it is a question of drafting, perhaps we should move on and see if we can return to this issue. I can see that, if it was broad ranging, that could be the effect, but I cannot see that that is Senator Collins’s intention.

Senator JACINTA COLLINS (Victoria) (6.14 p.m.)—Further to Senator Murray’s comments, I cannot even see how Senator Ian Campbell’s comments could apply. If you look at our amendments, we are simply substituting a percentage figure for the government’s percentage figure. If the government’s actuarial estimates do not apply to hearing loss but apply more generally to impairment then perhaps that reinforces our argument further as to why the scheme can afford to take a more generous approach in relation to hearing loss.

I was waiting to follow Senator Murray when I questioned Senator Campbell on this ‘heads of government workers compensation common standard’ of 10 per cent. This is also not a matter that I recall from the committee consideration of this detail as the rationale for why it was established at 10 per cent. In my reference, we noted that the workers compensation schemes in South Australia, Queensland and the Northern Territory have five per cent and New South Wales has six per cent. Going back to how the various schemes are fairing, with the Commonwealth well ahead, it does not really explain—and Senator Campbell’s comments about the costs and how they might have been calculated do not really explain—why that generosity is not warranted.

Senator MURRAY (Western Australia) (6.15 p.m.)—Perhaps the way around this is to ask the mover of the amendments to consider amendment (3) separately from amendment (4). I am referring to sheet No. 2308. As I read item 53 in the bill, line 10 refers to non-hearing loss but line 17 refers only to hearing loss. Item 53 reads:

53 Subsection 24(7)

Repeal the subsection, substitute:

(7) Subject to section 25, if:
(a) the employee has a permanent impairment other than a hearing loss; and
(b) Comcare determines that the degree of permanent impairment is less than 10%;
an amount of compensation is not payable to the employee under this section.

So it is not hearing; that is my reading of it. Section 7A of the bill says:

(7A) Subject to section 25, if:
(a) the employee has a permanent impairment that is a hearing loss; and
(b) Comcare determines that the binaural hearing loss suffered by the employee is less than 10%;
an amount of compensation is not payable to the employee under this section.

If the chamber is willing, I would rather deal with these two separately.

The CHAIRMAN—I can put the amendments separately.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.16 p.m.)—I am happy to support that. Senator Murray has got it absolutely clear, because opposition amendment (3) does apply to all permanent impairment other than hearing loss. It is quite specific. It reinforces the point that I made in my last intervention in the debate.

The CHAIRMAN—I will put opposition amendments (3) and (4) separately, and then we will move to opposition amendment (5), item 55. The question is that amendment No. 3 moved by Senator Collins be agreed to.

Question resolved in the negative.

The CHAIRMAN—The next question is that opposition amendment No. 4 be agreed to.

Question resolved in the affirmative.

The CHAIRMAN—The next one is opposition amendment No. 5 regarding item 55, which we have been discussing and which relates to hearing loss. The question is that item 55 stand as printed.
Senator MURRAY (Western Australia) (6.18 p.m.)—Could we make sure that we are not rushing through this particular item? If this relates solely to hearing, then it will be different from an item that related to both hearing and other impairments.

The CHAIRMAN—This is item 55, page 61, lines 23 to 30:
If Comcare has made a final assessment of the degree of permanent impairment of an employee constituted by a hearing loss, no further amounts of compensation are payable to the employee in respect of a subsequent increase in the hearing loss, unless the subsequent increase in the degree of binaural hearing loss is 5% or more.

Senator MURRAY (Western Australia) (6.19 p.m.)—I would like to hear from the proposer of the amendment about this. My reading of this is that it now matches amended item 7A because, provided you have five per cent, you will get compensation. Or have I misread it?

Senator JACINTA COLLINS (Victoria) (6.19 p.m.)—Perhaps I will go back to the statement I made when dealing with this. The government has proposed to require an additional five per cent hearing loss in order to claim for hearing loss after the initial application has been made. We are proposing to delete that provision so that an additional claim for hearing loss can be made at any time. This will ensure that those workers affected by additional hearing loss which does not exceed five per cent are not precluded from making a legitimate additional claim.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.20 p.m.)—The amendment appears to be a little bit confused or at least incomplete, and its effect is open to a number of possible interpretations when combined with the other provisions of the bill. On the one hand, it could mean that, where a worker is paid compensation for a hearing loss and they then suffer a further hearing loss, the worker could not get any further compensation. This is because the opposition amendment does not touch the government amendment which takes out hearing loss from the section dealing with further compensation for increased impairment.

The government amendment—which I believe the opposition amendment would remove—follows on from this and provides for a five per cent threshold before additional compensation is paid for hearing loss. On the other hand, the effect of the amendment might be that, where a worker is paid compensation for a hearing loss and then suffers even a fairly minor further loss—say, half a per cent—they can receive adjusted compensation. The administrative costs of such a provision would surely outweigh the small benefits which might accrue to workers. It would also be unfair that this would apply only to hearing loss impairments and not to other impairments.

Finally, its effect, together with the other opposition amendments, might be to put employees in the position—which the government is proposing anyway—where, once a worker suffers a 10 per cent binaural hearing loss, a further hearing loss will be compensated if that loss is at least another five per cent. It is absurd that the opposition should propose an amendment which simply makes the entitlements of workers unclear.

Senator JACINTA COLLINS (Victoria) (6.21 p.m.)—Senator Campbell, in your comments just then you referred to a section that our amendment has not touched. What section are you referring to?

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.22 p.m.)—A good question—I am seeking advice.

The CHAIRMAN—I put the question that item 55 stand as printed. I am master of nothing here except putting the amendments and the questions.

Senator IAN CAMPBELL—Madam Chairman, I think it was a very good question. We are just lucky it is not a broadcast day because people would be out there driving around adjusting their sets, wondering just when the parliamentary secretary was going to put the answer. I am going to sit down in a minute, gather my thoughts and then come back and give you an answer. My
opposite number is going to provide some entertainment in the meantime.

Senator JACINTA COLLINS (Victoria) (6.23 p.m.)—If only it were entertaining, Senator Campbell. Senator Murray assisted me in referring to the act at 25(4). I am leafing through the act to go back to it. It says:

Where Comcare has made a final assessment of the degree of permanent impairment of an employee, no further amounts of compensation shall be payable to the employee in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.

If that is the section that Senator Campbell is referring to, I suppose you could suggest that we put an extra clarification in there reiterating the point that we are making with this amendment. But I think the issue here is quite clear. We are talking about a different regime pertaining to hearing to that which relates to other impairments, thus the amendment that we just dealt with and the differential between permanent impairment other than hearing loss and that regime regarding hearing loss. We do not think that it leads to an unclear situation. The circumstances that we are seeking to address are, for instance, employees whose original impairment may be calculated at that five per cent level and then at some stage in the future it is ascertained that actually it is about the seven per cent level. We do not believe that such people should have to wait until their hearing deteriorates a further full block before they can address that situation. Equally, we think it is an issue of fairness that, if someone is going to permanently sit at around that seven per cent level, they should not be precluded from getting adequate compensation for the hearing loss. I might give Senator Campbell the opportunity to respond if we are talking about the section that he in fact had in mind.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (6.25 p.m.)—I have not had it in mind; it has just entered that scary place. As I understand it, what we have done at item 54 is to add a section 25(4). So in the bill at item 54 we are amending it to read, after ‘permanent impairment of employee’, that we are limiting subsection (4) to other than a hearing loss. The automatic inflator is referred to in 25(4) of the act, which says:

Where Comcare has made a final assessment of the degree of permanent impairment of an employee, no further amounts of compensation shall be payable to the employee in respect of a subsequent increase in the degree of impairment, unless the increase is 10% or more.

So we have constrained that already by limiting it to other than a hearing loss. It will effectively work against those people who do have a hearing loss that increases, those who have been initially accepted and then the loss increases.

Senator MURRAY (Western Australia) (6.27 p.m.)—Madam Chair, I suggest, for ease of moving this one forward, and as we are not going to make the dinner cut-off—

The CHAIRMAN—You’re right there.

Senator MURRAY—That the opposition and the government advisers discuss this a little further. Could I ask that we deal with the last amendment, and then we can deal with this one later.

The CHAIRMAN—Senator Murray is proposing to defer dealing with item 55. As there is no objection to that, it is deferred.

Senator JACINTA COLLINS (Victoria) (6.28 p.m.)—The opposition opposes part 11, as indicated on sheet 2308: (6) Schedule 2, Part 11, page 88 (lines 2 to 13), TO BE OPPOSED.

These provisions seek to make technical amendments to the Administrative Appeals Tribunal, which is the quasi-judicial body responsible for hearing appeals against Comcare decisions under the act. The government had proposed to replace the Administrative Appeals Tribunal with the Administrative Review Tribunal. However, that proposed legislation was defeated in March 2001. The Labor amendment rectifies the fact that references to the Administrative Appeals Tribunal should remain throughout the act.

The CHAIRMAN—The question is that part 11 stand as printed.

Question resolved in the negative.

Sitting suspended from 6.29 p.m. to 7.30 p.m.
The CHAIRMAN—The committee is considering the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000, as amended. The question is that the bill, as amended, be agreed to. However, we are to return to item 55. (Quorum formed)

Progress reported.

MEASURES TO COMBAT SERIOUS AND ORGANISED CRIME BILL 2001

Second Reading

Debate resumed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.34 p.m.)—To conclude my remarks, there are a number of amendments the government has to move, and we have taken on board the suggestions made by the Senate Legal and Constitutional Legislation Committee. The opposition also has some amendments which, after discussion, we will be supporting, in order to secure the passage of this very important legislation. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

In committee

The bill.

Senator BOLKUS (South Australia) (7.36 p.m.)—by leave—I move amendments Nos (1), (2), (16), (18) to (22) and (31) to (36) on sheet 2321:

(1) Schedule 1, item 2, page 3 (line 16), omit “; or”, substitute “.”.

(2) Schedule 1, item 2, page 3 (lines 17 and 18), omit paragraph (c) of the definition of appropriate authorising officer.

(16) Schedule 1, item 17, page 10 (lines 24 to 28), omit subsection (5).

(18) Schedule 1, item 24, page 12 (line 24), omit “or”.

(19) Schedule 1, item 24, page 12 (line 25), omit paragraph (c).

(20) Schedule 1, item 28, page 14 (lines 6 to 8), omit subsection (3).

(21) Schedule 1, item 28, page 14 (lines 9 and 10), omit “; NCA authorising officer or Customs authorising officer”, substitute “or NCA authorising officer”.

(22) Schedule 1, item 28, page 14 (lines 15 and 16), omit “, NCA authorising officer or Customs authorising officer”, substitute “or NCA authorising officer”.

(31) Schedule 1, item 34, page 17 (line 27) to page 18 (line 5), omit subsection (3).

(32) Schedule 1, item 35, page 18 (lines 11 and 12), omit “paragraph 15R(1)(a), (2)(a) or (3)(a)”, substitute “paragraph 15R(1)(a) or (2)(a)”.

(33) Schedule 1, item 35, page 18 (lines 13 and 14), omit “paragraph 15R(1)(b), (2)(b) or (3)(b)”, substitute “paragraph 15R(1)(b) or (2)(b)”.

(34) Schedule 1, item 35, page 18 (lines 15 and 16), omit “paragraph 15R(1)(c), (2)(c) or (3)(c)”, substitute “paragraph 15R(1)(c) or (2)(c)”.

(35) Schedule 1, item 35, page 18 (lines 18 and 19), omit “paragraph 15R(1)(d), (2)(d) or (3)(d)”, substitute “paragraph 15R(1)(d) or (2)(d)”.

(36) Schedule 1, item 35, page 18 (lines 20 and 21), omit “paragraph 15R(1)(e), (2)(e) or (3)(e)”, substitute “paragraph 15R(1)(e) or (2)(e)”.

In doing so, I would like to indicate that, when we come to the next batch of amendments—amendments Nos (3), (6), (8), (38) and (40)—I will not need to speak to those any further, because we are talking about the same subject area. This is a subject area which I canvassed extensively in my speech in the second reading debate. These amendments remove from Customs the proposed new controlled operations regime. As I indicated in my speech in the second reading debate, the opposition has not been presented with persuasive arguments as to why it would be appropriate to empower Customs officers to run long-term controlled operations. As a consequence, we oppose proposals to do so.

Further opposition amendments, which we will come to later, will clarify that Customs have lawful reason for carrying out controlled deliveries, and they will require Customs to regularly report to parliament on the conduct of these controlled deliveries, something they have never been required to do before. As I say, I discussed this issue
quite extensively in my speech in the second reading debate, and I do not think I need to detain the Senate much further in respect of it.

Senator GREIG (Western Australia) (7.37 p.m.)—At the second reading stage I discussed in some detail what we felt was the appropriate role of Customs in controlled operations. Briefly, Customs currently conducts controlled deliveries of prohibited goods to enable the apprehension of offenders. These operations are perfectly legitimate and I believe there is cross-party support for the continuation of that process. These amendments, along with opposition amendment No. 42, which Senator Bolkus has foreshadowed, provide Customs with a limited role in controlled operations. Customs will have a limited indemnity from prosecution for engaging in controlled deliveries. The amendments recognise that Customs does not need to engage in the more sophisticated long-term controlled operations conducted by agencies such as the AFP. Customs is not, as we have heard earlier today, a law enforcement body in the traditional sense, and if a sophisticated controlled operation is necessary, it is quite appropriate that it be conducted by the AFP and not by Customs.

The amendments proposed by the Democrats are along similar lines to that which Labor has presented today. The key difference is that our amendments would have kept Customs operations within the controlled operations framework rather than establishing a separate immunity for Customs officers. We feel that that is a more preferable approach, given the accountability requirements associated with the controlled operations regime. Of course, we note the reporting requirement in amendment (42) proposed by the opposition. Despite our preference for that alternative approach, we are nonetheless supportive of the amendments moved by Senator Bolkus this evening.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.39 p.m.)—In an effort to have this legislation passed, the government supports the amendments moved by the opposition. The opposition has proposed a narrower criminal immunity for Customs officers and others acting under their instructions who possess or convey prohibited imports or exports or smuggle goods in the course of an investigation. The government believes that its proposals would have been appropriate but, having discussed this with the opposition, it supports the opposition’s amendments.

The CHAIRMAN—The question is that opposition amendments Nos 1 to 16, 18 to 22 and 31 to 36 on sheet 2321 be agreed to.
Question resolved in the affirmative.

The CHAIRMAN—The question now is that items 5, 10, 13, 44 and 46 stand as printed.
Question resolved in the negative.

Senator GREIG (Western Australia) (7.41 p.m.)—It is my understanding that the amendments proposed by the Democrats—amendments Nos 1, 2, and 6 to 12, and 3 to 5 on sheet 2334—are now redundant.

Senator BOLKUS (South Australia) (7.41 p.m.)—I move opposition amendment No. 42:

(42) Schedule 1, page 21 (after line 16), at the end of the Schedule, add:

Customs Act 1901

50 After subsection 233(3)
Insert:

(3A) A Customs officer who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

51 At the end of section 233
Add:
The Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October each year, a report about any conduct by Customs officers that, apart from subsection (3A), would constitute an offence against a law of the Commonwealth or of a State or Territory relating to the possession or conveyance, or facilitation of the conveyance, of prohibited imports, prohibited exports or smuggled goods.

As I indicated in my speech at the second reading stage, we are concerned to give greater certainty to the legitimacy of the current practices of Customs, which basically, on occasion, allow prohibited imports to be delivered. Our proposal would ensure that this is done under surveillance in order to gain evidence against the person or organisation responsible for the importation. Our proposal would make it clear that Customs officers have a lawful excuse for facilitating the importation of a prohibited import while carrying out a Customs investigation. It would also give indemnity to civilians—for example, drivers of delivery vans who assist with the controlled delivery—on the instructions of a Customs officer. As I indicated in my contribution at the second reading stage, we are concerned to ensure that this practice of allowing delivery is permitted to continue and can be protected. We will also require, under our amendment, that Customs provide to the parliament annual reports on the number and conduct of these so-called controlled deliveries. This will ensure that there is transparency in and scrutiny of the activities of Customs.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.42 p.m.)—I move government amendment No. 2:

1. Omit subsection 233(3B), substitute:

(3B) A person who:

(a) possesses of conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods; and

(b) in doing so is acting in accordance with written instructions referring to this section issued by a Customs officer acting in the course of duty;

is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

This amendment is the product of discussions with the opposition. The government would seek to have a slightly revised version of proposed section 233(3B) of the Customs Act. This amendment places tighter rules on the immunities granted to third parties by Customs—and is supported by Customs—to ensure that the provisions are used carefully by officers in the field. The officer using the provision will have to be acting in the course of duty and must specifically refer to this section when giving written instructions giving rise to an immunity—that is, an immunity cannot be given away capriciously or without proper oversight. More particularly, the officer must not give immunity to someone who might not be deserving of that, such as someone who has offended or is a party to the criminal activity concerned.

Senator BOLKUS (South Australia) (7.44 p.m.)—This amendment has been discussed with the opposition, and we support it.

Senator GREIG (Western Australia) (7.45 p.m.)—Minister, given the relative lateness of the dissemination of this amendment, in simple key terms how does this differ from the original proposed section? I understand what it is that you are substituting, but can you clarify the essential difference between the status quo and what you are proposing?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.45 p.m.)—The way in which this immunity can
be conferred is spelled out more carefully. For instance, the proposed amendment states:

(3B) A person who:
(a) possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods; and
(b) in doing so is acting in accordance with written instructions referring to this section issued by a Customs officer acting in the course of duty;
is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

What you have there is a spelling out that there must be a reference to the section by the Customs officer in issuing the written instructions. It does place a tighter requirement, if you like, on Customs and the conferment of immunity here. As I said, the officer using the provision will have to be acting in the course of their duty and to specifically refer, as I have said, to the section in giving written instructions giving rise to the immunity. It will ensure that indemnity that might be conferred to third persons who assist Customs in a controlled delivery—I am talking about a controlled delivery here—will extend only to those whose assistance has been sought and duly authorised. It tightens that aspect of being sought and authorised in relation to a controlled delivery. It really tightens the wing nuts on it, if you like, and Customs was of the view that the previous drafting did not go as far as that in bedding down that aspect.

The CHAIRMAN—The question is that government amendment (1) on sheet GA2 to opposition amendment (42) on sheet 2321 be agreed to.

Question resolved in the affirmative.

Senator BOLKUS (South Australia) (7.47 p.m.)—by leave—I move opposition amendments (9), (10), (17), (37) and (39), which go to the scope of controlled operations:

(9) Schedule 1, item 17, page 6 (line 2), before “Commonwealth”, insert “serious”.

(10) Schedule 1, item 17, page 6 (after line 13), after section 15HA, insert:

15HB What is a serious Commonwealth offence?
For the purposes of this Part, serious Commonwealth offence means an offence against a law of the Commonwealth:
(a) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, money laundering, perverting the course of justice, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forgery including forging of passports, armament dealings, illegal importation or exportation of fauna into or out of Australia, espionage, sabotage or threats to national security, misuse of a computer or electronic communications, people smuggling, slavery, piracy, the organisation, financing or perpetration of sexual servitude or child sex tourism, dealings in child pornography or material depicting child abuse, importation of prohibited imports or exportation of prohibited exports, or that involves matters of the same general nature as one or more of the foregoing or that is of any other prescribed kind; and
(b) that is punishable on conviction by imprisonment for a period of 3 years or more.

(17) Schedule 1, item 20, page 11 (line 8), before “Commonwealth”, insert “serious”.

(37) Schedule 1, item 35, page 18 (line 27), before “Commonwealth”, insert “serious”.

(39) Schedule 1, item 45, page 20 (line 29), before “Commonwealth”, insert “serious”.

We believe that controlled operations should not become routine within law enforcement agencies. They are a special investigative tool that the community has accepted as necessary in the pursuit of serious and organised crime. However, they should not be used in the investigation of less serious crime. These amendments will restrict the offences in which the AFP and the NCA may use controlled operations to investigate ‘serious Commonwealth offences’. The NCA’s juris-
diction is limited by the offences set out in the NCA Act. These amendments replicate that list, with the addition of the following serious offences which the AFP has responsibility for investigating. They are espionage, sabotage, threats to national security, money laundering, perverting the course of justice, misuse of a computer or electronic communications, people-smuggling, slavery, piracy, the organisation, financing or perpetration of sexual servitude or child sex tourism, dealings in child pornography or material depicting child abuse and the importation of prohibited imports or exportation of prohibited exports. The specific offences must be punishable on conviction by imprisonment for three or more years. That is the range of offences that the shadow minister has negotiated with the government to be potentially the subject of controlled operations.

Senator GREIG (Western Australia) (7.49 p.m.)—The Democrats support these amendments for the reasons given at the second reading stage. Briefly, we believe that the scope of the Measures to Combat Serious and Organised Crime Bill 2001 should be limited to serious and organised crime. The bill, as introduced, applies to all Commonwealth offences, many of which involve neither serious nor organised crime. The bill therefore proposes a general grant of increased power rather than a carefully measured response to specific problems relating to serious and organised crime. We believe these amendments will go some way to correcting that by reducing the scope of the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.50 p.m.)—The government does support the opposition’s proposal to list the types of offences for which controlled operations can be undertaken. This might create difficulties for law enforcement; however, the opposition has agreed with a government proposal that a list can be updated by regulation. Accordingly, the government will accept these amendments to secure passage of the bill. The government also undertakes that no operation will be authorised on the basis of a new category of offences added by regulation until the disallowance period for that regulation has ended. On the basis of supporting these opposition amendments, the government will be seeking to withdraw its amendment No. 3.

At the outset of the committee stage, I should have tabled a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 21 August 2001.

The CHAIRMAN—The question is that opposition amendments (9), (10), (17), (37) and (39) be agreed to.

Question resolved in the affirmative.

The CHAIRMAN—The government is withdrawing its amendment (3).

Senator BOLKUS (South Australia) (7.51 p.m.)—by leave—I move opposition amendments (4), (5), (14), (15) and (23) to (30) on sheet 2321:

4 Schedule 1, page 4 (after line 5), after item 6, insert:

6A Subsection 3(1)
Insert:
major controlled operation has the meaning given in subsection 15J(2A).

5 Schedule 1, page 4 (after line 11), after item 8, insert:

8A Subsection 3(1)
Insert:
nominated Tribunal member has the meaning given in section 15OC.

14 Schedule 1, item 17, page 10 (lines 7 to 15), omit paragraphs (2)(a) to (c), substitute:

(a) if the operation is a major controlled operation that relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is within the functions of the Australian Federal Police—the Commissioner or a Deputy Commissioner;

(b) if the operation is not a major controlled operation but relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is within the functions of the Australian Federal Police—any AFP authorising officer;
(c) if the operation relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is within the functions of the National Crime Authority—any NCA authorising officer.

(15) Schedule 1, item 17, page 10 (after line 15), after subsection (2), insert:

(2A) A major controlled operation is a controlled operation that is likely to:

(a) involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than 7 days; or

(b) continue for more than 3 months; or

(c) be directed against suspected criminal activity that includes a threat to human life.

(23) Schedule 1, item 28, page 14 (line 25), omit “an appropriate authorising officer”, substitute “a nominated Tribunal member”.

(24) Schedule 1, item 28, page 14 (lines 30 and 31), omit “an appropriate authorising officer”, substitute “a nominated Tribunal member”.

(25) Schedule 1, item 28, page 15 (line 1), omit “appropriate authorising officer”, substitute “nominated Tribunal member”.

(26) Schedule 1, item 28, page 15 (line 3), omit “appropriate authorising officer”, substitute “nominated Tribunal member”.

(27) Schedule 1, item 28, page 15 (line 7), omit “appropriate authorising officer”, substitute “nominated Tribunal member”.

(28) Schedule 1, page 15 (after line 10), after item 28, insert:

28A Before section 15P

Insert:

15OC Who are nominated Tribunal members?

(1) A nominated Tribunal member is a member of the Administrative Appeals Tribunal in respect of whom a written nomination by the Minister is in force that permits the member to conduct reviews and to make decisions under section 15OB.

(2) The Minister must not nominate a person unless the person:

(a) is a Deputy President or full-time senior member; or

(b) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.

(3) A nominated Tribunal member has, in conducting a review or making a decision under section 15OB, the same protection and immunity that a Justice of the High Court has in relation to a proceeding of that court.

(29) Schedule 1, item 34, page 17 (lines 5 and 6), omit “by such a person”, substitute “that had initially been given by such a person under section 15M”.

(30) Schedule 1, item 34, page 17 (lines 20 and 21), omit “subsection 15OB(4) by such a person”, substitute “subsection 15OB(3) that had initially been given by such a person under section 15M”.

The opposition’s amendments will establish a tiered system of authorisation for controlled operations, with high level internal authorisation for controlled operations, highest level internal authorisation for major controlled operations and compulsory external authorisation for extended operations. Under our amendments, a major controlled operation conducted by the AFP—defined as a controlled operation that is likely to involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than seven days or continue for more than three months or be directed against suspected criminal activities that includes a threat to human life—can only be authorised at first instance by the AFP commissioner or a deputy commissioner.

A similar NCA controlled operation may only be authorised by one of three NCA members. Once a controlled operation has been active for just over two months, it must be reviewed by the agency and, if the agency then wants to continue with this operation, authorisation must be sought from the AAT, which will conduct its own review before granting such authorisation. The authorised continuation from a member of the AAT cannot be for more than an additional three months.

This tiered authorisation regime is proposed in support of the recommendations in the report of the Joint Committee on the Na-
tional Crime Authority, *Street legal*. The inquiry process which the committee conducted in producing this report was a detailed and lengthy one. The recommendations it made are considered and, we believe, based on a wide range of evidence. The opposition believes that these bipartisan recommendations and the justifications for them should not be discarded.

The opposition supports the arguments on which the committee explained its decision to recommend a limit of three months. They were:

The Committee accepts that there are some complex controlled operations that may require a longer period than the current 30-day period to be effectively and satisfactorily completed. While the Committee is keen to ensure that law enforcement agencies are not unduly burdened by unnecessary administrative paperwork, it also recognises that the requirement to renew certificates does act as a safeguard to ensure the timely review of authorities to conduct these operations.

Under these amendments, before the expiration of three months, the agency must apply to the AAT for authorisations for renewal. The only members of the AAT who may be nominated by the minister to authorise controlled operations are the deputy president or a full-time senior member or a member enrolled as a legal practitioner of the Federal Court or of the Supreme Court of the state or territory for at least five years. This tiered authorisation regime is another example of consultation between the minister’s office and the AAT, and we believe that it fulfils the needs of law enforcement while also ensuring that there is as much transparency and accountability as possible.

**Senator GREIG (Western Australia)**

(7.54 p.m.)—We Democrats support these amendments, again for reasons I outlined in great detail at the second reading stage. Fundamentally, we are not comfortable with authorisation procedures for controlled operations that are purely in-house. Controlled operations involve the commission of criminal offences by law enforcement officers. Often the criminality will be trivial or technical. However, in some instances it will be of a reasonably serious nature. After all, part of the purpose of this bill is to enable operatives to infiltrate criminal organisations—to present themselves as criminals to criminals. It will not always be possible to do this effectively without engaging in acts which raise significant issues regarding civil liberties and the misuse of police power. The *Street legal* report recommended that an external authorisation procedure be adopted for major controlled operations. This is an important accountability measure which has the support of the Australian Democrats.

**Senator ELLISON (Western Australia—Minister for Justice and Customs)**

(7.55 p.m.)—The opposition has outlined sufficiently the operation of these proposed amendments. Sufficient to say that the government will support the opposition’s amendments. The opposition’s proposal to require controlled operations certificates to be reviewed by an AAT member after three months is not the government’s preferred option. The government considers that it would be better to conduct a review internally, but in an effort to achieve compromise and to achieve the passage of this bill the government supports these amendments, and it does so after there have been discussions with the opposition and the law enforcement agencies on this matter.

**The CHAIRMAN**—The question is that opposition amendments (4), (5), (14), (15) and (23) to (30) on sheet 2321 be agreed to.

Question resolved in the affirmative.

**Senator BOLKUS (South Australia)**

(7.56 p.m.)—by leave—I move opposition amendments (7), (11) and (12):

(7) Schedule 1, item 12, page 5 (line 4), omit “others”, substitute “certain other persons”.

(11) Schedule 1, item 17, page 6 (after line 31), after subsection (2), insert:

(2A) Subsection (2) does not apply to a person who:

(a) is an informant of a law enforcement officer; or

(b) is believed to have been involved, other than for law enforcement purposes, in the criminal activity in respect of which the controlled operation was authorised.

(12) Schedule 1, item 17, page 8 (after line 8), after subsection 15IA(2), insert:
Subsection (2) does not apply to a person who:

(a) is an informant of a law enforcement officer; or

(b) is believed to have been involved, other than for law enforcement purposes, in the criminal activity in respect of which the controlled operation was authorised.

These amendments omit criminal informants from the provisions which grant indemnities to civilians involved in controlled operations. There are different categories of civilian involvement in controlled operations. There are the innocent bystanders and whistleblowers—civilians who are innocently involved in a consequential way in criminal activities. Labor supports the proposed sections of the bill which give these civilians indemnities if the police require their cooperation in an operation. And there are criminal civilian operatives—that is, couriers coming through the barrier or informants with significant criminal backgrounds—involved in long-term operations. It is these types of informants which pose potential problems in relation to granting prospective indemnities. One of the complicating factors with these types of informants in controlled operations is that they may be seeking to use a law enforcement agency and the grant of immunity to further their own criminal objectives, such as undermining a rival criminal organisation. In these circumstances, we believe the community would need to be confident that the granting of immunities to these sorts of people was being exercised in the public interest and perhaps with greater safeguards than when it is authorising a sworn police officer.

In that context, recommendation No. 16 of the Street legal report was that part 1AB of the Crimes Act 1914 be amended to include a provision to authorise the participation of civilians in controlled operations. But so as to exclude those persons who are police informants or who become involved in a controlled operation by reason of their having knowledge, position or influence as a consequence of their own involvement in criminal activities, the position of that class of civilian should remain, we believe, subject to the current system of retrospective indemnities and assistance at the time of sentencing that operates according to the discretion of the DPP.

The government has included a provision in the bill to authorise the participation of civilians in controlled operations, but it has not excluded police informants. Without in any way casting any doubt on the integrity of the members of the AFP or the NCA, we believe that we must be careful to ensure that opportunities for manipulation of police officers or, indeed, corruption are as limited as possible. These opposition amendments, therefore, will exclude informants of law enforcement officers and persons who are believed to have been involved other than for a law enforcement purpose in the criminal activity in respect of which the controlled operation was authorised. I commend these amendments to the Senate.

Senator GREIG (Western Australia) (7.59 p.m.)—We Democrats concur with the arguments presented by Senator Bolkus, agree with the amendments and will be supporting them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.59 p.m.)—The government has had discussions with the opposition and we will be supporting these opposition amendments.

Amendments agreed to.

Senator BOLKUS (South Australia) (7.59 p.m.)—I move:

(13) Schedule 1, item 17, page 9 (after line 32), after section 15IC, insert:

15ID Compensation for loss or injury

Where a person suffers loss or injury as a result of a controlled operation, the Commonwealth is liable to pay to the person who has suffered the loss or injury such compensation as is agreed on between the Commonwealth and that person or, in default of agreement, is determined by action against the Commonwealth in a court of competent jurisdiction.

Once again we pick up a recommendation of the Street legal report, a recommendation which the government has previously rejected. This amendment makes it absolutely clear that if any person suffers loss or injury as a result of a controlled operation then that person is entitled to compensation from the
Commonwealth. This covers innocent bystanders who were not part of the controlled operation and are therefore not covered by the indemnity provisions included in the legislative regime.

Senator GREIG (Western Australia) (8.00 p.m.)—We Democrats again support this amendment. We believe that where a person suffers loss as a result of a controlled operation the Commonwealth should ultimately be liable for that loss. Our concern is that without this amendment innocent third parties who suffer as a result of legally sanctioned criminal acts by law enforcement agencies would have to bear the loss themselves. Given that these operations are authorised for the benefit of the community, I think it is appropriate that the community bear the cost that those operations can have on individuals.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.00 p.m.)—The government will oppose this proposed amendment. It does so on the basis that there is, of course, a common law aspect. The current situation is that if a person is liable for harm caused by an operation the Commonwealth will indemnify them. We believe the opposition amendment could render the Commonwealth liable when no one could otherwise have been liable—for example, where harm is caused but there was no negligence. We still believe that that question of negligence needs to be made out. In fact, taken to its extreme, the opposition’s amendment could actually give rise to a cause of action even on the part of a criminal who suffers lost profits from being apprehended by the police. We know that it is taking it to its limits, but that is something we believe this could open up. We believe that the bill as proposed by the government already guarantees that the Commonwealth will provide an indemnity where harm is caused, but the question of taking it further as envisaged by the opposition amendment is not one the government would support.

Amendment agreed to.

Senator BOLKUS (South Australia) (8.02 p.m.)—by leave—I move opposition amendments (41) and (43):

(41) Schedule 1, page 21 (after line 16), at the end of the Schedule, add:

**49 After Division 2 of Part IAB**

Insert:

**Division 2A—Monitoring of controlled operations by the Ombudsman**

**15UA Ombudsman to be notified of certain matters**

(1) Within 2 weeks after the end of each quarter:

(a) the Commissioner; and

(b) the Chair of the National Crime Authority;

must give to the Ombudsman a copy of the report given to the Minister under section 15R for that quarter.

(2) The Ombudsman may require the Commissioner or the Chair of the National Crime Authority to furnish such information about an application, a certificate, a variation of a certificate or a surrender or termination of a certificate as is necessary for the Ombudsman’s proper consideration of it.

**15UB Inspection of records by Ombudsman**

(1) The Ombudsman:

(a) must inspect the records of the Australian Federal Police and the National Crime Authority in relation to controlled operations at least once every 12 months; and

(b) may inspect the records of the Australian Federal Police or the National Crime Authority at any time, for the purpose of ascertaining whether the requirements of this Part are being complied with.

(2) Nothing in this section requires the Ombudsman to inspect records in relation to a controlled operation that has not been completed.

**15UC Annual reports by Ombudsman**

(1) The Ombudsman must, as soon as practicable after 30 June each year, prepare a report of the Ombudsman’s work and activities under this Division during the preceding 12 months and give copies of the report to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives, respectively.
The report must include, for each law enforcement agency concerned, comments as to the comprehensiveness and adequacy of the reports which were provided to the Parliament by that law enforcement agency.

Nothing in this section requires participants of the controlled operation to be included in a report for the year if the operation had not been completed at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

**15UD Ancillary matters concerning reports**

1. A report prepared under this Division must not include any information which, if made public, could reasonably be expected:
   a. to endanger a person’s safety; or
   b. prejudice an investigation or prosecution; or
   c. compromise the agency’s operational activities or methodologies.

2. The Ombudsman must give a copy of any report prepared under this Division to the chief executive officer of the law enforcement agency to which it relates and to the Minister responsible for that agency.

3. Schedule 1, page 21 (after line 16), at the end of the Schedule, add:

   **National Crime Authority Act 1984**

   52 At the end of Part III

   Add:

   **55AA Ombudsman to brief committee about controlled operations**

   1. At least once in each year the Ombudsman must provide a briefing to the Committee about the Authority’s involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months.

   2. For the purposes of receiving a briefing from the Ombudsman under subsection (1), the Committee must meet in private.

While the opposition firmly believes that the extended legislative authorisation for controlled operations which is contained in this legislation is necessary, we are also adamant that any such extension must be accompanied by improved oversight and accountability. These amendments provide us with improved oversight and accountability through the Commonwealth Ombudsman. Again these opposition amendments adopt the recommendations of the *Street legal* report, recommendations which once again the government has rejected. But once again negotiations with the minister’s office, I believe, have led to a situation where the government will now support this Ombudsman oversight. The amendments do three major things: they require the AFP and the NCA to supply the Ombudsman with a copy of the report which they give to the minister and any other information the Ombudsman requires, they require the Ombudsman to inspect the records of the AFP and the NCA in relation to controlled operations at least every 12 months and they require the Ombudsman to report to the parliament as to the Ombudsman’s work in overseeing controlled operations. There is a provision which prohibits the inclusion in the Ombudsman’s report of any information which, if made public, could reasonably be expected to endanger the health or safety of any person or to disclose the methodology used in any investigation or to prejudice any investigation or any legal proceeding. The Ombudsman under these amendments will also be required to brief the parliamentary Joint Committee on the National Crime Authority annually. I commend these amendments to the Senate.

Senator GREIG (Western Australia)

(8.03 p.m.)—We Democrats agree that the Ombudsman should have access to information about controlled operations and should have the proposed accountability role. It needs to be recognised that the powers being conferred on law enforcement agencies within this legislation are very substantial. Among other things, authorised law enforcement officers will be able to engage in criminal acts. We Democrats accept that these powers are necessary, but it is difficult not to be concerned about the possibility of abuse. Where a bill such as this proposes to confer significant powers on law enforcement bodies, it is vital to ensure that there is adequate accountability. To that end we Democrats support the role of the Ombudsman proposed by these amendments.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.04 p.m.)—Although the government supports these amendments proposed by the opposition, it does believe that in the bill there are adequate mechanisms for reporting to the minister and parliament, and it believes that it takes these aspects into account. But there have been discussions with the opposition on this matter and, as a result, the government is inclined to support the amendments moved by the opposition.

Amendments agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.05 p.m.)—by leave—I move government amendments (9) and (10):

(9) Schedule 2, item 1, page 34 (after line 7), after subsection (1), insert:

(1A) An audit of these records must not be conducted by:

(a) an authorising person who has issued, varied or revoked an authorisation to which one or more of the records relate; or

(b) an approved officer or approved person who is covered by an authorisation to which one or more of the records relate.

(10) Schedule 2, item 1, page 34 (after line 12), after section 15XU, insert:

15XUA Matters to be reported

Commonwealth participating agencies must report annually

(1) Each of the following Commonwealth participating agencies:

(a) the Australian Security Intelligence Organisation;

(b) the Australian Secret Intelligence Service;

must, as soon as practicable after 30 June in each year, prepare and give to the Inspector-General of Intelligence and Security a report for the year ending on that 30 June.

(2) Each other Commonwealth participating agency must, within 3 months after 30 June in each year, prepare and give to the Minister responsible for the agency a report for the year ending on that 30 June.

(3) The Minister receiving a report under subsection (2) must table a copy of the report before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

What reports must include

(4) An agency’s report must include the following information:

(a) the number of authorisations issued by an authorising person from the agency during the year covered by the report;

(b) a general description of the activities undertaken by approved officers and approved persons when using their assumed identities during the year covered by the report;

(c) a statement whether or not any fraud or other unlawful activity was identified by an audit under paragraph 15XU(1)(b) during the year covered by the report.

(5) However, information must not be included in the report if the head of the agency is of the view that it is likely that its inclusion may:

(a) endanger a person’s safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise the agency’s operational activities or methodologies.

These amendments relate to assumed identities. The government’s amendments will ensure that audits of assumed identities are conducted by persons independent from those authorising or using assumed identities. This of course guards against any conflict of interest. The amendments would also require Commonwealth agencies authorising the use of assumed identities to prepare an annual report on their use. ASIO and ASIS would be required to report to the Inspector-General of Intelligence and Security, with other agencies to report to the parliament. These reports would include the number of assumed identity authorisations used during the year, a general description of the activities undertaken using those identities and a statement as to whether the audit of those identities revealed any fraud or unlawful activity. I understand that there is a variation proposed to these amendments by the oppo-
sition which I can foreshadow that the government will support, but in the meanwhile I commend the government’s amendments to the Senate.

Senator BOLKUS (South Australia) (8.06 p.m.)—I indicate support for government amendments (9) and (10) but also indicate that the opposition will be moving an amendment which will alter subsection (5) of the new section 15XUA to be established by amendment (10). As the government amendment currently reads, subsection (5) will allow the agency head to omit information in a report which is to be presented to the minister. We do not believe that this is acceptable as the minister should have full disclosure of all information, otherwise transparency and scrutiny are compromised. Our amendment will ensure that full disclosure to the minister is maintained and also contains a safeguard providing that, before the minister tables the report in parliament, she or he must omit on the advice of the relevant agency head any information which may endanger a person’s safety, prejudice an investigation or prosecution or compromise the agency’s operational activities or methodologies. Basically, we are supporting the government’s amendments on the expectation that our amendment will also be successful. I move:

(1) Omit subsection 15XUA(5), substitute:

(5) Before the report is tabled in the Parliament, the Minister must, on the advice of the relevant agency head, remove information from the report if the Minister is of the view that its inclusion may:

(a) endanger a person’s safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise the agency’s operational activities or methodologies.

Senator GREIG (Western Australia) (8.08 p.m.)—I articulate on behalf of the Democrats that the government amendments relate to the auditing and reporting requirements of assumed identities. The bill establishes a statutory regime for the acquisition and use of assumed identities by law enforcement officers, intelligence officers and others. In certain circumstances, it will be necessary for officers to assume identities. It may be a simple case of needing to acquire a credit card or use an assumed name to book a hotel room for a law enforcement operation. In other cases, whole identities will need to be created in the context of the infiltration of a sophisticated criminal organisation. The government amendments provide for independent auditing of assumed identities and establish reporting requirements. These additional accountability measures are an improvement on the bill as introduced and therefore have the support of the Australian Democrats.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.09 p.m.)—As I previously indicated, the government will support the variation sought by the opposition. The amendment sought by the opposition will clarify the rules concerning the non-disclosure of sensitive material concerning assumed identities. They apply only to reports to parliament, not to reports to the minister or the Inspector-General of Intelligence and Security.

The CHAIRMAN—The question is that the opposition amendment to the government amendment No. 10 be agreed to.

Question resolved in the affirmative.

The CHAIRMAN—The question is that government amendment No. 9 and government amendment No. 10, as amended, be agreed to.

Question resolved in the affirmative.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.10 p.m.)—by leave—I move government amendment (6) and (7) together:

(6) Schedule 2, item 1, page 23 (lines 5 to 8), omit paragraphs (f) and (g) of the definition of Commonwealth participating agency.

(7) Schedule 2, item 1, page 24 (after line 16), after paragraph (c), insert:

(c) the Police Integrity Commission established by the Police Integrity Commission Act 1996 of New South Wales; or

These amendments again deal with assumed identities and with participating agencies. The government’s amendments would include the New South Wales Police Integrity
Commission as a participating agency for the purposes of the proposed assumed identities provisions. This would allow the New South Wales Police Integrity Commission to obtain and use assumed identities. It had been intended to include this and by oversight it was not included. The amendments would also exclude the Defence Intelligence Organisation and the Defence Signals Directorate from the scheme as they do not propose to use such identities.

**Senator BOLKUS (South Australia) (8.11 p.m.)**—We support these amendments, but I cannot resist this opportunity to make a point about what has happened here. The government, in drafting the legislation, included in the definition of ‘participating agencies’ the DSD and the DIO. It was the government’s proposal to include these two organisations as agencies to be authorised to grant and to use assumed identities under the legislation. We were a bit curious about this, so the shadow minister for defence asked the Minister for Defence for a briefing as to why the Defence Signals Directorate and the Defence Intelligence Office needed to be included in the assumed identities regime. Curious we were. The position was put to the minister. As far as the opposition was aware, there were no operational or other reasons why these two organisations needed to use assumed authorities, so why were they in the bill? It was curious that the legislation had gone so far in the parliament—it was about to be debated and had been circulated—and the response from the defence minister’s office was that they had no idea that these measures were in the bill and they undertook to direct the Minister for Justice and Customs that they be removed. There must be some gremlins in the works somewhere. There must be some people with assumed identities somewhere in the system who thought DSD and DIO needed a capacity to assume more assumed identities. We got to a stage where, under this government, it seemed like no-one was actually keeping their eye on the wheel to see what was in the legislation. Gladly, we now have this amendment which will delete from the ambit of participating agencies in the legislation the DSD and the DIO.

**Senator GREIG (Western Australia) (8.12 p.m.)**—Following on from Senator Bolkus’s point, I would also suggest that the amendments suggest that the bill as originally drafted did not completely reflect which agencies did and did not need to be within the scope of the proposed regime governing assumed identities. However, we support the government’s amendments to more accurately address the needs of the agencies involved.

Amendments agreed to.

**Senator BOLKUS (South Australia) (8.13 p.m.)**—by leave—I move opposition amendments (44) and (45) together:

(44) Schedule 2, item 1, page 23 (line 1), omit paragraph (b) of the definition of Commonwealth participating agency.

(45) Schedule 2, item 1, page 23 (line 9), omit paragraph (h) of the definition of Commonwealth participating agency.

These go to the definition of ‘participating agencies’. As I mentioned in the second reading debate, the opposition has not been convinced that the Taxation Office or Customs need to be included in the list of agencies able to authorise the obtaining and use of assumed identities—although sometimes, I suppose, the Commissioner of Taxation would like to assume a new one. Both agencies use false documentation rarely and not in circumstances where entire new entities are constructed. It is no great burden for these agencies to apply to the AFP to authorise false documentation. That is why we have moved these amendments.

**Senator GREIG (Western Australia) (8.14 p.m.)**—These amendments propose to remove the Australian Taxation Office and Customs from the assumed identities regime. Having consulted with Customs on this issue, we have come to the view—as Customs argues—that they sometimes need to use assumed identities to protect the anonymity of their operatives in conducting controlled deliveries. I am advised that the ATO have similar needs in relation to excise matters. One example offered is where operatives conduct a controlled delivery to a regional centre and then need to check into a hotel in that location. To protect the anonymity of their operatives, they check in under an as-
sumed identity. Currently, Customs use these identities without being subject to any rigorous accountability mechanism. If they are brought within the statutory regime, they will be subject to auditing and reporting requirements, which we consider to be preferable to the status quo. On that basis, we Democrats oppose these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.15 p.m.)—Can I express my appreciation to the Democrats for opposing, with the government, the proposed opposition amendments. For the reasons mentioned by Senator Greig, the government opposes these amendments which would exclude Customs and the ATO from using assumed identities. It is important that both these agencies have this ability. Customs investigates not only very serious offences but a whole range of offences, and often assists police in joint operations. The Australian Taxation Office uses assumed identities to investigate the evasion of excise, which can be a multimillion dollar organised criminal activity. Of course, the ATO would ensure that the legislation is used by only a small number of people for nominated purposes concerning excise matters. For these reasons, the government will oppose the proposed amendments by the opposition.

Amendments not agreed to.

The CHAIRMAN—Minister, I will say at the outset that four of the government’s proposed amendments will be separated out for the vote because they prescribe the deletion of particular items within the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.16 p.m.)—by leave—I move government amendments Nos (29) to (36), (39) to (41), (45) to (55) and (57) to (61) together:

(29) Schedule 4, item 9, page 47 (lines 16 to 22), omit subsection (1), substitute:

(i) certain other people who are being investigated for Commonwealth offences;

(see Division 3).

(30) Schedule 4, item 9, page 47 (line 25), omit “lawfully”.

(31) Schedule 4, page 47 (after line 28), after item 10, insert:

10A Section 23AA
Repeal the section, substitute:

23AA How this Part applies to the Antarctic Territories

(1) This Part applies in relation to a person as if he or she were arrested on arrival in a State or Territory if:

(a) the person was arrested within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands; and

(b) the person was brought, while under arrest, to the State or Territory; and

(c) this Part applies in the State or Territory.

(2) This Part applies in relation to a person as if he or she first became a protected suspect on arrival in a State or Territory if:

(a) the person was a protected suspect within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands; and

(b) the person travelled, while a protected suspect, to the State or Territory; and

(c) this Part applies in the State or Territory.

(3) This Part does not otherwise apply within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands.

(32) Schedule 4, item 12, page 48 (line 4), omit the definition of arrested, substitute:

arrested: a person is arrested if the person is arrested for a Commonwealth offence and the person’s arrest has not ceased under subsection (3) or (4).

(33) Schedule 4, item 13, page 48 (lines 7 to 9), omit the definition of inform, substitute:

inform, in relation to an investigating official informing a person who is under arrest or a protected suspect, means notify the person:
(a) in a language in which the person is able to communicate with reasonable fluency; and

(b) in a manner that the official has reasonable grounds to believe is a manner that the person can understand having regard to any apparent disability the person has.

(34) Schedule 4, page 48 (after line 11), after item 14, insert:

14A Subsection 23B(1)
Insert:
protected suspect has the meaning given by subsection (2).

(35) Schedule 4, item 15, page 48 (line 14), omit the definition of under arrest, substitute:
under arrest: a person is under arrest if the person has been arrested for a Commonwealth offence and the person’s arrest has not ceased under subsection (3) or (4).

(36) Schedule 4, page 48 (after line 14), after item 15, insert:

15A Subsection 23B(2)
Repeal the subsection, substitute:
(2) A person is a protected suspect if:
(a) the person is in the company of an investigating official for the purpose of being questioned about a Commonwealth offence and the person has not been arrested for the offence; and
(b) one or more of the following applies in relation to the person:
(i) the official believes that there is sufficient evidence to establish that the person has committed the offence;
(ii) the official would not allow the person to leave if the person wished to do so;
(iii) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so; and
(d) none of the following applies in relation to the person:
(i) the official is performing functions in relation to persons or goods entering Australia, and the official does not believe that the person has committed a Commonwealth offence;
(ii) the official is performing functions in relation to persons or goods leaving Australia, and the official does not believe that the person has committed a Commonwealth offence;
(iii) the official is exercising a power under a law of the Commonwealth to detain and search the person;
(iv) the official is exercising a power under a law of the Commonwealth to require the person to provide information or to answer questions; and
(e) the person has not ceased to be a suspect under subsection (4).

(39) Schedule 4, page 49 (after line 22), after item 20, insert:

20A Subsections 23B(4) and (5)
Repeal the subsections, substitute:
(4) A person ceases, for the purposes of this Part, to be arrested or a protected suspect if:
(a) an investigating official believes on reasonable grounds that the person is voluntarily taking part in covert investigations; and
(b) those covert investigations are being conducted by the official for the purpose of investigating whether another person has been involved in the commission of an offence or suspected offence (whether a Commonwealth offence or not).

(5) Subsection (4) does not prevent the person from being re-arrested or again becoming a protected suspect.

(40) Schedule 4, item 21, page 49 (lines 26 to 28), omit the note, substitute:
Note: The powers in this Division only apply in relation to people under arrest. They do not apply in relation to protected suspects.

(41) Schedule 4, page 49 (after line 28), after item 21, insert:

21A Subsection 23C(1)
Omit “lawfully”.

(45) Schedule 4, item 40, page 52 (lines 21 and 22), omit the note, substitute:

Note: These obligations apply in relation to protected suspects as well as to people under arrest.

(46) Schedule 4, page 52 (after line 22), after item 40, insert:

40A Subsection 23F(1)

Omit “under arrest for a Commonwealth offence”, substitute “under arrest or a protected suspect”.

Note: The heading to section 23F is replaced by the heading “Cautioning persons who are under arrest or protected suspects”.

(47) Schedule 4, item 41, page 52 (lines 26 and 27), omit “if the person cannot hear adequately”, substitute “if that is the most appropriate means of informing the person”.

(48) Schedule 4, page 52 (after line 27), after item 41, insert:

41A Subsection 23G(1)

Omit “under arrest for a Commonwealth offence”, substitute “is under arrest or a protected suspect”.

41B Subsection 23G(2)

Omit “under arrest for a Commonwealth offence”, substitute “is under arrest or a protected suspect and”.

(49) Schedule 4, page 53 (after line 1), after item 42, insert:

42A Subsection 23G(3)

Omit “under arrest for a Commonwealth offence”, substitute “is under arrest or a protected suspect and”.

(50) Schedule 4, page 53 (after line 3), after item 43, insert:

43A Subsection 23H(1)

After “under arrest” (first occurring), insert “, or who is a protected suspect,”.

43B Paragraph 23H(1)(a)

Omit “is under arrest for the offence”, substitute “is under arrest or a protected suspect (as the case requires)”.

(51) Schedule 4, page 53 (after line 9), after item 44, insert:

44A Paragraph 23H(2)(b)

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

(52) Schedule 4, page 53 (after line 26), after item 46, insert:

46A Subsection 23H(5)

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

(53) Schedule 4, page 54 (after line 3), after item 48, insert:

48A Paragraph 23K(1)(b)

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

(54) Schedule 4, page 55 (after line 6), after item 51, insert:

51A Section 23M

Repeal the section, substitute:

23M Providing information relating to persons who are under arrest or protected suspects

(1) An investigating official must inform a person (the first person) who is under arrest or a protected suspect of any request for information as to his or her whereabouts by anyone of his or her relatives, friends or legal representatives.

(2) The investigating official must then provide that information to the other person unless:

(a) the first person does not agree to the provision of that information; or

(b) the investigating official believes on reasonable grounds that the other person is not the first person’s relative, friend or legal representative.

(3) This section has effect subject to section 23L.

(55) Schedule 4, page 55 (after line 6), after item 51, insert:

51B Section 23N

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

(57) Schedule 4, item 52, page 55 (lines 10 and 11), omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

(58) Schedule 4, item 52, page 55 (line 18), omit “of his or her arrest”, substitute “that he or
she is under arrest or a protected suspect (as the case requires)"

(59) Schedule 4, page 55 (after line 31), after item 52, insert:

**52A Section 23Q**

After “under arrest”, insert “or a protected suspect”.

(60) Schedule 4, page 55 (after line 33), after item 53, insert:

**53A Subsection 23U(1)**

Omit “under arrest for a Commonwealth offence”, substitute “under arrest or a protected suspect”.

**53B Subsection 23U(1)**

Omit “under arrest” (last occurring).

(61) Schedule 4, page 58 (after line 7), at the end of the Schedule, add:

**Fisheries Management Act 1991**

**70 Paragraph 84A(2)(a)**

Omit “under arrest because of paragraph 23B(2)(b)”, substitute “a protected suspect”.

The proposed government amendments implement recommendations 6 and 7 of the Senate Legal and Constitutional Legislation Committee report on the bill. The amendments clarify the distinction between persons who are lawfully arrested and persons who are being questioned as suspects. The confusing label ‘deemed arrest’ would be replaced with a clearer term ‘protected suspect’. During discussions with the opposition, I think this was canvassed to some extent and a better term has not been arrived at, so we are left with ‘protected suspect’. The amendments will also provide that the needs and circumstances of disabled persons must be taken into account in deciding how to communicate information to them. That is another important aspect in dealing with the exercise of police powers, and one which the government regards as important and one which was raised in the Senate Legal and Constitution Legislation Committee report.

**The CHAIRMAN—**The question will be divided. The question is that government amendments (29) to (36), (39) to (41), (45) to (55) and (57) to (61) be agreed to.

Question resolved in the affirmative.

**The CHAIRMAN—**The next question is that items 16 to 19, 25, 30 and 36 stand as printed.

Question resolved in the negative.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (8.19 p.m.)—by leave—I move government amendments (1), (2), (4), (5), (8), (11) to (28), (38), (56), (62) and (63):

(1) Schedule 1, item 17, page 8 (lines 25 to 30), omit paragraph (1)(d), substitute:

(d) the conduct does not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:

(i) that offence; or
(ii) an offence of that kind; and

(2) Schedule 1, item 17, page 9 (lines 10 to 15), omit paragraph 15IB(2)(e), substitute:

(e) the conduct does not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:

(i) that offence; or
(ii) an offence of that kind; and

(4) Schedule 1, item 20, page 11 (lines 13 to 18), omit paragraph (c), substitute:

(c) conducting the operation would not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:

(i) that offence; or
(ii) an offence of that kind; and

(5) Schedule 1, item 31, page 15 (lines 22 and 23), omit “or termination”, substitute “, termination or expiry”.

...
(8) Schedule 2, item 1, page 33 (line 29), after “Keeping”, insert “and auditing”.

(11) Schedule 3, item 1, page 36 (lines 4 to 6), omit the definition of child victim, substitute:

child complainant, in relation to a proceeding, means a child who is, or is alleged to be, a victim of an offence, of a kind referred to in subsection 15Y(1), to which the proceeding relates. The child need not be involved in the proceeding or the initiation of the proceeding.

(12) Schedule 3, item 1, page 36 (line 8), omit “victim”, substitute “complainant”.

(13) Schedule 3, item 1, page 36 (line 20), omit “victim’s”, substitute “complainant’s”.

(14) Schedule 3, item 1, page 36 (line 27), omit “victim’s”, substitute “complainant’s”.

(15) Schedule 3, item 1, page 36 (line 29), omit “victim’s”, substitute “complainant’s”.

(16) Schedule 3, item 1, page 37 (line 4), omit “victim’s”, substitute “complainant’s”.

(17) Schedule 3, item 1, page 37 (line 17), omit “victim’s”, substitute “complainant’s”.

(18) Schedule 3, item 1, page 38 (line 17), omit “victims”, substitute “complainants”.

(19) Schedule 3, item 1, page 38 (line 19), omit “victim”, substitute “complainant”.

(20) Schedule 3, item 1, page 38 (line 25), omit “victim”, substitute “complainant”.

(21) Schedule 3, item 1, page 39 (line 13), omit “victims”, substitute “complainants”.

(22) Schedule 3, item 1, page 39 (line 15), omit “victim”, substitute “complainant”.

(23) Schedule 3, item 1, page 43 (line 13), omit “unreliable witnesses”, substitute “an unreliable class of witness”.

(24) Schedule 3, item 1, page 43 (line 23), omit “victims”, substitute “complainants”.

(25) Schedule 3, item 1, page 43 (line 30), omit “victim”, substitute “complainant”.

(26) Schedule 3, item 1, page 43 (line 33), omit “victim”, substitute “complainant”.

(27) Schedule 3, item 1, page 44 (line 12), omit “victim”, substitute “complainant”.

(28) Schedule 3, item 1, page 44 (line 15), omit “victim”, substitute “complainant”.

(29) Schedule 3, item 1, page 44 (line 19), omit “victim”, substitute “complainant”.

(30) Schedule 4, item 20, page 49 (lines 12 to 22), omit subsection (3), substitute:

(3) A person ceases, for the purposes of this Part, to be arrested for a Commonwealth offence if the person is remanded in respect of that offence by one of the following:

(a) a magistrate;

(b) a justice of the peace;

(c) a person authorised to grant bail under the law of the State or Territory in which the person was arrested;

otherwise than under paragraph 83(3)(b), (4)(b), (8)(a), (8)(b), subsection 83(12), paragraph 83(14)(a), or subparagraph 84(4)(a)(ii) or (6)(a)(i) of the Service and Execution of Process Act 1992.

(56) Schedule 4, item 52, page 55 (line 9), omit the heading to section 23P, substitute:

23P Right of non-Australian nationals to communicate with consular office

(62) Schedule 5, page 60 (after line 32), after item 5, insert:

5A Paragraph 12G(7)(a)

Omit “or premises”, substitute “, premises or item”.

(63) Schedule 6, page 63 (after line 28), after item 3, insert:

3A After paragraph 15(1)(b)

Insert:

and (c) a report in respect of the transfer has not been given in accordance with this section;

3B Subsection 15(1)

Omit “unless a report in respect of the transfer has been given in accordance with this section”.
3C After subsection 15(1)
Insert:

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the Criminal Code.

3D After paragraph 15(5)(b)
Insert:

and (c) a report in respect of the transfer of the currency into Australia has not been made in accordance with subsection (1) before the transfer; and

(d) a report in respect of the receipt of currency is not given in accordance with this section before the end of the period of 30 days commencing on the day of the receipt of the currency;

3E Subsection 15(5)
Omit all the words from and including "unless".

3F After subsection 15(5)
Insert:

(5A) Strict liability applies to paragraphs (5)(c) and (d).

Note: For strict liability, see section 6.1 of the Criminal Code.

The government’s proposed amendments contain a range of clarifications to provisions in the bill and to other provisions relating to those in the bill. The amendments will be to the following effect. The test for entrapment will be clarified to overcome a grammatical error. Some errors in section headings will be corrected. The term ‘child complainant’ will replace ‘child victim’. The provision for warnings to juries will be amended to prohibit warnings that children are an unreliable class of witness, although that will not take away from a judge the ability to comment on the reliability of a particular witness in a particular case. Provision will be made to ensure that interstate transfer of arrested persons does not terminate the operation of detention and questioning rules. Provision will be made to ensure that privacy is taken into account in relation to particular item listening device warrants which form a part of this bill. Financial transactions reporting offences will be clarified to confirm case law indicating that the failure to report element carries strict liability.

Senator BOLKUS (South Australia) (8.21 p.m.)—The opposition support these amendments. Most of them are technical and will correct matters that need to be corrected in the legislation. The bill and these proposed amendments will introduce a range of protections for child witnesses at trials involving Commonwealth child sex offences. We are strongly in support of these protections. We are also quite aware of the importance of ensuring that any protections for children do not compromise a fair trial. The Senate committee recommended the use of the term ‘child victim’ when referring to a child who is, or who is alleged to be, the victim of an offence, and there is concern that that may, by implication, be detrimental to the child or the defendant. Therefore, we support these amendments which replace the phrase ‘child victim’ with ‘child complainant’. Most of these amendments are necessary in terms of drafting, but the child witness amendments are ones which we think are important.

Senator GREIG (Western Australia) (8.22 p.m.)—Similarly, we Democrats are of the view that these amendments clarify the operation of the bill in a number of areas and they therefore have our support.

Amendments agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading
Bill (on motion by Senator Ellison) read a third time.

GENERAL INSURANCE REFORM BILL 2001

Second Reading
Consideration resumed.

Senator SHERRY (Tasmania) (8.23 p.m.)—We are dealing with the General Insurance Reform Bill 2001. Labor supports the legislation. We have three concerns. The first is about delays in the process. The second is that the effectiveness of the legislation is dependent on APRA’s resources and willingness to enforce standards, and I will make
some later reference to the HIH case. The third is about the fit and proper person test and the exemptions from appointing an actuary, and we will have some committee stage amendments about that.

What are the main provisions of the legislation? The legislation amends the Insurance Act 1973 to bring it into line with international standards adopted by the International Association of Insurance Supervisors in 1997. This is achieved by, firstly, imposing restrictions and authorisation requirements on businesses and individuals in the general insurance industry. Under the legislation, it is an offence to carry out an insurance business without authorisation from APRA. APRA is given power to impose, vary or revoke conditions on an authorisation, and a breach of these conditions is an offence. APRA may revoke a general insurer’s authorisation under circumstances including insolvency and inadequate capital. APRA is given similar powers in relation to non-operating holding companies. Certain persons are disqualified from acting as directors or senior managers of general insurers and NOHCs. It is an offence for a disqualified person to act in these positions. Labor will be moving an amendment to include a fit and proper person test in the definition of ‘disqualified person’. APRA can direct a general insurer or NOHC to remove a person from such positions if they are satisfied that person is a disqualified person or fails fitness and propriety criteria in prudential standards. It is an offence for an insurer not to hold assets in Australia—excluding goodwill and assets outlined in the prudential standards—less than its liabilities in Australia without APRA authorisation.

I turn to the second broad area of change. In relation to prudential supervision and monitoring, under the legislation APRA is given the power to determine prudential standards that must be adhered to by general insurers. These standards are disallowable instruments. APRA has the power to direct a general insurer to adhere to all or part of a PS if it is satisfied that they have breached or are likely to breach a PS. Failure to comply with such a direction is an offence. APRA is accorded monitoring functions to collect and evaluate information on prudential matters and encourage the carrying out of sound practices.

The third main area of change relates to restrictions and disclosure obligations on auditors and actuaries. Under the legislation, a general insurer must have an APRA appointed auditor and actuary. APRA must be satisfied that such a person meets fitness and propriety criteria in the PS, and that there is no current determination disqualifying them. APRA can revoke the appointment of an auditor or actuary if it is not satisfied they are performing their duties under the act or a PS or they do not meet eligibility criteria in that PS. Under these circumstances, APRA may also determine that a person is disqualified from holding an appointment as an actuary or auditor. APRA may direct a person who was or is an auditor or actuary of a general insurer, NOHC or subsidiary to provide information that APRA considers will assist it in performing its functions. Failure to provide information is an offence.

An approved auditor or actuary must inform APRA if they have reasonable grounds for believing that the insurer, the NOHC or subsidiary is insolvent or there is significant risk that they will become insolvent; have failed to comply with prudential standards; or have failed to comply with the Insurance Act or Financial Sector (Collection of Data) Act. They must also inform APRA if they have reasonable grounds for believing that an existing or proposed set of affairs may materially prejudice the interests of policyholders. APRA can require an insurer to appoint an independent actuary—a valuation actuary—to investigate all or part of an insurer’s liabilities. Where it appears to APRA that an insurer is likely to be unable to meet its liabilities, APRA may direct the insurer to provide information within a specified period; direct the insurer, with the Treasurer’s approval, to not dispose of a specified asset during a specified period of up to six months; and direct the insurer, with the Treasurer’s approval, to deal with any asset on specified terms.

I turn now to new prudential standards. APRA has established four prudential standards that will be implemented under the
legislation. The first is the liability valuation standard. It requires the calculation of a risk margin with respect to insurance liabilities by class of business. The standard is also referred to as a prudential margin and is designed to ensure that an insurance company holds sufficient assets to cover the probability of an insurance claim. APRA has set the risk margin at 75 per cent. For example, fully discounting future claims for investment income provides a 75 per cent degree of certainty. While most insurance companies provision their claims at over 75 per cent, it is interesting to note that FAI and HIH consistently provisioned under 75 per cent.

The second area is capital adequacy standards. General insurers will be required to have capital resources that are adequate for scale, complexity and mix of business. The minimum capital adequacy for insurers will be increased from $2 million to $5 million. APRA has developed minimum capital requirement standards for a general insurer on the basis of their particular risk profile. APRA has the power to adjust the MCR for a general insurer where it believes the MCR does not reflect the risk profile of the insurer.

The third area is risk management systems. APRA has developed prudential standards for board members and senior managers of general insurers, introducing a formal, fit and proper test. Boards of general insurers are required to develop a risk management strategy, which must be submitted to APRA. A general insurer must advise APRA if it intends to conduct an activity which is outside its risk management strategy.

The fourth area is reinsurance arrangements. APRA's prudential standards will also require general insurers to develop a reinsurance management strategy and obtain APRA's approval prior to its implementation. It must be pointed out that under section 34 of the Insurance Act 1973, APRA has the power to approve reinsurance arrangements. APRA officials confirmed that it did in fact approve reinsurance arrangements for FAI and HIH. In the context of HIH, it is interesting to note in passing that some of the people who have been hurt by HIH did not even know that they were insured by HIH, because of reinsurance. I will make some further comments about HIH later.

I stated in my introductory remarks our concern at the delay in the process. The General Insurance Reform Bill 2001 is the final act of a consultative process to reform the prudential regulation of the insurance industry that commenced in 1995. Following its establishment in July 1998, the Australian Prudential Regulatory Authority, which I have referred to as APRA, established a consultative process to harmonise prudential standards across the insurance sector. In September 1999, APRA released a discussion document called ‘Study of the Prudential Supervisory Requirements for General Insurers in Australia’. Following public comment, in April 2000 APRA released another document, called ‘Proposed Reforms to the Prudential Supervision of General Insurance Companies in Australia’, which contained new draft prudential standards. In November 2000, the new draft prudential standards were approved by cabinet. Cabinet approved an implementation timetable of July 2003 for initial implementation and July 2007 as a transitional period for new capital adequacy standards.

The minister, Mr Hockey, as early as May this year continued to blame the industry for delaying these reforms. The industry denies this. Depending on who you believe, the minister was merely trying to lay the blame elsewhere or was admitting to caving in to industry pressure. One interesting aspect of this is the impact of political donations by HIH. Perhaps we will speak more about that in the future in other forums. Responding to criticisms about the time taken to implement reforms, the government has announced a new implementation timetable of 2002 for initial implementation and July 2004 for new capital adequacy standards.

After these delays and excuses by the Liberal government, they have the nerve to criticise Labor for failing to update the Insurance Act. Labor made significant changes to the act in its term in government and it was Labor that initiated the reform process in 1995. It is also fair to say that, had Labor been in government, we would not have caved in to the industry pressure that Mr Hockey so of-
ten refers to and allowed the process to drag out for so long.

I would like to deal now with APRA’s enforcement of standards, with specific reference to the HIH case study. The seriousness of the collapse of HIH has been brought home in recent months with the illustration of the tens of thousands of Australians in all walks of life who have been hurt by the collapse of this insurance company. Only tonight, watching the ABC news—I am always cautious about news reports on these matters—it has been disclosed that APRA has collapsed with total liabilities of $5 billion.

**Senator Minchin—HIH.**

Senator SHERRY—That is, HIH has collapsed, not APRA—APRA might need $5 million to supervise the industry, the way it is going! Five billion dollars in liabilities is an incredible amount of money. We eagerly await the outcome of the royal commission to identify the causes of the collapse of HIH. We support the legislation that we are considering because we believe that its provisions, particularly those relating to auditors and actuaries, have the potential to significantly improve the supervision of general insurance. However, the effectiveness of these improvements to the legislative framework is dependent on the resources and the expertise of the regulator and APRA’s willingness to use the new powers it is given.

Labor has previously expressed concerns about APRA’s resources and expertise and willingness to act in relation to the collapse of HIH. In defending APRA’s actions in respect of HIH Insurance, APRA officials pointed to the ‘flawed and out-of-date system of prudential regulation for general insurance’. There is certainly substance to that criticism. Currently, powers to prudentially regulate general insurers are contained in the Insurance Act 1973. Despite legitimate criticisms that aspects of this act are out of date, the act does in fact provide APRA with considerable powers in respect of prudentially regulating general insurers—powers that APRA did not use in some areas with HIH Insurance. Let us go to the Insurance Act of 1973 and see whether APRA used the powers that they had at their disposal. In particular, on the subject of valuation of assets, section 33(2) of the Insurance Act 1973 provides that:

APRA may, by notice in writing served on a body corporate, require it to furnish APRA with such information with respect to the value of an asset of the body corporate as APRA specifies in the notice ... the value of an asset of a body corporate as at a particular time is the market value of the asset at that time ... Where APRA is not satisfied that the value of an asset of a body corporate as determined by the body corporate is in accordance with subsection (4), (6) or (6A) ... APRA may, with the Treasurer’s agreement ... direct that the value of that asset is the value specified in the notice.

Despite public comment about the quality of FAI’s assets—FAI was purchased by HIH—and, in particular, assets such as the St Moritz hotel in New York, APRA did not use its powers to issue a notice to either FAI or HIH in respect of the valuation of its assets. Reinsurance arrangements, section 34 of the Insurance Act 1973, provide that:

... a body corporate authorized under this Act to carry on insurance business shall have arrangements, being arrangements approved by APRA on application by the body corporate, for reinsurance of liabilities in respect of risks against which persons are, or are to be, insured by the body corporate in the course of its carrying on insurance business ... An application must be in a form approved in writing by APRA.

APRA acknowledged to a parliamentary committee that it approved HIH’s reinsurance arrangements. HIH is known to have used reinsurance instead of carrying a prudential margin—that is, holding sufficient assets to cover unforeseen events. This is a riskier strategy for managing risks. Section 44 of the Insurance Act 1973—accounts and statements to be lodged with APRA—requires a general insurer to lodge statements of accounts with APRA. APRA’s record of receiving information from HIH was poor and certainly well outside of legal requirements. APRA did not charge HIH penalties for late submittal of accounts.

Section 46 of the Insurance Act 1973—appointment of an auditor—requires that APRA must approve the appointment of an auditor and may revoke the approval if APRA is satisfied that the auditor has failed
to fulfil his or her obligations. APRA approved the appointment of Andersen Consulting, despite the fact that a number of Andersen consultants went on to become company directors. Did APRA question this? I well remember the actuarial investigation because I asked questions about it at our Senate committee hearings in Sydney. Section 48A of the Insurance Act 1973 gives APRA the power to order an actuarial investigation of outstanding claims provisions. APRA did not use this power.

Section 49F(3) of the Insurance Act 1973—liabilities—provides that APRA may, with the Treasurer’s agreement, direct a body corporate to make further provision of a stated amount with respect to liabilities. Despite HIH’s September 2000 figures, which were provided in January 2001, revealing a sharp reduction in their net assets, APRA did not use its powers under the Insurance Act 1973 to direct HIH to make a provision. On the issue of actuaries, APRA apparently did not carry out an actuarial investigation of HIH from 1998 onwards. We cannot blame APRA, I do not believe. The political masters, the government of the day, the Liberal-National coalition are the ones that created APRA as a prudential regulator. They are the ones that forced the moving of the body to Sydney—as a result of which it lost many skilled staff—and they are the ones that provide the resourcing for the prudential regulator. But I am sure we will hear much more of this when the royal commission is concluded.

Labor supports the reforms contained in this bill. The lesson from the HIH collapse is that having powers alone is insufficient if you do not use them effectively. We know that the Insurance Act 1973 contains significant powers, but that these were not applied as thoroughly as they could and should have been in relation to HIH. It is now clear that APRA tolerated late submittal of reports, did not ask for information on actuarial reports and did not question valuation of assets, even when the market did. They ticked off on HIH’s reinsurance arrangements, when there is a clear question of whether they actually understood them.

The essential element of the General Insurance Reform Bill 2001 is parliament giving power to APRA to make prudential standards, rather than through legislation. This means placing significant trust in our prudential regulators and having a belief and a hope that they are doing the job. We believe that APRA must lift its game to deserve this trust. That said, I am hopeful that APRA can continue the work it has begun to do to improve its performance and I can assure the Australian public that it will have the full support of a future Labor government in this process.

I conclude on a very sad note. I have been advised that Mr Brian Gray, a senior official of APRA, died in his office while working on Friday. I pass on condolences to his family, including his three children. I understand that he died at the age of 46. Mr Gray has appeared before some meetings of Senate committees. He was a very committed, dedicated, hardworking official within APRA. It is very sad for Mr Gray’s family that the death should occur in this way. I note that the heart attack occurred while he was at work. I know that sometimes some members of the general public do not believe that public servants work as hard as they should do, but certainly in Mr Gray’s case, and in the case of the vast majority of public servants that I have had the pleasure of dealing with, whether in government or opposition, this is not true. He was a very hardworking and committed public servant. I pass my condolences on to Mr Gray’s family.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (8.43 p.m.)—I also rise to speak on the debate in regard to the General Insurance Reform Bill 2001. There are certainly some things that need to be said, although none of them are controversial. I will comment briefly on the passage of this bill so far through the parliament. It is important to remember that the bill was introduced into the House of Representatives on 28 June this year, and it was passed to the Senate by the House of Representatives only last Wednesday. The first notice that we had of the bill was when it appeared on the forward program that the Democrats received late on
Thursday afternoon. That program listed the bill for debate at 7.30 p.m. on Monday. In effect, that means that the bill is introduced into the Senate on Monday and is to be debated and have its amendments dealt with on the same day. We had a total of two working days to prepare for the bill. That is a bill to which the government made 65 amendments in the House of Representatives and, in addition to that, there were Labor Party amendments that we had to read and consider. When resources are limited, as they are for the Democrats, two days notice to prepare for a bill that is to be introduced and dealt with by the Senate on the same day is—in my view—not adequate to allow for full consideration of the issues and debate.

Nevertheless, the General Insurance Reform Bill 2001 makes a number of fairly substantive amendments to the Insurance Act, and I want to make some comments about that. First, it provides the Australian Prudential Regulation Authority, APRA, with the power to make, to vary and to revoke prudential standards. That amendment is probably the most significant of the amendments that are contained in this bill. The standards will be subordinate to the Insurance Act and will be disallowable instruments. I understand that the government has indicated that it is proposed that there will be four prudential standards on liability valuation, capital adequacy, reinsurance arrangements and risk management. That amendment is probably the most significant of the amendments that are contained in this bill. The standards will be subordinate to the Insurance Act and will be disallowable instruments. I understand that the government has indicated that it is proposed that there will be four prudential standards on liability valuation, capital adequacy, reinsurance arrangements and risk management. The proposed new prudential standards will effectively see minimum statutory capital requirements increase for most insurers, and the minimum level of capital for general insurers will be raised from $2 million to $5 million. The government has also indicated, in relation to prudential standards, that risk weighted capital adequacy similar to that used in banking regulation will be introduced to allow different insurance product lines to require different amounts of capital to be held by the insurer.

The second significant amendment in the bill is the expansion of the obligations on auditors and actuaries to report to APRA. Under the proposed new section 49A, auditors and actuaries are required to inform APRA where they have reasonable grounds for believing that certain matters have occurred, including that the insurer is insolvent or that there is a significant risk that it will become insolvent. The Democrats are, of course, very supportive of that amendment. Placing a legal obligation on auditors and actuaries to report directly to APRA in circumstances of suspected insolvency will provide useful information to APRA, particularly given some of the recent happenings in national business life in the country. But the bill makes it clear that the auditor or the actuary cannot be subjected to any legal action where that information is provided in good faith and without negligence.

The third matter of significance in the bill is the requirement in the proposed new section 39 that general insurers appoint approved auditors and actuaries that are approved by APRA. The appointment of auditors and actuaries and other professionals—for example, valuers—is an issue that my colleague Senator Andrew Murray has been trying to raise awareness of over the past three years. Senator Murray has moved amendments on a number of occasions to give shareholders of listed companies the opportunity to elect a corporate governance board. That board would be a group independent of the main board and would have the task of dealing with all of the decisions where the main board could potentially have a conflict of interest.

The appointment of auditors is a prime example of that. Auditors are required to audit companies and to state whether or not, in their opinion, the accounts present a true and fair view of the affairs of the company. There will always be a chance that a qualified audit report could see the directors appoint another audit firm to conduct the audit during the next year if the directors are not happy with the qualification of the audit report. It seems to me that this will often be to the serious financial detriment of the audit firm that is not re-hired, potentially leading to the possibility that they give positive rather than accurate or negative audit returns. A similar scenario could easily arise in relation to actuaries or valuers. An independent corporate governance board would be able to manage those issues as well as issues like
directors’ remuneration, which would always, of course, be subject to approval by the shareholders. As I have reiterated on numerous occasions, the option of choosing a corporate governance board should be left with the shareholders of individual companies. It is not a decision which should be taken by parliament on behalf of shareholders.

The final matter of significance that I want to draw to the attention of the Senate is the new power that APRA will have under the proposed new section 27. It is the power to remove certain directors and senior managers of insurers where satisfied that the person is a disqualified person or does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.

Senator Sherry has circulated a number of amendments to this bill on behalf of the ALP. I want to foreshadow our position in relation to those amendments. Under the bill, certain people are disqualified to act as a director or senior manager of a general insurer. The sorts of people who are currently disqualified are people with convictions for dishonest conduct within the meaning of the Financial Sector (Shareholdings) Act 1998 and people who either have been or are bankrupt. To that list, the Labor Party would like to add ‘a person who is not a fit and proper person’.

During the passage of the Financial Sector Legislation Amendment Bill last year, which I dealt with on behalf of the Democrats, the ALP attempted to impose a ‘fit and proper person’ test on people who conduct banking business. The Democrats at that time supported the introduction of that test. The amendment was accepted by the Senate but disagreed to by the House of Representatives. When it was returned to the Senate, the Labor Party did not insist on that amendment. During the debate, the Manager of Government Business commented that the government did not disagree with the proposal that there should be a ‘fit and proper person’ test but that APRA was working through a process which would see the introduction of such a test. The Minister for Financial Services and Regulation outlined a number of shortcomings with the ALP’s ‘fit and proper person’ test and commented:

... Australia will get a superior outcome if we just wait to see what APRA proposes when it has completed its review of fit and proper requirements.

The Democrats are supportive of the intention of the amendment that has been circulated, but we wish to raise a number of concerns about the technical operation of the amendment. It is not a matter of fact like the other disqualifying factors contained in proposed new section 25. It requires a judgment to be made but does not set out who will make the judgment and does not provide any appeal rights. My adviser has conveyed the problem to the Labor Party and I believe that they understand the issue that we are raising with them.

The second ALP amendment proposes to substitute a new provision to limit APRA’s powers to modify prudential standards in respect of a particular insurer, and the granting of this power was one of the amendments made to the bill in the House of Representatives. In its present form, the power that is given to APRA is too wide and is not subject to parliamentary scrutiny. The ALP and the government have reached an agreed form of words that will limit the modification power and substitute a new subsection 3A for the one inserted by the House of Representatives. In that case the Democrats will support that amendment.

Moving on to the ALP’s third amendment, the bill requires that general insurers appoint an auditor and actuary and that that auditor or actuary be approved by APRA. The bill provides that APRA may determine that a general insurer is exempt from the requirement to appoint an actuary. The amendment that is proposed by Senator Sherry would have the effect of requiring APRA to obtain the Treasurer’s written agreement before making an exemption. The Democrats will support that amendment.

The final matter I want to mention is the consultation process that I understand was undertaken to arrive at this bill. General insurers and industry bodies were of course widely consulted in relation to this bill and the forthcoming prudential standards, and my colleague Senator Andrew Murray dealt with a bill last week, the Financial Services
Reform Bill, that had undergone similar and possibly more extensive consultation. It seems to me that that sort of consultation and resolution of issues prior to a bill reaching the parliament is very valuable, and I think those who are involved ought to be commended for how they dealt with that one. Perhaps this one ought to have undergone the same type of process of scrutiny. In summary, the bill contains a number of measures to strengthen the powers of APRA, something which the Australian Democrats wholeheartedly support. Therefore, we support the passage of this bill.

Senator WATSON (Tasmania)  (8.54 p.m.)—Currently 161 private sector companies are authorised under the Insurance Act and manage $63 billion of assets. The bill before us tonight, the General Insurance Reform Bill 2001, actually amends an existing act, the Insurance Act of 1973. This reform bill will modernise and strengthen prudential requirements for authorised general insurers to bring the insurance framework into line with changes that have already happened in terms of authorised deposit taking institutions and life insurers. The reforms are consistent with the approach of the financial system inquiry, sometimes known as the Wallis inquiry, which argued for greater consistency in the supervisory regimes across regulated financial service providers.

This bill covers three broad areas: changing the act to give the Australian Prudential Regulation Authority, the regulator, the power to make, vary and revoke prudential standards; an expansion of the act to include the non-operating holding company of a general insurer; and to include the subsidiaries of the general insurer and non-operating holding company. There will be an expansion of the fit and proper tests applying to general insurers’ boards and senior managers as well as other bodies. Also there is a requirement to appoint, except in limited circumstances, an APRA approved actuary to advise the board of the general insurer on the valuation of the company’s liabilities. There are obligations on auditors and actuaries to report to APRA on matters on both a routine and non-routine basis. The purpose of these obligations is to provide an independent check on the internal control processes of the general insurer. They will also strengthen enforcement powers.

In a nutshell, the bill before the Senate tonight is a world first. It will provide a model for uniform prudential regulation in the general insurance area that does not currently exist. I remind the Senate that currently no international uniform regime exists in insurance supervision in the way that it applies for banking under what is known as the Bank of International Settlements in Basel, Switzerland. I think this is very significant because, as I mentioned earlier, the Insurance Act is a 1973 act, and if you examine the statutes and the reforms you will see there has been very little reform in those 30 years prior to what has happened today.

These reforms have been in the making for some three years. They have been extensively road tested with up to 53 different companies being involved, and there has been wide consultation with the Insurance Council of Australia, the Institute of Actuaries of Australia and other interested bodies. The Treasury position was put out for public debate. Also I think these reforms reflect the Reserve Bank’s experience in banking regulation. There is a three-tiered approach which includes high level principles, regulations and practice guidelines. This will ensure that there is greater uniformity between banking, life insurance and general insurance supervision.

The previous bill, the 1973 bill, was widely perceived to be blunt and unresponsive. Nowadays the industry is faced with new technologies. Internationalism, convergence and improvements in domestic and international regulatory best practice mean that regulators need to be more sophisticated. Also they need to be more flexible in the ways that they undertake prudential regulation. So in a number of years it has become clear that the current act has a number of flaws that have compromised the safety of policy holders. They include problems in the reliability and consistency of reported liability provisions, inadequate solvency and asset requirements, limited independent expert input, limited fit and proper tests and incomplete compliance with international stan-
What we have here before us today is a reflection of what the HIH failure highlighted: a series of problems which I have just outlined to the Senate. I believe that these new reforms will restore a great deal of confidence to the industry.

However, there are other aspects of the HIH failure that are not necessarily covered by this bill. I am thinking particularly of a decision taken by the HIH board to acquire the insurance interests of Mr Adler’s insurance company without due diligence. In this day and age, in terms of good corporate governance requirements, I think it is reprehensible and negligent in the extreme for the board of any company—particularly the board of an insurance company—to take over another company without undertaking due diligence issues. While there are fit and proper person tests, et cetera, to be applied, if the board does not comply with good corporate governance proposals that can still fall outside the ambit of these provisions. But I do welcome the provisions in this bill to actually strengthen the fit and proper person tests.

So far as the industry is concerned, policyholders will be protected by a much more vigorous and, importantly, a more risk based prudential regulatory regime than is currently in place. So far as APRA is concerned, the changes will mean that there will be more emphasis on individual insurance companies’ risk profiles and there will be the power to set standards, ensuring that the regime keeps pace with changes in the insurance market into the future. Under these new reforms, we will have a less rigid approach than existed under the Insurance Act of 1973, and a much more flexible regime. As a result, insurers will be better able to meet the future claims of policyholders. This will also improve APRA’s capacity to meet its statutory functions. So there is a wide range of benefits there. Pivotal to the reform process is the granting to APRA of the power to make, vary and revoke prudential standards. I suppose it is here that we can see flexibility at its zenith. These standards, of course, will be subordinate to the act and disallowable instruments, but they will be subject to parliamentary scrutiny. It is important that this parliament does have that oversight. So, I repeat: there will be greater flexibility in the new regime, allowing it to adapt over time to developments in the market and to improvements in general supervisory techniques. The four prudential standards will be based on liability evaluation, capital adequacy, reinsurance arrangements and risk management.

There are other important provisions in the bill. These are: the making of the provision to waive the requirement for a 14-day show cause notice prior to the appointment of an investigator; expanding the circumstances in which APRA can issue directions; clarifying that the grounds for an investigation specified in a notice served on a general insurer are the grounds required to be specified in that notice; expanding the types of books as well as other documents to which APRA, the regulator, can require access; enabling the regulator to receive reasonable assistance to carry out its prudential monitoring program; enabling the delegation of an inspector’s powers to someone other than an APRA staff member; giving APRA the power to accept enforceable undertakings; improving the transfer of insurance business provisions to facilitate the transfer of insurance liabilities to other insurers; and enabling APRA to provide protected information to auditors and to actuaries.

I would like to mention that one of the principal architects of the reforms before us tonight was Mr Brian Gray. His untimely death in the last few days has come as a shock, not only to APRA, but to the minister and the minister’s staff, to the government and, I suppose, to the Senate and many of us who saw Mr Gray on the other side of the table. Mr Gray was one of the principal architects of this reform, and he led the process of dragging the reluctant insurance industry into the 21st century. In so doing, he developed a framework for supervision that I hope will be copied the world over. In my introductory remarks I said Australia was a world first, and so I extend my congratulations to the minister and to APRA.

Mr Gray’s tragic passing has been a great loss, particularly because of his young age and because he has left a young family. All sides of politics will be deeply shocked and
saddened by his passing. He had a very distinguished professional life. His most recent work was on the development of better prudential supervision of superannuation. In earlier times, he led the team that first introduced risk weighted capital adequacy in banking—and now we are going to see that here in insurance. That is a major step forward. Brian’s other major projects included the development of the conglomerates regime for banking introduced after the Wallis financial sector review of 1997. Immediately prior to APRA’s formation, he was chief manager in the bank supervision department of the Reserve Bank of Australia, with responsibility for risk analysis and policy development. He led the introduction of capital adequacy guidelines for Australian banks’ market risk. He joined APRA on its formation in 1998, in the position of executive general manager for policy, research and consulting. He was responsible for the development of prudential policies covering all financial institutions, for research activities and for APRA’s specialist risk analysis groups. As a member of APRA’s executive committee, he also played a major role in designing APRA’s organisation structure, staff development and recruiting. He was a highly respected member of the Australian financial community and also of other arms of government. He was influential and well known internationally and made very important contributions to the Basel committee work on core principles for effective banking supervision and reform of the international capital accord for banks. He also co-chaired an influential APRA-FSA conference on conglomerates in London just last year. He is a great loss to APRA and Australian public policy making, as well as to his family and many friends. On behalf of the coalition, I express our sincere sympathy to his wife, Cathy, and to his three children, Michelle, Joanne and Michael.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.08 p.m.)—I thank all the senators who have contributed to this important debate. It is, as Senator Watson said in his remarks about Brian Gray, a very important piece of policy. It would not have been able to progress as successfully without the contributions of a whole range of people, but I pay particular recognition here in the Senate chamber to Senator Sherry and Senator Ridgeway—the other people who have been involved in the chamber—for helping us to progress it to this stage. I do not need to make any more remarks about the legislation. We can deal with the outstanding issues in the committee stage. As Senator Watson outlined, the passing of Brian Gray was untimely. It is always untimely if someone of such a young age passes away so suddenly, but it is untimely particularly for Brian, after being so closely involved with this legislation, to pass away just before it became law.

I was thinking in another context for some reason over recent days about reform of the financial sector, Corporations Law and these sorts of issues that come before the Senate from time to time. They do not attract a lot of interest from many senators. Senator Watson always pays close attention, as do Senator Sherry and Senator Conroy from the other side, of course, and Senator Murray from the Democrats. I cannot remember exactly the context of my having these thoughts, but they are—to use a USA colloquialism—a bit of an ‘inside baseball’ issue. They do not attract a lot of political attention and they involve an enormous amount of work within the bureaucracy itself from the participants in the various industries. In recent years, we have reformed the corporate law sector, the financial services sector generally and the insurance and superannuation sectors. Many participants in each of those sectors have given of their own time and their company’s time to consult with this government and with this parliament to ensure that we get the regulatory regime right. I thank all those people and particularly those involved in the General Insurance Reform Bill 2001 before us tonight.

I say this by way of background to some brief remarks about Brian Gray, because Brian was one of a number of very talented public servants—and I use those words in their highest possible meaning—who contributed an extraordinary amount. He was a very talented man who contributed for most
of his adult life to the good governance of Australia’s financial system. I make the remarks about it being an ‘inside baseball’ game because it does not get a lot of political or public attention, but when there are failures in this system it does get a lot of attention. If you do not get the nuts, the bolts and the mechanics of the financial system right, it can have the capacity to destroy the lives and the livelihoods of thousands of people. We have seen, with various collapses during the eighties—and luckily fewer during the nineties—massive upheaval for many families. I think that makes the point that getting the financial structures right—getting the architecture of Australia’s financial services sector generally right—is in fact a very important and, dare I say, noble cause for those who are involved.

I say to Brian’s widow, Cathy, and to his young children, Michelle, Joanne and Michael, that you should be very proud of your husband’s and your father’s work. It is not possible for Australia to lead the world in this area unless you have people like Brian contributing to Australia in this way. He made an extraordinary contribution. I am not going to reiterate the quite accurate description of Brian’s career that has been made by my colleagues here tonight; it does not add to the record. It was a distinguished career. It involved work at the national and international level within a discipline that is understood by very few but, as I have said, affects the lives of so many.

Because of the work of Brian, there are thousands, if not millions, of Australians who over coming years will be able to involve themselves with financial products and services in the banking sector and particularly in the insurance sector—something that does affect the lives of virtually every household in Australia. If you do not get it right, the risk of financial calamity and therefore calamity in a whole range of other areas is a real prospect for every household in the country. Brian Gray’s contribution there will make Australia a more secure place. It will ensure that families across Australia are able to lead a more financially secure life, with a reduced risk. Very importantly for Australia, along with a raft of other reforms that Brian was involved in, it will ensure that the, I am sure, bipartisan support for building Australia as a strong financial centre in our region and around the world is even more solidly and soundly on track.

Brian leaves one hell of a legacy for Australia as a nation. Nothing will fill the void that Brian will leave in his home. Nothing will fill the void in the hearts and the minds of Cathy, his children and his wider family. He leaves many close friends within APRA, where he had such a distinguished career in recent years, and at the Reserve Bank of Australia, where he served prior to joining APRA. As you would have heard tonight, Madam Acting Deputy President, Brian has also made a very strong mark here in the parliament of Australia, particularly with my Senate colleagues. With those words of special appreciation for a distinguished Australian who passed away at such a young age, I commend to the Senate this important piece of legislation, to which Brian Gray made such a significant contribution.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (9.16 p.m.)—Madam Acting Deputy President, I seek leave to make some brief comments of condolence.

Leave granted.

Senator RIDGEWAY—I did not know Brian Gray, but I would echo the words of all of the senators who have spoken about the life that he led. On behalf of the Australian Democrats, I wish to offer our condolences to the Gray family as well as to acknowledge Brian’s work and to pass on our support and heartfelt sympathy to the Gray family.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator SHERRY (Tasmania) (9.17 p.m.)—I move opposition amendment (1) on sheet No. 2344:

(1) Schedule 1, item 22, page 25 (line 3), at the end of subsection 25(1), add:

; or (f) the person is not a fit and proper person.

I understand that the Australian Democrats are not supporting the amendment. There are
a couple of comments I would like to make and also a couple of questions I would like Senator Ian Campbell to deal with if he could. Our amendment goes to inserting in the bill, at the end of proposed subsection 25(1), a new paragraph (f) ‘the person is not a fit and proper person’. We do this for consistency. My understanding is that there is a similar provision in legislation applying to superannuation funds. If we have this type of provision within legislation covering superannuation funds, then we think it should be included within the act in respect of the general insurance industry. It seems to us that the potential to exclude a person who is not a fit and proper person is a very fundamental issue—a matter of core importance, if you like. That is why I would argue that this amendment should be included in the legislation. The parliamentary secretary might explain why it is in one act dealing with one area of financial services and not in this bill.

Whilst I am on the issue of superannuation funds, I did note the comments by the Minister for Financial Services and Regulation, Mr Hockey, on Meet the Press on Channel 10. Although I will not go to go into all the issues, part of the interview went like this:

STEVE LEWIS: So, Minister, do you want to beef up the powers of APRA to regulate superannuation?

JOE HOCKEY: We’ve asked APRA for more powers. We believe there can be better prudential regulation of superannuation in Australia. We want to focus on giving people more choice, more powers as members of superannuation funds. You’ll recall, Steve, that we tried to get choice of super through parliament only recently. The Labor party opposed it. It does not say anything about the Democrats, by the way.

They don’t want the members of superannuation funds to have any power or control over their own super. We tried to give them that power. The Labor Party opposed it because their mates in the union movement control an awful lot of super. We believe consumers should have more power to choose where their superannuation is invested.

Contained within that comment are a number of false statements, outright lies, by the minister. They are as follows. Firstly, the Labor Party support investment choice. Indeed, we believe that every superannuation fund should have a menu of investment options from which a fund member can choose and exercise their investment choice. The issue of so-called union funds is an obsession with this government, and we continue to see incorrect claims about so-called union funds. The position on superannuation funds in this country, multi-employer funds, is that by law they are required to have joint employer-employee trustees. Many of those funds have trustees, nominated by a union or unions—and employer organisations, for that matter—with a two-thirds vote required to exercise decisions. So we do not have union funds. That is in marked contrast, I am glad to say, to the United States. That is another issue for another time.

I just give the government a warning: I advise you to read the next report of the Senate Select Committee on Superannuation and Financial Services. It is fascinating reading. I cannot disclose the contents of it, for obvious reasons—it has not been released yet—but, if you continue to attack union trustees and the role they play, you should read this report, because it is a ripper. That report will be tabled on Thursday. And you think you have problems with the regulation of superannuation at the moment.

The issue of membership choice is a fundamentally different issue. This effectively is the model advanced by the government. Deregulation—that is what it is. The fallout from the deregulation of superannuation funds in Chile and the UK is well known and well documented, and this was the model that the government sought to impose on Australia. So for us it is a matter of tightening the regulation of superannuation, not deregulating the superannuation funds, as this government proposes, with all of the disasters clearly evidenced in other national jurisdictions where this has occurred.

It is not correct to say that the unions control the moneys in superannuation funds. It is factually incorrect. Ask any employer in this country who sits around the table with union officials as the trustees of funds. I note the wild and false accusation made by the previous secretary of the Liberal Party, whose name has slipped my mind for the
moment, in the issue of the *Bulletin* during the election campaign in 1998. He alleged that these funds were donating money to the Labor Party. He stated that it was fact. It was a lie. I have no hesitation in using that description in the chamber. He alleged that some of the industry funds were giving money to the Labor Party. I could not believe that this could happen because of these joint trustee arrangements and the veto blocking power, so I checked the donation of moneys to political parties to see if I could find a superannuation fund that donated money to the Labor Party. There was not one. It was a total fabrication. So, with those comments in respect of superannuation regulation, the minister may be able to give me an answer about ‘fit and proper person’.

Senator Calvert—What about student unions? What about the National Union of Students?

Senator SHERRY—The Government Whip, Senator Calvert—‘student unions’.

Does APRA regulate student unions? Really! What on earth has that got to do with this bill. We have an inane interjection from the Government Whip, who knows very little about this area. The best he can think of is ‘student unions’ and their regulation by APRA and ASIC. I suspect that even the advisers are wondering what student unions have got to do with the regulation of financial products.

Senator Ludwig—The lawyers will be.

Senator SHERRY—The lawyers will know, that is right, but Senator Calvert is not a lawyer. I do not think Senator Campbell is either; nor Senator Watson, to give him credit. The issue of whether or not student unions, Senator Calvert, donate to any political party is an issue for another debate and another piece of legislation.

Senator Ian Campbell interjecting—

Senator SHERRY—Yes, if we put the word ‘choice’ in there. We are for choice, Senator Campbell. We are very enthusiastic about investment choice. We think people should have the right to pick their type of investment and their category of equities: international shares, bonds, ethical investments. There are concerns about some definitional issues, but generally it is a great new product. So investment choice, where people sit down and actively want to participate in an investment choice, is fine, no problems at all, but I do not want to traverse the debate we had a couple of weeks ago.

Senator Watson (Tasmania) (9.26 p.m.)—Senator Sherry has introduced into this debate, which I remind the Senate is on general insurance issues, a number of superannuation matters, which of course are not covered under this legislation. Senator Sherry must have a guilt complex in trying to defend the Senate’s rejection of the choice of superannuation for members, because I think choice in superannuation is now ripe for passage by this Senate.

It is true that some years ago there was some uncertainty. There was a lack of understanding and a lack of knowledge, but there has been better communication between the funds and their members and there has been a heightened awareness of the importance of superannuation, because it is a major asset of people. It is time that the Labor Party brought itself up to date.

Senator Sherry was saying that he supported investment choice as if it is a good thing yet to happen. It is here. The more reputable funds have it and it is operating. It is, indeed, true that there are not a lot of people who are taking up a lot of the options. But, in a sense, that might show their sophistication—their need to be cautious—in perhaps having a balanced approach. But I tell you, Senator Sherry, that members out there nowadays are actually demanding choice in a very significant way. Why do you continually close your mind to all the survey results that show overwhelming numbers are demanding choice of superannuation fund? Not investment choice, as you say, because that is already here and being applied.

I recently had a phone call from a young lass who had been a member of six superannuation funds. One was about to be extinguished because of its fees and charges. You are constantly talking about the problems of fees and charges, Senator Sherry. You have a marvellous opportunity to do something about it, particularly in an environment where the Australian work force is becoming
increasingly mobile, moving from job to job. In such an environment, people accumulate an increasing number of funds whose small amounts attract fees and charges. So I say to the Democrats and to the Labor Party, ‘Listen to the constituency out there which is asking for choice, demanding choice.’ I think that it would be most appropriate, before this Senate rises, for this bill to be reintroduced on the assurance that the choice proposals will be passed.

There are mechanisms, Senator Ridgeway, for accommodating and forwarding the sorts of outstanding issues that the Democrats believe are important. These include such issues as entitlements that come in at an earlier date and that there be no discrimination of a whole raft of people and organisations, not limited to the particular classes of people that are mentioned in your agenda. Because there are now many members of many different superannuation funds as a result of the significant changes since 1992 in the composition and mobility of the work force, the time has come to readdress this issue because you are depriving people of the ability to move to better funds.

In fact, Senator Sherry, you know as well as I do that the better managed industry superannuation funds are not worried about choice. They will actually encourage choice. The better funds know that they will benefit under a choice regime because people will gravitate towards them. It will mean pressure on the poorer performing funds. So why are you enslaving ordinary Australians to be locked in to poorer performing funds when they should be getting out of them, and getting out of them quickly? Why are you locking these people in to poorer performing funds where increasingly the fees and charges are wiping out small balances? You are not acting in the best interests of the great constituency of fund members you purport to represent out there in the community. Since you introduced this concept of superannuation choice, I believe it is appropriate for this matter to be addressed.

In terms of your requirements for a fit and proper person to be included in the legislation, this is a reform bill. This is more up to date than the earlier act that you referred to. It provides much more flexibility in giving APRA these more flexible powers when issuing guidelines, protocols and types of standards.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (9.32 p.m.)—I will make a couple of comments in response to Senator Sherry’s comments. I want to reiterate that the Democrats are supportive of the intention of the amendment circulated by the ALP. I also want to make the point that in October last year we went through this exercise, or a similar exercise, when the ALP sought to impose a fit and proper person test regarding the issue of banking business. We supported it at that time, and we still see merit in the argument. The simple fact is that, whilst the amendment was accepted by the Senate at that time, the House of Representatives disagreed with it and, when it returned to the Senate, the Labor Party did not insist on the amendment. So I think there are issues around having a degree of confidence about where you might stand in relation to the issue.

I also want to point out that we received the amendment only this afternoon. Had we had more time we would have sought to have had the amendment redrafted. I understand that the amendment itself was drafted in the House of Representatives, not here in the Senate, and certainly not by Rosemary Laing. I reiterate that we support the intention of the amendment, but we cannot support it because technically it will not work. It is fine to talk about supporting it, but I think the sentiment has to be backed up by practical application. If it does not achieve that, then in my view it is bad legislation. At the end of the day it needs to be put on the record that we support what the amendment seeks to achieve, but technically, unless it can guarantee workability and provide certainty, it cannot be supported.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.34 p.m.)—I was asked some questions by Senator Sherry and I will go through some of the detail as to why we are opposed to this amendment. I
think Senator Ridgeway put it quite succinctly in terms of the overall principle. The amendment proposed by the opposition to subsection 25(1) would make it an offence for a person who was not fit and proper to act as a director or senior manager of a general insurer or a non-operating holding company. The amendment would also make it an offence for a body corporate to allow such a person to act in that position. It is the government’s view that this amendment is not appropriate given the subjective nature of the tests of fitness and propriety as set out under the prudential standard. For example, it would be inappropriate for a person to be tried for a criminal offence simply because the regulator and the general insurer had differing opinions on whether a person had appropriate formal qualifications. It is the government’s view that in these circumstances it is more appropriate that a person simply be removed from office as provided for under section 27.

I will turn quickly to the issue of the consistency of the SI(S) Act, which I think is one of the key points that Senator Sherry raised. Section 120 of the SI(S) Act sets out the circumstances under which trustees, custodians and investment managers of superannuation entities are disqualified persons for the purposes of part 15 of the act. A disqualified person is an individual who has been convicted of an offence in respect of dishonest conduct, has had a civil penalty order made in relation to him, is an insolvent under administration or the regulator has disqualified under section 120A of the act. Subsection 120A(3) of the SI(S) Act enables the regulator to disqualify an individual if that individual is otherwise not a fit and proper person to be a trustee, investment manager, custodian or responsible officer of a custodian of a superannuation entity. It is an offence for a disqualified person to act as a trustee under section 121, as an investment manager under section 126, as a custodian or responsible officer of the custodian under section 126A and, in addition, the regulator may remove a trustee where that trustee is a disqualified person under section 133.

These provisions are different from those proposed in the opposition amendment. Under the SI(S) Act an offence is only established where a person has been specifically disqualified via written notice and that person has then taken up a position within another superannuation entity in the knowledge that he or she has been disqualified. In addition, a disqualification notice does not automatically follow from the failure of an individual to meet fit and proper criteria in one circumstance. This allows the regulator to use discretion to determine whether an individual should be completely prevented from operating in the superannuation sector or whether that person’s skills and experience are simply not suited to a particular role in a particular fund but would not prevent the individual from performing other functions within other funds.

Amendment negatived.

Senator SHERRY (Tasmania) (9.38 p.m.)—I move opposition amendment No. 2 to schedule 1:

(2) Schedule 1, item 22, page 29 (lines 11 to 13), omit subsection (3A), substitute:

(3A) APRA may modify a prudential standard to replace particular requirements in the standard with an in-house capital adequacy model proposed by a general insurer, authorised NOHC or subsidiary of a general insurer for the purpose of setting its capital requirements. The in-house capital adequacy model proposed by the general insurer, authorised NOHC or subsidiary must comply with criteria set out in the prudential standards.

My understanding is that there is agreement from the government on the circulated amendment that has been discussed between our advisers. Our concern was that the power to be given to APRA to vary prudential standards via regulation would have weakened effectively what the intent of the legislation is, which is to improve the regulation of the general insurance industry. Through the process of negotiation, I believe we have reached a satisfactory compromise that allays our concerns and fears in that regard.

Amendment agreed to.

Senator SHERRY (Tasmania) (9.39 p.m.)—I move opposition amendment No. 3 to schedule 1:
(3) Schedule 1, item 23, page 37 (after line 21), after subsection 47(2), insert:

(2A) APRA must obtain the Treasurer’s written agreement before making a determination under subsection (1).

The third amendment goes to the issue of the exemption from actuarial requirements. Our concern in this area was heightened following the disclosure that was made at the Sydney hearing of the Senate Select Committee on Superannuation, chaired by the current Temporary Chairman, Senator Watson, with me as deputy chair. Despite the fierce comments made a few minutes ago, I say that that committee was very ably chaired by Senator Watson. The reports of that committee are always worth reading. But the disclosure that the actuarial checking verification—

Senator Ian Campbell—Chair, I raise a point of order. I am not sure whether there is a standing order that covers this, but is gratuitous sucking up to the Temporary Chairman an offence under the standing orders of the Senate?

The TEMPORARY CHAIRMAN (Senator Watson)—There is no point of order.

Senator SHERRY—I doubt that it is the reverse situation, given the exchange that we had a few minutes ago. I am always willing to acknowledge the work that Senator Watson does and that others in the Senate from the opposite side of the political fence do from time to time. It is a good committee; it is constructive. We have had our differences from time to time but we generally produce reports of a very good standard. The overwhelming majority of the recommendations are unanimous. I am frustrated—I know we are confined by the time—in wanting to respond to some of Senator Watson’s earlier comments. I will not. Rather than that, I will accord him a compliment, because it is deserved.

The evidence given at the committee hearing held in Sydney approximately eight or nine weeks ago—maybe a little longer—with respect to actuarial checks carried out on insurance companies was disturbing. It was there that we learnt that the actuary within APRA had not had an actuarial audit carried out—a verification check—on HIH since 1998. Actuarial verification is critical to most forms of insurance, but not all forms of insurance. That is important in the context of our amendment and the reasons advanced by the government for the exemption. But it was very disturbing to hear that APRA had not carried out an actuarial check. An actuarial check effectively diagnoses the health or otherwise of an insurance company and checks out the insurance company’s internal actuarial projections. The projection of claims as verified by an actuary is quite critical to the importance of many insurance products. I referred earlier to the $5 billion cost to the general community. I do not know what the final bill to the taxpayer will be, but I suspect that it is going to be higher now, following the disclosure today of the $5 billion losses in HIH. So it was of concern to note an exemption from an actuarial requirement.

I do understand the argument, however, that some forms of insurance do not require an actuarial assessment. I think that is a valid point. So in the discussions we had, it satisfied us that the Treasurer of the day can give written agreement before making a determination under subsection (1) and that APRA must obtain that written agreement. I think that that is an adequate safeguard, and that is the effect of the amendment that we are moving, taking into account the practical realities of the insurance industry.

Amendment agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading
Bill (on motion by Senator Ian Campbell) read a third time.

NOTICES

Presentation

Senator Ian Campbell—by leave—to move, on the next day of sitting:

ADJOURNMENT

Motion (by Senator Ian Campbell) proposed:
That the Senate do now adjourn.

North Queensland: Sugar Industry

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (9.45 p.m.)—Tonight I want to spend a few minutes advising the Senate about the importance of the sugar industry to North Queensland. The sugar industry has been the lifeblood of the North Queensland coast for more than a century now. It has had a very significant impact on the development and the history of Queensland, the state which I represent in the Senate. In my role as Minister for Regional Services, Territories and Local Government, I have been impressed by the contribution that the sugar industry has made to the development of regional Queensland over the last 100 years.

The sugar industry does have its detractors. The significant contribution the industry has made is overshadowed at times by newer industries in regional Queensland. A lot of very good high technology mining industries, IT industries and education industries in the north get their share of credit for the advances country Queensland is making at present, but sometimes the sugar industry is not given the credit that it deserves. Although it is what some might call an old industry, research and development into the sugar industry is certainly a leading edge technology. It is that very significant research and development that has enabled the Australian sugar industry to be by far and away the best sugar industry in the world—the most efficient, the most economical and the most well researched. Cane farmers, the industry, the mills and the workers in the mills all join together to demonstrate that Australia has a significant sugar industry. It is not only the farmers, the millers, the mill workers, the cane harvesting contractors and the planting contractors, but the whole industry—the research and development side, the organisation of the industry and the shipping and the port—that maintain and develop the export of the sugar overseas.

It was with some great delight, therefore, that I received a letter during the week from the secretary of Canegrowers, the organisation representing Queensland farmers. It was a letter full of good news and positive direction. I want to use that letter to mention some facts about the significance of the sugar industry and the contribution it makes to Queensland and to the Australian economy. This year the raw sugar industry is making a strong recovery after several very difficult years. Prospects are much better following a substantial improvement in world sugar prices and the potential for better sugarcane crops in the coming years.

The sugar price for the crop being harvested now is likely to be 35 to 40 per cent higher, at around $100 a tonne more than the $253 a tonne received last year and the $254 paid in 1999. This could lift earnings for the industry by more than $500 million to around $1.5 billion, providing a much-needed boost to many regional communities which depend upon a prosperous sugar industry for their future. I cannot emphasise too much what an injection of $1.5 billion means to many of the communities in regional Queensland.

The improved price outlook is expected to remain positive into the 2002 season, giving rise to considerable optimism in the industry. Production this year is still well below the peak of 1997, but there is no justification for any thought that sugar is an industry in decline or unsustainable in the long term, either economically or environmentally. In fact, nothing could be further from the truth. We have had two adverse years in a history of more than 100 years, and those two adverse years—or even if they were 10—cannot break a fundamentally sound and internationally competitive industry.

Cane production this year should be approximately 32 million tonnes. It is far short of the productive potential of an industry that has had sufficient capital invested in cane growing and sugar milling to have the capacity to produce some 42 million tonnes of cane annually. The industry is confident that it will reach that milestone within a few years. This year, dry cool weather for the start of the year’s crush triggered higher than
normal sugar levels in the cane, auguring well for total sugar production in Queensland. Queensland produces 95 per cent of Australia’s output. Although production will be well below the record of 5.4 million tonnes in 1997, it will allow the industry to partially capitalise on higher world prices currently being achieved.

Most growers have invested heavily this year in replacing cane varieties that had been susceptible to orange rust. The total value of the 2000 season sugar pool was only $995 million, as against $1.81 billion in 1997. This reflected the small crop, disappointing yields and a low world price, but the industry now believes it is on track for a 2001 return to the figure of $1.5 billion that I mentioned earlier, with $2 billion in sight. The growers acknowledge that, although their prospects are improved, they have had two years of very low sugar prices. They congratulate the federal government in responding positively in late 2000 to an industry request submitted by the Canegrowers organisation for short-term financial backing to maintain the production base in anticipation of a price recovery.

The sugar industry package has provided invaluable income support and interest rate subsidies for financially stressed growers, underwriting part of the cost of carry-on for eligible growers and encouraging essential replantings for 2001-02. The industry acknowledges that further rationalisation of the industry could be beneficial provided it is part of a cooperative effort between the state and federal governments and has industry direction. Rationalisation, the industry says, must be voluntary and designed to assist in the long-term progress to higher productivity levels and a more profitable future.

Cane growers are committed to sustainable cane production and the adoption of best farming practice. Cane farmers now have a more positive attitude towards environmental issues and increasingly are adopting more sustainable farming methods. Where real problems exist, the industry has an enviable record of addressing them—more so than generally can be found in urban areas, in heavy industry, in coastal real estate development and in some other land use areas.

Most growers now farm in accordance with a code of practice for sustainable cane growing which the Canegrowers organisation instituted. The code addresses key issues such as minimum tillage, green cane harvesting, trash blanketing, fertiliser and chemical usage, irrigation and its impacts, water quality and run-off, biodiversity, soil health and maintenance of riparian land and wildlife corridors.

It is a very good story. Unfortunately, time is not going to enable me to complete all of the information I wanted to give. Suffice it to say that the Canegrowers organisation is now a voluntary organisation. It used to be a statutory body. It has over 94 per cent membership of all growers, and that is the highest rate of take-up of voluntary membership of any Australian farmer representative body. I congratulate Jim Pedersen, the new chairman of Canegrowers, his council and all cane growers generally—and the industry in broad—for the significant contribution they have made to Queensland. (Time expired)

Olsen Government: Ms Vicki Thompson

Senator BUCKLAND (South Australia) (9.55 p.m.)—I would like to speak tonight about a fax I got last week. My first thought was that receiving a fax is nothing particularly unusual, but on checking the machine last week I found that there appeared to be an application for a job. Of course, one always looks at these, thinking that someone may want to join the team in my office. Sadly, I would have to tell them there was no room at the inn.

On closer examination, however, I found that the facsimile was from a person identifying themselves as the ‘Chief of Staff to the South Australian Premier’, John Olsen. That caught my attention. I thought, ‘It’s gone to the wrong place.’ But as I read it through, it had obviously been sent to me so that I could look at what is really going on in my home state of South Australia. The letter is addressed to a Mark Hender, who is, as I understand, an employment agency recruiting on behalf of the Adelaide City Council. The letter says in part:

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Currently I am employed as Chief of Staff to the South Australian Premier, The Hon. John Olsen MP, a position I have held for almost two years.

Because of the nature of my current position, I ask that this application be treated in the strictest of confidence.

As I said, Mark Hender is a consultant, of Hender Consulting. He was sent the email attachment. In order to satisfy myself that I was not being set up, I did some investigations myself and found that the fax was in fact from the person described as one Vicki Thompson from the Premier’s office. Still not satisfied, I did a bit more digging around to ensure that there was a position available with the Adelaide City Council. I checked through the newspapers, did some investigation and found that, on Saturday, 2 July, there was an extensive advertisement saying that the Adelaide City Council was seeking a chief executive officer. I checked that and checked the reference number, 2459, on the advertisement and on the letter that had been forwarded by Ms Vicki Thompson.

The South Australian Premier’s chief of staff, Vicki Thompson, was, in my view, making a very clear statement to all that she was now, like a rat, deserting a sinking ship. The Olsen government have their difficulties in South Australia. I do not need to go into all of those things, but they are certainly running a very poor race. I guess if you were on board that team you would be looking for the quickest way out.

There is a real problem created by this, one that goes a little deeper than someone trying to find themselves a cushy job before their time is up. Ms Thompson is the Premier’s closest adviser—she determines question time strategy and controls the media unit—and she has ruthlessly attacked other members of the Premier’s staff who have sought to follow her lead by getting out early. Like her, many of her colleagues believe that they are in their final days of government and that they need to get out now to find something to do in the future. She has ruthlessly attacked these people for doing exactly what she has been doing. She is branding them as disloyal. It is my view that a person in a high office such as Vicki Thompson should have the utmost commit-
ment, if not to the Premier that she serves, then to the state which his government is leading, or pretending to lead.

That is not the only job that this lady has sought. She has also sought a position with the Adelaide wine centre, believed to attract a six-figure salary, not feeling extremely confident that CEO of the Adelaide City Council would be fitting to her abilities. Even though the Adelaide wine centre has a reasonably competent CEO at the moment, one that I believe is doing a fine job, Ms Thompson thinks that she could do better, because the options left with the government are thin. I understand that Ms Thompson is having the interview with Speakman and Associates this week. They are responsible for recruiting the new wine centre CEO.

It seems to me that Ms Thompson is spending a lot more time looking for jobs for herself than Centrelink spends looking for jobs for the unemployed in South Australia. The tragedy is that it sends a very poor message to the business community. What should the business community be thinking? If the Premier’s chief of staff is walking away from the government, why then shouldn’t business walk away from Adelaide and the state of South Australia? The other states are very keen to pick up much of the manufacturing base that we have already and the indication given by this woman at this time is one that should be sending shivers through the business community.

It reminds me of the old song by Nancy Sinatra, a singer that I was pretty keen on when I was a teenager—*These Boots Were Made for Walking*. After seeing this letter and learning more about this woman and her activities, it is clear that she is wearing the boot leather thin by chasing other jobs rather than concentrating on the main game, which is to assist in the heading of the government in South Australia. For the last 12 months, this woman has been looking for a lifeline. She is like the people on the *Titanic*. If there had been a lifeboat or a lifeline available, they would have grabbed hold of it seeking to save their lives that were in peril. It appears that this woman is seeking to save her life, which is much in peril at the moment.
It is a tragedy, as I say, that we have to see this going on in a government that is in trouble in South Australia now. She is a woman who has criticised others for doing exactly what she is doing—trying to feather her own nest before the day comes when they are defeated and tipped out of government. In her comments, she says that in her current role as chief of staff to the South Australian Premier she has been closely involved in the promotion of Adelaide and indeed South Australia. It seems to me that she is more concerned now about promoting herself than promoting the state of South Australia—particularly all of South Australia as opposed to just the Adelaide City Council. She also says that she is regularly on overseas trade and investment missions. (Time expired)

Great Barrier Reef Marine Park:
Dugongs

Senator BARTLETT (Queensland) (10.05 p.m.)—I would like to speak this evening on another issue in relation to the environmental health of the Great Barrier Reef Marine Park. Just recently—last week, in fact—the environment minister, Senator Hill, released a couple of reports into dugong numbers in the marine park. He accompanied that with a media release that stated, ‘New hope for dugongs in barrier reef’ and specifically stated that the results of a survey showed that dugong protected areas have ‘provided new hope for dugongs’ and have increased protection for dugongs.

Unfortunately, in the Democrats’ view, the surveys that the minister has released show nothing of the sort. It is disconcerting that he has chosen to significantly embellish the findings of these reports in such a manner. Whilst the minister did also go on to highlight that there is no room for complacency and there have still been significant, indeed massive, declines in dugong numbers over the last 40 years, nonetheless he has clearly overstated the role of the dugong protected areas in the results of these surveys.

The surveys found an increase in dugong numbers in the southern Great Barrier Reef and Hervey Bay regions between 1994 and 1999, but they also found that the numbers did not significantly differ from those obtained in 1986-87. It is worth noting that the report said that the most plausible explanation for the increase observed in most recent years was not the dugong protection areas but movement of substantial numbers of dugongs into the survey areas, probably from the northern Great Barrier Reef, which is the area north of Cooktown. The report also stated that the differences between the 1994 and 1999 population estimates could not possibly have been solely the result of a natural increase in the absence of immigration—that is, dugongs moving into the area from other areas—because the dugong is a long-lived species with an estimated maximum rate of increase of the order of five per cent per annum or 27 per cent over five years. The rate of increase required to produce the effect recorded in the survey would need to be much greater than this because the controls on significant sources of mortality in commercial net fishing—which are the dugong protection areas—were not introduced until 1997, which is only two years before the survey was conducted.

The report quite specifically states that the increase in numbers could not have been a result predominantly of the dugong protection areas, but was almost certainly the result of movement of substantial numbers from the northern Great Barrier Reef down into the southern region. So, it is incredibly misleading for the Minister for the Environment and Heritage, Senator Hill, to state that this report gives the thumbs up to the dugong protection areas as having increased protection for dugongs and provided new hope for dugongs in the southern Great Barrier Reef Marine Park area. The Democrats believe that the dugong protection areas need to be significantly increased and the activities within those areas more significantly constrained.

It is quite clear, in our view, that a lot more needs to be done in relation to the dugong protection areas. It is also worth noting the other problems and threats to dugong population in relation to issues such as water quality—which I spoke about in this chamber earlier this afternoon—and, particularly, the impact on seagrass beds. It is not simply a matter of curtailing fishing activity, although that is certainly important, but one of
addressing some of the other problems, particularly issues such as water quality: whether chemical run-off from agricultural activities on land is impacting on seagrass—not on the amounts of seagrass but on the quality and chemical composition of seagrass—or, indeed, whether it is sediment run-off more broadly and the resultant increase in turbidity in the water.

All of these factors are having significant impacts on the health and survivability of the dugong. It is clearly an indication that more needs to be done in relation to management of the marine park in general and to firmer tackling of the many threats—not just to dugong but to the many other species and to the biodiversity of the Great Barrier Reef region. Dugongs are of significant biodiversity value, as well as being an interesting species, and are listed as vulnerable to extinction by the IUCN, the International Union for the Conservation of Nature. So it is clearly a significant threat in terms of the biodiversity of the Great Barrier Reef area.

As stated in the reports, the decline in dugong numbers threatens the world heritage values of the Great Barrier Reef region, which, indeed, led to the establishment of the dugong protection areas. However, the Democrats believe that much more needs to be done in relation to this, and it certainly does not need overexaggeration of the impact of the existing areas by the minister—which he did in relation to these reports. One of the reports the minister released was titled *Shark control records hindcast serious decline in dugong numbers off the urban coast of Queensland*, by Helene Marsh, Glenn De’Ath, Neil Gribble and Baden Lane. Helene Marsh is one of the world’s leading dugong experts. The report highlights a huge drop in dugong numbers and suggests that dugong numbers in the region declined over the period 1960 to 1999—so 40 years—to about three per cent of their 1960 numbers. That obviously is a huge impact in terms of the survival of the species, particularly given its slow repletion rate, as I outlined earlier.

There are a number of reasons for the decline and, as the report said, these include habitat loss, traditional hunting, incidental drowning in commercial gill and mesh nets, as well as the shark control program. So there are a range of threats to the dugong and, obviously, there is still much more to be done to address those threats. The other report, produced by Helene Marsh and Ivan Lawler, was titled *Dugong distribution and abundance in the Southern Great Barrier Reef Marine Park and Hervey Bay: Results of an aerial survey in October-December 1999*. It is important to emphasise that Australia has international responsibilities for dugong conservation, particularly in the world heritage area of the Great Barrier Reef, and these reports show that we are not adequately meeting those responsibilities.

We are still clearly falling short in our responsibilities, and that is a real problem in terms of the signals it sends and the reality of the health of the Barrier Reef. A lot more needs to be done and the issue, in the view of the Democrats, needs to be taken much more seriously. There are any number of threats to the overall health of the marine park and the reef; the survival of dugongs is only one of those but, in itself, it is a significant signal that much more needs to be done. Certainly the Democrats will be seeking to ensure that both the federal government and, of course, the state Labor government step up their efforts to protect this incredibly valuable and hugely biodiverse region from further degradation. It is a priceless environmental asset and a priceless economic asset, particularly to the people of Queensland as well as to the rest of Australia, and we need to be doing much more to protect this world heritage area before it is too late. Obviously, once it is degraded beyond the point of no return and we start losing species, then it is impossible to retrieve that situation. *(Time expired)*

**Sport: Funding**

*Senator LUNGY (Australian Capital Territory) (10.16 p.m.)—*I rise to talk about the failure of the Howard government to deliver on its promises to the sporting community. If I were to talk about the Howard government’s achievements in sport, I would have only one positive thing to say—that is, it underwrote the 2000 Olympics. After two terms, we have had three sports ministers and, with all due respect, I believe the quality of performance of those ministers has
declined with each one. The Howard government simply does not understand that investing in grassroots sport will achieve a far greater return for a taxpayer’s dollar than any other kind of investment. The tremendous gains made from the Sydney Olympics would have been squandered if it were not for the pressure from both the sporting community and the Labor Party in opposition that was exerted on the coalition to reverse five years of cutbacks to both community and elite sport and to the Australian Sports Commission. The fact that the government belatedly restored that funding in the last budget does not compensate for years of budget cuts and the coalition’s failure to provide sport and recreation opportunities for all Australians, not to mention certainty for those community sporting organisations that need to plan and invest in their future.

It is worth while examining in some detail those areas of neglect, broken promises and incompetence. I believe that one of the most callous acts by the Howard government—this one perpetrated by the Minister for Sport and Tourism, Jackie Kelly—was to wield the funding axe on community sport by cutting the vital and highly regarded sport and recreation development grants program. In fact, it is my understanding that Minister Kelly personally directed the Sports Commission to terminate this three-year community grants program with state and territory departments of sport and rec. These grants were the lifeblood of regional sports assemblies and community based sporting organisations. The funding was not large but it was quite catalytic, and the sport and recreation development grants program was used by local sports assemblies, local bodies, to keep community sport programs operational. It gave them certainty; it allowed them to plan. Ever since this mean-spirited funding cut was introduced, many local sporting and recreational activities have been axed. Someone should tell Minister Kelly that this was off-strategy. The government races around telling everybody how committed it is to community development, particularly in the regions, and it has one renegade portfolio minister who is out there cutting programs at the expense of those who arguably are the most in need of that funding.

To provide an insight into the concern and outrage expressed by these communities, I have a series of quotes from around regional Australia. In reference to these cuts, Michael Neoh from the South West Sports Assembly said:

[These cuts will] devastate grassroots development programs.

From the Geelong Advertiser on 14 July 2001:

Leisure Networks, which operates the [Geelong based] regional sports assembly, has lost 40 per cent of its income as a result of the cuts ... the $20,000 shortfall left [Leisure Networks] with no other option but to abandon long-established grassroots programs.

From the Corangamite Shire councillor, Brendon Ryan:

The Federal Government has gone for elite athletes rather than grassroots. In our view this is ridiculous because you need to have grassroots athletes before you have elite ones.

From David Drane, the Executive Officer of Gippsport:

Without sufficient funding support ... many of the hundreds of programs that are delivered statewide will be cut.

From Di Trotter, Wimmera regional executive officer:

We are aware of the implication of this funding shortfall and will have to reduce staffing, projects and office hours in order to maintain current obligations.

Ron Alexander from the WA ministry of sport said:

The group most likely to miss out is regional WA. What it means is that we won’t be able to provide coaching courses that we run ... volunteer initiatives and the club administration development that we are providing throughout rural WA.

Kelvin Matthews from the Eastern Leisure Network said:

The functioning of Sports Assemblies will be severely reduced without these funds, ultimately impacting on the sport participation opportunities in many communities across Victoria.

From the South Gippsland Sentinel Times:

Funding cuts to Regional Sports Assemblies of up to 50 per cent have been implemented, resulting in cutbacks to programs at the grassroots level. Programs like water safety week and sport focus
week have been cut, because there is no project officer or buses for the program.

Finally, Paul Henshall from Sports Focus said:

There is no choice for Sports Focus but to downgrade or cut some programs... in the areas surrounding Active Australia development, education and training, and the face-to-face work with sport and recreation clubs.

But if slashing funding for vital community sport was not bad enough, you should hear what the local clubs are saying about the effect of the GST. Julie Sarll, Chief Executive Officer of VicSport, recently highlighted how the GST directly resulted in a decline of volunteers in community sport and recreation clubs. This is what Ms Sarll told the *Age* on 5 August:

It’s killing them. Compliance cost in terms of the GST is a huge time cost for the volunteers and they’re just not willing to do it. They’re not willing to be a tax collector for the government.

Ron Burns, Chairman of Sports Industry Australia, was quoted in yesterday’s *Sunday Times* as saying:

... people opt out of roles such as treasurer because of complications with the GST.

**Senator Heffernan**—He is a Labor staffer. He works for the Labor Party.

**Senator Lundy**—I hope you are listening to this, Senator Heffernan, because I am sure plenty of people in your constituency have been impacted negatively by these funding cuts. Since the introduction of the GST, I have heard from dozens of community based clubs and sporting organisations that have lost volunteer administrators and treasurers because of the extra workload imposed by the GST. We are talking about people who make this contribution out of the goodness of their heart and their love of their sport, and they are being forced to turn their backs on that because of the stress of the compliance relating to the GST. It will not surprise you to know that the biggest problem for non-profit sporting club treasurers and administrators is the business activity statement. It will probably not surprise many people to know what Minister Kelly’s response to these concerns was. According to a report, again in yesterday’s *Sunday Times*, the minister’s office claimed she was ‘not aware’ of concerns about GST compliance. May I respectfully suggest that the reason Miss Kelly knows nothing about the problems of the GST for volunteer run clubs is that she never goes out and talks with them. She has no insight into the concerns of the people involved in those clubs.

This government is so blatantly out of touch that the Treasurer has the effrontery to tell people that they should volunteer more. This is at the same time as the Treasurer’s tax, the GST, is the very issue that is forcing the volunteers to turn their backs on what they love most. Tell that to the overworked mums and dads out there collecting Mr Howard’s tax for the government and staying up late at night to fill in that BAS, just so their children can keep playing their sport. There is no question that the GST is negatively impacting on families specifically in terms of sport. In fact, just this month the Australian Council for Health, Physical Education and Recreation cited the cost of sport as one of the major barriers preventing children from playing sport—so it is a cost issue as well. This situation has become so serious in recent times that the junior sports unit of the Sports Commission has urged national sporting organisations to modify their competitions because many families can no longer afford to pay for their children’s sporting needs.

Another group totally ignored by the coalition is women. Sportswomen in particular know about the litany of broken promises. When the Howard government launched in 1996 a report titled *An illusory image: A report on the media coverage and portrayal of women’s sport in Australia*, they promised to increase the profile of women’s sport in Australia and increase female participation in both physical activity and senior administrative positions. You do not need to phone a friend or ask the audience to know that they have failed on both counts. I think the worst aspect of the Howard government’s broken promises to women is the very different status provided to victorious sporting teams when the government are hosting parliamentary receptions in their honour. The men get the full-on cocktail parties and drinks,
and women get a cup of tea. That is not very equitable, in my view.

It is okay to criticise commercial television stations for not showing all of the cricket, but why weren’t the government equally vocal about the recent threats to axe women’s sports from the ABC? Do you know what the Howard government have done for women’s sport? I will tell you. They have slashed funding to Womensport Australia. They refused to ensure sufficient funding for Womensport, which had asked for three-year funding and ended up getting a mere $50,000 for one year. They scrapped the Prime Minister’s Women in Sport awards in their first year of government and they have still not reinstated them. In fact, not only did they do that but they downgraded the women’s sport unit in the Australian Sports Commission. They broke their promises to make a greater contribution to women’s participation in sport. (Time expired)

Great Barrier Reef: Crown-of-Thorns Starfish

Senator MclucAsh (Queensland) (10.26 p.m.)—I rise in the chamber during the adjournment debate tonight to make some comments about the crown-of-thorns starfish, which has received an unprecedented level of interest over the last week or so. Coming from Far North Queensland, I am very pleased that the other parties have finally taken an interest in this very difficult and concerning situation for the Great Barrier Reef. I thought it might be useful to put on record some relevant pieces of information that some senators and members may not be aware of.

The crown-of-thorns starfish is a large starfish which can grow up to 80 centimetres in diameter. It has up to 21 arms and its venom is poisonous and the toxin accumulates in humans that are regularly stung by its tentacles. It breeds from about December to April in waters of about 28 degrees surrounding coral reefs, and it is not just a phenomenon on the Great Barrier Reef in Australia. A crown-of-thorns starfish breeds for about five to seven years and can produce 250 million eggs each year, usually in shallow water. Outbreaks of crown-of-thorns starfish have been recorded since the 1960s. The first recorded outbreak was near Green Island in 1962. Reefs off Townsville were affected by 1970, and high numbers were recorded in the Whitsundays by 1975. The second recorded wave started as the first, at Green Island, around 1979 and travelled south for the next 10 years. About 17 per cent of reefs were affected in that episode. The next recorded outbreak was in 1994, this time further north at Cooktown. There has been a consistent pattern of infestation: it travels south with the prevailing currents. One important thing to note here is that these recorded outbreaks have essentially followed visitation levels on the Great Barrier Reef. As people have become more interested in snorkelling and diving, infestation levels are noted by those who are on the reef.

The causes of outbreaks of crown-of-thorns starfish have also had some attention in this place today. Three theories that are supported by the scientific community require further testing as none have been proven to this point in time. The first theory is that crown-of-thorns starfish outbreaks are a natural phenomenon. Natural climate changes due to El Nino may be responsible for growth in aggregations, but this is as yet unproven. High rainfall levels affect salinity. This also has to be tested to ascertain if natural climatic events do in fact affect COTS infestations. The second theory is that natural predators of the COTS have been removed from the ecosystem. Triton shells are natural predators, and fortunately they were protected in 1969. Ongoing studies need to be continued into the potential for an increase in crown-of-thorns starfish aggregations as a result of fishing. The third theory is that there may be a link with land based human activity, which may affect aggregation of crown-of-thorns starfish. There is a view that high nutrient levels in water can provide increased food supplies for the development of larvae. They are the theories, and they all need to be tested.

The issue was first raised with me in 1999, after I had done some work raising the issue of climate change and potential coral bleaching in the Great Barrier Reef. Tourism operators who raised it with me requested me
not to raise it publicly, due to the potential for it to negatively affect their tourism numbers. Ecotourism is highly susceptible to negative perceptions. It is a highly competitive sector, and the Great Barrier Reef competes for visitors with tourist destinations in South-East Asia and Hawaii. International tourists make travel choices for a range of reasons. One of them is that their proposed destination is well managed. They need to know that their proposed destination—that is, the Great Barrier Reef—is being well cared for by the authorities that have responsibility for it. Obviously, though, the pressure on the reef and on the tourism industry has been so significant that AMPTO, the Association of Marine Park Tourism Operators, has had to make its concerns public in recent weeks. AMPTO represents tourism operators who work on the Great Barrier Reef Marine Park. It currently has some 45,000 members and associates. Two years ago AMPTO requested some funding from the federal government to assist in the eradication of the crown-of-thorns starfish. Three weeks ago, Senator Hill promised the industry $700,000 over two years. This follows a commitment by the Queensland government earlier this year to allocate $1 million over two years: those funds will go directly to the Great Barrier Reef Research Foundation which will acquit them and put them with the $2.3 million that the industry is spending in the Cairns-Port Douglas region to remove crown-of-thorns starfish.

The $700,000 from the federal government is made up of $350,000, I understand, from the tourism department and, we have been told, $350,000 from the department of environment. From there, I am afraid, the actual funding source becomes a bit murky. I am concerned that this money is not in fact a new allocation of money and that this $350,000 over two years has in fact to be found from the current budget of the Great Barrier Reef Marine Park Authority. I find it astonishing that Senator Hill considers that he can purloin, essentially, that amount of money out of the budget of an organisation which everybody in North Queensland knows has suffered desperately at the hands of this government. It is currently underfunded. The Great Barrier Reef Marine Park Authority faces enormous challenges and cannot afford to find $350,000 out of its current budget allocation.

The other concern I have is that, since the people at AMPTO were given the announcement three weeks ago that they were to be funded with this money, they have not heard a thing from the government or from Senator Hill. I am here tonight to advise the government that the crown-of-thorns starfish outbreak requires immediate action. It is not something about which this government can just say to the industry, ‘Off you go, and do not worry. The money will be there when you come back for it.’ The history of the relationship between this government and AMPTO has been one of the government saying, ‘Do not worry about it, it will be okay in the end.’ I think people in the industry are now at the point where they want to see the colour of the government’s money and, quite rightly, they do not want to see this money coming out of the GBRMPA’s budget. As I said earlier, AMPTO operators are spending $2.3 million a year on eradication in the Cairns-Port Douglas area alone. This money funds a live aboard vessel with a number of divers who work every day removing crown-of-thorns starfish from reefs that are visited heavily by terrorists. That is all the work they can do. They cannot go to those reefs which are not visited by the major tour operators.

To return to the research in the brief time I have left, I recognise that this ongoing research is important and it will direct the long-term response to crown-of-thorns starfish on the Great Barrier Reef, but the industry and the reef itself need a focus on more tangible and real outcomes for the present. I am advised that $50,000 is needed now to model larvae flows. If this work had already been undertaken, we would be able to respond to the event far more quickly at the moment. We are told that it is a naturally occurring event—we heard that today. I suggest to the government that they need to apply the precautionary principle to that theory. If we are going to wait for this naturally occurring event to come to its conclusion, we will end up in a situation where, lo and behold, we find that there is no Great Barrier
Reef left for us to earn $2 billion a year from, as the tourism industry of North Queensland does. I welcome Labor’s commitment of $2 million for both eradication and research, and I look forward to the day when we can see it happen. *(Time expired)*

Australian Search and Rescue: Australian Maritime Safety Authority

Senator O’BRIEN (Tasmania) (10.36 p.m.)—The serious problems with the administration of search and rescue services by the Australian Maritime Safety Authority exposed on the ABC *Four Corners* program tonight further highlight the failure of the minister for transport to properly administer his portfolio. There has been considerable attention paid to the circumstances surrounding the loss of the *Margaret J* in April and to the role of AMSA in the subsequent search for the vessel and its occupants. *Four Corners* has now exposed the detail of how the authority failed to apply all the resources it could muster to finding that boat and those fishermen. It was asked to help, and it refused.

The evidence presented by *Four Corners* confirms that the Chief Executive Officer of AMSA and the Manager of Australian Search and Rescue misled the Senate estimates committee on 31 May. It is clear from the program that AusSAR’s own records confirm that it was asked to take over the search for the *Margaret J* on 13 April and then again on 15 April. Despite its obligation to do so in accordance with the agreed arrangements with the state of Tasmania, and despite an overwhelming moral obligation to try to find the missing fishermen, AusSAR said no. This evidence also supports information provided to me that the request from the Tasmanian police for AusSAR to take over the search on 13 April was refused because, in the view of AusSAR, the police had not exhausted their search effort. The evidence also supports advice to me that on 15 April AusSAR rejected a second request from the Tasmanian police because the boat had been missing for six days, the search area was too large and it was not worth searching, in the absence of new intelligence.

The officers who gave evidence to the committee on 31 May should be called before the committee at the earliest opportunity. Information about this matter exposed by *Four Corners* also suggests that the failed search for the *Margaret J* did not flow only from errors of judgment by AMSA officers in relation to that search; the evidence suggests that debilitating administration deficiencies within the organisation were part of the problem. These administrative problems must be addressed by Mr Anderson as a matter of urgency, and Mr Anderson must also be held to account for what is nothing short of a scandal. It is Mr Anderson who must go to the board of AMSA and remind the board of its charter. It is Mr Anderson who must take control of this situation to ensure that there is an adequate Commonwealth search and rescue capacity.

Mr Anderson holds a simple view of his role in relation to the agencies within his portfolio—in particular, the Civil Aviation Safety Authority and the Australian Maritime Safety Authority. Mr Anderson’s view is that AMSA is a specialist body overseen by an independent board—he sees no role for himself in it at all—and he is of the view that he should not be held to account for any failings of the authority. This view is at best naive or at worst politically opportunistic. I fear it is the latter.

In relation to AMSA, there is a clear chain of accountability and it stops with Mr Anderson. AMSA staff is accountable to management, management is accountable to the board, the board is accountable to the minister and the minister is accountable to the parliament. The minister is accountable to this place because AMSA is required to report to him and he is then required to report to the parliament. Nor can Mr Anderson claim that he has no role to play and no ability to influence the manner in which the authority does its job. If the authority is failing to do its job—and tragically it is—the Australian Maritime Safety Authority Act 1990 gives Mr Anderson the power to do something about it. That act gives him the power to issue written directions of a general nature relating to the performance of the authority’s functions. Mr Anderson can monitor closely the performance of the authority by requiring that the corporate plan...
contain performance indicators and a review of the authority’s performance against previous corporate plans. He also has the power to seek a variation to the authority’s corporate plan to ensure that it meets all its obligations. The minister may also give notice in writing to the authority of his views in relation to its strategic direction or how it should perform its functions, and the authority is required to take these ministerial notices into account. As a last resort, the minister can convene a meeting with the authority board at any time to raise concerns in person about how it is performing its duties, but it appears that he has chosen to ignore his responsibilities.

There is a fundamental issue that must be clarified by this minister. What did he know about this search? And when did he know it? Mr Anderson received an information brief from his department on 2 May this year about the circumstances surrounding the search for the Margaret J. AMSA provided a briefing to the department on 13 May for Senator Ian Macdonald’s attendance at the estimates hearing that occurred at 31 May. That brief then went to Mr Anderson’s office on 16 May. Mr Anderson received a question time brief from AMSA through the department on 15 May. Mr Anderson then received a question time brief on 4 June, a further question time brief update on 18 June, and then another on 27 June.

If the briefing provided by AMSA through the department contains advice consistent with the AusSAR record that shows that the police twice requested that the authority take control of the search but that AusSAR twice refused, then he is party to what was a blatant misleading of the Senate on 31 May, and parliament should act accordingly. However, if the briefing to Mr Anderson reflected the misleading evidence given by AMSA officers to the Senate, then he too has been misled by these officers and he should take immediate and appropriate action. To date, Mr Anderson has managed to skate through by ignoring his responsibilities in the transport portfolio. There is now mounting evidence that a key safety authority within his portfolio has failed to do its job. We have three people who may well have lost their lives as a result of AusSAR failing to do its job. Someone must be held to account.

**Northern Territory Election**

**Senator SCHACHT** (South Australia) (10.43 p.m.)—I rise tonight to put on record my congratulations to Clare Martin and the Northern Territory Labor Party on their outstanding victory in the election held on Saturday, 18 August. Today we saw the result of that election and, for the first time in the history of the Northern Territory since they got self-government, there is now an elected Labor government in that Territory. I, like many people—I suppose most people—believed that at the least there was a possibility when the election was called that the Labor Party could improve on its seven seats out of 25, maybe win a couple of extra seats, and show that the Labor Party was gathering some strength in the Northern Territory.

During the last week of the election campaign, I saw some television reports and it became obvious to me that Mr Burke, the Leader of the Country Liberal Party, was looking increasingly worried. He lost all semblance of a smile and looked dour and grumpy. I thought it meant that he must have been getting some market research from within his own party that not everything was going well in his campaign. Of course, on election night, I—and I think most ordinary people in the community who support democratic reform and democratic change—was delighted to see the Labor Party win the election. It was obvious by the close of counting on Saturday night that, if there were not going to be a Labor government outright, there would be a minority Labor government, supported by at least one Independent.

Clare Martin—and the Labor Party—deserves great credit for the way she conducted herself in that campaign. She proved an absolute antidote to the old-style Country Liberal Party, which was running a red-necked, narrow-minded, abusive, negative campaign. She was positive, explained what she would do in government, was articulate and was pleasant to people, unlike the Country Liberal Party, which through their 27 years of arrogance in perpetually winning elections believed they could treat the voters with contempt, do anything they liked how they
liked and when they liked and still win the election.

I noticed in one of the newspapers—I think it was the Melbourne *Age*—about five days out from polling day that there was an interview with a woman running a store in a small settlement on the Gulf of Carpentaria. She said that she had been a lifelong supporter of the Country Liberal Party but that on this occasion she was not supporting the Country Liberal Party. She referred to the arrogance of that party and the treatment of people who did not support it and she pointed out that the previous electorate that she had been in—I think it was called Barkly—had been a CLP electorate for many years but over the last couple of elections had become a Labor seat or that part of it where she lived had been added into Barkly. She noticed that, as soon as they were in a Labor held seat in the Northern Territory, the government expenditure on services was cut back as punishment—the old Bjelke-Petersen trick in Queensland: you get government services only if you vote for a National Party candidate. That was the style of the Country Liberal Party in the Northern Territory after 26 or 27 years of arrogance.

But this has not been an uncommon result over the last 12 months in Australia, although it was an outstanding one and one that was least likely to have a clear-cut victory for the Labor Party, according to all the pundits—including us. I just want to draw attention to the fact that, during 2001, there have been a significant number of elections in this country—in Western Australia, in Queensland, in the by-elections in the electorates of Ryan and Aston and now in the Northern Territory—and the one common feature in every one of these elections was that the first preference vote of the conservative party, usually the Liberal Party and in the case of the Northern Territory the Country Liberal Party, dropped from anywhere between five and 10 per cent. The pattern is consistent, and now it is not even remarkable. Every time the voters in Australia now get a chance to go to the polling booth and cast their vote in whatever election it is—a state election or a federal election—they are actually casting their vote away from the coalition or, in particular, the Liberal Party. In Queensland, the voters decimated both the Liberal Party and the National Party.

In fact I asked a journalist the other day, ‘When was the last time there was a swing to the Liberal Party in a federal or state election in this country?’ It is almost like a trivial pursuit question or a question you might ask on *Who wants to be a millionaire?* The answer is March 1996, when the Howard government was elected for the first time. That is the last time there was a first preference swing to the Liberal Party in a federal or state election. I do recognise that in the last Territory election, in 1997, there was a small swing to the Country Liberal Party. But, if you go to the state and federal elections, since March 1996 the trend is clear.

That does not mean that we in the Labor Party are arrogant or taking the coming election for granted. We are not. But I do want to point out to the pundits in the press gallery and the spin doctors from the present government who seem to be chasing around and beating up all sorts of minor stories in this place that they ought to keep a balance and look at what has happened when the electorate has gone to the polling booth in the last five years in Australia. The Liberal Party vote has gone down and keeps going down.

In the time I have available to me tonight, I will not go into all the reasons why I think that is clear, but there is no doubt that ordinary Australians are fed up with having their services cut and their living standards reduced by the policies of this present government. And what did we get last week from the Prime Minister? A comment that he is not going to do any more for education and health, that it is all pretty good, and the only thing he might think about is giving a tax cut when there is an increase in the surplus. Most ordinary Australians know that a tax cut will disappear overnight. They want money spent on the services of education and health. It does not matter whether they are Labor or Liberal, whether they are National Party or Democrat, ordinary Australians living across this country, particularly in regional areas, know that a tax cut just disappears overnight.
Mr Burke, after he apologised for the preferences to One Nation, openly stated that the issue of the GST had an influence on the Northern Territory election. And it will be an issue that this federal government will be judged upon by the public in the coming federal election. Irrespective of what people think—that it is here forever or that it cannot be rolled back completely—they will punish the party that has put on them the GST, particularly low and middle income earners who have not had the benefit of the big tax cuts.

We have Mr Howard talking about reducing taxes, getting the top scale down from 49c to 37c, or even to the company tax rate of 30c. That helps the top five per cent of people in this country. He is not talking about significant tax cuts for the people who earn $32,000 or $34,000 a year, which is the median wage in this country. He is talking about giving it to the rich, the millionaires, the five per cent of people on incomes of over $80,000, $90,000 or $100,000. There are not too many people, whether they are employees or farmers, out in the regional areas of Australia earning incomes like that.

I wanted to use this opportunity to congratulate Clare Martin and the Northern Territory Labor Party on removing their version of the Berlin Wall. After 27 years of one-party rule, Clare Martin showed that well-presented, positive policies can, in the end, succeed against narrow-minded parochialism and stupidity. I think all Australians will welcome the new government with joy and see that it is possible to promote our society in a positive way and govern with an expansive view rather than the narrow-minded, negative view which was the mark of the old CLP government.

Senate adjourned at 10.53 p.m.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Aged Care: Accommodation**

*(Question No. 3664)*

**Senator Chris Evans** asked the Minister representing the Minister for Aged Care, upon notice, on 28 June 2001:

1. (a) How many residential aged care places are currently closed due to refurbishment or relocation (i.e. places that were operating but have been closed); and (b) how many closed places are in each planning region, separately identifying the number of high and low care places.

2. Can a list be provided of the aged care facilities that have closed and relocated since June 1999, indicating the original postcode of the facility, the number of beds, whether they were high or low care and to what postcode the beds were transferred.

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<th>Facility A</th>
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**Senator Vanstone**—The Minister for Aged Care has provided the following answer to the honourable senator’s question, in accordance with advice provided to her:

1. (a) and (b) Since the reforms 210 homes have either closed or relocated.

2. Allocations are made according to Aged Care Planning Regions and not on a postcode or electorate basis.

**Roads: Black Spot Program Funding**

*(Question No. 3672)*

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

1. When was the former Minister, Mr Vaile, or the department first contacted about possible funding for an upgrade of the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program.

2. (a) Who made the contact; and (b) what was the nature of the contact.

3. When did the former Minister or the department receive a formal application for funding for an upgrade of the Delegate to Delegate River Road and Browns Camp Road.

4. (a) What was the composition of the consultative panel responsible for the above application; and (b) did that consultative panel formally endorse the above application; if so, when did the panel formally endorse the application.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. The first record of contact with the Department about possible Black Spot funding for an upgrade of the Delegate to Delegate River Road was on 23 July 1997.

2. (a) The Land Transport Adviser to the then Minister for Transport and Regional Development, Mr Sharp

   (b) An informal inquiry from the Minister’s office asking the Department to ascertain what plans the NSW Roads and Traffic Authority had to upgrade the Delegate to Delegate River Road.

3. A formal nomination for an upgrade of the Delegate to Delegate River Road was received in the office of the Minister for Transport and Regional Development on 21 October 1997.

4. (a) The NSW Consultative Panel’s composition as at 28 July 1997 was:

   - The Hon Michael Ronaldson, MP (chairman)
   - Cr Bill Bott  Local Government and Shires Association of NSW
   - Mr Terry Dene *  Road Freight Advisory Council
Mr John Hely Institute of Municipal Engineering Australia
Inspector Dave Evans New South Wales Police Service
Mr Marzi de Santi National Roads and Motorists Association
Ms Janice Frape Federation of Parents and Citizens Associations of NSW
Mr Steve Procter Roads and Traffic Authority NSW
Mr Gavin Anderson Council on the Aging
* Mr Dene was represented at the July 1997 meeting by Mr Malcolm Paine
** Mr Anderson did not attend the July 1997 meeting
(b) No, the nomination was received after the panel meeting was conducted.

Roads: Black Spot Program Funding
(Question No. 3673)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:
(1) When did the department first provide the former Minister, Mr Vaile, or his office with advice in relation to the request for funding to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program.
(2) (a) On how many other occasions did the department provide advice in relation to the above application; and (b) on each occasion, was the advice provided following a request from the former Minister, or his office, or was the advice provided on the initiative of the department.
(3) When did the department provide a formal recommendation to the former Minister in relation to the above application for funding.
(4) Did the former Minister, or the former Minister’s land transport adviser, formally approve the above application for funding.
(5) When was the application formally approved.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:
(1) Records indicate that the Department first provided formal advice to the Minister’s office in relation to the request for funding to upgrade the Delegate to Delegate River Road on or about 23 October 1997. It is likely that informal advice was provided prior to this date, although there are no records.
(2) (a) Records indicate that the department provided formal advice to the Minister or Minister’s office in relation to the request for funding to upgrade the Delegate to Delegate River Road on at least two other occasions.
   (b) The first two occasions were provided following a request from the Minister’s office and the third was part of the Department’s submission to the Minister for approval of the 1997/98 NSW Program.
(3) 12 December 1997.
(4) The then Minister for Transport and Regional Development, Mr Vaile, approved the application.
(5) The application was approved on 20 December 1997.

Roads: Black Spot Program Funding
(Question No. 3674)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:
(1) What was the length of road contained in the application for funding to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program.
(2) (a) What is the exact location of the above section of road; and (b) how many curves in the above section of road required upgrading for safety reasons.
(3) (a) When did the work on the above project commence; (b) who were the contractors; (c) what was the final cost of the work; and (d) when was the work completed.

(4) (a) What tender process was followed in the letting of the above contracts; (b) when were tenders called; and (c) when was the successful tender advised.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) 11.7 km

(2) (a) The section of road which was the subject of an application for funding is on the Delegate to Delegate River Road (also known as Main Road 93) and extends from approximately 1.2 km south of Delegate to the Victorian border.

(b) There are many curves of varying degrees of curvature on this section of road. Each of these could have benefited from upgrading for safety reasons. Thirteen specific locations were identified in the reverse tender by the successful tenderer for minor realignment, drainage, earthworks and pavement works on curves and approaches to curves.

(3) (a) Work commenced in early March 1999.

(b) Oxbara Pty Ltd (trading as Rye Plant Hire Pty Ltd).

(c) The cost of the work to the Black Spot Program was $250,000.

(d) The work was completed on 10 May 1999.

(4) (a) A “reverse tender” process, managed by the Southern Region Office of the NSW Roads and Traffic Authority in accordance with its established tender provisions.

(b) The tender was advertised on 24, 26, and 31 August and 9 September 1998. A pre-tender meeting was held on 9 September 1998 and tenders closed on 23 October 1998.

(c) The successful tenderer was advised on 15 February 1999.

Roads: Black Spot Program Funding

(Question No. 3675)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

(1) Did the submission for funding to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program include a commitment to provide funding, labour or materials from other government or community and/or industry sources; if so: (a) what was the level of funding offered; and (b) what was the source of the funding.

(2) If labour or materials was offered as part of the above submission: (a) what was the value of those resources; and (b) who was to provide the labour and materials.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No.

(2) Not applicable.

Roads: Black Spot Program Funding

(Question No. 3676)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

(1) When was funding to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program paid to the New South Wales Government.

(2) When did the New South Wales Government certify that the above project conformed to the requirements of federal and state environmental legislation.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:
(1) Payments to States are for an approved program of works as a whole, not for individual Black Spot Projects.

The first payment of Black Spot funding to the NSW Roads and Traffic Authority (RTA) for the 1997/98 approved program was made on 27 February 1998.

(2) The RTA tender document included the following environmental requirement:

“The contractor shall ensure that all work is undertaken so as to minimise damage to the environment and that environmental requirements are included in the contractor’s Quality System. The Contractor is to prepare an Environmental Management Plan (EMP) to assure compliance with RTA QA Specification G5 - Environmental Protection Requirements.”

This condition was considered adequate to ensure that the project conformed to the requirements of federal and state environmental legislation.

**Roads: Black Spot Program Funding (Question No. 3677)**

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

Did the former Minister, Mr Vaile, or his office impose any conditions on funding to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program paid to the New South Wales Government; if so: (a) who imposed the conditions; (b) what were the conditions; and (c) what was the basis for those conditions being imposed.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(a) The Land Transport Adviser to the then Minister for Transport and Regional Development, Mr Vaile, advised conditions imposed on the funding to upgrade the Delegate to Delegate River Road.

(b) The conditions were that there be a reverse tender, that tender invitations be advertised in local newspapers and that no funds be paid without authorisation from the Minister’s Office.

(c) The Minister’s Land Transport adviser sought the conditions.

**Roads: Black Spot Program Funding (Question No. 3678)**

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

(1) How many written reports have been provided by the New South Wales Government to the Australian Transport Safety Bureau on the project status of the upgrading of the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program.

(2) (a) What was contained in each of the above reports; and (b) what action did the Commonwealth take in response to the above reports.

(3) Can a copy of each of the above reports be provided.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Detailed reports on individual projects are not required under the Federal Road Safety Black Spot Program guidelines. The project was covered in generic reports of approved program expenditure made by the NSW Roads and Traffic Authority when seeking additional grant payments according to program implementation.

(2) (a) These generic reports cover the entire state program and deal primarily with both actual and forecast expenditure on a program basis.

(b) Status reports are used to schedule payments to the States.

(3) Not applicable.

**Roads: Black Spot Program Funding (Question No. 3679)**

**Senator O’Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:
(1) What was the benefit to cost ratio of the project to upgrade the Delegate to Delegate River Road and Browns Camp Road, reference number N00752, through the Federal Road Safety Black Spot Program.

(2) What was the history of casualty crashes per kilometre on the road length covered by Black Spot Project N00752 for the period of: (a) one year; (b) 2 years; (c) 3 years; (d) 4 years; and (e) 5 years prior to the application for funding under the program.

(3) How did the above crash rate compare with other roads in the region at the time of the application for black spot funding.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Safety benefit-cost was one of the factors used by the NSW Roads and Traffic Authority in evaluating conforming tenders. A safety benefit-cost ratio was calculated for the proposal developed by the successful tenderer. The Department requested this information from the RTA, however the RTA was unable to make this available.

(2) The road length recorded 11 casualty crashes from 1991 to 1997, including:
   (a) 1 casualty crash in the year prior to the application, which is equivalent to 0.085 casualty crashes per kilometre per year;
   (b) 2 casualty crashes in the 2 years prior to the application, which is equivalent to 0.085 casualty crashes per kilometre per year;
   (c) 5 casualty crashes in the 3 years prior to the application, which is equivalent to 0.142 casualty crashes per kilometre per year;
   (d) 6 casualty crashes in the 4 years prior to the application, which is equivalent to 0.128 casualty crashes per kilometre per year;
   (e) 8 casualty crashes in the 5 years prior to the application, which is equivalent to 0.137 casualty crashes per kilometre per year.

(3) No comparison was undertaken by the Department of the crash rate on Delegate to Delegate River Road with other roads in the region.

Roads: Black Spot Program Funding
(Question No. 3680)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

(1) Was a road safety audit, in accordance with the minimum standard as described in the AUSTROADS publication Road Safety Audit, undertaken on the length of the Delegate to Delegate River Road and Browns Camp Road that attracted funding through the Federal Road Safety Black Spot Program; if so: (a) when did the audit commence; (b) when was the audit completed; (c) who undertook the audit; and (d) who initiated the audit.

(2) Can a copy of the audit be provided.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No.

(2) Not applicable.

Roads: Black Spot Program Funding
(Question No. 3681)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 2 July 2001:

(1) Where is Trunk Road 93 located.

(2) Since 1996, has Trunk Road 93 attracted any federal funding; if so: (a) when was federal funding provided for the above road; (b) what was the nature of the funding; (c) who requested the funding; and (d) who approved the funding.
Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Trunk Road 93 (or Main Road 93), also known as the Delegate to Delegate River Road, is located in the Shire of Bombala, NSW, extending from the Monaro Highway, South of Bombala, to the Victorian border.

(2) Yes
   (a) Funding was approved on 20 December 1997 and provided in the 1997/98 and 1998/99 financial years.
   (b) Road Safety Black Spot Program funding of $250,000 for “safety upgrading associated with curves”.
   (c) Funding was requested by the Secretary of the Delegate River and Border Districts Progress Association.
   (d) The then Minister for Transport and Regional Development, Mr Vaile.

Employment, Workplace Relations and Small Business Portfolio: Missing Computers
(Question No. 3738)

Senator Faulkner asked the Minister representing the Minister for Employment, Workplace Relations and Small Business, upon notice, on 25 July 2001:

(1) Have there been any desktop computers or any other item of computer hardware, other than laptop computers, lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) what and how many have been lost; (b) what and how many have been stolen; (c) what is the total value of these items; (d) what is the normal replacement value per item; and (e) have these items been recovered or replaced.

(2) Have the police been requested to investigate any of these incidents; if so; (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.

(3) How many of these lost or stolen items had departmental documents, content or information other than software on their hard disc drives, floppy disc, CD Rom or any other storage device.

(4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.

(5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.

(6) What departmental disciplinary or other action have been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4).

Senator Alston—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator’s question:

(1) (a) no desktop computers have been lost; (b) one desktop computer and various computer hardware (memory stick, central processing unit, monitor, CD writer and drive unit, motherboard, and hard drives) have been stolen; (c) the total value of the desktop computer was $1,581 and the total value of computer hardware was approximately $5,300; (d) normal replacement value for the desktop computer is approximately $2,300 and a total of $5,800 for the computer hardware; and (e) none of the items have been replaced or recovered.

(2) The police were asked to investigate in relation to the desktop computer and hardware; (a) the desktop computer was the subject of police investigation; police did not investigate the items of hardware stolen due to the timeframe during which some of the thefts could have occurred and the number of people who could have had access to the equipment (b) police investigation has concluded for the stolen computer; (c) no legal action has commenced; and (d) action has concluded without the stolen computer being replaced or recovered.

(3) There were some documents contained on the hard drive of the stolen computer.

(4) (a) None of the documents etc. in (3) were classified for security or any other purpose.
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(5) (a) None of the documents etc. in (3) have been recovered; and (b) none of the documents etc. in (4) have been recovered.

(6) No departmental disciplinary action has been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4). As part of the Department’s continuous improvement, internal controls have been strengthened.

Employment, Workplace Relations and Small Business Portfolio: Missing Laptop Computers

(Question No. 3757)

Senator Faulkner asked the Minister representing the Minister for Employment, Workplace Relations and Small Business, upon notice, on 25 July 2001:

(1) Have there been any laptop computers lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) what and how many have been lost; (b) what and how many have been stolen; (c) what is the total value of these items; (d) what is the normal replacement value per item; and (e) have these items been recovered or replaced.

(2) Have the police been requested to investigate any of these incidents; if so; (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.

(3) How many of these lost or stolen items had departmental documents, content or information other than software on their hard disc drives, floppy disc, CD Rom or any other storage device.

(4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.

(5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.

(6) What departmental disciplinary or other action have been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4).

Senator Alston—The Minister for Employment, Workplace Relations and Small Business has provided the following answer to the honourable senator’s question:

(1) (a) no laptop computers have been lost; (b) six have been stolen; (c) the total value of the laptop computers stolen was approximately $23,000 (d) the average replacement value per laptop computer is $4,000; and (e) none of the laptop computers have been recovered although two have been replaced.

(2) (a) two cases were the subject of police investigation; (b) police investigations have concluded; (c) no legal action commenced; and (d) both cases have concluded with no recovery of stolen or lost items.

(3) There were some departmental documents, content or information other than operating software on the hard drive of one of the stolen laptops.

(4) (a) None of the documents etc. in (3) were classified for security or any other purpose; and (b) no security classification was involved.

(5) (a) None of the documents etc. in (3) have been recovered; and (b) none of the documents etc. in (4) have been recovered.

(6) No departmental disciplinary or other action has been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4). As part of the Department’s continuous improvement, internal controls have been strengthened.

Australian Foundation for Disabled: Employee and Superannuation Payments

(Question No. 3780)

Senator Allison asked the Minister for Family and Community Services, upon notice, on 25 July 2001:

(1) Did the department provide $3.354 million to the Australian Foundation for Disabled (trading as Afford) which supported employment programs in the 1999-2000 financial year.
(2) Is the Minister aware that Afford has only recently started to pay employees at Newcastle, Blacktown and Guildford superannuation.

(3) Why has Afford been able to avoid paying the agreed (as negotiated in a contract between the employer, unions and key disability groups) flat rate of $6 a week superannuation to employees since 1996, only resuming payment of superannuation after a television crew from Today Tonight highlighted the situation.

(4) Is it true that the agreed minimum wage was also not being paid until the Today Tonight program last year.

(5) According to the Australian Foundation for Disabled annual reports of 1997, 1998 and 1999, it was paying a flat rate superannuation payment of $6 a week for all employees with a disability. Where did the money that was supposed to go into superannuation payments actually go.

(6) Under what circumstances was Afford allowed to request that all employees’ superannuation statements be sent directly to it and not the individual employee.

(7) How many of the 500 plus people employed by Afford have not had their full entitlements paid over the past 5 years.

(8) What steps are in place to ensure that workers who were entitled to superannuation payments and who may have left the company are paid their full entitlements.

(9) When did the department last review Afford and its practices as required by the Disability Services Act 1986 and what was the result of that review; if there has been no review in the past 5 years: (a) why not; (b) when will it review Afford; (c) when was the last review done; (d) how many other supported employment contractors have not been reviewed; and (e) how does the department intend to meet its obligations under the Act.

(10) Can the self-assessment reports that Afford is required to produce annually for the department be provided.

(11) What processes are in place to ensure that companies receiving partial funding from government departments are held accountable.

(12) (a) Is the Minister aware that when the Australian Foundation for Disabled built its new double storey offices in Minchinbury it failed to provide wheelchair access to the second floor where, amongst other things, the board room is located; (b) what obligations are placed on companies working with disabled employees to provide suitable and reasonable, given the circumstances, access to buildings; and (c) is it inappropriate for a newly-built office for the Australian Foundation for Disabled not actually to have full access for the disabled.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Afford received $2.7 million in funding under the Disability Services Act 1986 from the Department of Family and Community Services for the 1999/2000 financial year.

(2) The Department’s understanding is that Afford has been paying award-based employer superannuation payments for all employees from 1 October 2000.

(3) The Department understands that Afford has been paying award-based employer superannuation payments for all employees since 1 October 2000. Prior to that Afford had not been making employer superannuation payment for employees working at Afford outlets not listed in the award as their legal advice was that the award did not apply to those employees. Nonetheless Afford started making employer superannuation payments for employees across all outlets and backdated this to 1 October 2000.

(4) Afford has an obligation to pay wages under The Australian Liquor, Hospitality and Miscellaneous Workers Union Supported Employment (Business Enterprises) Award 1993. Departmental investigations have found no evidence that Afford was not paying in accordance with the award, except in relation to the outlets not listed in the award. These were brought into line with other Afford outlets in October 2000.

(5) The relevant award requires employer superannuation contributions to be made to the Australian Retirement Fund. The Department understands that Afford was meeting its superannuation obligations for all employees over the period 1997 – 1999 except for the outlets not listed in the relevant award. These were brought into line with other Afford outlets in October 2000.
(6) Afford, like any other employer is required to comply with all relevant superannuation legislation. The Department understands that Afford is meeting its obligations in this area.

(7) The detailed information required to answer this question would require a level of effort and resources I do not consider appropriate.

(8) Departmental advice is that Afford is currently examining this issue.

(9) The Department audited all of Afford’s existing outlets from 1996 - 2000. These audits looked at whether Afford was complying with the Commonwealth Disability Service Standards. The last Departmental audit was conducted in May 2000 and involved the Newcastle outlet. This audit found that the Newcastle outlet was meeting all relevant standards.

(10) Any self-assessment reports held by my Department are obtained in confidence and therefore I’m not in a position to provide them.

(11) Disability Employment Services need to sign an agreement with the Commonwealth to qualify for funding. This agreement places a number of obligations on these services, including:

- Services must comply with disability service standards. Every five years the Department undertakes an audit of services to determine their compliance. Yearly, all services are required to submit an annual plan, outlining how they will meet the disability service standards
- Services must report annually on their financial affairs.
- Services are required, on an annual basis, to submit plans demonstrating how they will comply with the standards.
- Services must report annually against agreed performance targets.

The new Quality Assurance System will require disability employment services to meet all standards (including providing appropriate employment conditions) to be eligible for Commonwealth funding.

(12) The Department requires disability employment services to ensure that they are complying with all relevant state and territory laws. This includes the Disability Discrimination Act 1992 which addresses issues like building access. The Department encourages services to ensure that each person with a disability has the opportunity to participate as fully as possible in decisions about the services they receive. The Department understands that Afford is examining issues of access in relation to its office building.

Nehl, Mr Gary: Interview
(Question No. 3782)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 27 July 2001:

In Mr Gary Nehl’s interview about Tibet shown in China on CCTV9 on 16 July 2001, was he authorised to speak as the Deputy Speaker of the House of Representatives (as shown in the subtitle) or is no such authorisation required.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

No such authorisation is required.
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