**INTERNET**

The Journals for the Senate are available at:


Proof and Official Hansards for the House of Representatives, the Senate and committee hearings are available at:


**SITTING DAYS—2002**

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>12, 13, 14</td>
</tr>
<tr>
<td>March</td>
<td>11, 12, 13, 14, 19, 20, 21</td>
</tr>
<tr>
<td>May</td>
<td>14, 15, 16</td>
</tr>
<tr>
<td>June</td>
<td>17, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>August</td>
<td>19, 20, 21, 22, 26, 27, 28, 29</td>
</tr>
<tr>
<td>September</td>
<td>16, 17, 18, 19, 23, 24, 25, 26</td>
</tr>
<tr>
<td>October</td>
<td>14, 15, 16, 17, 21, 22, 23, 24</td>
</tr>
<tr>
<td>November</td>
<td>11, 12, 13, 14, 18, 19, 20, 21</td>
</tr>
<tr>
<td>December</td>
<td>2, 3, 4, 5, 9, 10, 11, 12</td>
</tr>
</tbody>
</table>

**RADIO BROADCASTS**

Broadcasts of proceedings of the Parliament can be heard on the following Parliamentary and News Network radio stations, in the areas identified.

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **BRISBANE** 936 AM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 729 AM
- **DARWIN** 102.5 FM
SENATE CONTENTS

THURSDAY, 14 MARCH

Notices—
Presentation ..................................................................................................... 735

Business—
Rearrangement................................................................................................. 736

Notices—
Postponement .................................................................................................. 736

Lucas Heights: Nuclear Reactor ........................................................................... 737

Committees—
Superannuation Committee—Establishment................................................... 737
Legal and Constitutional Legislation Committee—Extension of Time........... 738
Privilege: Senator Heffernan................................................................................. 738

Committees—
Membership ..................................................................................................... 744

Security Legislation Amendment (Terrorism) Bill 2002 [No. 2],
Suppression of the Financing of Terrorism Bill 2002,
Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002,
Border Security Legislation Amendment Bill 2002 and
Telecommunications Interception Legislation Amendment Bill 2002—
First Reading ................................................................................................... 744
Second Reading .................................................................................................. 744

Transport and Regional Services Legislation Amendment (Application of
Criminal Code) Bill 2001,
Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 and
Interstate Road Transport Charge Amendment Bill 2002—
First Reading ................................................................................................... 752
Second Reading .................................................................................................. 752

Regional Forest Agreements Bill 2002—
In Committee ................................................................................................... 755
Declaration of Urgency ........................................................................................ 770
Allotment of Time .............................................................................................. 771

Business—
Rearrangement................................................................................................. 776

Higher Education Legislation Amendment Bill (No. 1) 2002—
Second Reading .................................................................................................. 776
Third Reading ...................................................................................................... 777

Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 and
Interstate Road Transport Charge Amendment Bill 2002—
Second Reading ................................................................................................... 777
Third Reading ...................................................................................................... 778

Transport and Regional Services Legislation Amendment (Application of
Criminal Code) Bill 2002—
Second Reading .................................................................................................. 778
Third Reading ...................................................................................................... 778

Coal Industry Repeal (Validation of Proclamation) Bill 2002—
Second Reading ................................................................................................... 779
Third Reading ...................................................................................................... 779

Commonwealth Inscribed Stock Amendment Bill 2002—
Second Reading ................................................................................................... 779
SENATE CONTENTS—continued

Third Reading.................................................................................................. 779

Financial Services Reform (Consequential Provisions) Bill 2002—
  Second Reading............................................................................................... 779
  In Committee................................................................................................... 779
  Third Reading................................................................................................. 780

Protection of the Sea (Prevention of Pollution from Ships) Amendment
  Bill 2002—
  Second Reading............................................................................................... 780
  Third Reading................................................................................................. 784

Human Rights and Equal Opportunity Commission Amendment Bill 2002—
  Second Reading............................................................................................... 784
  Third Reading................................................................................................. 784

Business—
  Consideration of Legislation ........................................................................... 784

Ministers of State Amendment Bill 2002—
  Second Reading............................................................................................... 784

Taxation Laws Amendment (Film Incentives) Bill 2002—
  Second Reading............................................................................................... 785
  Third Reading................................................................................................. 787

Australian Citizenship Legislation Amendment Bill 2002—
  Second Reading............................................................................................... 787
  Third Reading................................................................................................. 801

Radiocommunications (Transmitter Licence Tax) Amendment Bill 2002—
  Second Reading............................................................................................... 801
  Third Reading................................................................................................. 801

Questions Without Notice—
  Defence: Intelligence....................................................................................... 801
  Employment: Workplace Reform................................................................... 801
  East Timor....................................................................................................... 802
  Howard Government: Economic Policy.......................................................... 803
  East Timor....................................................................................................... 804
  Centrelink: Breaching..................................................................................... 804
  Telstra: Services.............................................................................................. 805
  Attorney-General: Protocol............................................................................. 807
  Privilege........................................................................................................... 807
  Health: Program Funding .............................................................................. 808
  Agriculture: Economic Outlook .................................................................. 809
  Health: Program Funding .............................................................................. 809
  Insurance: Public Liability............................................................................ 811
  Reserve Bank of Australia: Proposals............................................................ 812
  Australian Institute of Sport .......................................................................... 813

Questions Without Notice: Take Note of Answers—
  Defence: Intelligence....................................................................................... 814
  East Timor....................................................................................................... 814
  Privilege: Senator Heffernan.......................................................................... 819

Committees—
  Economics Legislation Committee—Meeting .............................................. 820
  Selection of Bills Committee—Report............................................................ 820
  Legal and Constitutional Legislation Committee—Meeting........................ 821
Advance to the Finance Minister ................................................................. 821
Budget—
  Portfolio Budget Statements ................................................................. 821
Committees—
  Selection of Bills Committee—Report .................................................... 821
Regional Forest Agreements Bill 2002—
  In Committee .......................................................................................... 825
  Third Reading ......................................................................................... 909
Adjournment—
  Economy: Debt Management ................................................................ 911
  Migration Agents Registration Authority ................................................. 912
Questions on Notice—
  Agriculture: United States Farm Bill—(Question No. 13) ....................... 915
  Agriculture: United States Farm Bill—(Question No. 15) ....................... 916
  Immigration: Request for Asylum—(Question No. 19) ........................... 916
  Finance: Commonwealth Superannuation Schemes—(Question No. 79) 917
  Environment: European Fox—(Question No. 103) ................................. 918
  Environment: Coltan Mining—(Question No. 106) ................................. 920
  Immigration: Occupations in Demand—(Question No. 132) .................... 921
Thursday, 14 March 2002

The DEPUTY PRESIDENT (Senator West) took the chair at 9.30 a.m., and read prayers.

NOTICES

Presentation

Senator Bourne to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) 13 March 2002 was Burma’s 14th Human Rights Day and marks the killing of student, Phone Maw, in 1988, and

(ii) earlier in March 2002, the United States’ State Department released its 2001 report on human rights, in which it was noted that Burma’s record remains extremely poor and includes disappearances, forced labour, torture, forced relocations, arbitrary detention, and severe restrictions on freedom of political expression and religion; and

(b) calls upon the State Peace and Development Council to:

(i) take immediate steps to end violations of human rights, and

(ii) restore the rule of law in Burma.

Senator Jacinta Collins to move on the next day of sitting:

That the following matter be referred to the Economics References Committee for inquiry and report by 27 August 2002:

The impact of public liability insurance for small business and community and sporting organisations, with particular reference to:

(a) the cost of public liability insurance;

(b) reasons for the increase in public liability premiums; and

(c) schemes, arrangements or reforms that can reduce the cost of public liability insurance and/or better calculate and pool risk.

Senator Faulkner to move on the next day of sitting:

That the Electoral and Referendum Amendment Regulations 2001 (No. 1), as contained in Statutory Rules 2001 No. 248 and made under the Commonwealth Electoral Act 1918, be disallowed.

Senator Tierney to move on the next day of sitting:

That the Senate—

(a) recognises the outstanding triumph of the National Library of Australia’s ‘Treasures from the World’s Great Libraries’ exhibition, which saw 161 exhibits from 24 countries fascinate and intrigue the nation;

(b) congratulates Library Director General, Jan Fullerton, and Director of Exhibitions, Nat Williams, on the exhibition and its outstanding success;

(c) appreciates the good fortune Australians had to experience exhibits first hand, which included the first ever book published in English, part of Martin Luther King Jnr’s ‘I have a Dream’ speech, one of Beethoven’s music manuscripts, and letters from Florence Nightingale, John Keats, and Groucho Marx;

(d) applauds the National Library of Australia for attracting a record 115 081 people to the exhibition; and

(e) encourages the National Library of Australia to organise similarly innovative exhibitions in the future.

Senator Stott Despoja to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) on 13 March 2002 the Deputy President ruled that Senator Heffernan’s speech on the address-in-reply debate on 12 March 2002 was in breach of standing order 193, in that it contained offensive words, imputations of improper motives and personal reflections on a judicial officer,

(ii) the ruling noted that Senator Heffernan’s speech was so structured that it was impossible for the Chair to detect that the speech was in breach of the standing orders until the very end of the speech,

(iii) the nature of that speech strongly suggests that this breach of the standing orders was premeditated and deliberate,
Resolution 9 of the Senate’s Privilege Resolutions enjoins senators to take the following matters into account in speaking in the Senate:

(A) the need to exercise their valuable right of freedom of speech in a responsible manner,
(B) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament,
(C) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament,
(D) the need for senators, while fearlessly performing their duties, to have regard to the rights of others, and
(E) the desirability of ensuring that statements reflecting adversely on persons are soundly based,

The content and nature of Senator Heffernan’s speech strongly suggests that the speech was made in premeditated and deliberate disregard of the matters set out in that resolution, and

these circumstances raise the question whether Senator Heffernan has been guilty of a contempt of the Senate by committing a premeditated and deliberate breach of the rules of the Senate compounded by wilful disregard of those rules; and

refers the following matter to the Committee of Privileges:

Whether Senator Heffernan committed a contempt of the Senate in making his speech on 12 March 2002 in the address-in-reply debate.

Bussiness
Rearrangement

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

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

No. 5 Higher Education Legislation Amendment Bill (No. 1) 2002.
No. 6 Coal Industry Repeal (Validation of Proclamation) Bill 2002.
No. 7 Commonwealth Inscribed Stock Amendment Bill 2002.
No. 8 Financial Services Reform (Consequential Provisions) Bill 2002.
No. 9 Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002.
No. 11 Australian Citizenship Legislation Amendment Bill 2002.

Question agreed to.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.34 a.m.)—I move:

That the order of general business for consideration today be as follows:

(a) general business order of the day No. 15—Ministers of State (Post-Retirement Employment Restrictions) Bill 2002; and
(b) consideration of government documents.

Question agreed to.

NOTICES
Postponement

Items of business were postponed as follows:

General business notice of motion no. 35 standing in the name of Senator Greig for today, relating to the jurisdiction for settlement of property issues for de facto couples, postponed till 19 March 2002.

General business notice of motion no. 31 standing in the name of Senator Allison for today, proposing an order for the production of documents by the Minister for De-
fence (Senator Hill), postponed till 19 March 2002.

Government business notice of motion no. 1 standing in the name of the Minister for Forestry and Conservation (Senator Ian Macdonald) for today, relating to the consideration of bills between 12.45 pm and 2 pm on Thursdays, postponed till 16 May 2002.

General business notice of motion no. 33 standing in the name of Senator Ridgeway for today, relating to the Community Development Employment Projects Achievement Awards, postponed till 19 March 2002.

LUCAS HEIGHTS: NUCLEAR REACTOR

Senator CARR (Victoria) (9.34 a.m.)—as amended, by leave—I move the motion as amended:

That there be laid on the table, by the Minister for Communications, Information Technology and the Arts representing the Minister for Education, Science and Training (Senator Alston), no later than immediately after motions to take note of answers on Tuesday, 19 March 2002, the following documents:

(a) all documents provided by Australian Nuclear Science and Technology Organisation (ANSTO) officials based in Argentina to ANSTO or the Government since September 2001, including but not restricted to matters of the financial condition of INVAP, its capacity to fully deliver the current contract, its repeated applications for Argentinian government loans and any discussion of renegotiated financial arrangements for the Lucas Heights contract;

(b) all documents relating to discussions between the CEO of ANSTO and other senior ANSTO staff and INVAP or any other Argentinian government agency, including but not restricted to the financial circumstances of INVAP, its capacity to fully deliver the current Lucas Heights contract, its repeated applications for Argentinian government loans and any discussion or consideration of renegotiated financial arrangements for the contract;

(c) all documents relating to the termination provisions in the contract entered into with INVAP;

(d) all documents substantiating the claims made by the Minister for Science (Mr Peter McGauran) on the Radio National Earthbeat program on 23 February 2002 that, ‘We are constantly monitoring the situation, through our Ambassador specifically and ‘We are alert to any flow on effects from the difficulties of the Argentinian economy, but INVAP is insulated, to all intents and purposes, from those problems’; and

(e) all documents relating to:

(i) any variations in the specifications and capacity of the proposed new reactor since formal negotiations with INVAP were commenced,

(ii) any amendment to the provision of neutron beam assemblies, specifically any amendment to the provision of two thermal neutron beam assemblies and an additional beam assembly for a hot neutron source, and

(iii) project cost revisions consequent on such variations, as well as documents relating to the effect of any such variations on the research capacity and potential of the reactor.

Question agreed to.

COMMITTEES

Superannuation Committee Establishment

Senator ALLISON (Victoria) (9.35 a.m.)—I move:

(1) That a select committee, to be known as the Select Committee on Superannuation, be appointed to inquire into matters pertaining to superannuation referred to it by the Senate, and inquire initially into:

(a) the adequacy of the tax arrangements for superannuation and related policy to address the retirement income and aged and health care needs of Australians; and

(b) the taxation treatment applying to transfers from an overseas superannuation fund to an Australian regulated fund, with particular reference to whether the lump sum payment from an eligible non-resident/non-complying superannuation fund, under section 27CAA of the Income Tax Assessment Act 1936, should be treated as income
and when such tax liability (if any) should accrue and be paid.

(2) That the committee present its final reports on (a) and (b) by the last sitting day in September 2002.

(3) That the committee have power to consider and use for its purposes the minutes of evidence, records and documents of the Select Committees on Superannuation and the Select Committee on Superannuation and Financial Services appointed in previous parliaments.

(4) That the committee consist of 7 senators, 3 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by minority groups and independent senators.

(5) That the committee appoint a member nominated by the Leader of the Government in the Senate as its chair and a member nominated by the Leader of the Opposition in the Senate as its deputy chair.

(6) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

(7) That the deputy chair act as chair when there is no chair or the chair is not present at a meeting.

(8) That, in the event of the votes on any question before the committee being equally divided, the chair, or the deputy chair when acting as chair, have a casting vote.

(9) That the quorum of the committee be 3 members.

(10) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

(11) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any such subcommittee any of the matters which the committee is empowered to consider, and that the quorum of a subcommittee be a majority of senators appointed to the subcommittee.

(12) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

(13) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily *Hansard* be published of such proceedings as take place in public.

Question agreed to.

Legal and Constitutional Legislation Committee

Extension of Time

**Senator CAL VERT** (Tasmania) (9.36 a.m.)—On behalf of Senator Payne, I move:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the provisions of the Proceeds of Crime Bill 2002 and a related bill be extended to 10 April 2002.

Question agreed to.

PRIVILEGE: SENATOR HEFFERNAN

**Senator BROWN** (Tasmania) (9.36 a.m.)—I move:

That the Senate conveys to His Honour Justice Michael Kirby, and to the Chief Justice of the High Court, the Senate’s profound apology for the breach of standing orders by Senator Heffernan on 12 March 2002.

Question agreed to.

**Senator STOTT DESPOJA** (South Australia—Leader of the Australian Democrats) (9.37 a.m.)—Madam Deputy President, I seek leave to amend the motion.

Leave granted.

**Senator STOTT DESPOJA**—I move:

Omit all words after “Senate”, substitute “calls on Senator Heffernan to apologise to the Senate and to His Honour Justice Michael Kirby and the Chief Justice of the High Court of Australia for his breach of Senate standing orders on 12 March 2002”.

**Senator BROWN** (Tasmania) (9.38 a.m.)—by leave—I do not support the amendment. Senator Heffernan is not here, in the first place, to receive debate on that, but
it does manifestly change the very important thrust of my motion, which is to extend an apology from the Senate to the High Court and to His Honour Justice Michael Kirby. It is very appropriate that we as a community of elected representatives do so even though many of us are ourselves aggrieved by what happened. The important fact to note is that damage has been done to His Honour Justice Michael Kirby and to the High Court, both of whom are innocent in terms of what happened here two nights ago. It is very important that we follow through with an apology—while we cannot undo the damage—to express the feeling of regret of this chamber that those events took place. We know from the trajectory of events that, on the face of it, there appears to have been a deliberate attempt to get around the provisions of our own standing orders by Senator Heffernan. It was effectively a sneak attack on the Senate, in that he did not use the name of the honourable justice to whom he was referring until the last two words of quite a lengthy delivery to the Senate chamber. Therefore, while he is the perpetrator of the breach, and while the Senate was to some degree unable to defend the standing orders until it was too late, nevertheless I believe that we have a collective responsibility to express our regret about that and then to move on to rectify what has happened as best we can.

I note that Senator Stott Despoja has brought a motion in this morning to have the Privileges Committee look at the matter. That is where Senator Heffernan should be dealt with, that is where his behaviour should be analysed, and if any action is to be taken it should be taken. In my view, it should. But this motion is quite a different matter. I do not think we should leave our response to the High Court and to His Honour Justice Michael Kirby to Senator Heffernan of all people. I think we should be conveying our profound regret at the events that have occurred. I feel very strongly that that is the honourable thing for this honourable chamber to be doing, and we certainly should not put that into the hands of Senator Heffernan. Let him make his own response. I would say, through you, Madam Deputy President, to Senator Stott Despoja that there is no way I would expect that Senator Heffernan would follow up an injunction from the Senate, were your amendment to succeed. I oppose the amendment and believe this very important motion should proceed as is.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (9.41 a.m.)—by leave—I acknowledge some of the points in Senator Brown's contribution. I think there are some salient points. One is that a damage has been done. I do not think many people in this place would dare deny that. Senator Brown talks about the honourable status of this chamber. I believe that the Senate has acted honourably; I think it is one member of this chamber that has failed to do so. The Democrats do not deny that a damage has been done; we do not believe that that damage has necessarily been perpetrated by the Senate as a body, nor compounded by the Senate as a body. The Democrats believe that, in the first instance, it would be fitting and proper for Senator Heffernan to make his apologies not only to His Honour Justice Michael Kirby, the man whose reputation has been impugned by those allegations in the Senate the night before last, but also to this honourable body. I think it is appropriate that he convey to us as a chamber that he recognises that the standing orders have been wilfully disregarded, that he is guilty of acting in a highly disorderly manner and also that he convey to the individual in question his profound apologies on his personal behalf with a recognition that there was a wilful disregard of the standing orders.

Senator Brown referred to the notice of motion that I have given in relation to a reference to the Privileges Committee on this matter. My colleagues and I do believe, after quite considerable discussion, that that is the best place to determine a response from the chamber. That is why we sought to amend the motion before us today. While there has clearly been a breach of the standing orders, and that breach has been committed by one particular senator, the Democrats believe that it is his, Senator Heffernan's, responsibility to make those apologies. The manner in which Senator Heffernan constructed his remarks suggests that he was deliberately attempting to defeat the standing orders. It
was not clear until the very end of his speech, as we all know, that the allegations he was making were against His Honour Justice Michael Kirby. Had Senator Heffernan begun his speech the other night by indicating that he intended to disparage His Honour, I have no doubt he would have been prevented from doing so by the Acting Deputy President.

The calculated manner in which the breach of the standing orders was executed exacerbates an already serious breach, for which he should be held responsible and for which he should apologise to the chamber and also to His Honour. The Democrats believe very strongly that it is the responsibility of Senator Heffernan to apologise for his conduct and, thus, we seek to amend the motion accordingly. I do think there are very strong grounds for us to convey to His Honour the mechanisms available to him for a right of reply in the interests of natural justice, but also I think the Senate should convey to Justice Michael Kirby the fact that we do recognise that standing orders were breached. That is the intent of this amendment. I still think the two are very similar in the outcome we are trying to achieve, and that is to assure this man that we recognise his reputation has been attacked in a wilful way and that it is quite inappropriate.

The DEPUTY PRESIDENT—Senator Faulkner, are you seeking leave?

Senator Faulkner—If it is necessary; I am just seeking your advice, first of all. Did Senator Brown speak by leave?

The DEPUTY PRESIDENT—Yes, and Senator Stott Despoja.

Senator Faulkner—Twice, by leave?

The DEPUTY PRESIDENT—Yes.

Senator Faulkner—And moved an amendment by leave?

The DEPUTY PRESIDENT—Yes.

Senator Faulkner—Thank you for advising me of the progress of business.

The DEPUTY PRESIDENT—I can see you have been distracted by other conversations taking place.

Senator Faulkner—I have. I find Senator Campbell a very distracting person, actually.
those senators and parties in the Senate trying to find common ground.

Senator Brown—I am going to try that now.

Senator Faulkner—With respect, Senator Brown, it is not possible on this occasion because, literally, I have only now had this handed to me and I am dealing with it on the run, as you can see, having given a commitment to Senator Brown that his motion would have been agreed to by the opposition. A sensible amendment has been moved. I see the logic of the amendment that has been moved by Senator Stott Despoja and the opposition will support the amendment. Equally, I make it very clear that, if that amendment fails, we will support the substantive motion that stands in the name of Senator Brown. But I do think it might have been a better process, frankly, for us to try to work this out before we are forced to seek leave on the question before the chair and, literally, deal with it in this way.

Whatever the question is, however it is finally determined, the key point in the view of the opposition is that an apology is warranted and it should be forthcoming from Senator Heffernan, and if it is not forthcoming from Senator Heffernan then I believe it is appropriate that it be forthcoming from the Senate.

Senator Harradine (Tasmania) (9.51 a.m.)—by leave—I have before me a motion from Senator Brown on the Notice Paper. Nobody has talked to me about this and I have nothing at all before me to indicate what the amendment is. I would like to have that while I am on my feet to make a comment or two about it. I must say that over the many years that I have been here this question of parliamentary privilege has been one which this Senate and individual senators have considered as being very important and to be used in certain circumstances. I think we must be careful that we do not interfere with the doctrine of the separation of powers: parliament, the judiciary and the executive. Each, as we know, has a particular obligation. In this area, the crucial obligation of this parliament is to make the laws. The crucial obligation of the judiciary in respect of legislation is the interpretation of that legislation according to the mind of the parliament. And of course the duty of the executive is to implement that legislation.

The question then arises: to whom are each of those institutions responsible? So far as parliament is concerned, we are of course responsible to the people who elect us. So far as the judiciary is concerned, under the Constitution they are ultimately responsible to the parliament in respect of whether or not a judge should be removed. And it is the executive who appoints the judges. I well recall what occurred in the early eighties. The chamber must be very careful that we do not do anything that will interfere with the obligations of the other two institutions in our democracy. But we do come to the question—I will come to it in a minute—as to how complaints against the judiciary ought to be handled. Clearly, there was a breach of standing orders in this particular respect. Senator Brown’s motion says:

That the Senate conveys to His Honour Justice Michael Kirby, and to the Chief Justice of the High Court, the Senate’s profound apology for the breach of Standing Orders by Senator Heffernan on 12 March 2002.

I think quite seriously it is a tall order for all of us to be apologising for what one individual senator did which has been found to have transgressed standing orders. I do not think, frankly, that the High Court would very much appreciate an apology from the Senate for something they did not do. In any event we are not answerable to the High Court for how an individual senator in a particular circumstance interprets or misinterprets the standing orders. I understand the intention behind it, but technically I would find it rather difficult to support that particular motion.

On the face of it—and I have just had a quick look at it—Senator Stott Despoja’s amendment appears to me to be premature. If we are going to have the matter referred to the Privileges Committee, I think it is desirable to give the honourable senator the opportunity of appearing before that committee and for that committee to consider whatever submission Senator Heffernan may make and then for that committee to make certain recommendations to the chamber. It may well
involve what is suggested here. But we tend to be jumping the gun. This matter ought to be ultimately dealt with in that fashion; in other words, as a complaint for the Privileges Committee to consider and then make a report to the Senate.

Finally, I look at this question of dealing with complaints against members of the judiciary. There is an urgent need for action to be taken to establish a procedure in which these complaints can be heard—to ensure that there is a presumption of innocence in the first place and that it can be properly heard. As to how this is to be done, there have been many suggestions. One is retired judges. Of course the argument against that has been that that will be 'within the club'. I am not reflecting on the integrity of ex-members of the judiciary, but whatever occurs must appear to be fair and just. The sooner that takes place, the sooner that machinery is established, the better. I believe, and I come back to that point, it is important that the integrity of the three institutions be upheld: the parliament, the judiciary and the executive. The executive, in the ultimate, is answerable to the parliament and under the Constitution in respect of removal from these positions. So, unfortunately, I am not in a position to support Senator Brown's motion. I really feel that Senator Stott Despoja's amendment is pre-empting what may occur before the Privileges Committee.

Senator HILL (South Australia—Leader of the Government in the Senate) (10.00 a.m.)—by leave—It is the view of those on the government side that the motion moved by Senator Brown should not be supported. The terms of the motion link the apology to the breach of standing orders. We are not disputing that there was a breach of standing orders. As I said yesterday, breaches of standing orders are not uncommon in this place. The point is that that is really a code for a determination against Senator Heffernan. I refer to the terms I used yesterday: a finding that he did not have a reasonable basis to bring his complaint to the Senate. In other words, he did not have a reasonable basis for making this complaint under privilege. That, in our view, is an issue that is still to be decided—that is the whole point of this.

Most senators would see the importance of the ultimate safeguard of the parliament and that parliamentary privilege is the basis of that. All senators would also say that it is such a powerful weapon that it should only be used reasonably and the test of reasonableness would be the evidence that Senator Heffernan has to support his case. That is a matter that is still to be determined.

Even in this form, which as I said is a code, we believe that the motion as moved by Senator Brown should not be supported. In the case of the amendment by the Australian Democrats, a similar argument applies. It passes the responsibility back to Senator Heffernan. That depends on the basis of his claim against Justice Kirby and whether he had a reasonable cause to make that complaint which is tied up in his concern about institutional failure. In this instance, it is a failure by the police in New South Wales, and that matter is still to be determined also. On that basis it is the view of those on the government side that neither the motion nor the amendment should be supported.

Senator ROBERT RAY (Victoria) (10.03 a.m.)—by leave—I would not normally intervene at this stage but Senator Hill seems to be missing the point completely or is deliberately obstructing the debate. We are not talking about the substance of Senator Heffernan's allegations here today because that would be an entirely different debate. What we are talking about is his disorderly conduct in breaching the standing orders which was done in such a retrospective way that it could not be enforced at the time. Therefore, all those points about evidence and all of the rest of the stuff put by Senator Hill are just a smokescreen. They have absolutely nothing to do with the motion and the amendment that are before us today.

The other reason that I intervene—and I do not want to anticipate the debate—is to say that I would not get too excited about referring Senator Heffernan to the Privileges Committee. The Privileges Committee is not here to enforce standing orders; it is here to enforce the proper standards in relation to parliamentary privilege. Unless you can
make a link that disorderly conduct in breach of the standing orders is a breach of privilege, I would not necessarily anticipate an enormous amount of support from the Labor Party for such a reference. I only mention that because it has been anticipated in this debate that these things may occur. We would have to take a long hard look at it before we would commit ourselves to referring such a matter to the Privileges Committee.

Senator Harradine—What committee would you refer it to?

Senator ROBERT RAY—I am not sure that there is one, Senator Harradine. Up until at least a quarter past 10 this morning, I am chair of the Privileges Committee—and as no other candidates have emerged, I imagine I will be afterwards, too. There is absolutely no way that, as chair of the Privileges Committee, I could hold hearings into Senator Heffernan’s conduct. We have spent a long time trying to take the partisanship out of the Privileges Committee and we have succeeded. We do not make partisan decisions. There is no opposition majority on the committee and at times we criticise both government ministers and opposition members.

To refer a matter such as this will polarise the committee. It certainly means I cannot participate in the hearings, given my personal views on Senator Heffernan and the views I expressed yesterday—it is just impossible. Anyway, I am anticipating that debate. What this motion is about, and what should be judged on its merits, one way or the other, is whether we should apologise for a breach of the standing orders, either by asking Senator Heffernan to do it or by asking the chamber to do it. It is not making a judgment about the actual allegations made by Senator Heffernan, in which Senator Hill has put all his trust to try and divert the debate.

Question put:
That the amendment (Senator Stott Despoja’s) be agreed to.

The Senate divided. [10.11 a.m.]
(The Deputy President—Senator S.M. West)

Ayes………..
Noes………..
Majority……..

AYES

Allison, L.F. Bartlett, A.J.J.
Bolkus, N. Bourne, V.W.
Buckland, G. Carr, K.J.
Collins, J.M.A. Collins, J.P.
Cook, P.F.S. Cook, P.F.S.
Crossin, P.M. Denman, K.J.
Faulkner, J.P. Faulkner, J.P.
Hutchins, S.P. Hudson, W.
Ludwig, J.W. Mackay, S.M. *
Murphy, S.M. Murphy, S.M.
Ridgeway, A.D. Ray, R.F.
Stott Despoja, N. Ray, R.F.

NOES

Abetz, E. Alston, R.K.R.
Barnett, G. Brandis, G.H.
Brandis, G.H. Calvert, P.H. *
Calvert, P.H. * Colbeck, R.
Colbeck, R. Crane, A.W.
Crane, A.W. Ellison, C.M.
Ellison, C.M. Harris, L.
Harris, L. Herron, J.J.
Herron, J.J. Kemp, C.R.
Kemp, C.R. Lightfoot, P.R.
Lightfoot, P.R. Macdonald, J.A.L.
Macdonald, J.A.L. McGauran, J.J.
McGauran, J.J. Tchen, T.
Tchen, T. Vannstone, A.E.
Vannstone, A.E. Walz, J.O.W.

PAIRS

Bishop, T.M. Reid, M.E.
Bishop, T.M. Reid, M.E.
Forshaw, M.G. Troeth, J.M.
Forshaw, M.G. Troeth, J.M.
Gibbs, B. Ferguson, A.B.
Gibbs, B. Ferguson, A.B.
Hogg, J.J. Minchin, N.H.
Hogg, J.J. Minchin, N.H.
McKernan, J.P. Chapman, H.G.P.
McKernan, J.P. Chapman, H.G.P.
Sherry, N.J. Ferris, J.M.
Sherry, N.J. Ferris, J.M.

* denotes teller

Question agreed to.
Original question, as amended, agreed to.

Senator BROWN (Tasmania) (10.15 a.m.)—by leave—I would like it recorded that while I opposed the amendment I supported the motion.
Senator LIGHTFOOT (Western Australia) (10.15 a.m.)—by leave—During the hubbub of the last division, I failed to record my vote as no. I seek leave of the House to now have that recorded in Hansard.

Leave granted.

Senator Harradine—Where does that leave us? Had Senator Lightfoot voted with the noes that would have evened the vote.

The DEPUTY PRESIDENT—It was for the last question, when there was no division.

Senator Harradine—I see.

COMMITTEES

Membership

The DEPUTY PRESIDENT—I have received letters from party leaders seeking variations to the membership of various committees.

Senator IAN CAMPBELL (Western Australia)—Manager of Government Business in the Senate) (10.17 a.m.)—by leave—

I move:

That senators be appointed to committees as follows:

Finance and Public Administration Legislation Committee

Participating member: Senator Mackay

Select Committee on Superannuation

Appointed: Senators Allison, Chapman, Lightfoot and Watson

Question agreed to.

SECURITY LEGISLATION AMENDMENT (TERRORISM) BILL 2002 [No. 2]

The Security Legislation Amendment (Terrorism) Bill 2002 is part of a package of important counter-terrorism legislation designed to strengthen Australia’s counter terrorism capabilities.

Since September 11 there has been a profound shift in the international security environment.

This has meant that Australia’s profile as a terrorist target has risen and our interests abroad face a higher level of terrorist threat.

Australia needs to be well placed to respond to the new security environment in terms of our operational capabilities, infrastructure and legislative framework.

This package, and other measures taken by the Government, are designed to bolster our armoury in the war against terrorism and deliver on our commitment to enhance our ability to meet the challenges of the new terrorist environment.

The first element of this package—The Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002—was introduced last month.

Today I introduce the Security Legislation Amendment (Terrorism) Bill 2002, and three other Bills that make up the legislative package: the Suppression of the Financing of Terrorism Bill; the Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002; and the Border Security Legislation Amendment Bill 2002. Next week I will be introducing a further element of the package—a Bill to enhance the ability of the Australian Security Intelligence Organisation to investigate terrorist related activity.
The Suppression of the Financing of Terrorism Bill will enact a terrorist financing offence and the mechanisms necessary to enhance the sharing of financial transaction information with foreign countries.

The new offence will be in line with the requirements of the International Convention for the Suppression of the Financing of Terrorism.

The Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002 will implement the International Convention for the Suppression of Terrorist Bombings in Australian domestic law.

The Border Security Legislation Amendment Bill 2002 will increase our national security by introducing further measures to protect our borders.

**The Security Legislation Amendment (Terrorism) Bill 2002 (The Terrorism Bill)**

The Terrorism Bill introduces a number of new offences for terrorist related activities that are not caught by existing legislation.

It has been prepared in response to the changed security environment since September 11.

September 11 is a stark example of the horror and devastation that can be caused by acts of terrorism.

Terrorism has the potential to destroy lives, devastate communities and threaten the national and global economy.

For these reasons this Government has reaffirmed its commitment to combating terrorism in all its forms.

We join with the international community in condemning the 11 September attacks and other terrorist activities.

Other like minded countries have passed, or are in the process of passing, anti-terrorism legislation designed to assist in this fight.

Consequently, counter-terrorism legislation and proposals throughout the world have been considered in the preparation of this Bill.

**Terrorism offences**

Schedule 1 to the Bill will establish a new general offence of engaging in a terrorist act.

Various related offences, such as providing or receiving training for terrorist acts, directing organisations concerned with terrorist acts, and possessing things connected with terrorist acts, are also included in the Bill.

All terrorism offences will carry a maximum penalty of life imprisonment.

‘Terrorist act’ is defined to mean a politically, religiously or ideologically motivated act that involves serious harm to a person, serious damage to property, endangering a person’s life, creating a serious health or public safety risk or seriously interfering with an electronic system.

This definition is intended to capture such acts as suicide bombings, chemical or biological attacks, threats of violence and attacks on infrastructure.

To reflect the severity of these offences, they will attract a maximum penalty of life imprisonment.

At the same time, this Bill protects the existing rights of law-abiding Australians.

The Bill makes it clear that a terrorist attack does not include lawful advocacy, protest, dissent or industrial action.

**Treason Provisions**

Schedule 1 to the Bill contains a new treason offence to replace the existing treason offence in section 24 of the Crimes Act 1914.

This will be inserted in the Criminal Code Act 1995.

The new provision modernises the wording of the treason offence and removes gender-based limitations.

The Bill also includes a new ground on which a person can be convicted of the offence.

Under this new ground, the offence will be made out if a person engages in conduct that is intended to assist and does assist another country or an organisation engaged in armed hostilities against the Australian Defence Force.

These amendments are designed to ensure that the offence of treason reflects the realities of modern conflict, which do not necessarily involve a declared war against a proclaimed enemy that is a nation state.

The penalty for the offence of treason remains life imprisonment.

**Proscribed Organisations Provisions**

Schedule 1 to the Bill also contains proscribed organisations provisions to be inserted into the Criminal Code.

These provisions provide an effective and accountable mechanism for the Government to outlaw terrorist organisations and organisations that threaten the integrity and security of Australia or another country.

The proposed provisions give the Attorney-General the power to make a written declaration that one or more organisations are proscribed.

However, objective, reasonable grounds must be made out before an organisation may be proscribed.
The Attorney General must be satisfied, on reasonable grounds, of one or more of the following matters.

First, that the organisation was committing or had committed a Commonwealth terrorism offence.

Second, that a member of the organisation was committing or had committed a Commonwealth terrorism offence on behalf of the organisation.

Third, that the declaration is appropriate to give effect to a finding of the United Nations Security Council that the organisation is an international terrorist organisation.

Fourth, that the organisation is likely to endanger, or has endangered the security or integrity of the Commonwealth or another country.

The Attorney-General will have an express power to rescind such a declaration.

A declaration of a proscribed organisation will not take effect until gazetted and will be the subject of a notification in newspapers circulating in each State and mainland Territory.

The Attorney-General’s decision to proscribe an organisation is subject to judicial review under the Administrative Decisions (Judicial Review) Act 1977.

It will be an offence to direct the activities of, receive funds from, make funds available to, be a member of, provide training to, train with, or assist a proscribed organisation.

The maximum penalty will be 25 years imprisonment.

There are two defences to ensure that those who are genuinely innocent of any complicity will not be convicted.

The defendant will have to establish the defence on the balance of probabilities.

Placing the onus on the defendant is justified by the need for strong measures to combat organisations of this kind, and the fact that a declaration that an organisation is a proscribed organisation will not be made lightly.

It will be a defence to prove no knowledge and no recklessness as to the existence of any of the grounds on which the organisation could potentially have been proscribed.

To the charge of being a member, it will also be a defence to prove that all reasonable steps to cease membership were taken as soon as the organisation was proscribed.

**Aircraft Security Officers**

Schedule 2 to the Bill amends the Australian Protective Service Act 1987 and the Crimes (Aviation) Act 1991 to ensure that the Australian Protective Service is able to provide a full and effective service in relation to combating terrorism.

The Bill includes provisions to enable the members of the Australian Protective Service to exercise their powers of arrest without warrant in relation to the proposed terrorism and terrorist-bombing offences.

This will mean that when members of the Australian Protective Service are performing their protective and security function, they are fully empowered to act to prevent or respond to a terrorist attack.

The Bill also includes provisions to ensure that the air security officer program, which is currently a function of the Australian Protective Service, is able to operate on all Australian civil aircraft.

Currently members of the Australian Protective Service who are providing this important air security capability are unable to exercise their powers of arrest without warrant on flights that operate purely within a State.

Such flights have traditionally been the subject of State jurisdiction and the amendment will not change this position.

However, if an aircraft is hijacked on an intra-State flight, for example between Brisbane and Cairns, it is clear that this will have national implications.

This amendment will expand the definition of “prescribed flight” in the Crimes (Aviation) Act to include flights operating within a State, allowing air security officers to operate as a fully effective and efficient team on those flights.

**Summary**

No country has ever been immune to the threat of terrorism.

While there is no known specific threat of terrorism in Australia at present, we must ensure that we are as well prepared as possible to deal with the new international security environment.

Terrorist forces, through violent and intimidatory methods, are actively working to undermine democracy and the rights of people throughout the world.

We must direct all available resources, including the might of the law, at protecting our community and ensuring that those responsible for threatening our security are brought to justice.

And we must do so as swiftly as possible.

The Howard Government emphatically rejects any suggestion that because we have not experienced any direct terrorist threat in Australia since
September 11 this package of legislation is not justified or is an over-reaction.
We are actively involved in the war against terrorism.
We cannot assume that we are not at risk of a terrorist attack.
We cannot afford to become complacent.
And we should never forget the devastation of September 11.
The Howard Government takes very seriously the responsibility to protect Australia against terrorism.
We will be seeking to bring this important package of legislation on for debate as soon as possible.
This package of counter-terrorism legislation delivers on the Howard Government’s commitment to protect Australians against the evils of terrorism.

CRIMINAL CODE AMENDMENT (SUPPRESSION OF TERRORIST BOMBING) BILL 2002

The Criminal Code Amendment (Suppression of Terrorist Bombing) Bill 2002 will enable Australia to accede to the Convention for the Suppression of Terrorist Bombings.
This bill is a further element of the Government’s package of important counter-terrorism legislation designed to strengthen Australia’s counter terrorism capabilities.
The object of the Convention is to enhance international cooperation in devising a legal response by the international community to the increasing number of terrorist bombings and other similar attacks in public places and on government facilities.
Existing counter-terrorism treaties, including those to which Australia is a party, do not specifically target these types of attacks.
The Convention focuses on such forms of terrorism and aims to provide the mechanism to prosecute and extradite those responsible for such attacks.
This bill is clearly a desirable measure.
The bill will significantly strengthen the ability of Australian authorities to take action against alleged offenders.

The bill contains two offences.
The first offence provides for acts causing death or serious harm to a person and the second offence provides for acts causing extensive destruction.
In each of those offences strict liability applies to the nature of the place where the act is committed.
This means that there are no fault elements for this particular element of the offence and, therefore, it is immaterial whether the person knows the nature of the place.
Lethal device is defined broadly.
This means that the bill would apply not only to bombings in the conventional sense, but also to acts such as the attacks on the World Trade Centre and the Pentagon on 11 September 2001.
The bill adds a new division to the Commonwealth Criminal Code, which implements the convention offences in Australian domestic law.
To reflect the severity of these offences, they will attract a maximum penalty of life imprisonment.
This demonstrates the seriousness with which the Government views its commitment to deterring these attacks and doing everything possible to bring the perpetrators to justice.
These offence provisions only apply where circumstances relating to the alleged offence have an international element.
In accordance with the provisions of the convention, the proposed offences will not apply to the activities of the Australian Defence Forces.
The governments of the states and territories have been consulted about the Convention and they have expressed their support for Australia acceding to the Convention.
It should be noted that where there is a corresponding state or territory offence, the Attorney-General is required take this into account before deciding whether to prosecute a person.

Conclusion
This bill, as part of the Government’s package of counter terrorism legislation, delivers on the Government’s commitment to enhance our ability to meet the challenges of the new terrorist environment.
The bill demonstrates our determination to deter terrorist attacks and to do everything possible to bring perpetrators to justice.
CRIMINAL CODE AMENDMENT
(SUPPRESSION OF TERRORIST BOMBING)
BILL 2002

The Criminal Code Amendment (Suppression of Terrorist Bombing) Bill 2002 will enable Australia to accede to the Convention for the Suppression of Terrorist Bombings.

This bill is a further element of the Government’s package of important counter-terrorism legislation designed to strengthen Australia’s counter terrorism capabilities.

The bill effects amendments to both the Criminal Code Act 1995 and the Extradition Act 1988. The object of the Convention is to enhance international cooperation in devising a legal response by the international community to the increasing number of terrorist bombings and other similar attacks in public places and on government facilities.

Existing counter-terrorism treaties, including those to which Australia is a party, do not specifically target these types of attacks. The Convention focuses on such forms of terrorism and aims to provide the mechanism to prosecute and extradite those responsible for such attacks. This bill is clearly a desirable measure.

The bill will significantly strengthen the ability of Australian authorities to take action against alleged offenders.

The bill contains two offences. The first offence provides for acts causing death or serious harm to a person and the second offence provides for acts causing extensive destruction.

In each of those offences strict liability applies to the nature of the place where the act is committed.

This means that there are no fault elements for this particular element of the offence and, therefore, it is immaterial whether the person knows the nature of the place.

Lethal device is defined broadly. This means that the bill would apply not only to bombings in the conventional sense, but also to acts such as the attacks on the World Trade Centre and the Pentagon on 11 September 2001.

The bill adds a new division to the Commonwealth Criminal Code, which implements the convention offences in Australian domestic law.

To reflect the severity of these offences, they will attract a maximum penalty of life imprisonment.

This demonstrates the seriousness with which the Government views its commitment to deterring such attacks and doing everything possible to bring the perpetrators to justice.

These offence provisions only apply where circumstances relating to the alleged offence have an international element.

In accordance with the provisions of the convention, the proposed offences will not apply to the activities of the Australian Defence Forces.

The governments of the states and territories have been consulted about the Convention and they have expressed their support for Australia acceding to the Convention. It should be noted that where there is a corresponding state or territory offence, the Attorney-General is required take this into account before deciding whether to prosecute a person.

Conclusion

This bill, as part of the Government’s package of counter terrorism legislation, delivers on the Government’s commitment to enhance our ability to meet the challenges of the new terrorist environment.

The bill demonstrates our determination to deter terrorist attacks and to do everything possible to bring perpetrators to justice.

BORDER SECURITY LEGISLATION
AMENDMENT BILL 2002

This bill, the Border Security Legislation Amendment Bill 2002, contains amendments to the Customs Act 1901, the Customs Administration Act 1985, the Migration Act 1958, the Evidence Act 1995 and the Fisheries Management Act 1991.

The purpose of this bill is to implement the Government’s election commitments to increase national security by further protecting our borders.

This bill contains amendments to a range of Customs activities that contribute to the security of our borders.

The amendments deal with border surveillance, the movement of people, the movement of goods and the controls Customs has in place to monitor this activity.

In implementing these measures the Government is mindful of the need to find a suitable balance between measures which detect and deter illegal activities and the needs of legitimate travellers and commerce.

The first set of amendments enhances the capacity of Customs officers to more effectively moni-
tor and enforce security requirements at our borders.

The amendments establish processes to define parts of international airports where access is restricted for border security purposes, require international airline operators to provide Customs with information about passengers and require employers of workers in the secure areas of international airports to provide Customs with information about their employees.

The Chief Executive Officer will have the power to gazette areas within international airports where access is restricted for the purposes of border security.

Persons other than arriving and departing passengers and aircrew will need to be authorised by Customs to enter these areas and officers will have the power to remove unauthorised persons.

The Government has decided that for border security reasons, it is important for Customs and the Department of Immigration and Multicultural and Indigenous Affairs to be able to assess any risks that passengers and crew might pose before they arrive in Australia.

The amendments enhance Customs’ and Immigration’s ability to assess passengers and crew prior to their arrival in Australia.

Operators of international passenger ships and aircraft arriving in Australia are already required to report all passengers and crew to Customs.

They now will be required to provide similar passenger and crew reports to Immigration.

Currently these reports can be made to Customs electronically or by document.

In most cases these reports will now have to be made electronically to Customs and Immigration prior to the ship or aircraft arriving in Australia.

While this scheme provides for advance passenger and crew reports to be made by the operators of aircraft and ships to both Customs and Immigration, measures have been put in place to ensure that those operators do not have to duplicate their reports.

If an operator provides information to Immigration under the Migration Act, that operator will not be required to provide the same information to Customs.

In addition, Immigration will be required to provide to Customs any information that it receives under the advance reporting provisions.

In the circumstances where the operators of aircraft and ships give information to Customs but not to Immigration, Customs will be required to give that information to Immigration.

International airline operators will also be required to allow Customs access to information about passengers in their computerised reservation systems.

This will help Customs to better identify high risk passengers who need further assessment on arrival.

This not only means Customs can concentrate its resources on the highest risks but also that the vast majority of travellers can be processed with minimal intervention and delay.

Penalties will apply where shipping companies and airlines do not comply with all the reporting requirements.

In keeping with the need to closely monitor activities at airports these amendments will also provide Customs with the authority to obtain information about people who work in the secure and restricted areas of international airports.

Employers will be required to provide Customs with details, such as name, address and date and place of birth, of new employees commencing work in these areas.

 Authorities who issue aviation security identification will also be required to provide details when these identities are issued or renewed.

The use of this information will fully comply with the provisions of the Privacy Act 1988 and the requirements of Section 16 of the Customs Administration Act which governs the disclosure of information.

To assist with monitoring the movement of goods across our borders it is proposed to make reporting of in-transit goods that pass through Australian ports or airports mandatory.

Currently there is no requirement for reporting of in-transit cargo.

This means that Customs has no knowledge of prohibited goods that transit our borders and this undermines our anti-terrorism strategies and inhibits the capacity to monitor the movement of goods on behalf of other countries or as required by international agreements.

The amendments will make in-transit cargo subject to Customs reporting requirements.

The amendments will also provide a power to seize, under warrant, in-transit cargo which is connected with a terrorist act or prejudices Australia’s defence or national security or international peace and security.

The amendment relating to electronic reporting of mail will address a risk associated with the reporting of international mail.
International sea mail is electronically reported to Customs on arrival in Australia but this is not the case for any international mail carried by air.

This amendment will remove the anomaly with airmail through mandating the electronic reporting of all mail.

The next set of amendments simplifies the administration associated with giving authority to persons to perform the functions of a Customs officer.

Under the Customs Act 1901 the Chief Executive Officer of Customs may authorise a class of persons to perform functions under the Act.

The power however does not apply to a person joining that class of persons after the authorisation is made.

This amendment will allow an authorisation made by the Chief Executive Officer to apply to persons who become a member of the class after the authorisation is made thus simplifying the administration involved.

The amendments relating to undeclared dutiable goods will remove an anomaly between the treatment of these goods when found in the possession or baggage of a person arriving in Australia, and similar goods found in baggage that is sent to Australia as “unaccompanied baggage”.

Dutiable goods that have not been declared by a person on arrival in Australia are forfeited goods. The amendments will allow Customs to treat undeclared dutiable goods in the same manner whether the goods accompany the person to Australia or arrive separately.

It is also proposed to enable these forfeited goods to be impounded rather than seized where the circumstances warrant.

The amendments relating to the Fisheries Management Act 1991 will allow Customs access to the Vessel Monitoring System data collected by the Australian Fisheries Management Authority.

This amendment implements one of the recommendations made by the Joint Committee of Public Accounts and Audit in its Review of Coastwatch (Report Number 384).

This amendment is necessary to provide the Australian Fisheries Management Authority with authority to pass this information to Customs.

Access to this information will enable the better management of the nation’s maritime surveillance activities, as Coastwatch will have the ability to identify known vessels from potential illegal vessels and thereby concentrate surveillance activities on unidentified targets.

The next set of amendments proposes to rationalise the different circumstances where the Chief Executive Officer of Customs considers it appropriate for a Customs officer to be issued with firearms and approved items of personal defence equipment.

Under Customs regulations the Chief Executive Officer authorises the carriage of firearms by Customs officers undertaking land patrols in remote parts of Australia.

Under the Customs Act 1901, the Chief Executive Officer authorises crews of Australian Customs Vessels to carry firearms and approved items of personal defence equipment at sea.

The proposal will provide a single comprehensive power to enable the Chief Executive Officer to authorise the issue and carriage of firearms and approved items of personal defence equipment by Customs officers.

The amendments will provide a framework that will clarify the obligations and responsibilities of the Chief Executive Officer, the issuing officer and the officer authorised to carry firearms and personal defence equipment.

The amendments relating to power of arrest will restore the power of Customs officers and police officers to arrest persons who assault, resist, molest, obstruct or intimidate a Customs officer in the course of performing his or her duties.

This power was unintentionally removed by the Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000.

The final set of amendments amends the definition of “Commonwealth agency” in the Customs Administration Act 1985 to provide that the Australian Bureau of Criminal Intelligence is a Commonwealth agency for the purposes of section 16 of that Act.

The Australian Bureau of Criminal Intelligence is an unincorporated organisation established by inter-governmental agreement between the Commonwealth, the States and the Northern Territory.

Amending the definition contained in this bill will clarify that the bureau is to be deemed a Commonwealth agency for the purposes of section 16.

This will provide authority for Customs to pass information to the Australian Bureau of Criminal Intelligence for the purpose of intelligence and law enforcement.

Collectively these amendments will allow Customs to make a more significant contribution to protecting Australia’s borders.
TELECOMMUNICATIONS INTERCEPTION 
LEGISLATION AMENDMENT BILL 2002

The ability to be able to intercept telecommunications is an important tool for law enforcement agencies investigating crimes.

The Telecommunications Interception Legislation Amendment Bill 2002 effects amendments to both the Telecommunications (Interception) Act 1979 and the Customs Act 1901.

Importantly the bill addresses the need for the use of interception by law enforcement agencies investigating terrorism, serious arson and child pornography offences.

I turn first to the amendments to the Interception Act.

First, the amendments clarify the application of the Act to modern means of telecommunication, such as email services, SMS messaging and voicemail services.

The use of new technologies by targets of law enforcement and national security agencies has posed increasing operational difficulties for those agencies in the performance of their functions.

The events of 11 September 2001 and subsequent investigations highlighted these operational difficulties.

The amendments make clear that a communication will fall outside the definition of interception where it is stored on equipment and can be accessed using that equipment but without reference to the telecommunications network.

In these circumstances agencies will be able to access the communications pursuant to other appropriate means of lawful access, such as a search warrant authorising the operation of the equipment.

These amendments reflect a much needed clarification, and will assist agencies in the performance of their functions.

Second, the bill contributes to the Government’s efforts to ensure we are well placed to respond to the new security environment in terms of our operational capabilities, infrastructure and legislative framework.

The bill includes conduct involving terrorist acts as offences in relation to which a telecommunications interception warrant may be sought.

These provisions, and other measures taken by the Government, are designed to bolster our armoury in the war against terrorism and deliver on our commitment to enhance our ability to meet the challenges of the new terrorist environment.

The inclusion of terrorist offences as warrantable offences in their own right properly acknowledges the seriousness of all terrorist offences, and will assist law enforcement agencies to avail themselves of this investigative tool in their investigations into such activity.

The bill also strengthens the Act by ensuring the availability of telecommunications interception as an investigative tool in connection with the investigation of serious arson and child pornography related offences.

Telecommunications services such as Internet and Email are increasingly employed in child pornography related offences.

Telecommunications interception will be an extremely valuable tool in the investigation of child pornography offences.

Similarly, telecommunications interception will be a valuable tool in the more effective investigation of serious arson offences.

To date, telecommunications interception has not been available in the investigation of such offences.

Consistent with the existing serious offence threshold provided in the Act, a warrant authorising telecommunications interception can only be sought in relation to the arson and child pornography related offences where the relevant offence is punishable by 7 years or more imprisonment.

The bill also amends the Act to ensure that lawfully intercepted information can be used by and communicated to Commissioners of the respective police services in connection with the possible dismissal of an officer of that service.

The amendments will therefore assist Commissioners to more effectively manage their respective services by ensuring that they are able to receive and act upon any lawfully intercepted information that may give rise to a decision to dismiss an officer.

In particular, the amendments will ensure that Commissioners are able to appropriately deal with corrupt conduct where evidence of that conduct is found in lawfully intercepted information.

The bill also amends the Act to include the recently established Western Australian Royal Commission into Police Corruption as an eligible authority for the purposes of the Act.

This will enable intercepting agencies to communicate relevant intercepted information to the Royal Commission, much as they were able to do in relation to the Royal Commission into the New South Wales Police Service. The amendments
will not, however, permit the Commission to apply for warrants in its own right.

The bill also amends the Act to permit intercepted information to be used in connection with the investigation of serious improper conduct by the Anti Corruption Commission of Western Australia.

The amendment will permit the Anti-Corruption Commission to more effectively discharge its function of investigating allegations of corrupt conduct, criminal conduct, criminal involvement or serious improper conduct by police officers and other public officers.

The bill also effects a number of amendments to reflect the recent merger of the Queensland Crime Commission and Criminal Justice Commission to form the Crime and Misconduct Commission, clarify selected aspects of the Act, and ensure the ongoing effective operation of the Australian telecommunications interception regime.

In addition to the amendments with respect to telecommunications interception, the bill also amends the Customs Act 1901.

The bill amends that Act to permit a judge of a court created by Parliament to consent to be nominated to issue listening device warrants under the Act.

This amendment will have the effect of extending the class of persons who may consent to be nominated to include Federal Magistrates.

In this respect the amendments will bring the Act into line with analogous provisions in the Australian Federal Police Act 1979.

Summary

This bill effects important amendments to the offences for which interception warrants may be sought.

These amendments are designed to assist the ability of law enforcement agencies to investigate serious and heinous crimes, such as terrorism, child pornography and serious arson offences.

The bill clarifies the application of the legislation to modern means of communication.

The bill also effects amendments to the agencies who may receive intercepted information and in what contexts, the purposes for which intercepted information may be used and other amendments designed to improve the operation of the legislation.

This bill was originally introduced prior to the last election.

Since that time, it has been amended to include offences constituted by conduct involving acts of terrorism as offences in relation to which a telecommunications interception warrant may be sought.

These changes are part of the package of counter-terrorism measures designed to bolster our armoury in the war against terrorism.

These measures demonstrate the Howard Government’s commitment to ensure we are in the best possible position to protect Australians against the evils of terrorism.

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

TRANSPORT AND REGIONAL SERVICES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

ROAD TRANSPORT CHARGES (AUSTRALIAN CAPITAL TERRITORY) AMENDMENT BILL 2002

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 2002

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.20 a.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 one of 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 agreed to.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (10.20 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—
TRANSPORT AND REGIONAL SERVICES
LEGISLATION AMENDMENT
(APPLICATION OF CRIMINAL CODE) BILL
2002


The amendments proposed by this bill will harmonise the offence provisions with the Criminal Code and will ensure that the provisions operate in the manner they did prior to the application of the Criminal Code. The bill affects a small number of offence provisions that were not included in the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Act 2001. As a result the offence provisions are inconsistent with the Criminal Code principles and may be interpreted and enforced in an unfamiliar manner.

The bill provides for amendments that clarify the physical elements of an offence and the corresponding fault elements, particularly where those elements vary from those specified by the Criminal Code.

The bill also provides for amendments that specify whether an offence (or physical element of an offence) is one of strict liability. In the absence of such an amendment, offences (or physical elements of offences) that, prior to the application of the Criminal Code, were interpreted as being of strict liability, would be interpreted as not being of strict liability.

The bill also restructures certain offence provisions so that any defences to the offence are restated separately from the physical elements of the offence.

The amendments proposed by this bill will not have retrospective effect.

ROAD TRANSPORT CHARGES
(AUSTRALIAN CAPITAL TERRITORY)
AMENDMENT BILL 2002

I am introducing here the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002. The Bill provides for automatic annual adjustments to the level of registration charges in the Australian Capital Territory (ACT), for vehicles over 4.5 tonnes, based upon a formula that accounts for changes in road expenditure modified by changes in road use by heavy vehicles.

This Bill forms part of the national road transport reform agenda in Australia, which is conducted by a cooperative process involving the Commonwealth, States and Territories. The National Road Transport Commission (NRTC) facilitates this reform process. Under the Heads of Government Heavy Vehicles Agreement, which is a schedule to the National Road Transport Commission Act 1991, the Commonwealth enacts nationally approved road transport legislation on behalf of the ACT, subject to its agreement. Other jurisdictions then either reference or adopt the substance of the ACT legislation in their own legislation.

This Bill will therefore provide a model for nationally consistent charges, by amending the Road Transport Charges (Australian Capital Territory) Act 1993 (the Principal Act). The Australian Transport Council comprising Commonwealth, State and Territory Transport Ministers has voted unanimously to support the Bill. The Victorian, South Australian and Northern Territory Governments reference the Principal Act in their own legislation. Other States and the Commonwealth reproduce the system and level of charges in their own legislation.

Nationally consistent heavy vehicle charges are an essential component of the road transport reform agenda being put in place by Commonwealth, State and Territory Governments and the NRTC. Major differences in charges between States and Territories put a straightjacket on efficiency and distort competition in the road transport industry, a vital sector of the economy. This was one of the key issues that Governments recognised needed to be fixed through the cooperative road transport reform process.

The Commonwealth, States and Territories first implemented national registration charges between mid 1995 and late 1996 based on the first charges determination developed by the NRTC. A second charges determination was implemented in 2000 and a third charges determination is planned for 2003/04. Charges determinations involve detailed consideration of methodology and are not feasible to conduct every year.

Since the national charges were first calculated, levels of both road use and road expenditure have changed, and the understanding of the relationship between road use and road wear has improved. This has given rise to the opportunity to implement an annual adjustment process that reflects road costs attributed to heavy vehicle use. The annual adjustment procedure takes into account rolling averages of changes in road expenditure and expected changes in road use. This enables jurisdictions to recover costs and provides for graduated increases in registration charges,
rather than accumulated increases at intervals of several years.

Transport Ministers agreed to the application of the annual adjustment formula in May 2001. As there was insufficient time to implement this in legislation in 2001, results derived from the adjustment formula were applied on a one-off basis by all States and Territories and the Commonwealth between October 2001 and December 2001.

As I have indicated, passage of the Bill will give the ACT Government the ability to adopt, from 1 July 2002, the automatic adjustment procedure for national registration charges and will provide other jurisdictions with a model to ensure national consistency. Subject to legislative and administrative processes, the States and the Northern Territory are targeting 1 July 2002 as an implementation date for the first automatic annual adjustment. A related Bill, the Interstate Road Transport Charge Amendment Bill 2002, will implement the adjustment procedure for Federally registered vehicles, from 1 July 2002.

The Principal Act deals with the level of registration charges for heavy vehicles, which are calculated according to the type of vehicle, number of axles and mass of the vehicle. The Bill applies an adjustment to the annual charges for heavy vehicles to ensure that heavy vehicles continue to meet their share of the costs of using Australia’s roads. The adjustment formula is moderated to reduce the effects of any large fluctuations in road expenditure by applying rolling averages to the data. Further moderation is applied by a ‘floor’ of zero and a ‘ceiling’ based upon movements in the Consumer Price Index, averaged over four quarters in a year compared to the four quarters in the previous year. The NRTC is required to publish the details of its calculations of the adjustment factor each year.

The fact that heavy vehicles pay fuel excise is recognised by the NRTC in calculating the level of registration charges. A portion of the fuel excise is nominally recognised as representing a contribution towards the cost of heavy vehicle road use. The updated charges assume this contribution to be 20 cents per litre. This excise component is not the subject of this legislation. It has no impact on the price of fuel at the pump or on road funding.

The charges are logical and based on the principles set out in the NRTC’s legislation. The charges, when combined with the nominal excise component, will achieve full cost recovery in total, and for most vehicle classes.

There is a financial effect for the States and Territories in that increases in the level of charges in any given year will reflect any increases in expenditure on provision and maintenance of road infrastructure for heavy vehicles. The increases in charges in July 2002 will represent a relatively small change in the costs of operating vehicles (typically less than two per cent of total operating costs).

The road transport industry supports the concept, encapsulated in these updated charges, of paying a fair charge for their road use. The NRTC consulted extensively with industry about the proposal.

In conclusion I commend this Bill and the work of the NRTC in developing the annual adjustment process. It has widespread support and provides a transparent, consistent and fair updating mechanism for the national heavy vehicle charging regime.

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 2002

I take pleasure in introducing the cognate Interstate Road Transport Charge Amendment Bill 2002, which provides for automatic annual adjustments to the level of charges for vehicles registered under the Federal Interstate Registration Scheme (FIRS). The Bill does this by reference to the adjustment amount determined in a Bill introduced earlier—the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002. The Bill ensures that charges for FIRS vehicles will be identical to those applied in the States and Territories and agreed by all Transport Ministers. It is intended that the adjusted charges will apply from 1 July 2002, which is the nationally agreed target date for implementation in the States and Territories.

FIRS is an alternative to State or Territory based registration for heavy vehicles engaged solely in interstate trade and commerce. The States and Territories administer FIRS on behalf of the Commonwealth. It is worth noting that the Commonwealth retains no revenue from FIRS registration charges. All revenue is returned to the States and Territory Governments through an agreed formula that reflects the road wear attributable to FIRS vehicles.

Formerly a regulation making power allowed for increases or decreases in registration charges of up to 5% to be made each year. The power to increase charges by regulation has been removed; ensuring that any charge under FIRS cannot exceed the agreed national maximum applicable charge.
As I stated when introducing the Road Transport Charges (Australian Capital Territory) Amendment Bill, this automatic annual adjustment of nationally agreed heavy vehicle charges has widespread support and provides a transparent consistent and fair updating mechanism to the national heavy vehicle charging regime.

Debate (on motion by Senator Buckland) adjourned.

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

Ordered that the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002 be listed on the Notice Paper as a separate order of the day.

REGIONAL FOREST AGREEMENTS BILL 2002

In Committee

Consideration resumed from 13 March.

The CHAIRMAN—Order! The committee is considering the Regional Forest Agreements Bill 2002 and amendment (6) on sheet 2432 (revised) moved by Senator Brown. The question is that the amendment be agreed to.

Senator BROWN (Tasmania) (10.21 a.m.)—You will remember that the debate last night was about the Greens amendment to ensure parliamentary scrutiny of the regional forest agreements. I was pointing to the importance of a number of factors for this parliament to consider but the lack of mechanism under the government and opposition approach that has any teeth to ensure the national heritage implications and also the use of the hundreds of millions of dollars of taxpayers’ money that is being siphoned through the executive to the forest industry that otherwise would be running at a prodigious loss in Tasmania because of the mismanagement of the forests.

I pointed out that Forestry Tasmania has effectively run at a loss for decades. It has had half a billion dollars of public money injected into it, either through direct funding or through the removal of debt—as occurred under the Field Labor government in 1990 when $272 million of Forestry Tasmania’s accumulated debt was crossed over to the public sector. The proposition here by government and by the Labor opposition of the Hon. Simon Crean, supporting the Howard government, is that there be no effective means of redress on a state government and therefore on a state authority.

On the other hand, there is a binding agreement in this legislation that, when it comes to compensating the woodchip and logging corporations if areas of forest are protected for the public good, the Commonwealth will dip into taxpayers’ money and hand that money across. That is binding, but the obligations on the states to properly and efficiently use public moneys and to carry out their obligations under the several regional forest agreements are not there. The minister, two nights ago, told the chamber that the states were bound in all things, but in fact that is not the case. I have made a very clear case to this committee showing that that is not the case. It is actually directly written into the regional forest agreements that those matters, other than the compensation clauses, are not binding. There is no compensation clause in the East Gippsland Regional Forest Agreement. Nothing at all is binding in that agreement, yet we had the minister misleading this committee by saying that these matters were binding.

I asked last night of the minister why it is that Forestry Tasmania’s profits are falling while the wood volumes rise—that is, the cut in the forest is rising. I would like to get an answer to that question this morning. I have asked why the returns on assets are so low, if the minister could tell this committee why the operating costs of Forestry Tasmania are blowing out and if he could give an account to this committee of what has happened to the public money. I do not necessarily want him to explain about the transfer of debt into the public sector in Tasmania—that is a state matter; effectively, it has been a huge impost on the provision of public services in Tasmania, because that debt has to be serviced—but I do expect the minister to be able to acquaint this committee with the more than $50 million of federal taxpayers’ money that went to Forestry Tasmania in 1988; the $64 million that went in 1997; and, effectively, the $52.197 million that went in 1998 through capital and interest due on softwood...
loads from the Commonwealth being written off.

Finally, why, if Forestry Tasmania is in good stead as a recipient of these tens of millions of dollars and cutting trees at the greatest rate in history—which should be returning a very handsome profit—did it need to borrow $14 million in the last year to help to service its functions and its debts. These are extraordinarily important questions. The regional forest agreements are entered into between the states and the Commonwealth, and it is important for us to have answers in this committee to questions as large as that if we are going to be acting in the public interest. I again ask the minister if he could give us an account of those matters.

When it comes to parliamentary scrutiny of the regional forest agreements, the amendment I have before this committee is that the regional forest agreements be scrutinised by each house of parliament. The opportunity is clearly made through my amendment on behalf of the Australian Greens. However, there is some confusion about what is happening in Western Australia. I ask the minister: is the regional forest agreement for Western Australia that was signed in 1999 between former Premier Court and Prime Minister Howard still in effect, has it been withdrawn or has it been amended? Does it include a binding commitment to the comprehensive and adequate reserves that are mooted under that agreement; and, if so, which ones?

I ask of the opposition, through you, Mr Temporary Chairman—because it is a Labor regime in Western Australia largely because people voted against that regional forest agreement and for the Gallop opposition, as it was, in Western Australia because they did not like the regional forest agreement that had been signed by former Premier Court: does the ALP here now support that regional forest agreement that has effectively been repudiated by Labor in Western Australia? What is the situation there? I know, Mr Temporary Chairman Cook, you will have a particular interest in hearing what the situation is as far as the Labor Party here is concerned vis-a-vis its Labor colleagues in Perth.

I ask finally of Senator Ian Macdonald, the Minister for Forestry and Conservation: does the government support the Western Australian Labor government’s expanded reserve proposals? These are matters that we ought to be able to get information on during this important debate. I would like to hear the answers from both parties on those questions.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that the amendment be agreed to.

Senator BROWN (Tasmania) (10.30 a.m.)—Thank you, Mr Temporary Chairman. We have Senator O’Brien, representing the Labor Party, refusing to answer those questions and Senator Ian Macdonald, the Minister for Forestry and Conservation, also refusing to answer those questions. Indeed, at the moment he is leaving the chamber. That is the attitude being taken by both the big parties to this question. In fact, they will not front up to it. They know that this legislation is not defensible. That is the effect of the way in which they are currently behaving.

Earlier, I was talking about the shortcomings of the forest industry in Tasmania and the whole broadscale, massive abuse of public funding. Here is an industry that should be running at a profit because it is using a no-cost resource, selling that on to private enterprise, and the price, obviously, should be fixed—that is, the royalty should be fixed—at one which returns a profit to the people of Tasmania who own that resource. Instead of that, Forestry Tasmania has become an extension of the woodchip industry. Gunns Pty Ltd, in particular, have been able to squeeze the royalty down against the public interest and have this facility run at a loss. (Quorum formed)

I will come to the compensation provisions later in this debate, but I now want to put further information before the committee for consideration. Gunns Pty Ltd is a Launceston company with its shareholding base largely on the mainland of Australia, so the profits pour out of Tasmania. It has a board in Launceston of well-known entities who have been huge in public life and in the pro-logging debate, including former Premier Robin Gray. It is the world’s largest
The hardwood woodchipping corporation and in the last couple of years has bought the holdings of North Pty Ltd in Tasmania and Boral. Effectively, it has become the monopoly woodchipper of the state which provides two-thirds of the export woodchips going out of this country. Its influence over the political establishment in Tasmania is prodigious.

When you look at these figures, you have to see them in the light of that influence over the establishment in Tasmania and, indeed, in this place—the power of this lobbying organisation over politics in this nation. The woodchip industry would be a great subject for an investigative report to enlighten Australians, not only because their forests are involved but because of the millions of taxpayers’ dollars being poured through state and federal coffers ultimately into servicing Gunns’ bottom line—its profit line. Gunns Pty Ltd’s assets have increased fivefold—from $143.2 million at the end of June 2000 to $703.8 million a year later—following its acquisition of the Tasmanian forestry assets of Boral and North. Its post-tax profit doubled in the same period from $8.7 million to $17.8 million.

That profit came at the expense of jobs. There is not inherently the integrity in either of the major camps in this Senate to admit to that, but that is a fact. I have challenged the minister repeatedly and I have challenged Senator O’Brien, from Mr Crean’s Labor opposition, to defend the loss of jobs and to analyse and give an excuse for the loss of jobs as far as native forest logging is concerned since the regional forest agreement was signed, but their total silence, which I take as consent to the argument I am putting forward, speaks for itself.

Forestry Tasmania also appears to have done very well financially over 2000-01, with an increase in their operating profit, which went from $8.332 million in 1999-2000 to $24.761 million the following year. But the Auditor-General noted that Forestry Tasmania included $32.118 million in increases in its forest asset value in its operating revenue. Forestry Tasmania has not done that in the past but is now allowed to do it under a new accounting standard. So, in effect, Forestry Tasmania is showing a $24.76 million profit, but it is fudged because that profit includes a $32.12 million asset re-evaluation. It has done nothing except get out the pen and paper and write up the value of the asset.

So when you do the sums on those figures, in the last year for which we have the figures Forestry Tasmania, in effect, made a loss of $7.357 million. Isn’t that incredible; isn’t that staggering! Here it is overseeing the greatest destruction of Tasmania’s forests in history—and that is saying something—which should have boosted it to the biggest profit return to the people of Tasmania, but it has run at a loss of more than $7 million. That is scandalous. But it is not going to be debated here because it is shepherded by both the Labor Party and the coalition. It is one of those times which, while I do not have the numbers, points to the importance of the Greens having become an alternative voice in politics to do what Labor, in particular, will not do in defending the public interest.

Senator O’Brien will have the opportunity to comment on this fix which is used in accounting by Forestry Tasmania. It is a fraudulent effect if one is looking at one’s own productivity to assess profits. That is not what has happened. In effect, through this fix which allows Forestry Tasmania to re-evaluate forests standing there which, in the main, it has not grown itself—they have been grown at the hand of nature—it comes up with a profit when it has run at a loss of more than $7 million.

Forestry Tasmania does not seem to have factored in the asset re-evaluation in its dividend to the state government, which fell from $48.687 million in 1999-2000 to $5.759 million the following year. And that is why: the money was not there. Forestry Tasmania shows an increased profit but it returns a smaller dividend. As a prospective member of this place would have said on that matter, ‘Please explain.’ I am explaining it, but the opposition and the government are running for cover. And well they might: it will catch up with them further down the line. You cannot keep hiding an abuse of public assets and public funds in this fashion, as the Bacon government does in Tasmania.
and as the opposition of the Hon. Mr Crean is doing in this parliament in aiding and abetting this Howard legislation going through. In the long run you will be found out.

Forestry Tasmania has also opened a bank overdraft facility, which increased its total borrowings from $205,000 as at 30 June 2000 to $6.46 million a year later. The Auditor-General in Tasmania noted that Forestry Tasmania’s ‘return on equity was quite low’. That was despite Forestry Tasmania including the asset re-evaluation in its profit result. So Forestry Tasmania technically made a loss in the last year for which we have figures, hugely increased its borrowings, significantly decreased its dividend to the government and yet continues to make this paltry return on assets while Gunns’ profit doubled. Gunns increased its assets fivefold and its share price probably went up commensurately.

What an extraordinary thing. Quite clearly what is happening as far as the forest asset in Tasmania is concerned is that under the Bacocon government, shepherding Forestry Tasmania, the value of the processing of the forest resource—whatever we might think about the environment, let us set that aside; I am arguing economics here—is being shifted across to the private sector. The private sector in this case is Gunns, and that means its shareholders on the mainland. Senator O’Brien is an expert in the matter. I do not know whether he has shares in Gunns. I have not looked through—

Senator O’Brien—Check the record.

Senator BROWN—He is inviting people to check the record. I charge Senator O’Brien to explain what the profit flow of Gunns is. He is talking about a $1 billion-plus industry. But you know where the money is going: it is going into the pockets of people in Pitt Street and Collins Street—outside the state.

Our new senator Senator Colbeck pointed out last night that Tasmanians have the second largest export income in the country after Western Australia. Sometimes we have been in front. Is it not extraordinary that Tasmanians are the poorest people in the country—the biggest export earnings yet the lowest average income? Why? Because of Gunns and the mining corporations and weak-kneed politicians, Labor and Liberal, who do not insist that we get a proper return on that asset. So the money goes to the private sector. It is scandalous, but it is what happens. Yet we have the Labor spokesperson and the government spokesperson stuck to their seats here. They are not going to defend that simply because they cannot.

Senator Barnett from Tasmania is here. Maybe he will get up and explain why there is this extraordinary diversion of money out of the asset into mainland pockets. Senator Watson is here; he will be able to get up and explain it. As soon as I sit down, I will be interested to hear which of the three Tasmanian senators in the chamber at the moment can explain this extraordinary—

Senator Watson interjecting—

Senator BROWN—Senator Watson wants more diversion of money to mainland pockets by this process. What an extraordinary intervention. He wants more of the likes of this in Tasmania. What an extraordinary thing for Senator Watson to be saying to his constituency. Senator Calvert has just entered the chamber. Maybe he can explain why it is that Gunns is making such a prodigious profit for its mainland shareholders while Tasmanians lose.

Senator Watson interjecting—

Senator BROWN—Will they? Yes, it is 2 a.m., Senator O’Brien. That is when the guillotine is going to be brought in on this legislation. Labor and the government are intending to do something like that because this debate is embarrassing for both sides. (Time expired)

The TEMPORARY CHAIRMAN—The question is that amendment (6) be agreed to. Question negatived.

Senator BROWN (Tasmania) (10.47 a.m.)—I move amendment (7) standing in the name of the Australian Greens:

(7) Clause 6, page 5 (lines 7 and 8), omit sub-clause (1), substitute:

(1) RFA wood is not prescribed goods for the purposes of the Export Control Act 1982 except if it is:
(a) roundwood, whole logs or sawlogs;
or
(b) plantation wood, unless the RFA was entered into having regard to an assessment of the availability of plantation wood in the region and in Australia.

This amendment seeks to put controls on the export of roundwood, whole logs or sawlogs, from native forests—because the bill that we are talking about is about native forests; it is not about plantations. It seeks to extend the legislation to cover plantation wood ‘unless the RFA was entered into having regard to an assessment of the availability of plantation wood in the region and in Australia’ generally.

One of the great faults with the legislation we are dealing with is the failure of the regional forest agreements to take into account the plantation estate in Australia. The nation, largely because of the spending of the Commonwealth through the states of hundreds of millions of dollars, particularly after World War II, has an enormous plantation estate. It is now of the order of some two million hectares, including 178,000 hectares—that will increase to close to 200,000 hectares—in my home state of Tasmania. Because these plantations have been growing from so far back they are now reaching maturity in huge acreages.

One of the expectations from this investment by the Australian people decades ago was that we would find ourselves able to get out of the contentious destruction of native forests and use that plantation estate to provide the nation’s wood needs. The former minister for forests, the Hon. Wilson Tuckey—and I am sure the current minister who is in the chamber at the moment, the Hon. Ian Macdonald, would agree—averred that we were losing in terms of foreign exchange when it came to the wood and forest based industry. For every dollar we got from exports, $2 was spent on imports which, on the face of it, looked like a bad exchange.

When you go into it further, you find it is bad management not bad exchange. For every log or weight of timber product we import we export two. There we have it: we are paying twice as much for imports as we earn for exports, but we are exporting twice as much as we import. When you do the mathematics of that, you find that for every tonne of wood, in one form or another, that is exported we get a quarter of the price we pay for a tonne of wood product that is imported. That is quite extraordinary.

What that points to is that the manufacturing and job intensive part of the industry is outside this country—things like paper making, furniture making, the veneers we have heard about and chip wood. A whole range of things is involved in ending up with this unsatisfactory state of affairs. It is largely because private enterprise does it that way. We are in the process of releasing native forests into the hands of private enterprise. That is what the whole regional forest agreement is about. We can expect that that process is going to get worse.

Senator O’Brien has meekly told us that the Finns and somebody else are experimenting with veneer woods and they may come and set up in Tasmania one day. They would only do it if they were going to make more profit than they would in Finland. They would only do it if they could minimise jobs in the pursuit of making that profit. They would not do it if we as parliamentarians fail to put conditions on the use of our native forests. That is part of what this process of regional forest agreements is about today.

There are questions that arise from the process of export controls being handed away, as they are under this legislation. I can tell the committee that 1.1 million cubic metres of sawlogs were exported from Australia in 2000-01. From Tasmania those exports included a large amount of native forest wood; from other states it was primarily plantation sawlogs. That translates straight across to jobs being lost; jobs being exported out of the country. It is also involves, as I have just been saying, us losing the opportunity to get out of native forests by exploiting our own huge plantation forest base. Victoria exported 422,000 cubic metres of sawlogs last year and it is now logging Goolengook to get another 10,000 cubic metres. Why is that? Why go into wonderful, pristine, wildlife-filled forests like Goolengook? At the time of the regional forest agreement that
area being logged now was totally protected under Victorian law as part of the national heritage rivers zone. Why is that being invaded now?

Most of Victoria’s exports would be plantation sawlogs of considerable quality. Why do we export sawlogs overseas from our plantations and then invade these contentious, limited, irreplaceable forests to meet domestic needs? The answer to that is the weak political performance by the Bracks government now and the Kennett government before them in Victoria and by several Labor and Liberal governments in Tasmania. There is little better political performance shown in the other states.

Last year Tasmania exported 294,000 cubic metres of sawlogs. Quite a bit of that came from native forests, and that has not been publicised in Tasmania. Senator O’Brien could enlighten the committee but he has been struck silent this morning. He is no doubt acting under orders from Mr Crean himself. This legislation is to be rushed through here because the Prime Minister wants it to be. Why do the Prime Minister and Mr Crean want this legislation through here today? It is because their financial backers and confidants in the logging industry want it that way. If there is a different explanation, let us hear it.

The biggest effect of the regional forest agreements, which came into effect seriatim from 1997, has been an increase in woodchip exports from 3 million tonnes per annum in 1995-96 to seven million tonnes in 1999-2000. That is more than a 100 per cent increase in the rate of destruction of native forests under the regional forest agreements.

The government and the opposition try to put forward the idea that this is for the good of the environment. There is a very clear mass deception being perpetrated here by the government and the opposition, arm in arm, to service the big end of town against the interests of Australians now and into the future. It is something that I feel very strongly about. It is totally unnecessary. The plantation estate is there and has been paid for by the people of Australia to enable us to have a win-win situation; to enable us to protect our native forests and wildlife while, at the same time, provide the wood products this nation needs. A judicious and mature parliament would ensure that that outcome were the result of today’s deliberation. But, instead of that, the big parties—in service to the profit-makers and turning their backs on the long-term interests of the heritage of this country, and falsely crying ‘jobs’ as they go—are taking this derelict course of forcing this legislation through the parliament, against all tenets of environmental custodianship but in the service of the almighty dollar.

This is an economic rationalist world. This is a world that cheats and is selfish and short-sighted—and this is a nation that deserves much better but where the ‘vocalless’ future generations are sold out by small-mindedness and weakness and the untoward patronage of influential people from the logging industry whose motivation is profit, whose motivation is money and who engage in the deliberate deception of crying ‘jobs’.

I have pointed out before in these proceedings that, since these regional forest agreements came into being, jobs have been shed in all jurisdictions. Amongst the biggest deceivers in that respect is the Hon. Prime Minister, John Howard. He went to each of these places and said, ‘I’ll create jobs through signing this regional forest agreement’—this death warrant on the grand forests of Australia. ‘We’ve got to do it because we want jobs,’ said the Prime Minister. Now, within three to five years of his signature
going on these documents, we have the real evidence of hundreds and hundreds of jobs having been shed while the rate of wood-chipping has more than doubled. We might expect an explanation, if not an apology, but instead of that we get a guillotine and a total of five senators in here for this debate, as part of the norm. Where are my friends from the Democrats today?

Senator McGauran—I didn’t think you had any friends.

Senator BROWN—Friends of the forests; they are in absentia yet again. It may be that they see the numbers and think, ‘What’s the use?’ But I do not take that point of view. One of our obligations to those who come after us, I believe, is to steadfastly refuse to cave in to this economic rationalist paradigm that prevails in Labor as well as in the conservative ranks of parliaments right around this country. (Time expired)

Senator O’BRIEN (Tasmania) (11.05 a.m.)—The opposition will not be supporting this amendment. This clause is fundamental to the proposition that there will be resource security arising out of regional forest agreements. Also, it protects the products of forests, which have been set aside for timber harvesting, from future action in relation to the Commonwealth’s export control powers. It is totally inconsistent with the concept, on the one hand, of the Commonwealth agreeing that certain areas are available for harvesting and, on the other hand, of the power remaining on a year-by-year basis, or even more frequently, to curtail the ability to export product from Australia’s hardwood forests, for example. But all that has to be read in the context of there being millions of hectares of forest which are not available for harvest and for the life of these RFAs—in deed, I expect, in perpetuity—will never be available for harvest.

Senator Brown does himself a disservice by not claiming credit, in part, for the focus that has been given to protecting a substantial amount of Australia’s hardwood forests. The Labor Party was the proponent of the idea that it should be recognised that there were parts of our natural resource, the forests, which should be protected; that we should have comprehensive, adequate and representative reserve systems so that the forest types around the country could be protected; that indigenous heritage values should be protected; that environmental values, including old-growth wilderness, endangered species, and National Estate values and World Heritage values, should be protected; that the economic value of forest areas and forest industry should be protected; that social values, including community needs—and that includes the needs of a great number of timber communities—should be respected in this process; and that the principles of ecologically sustainable management should be followed in any process of harvesting the timber from our forests.

In Tasmania, forest has been set aside which contains about 85 per cent of the old-growth timber that lies within the area that would be described as public forest, and 68 per cent—ever-increasing—in the private forest area, due to the measures that have I outlined earlier in this debate. So to say to the industry, ‘The Commonwealth and the state have reached an agreement and you can have access to the resource, but the Commonwealth will retain the power to say you cannot sell that resource overseas,’ is entirely inconsistent. This is fundamental to the bill.

Senator Brown knows that deleting this provision from the bill will, effectively, be to say that the Commonwealth is not going to respect the agreements it has entered into. I said before in this general debate that the public will be looking at the performance of this industry over the life of the regional forest agreements and their performance will determine how those agreements will be viewed at their end and in what form, if any, they will be renewed. I have now put that on the record for a second time. But the industry deserves an opportunity to establish that it can provide the downstream processing that will be necessary for this industry to be more than a woodchipping industry.

I have outlined some initiatives, and I guess Senator Brown misinterpreted what I said. When I talked about trial shipments of logs going to South Korea and Finland in relation to proposed rotary veneer peeling operations in Tasmania, I was not suggesting that they would come here to Australia and
set up operations; I was suggesting that that was where the trial was taking place. In fact, I expect that Australian companies will set up those businesses—or they may set up joint ventures—but ultimately they will use timbers which are now used for woodchip in a value-added sense to peel veneer and create a plywood industry, supplying our own construction industry and replacing imports but also exporting. If it were removed, this provision would be sufficient for Senator Brown to be arguing, for the life of this RFA, that the Commonwealth has the power to stop this product being exported overseas, under the Commonwealth’s export control powers. I cannot see why he would expect that we would be persuaded to support an amendment of this nature, given that we are supporting—and indeed promulgated—the idea of regional forest agreements, and in the context of the massive reserves that have been set aside.

It is almost as if Senator Brown wants to talk about the industry being a woodchipping industry but put barriers in the way of any progress which might alter that, which would ensure, by removing section after section of the resource, that that is all the industry could be. If you take away total access to old-growth forest in Tasmania, for example, you will destroy the veneer industry and the sawmilling industry, so what would be left? Why would investors want to get into downstream processing if the only resource that they can have is only suitable, with the processes available to them, for woodchipping?

Senator Brown seeks to put a system in place which will fulfil the rhetoric he has been putting to this chamber and to the Australian people, and that is that this industry is only about woodchipping. That is not true. In his contribution earlier he talked about the company Gunns. Gunns have at least five sawmills in Tasmania—massive investments in sawmills. Indeed, probably by their takeover of the North Forest Products resources in Tasmania, in Boral, they have elevated their role in woodchipping. But I think it is inaccurate to describe them as a company which is predominantly aiming itself at the woodchipping market. That is proven to be incorrect by the nature of their operations and I believe, given the opportunity, they are the sort of company which will explore avenues for downstream processing, for getting more for this country out of its resource and for sending less of this country’s resource out of its native forests as woodchips.

If we do not pass this legislation, why would their bankers want to lend them money? The bankers would say, ‘We do not know that you are going to have access to the resource that is now provided for in the regional forest agreements and, if it is going to be taken away, we do not know whether we will get paid.’ That is what this process is about: saying to the industry that they can invest in the future of their industry and the future of this country with the resources that have been set aside under processes that have been rigorously established and that involve the establishment of appropriate, comprehensive, adequate and representative reserve systems and all of the other criteria I mentioned earlier. So I cannot see how the opposition could possibly contemplate supporting an amendment such as this—and indeed, we will not.

With regard to where we are in this debate, we have now been debating this bill since Monday in all of the available government business time since the Senate commenced sitting at half past 12 on Monday afternoon. I concede that there was a small amount of second reading debate in that period of time, but we have now dealt with five amendments. Contributions from Senator Brown have traversed the same material on a number of occasions to the point where, one would have to say, it is getting extremely repetitious. I think it is appropriate this legislation be given a reasonable amount of time so that senators can express their points of view about particular matters and move amendments which are relevant to those points of view and have them tested before the chamber. But I do not think it is appropriate that we simply be asked to sit here and hear repetitious arguments ad nauseam—essentially the same arguments, arguments which one could jump up and argue are not relevant to the amendment before the chair—and then say this debate should go on forever. I do not believe the opposition will
support the proposition that Senator Brown can filibuster this debate for as long as he likes. I believe he has had, effectively, all week to advance the arguments in support of the 15 amendments he circulated and that he either has moved or intends to move. I think Senator Brown has had ample time to debate those matters. Other senators also deserve a reasonable amount of time to canvass the matters contained in their amendments. But this debate should not be left to meander along at the whim of one senator. I think it appropriate that we move on and deal with the amendments in an orderly fashion and we progress to the point where we ultimately vote on the third reading of this bill in this sitting day.

**Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (11.18 a.m.)—** The government will not be supporting this amendment simply because it really does undermine the whole purpose of the regional forest agreements and consequently the Regional Forest Agreements Bill 2002. The whole process that brings us to where we are today actually started before I was in the Senate—and that has been for some time now. There was uncertainty and division in relation to forests: we were uncertain as to what reserves were available and whether we would be able to conserve adequate, representative, comprehensive forests and whether particular species might be lost forever because state legislation, which was in charge of this, was being applied differently in each state. The Commonwealth under some external powers was introducing World Heritage listings and the whole conservation area, the whole industry area, was in great uncertainty. As a result, all parties got together—all governments regardless of political persuasion, and they were of all political persuasions—and recognised this could not go on either for the purposes of the future of the industry or for the sensible reserving of our very special species of trees, native flora and fauna in our country.

As a result of that, and as a result of a lot of discussion, the National Forest Policy Statement was agreed upon by all states and the federal government back in 1992. That set out certain principles. It indicated that we would all move forward in the same way so there would be certainty and guarantees for reserves and for the comprehensive and adequate nature of those reserves. The way to put into effect the principles that underpinned the National Forest Policy Statement back in the early nineties was to enter into agreements between the Commonwealth and the relevant states. Part of the proposal was that the states would do certain things; they would agree with the Commonwealth and allow the Commonwealth to influence, via regional forest agreements, certain matters principally within the jurisdictional area of the state.

And the Commonwealth agreed to do certain things. We agreed to put in some money to help sustain the industry, to save jobs for people, to look after families who lived in smaller country communities, to save a lot of the smaller country towns that were just disappearing off the face of the earth. So the Commonwealth agreed to put in money. The Commonwealth also agreed to release its control over the export of wood products provided export occurred in a way agreed upon by the Commonwealth in regional forest agreements. In involving ourselves in those agreements we went into the nature of the way states would be managing their forests and, when we were satisfied those arrangements were in place, we then said, ‘Okay, there will be no federal export control on the products, provided they come from forests that have been the subject of regional forest agreements the Commonwealth has had its say on and the Commonwealth has been satisfied the regime for the management of the forests is sustainable and the reserves are set aside.’ That was part of the original arrangement. The whole purpose of that agreement and the procedure was to bring certainty and security to the conservation of our very special forests and certainty and security to those who would invest in the forest industry—and by invest I mean create jobs, create wealth for communities, for states and for Australia. That is the whole principle underlying it.

I want to point out again that, as a result of this procedure and as a result of the
Commonwealth becoming involved in this process, there have been significant gains to the forests of Australia. Each regional forest agreement provided for the establishment of comprehensive, adequate and representative reserve systems based on nationally agreed criteria. The CAR reserve system adopted the precautionary approach to forest management, and it ensured that state and Commonwealth governments could be satisfied that they have adequately preserved forest ecosystems in their natural state free from major human impacts. The nationally agreed criteria were: 15 per cent of pre-1750 distribution of each forest type; 60 per cent of then existing old-growth forest or 100 per cent if they were rare or depleted; and 90 per cent or more of high quality wilderness forests. That was a great outcome for Australia, for our forest reserve systems, for our very special tree regime.

The level of protection that was negotiated through these agreements is to the forefront of international standards. The level of forest reservation in Australia greatly exceeds on all counts the level set out by the World Conservation Union, the World Heritage governing body, the IUCN. It also exceeds the standards set out by the World Wide Fund for Nature of 10 per cent of existing distribution of forests. While IUCN reserve criteria are based on existing distribution of forests, the Australian system is based on the distribution of forests pre-1750—that is, before European occupation of this continent. Australia’s forest reserve system is there as a result of this RFA process and is well in excess of IUCN standards. So we are ahead of the international standards. We are ahead of WWF standards. The IUCN, the world conservation union, is the leading conservation group around the world, and we have exceeded their standards. So this RFA process has brought real results.

I turn to a matter Senator Brown raised in his contribution. He talked about this debate being rushed through—I think those were his words—and being forced through the parliament without adequate discussion. Anyone listening to that might think, ‘Gee, that is terrible.’ But if they thought that they would not know the history of this whole process.

This is the fourth time that this bill or something like this bill has been introduced into this parliament. It has been fully debated already on three previous occasions. On two of those occasions the bill was sent off to a Senate committee which spent hours and hours looking through every single aspect of the bill. On no previous occasion has it ever got to a stage where it could be adopted by the parliament of Australia, but there has been tonnes of debate on this bill or something like it in previous parliaments. Even in this parliament, this bill was the first bill introduced by the Howard government when parliament resumed after the election and, so far, every day that the parliament has sat since the election has been spent dealing with this bill. So there has been plenty of time—and I am getting the figures shortly so I will be able to tell the Senate at some time—hours and hours of debate, spent on this and every senator who has wanted to has had every opportunity in this bill and in the previous bills to make their point and convince the chamber of the merit of their argument. To suggest that there has not been adequate debate is absolute rubbish in the highest degree, but it is in accord with all of the misrepresentations and misstatements of fact that Senator Brown has put in this debate.

Senator Brown was telling everyone here and anyone who happened to be listening on the radio that the World Heritage listed forests were being logged and the federal government was doing nothing about it. I challenged him about that. He says that all the time, people do not challenge him, so it becomes the truth. I challenged him on that. I said, ‘Tell us which World Heritage listed forests are being logged and we will do something about it, because it is illegal and completely contrary to the law.’ But of course Senator Brown has not murmured a response to that. He cannot, because he knows it is untrue—but that did not stop him saying it.

Similarly, he was telling us yesterday that, because of the RFA practices, a Tasmanian wedge-tailed eagle nest that he personally knew of had been firebombed and the poor old wedge-tailed eagle had been killed. We then inquired when this was, because I was a
bit interested in this—it is a species that is protected under the Howard government's Environment Protection and Biodiversity Conservation Act—Senator Brown said, 'Oh, well, that was in 1992.' That was 10 years ago, before the National Forest Policy Statement, certainly before these RFAs were entered into and certainly before the states, the Commonwealth government, industry and everyone involved had changed their practices in relation to wedge-tailed eagles and everything else.

This is the sort of misrepresentation that is put forward by Senator Brown time and time again to misrepresent the position to convince the people of Australia that the forests are not being managed in an ecologically sustainable way. As with most of the things that Senator Brown says, they are inaccurate, they are untrue, they are done for an emotive purpose and Senator Brown has an agenda which he chooses to pursue.

We will not be supporting this amendment. In relation to Senator Brown's comments on the time allocation for this debate, even Senator Brown should have been able to make his point in the time that has already elapsed in this debate, so I reject that argument that he has put.

I urge those who are interested in this debate to see all of the good things that have come out of the regional forest agreements. When they listen to Senator Brown in the future, I urge them to listen to him carefully and to query him because, when I query him, I find that all of his arguments are emotive and misleading and they are done for a purpose which has nothing to do with the forest debate.

Senator BARTLETT (Queensland) (11.31 a.m.)—As I understand it, we are debating an amendment by Senator Brown relating to export controls; although, I would not necessarily know that from the speech that has just been made. If I did not know better I would think that Senator Ian Macdonald was trying to filibuster on this bill.

The TEMPORARY CHAIRMAN (Senator Calvert)—We are dealing with amendment (7) relating to clause 6.

Senator BARTLETT—Thank you—on export controls.

Senator Ian Macdonald—You obviously did not listen to the first half of my speech. You only came in halfway through it.

Senator BARTLETT—I was thinking of all the other ones I have heard as well. The Democrats support the amendment. The clause deals with export controls and seeks to exempt RFA wood for the purposes of the Export Control Act. It also seeks to exempt RFA forestry operations from the Australian Heritage Commission Act and the Environment Protection and Biodiversity Conservation Act. There are some consequent amendments relating to that, some of which are from the Democrats and others are from Senator Brown.

At this stage, I record the support of the Democrats for the amendment and that we are willing to support all the other Greens' amendments that have been circulated. I understand that we are likely to end up with a situation where a time limit will be put on consideration of this bill. The approach the Democrats have been taking is to ensure that we have opportunities to ask questions and put forward arguments in relation to the amendments that we have circulated—and I am sure we will get to those at some stage today. When those amendments arise, I will be speaking further to some of those issues.

The principle that this amendment goes to, and subsequent ones from both Senator Brown and the Democrats, relates to one of the big concerns and central issues that possibly has not had the attention it deserves. That concern is in relation to this act and the operation of RFAs. It is one of the reasons why this act is important and one of the reasons why it is detrimental. There has been some focus, quite appropriately, on the compensation aspects that this act will entrench. We will get to that section later—though it has been traversed a fair amount in this debate already—and there are some important issues there in terms of the obligations for the Australian government, the inadequacies of the way that is structured and the costs that we are going to be linked to.
It is important to emphasise the other section that is also highly problematic which seeks to exempt RFA forestry operations from the provisions of the Export Control Act, the Australian Heritage Commission Act and, in particular, the Environment Protection and Biodiversity Conservation Act. If the protestations of Minister Macdonald are correct and the allegations of the occurrence of immense environmental damage are false, I cannot see why the government would have any problem with the environment protection act applying to RFAs. The argument that has been put forward—it has been put forward in the past and I am sure it will be put forward again—is that, because the process of putting together RFAs is very rigorous and takes into account those environmental issues, there is no need to do it again through the EPBC Act. The problems are—and people have indicated these many times—firstly, that there are significant concerns with the content of some of the RFAs that have been agreed to. Secondly, if the operations of the RFA are conducted in a way that breaches those RFAs and causes environmental damage—whether you are talking about threatened species, World Heritage values or whatever—there is nothing that this parliament can do about it. One of the significant reasons why the EPBC Act is a strong act in many regards and an improvement on previous acts is that it provides an opportunity for third parties to generate action to ensure that the legal requirements and legal obligations of the federal environment minister are upheld. We have already had one successful court case occur, in relation to the spectacle flying fox in Far North Queensland, which showed the value of that provision. It stopped the damaging activity that was threatening the world heritage values of the wet tropics and what is now a listed threatened species. If that activity was occurring as part of an RFA operation, whether it breached the RFA or not, that provision—if this part goes through—would not be able to apply. The rights of third parties to seek redress, to ensure that forestry operations concur with environmental obligations and with the RFA itself, would be removed.

Even if the assertion that the government makes that the putting together of RFAs is sufficiently rigorous that we do not need to do that assessment again under the EPBC is true—and the Democrats reject that assertion categorically—the key fact is still that, if those activities then occur in inappropriate ways or have damaging effects, there is nothing anyone can do about it. We are basically left relying on the political whim of the minister of the day and in many cases I do not think that is something many people would be confident in relying on. If you add to that the compensation provisions in this act, it would mean that the minister of the day might be less inclined to do anything because it might cost the Commonwealth money.

It is a key area and this whole section that this amendment goes to—although this particular amendment is to do with the Export Control Act—is something that really needs to be recognised as particularly problematic. It highlights one of the central flaws of this act. Many of us in this place have over quite a period of time brought to the attention of the Senate specific instances of breaches of RFAs. Senator Murphy has almost made it an obsession in many ways highlighting breaches of RFAs in Tasmania and the lack of ability to do anything about it. That is occurring anyway regardless of this act, but this act will close off a significant line of action to try and address those breaches. That is in many ways one of the most offensive parts of this legislation and why it is so important that it not go through in its current form.

I understand that there are people already working on legal cases in relation to RFA operations that are breaching the EPBC and using those provisions that the EPBC now has that were not there under the old system for people to seek redress. If this act goes through unchanged, that avenue will be closed off to them, and that is basically the government deliberately preventing anybody in the community from ensuring that the federal government meets its environmental obligations under the environment protection act. That is a serious problem.
There is no logical reason, from the Democrats point of view, why forestry operations under RFAs have some magical status and do not need to be subject to those enforcement requirements of the EPBC when every other activity of everybody else around the country—every other agricultural practice, every other farm usage and every other land use activity—is potentially subject to the EPBC. It is a question that a lot of farmers and the like should legitimately ask this government: how come forestry operators under RFAs get that free ride compared to what everybody else does? Even forestry workers that are not operating under RFAs are at a competitive disadvantage because they are still subject to the EPBC—as they should be, I hasten to add. That really has not been highlighted enough to date, and it again emphasises why this section of the bill in particular is a major problem and why we support this amendment by Senator Brown, as we have supported all the others. It goes to the reasons behind some of the amendments that we have circulated that I am sure we will get to at a later stage.

Senator BROWN (Tasmania) (11.41 a.m.)—This is an Australian Greens amendment to ensure that the Commonwealth retains the power to have control over exports of whole logs and sawlogs as well as plantation wood being exported from this country, as a lever for being able to enforce the regional forest agreements, which hand across the forest resource to the big corporations at the expense of the Australian people. We have just heard from the minister, who has been saying throughout this debate, ‘What can I do? It is up to the state governments to employ their side of the bargain, which is to protect the environment to make sure that species do not become extinct, to ensure there is ecological diversity and to ensure there is ecological management.’ But here we have in this legislation the Howard government, supported by the Labor opposition, saying, ‘We will remove Commonwealth powers to do anything when the states break the agreement.’

Just today, as you know, Mr Temporary Chairman, the loggers have moved into Goolengook; they moved in the other day but they are there in full force today. This is a legislated river heritage protected area which was there at the time of the regional forest agreement. Prime Minister Howard signed it with Premier Jeff Kennett and said, ‘We are going to protect this, we are environmentalists.’ Then after it was signed the Kennett government legislated and said, ‘No, we will open it up to the loggers.’ So people go out there to peacefully protest and say this should not happen. Where is the Howard government that says the regional forest agreement is binding? The Howard government agrees with the breach by doing nothing. So young citizens get carted off to jail for peacefully protesting, trying to do the Howard government’s job. The minister says, ‘Oh well, when the state governments do things like that I don’t have any powers.’ He does at the moment, but what he is doing here is legislating to give away those powers, and the Labor Party is supporting it.

Senator Ian Macdonald—Is stringing wire between the trees a peaceful process?

Senator BROWN—The interjections that come from the minister are no more helpful in this debate than when he does get to his feet to repeat what he said before. It is interesting, when we look at the situation in Victoria and you set aside the environment, to look at what the Prime Minister has said in bringing forward the regional forest agreement in Victoria, and ditto for the other states. He said on 3 February 1997:

Today, I was pleased to sign Australia’s first Regional Forest Agreement (RFA) with the Premier of Victoria, the Hon. Jeff Kennett MLA.

He goes on to say:

Today’s agreement is a milestone in Australian forest management.

The RFA will give greater certainty of access to timber resources, providing the basis for investment in the timber industry and the creation of new jobs—providing up to an estimated $140 million boost for the economy.

He goes on to say:

It is a welcome and positive result for the environment and the economy and illustrates that with sound policy it is possible to reach a balanced and responsible outcome in forest management.

See those public relation words coming in there. The release goes on:
Today's signing—
says the Prime Minister, and he put his sig-
nature under this—
ensures world class protection of wilderness, old
growth and biodiversity.
It did nothing of the sort; they are logging
that today and Prime Minister Howard and
his minister have failed to use the protection
method that the Commonwealth has for en-
suring that part of it.

But let us look at the so-called insurance
that the forest industries would now have a
continuing resource in terms of cutting the
forests. Indeed, it is in the explanatory notes
from the minister on this legislation that we
are dealing with at the moment. It says that
the legislation we have before us is going to
lead to:

20 years' certainty of access to forest resources
for the timber industry ...

Well, bunkum! In effect, the industry got
greedy, it thought it was going to have a
huge cut assured to it in the forest, Prime
Minister Howard agreed that that was the
case, Premier Jeff Kennett said ‘that’s going
to be the case’, but instead of that we have
uproar in East Gippsland. Haven’t we? That
is what we have got.

And instead of that, less than five years
after the signing of the regional forest
agreement promised stability and security,
sawlog quotas have been cut by 30 per cent
right across the state, and even more in East
Gippsland, which has had a cut of 43 per
cent.

The author of the report that recom-
mended the cutbacks found that there are still
no reliable estimates of wood volumes. The
whole thing is based on a shifting sand of
statistics and one thing you require when you
do not know what the resource is—and pat-
tently the government, the opposition and
their Victorian counterparts did not know
what the resource was—is flexibility for re-
adjustment. But what this legislation does is
take away the Commonwealth’s ability to be
involved in readjustment. And you know
what is going to happen then? It is the envi-
rionment that suffers because the power of
the industry to have governments renege on
their environmental commitments is awe-
some.

You note, from that explanatory memo-
randum, that this legislation will be in power
for 20 years, but in five years we have found
that it is already discredited. Therefore, there
has to be a right of parliamentary review and
scrutiny which has teeth in it. That is why it
is important that we do not give away Com-
monwealth powers in this matter; that we
hold them, including export powers. Let us
retain the ability to say ‘No you can’t export
whole logs out of Victoria’ when the sawlog
industry is running short; ‘You can’t export
whole logs out of Tasmania’ when the Tas-
manian sawlog industry cannot get them and
is not going to have its quotas met.

On the situation in East Gippsland, I refer
the committee to the Age dated 21 February,
a report by Claire Miller which says:

Logging in some Victorian forests will be cut
by up to 80 per cent after an independent report
found they have been extensively overlogged.

The report, Our Forests, Our Future, by Pro-
fessor Jerry Vanclay, the chairman of sustainable
forestry at Southern Cross University in New
South Wales, says a 30 per cent state-wide cut is
needed to put logging back on a sustainable foot-
ing.

A 30 per cent cut back, five years after the
Prime Minister and Premier Kennett say,
‘This secures logging supplies.’ How wrong
they were. What urgent need there is for the
rectification of the whole regional forest
agreement. What a failure the regional forest
agreement is, yet we have Labor in here sup-
porting the Liberals and saying, ‘Well, let’s
divest ourselves of any power to get it right.
Let’s divest ourselves of the need to fix
things up.’ The report in the Age goes on to
say:

The Victorian Premier Steve Bracks today will
announce $80 million in compensation to saw-
mills and loggers as part of the plan to overhaul
the logging industry.

Once again the taxpayers pay the industry for
this outcome which the industry demanded.
The industry and its cohorts in the bureauc-
rracy got the figures wrong, and instead of
having to readjust, it is the taxpayers who
pay out—and Labor supports that. The
CFMEU, this entity of failure when it comes
to the defence of workers’ rights, as we will see later in the day, supported that process and now wants to dip into the taxpayers’ pockets to the tune of $80 million to make up for their very own mistake. Labor says, ‘We’ll support the government in not being able to rectify that by going back to industry and saying, “You got this wrong—not the public—you rectify it.”’ No. They dip into the public purse. This is an industry that wants, to use the minister’s term, ‘mischievous government intervention’ taken out, but wants the government to come in and use taxpayers’ money all the time to bail it out of its own failure to plan adequately for the future. And Labor supports it. The Age report goes on to say:

Several hundred timber jobs—most in areas of chronic high unemployment such as East Gippsland—are on the line.

Why are they on the line? Not for environmental reasons, but because the industry cannot manage itself and because Prime Minister Howard’s promise was hollow. He got it wrong; the Labor Party got it wrong; the taxpayers pick up the bill. The report says:

The largest cutback will be a 79 per cent reduction of logging—from 41,100 tonnes to 8,600 tonnes in the Midlands forest management area, which includes the Wombat State forest near Daylesford.

Who picked up the failure of the industry there? The conservation movement. Who gets the compensation? The industry.

So we see this as a piece of legislation that is simply manufacturing a taxpayers’ windfall for an industry that cannot manage itself. The watchdog is not the government; it is the public and the community groups. The watchdog is not the opposition, not the Labor Party; it is people out there who desperately want to see these forests properly managed and protected. The report continues:

It is expected that the Midlands, which has seven sawmills, will be turned over to community management.

Sources said the government would respect local decisions on the future of forests in the region, where environmentalists have been pushing to phase out logging.

What an extraordinary failure of government at state and federal level. But, particularly, what an extraordinary failure of opposition by the Labor Party and now by the Bracks government in office in Victoria. They have failed the industry, they have failed the conservation movement and they are dipping massively into the public pocket to make up for their own default. If there is some explanation as to why they got it wrong, let Senator O’Brien say so now. Why did the Labor Party and the CFMEU fail to see this coming? Why did they get it wrong when they supported Jeff Kennett and John Howard back in 1997—this extraordinary get-together of supposed opposites in politics who in fact have the same driving motivation, which is short-term self-interest without the ability to look at the long term and analyse it properly? I commend this amendment to the committee.
going to be obstructive about it, but we are dealing with very important legislation and it is a common courtesy for the government, if it wants to move things along, to inform the chamber as to why the process has been interrupted. It may be that it wants to acquaint the chamber with information, to bring in legislation or whatever. I would advise the government to do that. It is the proper way of proceeding. I am on my feet for the second time asking for it, but I hope the government will do it now.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (11.56 a.m.)—After we vote on that motion, I will do exactly that.

Question agreed to.

Declaration of Urgency

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (11.56 a.m.)—I declare the Regional Forest Agreements Bill 2002 an urgent bill and move:

That this bill be considered an urgent bill.

The DEPUTY PRESIDENT—The question is that the motion be agreed to. Those of that opinion say aye, the contrary no, I think the ayes—

Senator Brown—I would like to have my opposition to that motion very clearly recorded on this occasion.

Senator Bartlett—I would like to also record my opposition on behalf of the Democrats.

Senator Brown—I did not hear the outcome of that debate.

The DEPUTY PRESIDENT—The ayes have it.

Senator Brown—I say the noes have it.

Question put:

That the motion (Senator Ian Campbell's) be agreed to.

The Senate divided. [12.01 p.m.]

(The Deputy President—Senator S.M. West)

<table>
<thead>
<tr>
<th>AYES</th>
<th>NOES</th>
<th>Majority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barnett, G.</td>
<td>Allison, L.F.</td>
<td></td>
</tr>
<tr>
<td>Boswell, R.L.D.</td>
<td>Bourne, V.W.</td>
<td></td>
</tr>
<tr>
<td>Buckland, G.</td>
<td>Cherry, J.C.</td>
<td></td>
</tr>
<tr>
<td>Campbell, G.</td>
<td>Lees, M.H.</td>
<td></td>
</tr>
<tr>
<td>Carr, K.J.</td>
<td>Ridgeway, A.D.</td>
<td></td>
</tr>
<tr>
<td>Collins, J.M.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cooney, B.C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crossin, P.M.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denman, K.J.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forshaw, M.G.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hogg, J.J.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Knowles, S.C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ludwig, J.W.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Macdonald, I.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mason, B.J.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>O'Brien, K.W.K.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payne, M.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schacht, C.C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tchen, T.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Watson, J.O.W.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
|               | AYES          | 40
|               | NOES          | 10
|               | Majority      | 30

AYES

Barnett, G.  Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G.  Calvert, P.H. *
Campbell, G.  Campbell, I.G.
Carr, K.J.    Colbeck, R.
Collins, J.M.A. Cook, P.F.S.
Cooney, B.C.  Crane, A.W.
Crossin, P.M.  Crowley, R.A.
Denman, K.J.  Eggleston, A.
Forshaw, M.G.  Herron, J.J.
Hogg, J.J.    Hutchins, S.P.
Knowles, S.C.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Macdonald, J.A.L.
Mason, B.J.   McLucas, J.E.
O'Brien, K.W.K. Patterson, K.C.
Payne, M.A.   Ray, R.F.
Schacht, C.C.  Scullion, N.G.
Tchen, T.     Tierney, J.W.
Watson, J.O.W. West, S.M.

* denotes teller

Question agreed to.

In division—

Senator Brown—Madam Deputy President, I draw the Senate’s attention to the relevant provisions in the standing orders which require that at this stage, if not before, any pecuniary interests should be declared.

The DEPUTY PRESIDENT—Thank you, Senator Brown.

Senator Watson—I believe, as a primary producer with trees, I may have an interest in the outcome.

Senator Crane—I have shares in Wesfarmers Cooperative and Wesfarmers Ltd.

Senator Lightfoot—I may have an interest which may be perceived as a conflict.

Senator Barnett—I may have an interest in forestry plantations.

Senator Ian Campbell—I have a box of matches on my desk. I might strike one later tonight and light a cigar. I think the timber comes from imported pine wood, so there may be a conflict!
The DEPUTY PRESIDENT—Thank you.

Allotment of Time
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.05 p.m.)—I move:
That the time allotted for consideration of the remaining stages of the Regional Forest Agreements Bill 2002 be as follows:
Commencing no later than 4 pm.
Committee of the whole—
(a) all remaining Australian Greens amendments—2½ hours
(b) all remaining Australian Democrats amendments—2½ hours
(c) all remaining amendments to be moved by Senator Murphy—2½ hours
(d) all remaining Opposition amendments—2½ hours
All remaining questions—10 minutes

The Senate has now resumed for the new parliament and, with the exception of one or two Thursday lunchtime bills on the last sitting Thursday, has debated only one piece of legislation and has made incredibly slow progress. In fact, I am informed that, up until now, we have been speaking on this one piece of legislation for more than 15 hours. The bill was debated in 1999 for a total of 25 hours and was referred to and considered by various Senate committees on at least two occasions: in June and December 1998. I do not think that anyone can argue that this is not a very important bill; I think that is one of the issues that is agreed across all sides of the chamber. This legislation is very important to the environment, to the natural heritage of Australia and to those who seek to exploit the forests and form the basis of Australia’s timber industry.

There is no doubt about the importance of this legislation. The interest in this bill and the length of time it has been debated bear testament to that fact. At some stage, however, the Senate has to make a decision about its priorities and it has to make a decision as a whole about the time that can be allocated to bills. That is done either by normal processes of consensus or by the Senate making a decision to do that. We are very keen to ensure that this bill is debated fully and adequately. It has already been one of the longest debates in Australian parliamentary history. It would certainly be in the top 10 bills in that regard in terms of the number of hours dedicated to debating this one particular piece of legislation.

We believe that it is time that the Senate made some decisions about the bill. We have, in crafting the time allotments that I have moved, ensured that, for all of the remaining amendments that are on the Notice Paper, a proper debate takes place around them and decisions by way of votes of the Senate take place on those amendments over the remainder of today. I commend the motion to the Senate.

Senator BROWN (Tasmania) (12.08 p.m.)—What an outrageous abuse of the proper forms of this house this is. What an outrage it is that the two big parties should get together to stymie what is a very important debate—which the government acknowledges even if the opposition will not—about an issue that is important to every Australian. The debate has not been filibustered.

Senator Boswell—You’ve called division after division.

Senator BROWN—It would have done well if those opposite who are intervening at the moment had been here.

Senator Boswell—Quorum after quorum and division after division.

The DEPUTY PRESIDENT—Senator Boswell, would you come to order! If you wish to speak, seek the call.

Senator BROWN—Senator Boswell, would you come to order! If you wish to speak, seek the call.
not only in terms of the environment but also in terms of the commitment to the Australian people that this would be a good outcome. Nothing could underscore that better than the $80 million of taxpayers’ money currently being put into the Victorian regional forest agreement system because the industry itself got wrong the volumes of wood available.

We are talking about hundreds of millions of dollars of taxpayers’ money as well as the nation’s forest and wildlife heritage and we are seeing a bill that removes the federal powers and responsibilities to look after those matters now being guillotined as far as debate in this parliament is concerned. That is unprecedented for a decade. The last time such a bill was guillotined—not at the end of a winter or annual session—was also on a forest bill in 1992. Twice bills giving largesse to the logging industry, which in turn donates back to the big parties, got guillotined in this place, showing the power of the big end of town over the interests of the average Australian citizen. On both occasions it took the Labor Party to get together with the government. First time round, the then conservative opposition supported Labor. This time round, the then conservative opposition supported Labor. This time round, it is the Labor Party—the forest quisling party—supporting the government to effectively remove not only the rights of Australians to have their forests properly husbanded but also the rights of people to have this properly debated in this place. The Labor Party, the Crean opposition, should hang its head in shame over this failure to adequately protect the forest environment in Australia, the wildlife and the rare and endangered species—let alone the failure to protect the jobs of people in the industry.

I reiterate: since these regional forest agreements were signed with the promise of jobs, jobs, hundreds—if not thousands—of jobs have been shed from the industry as it has aggregated, rationalised and got rid of the workers. Where has the CFMEU been? What is the Labor Party doing about that? It is siding with the big boys in Gunns and the other logging companies, including Daishawa—profits to Japan—against the interests of the workers in Australia. Where is One Nation to defend the jobs in the bush? What an extraordinary thing that it is the Greens who are defending the workers’ jobs by saying, ‘We must get this industry on a basis which properly defends the rights of workers.’

In the 2 1/2 hours I am now constricted to, I will be moving an amendment which says, ‘If you’re going to compensate the corporations with taxpayers’ money if any future forests are protected—give them millions of dollars, having done nothing but simply create a national park for the good of the people who own the forests—isn’t it good enough to compensate workers who get sacked by those very same corporations, that those corporations should give some of that largesse to their workers?’

Do you know what is going to happen? The Labor Party, the defenders of the workers, are going to vote against it. They are going to sell out the workers and the industry. Where is the CFMEU—this lickspittle of the woodchip corporations; this travesty of a union; this self-invested seller out of the workers, which never steps off the footpath as the workers in the industry get serially sacked, as the contractors lose their jobs, their trucks, their houses and their money in the bank? It is at the whim of the woodchip corporations.

What has happened to the Labor Party that they aid and abet the profit line of the big corporations against the interests of the people in the bush like that? If they had a credible job security program before this house then it would make for a debate, but their position is, ‘If John Howard says it is good enough, we will support it.’ It is not the first time that they have done that and made a mistake, but this compounds that ‘blinkers on’ attitude, which Labor so often take on great social—let alone environmental—issues of the age. That is why you need a crossbench. That is why you need the Greens, why you need the Democrats: so that the powerless voices have a say—not just those people in our community who are disenfranchised in this debate because the two big parties have got together but also our fellow creatures on this planet, who, due to this legislation, are going to be depleted in their millions around this country as this voracious cut-it-down, firebomb it, poison it
industry wrecks forest after forest in Tasmania, Victoria, New South Wales and Western Australia.

This is a marker of what is wrong with economic rationalist policy. This is a marker of what is wrong with a system which is run by the big end of town against the interests of the Australian people—the people who repeatedly say in polls, by more than 70 per cent, that they want the chainsaws out of the forest and that they want the two million hectare plantation establishment in Australia, which can meet all this nation’s wood needs, put to just that job. They want the downstream processing that goes with it that would ensure jobs in the bush. But the big industry is now in control and it is not going to downstream process in Australia if it can do it more cheaply overseas and pay people less. You might expect that from the government, but what we are doing here is getting it from the Labor opposition, which is no opposition at all. What a process this is, what a defining day in politics this is and what a failure—if not of government, then of the Crean Labor opposition—this definitely is in the Senate today.

Senator BARTLETT (Queensland) (12.18 p.m.)—For the benefit of those who are following this debate, I clarify that what we are debating at the moment is the motion moved by the Manager of Government Business to set a time limit on debate of the Regional Forest Agreements Bill 2002 and, by virtue of that, ensure that it is able to be voted on tonight. It is usually referred to, quite appropriately, as it is a very good description, as a guillotine motion because it cuts off debate. That is obviously something being employed by the government, clearly with the support of the opposition, to ensure that this bill passes despite the opposition of the Democrats and Senator Brown.

The Democrats completely oppose this motion. I put on the record that we at least support the attempt to ensure that each party’s or each senator’s amendments get some consideration rather than spending nine hours and 50 minutes on one amendment and 10 minutes on all the other amendments. I think that is a worthwhile way to structure a guillotine if you are going to have one. That does not in any way deduct from the Democrats’ opposition to the imposition of the guillotine in the first place.

As I and a number of my Democrat colleagues who have contributed extensively to this debate have said, this is a very dangerous bill and one—and this goes back to the debate we had in the previous sitting week—that I attempted to have referred to a Senate committee for proper consideration not just of the bill itself but of the RFAs as they are operating at this moment and the activities that this bill will affect. I think everybody is clear about what is in the bill, but I do not think any of us can claim to be clear about its effects on the environment it applies to. That is fairly fundamental. I indicated last sitting week when the Senate refused to support the Democrats’ move to refer this to a committee that it was a great shame because it prevented that information being examined.

The motion the government has moved to curtail debate on the bill and force it through tonight also compounds that error because it prevents us as senators and, indeed, the general public from being more fully aware of the environments that this bill is going to impact upon—the natural or physical environment, the workplace or employment environment and the economic environment. That is a major flaw that the Democrats wish to emphasise once again. There is no hiding the fact that basically the purpose of this motion is to force the bill through today and prevent the opportunity for further debate on it beyond today. That is, quite clearly, what is being done. All the other arguments about whether or not there has been too much debate today are, in a sense, irrelevant. What is clearly the case is that the two larger parties are using their numbers to crunch this bill through.

This bill is comprehensively and totally opposed by the Democrats, although we still have amendments to move to remove some of the more insidious aspects of it. I will speak to those at the appropriate time. One of the reasons why, to date, in terms of the debate in the committee stage, I have not spoken at great length is that I have been waiting for our amendments to come on so that I can raise those points, seek information from the
minister and get responses on the record in relation to those areas. In that sense, the fact that this is going to be guillotined is unfortunate. Although I note that 2½ hours is going to be given for all of the remaining Democrat amendments, that may well be insufficient time to explore the issues that the Democrats wish to explore in this debate. To date, as this debate has continued, we have not had the opportunity to examine those issues surrounding our amendments, and that is unfortunate. Whilst 2½ hours is better than nothing, it may well be insufficient for our purposes, and our annoyance at that fact and our opposition to the fact that that curtailment is happening should be put on the record.

We have contributed extensively during the second reading debate—I think four Democrat senators spoke at that stage. We again moved amendments to try and defer consideration of the bill but, once we got to the committee stage—I am not sure how many hours have been spent in committee as opposed to on the second reading—from the Democrats’ point of view, we were waiting to get on to our amendments and the issues we wished to raise. Now we are in a situation where we will not be able to do that as comprehensively as we believe is required and as comprehensively as we wish to because of the guillotine that has been introduced. It is a poor act on the part of the government to curtail debate. It is preventing the issues that the Democrats wish to raise from being properly examined, and that is something that we express great opposition to and annoyance at.

It will also mean that, obviously, a lot of people who were trying to leave Canberra tonight to get to their home towns, their electorates or other engagements tomorrow will not be able to. Apart from this motion curtailing debate and enabling the two larger parties to force the legislation through, one part which has not been touched on is that it also means that the sitting of the Senate will be extended. We will not have general business today, which would have been a Democrat private member’s bill—although I understand that we will have the opportunity to debate that next time general business appears on a Thursday. That is one impact of it. That Democrat private member’s bill—a very important one dealing with post-parliamentary employment of former ministers and advisers, an issue of great public concern that the Democrats have put forward legislation to address—was going to be debated in this chamber this afternoon; now it is not, because of this motion.

We were going to, as usual, finish up early this evening but instead we will now be going to 12 o’clock or two o’clock, so those activities of other senators will be severely disrupted by this insistence by the government and the opposition on forcing this legislation through. It shows the extent of their obsession with forcing it through that they would go to that length to cause that much disruption to the Senate and to senators to extend the sitting hours well into the night and push it through in the dead of night.

It also means that some of us who were going to watch the Nick Cave concert tonight in Brisbane will not be able to do so, and that is a major sacrifice. I am particularly irritated about that but I should say that even Nick Cave is not as important as saving our forests, so certainly I will be remaining here and doing what I can on behalf of the Democrats to attempt to ensure—

Senator Ian Campbell—Was it a sell-out concert?

Senator BARTLETT—It was a sell-out concert, yes. I will be doing my bit to try and ensure that the removal of the protection of our native forests does not occur. Obviously, the obsession of the government and the Labor Party with forcing this bill through, and the fact that they are joining together to support this guillotine motion, highlight that the chances of the Democrats and Senator Brown being able to stop the bill are probably fairly slim. I do at least hope, however, that genuine consideration will be given by other parties in this place to the Democrat amendments and to other people’s amendments. Certainly we have looked with interest at the ones that the Labor Party have put forward, and we hope they look with interest at ours—and Senator Murphy’s, for that matter.
The guillotine will mean less time to examine those amendments. It is obviously—and it is no secret to anyone—a joint effort by the Liberal Party and the Labor Party to force this bill through and really put at risk native forests of Australia that are already suffering terrible damage. That is a terrible outcome—and one that the Democrats oppose wholeheartedly, comprehensively and completely.

Senator LUDWIG (Queensland) (12.28 p.m.)—I do agree with Senator Brown: it is a serious step that the Labor Party are taking in relation to this bill. It is one we do not take lightly. What we have sought to do in structuring the remaining hours of the debate is ensure that Senator Brown, the Australian Democrats, the Labor Party in opposition and the government can deal with the amendments that are proposed for the Regional Forest Agreements Bill 2002. In doing so, we have insisted on putting down a marker that there should be sufficient time for the debate. The Australian Greens amendments—which we have been on since the beginning of this week—have 2½ hours, the remaining Australian Democrats amendments have 2½ hours, those by Senator Murphy have 2½ hours and the opposition amendments have 2½ hours.

We have insisted that in the motion there be sufficient time to allow the debate to be progressed. All we have done this week is debate the first bill to be introduced—that is, the RFA Bill. Speaking as Manager of Opposition Business, this week we have had to shift and rearrange business a number of times to accommodate the RFA, a first speech and the address-in-reply. The need to bring this debate to a conclusion is clear. The process undertaken by Senator Brown could only be described as a filibuster. We have left this course of action to the latest possible time it could be done—the latest.

Having come to that time, it will mean, as a consequence of our insisting that sufficient time be given to the amendments of each of those parties I mentioned earlier, that we will sit late into the evening if those amendments take up their allotted time. That is as a consequence of our having left this to the latest possible time, and we have done that to allow Senator Brown to progress his amendments. We find that, having had something in excess of 10 hours of debate so far on this bill, we have not moved from the fifth amendment by Senator Brown.

Senator Ian Macdonald—Fifteen hours.

Senator LUDWIG—we have not got to the opposition amendments, we have not got to the amendments to be moved by Senator Murphy and we have not got to the amendments to be moved by the Democrats. The passing of this motion will allow that to occur. The time allotted is sufficient, in our view, to complete the debate on this important piece of legislation. I need only reiterate that it is a serious step that we take and that we do not take it lightly.

The DEPUTY PRESIDENT—The question is that the motion moved by Senator Campbell be agreed to. Those of that opinion say aye, to the contrary no—

Senator Brown—No.

The DEPUTY PRESIDENT—I think the ayes have it. Do the ayes have it?

Senator Brown—The noes have it.

The DEPUTY PRESIDENT—Division required; ring the bells.

Senator Faulkner—Madam Deputy President, I raise a point of order. There was only one voice from a senator on the floor. I do not mind the division going ahead, but we all know that it properly should not be called. I merely draw attention to that and take the technical point of order that that should not be allowed. But, in the interests of seeing the will of the chamber shown on this issue, let us have the division, even though properly it should not have been called because there was only the voice of one senator on the floor.

Senator Ian Macdonald—And it takes another 10 minutes off the debate.

Senator Faulkner—I know that.

Senator Ian Macdonald—It is 10 minutes in which we could have been debating it.

Question put.

That the motion (Senator Ian Campbell's) be agreed to.
The Senate divided. [12.38 p.m.]
(The Deputy President—Senator S.M. West)

Ayes…………… 43
Noes…………… 10
Majority……… 33

AYES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Calvert, P.H. *
Campbell, G. Campbell, I.G.
Carr, K.J. Colbeck, R.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Cooney, B.C.
Crane, A.W. Crossin, P.M.
Crowley, R.A. Denman, K.J.
Eggleston, A. Evans, C.V.
Forshaw, M.G. Harradine, B.
Herron, J.J. Hogg, J.J.
Hutchins, S.P. Knowles, S.C.
Lightfoot, P.R. Ludvig, J.W.
Lundy, K.A. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.I. McLucas, I.E.
O’Brien, K.W.K. Patterson, K.C.
Ray, R.F. Schacht, C.C.
Scullion, N.G. Tchen, T.
Tierney, J.W. Watson, J.O.W.
West, S.M.

NOES
Allison, L.F. Barllett, A.J.J.
Bourne, V.W. * Brown, B.J.
Cherry, J.C. Greig, B.
Lees, M.H. Murray, A.J.M.
Ridgeway, A.D. Stott Despoja, N.

* denotes teller

Question agreed to.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.42 p.m.)—I move:

That government business order of the day No. 4 (Taxation Laws Amendment (Film Incentives) Bill 2002) be postponed till after consideration of government business order of the day No. 13 (Radiocommunications (Transmitter Licence Tax) Amendment Bill 2002).

Question agreed to.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 1) 2002

Second Reading

Debate resumed from 13 March, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (12.42 p.m.)—The Democrats have agreed to the request that the Higher Education Legislation Amendment Bill (No. 1) 2002 be treated as non-controversial. However, I will take the opportunity to make three brief comments about the legislation. I would like to draw the attention of senators to the explanatory memorandum for the bill. It states:

The Bill amends the HEFA to create a HECS-style interest free loans scheme for overseas trained professionals.

This is not accurate. This proposed scheme could be more properly described as a PELS style loan; at best it is only a half-truth to describe it as a HECS style loan. There are two important features to HECS. Firstly, it is an interest-free, income-contingent loan; and it is repaid through the taxation system. This new loans scheme for overseas trained professionals shares this element of HECS. However, the other defining feature of the Higher Education Contribution Scheme is that it is a private contribution to a publicly funded place. This notion of contribution explicitly recognises that there is considerable public benefit from higher education—something the Australian Democrats have long argued. Our voting record in this place and our policy generally reflects this particular commitment. Loans schemes such as PELS and the proposal in this particular bill simply advance the full cost of tuition, and thus assume only a private benefit for the student involved. The reason I am drawing the Senate’s attention to this slippage in the use of ‘HECS like’ is no mere idle exercise in semantics. Senators will be aware that the new Minister for Education, Science and Training, Dr Nelson, has acknowledged that the current funding arrangements of universities are unsustainable, and he has flagged the need to review funding mechanisms.
Moreover, there has been some public discussion in recent weeks concerning proposals to further increase private contributions to Australian universities. We have no problem with that—indeed, we encourage a debate on such matters. However I think it is particularly important we do not allow HECS to become simply conflated with a loan scheme by stealth.

I note that in the other place when debating this legislation on 11 March the new shadow minister for education, the member for Jagajaga, also referred to this proposal in this bill as a HECS style loan. As it was the first time she had addressed the new parliament in her capacity as shadow minister for education, the community and, indeed, the Senate is entitled to wonder whether this was a mere slip of the tongue or whether it indicated the Labor Party was also moving to a position that diminished the centrality of public good in higher education policy. I would not like to draw too many inferences from that particular line or that reference—certainly not from one comment in a speech in a second reading debate—but I certainly look forward, as I am sure the chamber and the rest of the community does, to future comments from the shadow minister and some future reassurance on this point regarding the opposition’s commitment to recognising higher education as a public good and public benefit.

The second point I would like to make in relation to this legislation is consistent with the government’s general approach of cost shifting to students. Currently the Commonwealth funds bridging programs for overseas trained professionals. I am informed by the minister’s office that once the loan scheme is in place the current allocation for these places is not reinvested back in higher education but simply reverts to consolidated revenue. That was a question that came from my office to the government and we received that answer—that it would go into consolidated revenue but it would not be specific to higher education. While the money involved in the grand scheme of things is probably relatively small, it is important to note that this bill is another example of this government’s continuing abrogation of its own responsibility to invest in Australia’s future economic and cultural prosperity.

The final point I wish to raise is that clause 98Q allows the minister to determine that a specified part of an occupation can be considered as an occupation in its own right for the purposes of maximising the Bridging for Overseas Trained Professionals Loan Scheme. We have no problem with this, but we do note that the bill only requires that determinations are gazetted after tabling as a disallowable instrument. We wanted to ensure that any such determination was placed on the National Office for Overseas Skills Recognition web site, the NOOSR web site, so that other potential students were aware of such decisions. We have raised this with the minister’s office and I would like to place it on the record that the minister’s office has indeed advised us that any determinations will in fact be placed on that NOOSR web site. So the Democrats will be supporting the legislation before us today with those few comments that pertain to this bill.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.48 p.m.)—I would like to thank Senator Stott Despoja for her contribution and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

ROAD TRANSPORT CHARGES (AUSTRALIAN CAPITAL TERRITORY) AMENDMENT BILL 2002

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 2002

Second Reading

Debate resumed.

Senator O’BRIEN (Tasmania) (12.50 p.m.)—I welcome the opportunity to speak on the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 and the Interstate Road Transport Charge Amendment Bill 2002. The Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 provides for auto-
matic annual adjustment to the level of registration charges in the ACT for vehicles over 4.5 tonnes. The annual adjustment is calculated using a formula that has been devised by the National Road Transport Commission. All states and territories have agreed to the formula. This review of charges by the National Road Transport Commission is part of a regular review program. This review is the second in the current program and will be followed by another review in 2004. This bill is an integral part of the national road transport reform agenda. It provides a model for nationally consistent charges. By enacting legislation on behalf of the ACT, the Commonwealth provides the basis for all states and territories to either reference or adopt the substance of the ACT legislation in their own legislation.

The second of these bills, the Interstate Road Transport Charge Amendment Bill 2002, extends nationally consistent charges to those heavy vehicles registered federally under the Federal Interstate Registration Scheme. That scheme is an alternative to state or territory based registration for heavy vehicles engaged solely in interstate trade and commerce.

There is no financial impact on the Commonwealth as a result of these bills. Under the Federal Interstate Regulation Scheme registration charges are returned to the states and territories under an agreed distribution formula that accounts for their estimated proportion of road usage by Federal Interstate Registration Scheme vehicles. We recognise that all states and territories have supported the introduction of these road transport charges and advise the Senate that the opposition will support the passage of both of these bills.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.51 p.m.)—I thank the opposition for their support and commend the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 and Interstate Road Transport Charge Amendment Bill 2002 to the Senate.

Question agreed to.

Bill passed through its remaining stages without amendment or debate.

Third Reading

Bills passed through their remaining stages without amendment or debate.

TRANSPORT AND REGIONAL SERVICES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2002

Second Reading

Debate resumed.

Senator O’BRIEN (Tasmania) (12.54 p.m.)—I would like to briefly indicate our support for the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002. These amendments will ensure that the offence provisions operate in the manner they did prior to the application of the Criminal Code. The bill affects a small number of offence provisions that were not included in the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001 and are therefore inconsistent with the Criminal Code principles. The amendments arise from the requirement to specify that an offence or a physical element of an offence is one of strict liability; to clarify the physical elements of an offence; to clarify the fault elements of an offence, especially where the fault elements vary from those specified by the Criminal Code; and to separate defences from offences and identify the evidential burden in relation to a defence. The opposition supports this bill.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.55 p.m.)—I thank the opposition for their support and all other senators for supporting the fast-tracking of the Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002 and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
COAL INDUSTRY REPEAL
(VALIDATION OF PROCLAMATION)
BILL 2002
Second Reading
Debate resumed from 13 March, on motion by Senator Ian Macdonald:
That this bill be now read a second time.
Senator O'BRIEN (Tasmania) (12.56 p.m.)—I would like to indicate the opposition's support for the Coal Industry Repeal (Validation of Proclamation) Bill 2002, as it simply makes sure that the Coal Industry Repeal Act 2001 commenced on 1 January 2002, which sounds a strange proposition but that is why this bill is required: to achieve that operative date. The New South Wales government has enacted the complementary legislation and has operated on the understanding that the Coal Industry Repeal Act 2001 of this parliament was to have been proclaimed last year after the original bill had passed. Unfortunately, through some misadventure apparently, this did not happen. Therefore this bill is required to simply fix any confusion that may have arisen from that situation and the bill therefore has the opposition's support.
Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.57 p.m.)—I commend the Coal Industry Repeal (Validation of Proclamation) Bill 2002 to the Senate.
Question agreed to.
Bill read a second time.
Third Reading
Bill passed through its remaining stages without amendment or debate.

FINANCIAL SERVICES REFORM
(CONSEQUENTIAL PROVISIONS)
BILL 2002
Second Reading
Debate resumed from 14 February, on motion by Senator Troeth:
That this bill be now read a second time.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.00 p.m.)—I commend the bill to the Senate.
Question agreed to.
Bill read a second time.
In Committee
Bill—by leave—taken as a whole.
Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.01 p.m.)—by leave—I move:
Clause 2, page 2, table item 3, omit the item, substitute:
3. Schedule 2, item 1
Immediately after the commencement of item 329 of Schedule 1 to the Financial Services Reform Act 2001
4. Schedule 2, items 2 to 7
Immediately after the commencement of item 1 of Schedule 1 to the Financial Services Reform Act 2001
5. Schedule 2, item 8
Immediately after the commencement of item 436 of Schedule 1 to the Financial Services Reform Act 2001
Schedule 2, page 4 (after line 9), at the end of the Schedule, add:
2 Subsection 992A(3)
Omit all the words before paragraph (a), substitute:
A person must not make an offer to issue or sell a financial product in the course of, or because of:
(aa) an unsolicited telephone call to another person; or
(ab) an unsolicited contact with another person in another way that is prescribed by the regulations for the purposes of this paragraph;
unless the other person has been:
3 After subsection 992A(3)
Insert:
Neither subsection (1) nor (3) applies to an offer of financial products if the offer is not to a retail client.

Note: A defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the Criminal Code.

4 Section 1042A (paragraph (c) of the definition of Division 3 financial products)
Repeal the paragraph, substitute:
(c) interests in a managed investment scheme; or
(ca) debentures, stocks or bonds issued or proposed to be issued by a government; or

5 Section 1043H
Omit “entered into, one or more transactions or agreements in relation to financial products issued by that other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person”.

6 Subsections 1043L(1) and (2)
Omit “entered into, one or more transactions or agreements in relation to financial products issued by the other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person”.

7 Subsection 1043L(1)
Omit “entered into, one or more transactions or agreements in relation to financial products issued by the other person”, substitute “entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the third person or by a fourth person”.

8 Section 1317DA (definition of financial services civil penalty provision)
Omit “(jb)”, substitute “(ja)”.

I table the explanatory memorandum relating to the amendments.

Question agreed to.

Bill, as amended, agreed to.
I regard the discharge of some of these pollutants as a serious offence. If we continue to be exposed to the failure of some of these ships and of their masters to accept their responsibilities when given the opportunity to trade in Australian waters, over time both sides of parliament might have to consider whether the law should be further strengthened with the provision of penalties involving imprisonment for offenders.

However, in supporting this bill, I ask the government to consider its commencement date. If it can be avoided, we must ensure that there is no gap in the application of these provisions. The government should therefore consider if the retrospective commencement of this bill would ensure such a gap does not remain. This point has been raised, for example, in the Parliamentary Library’s Bills Digest, which also cites the attitude of the Senate Standing Committee for the Scrutiny of Bills that retrospectivity may not be opposed if the legislation is merely correcting drafting errors.

The opposition believes it would be remiss if it did not use this opportunity, however, to draw attention to the government’s anti-Australian shipping policies. The opposition believes that the Howard government’s approach to the maritime and shipping industry is ideologically driven. It is not policy that is motivated by Australia’s national or public interests. We have got to get to the point where it is about a policy which is in the best interests of the Australian maritime industry, Australia as a trading nation, Australian workers and their families.

We should no longer have a shipping policy in Australia that is driven by an obsession by the current government for an all-out assault on the maritime unions, maritime workers, their families and Australian shippers. In 1998 we saw a huge dispute on the waterfront. The government was intimately involved in that dispute because it wanted to drive an ideological attack on maritime workers and on their families. The government, as we all know from the record, was prepared to use any means to take away maritime jobs, bludgeon their families and, in doing so, undermine Australian coastal shipping services.

Yes, the government might boast from time to time about crane improvements, but this change could have been achieved without recourse to what occurred. Just ask Mr Corrigan how change has been achieved, for example, with the operation of Virgin Blue and the wages and conditions that exist for that work force as a result of the willingness of people to sit down and work out what is in the best interests of the Australian community. But it was different on the docks.

There is another prong to the Australian government’s ideological approach to the waterfront and related shipping issues. That goes to the government’s assault on maritime workers, their jobs and their families by undermining the competitiveness of the Australian shipping industry. The maritime policy strategy of the government is to open up the Australian coastline to subsidised foreign ship operators with foreign crews that work on lower conditions and pay no taxes to Australia.

As far as I am concerned, Minister Anderson not only admits to this strategy; he is proud of this strategy. Just take the foreign crews. In many instances they work for lower conditions because they are receiving tax concessions in their home countries. Similarly, the ship operators can charge lower freight rates because they are receiving subsidies and benefits from their nation state. What we have to ask ourselves as Australians is how we want to operate our interstate and intrastate transport systems and infrastructure. Would the government’s approach to the maritime industry be acceptable in our rail networks, our retail industry or our road systems, for example? I wonder how the Howard government would react if the rural producers in Australia were required to accept this type of access for foreign farmers and producers in countries beyond Australia. We know what they would do—they would scream the house down. They would regard this as uncompetitive behaviour that takes away Australian investment and jobs—and they would be right.

I ask the Australian government today to review its position with respect to the operation of the shipping policy in Australia. You cannot have one policy approach when it
comes to the needs and aspirations of rural producers and the food manufacturing industry and then have another ideological approach when it comes to the operation of the shipping industry in Australia. It is exceptionally important because the time has come for the government to review potential assistance made available to this very important industry. The record will show that the Australian government has continued to refuse any assistance to the Australian shipping industry or Australian seafarers. It has continued to turn a blind eye to the call for industry reform. In short, the Australian shipping industry has been hung out to dry and it will be getting close to the end of being the great industry it is, unless something gives very soon.

Australia is an island nation. It is a trading nation. It is a nation that needs its own shipping industry. As with other island nations that rely on shipping for trade and access, Australia’s shipping industry needs to be acknowledged for its contribution and role. We must also acknowledge the contribution and sacrifices that Australian seafarers make in the best interests of Australia as a nation. It is not easy to be seafarers, with the requirement for them to be away from home for lengthy periods and the sacrifices that their families make in the best interests of Australia as a nation. Let us clearly say that we have had enough of this unfair, ideological approach by the current government to the shipping industry which, as far as I am concerned, is about propping up unfair competition for the Australian shipping industry interests. Clearly, some shipping companies operating beyond Australian shores are able to compete on more favourable terms compared to Australian shipping interests because of the concessions and benefits given by the nations beyond Australia.

There are also some other serious problems in the operation of the shipping industry. The lack of help for the Australian industry will not only prop up a competitive gap but will also guarantee that we will continue to lose very valuable jobs for Australian workers and their families. I refer to the destructive and negative policy that is being pursued under the current government with the operation of continuous and single-voyage permits. Mr Anderson in his speech to the Bulk Commodities Group last year, which seems to be the only group that he addresses on shipping policy, confirmed that his department would be looking later this year at these legislative changes and so-called barriers. In respect of some of these matters I believe we also have to seriously look at how some of these continuous and single-voyage permit operations actually continue to undermine the Australian shipping industry.

I want to also go to the issue of immigration, which is part of this debate. In respect of the immigration arrangements for the crew, crew members of ships entering Australia are deemed to have a special purpose visa. We talk about border protection. I think we ought to have a look at the problems of so-called border protection in coastal shipping in Australia. I refer to the fact that these foreign crews are deemed to have special purpose visas. What do we find when we actually start investigating these so-called special purpose visas? We find one rule on border protection when it comes to the election campaign and another when it comes to a deliberate government policy aimed at exporting Australian jobs and giving overseas countries and companies the perfect opportunity to exploit Australian workers, their families and the Australian community. This is not only with respect to the issue of tax concessions but also with respect to the important issue of border protection and migration.

I will tell you what the record shows with respect to these visas. There is no rigorous scrutiny or identification checking of these crews. They can hold single-voyage permits indefinitely if they stay on board the vessel. Who would know who is on the vessel? It is about time the Australian government actually told the Australian community what they are going to do to toughen and tighten up on border protection when it comes to the operation of foreign crews in Australian waters, which is taking away Australian jobs and destroying the livelihoods of Australian families.
Then we get to the question of the coming and going from ships. If crew members leave the ship, they must leave Australia within five days. I just wonder what you could do within five days. We had the Australian government suggesting in the middle of the last election campaign that any of the vessels bringing illegal migrants down to Australia could have a terrorist on board. Here we have, from a government which prides itself on border protection, a policy which takes no opportunity at all to do a proper investigation of the character of the people working on these foreign vessels plying Australian waters. There is one rule and one statement on border protection when it comes to the election campaign and another rule and another approach when it comes to undermining the Australian coastal shipping industry, destroying Australian workers’ livelihoods in Australian regional communities and, with respect to the payment of taxes, in essence undermining our capacity as a nation to gather enough revenue to ensure that we as a community can invest in our infrastructure and provide proper health and educational opportunities for our young.

The time has come for the Australian community to stand up to this government and demand of it a uniform approach on border protection. We must also make sure that we can trade as a nation and that we can keep jobs and vessels in Australia. When it comes to the shipping industry we should not forget that it is not just about seafarers on ships plying our waters. It is also about considering whether we should return to building ships in Australia. We have proven that we can do it on the naval front. We have countries beyond Australia reviewing their policy with respect to the construction of ships. Go to Great Britain and have a look at what has occurred to support for the shipping industry with the election of the Blair government. I believe that we should be investigating not only how we keep coastal shipping jobs in Australia but also whether or not in the context of industry policy there are initiatives that we can take to attract investment to the Australian shipbuilding industry and in so doing rebuild industry policy in Australia. I raise these issues because they are very serious matters.

I come now to our second reading amendment to try and pull together the fact that this is a very serious issue. The issue of coastal shipping extends across a range of portfolios and not only the portfolio of the Minister for Transport and Regional Services. It also extends across the portfolio of the Treasurer because the issue of tax concessions, and what is applied to overseas crews, goes to revenue and taxation. Coastal shipping also goes to the portfolio of the Minister for Immigration and Multicultural and Indigenous Affairs with respect to border protection, access to visas and a failure to do proper checks for criminality. On that basis, I move as an amendment to the motion for the second reading:

At the end of the motion, add:

“but the Senate:

(a) condemns the Government for its sustained neglect of Australia’s interstate transport network, especially the coastal shipping industry;

(b) notes that the Government has actively supported the use of foreign ships and crews on the coast with inadequate industrial and immigration controls in place and inadequate monitoring of ship safety standards;

(c) notes further that the Government’s neglect is leading to the demise of the Australian shipping industry, jeopardising our national security and defence, and threatening our marine environment; and

(d) calls on the Government to drop its ideologically driven opposition to the Australian shipping industry and its blind pursuit of lower shipping charges at the expense of Australia’s broader national interests”.

This bill is obviously about the shipping industry and pollution. We support the government’s intention on this front, but this debate is about more than just the bill. Do not forget that ships of shame, foreign crews and the Australian government propping up overseas interests can also destroy our environment.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.15 p.m.)—I think I thank the opposition for their contributions, but I do
thank them for their support of the Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION AMENDMENT BILL 2002

Second Reading

Debate resumed from 13 March, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (1.19 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 12 (Ministers of State Amendment Bill 2002) and government business order of the day no. 4 (Taxation Laws Amendment (Film Incentives) Bill 2002).

Question agreed to.

MINISTERS OF STATE AMENDMENT BILL 2002

Second Reading

Debate resumed from 11 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator ROBERT RAY (Victoria) (1.20 p.m.)—I was unaware that Senator Bishop was going to speak on this Ministers of State Amendment Bill 2002. I will try to be brief. I also thank the Senate for changing the order, because we have two brilliant speeches to come on the citizenship bill. There may be three or four of them, for all I know.

Senator Cooney—There will be four.

Senator ROBERT RAY—Very good. I will be very brief on this. I wish to raise with the Special Minister of State how often we have a ministers of state bill. I understand it is related to the Constitution and provisions made therein, but I am wondering if there is a method by which a more flexible ministers of state bill can be produced that would lessen the requirement of having to repeat this every time there is a pay rise. I am not sure if that is constitutionally possible. I just ask the minister to take that one on board.

Senator Ian Campbell—the minister probably thinks it is a good idea.

Senator ROBERT RAY—The second point is that I note with some pleasure the section relating to parliamentary secretaries, as we waged a campaign for some time for that. That is reflected here. I did not know that the Manager of Government Business was so well remunerated at 35 per cent of additional base salary. I recall doing the job myself for four years and not getting a cent. All I am doing here is putting my envy on the record. I also think, given the workload involved in being manager in this place, that is an absolutely suitable arrangement.

Senator Ian Campbell—I sent the Remuneration Tribunal a copy of your speech on the subject.

Senator ROBERT RAY—I am sure you did, Senator. It is interesting to look at this bill and surrounding documents. I know exactly how much the Prime Minister is being paid. I know how much the Treasurer is being paid. I know how much Senator Macdonald, Senator Ian Campbell and Senator Judith Troeth are being paid. I find it rather strange, therefore, that I do not know what Mr McClintock, the cabinet policy unit secretary, is being paid. But I do not know what Mr Sinodinos is being paid or the pay for the third officer in the Prime Minister’s office, who is being paid outside the MOPS guidelines.

This issue was pursued at an estimates committee. We put questions on notice. We only discovered this by mistake because the Department of Finance and Administration handed us the wrong document. So that is
how we found out that there were special classifications in staffing that are not available to Labor or the Democrats. Then we found out that three members of the government’s staff are being paid over and above the principal adviser rate, which is set at $130,000 a year; plus ministerial staff allowance, another $10,000; plus car. I have no concern with that salary level because it is an extremely hard job, but I am concerned that a government can negotiate this with staff and then cover up their salary, especially as those people—as the government claims and not without some merit—are protected. They cannot apparently be called at Senate select committees, they cannot be made accountable anywhere, but if that is the case I just wonder why this parliament is not entitled to know what their remuneration is. We do not even have to know exactly. We know that senior advisers are paid within a range. We know it is a practice of this government to pay at the top of the range nearly all the time. So we do know that the principal advisers sit on $130,000 a year. But we now know that three are being paid more than that. How much more we do not know. We do not know if they are being paid an extra $100, $5,000, $10,000, $15,000, $20,000 or $50,000 a year because the government says, ‘Effectively, this is an AWA and we don’t actually have to disclose the amount of salary.’

I am only flagging now—and I am going to finish on this note—that I am going to pursue this matter. I believe this parliament has a right to know exactly how much MOPS staff are being paid, just as the public have a right to know how much I or Senator Ian Campbell or anyone else is being paid. There should not be a protected species of staff in the system. It is not a question of privacy. These people are being paid out of public funds, and the public and the parliament have a right to know exactly how much they are being paid. So I will pursue this issue over the next few weeks. If the government does not disclose the material to me, you can absolutely bet that I will find out and disclose that material here.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (1.25 p.m.)—by leave—I will move that debate on the Ministers of State Amendment Bill 2002 be adjourned and made an order of the day for the next day of sitting. There has been a slight misunderstanding. The Democrats had indicated that they had an amendment and it should not be dealt with at lunchtime. But at least Senator Ray has given his speech, so we have moved into it.

Debate (on motion by Senator Ian Campbell) adjourned.

TAXATION LAWS AMENDMENT (FILM INCENTIVES) BILL 2002

Second Reading

Debate resumed from 13 March, on motion by Senator Ian Macdonald.

That this bill be now read a second time.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (1.25 p.m.)—I will not speak at length about the Taxation Laws Amendment (Film Incentives) Bill 2002. The Democrats welcome the passage of this legislation today, as I know the Australian film industry does. It marks a new era of opportunity for one of our most prominent and creative industries, which should help Australian film and Australian actors to gain a more secure foothold in the very competitive world of international movie production.

Australia has a lot of strengths when it comes to the quality and reputation of our film production industry. I want to mention some of those that are particular pertinent to this bill: a favourable exchange rate; some of the most spectacular locations in the world; a skilled work force, particularly in relation to acting, cinematography and production itself; a sizeable resources infrastructure; and political and social stability. We are very much a credible player on the international runaway scene, with AFC figures for 1999-2000 suggesting that Australia has attracted some $325 million worth in foreign productions.

I think it is also important to point out that Canada is the country that dominates the market in the US runaway productions with a massive 80 per cent of a market that is valued at over US$3 billion. This dominance cannot be dismissed as purely a result of its proximity to the United States. It is because
Canada is more competitive than Australia when it comes to financial incentives, marketing and infrastructure.

In many respects this legislation addresses one of the areas where the Australian government has had a lot to do in creating a more reliable and attractive investment environment for private investors and filmmakers. Following the uncertainty and the anxiety that was created last year in the Australian film industry by the Australian Taxation Office’s decision to refuse to allow tax deductions for the films *Red Planet* and *Moulin Rouge*, the introduction of this bill cannot come soon enough.

We are aware from discussions with Fox Studios Australia that many feature films have come to Australia or plan to locate their production here in the next 12 months on the basis that the tax offset would be available. If the bill is not passed, Australia will miss out on production activity that would be attracted to Australia by the incentive. The result would be a loss of work opportunities for a large number of Australian crew and cast.

The Democrats have been very mindful of this fact as well as the economic, social and cultural implications for Australia if the bill is delayed. The bill does present opportunities that we cannot afford to miss. However, the Democrats also take very seriously the concerns that have been raised by the Media, Entertainment and Arts Alliance regarding the ability of the provisions of the bill to deliver the desired outcomes. Essentially, we share their uncertainty that there is a real incentive for film production companies to employ Australian actors, Australian crews and production staff as opposed to overseas personnel. This stems from the fact that the bill requires companies only to pass a so-called activity test rather than a labour test. We therefore welcome the government’s decision to amend the bill to incorporate a statutory review of the operation of the legislation every five years. More particularly, it is important that we be looking closely at the outcomes of the legislation to ensure that the broad objectives are being met. What is important in that arrangement is that the film industry itself will be welcome to make submissions to that review and that, I think, is a positive and encouraging sign for the film industry into the future.

The final thing I want to say is that Australian films have been warmly welcomed onto the international stage. I want to list some of those so that we know what it is that we are supporting today: *Moulin Rouge, Shine, Priscilla, Muriel’s Wedding, Lantana, Crocodile Dundee, Chopper, Strictly Ballroom, The Bank, The Dish* and so on. I want to commend them all, and I would hope that this bill grows that list so that the Australian film production industry can be supported in the way that it ought to be.

*Senator ALLISON (Victoria)* (1.30 p.m.)—I will make a couple of remarks about the Taxation Laws Amendment (Film Incentives) Bill 2002. As my colleague says, the Democrats are very supportive of this bill and want to see its passage through parliament as soon as possible. It has come to my attention, and it has been noticed by a number of other people too, that films are increasingly an effective opportunity for the tobacco industry to trade their wares. Despite the fact that we have a ban on tobacco advertising in this country—except of course for the Grand Prix and other prominent sporting events, and I have spoken on many occasions in this place about the undesirability of that advertising—it is now clear that films are seen by the tobacco industry as a legitimate place for them to promote their product. It is a product, I remind the Senate, that kills 19,000 Australians every year and kills four million people worldwide. The tobacco industry do this by what are known as product placements and pay-offs. By and large, the consumers remain unaware that this kind of product placement, and therefore advertising of a form, is being paid for by the tobacco industry.

The Democrats are very supportive of this legislation. I do not want to hold up the passage of this bill by putting forward an amendment that might do what I am about to suggest, but I did want to raise the possibility that federal funding through tax rebates to film investors provides a very logical and proper opportunity for the government to
make a positive contribution to reducing the incidence of smoking in our community.

I have observed over the last few years that there has been a very substantial increase in smoking on screen. It seems to me to be somewhat gratuitous and unnecessary to the plot. This has been of concern in the US for some years now. In fact, a recent study tracked that incidental advertising. It found that the increase coincided with the ban on tobacco advertising in cinemas. The study demonstrates that the incidence of smoking on film is now something like three times the amount that one would expect to see in reality. That would suggest to me that there is a clear connection between tobacco production and films.

The rate of tobacco smoking in Australia is very slowly reducing. The Democrats would like to see it going much faster than it is, but it is now down to just over 20 per cent. It is much worse in other countries, but one thing we do know is that children are very influenced by smoking that they see in films. Research has found that non-smoking teenagers whose favourite film stars frequently smoke on screen are 16 times more likely to have positive attitudes towards smoking in the future. Even more importantly, 31 per cent of teenagers who saw more than 150 occurrences of smoking in movies—that is, in theatres, on video or television—had tried smoking, compared with only four per cent among teenagers who had seen fewer than 50 occurrences. Even after controlling for the effects of parents smoking and other factors, seeing a lot of smoking in the movies tripled the odds that a teenager would try smoking. Big tobacco marketing experts and independent researchers agree that moving stories with charismatic actors are a powerful way to attract new smokers and to keep the current smokers. That is of course why we ban television advertising of tobacco products in this country.

One option in stopping this insidious form of advertising by stealth would be to require film producers to make a disclaimer in their credits because, at the present time, the industry by and large claim that they do not take tobacco advertising. I think this is a good opportunity for us to ask them to make that a disclaimer and to put it into the film credits. It could be something to the effect that, 'The film has received no inducements from tobacco companies for product placement.' As I said, I do not propose to amend this legislation, but I would like to ask the government if they would consider exploring this issue. The Democrats are very keen to make some progress here. I wonder whether we could get an indication from the government that this might be a subject that we could have some discussions about with a view to using this legislation—this very worthwhile tax incentive for film-making investment—to bring about what I think is a very necessary change with regard to the way that tobacco smoking advertising by stealth is occurring in film-making.

**Senator IAN CAMPBELL** (Western Australia—Parliamentary Secretary to the Treasurer) (1.36 p.m.)—As I have indicated to Senator Allison privately, I am happy to reiterate that I understand the Treasurer is happy to have a look at that suggestion. I will ensure that he progresses it in the constructive way that he normally does. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**AUSTRALIAN CITIZENSHIP LEGISLATION AMENDMENT BILL 2002**

**Second Reading**

Debate resumed from 13 March, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

**Senator BOLKUS** (South Australia) (1.37 p.m.)—In speaking to the Australian Citizenship Legislation Amendment Bill 2002, I indicate that I think the most pressing imperative for us today is to pass this legislation by 2 o’clock. Accordingly, my remarks will not be as extensive as I would have liked.

This reform has been long awaited and will be welcomed by many. It is a belated reform—a reform which was necessary to
our citizenship laws to bring them up to date, not just with the nature of the multicultural society that we claim to have in Australia, but with the rest of the world.

The major effect of the legislation that I will focus on is the repeal of section 17—the provision that denies dual citizenship to natural born Australians. We have a situation at the moment involving enormous discrimination. In 1995, as minister for immigration, I was advised that some five million Australians then had dual citizenship, but many Australians were not able to acquire it because of the effect of this provision in the legislation.

This matter has been on the agenda for eight years. In 1994, there was a recommendation by the Joint Standing Committee on Migration for Australia to embrace dual citizenship in an open and direct way. As I said, in 1995 five million Australians had dual citizenship. I would reckon that, given changes in international citizenship laws over the last seven years, a good half of Australia probably now has, or is entitled to, dual citizenship, and can obtain it legally under existing provisions, even before this legislation is passed. So 1994 was an important staging post on the road to this reform that we are debating today.

In 1995, as minister for immigration, with responsibility for citizenship, I was very keen to try to get this reform through. I was frustrated to a certain extent by the political climate at that time. There were reports that this legislation was on track. The opposition spokesperson at the time, Mr McGauran, tried to merge the issue of dual citizenship with that of the republican debate, which was developing at the time. We felt at that time that the pre-election climate was such that the legislation could not be proceeded with.

As a consequence, I took executive action which was announced on 25 August 1995. By issuing guidelines for the resumption of citizenship, we were able to achieve substantially what this legislation achieves but in a two-step way. Australians, as a consequence of those guidelines interpreting the legislation, were able to acquire the citizenship of another country, lose Australian citizenship and then acquire it almost immediately upon proof of some inconvenience—lost economic opportunities or for social, cultural or procedural reasons. In essence, probably 95 per cent of those who have wanted to achieve citizenship over the last seven years would have been able to do so.

As I said, there was resistance from the then opposition, the present government. I am glad they have had a change of heart on this matter. It was imperative to make changes, given the pressing discrimination contained in existing legislation. I had also received advice from the late Ron Castan QC on the effects of section 17 which basically said to the government at the time that there was a fair chance that section 17 was unconstitutional. I would have liked to have gone through this advice but with the leave of the Manager of Government Business in the Senate, Senator Ian Campbell, I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

RE: THE AUSTRALIAN CITIZENSHIP ACT 1948—SECTION 17
MEMORANDUM OF ADVICE
I have been asked to advise as the constitutional validity of Section 17 of the Australian Citizenship Act 1948.

That Section provides:

“17. (1) A person, being an Australian citizen who has attained the age of 18 years, who does any act or thing:

(a) the sole or dominant purpose of which; and

(b) the effect of which;

is to acquire the nationality or citizenship of a foreign country, shall, upon that acquisition, cease to be an Australian citizen.

(2) Subsection (1) does not apply in relation to an act of marriage.”

I am instructed that severe anomalies have arisen in the operation of this Section. It operates in a discriminatory way as between various classes of Australian citizens who, for various reasons, such as residence overseas, take steps to acquire dual citizenship, believing themselves able to retain their Australian citizenship. In particular it discriminates as between Australian citizens who are dual citizens by reason of having taken on Australian citizenship, while not losing their original citizenship under the law of some other country.
and those Australian citizens who are not dual citizens, but for one reason or another seek to become so.

I have been much assisted by “Australians All—Enhancing Australian Citizenship”, the report of the Joint Standing Committee on Migration of September 1994, and by Memoranda concerning aspects of the administration of the provisions of Section 17, provided to me by my instructing solicitors, and officers of the Department of Immigration and Ethnic Affairs.

There is a peculiarity about Australian citizenship. It is not recognised in the Constitution, and there is no constitutional head of power which invests the Parliament of the Commonwealth with power to make laws with respect to citizenship. Section 51(xix) provides the Parliament with the power to make laws with respect to immigration and emigration. Neither of these powers is apt to deal with the question of citizenship generally. These powers necessarily omit the vast majority of Australian citizens, i.e. those who were born in Australia, and who are not dual citizens, but for one reason or another seek to become so.

Quick and Garran also make reference to the use of the words “have agreed” in the preamble. They say, at p. 290:

“These words make distinct and emphatic reference to the consensus of the people, arrived at through the procedure, in its various successive stages, prescribed by the substantially similar enabling Acts adopted by the legislatures of the concurring colonies. ... In all the colonies the Constitution was eventually referred to the people. ... In this manner there was ... in all the colonies a popular ratification of the Constitution, which is thus legally the work as it will be for all time the heritage, of the Australian people.”

At p. 314, Quick and Garran describe the Constitution as:

“... a general law or a collection of laws capable of effective enforcement and binding on every member of the community, including the members of the government in their private capacities.”

The next reference to this entity described in the Constitution as “the people” is to be found in covering clause 3 which uses the words:

“The people ... shall be united”. Quick and Garran comment at p. 332:

“The formative words in this clause are more forcible, striking and significant than those of the corresponding parts of the constitutions of the United States and of Canada; they indicate the fundamental principle of the whole plan of government, which is neither a loose confederacy not a complete unification, but a union of the people considered as citizens of various communities whose individuality remains unimpaired, except to the extent to which they make transfers to the Commonwealth.

The union of the people of the colonies is doubly asserted and assured; first in the preamble, where it is recited that ‘the people have agreed to unite’ and secondly in this clause, which it is emphatically stated with mandatory force that on the day appointed they ‘shall be united’.”

The next reference to “the people” is to be found in covering clause 5 of the Constitution which provides that:
“This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges and people of every State and of every part of the Commonwealth...”

Quick and Garran comment, at p. 353:

“The importance of these words, as indicating one of the fundamental principles of the Constitution, should be specially noted. They make clause 5 of the Commonwealth Constitution Act substantially similar in scope and intention to article VI, Section 2 of the Constitution of the United States. Under this clause, the Act, the Constitution and laws of the Commonwealth made in pursuance of its powers will be the supreme law of the land, binding on the courts, judges and people of every State notwithstanding anything to the contrary in the laws of any State. ... The preeminent significance of this direct action of the federal laws on the courts, judges and people is that it forms the distinctly national feature of the Constitution and differentiates it from the weakness and imperfection of a confederate system of government.”

The importance of the concept of “the people of the Commonwealth” is emphasised by the operation of Section 24 of the Constitution which provides:

“24 The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the Senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner –

(i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the Senators;

(ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the States, as shown by the latest statistics of the Commonwealth, by the quota; ...

The commentary in Quick and Garran at p 449 is in the following terms:

“Attention may be drawn to the above expression ‘the people of the Commonwealth’ for the purpose of contrasting of it with another, to be found in Section 7, ‘the people of the States’. A federation is, ... defined by some authorities as a State having a dual system of government ... hence, in a federation it is said there is a dual citizenship. It follows that each natural born or naturalised subject of the Queen permanently residing within the limits of the Commonwealth is entitled to be considered as a citizen of the State in which he resides. Every such person thus owes a double duty, and can claim a double right; a duty to the Commonwealth, as a great community embracing all the people, to yield obedience to its laws, to assist in its defence, and to take part in promoting its interests; a right to claim from the Commonwealth equal protection of its laws, and to share in the honour and advantage of its rule. Such a person also owes a duty to the particular State in which he resides, regarding that State as a part of the Commonwealth, guaranteed to possess and enjoy certain privileges and immunities; a duty to obey its laws, and at the same time to assist in defending the State domain against unconstitutional invasion; a right to demand from the State the equal protection of the laws of the State. In one capacity such a person is described by the Constitution as one of ‘the people of the Commonwealth’ and the other he is one of ‘the people of a State’. From this dual citizenship, and, in order to assist in its preservation, every person living under such a form of government has a duality of political rights and powers. He is entitled not only to assist in carrying on the government of his State as a part of the Commonwealth, but to assist in the government of that wider organisation of the nation itself. In the latter work, taken and considered by itself, he has also a dual right and power; viz, to join in returning members to the House of Representatives in which centralising, consolidating, nationalising and progressive elements of the community are represented, and also to assist in returning members to the Senate, in which the moderating, restraining, conserving and provincial elements of the community are represented. The duty of a citizen having these dual functions, and of the Federal parliament to dually constituted, would be to reconcile and harmonise all these apparently conflicting yet necessary and inevitable forces.”

The importance of the concept of “the people” in a constitutional sense is further exemplified by
the provisions of Sections 25 and 127 of the Constitution.

Section 25 provides:

“For the purposes of the last Section, if by the law of any State all persons of any race are disqualified from voting at elections for the numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.”

Section 127 provided, until its repeal in 1967, as follows:

“127 in reckoning the numbers of the people of the Commonwealth or of a State or other part of the Commonwealth. Aboriginal natives shall not be counted.”

In the “political community” which was constituted by the Constitution in 1901 the essentially democratic processes by which it was to function ensured appropriate representation according to population by gearing the numbers of members of the House of Representatives to the population of a given State and by ensuring that the number of Senators would be twice the number of Representatives would be twice the number of Senators. This political community was deliberately structured so as to ensure that specific groups were excluded, or were liable to be excluded from it. It was made manifestly clear that all those other than those so excluded formed part of the totality of the Australian community—they comprised “the Australian people”.

These last provisions were manifestly and deliberately racist. Their importance for present purposes however is the fact that they demonstrate that apart from the groups which were specifically excluded (or in the case of Section 25, were subject to potential exclusion) the concept of “the Australian people” was critical to the fundamental representative nature of Australia’s democratic institutions.

It is notable that Quick and Garran, in 1901, repeatedly used the concept of citizenship to reflect the prevailing view at that time of the notions conveyed by the concept of “the people” in the Constitution notwithstanding the absence of any reference to the concept of “citizenship” in the document itself.

The concept of “the people” was given consideration by the High Court in Attorney-General Commonwealth; Ex rel. McKinlay v. The Commonwealth (1975) 135 CLR 1.

Although that discussion took place in the context of a challenge to the relevant provisions dealing with apportionment and representation McTier-

nan and Jacobs JJ. At p.35 expressed the following view.

“The people is the body of subjects of the Crown inhabiting the Commonwealth regarded collectively as a unity or whole and the sum of those subjects regarded individually. To say that ‘people’ means ‘electors’ or ‘enfranchised subjects’ is erroneous because it takes account only of the enfranchised subjects regarded individually but no account of the body of subjects regarded collectively as a unity. It is an accurate description only so long as the franchise is wide enough to satisfy the description ‘popular’ but it would be nonsense to speak of a choice by a few who happen to be enfranchised (the foundation of an oligarch as a choice by the people (the foundation of a democracy) ... Nevertheless, it is important to state that ‘chosen by the people’ does not mean chosen by all the persons individually who regarded collectively are the people. If it meant that perhaps a unanimous choice of all would be required and that cannot be correct: but without going that far it would mean that all subjects inhabiting the Commonwealth would need to participate in the choice of members and a choice by any number of persons less than a sum of the individuals would not be a choice by the people. That is not intended. Common sense tells us that babes and young children at least cannot participate in the choice and the Constitution ... envisages that all persons need not participate or be eligible to participate in the choosing. However, to argue from this that ‘people’ merely means ‘electors’ is to subtract an essential feature from the constitutional requirement if thereupon it is argued that Section 24 in its opening words says no more than the choosing of members shall be by direct vote of electors. The section says much more than this ...

At some point choice by electors could cease to be able to be described as a choice by the people of the Commonwealth. It is a question of degree. It cannot be determined in the abstract. It depends in part upon the common understanding at the time of those who must be eligible to vote before a member can be described as chosen by the people of the Commonwealth. For instance, the long established universal adult suffrage actually now be recognised as a fact and as a result it is doubtful whether ... anything less than this could now be described as a choice by the people.
Stephen J. p. 56 after referring to Section 24, dealing with the House of Representatives, and Section 7 dealing with Senators, went on:

“Both the similarities and the differences between these provisions are highly significant. Each calls for a system of representative democracy in the sense that the Houses of the Legislature are to be composed of members whom the people choose. In each the method of choice is required to be that of direct choice.

Three great principles, representative democracy (by which I mean that the legislators are chosen by the people), direct popular election, and the national character of the lower House, may each be discerned in the opening words of Section 24. Nothing however is said to the composition of electoral divisions. Only if some requirement as to their composition necessarily flows from one or other of these three principles can the plaintiffs submissions be made good; and it can surely only be from that first representative democracy in the sense in which I use that term, that some such requirement might be derived.”

The High Court has also acknowledged the concept of “the community of the Australian people” in a number of decisions dealing with the proper meaning and interpretation of the power with respect to immigration and emigration. In a succession of cases originating in Ex parte Walsh and Johnston; in Re Yates (1925) 37 CLR 36 the court asserted that;

“... a person who has originally entered Australia as an immigrant may in the course of time and by force of circumstances, cease to be an immigrant and becomes a member of the Australian community... and thus may be exempt from the operation of the immigration power.”

In both Walsh and Johnston, and in O’Keefe v. Calwell (1947) 77 CLR 261 the court held that the power to provide for deportation (based on the immigration power) was exhausted when the person had become absorbed into the Australian community.

A relatively more modern view of this approach is reflected in the Queen v. Director General of Social Welfare (VIC); ex parte Henry (1975) 133 CLR 369.

In holding that a section of the Immigration (guardianship of Children) Act 1946 should be read down, in order to preserve its validity, Gibbs J. said:

“In my opinion section 6 on its proper construction does not extend to children who have become a part of the people of Australia, and so construed the section is valid. It is true that it may be difficult in an individual case to determine when the section ceases to apply...”

Gibbs J thus expressly adopted the concept of “a part of the people of Australia”, and has found that the immigration power must be limited to deal with those who have not yet fallen into that category.

The naturalisation and aliens power goes much further than the immigration power. In Pochi v. McPhee (1982) 151 CLR 101, at 107-110. Gibbs C.J. outlined the history of the development of the statutory concept of “Australian citizenship” originating with the Nationality and Citizenship Act 1948, which took effect on 26 January 1949. It is clear from this case, and from Nolan’s case (1988) 165 CLR 178 that the expression “subject of the Queen” which is to be found in Section 34(ii) of the Constitution and in Section 117, must now be taken to mean “subject of the Queen of Australia”. “Subjects of the Queen” in right of the United Kingdom, Canada, or any other of the Queen’s dominions are not included in those contemplated by the Constitution. On the contrary, it is clear from Nolan’s case that a subject of the Queen in right of the United Kingdom is now capable of being an “alien” in terms of the Constitutional head of power in Section 51(ixx) if such person has not otherwise been naturalised. In Pochi’s case, Gibbs C.J. acknowledged the difficulties inherent in the limitations provided by Section 51(ixx), which confers power on the Parliament only to deal with “naturalisation and aliens”. At page 109 he said:

“The meaning of ‘aliens’ in the Constitution cannot depend on the law of England. It must depend on the law of Australia. It is true that Section 51(ixx) presents some difficulties. Clearly the parliament cannot, simply by giving its own definition of ‘alien’, expand the power under the section.”

Given these developments, wherein lies the constitutional basis for the Australian Citizenship Act 1948, in its present form, and for the provisions of Section 17 in particular?

To the extent to which the Section deals with aspects of providing citizenship by naturalisation, it is clearly within the head of power conferred by Section 51(ixx). To the extent to which it deals with aliens, it is also clearly within that head of power. However to the extent to which it deals with those persons who are already members of
the people of Australia’ because they were born and grew up as part of that community, and have only ever been part of that community and of no other community, no express power under section 51 provides any assistance.

Nevertheless Parliament can validly make laws with respect to Australian citizenship, in relation to those who do not fall within the “naturalisation and aliens” category. It is inherent in the constitutional concept of “the people of the Commonwealth” that the Parliament can make laws which are reasonably and appropriately adapted to the purpose of determining who falls within and who falls beyond that category.

For this purpose it is necessary to take into account the implied power of “Australian nationality”. The nature of this power has been discussed in the High Court in considering the scope of the Executive Power of the Commonwealth. In Davis v. The Commonwealth (1988) 166 CLR 79, at 92, in the judgment of Mason C.J., Dean J. and Caudron J. their Honours discussed this concept in that following terms:

“The scope of the Executive Power of the Commonwealth has often been discussed but never defined. By section 61 of the Constitution it extends to the execution and maintenance of the Constitution. As Mason J. observed in Barton v. The Commonwealth, the power...

...extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. It enables the Crown to undertake all executive action which is appropriate to the position of the Commonwealth under the Constitution and to the spheres of responsibility vested in it by the Constitution.

These responsibilities derived from the distribution of legislative powers effected by the Constitution itself and from the character and status of a Commonwealth as a national polity. So it is that the legislative powers of the Commonwealth extend beyond the specific powers conferred upon the Parliament by the Constitution and include such powers as may be deduced from the establishment and nature of the Commonwealth as a polity; see the discussion by Dixon J. in the Communist Party case. Dixon J. expressed a like view of Parliament’s power of appropriation when he said in the Pharmaceutical Benefits case:

“In deciding what appropriation laws may validly be enacted it will be necessary to remember what position a national government occupies and...to take no narrow view, but the basal consideration would be found in the distribution of powers and functions between the Commonwealth and the States...

If we ask the question whether the commemoration of the Bicentenary is a matter falling with the peculiar province of the Commonwealth in its capacity as a national and federal government, the answer must be in the affirmative. ...The commemoration of the Bicentenary is preeminently the business and the concern of the Commonwealth as the national government and as such falls fairly and squarely within the federal executive power. ...In the legislative sphere the nature and status of the Commonwealth as a polity has sustained legislation against subversive or seditious conduct: Burns v. Ransley, R v. Sharkey, see the Communist Party case.”

It follows from the concept of ‘the implied nationality power’ discussed in Davis, that there is a power in the Commonwealth Parliament appropriately to define those situations in which persons will be taken to form part of ‘the people of the Commonwealth’ and when they may not. This power, in my view, extends beyond the limits of the power conferred by Section 51(ix) to deal with ‘naturalisation and aliens’. However, the fact that such a power exists does not mean that it is a power which is unlimited. Whether it is dealing with persons who have become part of the ‘the Australian people’ by naturalisation, or with those who have always been and only ever been part of the Australian people by reason of their birth and residence in Australia, the parliament’s capacity to pass laws depriving individuals of the privileges and benefits of being part of that ‘people’ has clear limits. To take a clear case there is no difficulty whatsoever with the provisions of Section 19 of the Australian Citizenship Act 1948. This section provides that an Australian citizen who is a national or citizen of another country under the law of that country and who serves in the armed forces of a country at war with Australia ceases to be an Australian citizen upon commencing so to serve. It is clear that Section 19 does no more than would be implied in any event, i.e. that a person who undertakes armed service against Australia has thereby expressed his intention to be separated from the Australian people, and is no longer to be regarded as one of them. In this sense, Section 19 is clearly ‘reasonably and appropriately adapted to achieve the ends that lie within the limits of constitutional power’ per Mason C.J.; Deane J. and Gaudron J. in Davis v. The Commonwealth, (holding that a law which limits the use of the expressions ‘Melbourne, 1988, Sydney 1988’ were beyond the
power of the Commonwealth to decide how to celebrate the Bicentennial).

Section 18 of the Australian Citizenship Act, which deals with renunciation of citizenship, is of a similar nature to Section 19. It is virtually certain that the High Court would uphold a law which provides that persons who have expressly renounced their Australian citizenship (albeit that they have not gone to war against Australia) have ceased to become part of the Australian people. Such persons have by their conduct expressed their desire to do so by such renunciation.

It is easy to contemplate examples which clearly fall on the other side of the line, as compared to Sections 18 and 19. Let it be assumed that the Commonwealth were to amend the Australian Citizenship Act so as to provide that all Australian citizens who travel to a particular country shall lose their Australian citizenship, (assuming that Australia is not at war with that country). In the absence of extraordinary circumstances it would not be possible to say that such a law was ‘reasonably and appropriately adapted to achieve the ends that lie within the limits of constitutional power’.

While conceding the capacity of the Parliament to define those circumstances in which a person clearly has ceased to be a member of ‘the people of the Commonwealth’ it is also possible to determine that certain provisions go beyond the capacity of the Parliament to exclude a person from the rights and privileges associated with that status.

In my view, these limitations apply whether or not a person is a naturalised citizen, or a citizen by birth. Once a person has been naturalised, he or she has been acknowledged as part of ‘the Australian people’. It is only possible for the Parliament to deprive persons of the privileges which the Constitution bestows on those who form part of ‘the people of the Commonwealth’ by a law which is appropriately adapted to defining the limits of the group, subject to the constitutional concept itself.

Section 17 falls beyond the limit of constitutional power because it seeks to exclude from ‘the people of the Commonwealth’, in its Constitutional sense, persons who in truth have not ceased to be such people but who nevertheless wish to take on dual citizenship. In considering this question, I am influenced by the fact that the Constitution itself contemplates the concept of dual citizenship. Section 44 excludes from eligibility for election to the Senate or the House of Representatives, those persons who are:

“...under any acknowledgment of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen entitled to the rights of privileges of a subject or a citizen of a foreign power....”

This provision, discussed at length in Sykes v. Cleary (1992) 109 ALR 577, clearly distinguishes the question of eligibility for election to the Senate or the House of Representatives, from the question of eligibility to vote. Persons who have such an allegiance, or who are also a subject or a citizen of a foreign power, are not disqualified from voting. Dual citizenship is expressly contemplated by the Constitution by the mechanism of providing that dual citizens are not permitted to stand for the Federal Parliament. In this context, such persons from part of ‘the people of the Commonwealth’. (I am instructed that there are up to 3 million Australians who hold dual citizenship). Thus the effect of Section 17 is to prohibit those who are not already dual citizens from attaining a status which is constitutionally permitted, and which millions of their fellow Australians already hold. In these circumstances, Section 17 takes as its criterion of operation a status held by persons who are members of what the Constitution describes as ‘the people of the Commonwealth’ and purports to remove that status from them. This removal occurs notwithstanding their own desire to maintain that status, or regardless of that desire, and notwithstanding the status which they seek to obtain, on acquiring such second citizenship is a status which millions of their fellow Australians already hold, which is constitutionally permitted, and which is not inherently inconsistent with their membership of ‘the people of the Commonwealth’. In these circumstances, I do not consider that it is possible to say that the Section is reasonably and appropriately adapted to the purpose of the power of determining those who have ceased to be members of the Australian community or to be part of ‘the people of the Commonwealth’.

The discriminatory treatment as between Australians who are entitled to dual citizenship, and those who acquire dual citizenship, also manifests an inequality before the law founded on irrelevant considerations, and which itself runs counter to underlying constitutional principles. In Queensland Electricity Commission v. The Commonwealth (1985) 159 CLR 192, at 247 the court spoke of ‘equality of the people...under the law of the Constitution’. In Davis v. The Commonwealth (1988) 166 CLR 79 at 116 Brennan J. pointed out:

“It is of the essence of a free and mature nation that minorities are entitled to equality in
the enjoyment of human rights. Minorities are thus entitled to freedom in the peaceful expression of dissident view..."

In Health Department v. GWB and SMB (1992) 175 CLR 218, 277, the court referred to ‘equality under the law’. In Leeth v. The Commonwealth (1992) 174 CLR 455 at 486-7, Deane and Toohey JJ said as follows:

“In conformity with its ordinary approach to fundamental principles, the Constitution does not spell out that general doctrine of legal equality in express words. The question arises whether it adopts it as a matter of necessary implication. In our view, several considerations combine to dictate an affirmative answer to that question.

For one thing, there is the conceptual basis of the Constitution. As the preamble in Section 3 of the Commonwealth of Australia Constitution Act 1900 make plain, that conceptual basis was the free agreement of ‘the people’—all the people of the federating colonies—to unite in the Commonwealth under the Constitution. Implicit in that free agreement was the notion of the inherent equality of the people as the parties to the contract. Indeed, covering Clause 5 expressly enacted the first aspect of the common law doctrine of legal equality namely that ‘this Act’ (which included the actual terms of the Constitution) and all laws made by the Parliament of the Commonwealth under the Constitution shall be binding on the courts, judges and people of every part of the Commonwealth.

For another thing, the doctrine of legal quality is, to a significant extent, implicit in the Constitution’s separation of judicial power from legislative and executive powers and the vesting of judicial power in designated ‘courts’. Those provisions not only identify the possible repositories of Commonwealth judicial power. They also dictate and control the manner of its exercise. They are not concerned with mere labels or superficialities. They are concerned with matters of substance...At the heart of that obligation (to act judicially) is the duty of a court to extend to parties before it equal justice, that is to say, to treat them fairly and impartially as equals before the law and to refrain from discrimination on irrelevant or irrational grounds...The existence of a number of specific provisions which reflect the doctrine of legal equality serves to make manifest rather than undermine the status of that doctrine as an underlying provision of the principle of the Constitution as a whole.”

For the reasons expressed above, Section 17 of the Australian Citizenship Act, which is manifestly discriminatory as between those who happen to hold dual citizenship, as against those who seek to acquire it, embodies a form of inequality as between “the people of the Commonwealth” that in my view is constitutionally impermissible.

The real difficulty with the section in its present form is that it focuses on the purpose of the conduct of the Australian citizen in relation to acquisition of another nationality or citizenship rather than the purpose of the Australian citizen in relation to his or her continued Australian citizenship. If the section were drafted in a way which directed attention to steps taken by the Australian citizen with the purpose of ceasing to be an Australian citizen, it would be clearly valid. However in circumstances where it takes as its criterion of operation nothing other than the acquisition of the nationality or citizenship of a foreign country, it is discriminating against the citizen who has taken such a step as against those who hold citizenship of another country by virtue of other circumstances, and are not appropriately penalised in this way. It discriminates in this way for no constitutionally permitted or required reason that is apparent from the concept of “Australian peoplehood or nationhood”, that has been discussed above.

The view expressed above is supported by passages in the judgment of Gaudron J. (dissenting) in Nolan’s case (1988) 165 CLR 178, at 193:

“As the transformation from non-alien to alien requires some relevant change in the relationship between the individual and the community, it is not, in my view possible to effect that transformation by simply redefining the criterion for admission to membership of the community constituting the body politic of Australia. Nor, in my view, does a mere failure on the part of a non-alien to acquire citizenship involve any fundamental alteration of his or her relationship with that community. Of course, it might be otherwise if citizenship were offered and refused in circumstances such that refusal could properly be seen as a revival of an earlier allegiance to some other nation or as an abandonment of allegiance to Australia.”

Although dealing with a different issue, ie the failure of persons to take up citizenship when they were entitled to do so, these comments are apposite.
I note that the United States Supreme Court in Vance v. Terrazas (1984) 444 US 252 has held that Congress does not have any general power to take away an American citizen’s citizenship without his ‘assent’, which means an intent to relinquish citizenship, whether the intent is expressed in words or is found as a fair inference from his conduct. That case concerned a US citizen who obtained a certificate of Mexican nationality, and who was treated by the authorities as having lost US citizenship by reason of Section 349(a)(ii) of the Immigration and Nationality Act. That section provided that:

“A US citizen loses his nationality by taking an oath or making an affirmation or other formal declaration of allegiance to a foreign State.”

The case relied in part on the 14th Amendment which relevantly reads:

“All persons born or naturalised in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

It is noteworthy that this provision does not say anything about retention of that status, or the circumstances in which a person may be deprived of it. The majority judgment in the US Supreme Court specifically states:

“This court...rejected the idea that aside from the 14th amendment Congress has any general power, express or implied, to take away an American citizen’s citizenship without his assent’, and referred to the court’s opinion in Afroyim v. Rusk.

The court also stressed that:

“The trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the Statute, but also intended to relinquish his citizenship.”

In my view, the decision of Vance v. Terrazas is directly relevant to the present situation. The reasoning of the US Supreme Court in holding that citizenship is constitutionally protected, in the absence of express intent on the part of the US citizen to relinquish it, is directly applicable in Australia. Once it is acknowledged that there is a constitutional concept of “the people of the Commonwealth”, then in my view those who form part of that body of people cannot be deprived of that status by the Parliament unless they intend to relinquish that citizenship, or have acted in ways which are inconsistent with their continued membership of that group of people.

I have also been asked to advise on aspects of the interpretation of Section 17, assuming its validity. In particular, I have been asked whether the proper interpretation of Section 17, appropriately read down, is that it requires that the person concerned would not lose Australian citizenship unless they had the intention of relinquishing such citizenship. I have also been asked whether “acquire” necessarily encompasses “reacquire” in the case of persons who acquire a nationality which they have previously held, but which has been relinquished or lost at an earlier stage and is then re-acquired by acts which become the subject of consideration under Section 17.

In Gugerli’s case (1992) 36 FCR 68 Davies J. found that Mrs Gugerli had applied for recognition for a preexisting Swiss citizenship and therefore had not sought to acquire Swiss citizenship, she believing she already held it. In these circumstances, Davies J. held that she had not lost her Australian citizenship by reason of the operation of Section 17.

In my view, for the reasons expressed above, Section 17 is invalid, if read in a way which provides that a person loses Australian citizenship notwithstanding his or her desire to maintain it. The better view is that the Section should be read, pursuant to Section 15A of the Acts Interpretation Act, so as to be constitutionally valid. If so read, it is limited only to those cases in which a person seeks to acquire the nationality or citizenship of a foreign country with the intent of relinquishing Australian citizenship.

Given my above views, I have greater difficulty with the notion that the word “acquire” does not extend to “reacquire”. I presume that it is not necessary to answer this question since the section does not have constitutional validity in the absence of an implication of appropriate intent. My instructing solicitors have also asked whether it would be appropriate to treat the section as having become constitutionally invalid at the present time, so as not to cause the re-opening of the cases of those persons upon whom Section 17 has operated in the past. In my view this is not possible as a matter of law. If the section is invalid it has never had validity and there is nothing to stop persons who have “lost” their Australian citizenship from now seeking a Declaration from a court that the section did not affect their status, regardless of how they were dealt with by the Department. To quote Latham C.J. in South Australia v. The Commonwealth (1942) 65 CLR, at 408.
“Common expressions such as ‘The Courts have declared a statute invalid’ sometimes lead to misunderstanding. A pretended law made in excess of power is not and never has been a law at all. Anybody in the country is entitled to disregard it. Naturally he will feel safer if he has a decision of a court in its favour—but such a decision is not an element which produces invalidity in a law. The law is not valid until a court pronounces against it—and thereafter invalid. If it is beyond power it is invalid ab initio.”

I would be happy to confer further to discuss any of the above matters if this is desired.

A.R. CASTAN Q.C.
Aickin Chambers
27 June 1995

Senator BOLKUS—The other point I would like to make is that there was an enormously strange environment in 1995 and it was not just because of the lead-up to an election. At that time, in the Prime Minister’s department in particular, there were a number of senior bureaucrats who had their own political agenda and who I feel, to this day, overstepped the mark of propriety. Some of the claims that they were making were claims that were spurious at best, were baseless and were just designed to derail this particular process. Their behaviour was such that they became political players. For instance, PM&C claimed that Australia, by taking this measure, would be out of step with the rest of the world and out of step with the USA, when the facts showed full well, for instance, in the case of the USA, that it was a constitutional right of their citizens to maintain US citizenship in most circumstances where they acquired the citizenship of another country. But we were told that this would be contrary to the overriding and unifying commitment to Australia—rejecting, by way of that allegation, any adoption by them of the concept of multiculturalism, with a commitment to Australia as the overriding and fundamental commitment of migrants who come here.

Their campaign was a political one and it was excessive. But I am pleased to see that they were not able to unwind the guidelines that were issued in 1995. I am pleased to see now that their influence is out of the system and we have reached the stage where this legislation is before us today. It is long awaited, belated legislation which does away with discrimination against Australian born citizens and which is necessary in the current multicultural environment in Australia, and it brings Australia very much in line with other countries. I think it responds very well to the imperatives of the global environment in which this country finds itself—a global environment which has more and more Australians working internationally and more and more people from overseas working in Australia. It is a global environment which means that, in a sense, we are in an era of rapid mobility where people and their assets travel the world for short periods but then come home and know where their home is. The citizenship legislation has not acknowledged that over recent years. I welcome this reform, having incorporated the late Mr Castan’s advice in Hansard.

Senator CROSSIN (Northern Territory) (1.44 p.m.)—I seek leave to incorporate in Hansard a speech by Senator Ludwig on the Australian Citizenship Legislation Amendment Bill 2002.

Leave granted.

The speech read as follows—

The main provision of this Bill centre on the repeal of section 17 of the Australian Citizenship Act 1948.

This section means that if an Australian citizen took out another citizenship then the effect of this would be to disqualify the person from holding Australian citizenship. Thus, Australian citizens are faced with a terrible choice—if they went abroad for either a short or long while, irrespective of the reasons, for example, work, marriage, touring and decided to take out citizenship in the resident country, they would automatically lose their Australian citizenship. Thus, on their return to Australia for a visit or perhaps to return for good they found themselves denied an Australian passport. A situation could arise where the person might find it difficult to return or at least spend some time worrying about their status.

The Bill also contains a new provision to allow a person who is born overseas to be allowed to be registered up to their 25th birthday. The caveat is that the person be of good character. Occasionally, overseas Australians do not register their child or children and thus fail to get Australian citizenship notwithstanding the parents of the child or children by being Australian citizens.
The provision 10B(1A) will overcome this inconvenience in part by allowing the upper age to be moved from 18 to 25.

Section 13(1) of the Australian Citizenship Act 1948 extends the scope of service with the Australian Reserve Forces to a more contemporary basis. It allows 6 months equivalent service to allow a residency requirement of 1 out of 2 or 2 out of 5 years to be waived. However, the usefulness of this provision remains to be seen.

The amending Bill also contains provisions for the Prohibitions on Grant of Citizenship and provisions where citizenship can be deprived of gaining citizenship.

Section 23AA touches on the cases where citizenship can be resumed in various circumstances. The situations where this can be activated is only where the person did not know that the act through which they lost their citizenship would have that outcome or acted under duress. Thus, if the person took the action voluntarily and with knowledge of its consequences than it would not be permissible under this provisions. The Minister must approve it though.

So, in short, the Bill takes away the provision which means that Australian citizenship is lost on the gaining of another. It extends the age at which young people can gain citizenship. It also inserts a specific reference to people smuggling offences in the existing provision in the Act.

The central provision of the Bill deals with the concept of dual citizenship. A dual citizen is a person who has a citizenship certificate from two countries. Many, many Australian's currently hold dual citizenship.

It is interesting to note that under present legislation, two classes become apparent. Australians who already hold another citizenship because of a number of circumstances such as through marriage a person becomes a citizen of another country or because of descent. On the other hand, a person who acquires citizenship of another country loses their Australian citizenship. Thus, it appears that the present legislation militates against Australians who are citizens by birth.

The benefits of the new Bill seem to more broadly fit in with a modern world. Dual citizenship is in part recognition of our multiculturalism. And, clearly that the world is a smaller place. More people are travelling, working and living for periods in other countries without necessarily feeling that they have to make a choice between Australia and the new country. It would appear anecdotal that many Australians living overseas don’t easily give up there citizenship.

No doubt, many countries show a close tie with Australia and its people. Clearly countries like U.S., U.K., N.Z., Canada and France have recognized this and I'm sure Australians feel the same. Of course, this should not cheapen the value of citizenship.

I am comforted in my view, that it is a valuable contribution to our citizenship regime because in February 2000 the Australian Citizenship Council’s report ‘Australians Citizenship for a New Century’ strongly recommended the repeal of section 17. The Government responded to the Report positively. Labor has similarly supported the repeal of section 17.

Laurie Ferguson, the Shadow Spokesperson informed the House that the Joint Standing Committee on Migration entitled ‘Australians All—Enhancing Australian Citizenship’ was persuaded by those deliberations in 1994 to accede to the Concept of Dual Citizenship.

“Many Australians are adversely effected by the current law when overseas.”

It was unable to be proceeded with at that time but was revised in 1999 by the Australian Citizenship Council. Labor is pleased to support the Bill. Although it would be better to allow better resumption arrangements.

The Bill is prospective and thus Australian citizens who have lost their citizenship cannot easily recover it under these provisions. Further work is needed on this issue. Consideration should be given to looking at this matter again.

The Act as I have said, provides that a person born overseas to Australian parents can get Australian citizenship by descent if their parents registered their birth before their 18th birthday. About 8-9 thousand children are registered. This is now extended to 25 years.

The Australian Labor Party has a proud record of multiculturalism and involvement in citizenship matter and I am pleased to be able to support such an initiative.

Senator BARTLETT (Queensland) (1.44 p.m.)—I recognise the importance of trying to get the Australian Citizenship Legislation Amendment Bill 2002 finalised by two o’clock, so I will be brief, which is rather unfortunate because it is an important piece of legislation. The brevity of my remarks should in no way be taken as a lack of recognition of its importance.

I will put a few points on the record. The Democrats are happy to support this bill and are happy to facilitate its quick passage. It
was introduced in the last parliament but was not able to be debated. The issue itself has been bubbling along for quite some time, certainly in relation to the repeal of section 17 of the Citizenship Act. It is worth noting that the whole notion of citizenship is one that is evolving. As senators would know, citizenship itself only became a legal reality a little over 50 years ago and, for the first half of our life as a federated nation, we did not have such a thing as an Australian citizen, despite being an Australian nation. It is a concept that will continue to evolve, and it will be interesting to see what the notion of citizenship is in 50 years time. I think it will be very different again.

This bill is at least bringing things more up to date. It removes discrimination against a significant proportion of Australians, and will assist in the better integration of Australia with the global community. It does, however, raise one other issue which makes it all the more urgent that it be addressed. I urge the government to act in the life of this parliament to address this issue, because the longer we leave it, particularly having passed this bill, the worse it is going to get. I refer to the provision in the Constitution that prohibits dual citizens from standing for parliament. The Democrats have indicated a number of times our support for removing that provision or modifying it significantly, although it has to be done by referendum. We would urge the government to hold a referendum on that, if not before the next election then at least at the next election. This already affects a large number of people. I do not know how many but Senator Bolkus indicated it was a very large proportion. He said it affected half of Australia; I think at least one-quarter of Australians are dual citizens already. This will open up the ability for many more to become dual citizens and, effectively, at the same time, disenfranchise themselves from running for the federal parliament.

It is becoming more and more of a problem, certainly from my experience as a campaign director for the Democrats through many elections. It is a regular problem for people who are wishing to run for parliament—often, unfortunately for the Democrats, for House of Representatives seats where they are not likely to win. They still want to participate in the electoral process but are not able to do so because of the Constitution and the way it has been interpreted by the High Court. I think it is an unfortunate interpretation but I should not reflect on a decision of the High Court. Certainly, the interpretation has been made regardless. The Democrats urge the government, and urge the opposition to lend their cooperation, to attempt to change that part of the Constitution by putting up a referendum to change it as quickly as possible. As I say, the passage of this bill, whilst it is one that we support very strongly, actually makes that need for action all the more urgent.

**Senator COONEY (Victoria) (1.48 p.m.)—**The Australian Citizenship Legislation Amendment Bill 2002 is non-controversial but I would have hoped that a deal of time was put aside for its debate. It is about the underpinning of Australian nationality, and that is a matter which we as a parliament ought to talk about at length. There is an interesting concept that you must be an Australian citizen to be in the Australian military forces or to be in the reserves. That indicates that there is importance attached to the concept of Australian nationality. But with the passing of this legislation—and it has been discussed, as Senator Bolkus has said, for years now—the fact is that you will be able to hold any number of citizenships of any number of countries and, at the same time, be Australian.

I am really talking nostalgically. I do not think nostalgia is all that bad at times. I became an Australian citizen in 1948, when the Act was originally passed. I was born in Tasmania; my father—who had the same name as me, Barney Cooney—was born there in July 1894. In spite of the fact that my mother, Corrie Curtain, was also born in Tasmania on 26 February 1899, and three of my grandparents were born there, the fourth one was a foreigner from Ballarat—in those days, Ballarat was in a foreign country; I was born British.

Great contributions were made to Australia in the 19th century. This legislation is in keeping with where Australia has developed
to. I like to think that, although Australia is developing in a great way and we have a great multicultural society, those who came in the 19th century and before did make a great contribution. The indigenous people were, of course, the first people here.

I am always very pleased, in light of some of my ancestry, that 26 January is Australia Day. That is the day that the convicts founded Australia. That was the day that they got here, and they were the first to till the soil in this land. They were followed by the graziers, squatters, the selectors that we used to learn about in school, and the miners. And we developed to the stage we have reached now. I think it is good to contemplate the contribution that the earlier settlers made to Australia. We learnt about those sorts of things at school. Mr Acting Deputy President, you will remember the great poem by Dorothea Mackellar, which is the one that often comes to mind: My Country, which contains the lines ‘I love a sunburnt country’—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—A land of sweeping plains.

Senator COONEY—‘A land of sweeping plains,’ and so on. You would know, Mr Acting Deputy President, about the magnificent country that we belong to and the great contribution that our forebears made to it. This is an occasion when we ought to be talking about it. It is a time to remember how over 60,000 Australians were killed in the First World War. This would be a different country had they survived. I am not saying that the present country is not a magnificent country; I am just saying it is a different country. I want to bring to the fore at a time when we say, ‘Righto, you can be an Australian citizen; you can be a citizen of any other country who cares to take you at the same time’, that the contribution of the past is not forgotten and that those over 60,000 men that were killed on the battlefields are remembered. I think there were about 200 Navy people killed as well. Even the contribution Australia made in the Boer War, not a war that I necessarily agreed with—

Senator McGauran—Breaker Morant!

Senator COONEY—I heard you the other night, Senator McGauran. It is the anniversary of the execution of Breaker Morant and of Peter Handcock who was executed with him. There are other historic figures, for example great painters. I am thinking of Mount Duneed, where Sir Arthur Streeton was born—as Senator McGauran would know—and the magnificent art he painted. All I am saying is that the Australia of Lawson, the Australia of Steele Rudd—Arthur Hoey Davis was known as Steele Rudd—the Australia of C. J. Dennis and all those stories that we used to read, such as Blinky Bill, is clothed with nostalgia but, I think, very important nostalgia. In the context of our debate about Australian nationality, that ought to be remembered.

Senator Crossin—Talk about Vegemite and Aeroplane jelly!

Senator COONEY—Senator Crossin talks about Vegemite and Aeroplane jelly. I understand what she means, but that can be belittling of a contribution made by a lot of people prior to and since 1900. I want to have that on the record as we go into the future. We have the possibility of dual citizenship. None of my children, unless they go overseas and acquire it over there—I am not sure that they would want to—could get it. Nevertheless, as we go forward let us remember what is the best of the past. We must remember that we have a very proud history to date. All I want to do is to have that acknowledged.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (1.55 p.m.)—I endorse the words of Senator Cooney and thank all honourable senators for their contributions. I would have loved to have had a much longer debate on this sort of bill. It falls into the category of the sort of bill we could debate for longer if we managed our time better and set our priorities better. That is a debate I will continue for a long time, I suspect.

After all the convicts, the pastoralists, the graziers and everyone else, finally came the merchant bankers. One Australian whom we are looking forward to returning to our shores very soon is an investment banker by the name of Simon Withers. I am sure he will...
applaud the passing of this legislation. We all look forward to welcoming home the son of former Senator Reg Withers very soon.

Question agreed to.

Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 2002

Second Reading
Debate resumed from 11 March, on motion by Senator Ian Campbell:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

QUESTIONS WITHOUT NOTICE

Defence: Intelligence
Senator Faulkner (2.00 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Minister, what steps have you taken, or what steps do you propose to take, to investigate the apparent breach of security in today’s publication of sensitive intelligence material, including transcripts, intercepted by DSD?

Senator Hill—I have checked to ensure that the matters have been referred to the Australian Federal Police, and have been told that that has occurred.

Senator Faulkner—Madam Deputy President, I ask a supplementary question. I thank the minister for his response. Minister, in this circumstance isn’t it correct that a disclosure of intercepted material is by definition a security breach and would contravene laws enacted by the parliament? In this situation would the minister agree to a proposal to allow DSD to brief the Joint Intelligence Committee of the parliament on how that organisation protects its source material and what steps it takes to investigate unauthorised disclosures?

Senator Hill—I think that that would be okay. I would like to check with DSD. It seems to me that the purpose of the act is for parliamentary supervision of the administrative structures. Effective administration includes effective security. I cannot see any reason why the new committee should not be briefed to the extent that they can be satisfied that important intelligence is being properly secured. In saying that, please do not misinterpret me to be conceding that any protected material has in fact been leaked. I would not wish to be interpreted in that way.

Employment: Workplace Reform
Senator Tierney (2.02 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of the government’s intended workplace reform policies, which are further proof of the Howard government’s commitment to providing job growth and increased business confidence, to the benefit of all Australians? Is the minister aware of any alternative proposals in this area that are worthy of consideration?

Senator Alston—The big news today is undoubtedly the latest unemployment figures, which show a very significant fall in unemployment. Unemployment is down to 6.6 per cent. You would not think so, judging from the reaction on the other side. Once again, they are probably feeling very depressed, but ordinary Australians are very pleased with those results. They do not come about accidentally; they come about because of a commitment to do the hard yards—in other words, a whole series of structural reforms that make the Australian economy more competitive and create more jobs and, therefore, reduce unemployment.

There is always a dark cloud on the horizon. It ought to be perfectly plain that one of the few areas in which the Australian economy is very vulnerable is on the industrial relations front. Yesterday we had the closure—for the second time in two days—of Melbourne airport, shut down by industrial action. Flights in and out of Melbourne airport were stopped, and thousands of travellers had their plans disrupted. What did the IRC say? They said the strike should not go
ahead. The unions were told the strike was both premature and unnecessary, would have serious consequences and the union should cancel the strike. We have two of their representatives in here, Senator Conroy and Senator Hutchins. Where have they been?

Opposition senators interjecting—

Senator ALSTON—You represent the Transport Workers Union, that is how you got here. You are not going to pretend you got here on your merits. You are here representing their interests.

The DEPUTY PRESIDENT—Order! Address the chair, please.

Opposition senators interjecting—

Senator ALSTON—It was a reward for perseverance.

Senator Ray interjecting—

Senator ALSTON—You should appreciate that, Senator Ray.

Senator Ray interjecting—

Senator ALSTON—You did not do too well in Gellibrand, as I recall. What happened? Robert pulled the rug out, did he?

The DEPUTY PRESIDENT—Order! When the chamber comes to order, I will ask you, Senator Alston, to address the chair and ignore interjections.

Senator ALSTON—It is very difficult, but I will try, Madam Deputy President. So we have two transport representatives in the Senate simply sitting on their hands, not prepared to urge their union colleagues to do the right thing and put Australian travellers first.

We have another strike on our hands now. Firefighters in Melbourne are going out for two hours. I think they have a representative here, too. Maybe he is not here because he is out putting out a press release, trying to call the strike off. Here he is—Senator Chris Evans, former member of the firefighters union. I am sure he never actually got around to fighting fires, except the sort of strategic numbers fires that no doubt arose on a regular basis. What are these guys interested in? Essentially, they are not interested in solving problems or getting the economy ticking again.

The CFMEU—that is Senator Lundy’s crowd—had 400 of their members invading the National Gallery in Victoria, causing a huge amount of damage. Is Labor interested in any of that? Of course they are not. When will they ever learn? The Australian public expects sensible reforms in a number of important areas. We have the chief strategist, Senator Faulkner, here. Remember him? He was shoulder to shoulder during the election campaign with Mr Beazley. Whenever you saw Mr Beazley, there he was. They clearly do not believe in docking performance pay on that side of the chamber, Madam Deputy President. What was his reward for that little effort? Once again, it was business as usual.

Three losses on the trot. You get dropped for that from most teams, these days. You could not exactly say he was Steve Waugh, with a long and impressive captaincy record. Here is a bloke who was a failed environment minister, who never had a serious policy job in six years of opposition, and here he is the chief strategist, presumably telling his Senate colleagues that they should not be out there barracking for the Australian economy. It is a tragedy for the Labor Party, but I suppose we should be grateful. Quite clearly, if they have learnt nothing from last time—

Senator Chris Evans interjecting—

Senator ALSTON—I think it was about $1 million. And what about Faulkner House: what has that cost the taxpayers to date? It has been renamed, as you should know. (Time expired)

East Timor

Senator CHRIS EVANS (2.07 p.m.)—My question is to Senator Hill, Minister for Defence in his capacity representing the Minister for Foreign Affairs. Can the minister confirm reports in today’s Sydney Morning Herald and Age newspapers that the Australian government knew prior to the vote for independence in East Timor on 30 August 1999 that there was an orchestrated campaign of violence by the most senior Indonesian army generals to intimidate the East Timorese people? Would the minister inform the house what immediate steps the government took, upon receipt of this information from DSD, to protect the East Timorese people?
Senator HILL—I am not sure that there has been much tick-tacking on the opposition side before question time, but I will add a little to what I said in the answer to Senator Faulkner. Not surprisingly, consistent with long established practice, I will not comment on matters relating to intelligence and security, but I can say, contrary to how I interpreted the article in the Sydney Morning Herald, that Australia gave information based on intelligence to the United Nations to assist its human rights investigations. The UN Commission of Inquiry on East Timor expressed appreciation for the government’s positive response to its request for assistance and Australia provided to the UN all INTERFET military police reports relating to investigations into alleged crime.

Senator CHRIS EVANS—Madam Deputy President, I ask a supplementary question. I do not think the minister answered the question, which is what action the government took prior to the vote for independence in East Timor to act on these DSD reports. Given that the reason that the DSD exists is to enable the Australian government to take actions about threats to security in our region, why did the Howard government fail to act on DSD information that gross violence against the East Timorese people was being planned?

Senator HILL—I thought I just said that I am not in a position to confirm any particular reports. If reports existed, I would not be in a position to advise how they were utilised.

Howard Government: Economic Policy

Senator KNOWLES (2.10 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Would the minister advise the Senate how Australian families and workers are benefiting from the Howard government’s responsible economic management? Would she inform the Senate if there are any other alternative proposals before us?

Senator COONAN—I thank Senator Knowles for the question and for her ongoing interest in the welfare of Australian families and workers. I also want to pick up on the great news that Senator Alston announced. There is certainly good news for the economy today in the latest ABS labour force figures. They are great news for job seekers and, I might add, great news for the revenue, Senator Conroy. The seasonally adjusted unemployment rate fell to 6.6 per cent in February 2002. Today there are 9.3 million Australians in work. That is the highest figure ever. In total some 950,600 new jobs have been created since the coalition came to office. And the good news is that the continued growth of the Australian economy means that Australians can be cautiously optimistic about employment trends in coming months. This, of course, compares with Labor’s horror record on employment when unemployment reached a record high level of 10.9 per cent in December 1992.

The Howard government’s commitment to lowering taxes has been a hallmark of our economic management over the past six years. In our first term, tax cuts were delivered through the $2.4 billion family tax initiative, benefiting more than two million Australian families. In the government’s second term, we delivered the largest reforms the tax system has ever seen through the new tax system, and we have done this in the face of cynical and sustained opposition from the Labor Party, who oppose tax cuts, oppose cutting down on tax cheats and oppose modernising the tax system. The benefits for Australians include $12 billion worth in income tax cuts for average wage earners and a top marginal tax rate of just 30 per cent up to $50,000; a cut to company tax rates from 36 per cent down to 30 per cent; tax-free exports, providing an estimated benefit of $3.6 billion; and extending capital gains tax rollover relief for small business. In addition, the coalition has also abolished the half-yearly indexation of the fuel excise, introduced a first home owners grant and maintained a low interest rate policy which is saving home owners $370 a month on an average $100,000 mortgage. Unlike the Labor Party, this government believes in lowering taxes and ensuring that all Australians pay their fair share of tax and no more.

There is even better news. Today the government is proud to deliver on one of the most innovative policies announced during
the election campaign. The first child tax refund is a measure that will further cut taxes for Australian families. One of the hardest times financially for families is often with the birth of their first child. In recognition of the contribution made by women leaving the work force to have and raise kids, we will be introducing the first child tax refund, or the baby bonus, as it is colloquially known, up to a maximum of $2,500 a year over five years. Low-income earners will not miss out, with a minimum $500 rebate for a parent earning less than $25,000 in the assessment year. The proposal will repay a parent who acts as the primary carer after the birth of their first baby born after July 2001, and recipients of the bonus will even be able to contribute it to a superannuation fund. While Labor make promises they cannot keep and hock every Australian into debt, the Howard government is delivering where it counts most: by cutting taxes, creating jobs, helping families and putting more money into the hip pockets of Australians.

East Timor

Senator BOLKUS (2.14 p.m.)—My question is to Senator Hill, Minister for Defence and representing the Minister for Foreign Affairs. Can the minister confirm that the government has evidence about the direct involvement of senior Indonesian army and police officials and Indonesian ministers in the violence in East Timor in 1999—information which would be directly relevant to current prosecutions in East Timor of Indonesian officials? Can the minister give the Senate an assurance that none of the evidence now available contradicts the statements made by government ministers at the time of these events?

Senator HILL—As I have already said in answer to the previous question, it is not appropriate for me to comment on intelligence and security matters. I have already advised the Senate of information that was provided to the United Nations to assist it in its investigations, including the military police reports. I should also remind the Senate of the fact that the government has been taking every opportunity to urge Indonesia to bring to justice those responsible for human rights abuses. The Senate will recall that the government welcomed President Megawati’s extension of the jurisdiction of the ad hoc human rights tribunal on East Timor last year, and the appointment of judges this year.

Senator BOLKUS—Madam Acting President, I ask a supplementary question. The minister is being very selective in what he answers today. I would remind him that I did ask a question about Australian government ministers, and I would like an answer to that. Why did the Howard government, throughout 1999, attribute militia violence in East Timor to so-called ‘rogue elements of TNI’, when ministers knew for a fact that such violence was being orchestrated by high levels of Indonesian military and government? Why did the foreign minister, and the then defence minister, make public statements on this issue contradicting the government’s own information available to it through its own intelligence sources?

Senator HILL—Senator Bolkus is asking me to reach conclusions from alleged intelligence and security material which, as I have said, I am not able to do. It would be a mistake for him to assume the factual basis of his question.

Centrelink: Breaching

Senator BARTLETT (2.17 p.m.)—My question is to the Minister for Family and Community Services. I refer to the report of the Independent Review of Breaches and Penalties in the Social Security System which was released this week and which has already been the subject of some discussion during question time. Does the minister acknowledge that the report states that the increases in breaching have led to a marked increase in requests for assistance to welfare organisations that help the needy and destitute? Will the minister acknowledge that that is factual and indicate whether there is any willingness on the part of the government to assist in providing extra help to those welfare organisations that have had an increased burden? Will the minister also acknowledge that any plans to further extend breaching to single parents will add to the load of those charitable organisations?

Senator VANSTONE—I thank the senator for his question, although I think he is
asking a bit much when he asks me whether I can confirm as a fact that there is extra pressure on community agencies. The only people who can actually confirm that for you are those agencies themselves.

Senator Bartlett—They are saying it.

Senator VANSTONE—The senator has had a chance to ask his question; if he wants to answer it he will have to join a party that is likely to be in government one day—and if I can give him a bit of assistance, he has not made a good start in that context; not a good start at all. Senator, it might interest you to know, should you be interested in going into the substance of problems associated with the welfare area, that there are some in the welfare sector who offered to me their view that they are not actually certain where all the increase is coming from. They are certain that some of it is increased activity by this government and that is right—there is increased breaching activity by this government. But they also say that it might be a part of the institutionalisation by the states, and people who otherwise would have had the positive aspects of institutionalisation there to assist them now do not have them. They have other positives in exchange, but they nonetheless need that extra help. We provide our assistance, as you know, Senator, directly to the individual in need of help. Some other assistance is provided to agencies, and I think we are working very positively with them.

I thank you for raising the Pearce report. Professor Pearce was kind enough to suggest that we might have stolen his recommendations; in fact, we were a few months ahead of him on that aspect. But in any event that shows you that his recommendations are very close to what the government is in fact doing. We cannot have it both ways, can we? We cannot say, ‘Oh, the government has stolen the Pearce report recommendations,’ and then say, ‘The government’s gone the wrong way.’ We are on the right track, we are doing something, and we have been all over last year, to help those most vulnerable people who do find not just the welfare bureaucracy but any bureaucracy difficult to deal with. But we are also working to make it harder and harder for those people who think that their activity requirements when they are on the equivalent of the dole are optional—they are not. We believe that the taxpayer expects us to treat the dole as payment to find work. Just as you have to show up at work—you cannot not appear for four days and expect to still have your job—and just as you are expected to respond to requests from your employer so, when you are on the dole, you are expected to keep your appointments and you are expected to respond to letters that are sent to you.

Senator BARTLETT—Madam Deputy President, I ask a supplementary question. Regardless of what the reasons are for the increase in breaching—as the minister outlined there may be a number of reasons—it is still the case that increases occurred and the fact surely is that the increase has led to an increasing burden on welfare organisations. In light of the facts that indicate the adverse impact that breaches have had on recipients of benefits, does the minister still intend to extend breaching to sole parents and other parenting payment recipients as announced in the last budget as part of the Australians Working Together program? Is it still the plan to empower the government to impose suspension and reduction of allowance on single parents of children and parents of children with a disability because they failed to receive a Centrelink letter or because they were unable to attend an interview?

Senator VANSTONE—Senator Bartlett, if you do not now understand that people are not breached simply because they could not respond to one letter or because they had a reasonable excuse for not showing up to an appointment, you ought not to be asking questions in this place. People who have a reasonable excuse do not get breached. When people do not respond, we do try to contact them again. But there is a point at which the taxpayer expects us to say, ‘We don’t know if this person still exists,’ and to suspend the payment or impose a breach.

**Telstra: Services**

Senator LUNDY (2.22 p.m.)—My question is to Senator Alston, Minister for Communications and Information Technology. Can the minister confirm that Telstra have
admitted that up to one million customers may be victims of pair gains, a technology that allows a single phone line to be split, providing additional lines? Is the minister aware of comments made by a Telstra spokesperson and reported in today’s Financial Review that pair gain technology had saved the telco billions of dollars during the 1990s when it was implemented during the $3.5 billion upgrade of the copper cable network? In light of Telstra’s admission that this line splitting was done to save Telstra money, does the minister have any response to the report prepared by PricewaterhouseCoopers and delivered to Telstra today stating that that this technology appears to have been a factor in the phone problems experienced by Mrs Rose Boulding?

Senator ALSTON—Pair gain arrangements are certainly not as good as, say, an ADSL connection, but there are limitations on ADSL. You can get something like three megabits if you are within, say, two kilometres of a local exchange, but the coverage falls off dramatically with distance. Pair gain arrangements were put in place to try to provide upgrade facilities for areas where there might not have otherwise been any ability to improve the carriage service. As you know, because of our introduction of digital data service obligations and various other initiatives, people now do have an ISDN or equivalent opportunity, if necessary by satellites. I think it is quite unfair to say that people have been victims of pair gain technology.

Senator Lundy—They are not told when they are on pair gain technology.

Senator ALSTON—That may be so, but neither are we told whether the CAN is upgraded at home or whether we have ADSL technology in place. Do you and I know whether our exchanges have re-provisioned for ADSL? I presume not. There is nothing particularly unusual or sinister about Telstra not advising people. What is important is that they do not use revenue-saving means to provide inferior levels of service. That is why things like customer service guarantees are very important.

In the Boulding case, to which you refer, there were certainly issues that I think might not have arisen if there had not been pair gains. The line going out on successive occasions is a problem in itself, but pair gain does not give you any back-up facility, because you are using only the one line. If that line is overloaded then you do not have a bypass facility. I think, certainly arising out of this episode, Telstra should re-examine their strategy. But I would not say that, because they have saved money in the past, that somehow demonstrates that they have been trying to dud consumers or that consumers become victims.

We have today released the report of the ACA, and I think it does demonstrate significant deficiencies in Telstra’s processes. As a result, we are going to impose some stringent licence conditions to make sure that this sort of thing does not happen again. We are particularly concerned to ensure that they have a rigorous emergency regime in place so that people can be identified early and assessed. They can then be entitled to an emergency service—in other words, an interim satellite handset or a mobile phone—if the phone is not fixed within 24 hours, or 48 hours in regional areas. There are a number of other initiatives which I think are also very important in a comprehensive response.

We have not been particularly influenced by the PricewaterhouseCoopers report. It has really been a Telstra internal document which it has made available to the ACA. I have not seen it. Our concern is to address the recommendations from the ACA. We have been fully briefed on those, and I have put out a release responding. At the end of the day, I think we are going to be crawling all over Telstra’s processes to make sure that they address this issue with the seriousness that it deserves. I think what Dr Switkowski has said to date suggests that Telstra is acutely aware that the systems that it had in place were inadequate, that no-one really knew about these opportunities. To the extent that pair gains and technology that might be able to overtake pair gains is available and necessary, then it will be addressed.(Time expired)

Senator LUNDY—Madam Deputy President, I ask a supplementary question. Given that Telstra admitted that this practice of pair
gains can result in significantly lower Internet connection speeds at the recent Senate estimates hearings, including below that of the minimum standard of 19.2 kilobits per second, what justification does the minister have for spending $50 million of taxpayers' money on a so-called Internet assistance program to effectively bail Telstra out of the pair gain problem, which is a problem of their own making?

Senator ALSTON—I think you do not understand what we have put in place. Essentially, people in remote areas—and many even in regional areas—were guaranteed nothing more than the standard telephone service, which is 2.4 kilobits. That is no use at all if you want to email and chat and do other basic Web browsing. We believe that 19.2 kilobits will provide adequate facilities as a minimum level. That is why we have required that, or an equivalent, to be universally available.

Pair gains systems have been put in place over recent years. We have introduced this minimum standard arising out of the Besley report in the last 12 months, so it is well after the event. What we have done is come in and identify that, in this day and age, people are entitled to have reasonable access speeds. They can buy faster speeds if they want to—and, clearly, we want to make sure there is maximum competition out there to deliver that—but to say that Telstra’s use of pair gains is a reason why we should not be assisting—(Time expired)

Attorney-General: Protocol
Privilege

Senator BROWN (2.29 p.m.)—My question without notice is to Senator Ellison, representing the Attorney-General. Does the Attorney-General have any remaining role as an advocate for the judiciary? I refer to the Attorney-General have any remaining role as an advocate for the judiciary? I refer to the Attorney-General’s statement today that Senator Heffernan’s speech has highlighted the need for a protocol, as recommended by the Australian Law Reform Commission, for dealing with allegations against federal judges. While I would agree with such a protocol, is not the real need which that speech highlighted a need to deal with the abuse of privilege by members of parliament? What protocol for dealing with public allegations against members of parliament is the government considering?

Senator ELLISON—Firstly, in relation to privilege, I remind Senator Brown that we have the Privileges Committee, and a very good committee it is, too. Concerning the role of the Attorney-General in relation to the judiciary, he has today rejected firmly the criticism that has been levelled at his role in this matter. He has said: The comments that have been levelled are superficial and misguided.

He has reaffirmed, as has the Prime Minister, that Mr Justice Kirby enjoys a fine legal reputation and that the Australian Law Reform Commission recommendation concerning setting up a protocol which would relate to allegations made against judicial officers should be looked at. I think that is an appropriate course of action. He has further stated that details of that protocol will be developed by his department and by the Department of the Prime Minister and Cabinet. That is an appropriate response from the Attorney-General and his position in the whole of this matter has been entirely appropriate.

Senator ELLISON—Firstly, in relation to privilege, I remind Senator Brown that we have the Privileges Committee, and a very good committee it is, too. Concerning the role of the Attorney-General in relation to the judiciary, he has today rejected firmly the criticism that has been levelled at his role in this matter. He has said: The comments that have been levelled are superficial and misguided.

He has reaffirmed, as has the Prime Minister, that Mr Justice Kirby enjoys a fine legal reputation and that the Australian Law Reform Commission recommendation concerning setting up a protocol which would relate to allegations made against judicial officers should be looked at. I think that is an appropriate course of action. He has further stated that details of that protocol will be developed by his department and by the Department of the Prime Minister and Cabinet. That is an appropriate response from the Attorney-General and his position in the whole of this matter has been entirely appropriate.

Senator BROWN—Madam Deputy President, I ask a supplementary question. The minister referred to the Privileges Committee and I ask: can the minister acquaint the Senate with the penalties for the most serious breaches of privilege which damage members of the citizenry or institutions in this country? Does he believe that a protocol developed for dealing with charges against judges should be in house or independent of that house? If that is the case, why not have such an independent entity to deal with allegations of misbehaviour by the public against members of parliament?

Senator ELLISON—This is perhaps more a question which should be directed to the President of the Senate, but there are provisions in relation to contempt in the standing orders.

Senator Brown—What are they?

Senator ELLISON—Senator Brown should read his standing orders. I am saying that that is something which Senator Brown should take up with the President and per-
haps the chair of the Privileges Committee, Senator Robert Ray.

**Health: Program Funding**

Senator SCHACHT (2.33 p.m.)—In the light of the Prime Minister’s rethink—

The DEPUTY PRESIDENT—Who are you addressing your question to, Senator Schacht?

Senator SCHACHT—I am sorry, Madam Deputy President, I was just having a very good conversation about the poor performance of the government at the moment.

The ACTING DEPUTY PRESIDENT—Senator Schacht, who was your question addressed to?

Senator SCHACHT—My question is to Senator Patterson, the Minister for Health and Ageing—I think she is still the minister. In the light of the Prime Minister’s rethink and the potential withdrawal of the $5 million grant which Dr Wooldridge made to GP House, what action has the minister now taken to scrutinise other funding decisions made by Dr Wooldridge in the last few days in which he was in the ministerial seat—for instance, decisions to commit payments of $43 million in expressions of interest for provision of after hours care services, some $70 million in funding for GPET Pty Ltd and tenders for delivery of regionalised GP training, and over $5 million in special grants to the Australian College of Rural and Regional Medicine? Given that the minister has now been in the job for five months, what action has the minister taken to assure herself that all decisions taken by Dr Wooldridge in his last days in the job were properly made and not the product of stripping money out of urgent health programs? *(Time expired)*

Senator PATTERSON—Let me tell you about some of the decisions which Dr Wooldridge made. He made a decision to rectify the absolutely outrageous immunisation record of the Labor Party. When we came into government, immunisation levels were running at 53 per cent—53 per cent of children were immunised—which matched immunisation levels in China, Algeria, Laos and Vietnam.

Opposition senators interjecting—

Senator PATTERSON—Senators on the other side might say that that was a great record but, having put proper and innovative policies in place, we now have 91 per cent of our children immunised. That was one of the decisions that Dr Wooldridge made. Another decision he made was to place a lot of emphasis on rural health. We had eight per cent of young people in medical schools who came from rural areas; now we have 25 per cent. That was a very good decision by Dr Wooldridge. What else did he do? He instigated rural scholarships for nurses and doctors, and we now have young people who are going out to work in rural areas. He instigated funding for young GPs to do their training in rural areas. A young GP who trains in a regional hospital is relieved of HECS when they are training in the rural GP program. They get $10,000 in the first year, $20,000 in the second year, $30,000 in the third year—that is, $60,000—for going out over a three-year period and doing training. That was a very good decision made by Dr Wooldridge. You had plenty of opportunity in estimates to go through those decisions. You did not ask about the good news, you did not ask about those innovations by Dr Wooldridge. You had plenty of time to question the allocation of money in estimates.

Senator SCHACHT—Madam Deputy President, I ask a supplementary question. Does the minister recall the Prime Minister stating on 5 October 2001, when announcing the election:

I won’t be sort of using the weekend to take a whole lot of hurried last-minute decisions.

Now that it is clear that Dr Wooldridge was doing exactly that during that weekend, what action will the minister take to thoroughly review Dr Wooldridge’s decisions?

Senator PATTERSON—As I said, the opposition have every opportunity, if they have any questions about what Dr Wooldridge did, to pursue those issues in estimates. They had a whole day in estimates to do that if they thought something was improper. If they have more questions to ask, they can bring those questions to estimates to be addressed there.
Agriculture: Economic Outlook

Senator McGAURAN (2.37 p.m.)—My question is to the Minister for Forestry and Conservation, Senator Ian Macdonald. Will the minister update the Senate on forecasts issued by ABARE for agricultural commodities? How has sound economic management contributed to a better economic outlook for Australian farmers?

Senator IAN MACDONALD—Senator McGauran’s very astute question draws attention to another strong financial performance for the Australian farm sector in 2002-03. The agricultural sector has made a very significant contribution to Australia’s remarkable economic performance, despite very difficult world markets. Senators will know and will have heard with great pride about the 4.1 per cent growth in the Australian economy. That happened at a time when the US and Japanese economies were in recession. Our growth is some 10 times better than that of all our significant trading partners. Agricultural exports are over $30 billion, or something like 23 per cent of the $135 million total export market for Australia.

The Australian Bureau of Agricultural and Resource Economics—and ABARE is a very respected organisation—has indicated that strong productivity gains made by the farm sector are expected to continue and to result in farm production continuing to expand. ABARE predicts that farm production is likely to increase by around 10 per cent for the second successive year. Increases in saleryard prices for beef and cattle and higher prices for other farm commodities, including milk, grains and wool, are also expected to result in substantial increases in profits for most producers this financial year. Of course, the Howard government’s various programs have helped in that.

I notice in the gallery some leaders from the Murchison-Gascoyne Strategy from Western Australia. I am pleased to see them here. They are the sorts of leaders who have helped in this great boost in Australian farm exports. This great farm result has also contributed to the very low unemployment figures of 6.6 per cent announced today. World economic recovery could start in the latter part of 2002 and strengthen in 2003. That, again, will improve demand for Australia’s exports. These good results have been achieved by hard work and good practice within the rural sector, assisted by very strong government economic leadership. The Senate is well aware of the structural reform initiated by the Howard government. The farm sector, like all other business sectors of Australia, appreciate the low interest rates and remember the times when, under Labor governments, farmers were paying interest rates of 20 per cent. I had farming clients who were paying 27 per cent at the time Senator Cook was in charge of the economy of Australia. Now interest rates are down around five, six, seven and eight per cent.

Inflation is low and farmers appreciate this, particularly when it is compared with Labor’s double-digit inflation. Productivity gains, particularly in the transport industry, have been significant in our export performance, particularly in our exports across the wharves. Madam Deputy President, you will recall how the wharves used to be so poorly run. But with Chris Corrigan and Patrick Corporation at the lead, productivity across the wharves has increased. Labor, of course, oppose that because they are captors of the union movement. Labor opposed those productivity increases across the wharves just because the unions told them to do that. (Time expired)

Health: Program Funding

Senator FORSHAW (2.42 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Minister, can you confirm that in September last year Dr Wooldridge had funding applications for at least eight important New South Wales rural medical projects on his desk when he made the decision to take $4 million from rural health and to give it to his new employer, on the basis that it was impossible to spend the money in time? Is it also correct that the New South Wales Minister for Health protested publicly about the delays in the funding of these important projects two days ago? Didn’t you, Minister, deny to the Senate that there was any delay in funding for these important projects? Minister, if there was no delay in considering these proj-
ects, why did it take public exposure of the issue this week to force you to decide late yesterday to fund these projects?

Senator PATTERSON—It is obvious that the honourable senator has not been a minister. It would be impossible to have the issue raised on Monday or Tuesday—or whatever day it was—and for me to sign the next day. Those applications were in the pipeline. In fact, I think the minute was sitting in my office during that period. I signed it yesterday afternoon. It happened to be coincidental. But I have to tell you that it was incredibly good news for New South Wales—$2.1 million for New South Wales rural specialist health. I do not understand why the Labor Party keep bringing it up, because they did nothing for rural health. It really shows them up when they ask questions about rural health—$2.1 million for an outreach program so that people in rural areas can have access to specialists. They did nothing about it, so every time they ask a question I will remind them that they did nothing about it and here I was able to announce $2.1 million for rural health.

There were some hold-ups because the project proposals needed clarification and amendment. It was a new program. There were different sorts of specialist services being rolled out in different areas. Some of them needed clarification and amendment to make sure there was no duplication of services or overlapping with existing services. Some of the proposals from New South Wales fell short—I went through this in an answer to Senator Mackay, I think it was—and the department told them that the projects had merit but the costings were problematic. The New South Wales Minister for Health forgot to mention in the New South Wales parliament the other day when he was speaking that it took New South Wales health officers considerable time to provide information on the vital issues which we asked for. Nevertheless, we got some of those projects through.

The spending will include: $100,000 in the far west of New South Wales for physician, dermatology and neurology services; $515,000 over three years in the Mid North Coast for endocrinology, psychogeriatric and other services; $531,000 over three years in the Macquarie area; $70,000 in the Hunter region—this gives me a great opportunity to announce these and to tell people, thank you, Senator—$259,000 over three years in the Northern Rivers region for psychogeriatric, child and adolescent psychiatry, neurosciences and clinical genetics services; $187,000 over three years in the mid-western region for upskilling local health stuff and for oncology, renal, vascular and ear, nose and throat services; $335,000 over three years in the Greater Murray region for neurology, urology, orthopaedic, anaesthetic, gynaecology, oncology and paediatric haematology services; and $180,000 over three years in the southern region for radiation, oncology, haematology, geriatric rehabilitation and paediatric ear, nose and throat services. This means a significant additional level of specialist medical care for people of rural New South Wales. It comes after considerable consultation with the community and local health service providers analysing service gaps—where there were gaps and how best to fill them.

There were some gaps in those areas. Personally, I experienced those gaps in New South Wales when I was looking after my mother, who was terminally ill. I am very pleased that one of the facilities is actually going to address the very problem I experienced when I was caring for my mother, who was dying. I know that some of those people in some of those areas under Labor had no access to these services, and I am delighted that I was able to announce those programs yesterday. Thank you very much, Senator Forshaw, for the opportunity to expand on those in great detail.

Senator FORSHAW—Madam Deputy President, I ask a supplementary question. Thank you, Minister, for that quite lengthy list of announcements that you have made. My supplementary question is: why is it that when no-one was watching the government was happy to secretly take the money from rural health but, when sprung, when the pressure was applied, the new minister decided in 24 hours to fund projects, such as the ones that you have just referred to, that have been
sitting in your in-tray for the last five months?

Senator PATTERSON—With all due respect, they have not been sitting in my in-tray for five months. That is absolute nonsense. I did not make a decision in 24 hours. This process has been going on in conjunction and in consultation with the New South Wales government. There were some delays with that because they did respond in detail to ensure that we did not overlap. It was a fact that there are likely to be underspends in that program because of the delays we had with some of the state governments. The Prime Minister has said that, despite the fact that there are likely to be underspends, that money will be quarantined to ensure that it stays within that program.

Insurance: Public Liability

Senator CHERRY (2.48 p.m.)—My question is directed to the Minister for Revenue and Assistant Treasurer. Does the minister agree with the small business minister’s assertion that the aggressive legal profession is responsible for the blow-out in public liability insurance premiums? Is it not the case that the data of the Australian Prudential Regulation Authority on rising insurance claims have been said by the authority to be unreliable while all objective data on the court system show litigation rates in Australia have been stable in recent years? Given the causes for the crisis appear to lie within the federally regulated insurance industry rather than the state run legal systems, what measures will the federal government be taking to its 27 March summit to do its part to bring down public liability insurance premiums for charities and sporting bodies?

Senator COONAN—Thank you, Senator Cherry, for that question, although it contains a lot of misconceptions and unfounded assumptions, I must say. The drivers for the increases in public liability insurance cases and premiums are really very complex. You really cannot just sheet it home to any one factor. Certainly among the factors is the increased number of claims. Part of the reason for the increased number of claims is the fact that we have a much more litigious society and a culture of blame. Where, previously, people probably dusted themselves off and walked away, they now want to sue somebody. All of the data tell us that it is not so much the actuarial assessment of high claims that is causing the spike in premiums but the plethora of small claims.

When you look at what can be done about this, there is no doubt that reforming general law is the best and most obvious way to address rising premiums. To address general law problems and tort liability and to look at whether or not there is any purpose in having caps, thresholds or doing anything of that nature—having proportionate liability instead of joint and several liability, for example—are matters for state and territory governments. This is not something where the Commonwealth has any jurisdictional basis to intervene. I do not think I can put it any more plainly than that. The Commonwealth has no jurisdictional basis to intervene when the sovereign states and territories have jurisdiction over general law problems.

To help Senator Cherry with the demarcation problem, I point out that the federal government is responsible for the general structure of the industry. It is responsible for putting in place a framework for prudential regulation of the industry. The Commonwealth government certainly cannot and will not try to force the states to do something if they choose not to do it—such as put on caps in liabilities and otherwise look at the risk. The government recognises that the problems of rising premiums are very significant. I hope all state and territory governments recognise that as well.

I noticed that Senator Conroy put out a press release saying he welcomed the initiative taken by the Commonwealth government to call together the squabbling states and territories that are going in 15 different directions. This is an opportunity to actually look at the initiatives taken in various states—and, indeed, there have been some initiatives taken by the various state governments; Victoria and Queensland are leading the way. They are looking at the pooling of risk and looking at innovative solutions for no liability companies and for charities and community organisations. It seems only appropriate that the Commonwealth play a facilitating role to pull together these threads
and to see whether the states and territories are able to identify ways forward so that there can be a more consistent approach across the states.

Senator CHERRY—Madam President, I ask a supplementary question. I must confess that I despair for the town of Mansfield, which is on strike today in protest about insurance claims, and the Gladstone Harbour Festival, which was almost cancelled this week because of insurance issues. As the minister should be aware, the simple fact is that the litigation rates have not moved in recent years. What is the minister’s reaction to the American experience which shows that all the things which she talked about—changing the common law, changing access to the courts—did nothing to reduce public liability insurance premiums over the last 15 years? Are we actually putting up in your proposals a nonsolution to a problem which will continue unless the government actually looks into the insurance industry itself and find the solutions there?

Senator COONAN—Thank you for that supplementary question, Senator Cherry. I do understand that the Democrats do wring their hands and often do not have much in the way of solutions, but to be actually suggesting that there has been serious reform in this area certainly does not show any appreciation of what has happened over the last few years. The difficulty is that the rise in claims, of course, has had a lot of external factors. It cannot have escaped even Senator Sherry—

Senator Cook—You are picking on a bloke who is not even here.

Senator COONAN—and Senator Cherry that there was an event called September 11 that had a substantial effect on reinsurance. That is certainly a driver of change. I suppose that Senator Cherry is going on the 7.30 Report tonight to talk about the Mansfield cancellation. I know that there have been requests to various people to talk about that. The simple fact of the matter is that it is a very complex issue. The Commonwealth government has taken a leadership role.

 Reserve Bank of Australia: Proposals

Senator CONROY (2.54 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Has the minister’s attention been drawn to media reports today of a joint submission from consumer groups supporting the RBA proposals to reform the credit card market and reduce interchange fees? Has the minister’s attention been drawn to the public support of the ACCC for the RBA’s proposals? Will the government now declare its support for the RBA’s campaign to significantly reduce costs for consumers? If not, why not?

Senator COONAN—Thank you for that question, Senator Conroy. As Senator Conroy would be aware, the RBA has invited extensive consultation since the RBA’s proposals on the interchange fees were released in December last year. That document outlines draft standards which many people are now commenting on. The government strongly encourages all interested parties to closely consider the regulatory standards and to take advantage of the consultation period which ends on 15 March to make submissions to the bank on the standards. The deadline is pretty close, but it is expected that the RBA will continue the dialogue because it certainly does propose some fairly radical changes to the interchange fees.

Senator Conroy—What is the government’s view?

Senator COONAN—Particularly with respect to the parties that made submissions, we do want to hear from them. But this is actually a process that is being undertaken by the RBA, Senator Conroy; it is not being undertaken by the government.

Senator Conroy—Do you support the RBA or not? What is the government’s view?

Senator COONAN—Senator Conroy, if you will let me get to that. The government are determined to maximise competition and reduce the costs of financial services to Australian consumers and the business sector. We welcome any reforms to the credit card sector that involve a reduction in fees and charges and which boost competition without undermining the appropriate prudential standards. Obviously it is important that the pru-
dential standards are observed. Of course, the RBA has the statutory responsibility for the standards. We will be looking forward to considering the issues together with all of the input from all of the people who have been consulted and the ACCC in due course.

Senator CONROY—Madam President, I ask a supplementary question. The RBA do not need your consideration or permission; they just need your support. Given the government’s refusal to endorse the RBA’s campaign on interchange fees, the government’s refusal to direct the ACCC to formally monitor bank fees and charges, the government’s refusal to act on banks who will not pass on credit card interest rate reductions, and the government’s inaction on the obscene levels of credit card interest rates, aren’t Australians entitled to believe that this government just looks after its mates at the big end of town?

Senator COONAN—Senator Conroy, I was just trying to recall what the Labor Party had actually done about regulating bank fees. I just cannot quite bring it to mind.

Honourable senators interjecting—

Senator COONAN—Senator Conroy, this process is going to—

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

Senator COONAN—This process will be a rigorous one, as indeed is any process undertaken by the RBA. It is one that is transparent; it is one that involves going out and consulting. It is going to canvass the views of all those with an interest in this issue, and the government will consider all of the interests in due course.

Australian Institute of Sport

Senator PAYNE (2.58 p.m.)—My question is to the Minister for the Arts and Sport, Senator Kemp.

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! I know that he is waiting with bated breath to hear it, but he cannot, until there is silence.

Senator PAYNE—We all are. I refer the minister to the success of the Australian Institute of Sport in preparing our elite athletes for international competition and I ask if the minister is aware of any threats to the future operations of the AIS. Could the minister inform the Senate of the government’s position in relation to these threats?

Opposition senators interjecting—

The DEPUTY PRESIDENT—Order! There are too many interjections on my left.

Senator KEMP—What a great pleasure it is to get a question. The thing I find a little bit curious is that this was a question which I would have thought would have been forthcoming from Senator Lundy, to be quite frank, because it is a very important issue Senator Payne has raised—an issue of great concern.

Senator Conroy interjecting—

Senator Schacht interjecting—

The DEPUTY PRESIDENT—Order! Senator Conroy and Senator Schacht, would you please come to order.

Senator Forshaw interjecting—

The DEPUTY PRESIDENT—Senator Forshaw, you are not helping. Order!

Senator KEMP—I am saddened to see that the Labor Party has not changed at all. I think it is true, and most Australians would agree, that our athletes are performing exceptionally well on the international stage. But I am sorry to inform the Senate that there is a dark cloud on the Australian sports horizon. The Australian Institute of Sport has come under very serious threat with a proposal by the ACT Labor government to extend Gungahlin Drive through the AIS lease. Just listen to what an extraordinary policy Senator Lundy is supporting. Senator Lundy believes that a four-lane highway within 120 metres of a residential facility, which houses up to 250 AIS athletes and several thousand others who visit the AIS for pretraining annually, is a good policy. Senator Lundy, it is dreadful policy.
ment and, no doubt, would undermine their performance. The threat is so serious—

Senator Lundy—You’re going to shut it down, aren’t you? Answer that question.

Senator KEMP—If you would ask me a question, Senator Lundy, you would, as they say, make my day. You would make my day, Senator Lundy, if you would ask me a question—but you never do, Senator Lundy.

Senator Lundy—I did, and you would not give me an answer. Now is your chance: commit to the AIS.

The DEPUTY PRESIDENT—Order! Senator Lundy, would you cease interjecting; and, Senator Kemp, would you address the chair and not be provocative, thank you.

Senator KEMP—Me provocative, Madam Deputy President! I cannot believe what I have heard. The threat is so serious—and I would ask the Labor Party to listen to this because they may have been misled by Senator Lundy—that Mark Peters, the head of the Australian Sports Commission, has said it would be a disaster for the institute and has raised concerns about noise and air pollution. In fact, Mark Peters has said, ‘At the end of the day we do not make the choices whether athletes come here, and certainly if we believed that the environment was not sufficient for them to reach maximum performance then we would not be encouraging them either.’ That is a quote from Mark Peters. I think I am going to run out of time, and I have got some further information on this, so if my colleague would like to seek a supplementary I would be very happy to continue.

The DEPUTY PRESIDENT—Order! Minister, have you finished your answer?

Senator Kemp—I have finished the first part, yes.

The DEPUTY PRESIDENT—I am sorry, but you still have 24 seconds left to go. So the answer is finished.

Senator PAYNE—Madam Deputy President, I ask a supplementary question. The minister has been able to provide the Senate with information on the threat to the AIS, but I would seek further information on the government’s position in relation to those threats.

Senator KEMP—Let me make this absolutely clear: the government is opposed to the plans of the ACT Labor government and it is opposed to the plans supported by Senator Lundy. While I am speaking about Senator Lundy, I have to say that her position has been very confused on this issue. Indeed, she is claiming, of course quite wrongly, that the Commonwealth government is seeking—

Senator Cook—Madam Deputy President, I raise a point of order. My point of order is consistent with all the points of order I have called on Senator Kemp up until now. Would he please answer the question as put to him?

The DEPUTY PRESIDENT—There is no point of order.

Senator KEMP—Thank you, Madam Deputy President. The only point I would make to Senator Cook is that I am here on the front bench and you are—

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

Senator KEMP—Thank you, Madam Deputy President. Time is running out, but this is a very serious matter. The threat to the AIS is very serious. Frankly, if Senator Lundy cannot support the AIS, then Mr Simon Crean should find a shadow sports minister who can.

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

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Defence: Intelligence
East Timor

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked today.

It is fair to say that Senator Hill provided several lacklustre answers to some very important questions that were asked in question time today. I would have to acknowledge, however, that at least Senator Hill was will-
ing to attempt to provide those lacklustre answers. That puts him in stark contrast with Senator Patterson, for example, who just suggested that any questions should be directed to her in a Senate estimates hearing. But this is question time, and it is an important accountability mechanism of the parliament—perhaps the most important one we have. I would hope that Senator Patterson’s senior colleagues might counsel her as a result of her approach to Senate question time.

In relation to the matters that were directed to Senator Hill, the opposition is concerned about the important questions that need to be asked and answered regarding the revelations that Australia has had in its possession reams of intercepts from the Defence Signals Directorate which were obtained during the build-up to the East Timor independence vote, the massacres and of course the aftermath. What we know is that there appears to have been a massive leak from the military intelligence agency, the Defence Signals Directorate—a directorate that is under the stewardship of Senator Hill. That in itself is a huge embarrassment for the minister and the government. Are we to assume that there is someone in Defence who has a very strong view that material such as this should be put to effective use by governments and this government is being utterly negligent in letting it gather dust?

What we know is that the leaks published in today’s *Age* and *Sydney Morning Herald* newspapers reveal that, back in 1999, this government must have known from these intercepts that war crimes were being planned and were to be carried out against the people of East Timor. According to the leaked material, as I am sure senators would be aware, the planning was at the highest levels of the Indonesian military and there was a last-ditch effort conducted at the time to keep East Timor contained within Indonesia.

According to the material, individuals in the military tried to stymie the 30 August 1999 UN ballot on independence; they then organised the forced deportation of a third of East Timor’s population. These are very serious matters. At that time, the Prime Minister, Mr Howard, the Minister for Foreign Affairs, Mr Downer, and the then Minister for Defence, Mr Moore, were the relevant ministers. It is reasonable to ask, given the nature of the material now in the public arena: did those ministers sit on their hands? Did they put critical intelligence to prompt and effective use? Why is it reasonable to ask these questions? Let no-one forget in relation to the events in East Timor that crimes against humanity were committed. That is why it is reasonable to ask those questions. *(Time expired)*

**Senator McGauran** (Victoria) *(3.11 p.m.)*—Senator Hill gave the only answer he possibly could have in question time, given the four questions he was asked—that is, he has no comment and as a minister he cannot responsibly comment in regard to intelligence matters. There is a reason for that, and those on the other side of the chamber know only too well that they would have done the same thing if they were in government. And when they were in government they did just that when they were asked questions on sensitive matters regarding East Timor. I know that only too well; I asked several questions in this chamber myself as a member of the opposition.

The reason you cannot confirm, deny or comment on matters of intelligence gathering is that it is not in the national interest. That is how Senator Hill properly answered the question. So there is no charge against Senator Hill at all. What is not reasonable is the unspoken line that I believe the opposition is running: that this government has abdicated its responsibilities in regard to East Timor and the human rights question. That is an absurd line to run and it is an absurd suggestion. As Senator Faulkner put it: were we sitting on our hands? The short answer to that is no. You need only ask the Australian people how this government reacted to the East Timor crisis at the time; you can ask the international community whether we acted promptly.

**Senator Forshaw**—After the election you acted.

**Senator McGauran**—You have very short memories of the difficulties—
The DEPUTY PRESIDENT—Senator Forshaw, come to order!

Senator Forshaw—The warning signs were there.

Senator McGauran—with the whole situation over there. What options were there with the occupation of East Timor other than to invade? We moved as quickly as we could by putting peacekeeping troops into East Timor—

Senator Forshaw—you did not.

Senator McGauran—'We did not,' says Senator Forshaw. You are rewriting history.

Senator Forshaw—you have a look at the history.

The DEPUTY PRESIDENT—Order, Senator Forshaw! You will have an opportunity at a later time.

Senator McGauran—it is my recollection that we moved ahead of time. That was because the then Minister for Defence had mobilised, some months before, the Australian armed forces in Darwin and they were ready to go on the signal of the United Nations and the concession of the Indonesian government at the time. This government has no apology to make in regard to its actions in East Timor, but those on the other side of the chamber certainly do. Do you want to put up your credentials against this government’s credentials in regard to human rights? You are at the bottom of the barrel in regard to human rights and East Timor. It was not until Laurie Brereton came onto the scene—he is now sitting on the backbench—that there was any thought to turn around Labor’s policy on East Timor.

What was your East Timor policy? It is known to all that your Prime Minister Paul Keating was a sycophant to the Indonesian dictatorship, namely, President Suharto. Your association with that country at the time while there were daily human rights atrocities in East Timor—rape and murder and then massacres—is known. What intelligence did your side of the House have when the Dili massacre broke out? The policy you ran in regard to East Timor was an exchange known internationally as sycophantic. It was very weak; it was very demeaning to Australia.

From almost the first day that the Minister for Foreign Affairs, Mr Downer, came into office we had a frank exchange. There was an immediate shift in our relationship with Indonesia. From 1996 on we had a frank exchange with that country which allowed us to act the way we did. We owed them no favours and nor did the international community. So when you had a choice between the human rights of the East Timorese and relationships with Indonesia we know who got the raw end of the deal. We know some of the more famous comments, the sell-out comments, of the former Prime Minister Mr Keating. In 1993 he said:

The time to have had that was in the middle of the 1970s—that was in relation to an East Timor independence debate, but the opportunity has passed. I think to be arguing now against the incorporation of East Timor in Indonesia would be absolutely fruitless. In May this year that will an independent country—(Time expired)

Senator Chris Evans (Western Australia) (3.16 p.m.)—I think the claims published today in the paper are a very serious matter that deserve the attention of this parliament. We have reports that in fact the DSD did inform this government there was an operation involving senior Indonesian military officers which had the intention of deterring East Timorese from voting in the plebiscite for independence. Far from it being a question about the rogue elements of the TNI being involved in wanton acts of destruction, there was an orchestrated campaign by senior officers of the Indonesian military to ensure the vote for independence was defeated and the East Timorese people were intimidated.

Today’s revelations are crucial because they go to the heart of the issue, in that they say the government knew and had very detailed information that made it clear the most senior military officers in the Indonesian military were involved in this campaign of terror and intimidation and violence against the East Timorese people throughout 1999
leading up to the vote on 30 August of that year.

This is important because the government all through that period perpetrated the myth that any actions taken by TNI soldiers or those associated with pro-integrationist forces were rogue elements. Minister Downer used the words ‘rogue elements’ on numerous occasions, indicating these were not authorised actions but the actions of a small group of TNI soldiers and pro-integrationists that were not at all controlled by the Indonesian military and were not part of a broader strategy. That was the minister’s defence when serious concern was expressed in this chamber and in the House of Representatives and in Australia and in the international community about what might occur in East Timor because of the intimidation and violence being perpetrated on the East Timorese people.

We know in the February of 1999 senior government officials of the Howard government went to Washington and actively argued against a peacekeeping force to secure East Timor leading up to the vote. We argued against it as a government in the lead-up to the vote. Australian officials said: Australia does not sense any broad international appetite for large-scale intervention. The Timorese had to sort themselves out. This is the attitude the Minister for Foreign Affairs, Mr Downer, and Prime Minister Howard were taking. In an interview with Laurie Oakes in March 1999, Mr Downer said: There may be some rogue elements within the Indonesian armed forces who are providing arms of one kind or another to pro-integrationists. We hope that that desists.

Today’s report confirms that DSD knew very well that they were not rogue elements, that these were not wanton acts of destruction by small groups, that there was a strategy endorsed by senior Indonesian military setting about to intimidate the East Timorese people. So what the government was saying about rogue elements is directly contradicted by the advice they were getting from DSD.

I am not sure whether the government’s defence from Senator Hill is that the DSD did not tell them, but as DSD’s function is to monitor and intercept communications that go to the heart of national security involving foreigners I would be very surprised if that information were not passed on. We know then they were receiving information about the threats to the East Timorese people in the lead-up to April 1999. Senators might remember that, in April 1999, 58 people including women and children were massacred at a church in Liquica by pro-integrationists wielding machetes. That was a terrible event.

But post that massacre when Mr Downer was again asked about government intelligence on the TNI’s involvement in ongoing violence he dismissed the concerns. We now know that the DSD had warned that it had information that there was an orchestrated campaign to intimidate the East Timorese people by way of violence. The minister kept perpetrating the myth that somehow they could have a free vote, that their democracy would be allowed to flourish, knowing there was this campaign against the East Timorese people. (Time expired)

Senator PAYNE (New South Wales) (3.21 p.m.)—I rise to also take part in the debate to take note of the answers of the Minister for Defence, Senator Hill, during question time. I think Senator McGauran canvassed appropriately and with some accuracy the answers given by Senator Hill and the restrictions under which Senator Hill operates in that regard, and every member of this chamber is acutely aware of those.

I note particularly that the article referred to in today’s Sydney Morning Herald refers importantly to the beginning of what will be a pivotal trial in this process—one that some might say is the next chapter in a very sorry saga that stems from, amongst other things, decisions of the former Whitlam government in relation to Australia’s relationships with East Timor. That is not something that it is possible to run away from. I welcome the beginning of that trial. Anyone who has paid any attention to this process knows that there have been significant and ongoing challenges in relation to the collecting of evidence in these matters and the bringing of not only these but other actions that may be in preparation. These challenges have in part been met by some Australian lawyers, by some
Australian police and some former police as well. They are participating in various processes and have found enormous difficulty in obtaining evidence, in collecting evidence and in ensuring that it is brought to the attention of the appropriate authorities, currently part of the UNTAET process. That is part of the very complex tapestry that makes up not just the history but the present and the future of East Timor.

What Australia now finds itself doing is making an extraordinary contribution, one which I would describe as manifold in fact, to the future of the new nation of East Timor. As I have said before in this chamber, I have had the opportunity to see it on several occasions, not just in the ballot of August 1999, to which previous speakers have referred, but again in the period of December 1999 when INTERFET was present in East Timor, in Dili and in Suai—in places where the massacres to which Senator Evans referred occurred. I had the opportunity again in the 2001 ballot, to elect the National Constituent Assembly, to participate as an observer in that process and also to make several independent visits to the nation of East Timor. I have seen in that process the role of our Department of Foreign Affairs and Trade, the role of AusAID particularly in that and also, more significantly on my most recent visit, the role of the Australian defence forces. They were not just maintaining security and maintaining the peace in their area of operations; they were building community, building relationships and assisting the entire nation to move forward through the challenging years that it faces.

As far as AusAID and the Australian government’s broad involvement in the development issues facing rural East Timor in particular are concerned, great attention has been paid to how best to work with traditional East Timorese farmers in traditional communities and villages, some of which are extraordinarily isolated, to bring the sort of support that AusAID is expert in bringing. It does not matter whether we are talking about gathering crops of coffee or gathering and replanting rice crops twice in one season, these are extraordinary contributions by AusAID.

In light of the continuing role of the Australian defence forces, I also want to make just a couple of points. I spent some time last year in the Australian area of operations in western East Timor, broadly known as Bobonaro district, specifically in Maliana and Balibo. It was quite clear to me in travelling through that region with members of the Australian defence forces that the remarks I made earlier relating to building relationships and community involvement were manifest in every single thing the members of the Australian Defence Force were doing in that area. These are an enormous credit to our nation. These are the steps that will take both our relationship with East Timor and East Timor itself forward and these are very important things for the Senate to note.

Senator BOLKUS (South Australia) (3.26 p.m.)—I also take note of Senator Hill’s answers in relation to the leaks appearing in the Age and the Sydney Morning Herald this morning. This is an issue that should not be taken lightly, and I suspect this afternoon in this place this issue is not getting the degree of serious attention that it should be. This is not just another leak exposing yet another page of shame in our relationship in respect of East Timor. This is a leak with many dimensions and many implications not just in respect of our relationship with Indonesia but also in respect of our relationship with the United Nations, an organisation which, on the publicly and privately available information to us, has been misled as to the nature of the conflict and the presence of Indonesian forces in East Timor and their role—misled to the effect that they have probably made decisions based on what was not provided to them by Australia as much as what was provided to them. As a consequence, their responses to handling personnel in East Timor and handling them through the war crime tribunal processes have been affected. It has important implications also for our relationship with the United States of America, a close ally which I think can quite validly claim to have been misled by both public and private pronouncements of the Australian government. This is an issue that does affect the lives of the East Timorese, but it is an issue which has, as I say, many implications for our foreign policy and our domestic pol-
icy. It affects the trials of Indonesian military heads in East Timor. It also, I think, reflects the disaffection that our own defence forces are feeling with respect to the Howard government at this stage.

There are many questions to be answered, but at the same time these leaks this morning do answer many questions. For a start, one direct effect of these leaks is to, I believe, discredit the core of the Howard government’s claimed achievements in respect of East Timor. Senator McGauran was right when he said just a little while ago that it was Laurie Brereton, the then shadow foreign spokesman for the Labor Party, who led the change in Australian policy in respect of East Timor. Up until then, people like the Prime Minister had condemned those in the Labor Party, of the Left of the Labor Party in particular and of the Right, who had shown support for the East Timorese cause. He claimed that we were jeopardising our relationship with Indonesia because of our support for East Timorese independence.

But what these leaks this morning show is that the Howard government’s claims are based on a lie, and as a consequence of that lie the United States and the United Nations have been misled—the world in fact has been misled—in respect of the real situation in East Timor. East Timorese lives were risked, and I think Senator Evans has already mentioned the incident in April 1999 in Liquica where some 58 people, women and children included, were massacred at a church.

These leaks show not just that the claims are based on a lie, but that the claims that Labor was making at the time for early intervention in East Timor were claims that should have been listened to. They were claims that were being reinforced in their importance by the intelligence information that was being received by the Australian government. It has been further revealed today that both Prime Minister Howard and Minister Downer have basically embarked upon a litany of deceit of the Australian people with respect to what they knew about what was happening in East Timor.

We can see from the evidence this morning that those claims made in 1999 by Mr Downer—that what we were talking about were rogue elements—were claims that were based not in truth but in deceit. When he went on the Sunday program in March 1999 and said, ‘There may be some rogue elements within the Indonesian armed forces who are providing arms of one kind or another to integrationists and we hope that that desists,’ Mr Downer knew at that time that they were not just rogue elements. He knew—he had detailed knowledge—at that time that there was orchestration from Jakarta of the militia violence in East Timor, and he knew that some of the most important military personnel in Indonesia were at the peak of that orchestration. He knew that the leaks this morning indicate that that was information available to the government—but he chose not to tell the truth. As I said, our relationship with the USA is important here as well. (Time expired)

Question agreed to.

PRIVILEGE: SENATOR HEFFERNAN

Senator Heffernan—I advise the Senate that in response to—

The DEPUTY PRESIDENT—You are seeking leave?

Senator Heffernan—I seek leave to make a short statement.

The DEPUTY PRESIDENT—Is leave granted?

Senator Bolkus—I raise a point of order. Owing to the recidivist nature of his abusing the process of the Senate, and as we have no idea what he wants to talk about, I am not inclined to give him leave.

Senator Mackay—I seek leave to make a short statement.

The DEPUTY PRESIDENT—Is leave granted?

Senator Mackay—Leave is denied? I raise a point of order. In relation to the comments that Senator Bolkus made, I would like to seek leave to make a short statement. Perhaps the manager could assist me in responding to my short statement.

The DEPUTY PRESIDENT—Senator Heffernan first sought leave.

Senator Ian Campbell—It has been denied so far.
Senator Faulkner—I raise a point of order. Any senator who wishes to make a statement when there is no question before the chair is required to seek leave. Two senators have just done that: Senator Heffernan has done that and now Senator Mackay has done that. I have consistently adopted the view that such statements ought to be made after the conclusion of taking note of answers to questions.

The DEPUTY PRESIDENT—Which has just happened.

Senator Faulkner—I was going to make that point, Madam Deputy President. Senator Heffernan and Senator Mackay seek leave; they are seeking leave at the right time. Normally what occurs is that leave would automatically be granted to any senator who seeks leave to make a personal explanation. If I could address the point of order—

Senator Ian Campbell—We will give her leave to proceed.

Senator Faulkner—No, I do not think Senator Mackay will progress it. If Senator Heffernan had sought leave to make a personal explanation, it would have been granted. He sought leave, as I understand it, to make a statement. In those circumstances, the usual courtesies are that the senator indicates to the opposition in the chamber the broad issues that might be canvassed. A personal explanation will attract an automatic grant of leave; in other circumstances it depends on the subject to be discussed.

Senator Bolkus and Senator Mackay correctly have drawn attention to the fact that proper courtesies at that point had not been accepted. Senator Heffernan has now indicated to my shadow ministerial colleague, Senator Carr, what he intends to make a brief statement about. In that circumstance it is reasonable to grant leave. But I make this point: it is up to all senators to accept the proper forms and courtesies of the chamber. That is why Senator Bolkus—properly, in my view—did not grant leave; that is why Senator Mackay was about to make a statement and indicate her concern. That is why, now that the matter has been dealt with in this way, leave will be granted for Senator Heffernan to make a statement about some matters that have received publicity over the last 24 hours. I hope the government will accept the points I am making in relation to the proper courtesies and processes in this regard.

Senator HEFFERNAN (New South Wales) (3.36 p.m.)—by leave—I thank Senator Faulkner for his remarks. I advise the Senate that, in response to an invitation from the New South Wales Police service, I have today forwarded to Police Commissioner Peter Ryan material I believe should be taken into account in the further assessment of the matter in question. This material includes Comcar dockets, Comcar records and a statutory declaration. In addition, I remain willing to fully cooperate with any police inquiry. I am conscious of the very difficult and controversial nature of this issue. It is not something I have done lightly, but I believe it is extremely important that all the issues involved be fully tested.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.37 p.m.)—by leave—I simply want to make this point: some of the action that Senator Heffernan outlines to the Senate that he is proposing to take ought, of course, to have been taken before he made his speech to the Senate on these matters earlier in this sitting week.

COMMITTEES

Economics Legislation Committee

Meeting

Senator BRANDIS (Queensland) (3.37 p.m.)—by leave—I move:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 19 March 2002, from 3.30 pm till 6.30 pm, to take evidence for the committee’s inquiry into the provisions of the Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002 and a related bill.

Question agreed to.

Selection of Bills Committee

Report

Senator CALVERT (Tasmania) (3.38 p.m.)—I seek leave to table the second report of 2002 of the Selection of Bills Committee and to move a motion for the adoption of the report.
Leave not granted.

Legal and Constitutional Legislation Committee

Meeting

Senator IAN CAMPBELL (Western Australia)—Parliamentary Secretary to the Treasurer (3.38 p.m.)—I seek leave to move a motion in relation to a bill.

The DEPUTY PRESIDENT—Is leave granted?

Senator Bartlett—What bill is it?

Senator IAN CAMPBELL—The motion is about giving a committee leave to consider the provisions of legislation during the sittings of the Senate on Tuesday next week. It is the migration legislation.

Leave not granted.

ADVANCE TO THE FINANCE MINISTER

Senator IAN CAMPBELL (Western Australia)—Parliamentary Secretary to the Treasurer) (3.40 p.m.)—I present the Advance to the Finance Minister for the period July 2001 to January 2002:

BUDGET

Portfolio Budget Statements

Senator IAN CAMPBELL (Western Australia)—Parliamentary Secretary to the Treasurer) (3.40 p.m.)—I table corrigenda to the Portfolio Additional Estimates Statements 2000-01 for the Health and Ageing portfolio and the Industry, Tourism and Resources portfolio. Copies are available from the Senate Table Office.

Senator Bartlett—On a point of order, Madam Deputy President: I seek clarification of something. On the red there is item 14, a government response on Lucas Heights. Is that not proceeding?

The DEPUTY PRESIDENT—I understand no.

COMMITTEES

Selection of Bills Committee

Report

Senator CALVERT (Tasmania) (3.41 p.m.)—Madam Deputy President, I have been Chairman of the Selection of Bills Committee for a long time and I just hope that Senator Bartlett might reconsider, and I therefore again seek leave to table the second report of 2002 of the Selection of Bills Committee report and to move a motion for the adoption of that report.

Leave not granted.

Senator CALVERT—Pursuant to contingent notice standing in the name of the Leader of the Government in the Senate, Senator Hill, I move:

That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion relating to the presentation of a report of the Selection of Bills Committee.

I reiterate that I had been chairman of this Selection of Bills Committee for quite a few years now. As you would know, Madam Deputy President, the Selection of Bills Committee does work in the position of trust and we do consult the opposition and the minor parties, and all the recommendations we make in this particular Selection of Bills Committee report are done in a cooperative manner.

The only time that does not happen is when there is some difference of opinion from one of the parties involved as to perhaps a reporting date on a particular matter. I understand that in this particular case Senator Bartlett has a problem with the reporting date on this particular piece of legislation, but the government believes that we need this legislation as soon as possible. I understand that the opposition are an agreement with what we are trying to do. I just feel that it is rather inconsiderate of the Democrats in this particular case to deny what has been a longstanding principle of the Selection of Bills Committee not to hold up legislation that the government is seeking to get through the Senate. It is hard enough at any time to get legislation through this place, and it does need the cooperation and agreement—

Senator Ian Campbell—What this does is deny the right of people to put their views to the Senate. It actually stops a hearing of the committee.
Senator CALVERT—You are quite right. It is not as if we are trying to push through a bill here. What we are trying to do is to allow the process which I believe is one of the best processes of any parliament in the world, where the parliament actually takes legislation back to the people to allow them to put their views on a piece of legislation that the government of the day is putting through the Senate. It is probably one of the best forms of democracy one could ever have when a piece of legislation that is proposed by the government is taken to a committee and it allows people to come along and give evidence and to put their points of view for and against that piece of legislation.

What is happening here today is that Senator Bartlett, on behalf of the Democrats, is stopping that process from happening. Knowing Senator Bartlett the way I do, I would have thought that that is not really what he would wish to do. Once again, I say this to him: perhaps you and the Democrats could reconsider your decision on this matter. I know the opposition have given it some thought and they realise that the government and Mr Ruddock want this piece of legislation through as soon as possible. We do not have many sitting days between now and the end of the sittings.

The process is to allow the people to put their points of view on this legislation to the committee so that that legislation can be given the weight it should have when it comes back to this place after having been to the appropriate legislation committee. It is hard enough to get legislation through this place without being frustrated by people not granting leave when we try to get on with the business and do the sorts of things that this place is supposed to do. I ask once again that the Democrats reconsider allowing the Selection of Bills Committee report to be adopted.

Senator BARTLETT (Queensland) (3.46 p.m.)—I wish to speak on this motion to suspend standing orders to allow this report to be tabled. As senators would be aware, it needed leave to be tabled and adopted and I refused that leave. I acknowledge that is an unusual action and it is one that I did not take lightly, but it is important to put on the record the broader context of what is happening here in a political sense.

I acknowledge and support most of Senator Calvert’s comments about the valuable role of the Selection of Bills Committee and the good work it does in streamlining the process for referring bills to committees. I think it is an excellent process that we have got. Certainly, while it may be easy to make the accusation that I am trying to prevent people from commenting on this bill, I am actually trying to ensure that there is adequate opportunity for comment on this bill.

The background to the issue is this: the committee is trying to use this report—if I can refer to it as that, even though it has not been tabled—to refer a number of bills to committees, including a range of workplace relations bills and other significant bills, to report back in May. I do not have a problem with that. The very important legislation to do with security and terrorism that has also been the subject of some great public interest has been referred to a committee to report back in May. But what else is included here is a piece of legislation that was introduced in the House of Representatives only yesterday, without any warning, after being put through a special unscheduled Selections of Bills Committee meeting—which was actually called to enable the workplace bills to be referred; brought in by the government to refer that bill off, to have a hearing tomorrow and report back next week on 19 March—with an aim to railroad that bill through, quite possibly guillotine it through, with the support of the opposition and have it passed next week. That is what is happening and that is why I am using every mechanism available to me to prevent that happening. It is not a course of action that I prefer to take, but it is the only one open to me to prevent that process from reaching that conclusion.

If and when that report is tabled I will move an amendment to extend the reporting date for that bill. That is my intent and the Democrats’ intent: rather than prevent people from having comment, we are actually trying to ensure people will have the opportunity for comment, because if this report is adopted by the Senate people will not have an opportunity to comment. The bill hit the
public arena only yesterday. I have been fortunate to have had an initial briefing from members of the department, which I thank the minister for. I appreciate that and I should acknowledge that he is always willing to provide and very open in providing briefings and information. But that does not negate the fact that even I have not read the bill properly—I would be lucky to attend a hearing tomorrow anyway as I have other commitments—and it would be very difficult to ask meaningful questions about the bill because I have not had time to examine it. No-one has had time to examine it. The many skilled people in the Australian community who have expertise in this area way above mine would not have had time to examine it to even raise issues that they think should be explored at that committee hearing. The process would be so immensely flawed that there is no way that the Democrats could support that date that is contained in the report.

I do not think it is a secret so, hopefully, it is not a problem to indicate this, but my understanding is that it is likely that the government’s proposed reporting date of next week would have been supported by the ALP, which would have meant that, despite Democrat opposition, this process would have happened. I hope there has not been any agreement about guillotining the bill, and if there has not then I can assure you that we will do everything to stop it getting past in such a rapid way next week. The only way it would get through would be with another guillotine, but we have seen today that that is possible and I would not put it past the government given the history of this issue. This is the only mechanism available to the Democrats. It is not the best way of doing it in a process sense, and I apologise for jerking around the committee. It is that one bill that we have concerns about and they are reflected by the fact that the other two areas, the workplace relations and the security bills, have got proper lengths of time. They are being reported back in May, but the migration one, which is also an immensely important area of great public concern, has got no time for consideration at all.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.51 p.m.)—The opposition does not accept the arguments put forward by Senator Bartlett and will support the motion to suspend standing orders that is before the chair to try to allow the tabling of the Selection of Bills Committee report. There is a risk and let us all be frank: even if this debate is concluded before 4 p.m. there will be other questions before the chair, and that is really going to mean that the Australian Democrat senators have been successful in stymieing the tabling of the Selection of Bills Committee report.

Senator Ian Campbell—A historic achievement.

Senator Faulkner—I want to be absolutely clear in what I am going to say, and I think the Australian Democrats senators would be honest enough to admit that that is going to be the result—they nod their heads; they accept that—from the way the chamber has determined to manage its business today. The opposition has played a role in this, but it has played a constructive role. There has been an ongoing debate on the Regional Forest Agreements Bill 2002 in this place that has gone on for 15 or 16 hours. The opposition has said, ‘Let’s curtail the debate within a reasonable time frame,’ and it has proposed a guillotine that allows a further 2½ hours of debate on Australian Democrats amendments, 2½ hours of debate on Australian Greens amendments, 2½ hours of debate on Senator Murphy’s amendments and 2½ hours of debate on the opposition amendments. That is a generous and reasonable compromise in difficult circumstances, knowing there is only one week left for these sittings and knowing there is a lot of business before the parliament.

What does the question mean in relation to this refusal of leave? It is quite simple: we run the risk now that there will be no committee hearings at all into the Migration Legislation Amendment (Transitional Movement) Bill 2002. That is the achievement of Senator Bartlett and the Australian Democrats. No examination by that committee becomes a real risk, and Senator Bartlett properly says to us that he wants to
see adequate examination. I accept that he is genuine about that; I am sure he does. I suppose adequacy is in the eye of the beholder. But the risk we have here is that there will be no committee consideration of that bill. As far as the opposition is concerned, that is a very poor outcome indeed. It is not an outcome we would want to have seen. But this is a device that will lead to that outcome—or may lead to that outcome.

The Selection of Bills Committee report can be introduced by Senator Calvert, as its chairman, next week, and most of the recommendations in the report can be dealt with then. The reporting date for the security package that everyone accepts needs thorough examination will not be changed, I suspect. The reporting date of 14 May for the workplace relations package will not change. Where will the impact be? The impact will be on the migration bill, which is apparently the one of most concern to the Australian Democrats.

This is a classic example of senators shooting themselves in the foot. In this case, Senator Bartlett has managed to shoot himself in both feet and has probably shot a lot of other senators in the foot as well. That is not appreciated. Yes, certainly this may be new ground, maybe we have had a new precedent set here today about the way we are going to deal with leave for a Selection of Bills Committee report to be introduced. But all senators in the chamber can be unreasonable at times. I try to be consistent on these things. You saw it when Senator Heffernan came in here recently to seek leave. Try to be consistent, because once you break the conventions, the accepted procedures of this place, you get into trouble. You have got yourself into trouble, Senator Bartlett. You have got us all into trouble, and I do not think it is a very edifying effort on your part.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.56 p.m.)—Mr Acting Deputy President, it is quite clear that at four o’clock, as Senator Faulkner has said quite accurately, due to a decision of the Senate, which we fully support, there will be more questions before you at that time. The effect of what the Australian Democrats have done today, or will be successful in doing today if they do not change their minds in the next two or three minutes, will be to have stopped—or stymied, to use Senator Faulkner’s word—the reference of an important bill, albeit an urgent bill, to a committee to allow anyone who wants to make evidence available to the committee of the Senate to do so before the Senate deals with it next week. It is a process that was established in the Senate some decade or so ago that the Senate refers bills to committee, that it has hearings into those bills and reports back to the Senate. As Senator Calvert, my Whip, said, it is a superb parliamentary process which allows citizens from all parts of this wide and wonderful brown land of ours to give evidence before the Senate on these things.

The Democrats, who take their name from the most important principle of parliamentary democracy, will potentially deny the people of Australia from having a say on this bill. The government sought to ensure there was a reference to a committee on this bill, albeit a short hearing in a short time frame, so that anyone in Australia could come and give evidence to that committee. The government sought to do that. As the Opposition Whip knows from my comments in the selection of bills meeting last night, the government initiated this inquiry. What happens—and it has not been said in the debate yet—is that, if the Selection of Bills Committee report sets a date for a report back to the Senate, the protocol that has developed, the good practice that has developed, is that, if there is a disagreement by any senator or any group of senators about that reporting date, you move an amendment to the Selection of Bills Committee report. If you are not happy with 4 May, you come in here and democratically move that the date be changed to 14 or 17 May, or to 18 December 2005 if you want to have a long hearing.

As you know better than most, Mr Acting Deputy President Watson, you test that proposition through the democratic processes of a vote on the floor of the Senate—the philosophy the Democrats were founded on. They could not get their way, so they refused leave. This is the very first time that I can
recall it happening in my six years in this job. They have not only refused the opportunity to people to give evidence before a committee, potentially, but also refused the right of all the senators representing the people of Australia to make a vote on the proposition that that committee should have a longer time to consider this bill and report back.

That is the core philosophy that has been breached. That is the core philosophy that Don Chipp founded the Democrats on, and that core philosophy has been thrown out the window by the new leader of the Australian Democrats and her spokesman on this bill. It is a day that will be marked in history. It is a very black mark against the leadership of the Australian Democrats, who really need to understand what they have done here and what they are doing to the processes of the Senate and democracy.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being 4 p.m., in accordance with the order agreed to earlier today, the Senate must now proceed to the Regional Forest Agreements Bill 2002.

REGIONAL FOREST AGREEMENTS BILL 2002
In Committee
Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Knowles)—The allotment of time agreed to earlier today relates to groups of amendments. We have now commenced the time for consideration of the remaining Australian Green amendments. Therefore, I suggest to the committee that it would be best for the amendments to be moved in groups to ensure that all amendments may be debated. Is it the wish of the committee that that course be followed?

Senator BROWN (Tasmania) (4.00 p.m.)—Madam Temporary Chairman, when you are talking about groups, do you mean as on the sheet I have just received, with the Australian Green amendments to be followed by the Democrat amendments, Senator Murphy and then others?

The TEMPORARY CHAIRMAN—That is correct, Senator.
over what happens in our forests. I would like to move the amendments to clause 6 together—when I get the amendment paper, I will find different numbering on it—that means Green amendments (7) and (8).

The TEMPORARY CHAIRMAN—Green amendment (8) is to oppose clause 6.

Senator BROWN—In that case, we will take them separately.

The TEMPORARY CHAIRMAN—I understand you have moved amendment (7). Do you have any further comments to make on amendment (7) or do you wish to put that to the vote now?

Senator BROWN—We can put that to the vote now.

Question negatived.

Senator BROWN (Tasmania)  (4.05 p.m.)—For the record, that was the Labor Party saying no and supporting the government position on the matter. The next item is Green amendment (8), which is to oppose clause (6) in the following terms:

(8) Clause 6, page 5 (lines 5 to 24), TO BE OPPOSED.

This is to remove the provisions in the Regional Forest Agreements Bill 2002 which, effectively, would take away the provisions of the Australian Heritage Commission Act and, very significantly, the provisions of the Environment Protection and Biodiversity Conservation Act insofar as they apply to forestry in Australia. This is at the heart of this matter. We have the Labor Party supporting the government in shelling out for forestry in Australia. The Environment Protection and Biodiversity Conservation Bill, much heralded by the government and guillotined through this place a few years ago, significantly enough with the support of the Democrats—it was supposed to be the harbinger of a new age of environmental power by the Commonwealth—is being sideswiped when it comes to forests—‘Just remove it; take it out!’ There is no way of excusing that. There is no way a forest minister who is worth his salt could excuse that. There is certainly no way that the Minister for the Environment and Heritage should be allowing that to happen. Of course, it is in the interests of the wood-chip corporations. One of the questions we need to put to the government in this matter is: why should, for 20 years, the Environment Protection and Biodiversity Conservation Act not apply to forest areas in Australia if indeed, there is going to be environmentally sound forest management of those areas and if indeed rare and endangered species are protected, and if indeed the biodiversity of the nation is protected in the comprehensive and adequate reserves? Why take away the power of these pieces of legislation?

Senator O’BRIEN (Tasmania)  (4.07 p.m.)—The opposition opposes this amendment. If Senator Brown looks at the explanatory memorandum he will see the passage which reads as follows:

The provision in the Bill that Part 3 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) does not apply to an RFA forestry operation has no new implications for industry or the environment, since it reflects Section 38 of the EPBC Act.

All we are doing is confirming that very passage so that there is no confusion between the two pieces of legislation. There is some confusion because of the timelag between the passage of the EPBC Act and the passage of this legislation. I understand that that is related to a difference in timing of the two provisions. I understand that the reference in the EPBC Act may be confusing without the amendment which is in section 4 of clause 6 of this bill as to part 3 of the EPBC Act.

In terms of the general principle, the idea is that these issues have been extracted in relation to areas which are set aside for harvesting so there is no confusion and there are not constant tests being applied—considering they have already been applied—to the areas that are available for wood harvesting operations under a regional forest agreement. We see nothing untoward in making provision in this bill for a consistent approach to a regional forest agreement without having reference to a variety of acts and specifying that those areas that have been set aside for harvest are available without the constant badgering by parties through the courts seeking to suggest that there is some application of another act. Hence the provision in this bill which would make clear that the
Australian Heritage Commission Act and the EPBC Act, insofar as there might be confusion as to the latter, do not apply. We will not be supporting this amendment.

Senator BROWN (Tasmania) (4.09 p.m.)—That is exactly the point: here is the Labor Party saying, ‘The environment can go hang; our priority is woodchipping, and when it comes to a woodchipping bill it has precedence over the environment protection legislation.’ So the Crean opposition fails in its first real test on the environment. Instead of embracing the forests, the Hon. Simon Crean, Leader of the Opposition, is embracing the Hon. John Howard, Prime Minister, in sending the chainsaws into the forests. That is what this amendment is about.

The opposition has explained itself pretty well through Senator O’Brien: ‘Let the environment legislation go hang. Let it be second fiddle. Insofar as this legislation for the woodchippers is concerned, let any provisions that might be tested in the court by citizens to defend the environment be side-swiped, and let us make it clear that the chainsaws come before the forests, the wildlife and the environmental amenity.’ Senator O’Brien has explained it pretty well.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that clause 6 stand as printed.

Senator BARTLETT (Queensland) (4.11 p.m.)—I did speak to this prior to lunchtime. It is a particularly important clause, and it is particularly important that it be removed, for the reasons that I outlined before lunch—particularly the attempt to exempt RFA operations from the provision of the environment protection bill. As I said before, that is an aspect of the legislation which I do not think has got the attention that it deserves, and the seriousness of it has not really been that prominent in a lot of the considerations of the legislation.

It is ironic in some respects, because Senator Brown and some in the conservation movement—not many these days, but some—are prone to be very critical of the Environment Protection and Biodiversity Conservation Act as being a terrible piece of legislation that leaves the environment open for plunder et cetera. That is a view the Democrats reject; we think it is much stronger than what was in place before. But apparently it is good enough for Senator Brown and others that RFAs should not be exempt from it. I think, by the action Senator Brown has taken in wanting to ensure that that exemption is not there, he is obviously indicating that there is some environmental protection value in the EPBC Act—a view which the Democrats obviously concur with.

It is an important piece of legislation. It can still be further strengthened—which the Democrats will certainly continue to endeavour to do—but it is much stronger than what was there previously. It provides better mechanisms than previously for protecting the environment—particularly, as I stated earlier, the ability for third parties to go to court to ensure that environmental protection occurs where it is appropriate under the terms of the act. I am fairly sure that there are people—lawyers and the like—examining RFA operations and examining how they are in breach of the EPBC Act and how the EPBC Act could be used to ensure environmental protection is taken into account, particularly in areas like threatened species.

I have not seen as much evidence as some other senators in this chamber—but I have certainly seen some evidence in the north of Tasmania—of appalling clear-felling practices and blatant breaches of the code. Even to someone with my limited familiarity with the code, it is very clear from some of the logging that occurred—for example, around Mount Arthur—that there had been clear breaches of the code and clear-felling across streams in areas which are the habitat of an endangered species: the endangered crayfish. That sort of activity breaches the EPBC Act and should generate intervention by the federal environment minister to ensure the protection of those species. But we have not had that. That was under the previous environment minister, of course, but there is no sign of anything different happening this time around.

If this provision remains in the bill then there will no longer be any mechanism for people to utilise that provision. It is a very important provision in the EPBC Act. It is
one that the Democrats were primarily responsible for inserting. It has already shown its worth in relation to preventing dangerous and damaging activity that was threatening the survival of the spectacled flying fox and impacting on the World Heritage values of the Wet Tropics World Heritage area. The legislation has already demonstrated its worth in relation to requiring the government or individuals who are doing environmentally damaging activities that breach the provisions of the EPBC to stop doing them. The electrocution of flying foxes to prevent them getting into orchards has now stopped. The damage that was occurring has now ceased.

The same could apply if this provision were taken out and damaging acts occurred under RFA operations. Even if the RFAs themselves are appropriately put together in a way that protects the environment, and if their provisions are fulfilled—I do not necessarily agree with that anyway with most of the RFAs around, but if it were the case—it is clear that they are not being conducted accordingly. In some cases there are breaches and in such circumstances, particularly if they are regular breaches, there should be provision for the federal government to act to enforce its obligations under the environment protection act. They are obligations that I think all people would expect it to enforce in relation to threatened species. This particular provision is significant and it is very damaging to leave it in there. The Democrats will certainly be voting to remove the schedule from the legislation and that it not stand as printed.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (4.17 p.m.)—The government will not be supporting this amendment, again for the reasons that I raised when we debated the previous amendment relating to subclause 6(1). So in the interests of saving time and to allow the maximum time for debate, I will not repeat that. I simply refer to subclause 6(4), which provides that:

Part 3 of the Environment Protection and Biodiversity Act 1999 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.

That is because within an RFA there are very precise criteria for the way forestry operations are to be undertaken by reference to the agreement and to the state acts and codes. I emphasise the point that this subclause appears in a form in the Environment Protection and Biodiversity Conservation Act. That act, which passed through this parliament some time ago, actually refers to the RFA Bill of 1999. It is actually in this clause because in the EPBC Act it refers to the RFA Bill 1999. That was obviously done with the great expectation that the 1999 bill would pass into law and become an act. That did not happen. To tidy up the wording, we are actually restating that in this clause. It adds nothing that is already not law.

I am conscious of the time and do not want to take too much of the Senate’s time. I want to make the point, yet again, that this debate should be based on fact. Throughout the debate I have demonstrated quite clearly, on any number of occasions, where Senator Brown has made allegations that are not true. I have enumerated a number of those. I refer to Senator Brown’s claims that trees were felled into watercourses in the Mount Arthur coupe in north-eastern Tasmania. We all remember that Senator Brown went on for some time about that.

I will give you the facts rather than the evocative and emotional allegations made by Senator Brown. Last year, a number of allegations of breaches of the Forest Practices Code in the Mount Arthur coupe were made, including allegations concerning the felling of trees into watercourses. These allegations were investigated by the Forest Practices Board and most of them were unfounded, including this particular claim. Only one minor breach involving snigging logs within a drainage depression was substantiated and that caused no harm to soil or water value. I understand that there have been occasions when water run-off during heavy rain has effectively created streams into which trees have been felled, but this hardly constitutes logging into watercourses as alleged by Senator Brown. As I have said time and time again, any allegations of breaches of the Forest Practices Code should be referred to the Forest Practices Board, the board responsible
for investigating these matters. I have added that, if references are made and they are not followed up or they are not reported back to those who have made the allegations, I am very happy to use my officers to pursue them with the Tasmanian Forest Practices Board and the Tasmanian government.

I should indicate to the Senate as a matter of courtesy that I have a commitment with the cabinet subcommittee on a sustainable environment, of which I am a member and which I am very keen to pursue. While the next 2½ hours of debate dealing with Senator Brown’s amendments will be important, my colleague Senator Abetz has wide experience in forestry matters, and particularly Tasmanian forestry matters, so he will be handling the committee stage of the debate until I return. I thank him for that. As the main people in this debate—Senator O’Brien, Senator Murphy and Senator Brown—are all Tasmanians, it is probably appropriate that another Tasmanian, Senator Abetz, looks after the government’s interests for the next couple of hours.

Senator BARTLETT (Queensland) (4.22 p.m.)—Before the minister leaves the chamber, I must say I am very disappointed that he is not going to be here for this debate—I think that is unfortunate. Whilst I have no doubt that his subcommittee is important—and it is good to know that there are some subcommittees in the Howard government that look at environmental issues and sustainable development—I do think that it is unfortunate, to put it politely, that he is not able to be here for this debate, particularly as we have Democrat amendments coming up. They will be much more interesting and worth while, and I am sure you would like to consider them in detail. It is a shame that you will not be here.

Senator Ian Macdonald—I will be back for the Democrat ones. Don’t you think it is important that I should attend the cabinet subcommittee—a new initiative, very important?

Senator BARTLETT—I think that both are important, but I also think that it is unfortunate that you are not able to attend this debate, as I have said, for that time. It is a shame to lose another Queensland voice as well; I will be the sole Queenslander.

Senator Ian Macdonald—You’ve got a good point there.

Senator BARTLETT—It is interesting in the Queensland context because of the forestry agreement that has been developed there by the Queensland state government that has not been recognised by the federal government. That is an issue I might explore further this evening, but it is worth noting, as we are talking about different states and aspects of forestry operations. I am not going to chew up too much time in what could loosely be termed Senator Brown’s section, in terms of his amendments, but I have to say, regarding the report that the minister just gave about investigations into breaches at Mount Arthur, that I have seen that site. As I openly continue to say, I have far less experience in visiting forest areas and exploring this area compared to all of the other participants—certainly those on this side of the chamber, anyway: Senators O’Brien, Brown and Murphy. But I have, by coincidence, seen that Mount Arthur site and the area about which those allegations were raised. I find it breathtaking that, apparently, this was investigated and that people could say that there were not any breaches, or that there were minimal breaches, and that there was no logging in watercourses. I do not know what that watercourse was that I saw, but it was clear-felled on either side and it was certainly a watercourse!

Both the size of the clear-felling that occurred and the impact it had on the water flows through that area—an area which is a habitat for an endangered species of crayfish—were quite clear. That just highlights the frustration that so many people have that what seemed to me to be the most blatant breach, the most clearly environmentally destructive practice you can possibly see, apparently gets investigated and, somehow or other, nobody seems to see anything wrong. It is no wonder that people have not got much faith in Forestry Tasmania’s ability to uphold the proper conduct of the RFA down there. I had to put that on the record. If that is the best that can be done in terms of investigating complaints about breaches,
then I think my confidence is even lower than it was before that there is any validity in the way things currently operate.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that clause 6 stand as printed.

Question agreed to.

Senator BROWN (Tasmania) (4.26 p.m.)—The committee is now being treated with total disdain, as far as the government is concerned. The government knew this morning when it used its force of numbers to guillotine this legislation that it was going to bring in a forestry hack. It is not going to make much difference, because Senator Ian Macdonald has just exhibited that he had absolutely no idea of what is going on at Mount Arthur. Senator Bartlett shows that he has been there; he does know. Senator O’Brien has been there but will not say. The fact is that there has been a huge breach—manifold breaches—of the Forest Practices Code there, including logging into streams with chainsawing of trees which are actually within the stream, if you take it, as the Forest Practices Code does, that a stream is from bank to bank. When you have a bureaucracy which lies, a bureaucracy which deceives, a bureaucracy which—as in Tasmania—has corruption within its ranks, then you expect to get reports like that going through to a minister and, when he has not seen it for himself, he does not know any better. As far as that stream is concerned, certainly the breach has occurred and it cannot be undone.

We have a difference in philosophy there. I have a difference in philosophy with the government and the opposition. All members of the opposition and all members of the government are going to vote for that sort of breach of public commitment. They cannot even stick to the commitment they make about the forests and, when they use terms like ‘ecologically sustainable management’, they make a mockery of it. All the members of the government and opposition are going to support that and cement it through this legislation—and be that on their heads forever and a day, at least for the 20 years that this is in vogue and this legislation is empowered.

The next amendment, which is Greens amendment (9), again puts some teeth into this legislation instead of simply and willy-nilly saying, as the legislation does, that ‘the termination of an RFA by the Commonwealth is of no effect unless it is done in accordance with’ the RFA—in other words, the Commonwealth is subject to the RFA again in a way that the states are not, and then it does not have any effect. What the Greens are saying is: let’s have an amendment there that means something. Our amendment says: The Commonwealth is deemed to have terminated an RFA:

(a) if a State which is party to the RFA has breached the RFA; or
(b) if it has given one month’s notice of the intended termination to a State which is a party to the RFA.

It allows the Commonwealth to terminate an RFA in the national interest or if a state party has breached it. The question here, obviously, is: what is the mechanism for recompense that the Commonwealth has otherwise? What are the measures to right a wrong if a state party breaches an RFA? There is no answer to that; there is none. I do not have to ask anybody about that, but that is the fact.

I move Greens amendment (9) on sheet 2432:

(9) Clause 7, page 5 (lines 25 to 31), omit the clause, substitute:

7 Termination of RFA by Commonwealth

The Commonwealth is deemed to have terminated an RFA:

(a) if a State which is party to the RFA has breached the RFA; or
(b) if it has given one month’s notice of the intended termination to a State which is a party to the RFA.

I commend this amendment to the committee.

Question negatived.

Senator BROWN (Tasmania) (4.30 p.m.)—I move:

(10) Clause 8, page 6 (lines 1 to 16), omit the clause, substitute:
Compensation for breach by RFA by Commonwealth

The Commonwealth is not liable to pay any compensation arising out of a breach of an RFA.

Amendment (10) and the next amendment are perhaps the heartland of the ethics of this legislation. They are trying to put some ethics into it. Amendment (10) seeks to remove the clause that gives compensation to the landowner—that is, the state and the companies—if the Commonwealth moves to protect the environment and replace that with a clause which states:

The Commonwealth is not liable to pay any compensation arising out of a breach of an RFA.

A number of questions will arise out of this and the consequent amendment. I may as well ask those questions now of the opposition—which has the same policy and is, therefore, the alternative government—and also of the government. Before I do so, however, I have a question for you, Madam Temporary Chairman. The compensation provisions of this legislation entail the potential payout of hundreds of millions of dollars if a future government is to protect the Styx Valley in Tasmania, the Tarkine Wilderness, Goolengook, the Badja Forest of southern New South Wales, and the stands of forests in Western Australia. The opposition and the government cannot establish the status of the RFA in Western Australia, your home state, Madam Temporary Chairman. If the Sharpe Block or some other block there is being protected, then compensation presumably will come into play. If this legislation is passed as it stands—and it will be thus passed because the opposition supports the government in this regard—any future action by the government to even implement its standing legislation, such as the EPBC legislation or any new legislation, would potentially involve it paying out millions of dollars of compensation. We are legislating for that open possibility now.

Madam Temporary Chairman, I ask you, therefore, whether or not this is an appropriation bill. I would like your considered reasons as to why it is not, if it is not. Undoubtedly, we might need some time for that, but I would like to see that in a reasoned form because it is a very critical matter as far as we Greens are concerned. This does open up the taxpayers to extraordinary payouts in the future. The legislation is very much tilted in that direction. In fact, the whole thrust of this legislation is compensatory. It means to allocate future funds. The question therefore arises: as this is not just a possibility or a likelihood, as it entails a degree of certainty, is it the business of the Senate to be passing legislation for future appropriations to meet those compensatory determinations? Under the Constitution, as you will be aware, Madam Temporary Chairman, this is a very important matter. I treat it so seriously that I would like not only your determination but also a matter of clarification from the government if we knew which department would foot the bill for compensation. Who is going to pay compensation if an area of forest is protected because there is an endangered species there?

The TEMPORARY CHAIRMAN (Senator Knowles)—Have you finished, Senator?

Senator BROWN—No.

Senator Abetz—Wishful thinking.

Senator BROWN—No, that is not wishful thinking. That is a responsible representation of the public interest and it demands a mature and reflective answer from the government. That, Senator Abetz, is your responsibility and will determine how well you contribute to this debate.

Senator Abetz—Madam Temporary Chairman, I raise a point of order. I have been misrepresented by Senator Brown. The comment ‘wishful thinking’ was made in relation to you, Madam Temporary Chairman, saying, ‘Have you finished, Senator Brown?’ When Senator Brown indicated no, I simply said as an aside that it was wishful thinking. It had nothing to do with his useless contributions to this debate.

The TEMPORARY CHAIRMAN—There is no point of order.

Senator BROWN—Of course, there is no point of order. You would think that the minister would know that, but he does not. I
hope that he can answer the questions with more understanding than he has shown of the standing orders.

My other question is: how are the binding compensation provisions in the Tasmanian Regional Forest Agreement triggered on the commencement of this legislation? Will this not fetter future governments? Under the phraseology of the relevant clause, does an action include acts required to be carried out under other legislation? I will leave it there because they are important matters. I am happy to give you time to consider the first matter which I raised with you. I would like Senator Abetz to answer the consequent questions about where the compensation would come from, whether it is binding, whether the binding provisions in the Tasmanian RFA do not fetter a future government, and whether an action includes an action that is required to be carried out under the law under other pieces of legislation.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Brown, in response to your question to me, I will get a written reply for you, but this is not an appropriation bill, so there is no need for it to be listed as such. I will get written advice for you as well.

Senator Brown—Madam Temporary Chairman, on a point of order: I hear what you are saying—that it is not an appropriation bill, so there is no need for it to be listed as such. I will get written advice for you as well.

Senator ABETZ (Tasmania—Special Minister of State) (4.38 p.m.)—There are a number of things that I would like to put on the record in relation to this amendment and the other amendments put forward by Senator Brown. The simple fact is that the regional forest agreements legislation is designed to provide some degree of security in an industry that has been racked by uncertainty for decades. We have been able to get some degree of agreement between the states in relation to what would be a good future plan and use of our forest resources. In all this, there has to be a sensible and sustainable balance.

As Senator Brown continues to bang on about forests, let me remind him—and, indeed, those who claim to have a concern for the environment—that forest products are renewable, they are reusable, they are recyclable and, at the end of the day, they are biodegradable. If we do not use forest products, what are the alternatives? Plastics, a non-renewable resource, from chemical industries that belch out pollution day after day and which do not decompose? In the building industry, if you do not use forest products, what do you use? Aluminium—solidified electricity, a non-renewable resource. How would Senator Brown and the Greens build houses for Australians? What would they use? They would use aluminium and plastics day after day as opposed to a renewable, reusable, recyclable and biodegradable product. So where are their environmental credentials in relation to this?

I take great objection to the assertion by Senator Brown regarding the ‘bureaucracy that lies’—if I took a correct note before. I am sure that those involved in the bureaucracy are doing a good job. You might have a genuine difference of opinion, but that does not mean that those involved as of necessity are lying just because they happen to disagree with you. We do need to have some sensible debate and discussion on these issues. Indeed, I am reminded that, if you were a beaver, Senator Brown would say it is okay to chop down trees and dam rivers, but if you are a human being somehow you should not be allowed to engage in those practices.

The question has to be asked: in the green world view, whereabouts do human beings actually fit? Are they allowed to dam rivers like beavers? Are they allowed to chop down trees? In fact, some animals even eat trees. How horrendous! Can you hear the trees screaming as they are being eaten by the koalas, possums and other animals? The leaves are taken off them and ultimately, un-
fortunately, some of these poor little trees die. What are we going to do about these koalas? What are we going to do about these possums? No doubt the same thing that Senator Brown would want to have done with human beings.

There is a code of practice in place. Tasmania has a very rigorous forest practices code—one which is, I believe, the envy of the world. I pay tribute to both state Liberal and Labor governments in Tasmania for having taken a responsible attitude in relation to forestry. When Senator Brown refers to events in Tasmania, let me remind those who may not be aware that over 40 per cent of the Tasmanian land mass is already locked up. The question that Senator Brown has to answer is: what percentage of the land mass does he want to have locked up? And what would be the result in relation to jobs? That is an aspiration that a lot of people have. It is all very well for well-to-do, middle-class people on senators’ salaries or, indeed, doctors’ or lawyers’ salaries—and I used to be a lawyer—who are able to make a fairly good living, but what about the forest workers who rely on this renewable, reusable, recyclable and biodegradable product for their livelihood?

The only job that Senator Brown can claim to have created is in the panel beating industry in Tasmania, because whenever the Prime Minister comes to Tasmania Senator Brown and his cohorts ensure that damage is done to his vehicle. On one occasion when the RFA was signed in Tasmania, some thousands of dollars of damage was done to the Prime Minister’s vehicle. This is the sort of extremism which we in Tasmania are confronted with each and every day in relation to this forestry debate.

We have seen some horrendous acts of vandalism in relation to forest machinery in recent times, and the Greens protest. They say, ‘No, it wasn’t us.’ But in front of TV cameras they are prepared to dent and scratch the Prime Minister’s vehicle. If they are prepared to do that in front of TV cameras, I simply ask the question: what would they be prepared to do in the middle of the night, in the dark forests, where there are some forest machines not in the sight of TV cameras? If you fly with crows and you look like a crow, sometimes you have got to be prepared to be shot at like a crow. The Greens cannot protest, as they have been trying to, when they have this legacy of damage to property.

In relation to the question that was asked, any moneys that might need to be paid would be paid out of the general revenue and an appropriate allocation would be made at the time when it is appropriate, if it were to be appropriate.

Senator Brown—Madam Temporary Chairman, I think this forceful contribution needs to be heard. I draw your attention to the state of the House. (Quorum formed)

Senator ABETZ—Madam Temporary Chairman, it is amazing that when you are answering a question that Senator Brown allegedly wants to hear an answer to, all of a sudden he calls for a quorum. As I was saying, any moneys that would need to be paid would be paid out of general revenue. At the end of the day, if we as a people want to see our forest products actually being processed in this country, there has to be some guarantee to the processes of security of resource.

This is where the green movement has been so hypocritical and deceitful. They always say, ‘We want downstream processing, downstream processing, downstream processing,’ and everybody in the community says, ‘Yep, we agree with the green movement.’ But what happens when the acid test is applied to them? In the case of Huon Forest Products, there was a Green-Labor accord to pay literally millions of dollars to somebody who wanted to downstream process so that they would vacate and remove that possibility.

We then had the Wesley Vale situation where wood products could have, and would have, been processed in Tasmania, but by blocking that, what did the Greens ensure? They ensured that they kept on being shipped over to Japan and elsewhere for processing, only to be reimported into Australia. Where is their commitment to downstream processing? Whenever there has been a proposal for downstream processing, the Greens have opposed it. Of course, the latest example is
the Southwood project in Tasmania, which they are opposing yet again. Although the Southwood project has such things as composting as part of its proposal, Senator Brown and the Greens oppose it because they have this manic, quite strange view of the world that we as human beings should not be using some of the resources, especially and surprisingly, as I said before, those that are renewable and reusable.

This amendment seeks to gut the regional forest agreement. I am pleased that the committee will not support it. At the end of the day, Senator Brown’s amendments are all designed to oppose and frustrate this legislation. If the senator disagrees with the legislation, that is fine; that is quite understandable. But then to try to run a whole host of amendments simply to gut the legislation is disingenuous and I would have thought that the more appropriate course of action would have been simply to indicate that he opposes the bill outright. I have this funny feeling that even if we were to agree to all the Greens’ amendments, what is the bet that he would still vote against the legislation?

Senator BROWN (Tasmania) (4.50 p.m.)—One sentence in that speech was by way of an answer—that the money would come from consolidated revenue when it goes to the logging corporations and/or the states. The question that next comes out of that is: in what way would that money from general revenue be given to the states? Would that be a government appropriation which does not come before the parliament or would it be via a form of legislation? How would the parliament have the ability to check the matter and have an overview of that money in a way which allowed it to regulate it?

I put that question to the Special Minister of State. While he is considering that, I want to acquaint the committee with what the compensation provisions under the regional forest agreement in Tasmania in effect mean. It would mean that compensation gets paid out of the public purse. I will quote selectively from the regional forest agreement signed by Mr Howard. Compensation would be payable by taxpayers to either the states or the logging corporations. One way or another it will end up in the logging industry’s pockets. I quote:

If, to protect the environment and heritage values of native forests the Commonwealth takes any action which is consistent with any provision of this agreement and a foreseeable and probable consequence of which is to prevent or substantially limit:

(1) The use of land for the forestry operations which are being undertaken or were intended to be undertaken at any time or the use of land pursuant to a statutory lease, statutory licence or other statutory authority permitting those operations or the sale or commercial use of forest products or the first sale or first use, commercial use of mining products for a purpose for which they had been intended to be sold or used commercially at any time, the construction of roads built or intended to be built where those roads’ primary purpose is for the transportation of forest products...

That also means mining products—the big corporate sector. When it comes to how much compensation for whom, if you look at section 95(2) of the agreement, it says:

In relation to forest products, the compensation is the amount of reasonable loss or damage sustained by any person in any of the following classes: the owner of the land or the forest products on the land; any person who entered into a contract with the owner of the land or the forest products on the land for the carrying out of forestry operations on that land; any person who entered into a contract with the owner of the land or of the forest products on the land to purchase the forest products on the land.

In relation to mining, it states:

The amount of reasonable loss or damage sustained by any person carrying on mining operations on the land pursuant to a statutory lease, statutory licence or other statutory authority.

In relation to roads, it states:

The amount of reasonable loss or damage sustained by any person who was contracted to construct that road.

This means that after this legislation, were a farmer to deem—and who can counteract the word—that she was going to log her back paddock, even though she had no intention of doing so, because there is a singular case of a rare and endangered species there which should be protected under this legislation but is not, then compensation would be payable. In other words, the farmer or the landowner,
and particularly the logging company, can say, ‘Look, I’m on hard times. I was going to log that block. I know there is an endangered species there. I will now reveal that and put out my hand and get compensation from the taxpayers.’ That is what will happen. This is not only compensation for—

Senator O’Brien—That would happen before.

Senator Brown—What would happen?

Senator O’Brien—An endangered species can cause a resource to be drawn at a state level.

Senator Abetz—And that is fair enough.

Senator BROWN—I am giving you the case where a logging company that owns land with an endangered species on it does not reveal that because it wants to log it but then falls on hard times and says, ‘But now we reveal there is an endangered species here; the public can pay us for the cost of that forest.’ It is wide open to manipulation like that. Senator Abetz says, ‘That’s fair enough,’ to manipulate the public purse like that for a logging company.

But I would ask Senator Abetz through the advisers, whom he will need to consult, what the situation is if there is a threatened species listed under Commonwealth legislation on land that is currently under the regional forest agreement to be logged but the state withdraws recognition of that threatened species in its own legislation and says, ‘We’re not going to prevent this species going to extinction,’ and the Commonwealth says, ‘We will protect the land.’ What is the situation there? Senator O’Brien is more on top of this than Senator Abetz—that is not hard—so he might like to answer this because I know that Senator Abetz will not be able to. But he may get advice on the matter. What is the answer to that question?

Senator O’BRIEN (Tasmania) (4.57 p.m.)—It is what I would call an extremely hypothetical proposition that Senator Brown is putting. The RFA must make provision in the agreement that satisfies the condition that the agreement was entered into having regard to assessments of the following matters that are relevant to the region or regions. One of them is endangered species. I make the point that it is not only possible but it often happens that sections of forest are withdrawn from availability, notwithstanding that they were originally set aside in the regional forest agreement for harvesting. In relation to the proposition that Senator Brown advanced that somehow it would ultimately be incumbent on the Commonwealth to withdraw access to the logger, I really think that that is extremely hypothetical because I do not believe that those circumstances arise in the ordinary course of events. If they did arise, then the compensation provisions of the RFA would apply and the party compensated is the state, where the Commonwealth takes that action, and the state is responsible for disbursement of those moneys.

This, I think, comes to a question of one of our amendments, where we believe that it is appropriate that rather than ‘reasonable loss’, the words ‘actual loss’ should be included in the appropriate part of the legislation, and I will debate that later. But I think that area, if we can get agreement, might somehow resolve your concerns in that regard. Maybe it will not. Perhaps I am being a bit fanciful in suggesting that that will resolve your concern, Senator Brown. But the opposition does not believe that we could support this amendment. I really think that the proposition that you are advancing is extremely hypothetical.

Senator BROWN (Tasmania) (4.59 p.m.)—It is as hypothetical as a Premier being dismissive of one of the most endangered birds on the face of the earth. Who can forget the very crude dismissal of the orange-bellied parrot being ‘of no consequence’ by the former Premier of Victoria, Jeff Kennett. A state government that takes a different attitude to the Commonwealth will be able to move in on forest land where there are rare and endangered species. All it has to do is list them and the Commonwealth is then left under the tenets of this agreement. Its only way is to go to the state with a bunch of money. So a state government that has that mind-set wins in both directions. This legislation leaves the Australian taxpayers wide open to that sort of political action.
I did ask the government whether an action under this provision includes acts required to be carried out under other legislation, and I did not get an answer. But I will leave that question there. I also ask: if a future parliament refuses to appropriate funds for compensation, where will the money come from? If compensation is to be paid and the parliament is not forthcoming with it, where will the money come from; how will the compensation get levied? Also, who would have standing to bring any action for recovery of the debt? Is it only state governments that have standing in that situation? That is a very serious question, and I would be very pleased if the government and/or the opposition were listening to it. The question is: who has standing to recover debts?

Does the legislation prevent the Commonwealth from doing anything to protect native forests, unless it pays compensation? Is there any way that the Commonwealth—other than with the agreement of a state, which would have done it anyway, so that is not the question—can protect forests without having to pay out taxpayers’ money? Also, does this legislation place companies that are engaged in logging or mining in a privileged position in comparison with companies engaged in other industries? In a way that is rhetorical because, yes, it does. The opportunity lost for the tourism and hospitality industries—which are increasing jobs rather than shedding them—is huge, but there is no compensation provision here. If I am wrong in making that statement, then I would like to hear it.

If the Commonwealth passes legislation to prevent damage to the environment that has consequential effects on forest areas that are under the regional forest agreement, would this result in payment to loggers and miners and not to other companies? Again, I think that is somewhat rhetorical because the obvious answer, in the absence of anything to be heard differently here, is, ‘Yes, this is privileged legislation for loggers and miners, and everybody else can go hang.’ If I am not right about that, then let us hear it. But that is the situation as it stands. I very strongly recommend this Greens amendment to the committee.

The TEMPORARY CHAIRMAN (Senator Hogg)—Senator Brown, you did ask a question of the previous chair before I assumed the chair about this bill being an appropriation bill, and you wanted something in writing. I now have a statement confirming the advice of the person who occupied the chair prior to me.

Senator Brown—I wonder whether I could have a copy of that statement.

The TEMPORARY CHAIRMAN—Yes. I just want to read it to you and then I will hand it across to you. It states:

Earlier Senator Brown asked the Chair whether this bill is an appropriation bill. It is not an appropriation bill, because it contains no provision which would appropriate any money.

That is the advice. I will get one of the clerks to provide you with that advice, as provided by Senator Knowles when acting in the role of chair.

Senator ABETZ (Tasmania—Special Minister of State) (5.03 p.m.)—I thank the committee for its quick dealing with an answer that Senator Brown, of course, well knew before he asked the question. But he asks these questions to deliberately delay and try to fill up time so that he can try to think of a few more questions to ask to fill up the 2½ hours that have been allocated to him.

I refer Senator Brown to clause 95(ii) of the regional forest agreement between Tasmania and the Commonwealth. I also would indicate to him that the idea of the RFA is that there be some resource security and that, as a result of that, if there is to be some diminution or withdrawal of that resource, those who have made investments and planned on the basis of it—I think this is fair and reasonable—get some fair and appropriate compensation.

Senator Brown refers to the ‘logging corporations’. If Senator Brown actually knew anything about the forest industry, the vast majority of people who are employed in it are small contractors, small businesses, in small regional areas and regional communities. Sure, there are some big corporations but, as I understand it, Senator Brown wants to grow the green movement into a bigger party. Why he has this hatred for bigger cor-
porations, I do not know. One of Senator Brown’s aspirations for the Greens is that they grow bigger, and I do not know why he does not like corporations or other businesses getting bigger. If you can employ a few more people in the forest industry—as I said before, it is a renewable, reusable, recyclable and biodegradable product—then I reckon that is an industry that is worthy of support. I notice somebody in the gallery who has a pair of crutches; I wonder where those crutches came from.

Senator Brown—Mr Chairman, I raise a point of order. That is quite unfair. I ask if reference to persons in the gallery is within standing orders.

The TEMPORARY CHAIRMAN (Senator Hogg)—I do not see it as being a point of order, Senator Brown.

Senator ABETZ—Thank you, Mr Chairman. Of course it was not just a frivolous point of order to try to throw me from my train of thought! Bad luck, it did not work. The situation is that people within the community enjoy the use of crutches, and the majority of those crutches in the past were made of wood. Nowadays a lot of them are made out of aluminium. Which is better for the environment? I have to say to you that wooden crutches are, as opposed to aluminium crutches. That is the reality of trying to oppose the forest industry in this sort of blinkered, negative way. In effect, Senator Brown has become the mouthpiece for the plastics and aluminium industries of this country. Each time Senator Brown seeks to diminish and denigrate the forest industry, the people in the aluminium and plastics industries cheer him on, because they know that the fewer forest products are used within this nation—and, indeed, within the world—the more plastics, the more aluminium and, as a result, the more fossil fuels will be expended. Senator Brown might like to explain to the chamber how that is good for the environment.

Senator O’BRIEN (Tasmania) (5.08 p.m.)—If I can assist Senator Brown with the opposition’s view of where compensation payments might come from and how they might be scrutinised, one option would be that they be taken from the Advance to the Minister for Finance which would then be the subject of a report to parliament. We would expect that in the appropriation bills there would be reference to specific program requirements or specific compensation. For example, in the additional estimates this time, there was reference to provision of money for compensation arising out of mesothelioma claims on the waterfront which was the subject of scrutiny through the estimates process and their passage through the Senate. That is our view as to how these matters might be dealt with. There may be other options, but we think that those matters would be the subject of scrutiny of the parliament, if that is your concern, Senator Brown.

Senator BROWN (Tasmania) (5.09 p.m.)—I disagree with the ruling that has been made that this is not an appropriation bill. It is easy to say that, but we have just had it from the opposition at least that money could and may be appropriated in the future. I have a disagreement with the chair on the matter because clearly, if the compensation clause means anything, it means future appropriation of money. As such, it means appropriation of money from the taxpayers and, ipso facto, this is inherently an appropriation bill in waiting. I do not accept the statement that has come from the chair.

Senator Abetz—Mr Temporary Chairman, on a point of order: this sounds very much to me like a senator seeking to contest a ruling from the chair, and I am not sure that that is appropriate.

The TEMPORARY CHAIRMAN (Senator Hogg)—On your point of order, Senator Abetz: I think it is appropriate for Senator Brown to express a view on the statement. It was not a formal ruling from the chair; it was a statement from the chair in response to an issue that had been raised by Senator Brown with the previous chair. I do not take the actions of Senator Brown at this stage as reflecting on the chair or on the statement.

Senator BROWN—You are quite right there—
The TEMPORARY CHAIRMAN—Senator Brown, I do not need you to confirm those matters for me.

Senator BROWN—No, but I am going to continue my comment on that ruling. You are quite right there in that ruling, and again Senator Abetz shows he does not know how the rules work. Of course, in a free society, whatever Senator Abetz may believe, we have the ability to give an opinion contrary to one that has been expressed by anybody, including the chair. The point I was making is that this is inherently going to become a matter of appropriation, and I do not agree that it has not got an appropriation component to it. My case has just been put quite ably by Senator O’Brien for the opposition.

A simple question comes to mind which is very germane to the current situation where the Bracks government in Victoria is now logging in what was a protected heritage river zone at Goolengook when the regional forest agreement was signed. So that area was protected. What happens if we have a government which wants to keep its agreement under the regional forest agreement and declares that that area is protected under Commonwealth powers? Would compensation go to the Bracks government, which is effectively breaching the terms of the regional forest agreement?

Senator ABETZ (Tasmania—Special Minister of State) (5.12 p.m.)—That is a very convoluted question, and I am not sure that even Senator Brown understands it. There is an agreement between the state and federal governments. In the event that it is agreed that that agreement should be varied between the state and the Commonwealth, or the parties to the agreement, then I should imagine it would be open to the parties, from time to time, by mutual agreement, to make variations—not that I would consider that to be a likely event because the process in developing these regional forest agreements was absolutely exhaustive and absolutely thorough with the best expert advice available. It is a bit like not the ruling—I stand corrected—but the statement that you just made. No matter who or what the authority, when Senator Brown asks a question and does not like the response, he makes assertions about it. He asked the chair for a statement about appropriation; he did not like it.

As a community, we asked a lot of experts to consider the regional forest agreements—what areas ought to be considered, what ought to be available for harvesting, what should not be available for harvesting—and Senator Brown does not like the answers he has got. That is fine, but at the end of the day we as a community, like the Senate, have to move on with these issues. I am satisfied that the determinations made under the various regional forest agreements around Australia have been as a result of a very thorough and rigorous process which will be of long-term benefit both to the environment and to the jobs of many decent Australians who are genuinely concerned about their futures. Once this legislation gets through, as I hope it does, I am sure there will be a lot of people in regional and rural Australia who will be more secure in their jobs knowing that there is some future for an industry that has been part of Australia since day one.

Senator BROWN (Tasmania) (5.15 p.m.)—I think that answer must get some sort of recognition. I could not have asked a simpler question. I could not have expected that anybody could be as convoluted and inadequate in answering a simple question as the member who just responded to it. I will not go on because it is totally pointless. I will move to ask about a Tasmanian example. Maybe the opposition could take some note of this because Senator O’Brien did have some content in his last contribution and that will help the committee.

The Tasmanian government has exempted forestry operations from the Threatened Species Act if they are in accordance with the forest management plan. That is not contrary to the RFA because the states are not bound. But would the Commonwealth be obliged to pay compensation if it took action to protect a listed threatened species?

Senator O’BRIEN (Tasmania) (5.16 p.m.)—I assume we have to read that to be relating to an area which was set aside as a wood production zone under a regional forest agreement and that some threatened species was discovered in that area and that the regional forest agreement permitted the state,
for example, to continue operations in that area notwithstanding whether the Commonwealth, if it took action in those circumstances, would need to compensate. I expect the answer is yes, technically, although there may be reasons why the Commonwealth would seek to pursue the state with regard to the action it took in relation to that activity. I believe that is also open under the regional forest agreement.

Senator BROWN (Tasmania) (5.17 p.m.)—I thank Senator O’Brien for that contribution. We are in the area of enormous future potential damage to the public purse as well as the public environment. It is hopeless to proceed to get any information about how this whole process is going to work with the government in the mind-set it currently is in. I will put that amendment after I have put forward one further question. What, in detail, are the compensatory commitments that will be made to the mining industry here and why has the tourism industry been left out?

Senator ABETZ (Tasmania—Special Minister of State) (5.18 p.m.)—The regional forest agreements struck that important balance. You have tourism operators that do take people through the wilderness areas. But, indeed, as Senator O’Brien will recall, the greens did not even want scenic flights over wilderness areas. The greens wanted certain bushwalking tracks replanted and maps of the tracks destroyed. It beggars belief that the greens that have this extreme agenda now all of a sudden are concerned about the tourism industry. It is a bit like when they closed down Exit Cave in Tasmania. They did not want to see tourists go in there—no, no, no. Yet when would you allow tourists into some of these areas? It just beggars belief and it highlights the sort of hypocrisy the green movement goes on with in relation to, for example, downstream processing, alleged care for the environment or alleged concern for the tourism industry. Every time they have got the opportunity, they will lock the tourism industry out.

It was like the Mount McCall track in Queenstown, a very important access track to the Franklin River. We in Tasmania were promised a wonderful booming tourism industry in the event the Franklin River was not dammed. Guess where the vast majority of rafters going down the Franklin River access the Franklin River: via the Mount McCall road. What do the greens do? They move heaven and earth—thank goodness they failed—to try to block the Mount McCall access road and, as a result, deny the vast majority of people that raft down the Franklin River the opportunity to access the Franklin River. As a result, a lot of ecotourism businesses were opposed and ran a campaign against the greens proposal. Thank goodness the Mount McCall track remains open and people can still access the Franklin River. I have been the beneficiary of that and was able to raft down the Franklin River about 12 or so months ago—a great experience. But at the end of the day this alleged concern for the tourism industry by Senator Brown is just non-existent because his actions speak so much louder than his many words during this and other debates.

Senator BROWN (Tasmania) (5.21 p.m.)—I will allow the question to be put. It is pretty sad, that stuff, and very erroneous, but all I need to say there is that, besides being terrifically proud of being part of thousands of people who saved the Franklin River against Senator Abetz and the wishes of many other people on that side of the House—and indeed on the Labor Party’s side of the House—it is a tourist mecca—

Senator O’Brien interjecting—

Senator BROWN—No; the ALP in Tasmania, as against the federal ALP, and that includes a good number of current ALP state and federal members who opposed the saving of the Franklin, Senator O’Brien.

Senator Abetz—What about the Mount McCall Track? You are ignoring that.

Senator BROWN—The Mount McCall Track that the senator refers to was a Hydro track which effectively impacted on the wilderness, so under the management plan drawn up by the state and Commonwealth it was to be revegetated. Senator Abetz is quite wrong about the numbers. Most people go down from the Collingwood River—but he is allowed to make mistakes. In fact, he knows very little about the Franklin. I am
terrifically glad he went there, because after the event he can see what a mistake it would have been if without knowledge of the area his wish that it had been flooded had been carried into effect. It is very germane because the pity is that so many members of parliament have not been to see the places that are now going to be destroyed under the regional forest agreement. The same thing applies: much better prospectivity in terms of return to Tasmania, as with the Franklin River, if the wildness is kept intact. But you cannot get that if you have sent in the bulldozers and the chainsaws. So it is, sadly, a pattern of failure that is being played out here. Further down the line we will find that people who did not have the insight to see the value of great natural areas at the time will go to enjoy them and then hopefully claim some part of the presentation of them to other people.

Just before I move on to the next amendment, I will ask Senator O’Brien a question—because I am more hopeful in that direction now and I think Senator O’Brien’s amendment might be addressing this to some degree. I also ask Senator Abetz if he might speak to his advisers and find out whether the regional forest agreement assessment on compensation under this legislation, as it stands, includes the profitability to come from forests if they were to be logged but were prevented from being logged by Commonwealth action to protect their natural values. Is that a matter for assessment in the compensation claim that the Commonwealth would be obliged to pay out?

The TEMPORARY CHAIRMAN (Senator Hogg)—The question is that Greens amendment (10) on sheet 2432 revised be agreed to.

Question negatived.

Senator BROWN (Tasmania) (5.25 p.m.)—That is the best answer I have had yet from Senator Abetz, Chair. Thank you. I move on to the next and very, very crucial amendment, which is to—

The TEMPORARY CHAIRMAN (Senator Hogg)—Could you clarify for the chair and the committee which amendment you are referring to—amendment (11) on sheet 2432 revised?

Senator BROWN—My understanding is that we have dealt with amendment (11) and have now gone to—

The TEMPORARY CHAIRMAN—No, that was amendment (10) on sheet 2432. I was quite specific, as I normally am when I am chairing the committee, to read out the motion that is being put before the chair. We considered just then Greens amendment (10) on sheet 2432 revised, and I am seeking your guidance as to the next amendment which you are putting forward as an alternative to (10).

Senator BROWN—Yes. And the next amendment covers the question I just asked, which was about mining.

The TEMPORARY CHAIRMAN—Senator Brown, can I just draw your attention to the note on the running sheet where it says:

(10) [sheet 2432 Revised]—omit, substitute clause—

and then down the bottom there are two NBs: NB(1) and NB(2). NB(2) says:

AG(11) [sheet 2432 Revised] is an alternative to AG(10) [sheet 2432 Revised] …

That is why I am trying to clarify which amendment you are proceeding to. Are you proceeding to (11) or are you proceeding elsewhere?

Senator BROWN—Amendment (11), Chair. I move:

(11) Clause 8, page 6 (lines 1 to 16), omit the clause, substitute:

8 Compensation for breach by RFA by Commonwealth

The Commonwealth is not liable to pay any compensation arising where mining operations are prevented or substantially limited if it takes an action to protect the environment and heritage values in native forests.

I will move on from that quickly. I already asked the question that is germane to that and, as I said, received the most helpful answer we have had yet from Senator Abetz on the matter. The Greens amendment here is to remove liability from the Commonwealth to pay compensation to the mining industry
when it protects forest on behalf of the nation. It does not happen elsewhere where national parks are established and so on that you pay compensation to mining. There is no compensation here for tourism. There is no compensation to adjacent communities. There is no compensation for anyone else, so why should there be for the mining industry? Well, they are good lobbyists. They are powerful. They have the ear of the Prime Minister and they have the ear of the Leader of the Opposition. But the Greens do not accept that, and this amendment is to overturn that provision of liability to have taxpayers’ money go to the mining industry under those circumstances.

Senator ABETZ (Tasmania—Special Minister of State) (5.29 p.m.)—Senator Brown sought to make disparaging comments about me, but he then found himself in a web of confusion of his own making: he thought that we had just voted on amendment (11) and then complained about the answer or non-answer when he thought he was on another amendment talking about other issues. So for Senator Brown to try to use these smart alec tactics and then find himself tripped up by his own smartness—

The TEMPORARY CHAIRMAN (Senator Hogg)—Senator Abetz, you should withdraw those comments.

Senator ABETZ—What, ‘smart alec’?

The TEMPORARY CHAIRMAN—Yes. Withdraw them.

Senator ABETZ—All right, I will withdraw that, but I find the chair somewhat oversensitive in relation to—

The TEMPORARY CHAIRMAN—No, my advice from the Clerk is that it is unparliamentary and should be withdrawn.

Senator ABETZ—I would invite the Clerk to listen to some of the comments Senator Brown has made during this debate, of a very personal nature.

The TEMPORARY CHAIRMAN—Senator Abetz, you have withdrawn the remarks?

Senator ABETZ—Yes, I have; I have indeed. I do not wish to offend against the standing orders, but it is somewhat ironic, is it not, when Senator Brown seeks to make commentary about responses he has given to questions that he thought he was asking about one amendment when in fact he had moved another amendment? The complete state of confusion that has been brought into this debate by Senator Brown moving his own amendments, tripping himself up, embarrassing himself by his own ineptitude and then trying to reflect on me as the minister at the table, and also Senator O’Brien highlights how ill-prepared Senator Brown has been to deal with the actual issues of substance, as opposed to the empty rhetoric that we have heard time and time again.

From time to time during this debate Senator Brown has suggested that I ought to attend to my advisers. Guess what he is doing now? He is going up to his own advisers for assistance and help. If it is to be criticised that I seek advice from my advisers, what is he doing right now? This is the sort of duplicity we get from Senator Brown each and every day in this place, and it is about time that people in Australia realised this. He is still with his advisers, pointing things out. In this debate it is quite appropriate that we have advisers and assistance, but when Senator Brown seeks to make disparaging comments that opposition spokesmen or government spokesmen need advice from time to time—and of course we do, just as much as he himself has been seeking advice over these last few minutes—it really is a case of the pot calling the kettle black, hoping that we do not pick him up on it. The duplicity has gone on for too long and it will be pointed out each and every time. Senator Brown knows full well that we will be opposing the amendment.

Question negatived.

Senator Brown—Could I have it recorded that I was the lone voice in favour of that amendment?

The TEMPORARY CHAIRMAN—Yes, that will be recorded, Senator Brown.

Senator BROWN (Tasmania) (5.33 p.m.)—I move Greens amendment (12) on sheet 2432:

(12) Page 6 (after line 16), after clause 8, insert:
8A Compensation payable to employees

(1) Persons who are eligible to receive compensation in accordance with the provisions of an RFA must compensate any employee or contractor engaged in RFA forestry operations whose employment or contract is terminated.

(2) The amount of compensation payable will include all entitlements, plus the amount of reasonable loss or damage sustained by reason of the termination.

(3) The State which is party to the RFA must establish a process for implementing this provision within six months of an RFA being entered into or of this legislation commencing, whichever is first.

We have just dealt with the Greens’ efforts to remove potentially massive compensation to the logging and mining industries if any trees are protected under Commonwealth action in the future, be it for World Heritage matters—because they are of World Heritage value, as are the forests targeted now under the legislation in the Huon and Weld and Picton valleys—whether it be to protect endangered species or whether it is simply because spirit returns to the body politic in the future, which says we are required, in the interests of custodianship, to pass on the great forests of this nation to future generations and we should not hand them across to the woodchippers for their quick profit. The committee, under Labor and Liberal, is moving to give the compensation to the companies. That is why I have moved the Greens amendment to compensate workers. The first paragraph states:

8A Compensation payable to employees

(1) Persons who are eligible to receive compensation in accordance with the provisions of an RFA must compensate any employee or contractor engaged in RFA forestry operations whose employment or contract is terminated.

The woodchip corporation, which has its hand in the public purse if any trees are protected should, quid pro quo, have to protect workers and contractors and ensure they are compensated, rather than the current circumstance where they are sacked without any redress. The amendment continues:

(2) The amount of compensation payable will include all entitlements, plus the amount of reasonable loss or damage sustained by reason of the termination.

The importance of this provision from the Greens is that it gives the workers some guarantee. We have seen in all the regional forest agreement areas so far that, consequent on the regional forest agreement, there is a loss of jobs. In Tasmania, despite the Prime Minister signing the agreement and saying, ‘This will create 350 jobs,’ on a cursory look at just newspaper clippings since 1997, in fact 468 people have been sacked. Senator O’Brien has not spoken out about this. Senator Abetz has not spoken out about this. But you would expect that the CFMEU would—this is the union which is there to defend forest workers.

I want to have it on the record that some weeks ago I spoke to Sharan Burrow, the President of the ACTU, and told her that this clause was coming down the line. My office has contacted the CFMEU in Tasmania and has simply been bounced off to CFMEU people in Victoria, but there has been no response from the CFMEU. The fact is that the unions and the Labor Party are going to oppose this clause which is to compensate workers, to give them some guarantee. There can be no way of explaining that in terms of common decency if one wants to do the right thing by workers. I have no doubt that we will get some specious response, but I ask this simple question: why should this parliament be entertaining compensation out of taxpayers’ money to the wealthy woodchip and logging corporations in return for not destroying our national heritage? It should be the other way around: the logging companies should be compensating the people of Australia for the destruction of their heritage.

The Labor Party has supported the Howard contention that it is the corporations that should be compensated, not the people of Australia. The Labor Party says that it stands for workers; there has never been such a clear-cut case of an opportunity to defend the workers’ interests as there is in this clause.
from the Australian Greens. There has never been such a clear-cut case of saying on behalf of those people who are manipulated so often out in the forests—and who fear for their jobs and who have a right to fear for their jobs, because they are serially sacked by their bosses in the logging corporations, whose interest is profit, not jobs—’Let us ensure that those workers at least have a guarantee that they will be compensated when their term comes up. Let us put some security into these jobs.’ It has been left to the Australian Greens to move this amendment. If either the government or the opposition were to support this amendment, it would go through, because I know that the Democrats, although they are not here at the moment, would support this amendment as well. In fact, Senator Bartlett has said that they support the Greens amendments, all of them. So it is a very clear-cut case. If Labor supports this amendment, it will stand; if it does not, the amendment will fail.

I have the opportunity to speak to a function of the Victorian Trades Hall Council tomorrow night and I will be acquainting them, you may be sure, with the outcome of the next vote. Let us look at the newspaper clippings in Tasmania since Prime Minister Howard signed the agreement on 8 November 1997. He was backed by the Labor Party, excepting that they did not want to protect the small national parks that were created at that time. The Labor Party in Tasmania wanted to log them too, there and then; they are actually worse than the Liberals in Tasmania. In the newspaper clippings you will see that the Prime Minister said that 550 jobs would be created. The Labor Party said, ‘Job security is needed; that is why we back the RFA.’ The CFMEU said, ‘We back the RFA arm in arm with the logging industry,’ the boardroom people in Gunns, North and Boral, as it was at the time. The CFMEU said, ‘We are arm in arm with the captains of industry in supporting this legislation because it will give us job security—they said so.’ But what is the record? What are the facts that we search for here?

On 9 April, following that event, 24 people were sacked from the Amcor fibre packaging plant in Launceston. These are the recording dates. On 24 April, 30 were sacked from the Amcor Australia paper facility at Burnie and Wesley Vale. On 29 April, 20 were sacked out of the ANM paper facility when it moved to Sydney. In 1998 Amcor closed its Burnie pulp mill, with the loss of 150 pulp operation workers, 50 Silcar contractors and 20 subcontractors—a total of 220 jobs there. By the way, the option taken up there was to import Indonesian pulp instead of using Tasmanian pulp, and the CFMEU, the Labor Party and the government have allowed that to happen. On 3 February 1999, North, now owned by Gunns, reduced contractors from 10 to 4, losing 50 jobs.

Senator O’Brien—It wasn’t Gunns then, was it?

Senator Brown—It was not Gunns then but it was getting ready to sack workers to make its asset more attractive to the buyers, Gunns, waiting in the offing, Senator O’Brien. The Boral workforce was reduced by nine. On 21 May 1999, North sacked 10 senior management officers. In May 1999, North, further scaling down—it was making itself more appropriate for sale—knocked 10 per cent of its workforce out; 31 more jobs went west. This is under the promise of jobs by Labor, Liberal, the Prime Minister, the union and the business. On 25 April 2001 Starwood MDF plant shed 24 jobs, all in Tasmania, and on 16 June 2001 Forest Enterprises slashed its workforce by 20. In November 2001 Gunns shed another 30 jobs. That meant that 468 jobs which are recorded went west. I believe there are more in Forestry Tasmania itself and there are more out in the field. This is just those we came up with in a quick survey.

At the time Prime Minister Howard made his statement with the then Tasmanian Premier Rundle—with the Labor Party in the wings, notably the now Deputy Premier and power behind the throne, Paul Lennon, and the then opposition leader, Jim Bacon—they promised 550 direct jobs, with the Commonwealth putting in $110 million of taxpayers’ money to achieve that result. Mr Howard said that another $400 million to $500 million would flow automatically for more than 1,000 jobs. In fact, 458 jobs have
been knocked out—jobs that have been lost in this new era of security, which guaranteed access to the forests.

Nevertheless, in the way they have of putting spin on this, Forestry Tasmania estimates that 168 new jobs had been created up to 1 June 1998, and you can take that into account. That is their assessment. You still end up with massive job losses, and a massive default on a promise by politicians who did not follow through on that commitment. But we now have the opportunity to meet head on this continued attrition of jobs as the corporations search for the profit on the bottom line at the expense of jobs. I am not talking here about the environment, I am talking about the failed guarantee of the regional forest agreement.

In Victoria the Bracks government is dealing with the failure of the regional forest agreement there and jobs are being lost across the state because the forest agreement has again been found to be hollow; the government is putting $80 million of taxpayers' money into trying to fix that up. Why should the taxpayers fork out all the time? Why shouldn’t the corporations, which are doing very nicely thank you, pay some of the money? Why shouldn’t Gunns, part of the woodchip industry which is getting a 35 per cent return on its investment, pay some of the money back into the state, back to the workers and back into the community?

The Greens are now saying, 'Let’s legislate: the big companies have got their forests secure because this massive compensation clause is there, so let’s legislate for the workers that this is said to be in favour of.' Here is a test of the Labor party. The CFMEU knows all about this amendment and the ACTU is fully acquainted with it, so let us see if there are senators—other than on the crossbench—who are going to stand to defend workers when it gets down to the legislative ability to do it.

Senator ABETZ (Tasmania—Special Minister of State) (5.48 p.m.)—We have just had a most shameful display of crocodile tears in relation to job losses within the forest industries. Every single Tasmanian forest worker and, indeed, Australian forest worker knows that if the Greens agenda were to be adopted we would have no forest jobs. It is as simple as that. Whilst it is to be regretted that a certain number of jobs have been lost for a number of reasons, we as a government are trying to put in place a regime where there will be resource security and as a result jobs growth.

Senator Brown is absent from the chamber. He always makes that cheap shot when other people have to leave the chamber for quite proper reasons. I am sure that Senator Brown has left for a very proper reason on this occasion, but I just wanted it recorded on the Hansard to let him know that other people can play his silly games as well. Every now and then during a debate you do have to absent yourself from the chamber and the Hansard is now noting that in this most important debate where he did not want Senator Ian Macdonald to absent himself from the chamber, Senator Brown himself in his normal duplicitous fashion has now absented himself from the chamber. What is not good enough for the minister is somehow good enough for him, which is always indicative of this senator's approach, always the double standard.

In relation to job losses, we as a government want to see jobs growth. That is why we want to see resource security. If Senator Brown were genuine about jobs from the forest industry he might like to explain why he in the Green-Labor accord used taxpayers' money to pay a big corporation, Huon Forest Products, not to create jobs and not to create a development in southern Tasmania, and as a result the potential for jobs growth was denied. Similarly with Wesley Vale, where we would have been able to have some downstream processing. Once again it was opposed tooth and nail by the Greens. Whenever there is the opportunity for jobs growth in the forest industry, Senator Brown and the green movement oppose it tooth and nail to ensure that there is no jobs growth.

Senator Brown mentioned before that it was good that I had rafted down the Franklin River. Yes, it was a great experience. I suggest to Senator Brown that he ought to visit the people down the Huon who thought they had a job prospect but it was denied to them and they remain unemployed because Huon
Forest Products never got under way because he was willing to use taxpayers’ money to pay Huon Forest Products, a big corporation, not to develop a plant for downstream processing. This is the sort of duplicity that we in Tasmania have had to live with now for far too long. It is the old forked tongue—say one thing but do another. You say that you are concerned about jobs but then you talk as much as possible to deny the possibility of job creation.

In amendment (12) Senator Brown yet again referred to the woodchippers. We have to debunk this nonsense that Senator Brown continually peddles that the forests are harvested for woodchips. It would be like saying that farmers grow sheep and cattle for blood and bone. It is a nonsense argument, and he knows it. Sheep and cattle are grown usually for prime meat. But, as we know, you have bones that you cannot eat and the skin and the offal, and so blood and bone and by-products also come from the beast. As I understand it—and I am no expert—about 50 per cent of the beast is in meat that is edible and the rest goes off in by-products. Of course you would not deny the farmer the use of those by-products to earn a bit of extra money from the beast to help make the whole farm a viable venture; similarly with the forest industry.

The forest industry is motivated by veneer logging and saw logging. But of course not all trees are able to be used for veneer or for sawlogging. As a result, there is substantial waste. Senator Brown would have that waste simply rot or burn on the forest floor. We say, ‘Let’s use it for products that go into making paper.’ If we did not, we would be using plastics. That would be great for the environment, wouldn’t it? So this continual condemnation of the woodchip is about as fatuous as trying to condemn the blood and bone industry and saying that the farmers of Australia were motivated by keeping the blood and bone industry alive. It is just a fatuous argument. Senator Brown is intelligent enough to know that it is, but he continually perpetrates the line and unfortunately a gullible media continually spits it out and repeats it. It is a false assertion; it is wrong. To have a proper forest debate in this country, these sorts of issues need to be mentioned so that people are not misled, as Senator Brown is so want to do in this debate.

When we talk about the forest industry, people should be reminded that we still have a trade deficit in forest products of $2 billion. By that I mean that we are importing $2 million worth of forest products into this nation each and every year above and beyond what we export. In other words, there is a shortage of supply within Australia. I look forward to the day when Australia is able to grow and supply all of its own forest product requirements. But the Greens are opposed to that. Do you know where our forest products come from now, Mr Temporary Chairman? Where does that deficit come from? Yes, out of the rainforests of Indonesia, South America and South-East Asia, I would assume, countries that do not have forest practice codes like we do in this country. So the view is: let them rape the forests all over the rest of the world, but do not allow a sustainable industry in Australia. What is the slogan about think globally and act locally? I suppose it is a big ask for the green movement to think at all, but in this case the Greens are clearly not thinking globally and they are especially not acting globally.

The Regional Forest Agreements Bill 2002 deals with property rights and harvesting rights. If Senator Brown is concerned about employees, as indeed I would imagine every senator in this place is, there are other pieces of legislation that deal with the issues of worker entitlements et cetera, and at the end of the day that is for another piece of legislation. This legislation has detailed provisions for the Commonwealth to deliver on its constitutional obligation to provide just terms for the acquisition of property. Senator Brown knows this. This is just a furphy, and I trust that when Senator Brown addresses the ACTU—I would assume it will not be a hot-ticket item for tomorrow night—he will be honest with them and tell them the truth about this legislation and the fact that, if anybody voted against his quite spurious amendment, it was not because they were not in favour of workers’ entitlements. Of course
we are concerned about workers’ entitlements.

Senator Brown could really show how genuine he is in relation to workers’ entitlement, because the most important entitlement for a worker is the job itself. Senator Brown and the green movement have denied job, after job, after job in Tasmania and around Australia and have seen Australia import forest products into this country because we have a shortfall, a situation that they would never seek to have rectified. If it were rectified, there would be a growth in jobs in the forest industry. Do not worry so much, I would suggest to Senator Brown, about the job losses that you have seen, regrettable though they are; work on ensuring jobs growth in the forest industry. Of course that is something we will never hear about from Senator Brown. I believe I have said sufficient to put the government’s point of view, and I understand the opposition wants to put its position on the record as well.

Senator MURPHY (Tasmania) (5.59 p.m.)—What an interesting expose on behalf of the government by Senator Abetz. I could lay some claim to representing the interests of workers and workers’ rights. I could probably lay a much greater claim than you in that respect.

Senator Abetz—I doubt it.

Senator MURPHY—I did not see you in 1992 when we were struggling against North Forests in respect of the APPM dispute. I recall you making some disparaging remarks about workers at that time, even against the interests of your own party and the position that the then Premier Ray Groom took.

I recall the last time compensation was dealt with under the regional forest agreement process—it was before regional forest agreements came into being—when decisions were taken at the Commonwealth level with respect to export woodchip licences. There were people at the contractor level who were seeking compensation who had to struggle to get a few hundred thousand dollars but, of course, the big corporations got their money—no questions asked. I ask the government, and the opposition if the opposition’s argument is the same: if an amendment to this bill does not detract from its initial purpose—and we have seen outlined that there is a purpose in this bill to pay compensation—and it can improve the process for the purposes of paying compensation, then why not support it?

I listened with great interest to the expose from Senator Abetz on behalf of the government with regard to jobs. I would like to deal with that briefly. I have seen many announcements, particularly in the Tasmanian industry, with regard to employment opportunities. I will not go back a long way, but I will start in 1997. An article in the Mercury on 5 March 1997 stated:

‘Extra 1,500 Tassie jobs possible,’ says report: $3.5 billion in wood industry potential.

It went on to say that we can get an additional 1,500 jobs over time. An article in the Examiner on 12 November 1998 stated:

Investment and jobs in forests. A new industry plan, three roads and new flitch mills in the north-west and the south have been outlined in Forestry Tasmania’s vision for the future released yesterday. The plan for forestry in the next 10 years encourages downstream processing and focuses on new investments to create jobs. Mr Ian White—

the executive officer of the Forest Industries Association of Tasmania—

says, ‘It flags a very strong public commitment that the government is about to systematically go about encouraging forest based industries in Tasmania. There is specific evidence of the commitment: establishment of port facilities, new forestry routes built with $6 million from the RFA and the establishment of flitch recovery yards.’

Flitch recovery yards: what an interesting concept. I often wondered how that worked. The article mentioned ‘new flitch mills’. Then Mr Lennon, the minister, said:

The industry needs to get up to world’s best practice. We now need to achieve world best practice in forest growing, processing, value adding and employment.

I have here ABARE forest products statistics of 12 December 1999 which relate to employment in sawmilling and the growth in export woodchips. I might request that this particular information be incorporated in Hansard. It states:
Employment in log sawmilling continues to plummet as woodchip exports skyrocket. Wood-chipping our native forests does not provide long-term employment.

The reality is that that is the truth. The reality of Mr Lennon’s statement with respect to new flitch mills is that none of them have come to fruition. When I was secretary of the Timber Workers Union in Tasmania, I can remember a person who came to see me in 1992. He had a proposal for three flitch mills in Tasmania. He tried for eight years to get those developments off the ground and failed. Over time, I have brought different people to Tasmania for the purpose of trying to get developments off the ground. As recently as last year, I can recall a sawmill being built at Bridgewater by the Smith brothers. Lo and behold, Forestry Tasmania said, ‘We can’t supply you with 50,000 cubic metres of resource.’ In effect, what went begging there were about 25 jobs. There is a sawmill at Wynyard which could employ 25 people but, ‘Oh no, we don’t have the sort of resource that you need.’ So the sawmill lies idle. Yet you can go down to Burnie where, between the Burnie wharf and what is now Gunns’s property, there are at least 20,000 cubic metres of logs waiting to be exported somewhere. With regard to other employment matters, on 10 September 1996, I received a letter from Corporate Communications, which says, in part:

The enclosed brochure has been produced by Taiwan Pulp and Paper Corporation to ensure the community is kept informed about the feasibility study it has commissioned into a northern Tasmanian pulp mill.

Let me tell you what happened about that. Forestry Tasmania, rather than comply with the forest and forest industry strategy developed in that state in 1990—rather than comply with the objectives that the first call on the resource in Tasmania would go to downstream processors in the state—said, ‘We don’t have enough resource for you. You’ll have to go and talk to North Forest Products about it.’ And, of course, the question comes up about world parity pricing. I might add that North are actually selling the public forest wood of Tasmania because they have been dumb enough and Forestry Tasmania has been dumb enough to have signed a 15-year contract. They have customers in Japan, so they say, ‘Yes, you can have the wood, Taiwan Pulp and Paper, providing you pay the export market price.’

We know—and Senator Abetz must surely know—from history that, at the time of the Wesley Vale pulp mill project proposal, the government of the day endeavoured to do the right thing with respect to resource supply. They did not do much else right, but at least they endeavoured to do that. They said to North that the price for the resource would be different from that which was obtained from an export market. They knew that, when you are developing such a significant development as that, you cannot expect a company in the early stage of development to pay the sort of resource price that was being paid by established pulp and paper mills elsewhere in an export market. So if there is anyone to blame with regard to employment opportunities being lost in Tasmania, it is Forestry Tasmania. There are other reasons of course. With respect to people seeking to increase employment opportunities in the state, I would like to briefly read a letter. Mr Ian Johnston from Ian Johnston Marine in Hobart wrote to the Southern Regional For-ester of Forestry Tasmania and said:

Dear Graham,

Thank you for facilitating my guided tour of the forest area behind Maydena. Both Brett Warren and Penny Wells were very helpful and were willing to explain the complexities of their interesting jobs.

I came away with a reinforced understanding that there is, indeed, a glut of Celery Top Pine ...

He went on to say:

Brett had not been instructed about long term sustainable management of the old growth forest he was working in. He is prepared to modify coupes to cut around immature high quality timber stands. But he said there was nothing in the Silviculture manual that mentioned this major factor and it is supposed to give directions to foresters and tree measurers.

This is the crux of my ongoing campaign to manage the old growth forest in a way that is truly sustainable (that is without loss of quality or variety to manage a sustainable harvest forever). This letter was dated 29 September 1999. He wrote a further letter in which he said:
It has been more than six months since the first
and only meeting for the consulting group exam-
ing alternate harvesting possibilities for areas of
high quality old growth forest in southern Tasma-
nia.

... we await the plan for the future direction of
this consulting group (including budget details of
annual expenditures) for the next few years.

He then asked a number of questions:

Is it true that this year’s budget for trials for alter-
nate harvesting methods in quality old growth
forests is only $5,000? If this is true, what im-
portance does Forestry Tasmania place on the
LITER site trials? Indeed, why won’t Forestry
Tasmania give a written undertaking to manage
its quality old growth forest on a truly sustainable
basis. Sustainability means without losing quality
and variety managing a sustained annual harvest
forever.

This person is a boat builder and boat chan-
dler. That is the sort of person involved in
the process at the grassroots level who seeks
to actually increase employment. And what
sort of treatment did he get? As far as I
know, Ian Johnston never received a re-
sponse to that correspondence.

In respect of the pine industry in Tasma-
ia, which I just want to touch on briefly,
Senator O’Brien, Senator Abetz and all of
the other Tasmanian senators would know
that it was not that long ago that both French
Pine and Auspine—the two biggest pine
millers in the state—were at loggerheads
over Forestry Tasmania in terms of them
flogging the resource off underneath them.

You would not expect that sort of thing from
the manager of the public forest estate,
whether it is pine or hardwood. You would
not expect that sort of thing to happen.

With regard to this amendment, it is im-
portant that, if people seek compensation—
the people at the bottom of the pile, so per-
ceived—they do not have to struggle to get
the sort of compensation that might be due to
them. As I said, I saw this sort of practice
happen when we still had export woodchip
licences, where some contractors and the
workers who worked for them had great dif-
ficulty getting compensation that was due to
them. If any amendment can improve this
legislation, providing it does not detract from
the initial thrust of the objectives of the bill,
then we should incorporate it for those pur-
poses. We should support this amendment. It
does not detract from the original intention,
but it does enhance the process through
which compensation will be dealt with.

Senator O’BRIEN (Tasmania) (6.13
p.m.)—I am very mindful of the time that
this portion of the debate is taking, but I feel
that the opposition must put a response on
the Hansard in relation to this amendment.

There are a number of problems with this
amendment which I will be referring to, but
first let me say that Senator Brown talked
about a number of circumstances where em-
ployees lost their jobs. None of them arose
out of an action by the Commonwealth
which would activate a compensation clause
under this legislation. I think I can say that
without a shadow of a doubt.

Senator Brown—None of them were due
to conservation measures—that is right.
They were all individually raised by those—

Senator O’BRIEN—that is absolutely
right, Senator Brown. This clause would
have no application to any of those circum-
stances and would not change those facts. I
could use what is, effectively, the time for
your amendments to deal with those matters,
but we are not going to have adequate op-
portunity to do that now because we have
spent too much time on other things. I sus-
pect this was the key amendment you wanted
to debate. Similarly, Senator Murphy’s com-
plaints relate to matters which may have va-
lidity, but again they do not arise in relation
to an action under an RFA where a resource
is withdrawn by the Commonwealth. So this
clause would not be relevant.

I do not propose to canvass the provisions
of the relevant RFAs as to how compensation
works. I think subclause (3) of this provision
would be particularly unworkable and de-
signed to promote an argument that the RFAs
should not proceed. I am trying to get my
head around how this legislation could pos-
sibly require action by a state through an
agreement which, for example, has already
been signed. I think it is simply a provision
which is designed to promote disputation
between the states and the Commonwealth
quite unnecessarily.
Subclause (2) states that the amount of compensation payable will include all entitlements. Frankly, the opposition’s position on entitlements is that they should not be paid by the taxpayer, they should be paid by business. I thought I heard Senator Brown complaining that these compensations were designed to put money in the pockets of the corporations. The opposition’s view in relation to entitlements is that those corporations should pay them. They should not be paid by the Commonwealth. That is what this provision purports to be designed to achieve. It says that the amount of compensation, which is Commonwealth compensation in this case, payable will include all entitlements. He is suggesting that the Commonwealth will underwrite the legal obligations under state or federal law relating to leave, superannuation and long service leave rather than those obligations falling on the employer. The opposition does not agree with that proposition. We believe that those obligations should fall on the employer.

You only have to read subclause (1) to see that it is deficient. For example, there is no mention in subclause (1) that the right to compensation in the case of employment or contract termination is dependent upon a direct relationship with a particular act. It states:

Persons who are eligible to receive compensation in accordance with the provisions of an RFA—
I take that to mean an employer body—for example, a corporation where the word ‘person’ is used—but also to mean an individual who is an employer; I think that is what this is designed to mean—
must compensate any employee or contractor engaged in RFA forestry operations whose employment or contract is terminated.

In what circumstances? This is entirely vague in relation to that provision. It is a minefield. I suspect that it is more likely that opportunities will not arise because of an action by the Commonwealth to withdraw a resource than employment being terminated. I am not sure that everyone is following what I am saying. The reality is that the withdrawal of a resource leads to a reorganisation of a business. It does not mean that contractors will be engaged to cut down a resource and then be terminated, for example, if they are falling contractors.

Senator Murphy—That is not right.

Senator O’BRIEN—I beg to differ, Senator Murphy; I think that is right. In any case, these provisions are capable of being dealt with on a state basis and the compensation in relation to regional forest agreements is put in the hands of the states. There is a mechanism for the resolution of a dispute arising from any disbursement of that compensation. As I understand it, there is also a dispute mechanism in relation to a dispute between a state and the Commonwealth as to quantity of compensation. The opposition would much prefer that matter be dealt with there. We also think this provision would be challengeable in terms of a direction beyond the contract where contracts have been entered into and it is specific in this legislation that compensation payable by the Commonwealth is paid to the state. I think there are enormous problems with this proposal.

We need to look at this amendment moved by Senator Brown. On the one hand, we have seen amendments where the Commonwealth should be able to walk away from RFAs with a month’s notice, with no grounds and no compensation—we have defeated them—and, on the other hand, we have amendments that address serious environmental concerns. This provision, which I think is a minefield, is sought to be included in the legislation. It will not achieve what it is purported to achieve. It is designed to be put forward to attempt to embarrass the opposition. The opposition is not embarrassed by this. We think this provision is a nonsense. More importantly, we think this legislation is about ensuring, as far as possible, that employment is maximised and maintained in the forest industries. That means securing resources. I understand that Senator Murphy comes to this debate with good intentions in this regard. I accept that. You are smiling, Senator Murphy; perhaps I have overestimated you.

Senator Murphy—I wish you were right in terms of the job side of it.

Senator O’BRIEN—We can have that debate, Senator Murphy. I do not think this
provision will achieve the end that it has been said it was designed to achieve.

Senator Murphy—Wouldn’t it depend on the way the process was set up?

Senator O’BRIEN—I will take that interjection. In some respects, it would, but putting this provision in the bill would not achieve the end that has been suggested it would achieve in that regard. We are using the valuable time for—

Senator Brown—I rise on a point of order. We have a few minutes left for the Greens amendments. It is going to be a long night if we have to extend into debating other people’s areas. I did want to have some minutes to sum up on the Greens amendments—

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator, there is no point of order. It is a view that you have. I am sorry; I will give the call to Senator O’Brien.

Senator O’BRIEN—I will finish. Just let me round off—

Senator Brown—I was trying to help the committee, Chair. If you don’t want that to proceed, so be it.

The TEMPORARY CHAIRMAN—You raised a point of order, and I ruled on the point of order, Senator Brown. I cannot do anything other than that.

Senator O’BRIEN—I am mindful of that too. As I said, we are up against time in this regard, and I guess there has been a bit of self-indulgence by everyone in terms of how far we have gone into this debate. I will finish there. We could debate this for some time but it will not change the outcome, I suspect, and I would prefer to give Senator Brown a few minutes to wind up on his amendments and then we can put the vote on them.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (6.23 p.m.)—I just want to indicate that Senator Abetz has indicated to me that he has already given the government’s view on this matter, so I will not be taking the time of the Senate. It is interesting to note now though that, after 17½ hours plus of this debate, Senator Brown now wants everyone else to keep quiet so that he can speak yet again. I will do that, because it is his time, but I think it is a bit rich coming from a senator who has prevented everyone else from having a say over the period, who has had by far the lion’s share and who now wants to restrict others in the last five minutes of his contribution so that he can sum up. That, to me, is the height of hypocrisy and the height of unreasonableness, but it is just typical of the way this debate has proceeded at Senator Brown’s behest.

Senator HARRADINE (Tasmania) (6.24 p.m.)—I was very interested in this measure because it related to compensation to employees. Having listened very carefully to the debate on this particular matter, there are now competing views. I am certainly supporting what Senator O’Brien said, particularly in respect of the need for the compensation to be paid by the industry, by the employer, not by the taxpayer. The onus should be on the employer to pay all entitlements, plus the amount of reasonable loss or damage sustained by reason of the termination. I do not know whether it is possible to extract that—and I do not expect it is at the present moment—but I did listen carefully to what Senator Murphy said as well. It is a difficult situation, and we are at a stage where decisions have to be made.

I am sorry that it has come to this. I do believe that Senator Brown should reflect in future on the fact that an amendment worthy of consideration is not able to be properly dealt with here if time has been wasted previously, as it has been on this occasion.

Senator BROWN (Tasmania) (6.27 p.m.)—We will have ample time to debate this when the amendments of the Democrats, Senator Murphy and Labor come in later tonight. The committee knows full well that Labor has joined the government to guillotine this legislation so that it cannot be debated adequately. Senator Harradine has not been here for the majority of the debate, so he is quite out of kilter when he talks about wasting time. I now have a crucial amendment before the chamber, which is to give compensation to workers when they are sacked from the industry by the woodchip companies. It is not contingent upon the Commonwealth intervention at all. It simply
says that if a company, by dint of the RFA, is working in RFA forests where it is protected under this legislation from those forests becoming national parks or havens for rare and endangered species, as they should, but is still sacking workers—and we know that hundreds of workers have been sacked under the RFA—then it should look after them, it should compensate them, it should see that their entitlements are paid. It is a simple industrial measure here now that lay-down misere has been given by the Labor Party, along with the Howard government, to the destruction of forests—and they have always said that this was for the workers!

The Greens are moving an amendment which says, ‘Let’s make these companies keep their workers in employment, instead of sacking hundreds of them as they have done since the RFAs have come in.’ They are making the forests a moneymaking machine and they are shedding jobs in the industry, and the Labor Party abandons the workers when the opportunity arises to give them, through legislation, direct security such as they are prepared to give the woodchip corporations, the big end of town. But here is the Labor Party supporting the big end of town and abandoning the workers. It is left to the Greens to move this amendment and to Senator Murphy—who, as he rightly says, knows much more than members opposite in this place about what is going on in the industry as far as workers and resources are concerned—to support this amendment, because he knows how thousands of the workers have lost their jobs. Senator Murphy intervened that that did not happen because of the environment but because of industry rationalisation and putting the profit line first. But the Labor Party is self-indicted by its refusal to support this amendment. What an extraordinary abandonment of the workers in favour of the bosses, to put it in brief. What an extraordinary abandonment of Australia’s forests by the Crean opposition, in its first test, embracing this pro-woodchip legislation by the Howard government.

Senator HARRADINE (Tasmania) (6.29 p.m.)—I just want to say that that was a tawdry comment by Senator Brown that I have not been here. I have been listening very carefully to this.

Senator Brown—You haven’t been here, Senator.

Senator HARRADINE—I have been listening very carefully while in my office doing other things.

Senator Brown interjecting—

Senator HARRADINE—You were the one who made that—

Senator Brown—You were the one who spoke about goodwill.

Senator HARRADINE—Senator Brown was the one who implied that I was not doing my duty. I have listened to every word of this particular debate and this particular matter as it has come through into my room, and I had certain other responsibilities for being there. Not everyone can be in the chamber, particularly when time is being wasted, and that time was being wasted by Senator Brown hour after hour after hour when we should have been dealing with the particulars of the legislation in committee. That is where the decisions are made.

The TEMPORARY CHAIRMAN (Senator Knowles)—The time allotted for consideration of these amendments has expired. The question is that amendments (1) and (12) to (16), circulated on sheet 2432 revised by the Australian Greens, be agreed to.

Senator Brown—Madam Chair, on a point of order: I bring to the chair’s attention the fact that there are senators who would vote differently on different clauses.

The TEMPORARY CHAIRMAN—Could you please indicate which amendments are to be put separately?

Senator Brown—It is important to give the senators that opportunity. It is not for me, but it is important that other senators know, because these are important matters and should be dealt with properly, Chair.

The TEMPORARY CHAIRMAN—Therefore I would like to know which of the amendments are to be put separately. If you can indicate to me which amendments are to be put separately, they can be put separately.
Senator Murphy—I indicate that I wish to support amendment No. 12.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that amendment (12), circulated on sheet 2432 revised by the Australian Greens, be agreed to.

The committee divided. [6.37 p.m.]

(The Temporary Chairman—Senator S.C. Knowles)

Ayes............ 9

Noes............ 41

Majority........ 32

AYES

Allison, L.F. Bourne, A.J. J.
Bourne, V.W. Brown, B.J.
Cherry, J.C. Greig, B.
Harradine, B. Murphy, S.M.
Ridgeway, A.D.

NOES

Abetz, E. Barnett, G.
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Buckland, G.
Calvert, P.H. Campbell, G.
Carr, K.J. Colbeck, R.
Coonan, H.L. Cooney, B.C.
Crane, A.W. Crossin, P.M.
Denman, K.J. Eggleson, A.
Ellison, C.M. Forshaw, M.G.
Herron, J.J. Hogg, J.J.
Hutchins, S.P. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Lundy, K.A. Macdonald, J.A.L.
Mackay, S.M. Mason, B.J.
Mason, J.J.J. McGauran, J.J.J. *
McLuca, J.E. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Scullion, N.G.
Tchen, T. Tierney, J.W.
Vanstone, A.E. Watson, J.O.W.
West, S.M.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that amendments (1) and (13) to (16), circulated on sheet 2432 revised by the Australian Greens be agreed to.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that amendment (12), circulated on sheet 2432 revised by the Australian Greens, be agreed to.

The amendments read as follows—

(1) Clause 2, page 1 (line 7) to page 2 (line 10), omit the clause, substitute:

2 Commencement

This Act commences on a single day to be fixed by Proclamation, being a day no sooner than 15 sitting days following the day of tabling in each House of the Parliament of the Regional Forest Agreement five yearly review reports for East Gippsland and Tasmania.

(13) Page 6 (after line 16) after clause 8, insert:

8B Compensation payable for roads

(1) Persons who are eligible to receive compensation in accordance with the provisions of an RFA must compensate road authorities for the cost of building, upgrading, repairing or maintaining to a suitable standard roads used for transporting RFA wood.

(2) The State which is party to the RFA must establish a process for implementing this provision within six months of an RFA being entered into or of this legislation commencing, whichever is first.

(14) Page 6 (after line 16) after clause 8, insert:

8C Compensation payable for water

(1) Persons who are eligible to receive compensation in accordance with the provisions of an RFA must compensate water authorities, landholders, holders of fishing rights or any other person with a right or interest in water, for any diminution in the quantity or quality of water caused by RFA forestry operations.

(2) The State which is party to the RFA must establish a process for implementing this provision within six months of an RFA being entered into or of this legislation commencing, whichever is first.

(15) Clause 11, page 8 (after line 20), after sub-clause (2), insert:

Membership

(2A) Membership of the Forest and Wood Products Council must include:

(i) a representative of the forest-related tourism sector;

(ii) a representative of the forest-related water sector.
(16) Schedule 1, items 1 to 8, page 11 (line 6) to page 12 (line 14), omit the items, substitute:

1 Division 4, Part 4
Repeal the division.

Question negatived.

Senator Brown—I will have it recorded that the one voice was mine.

The TEMPORARY CHAIRMAN (Senator Knowles)—Yes, Senator. The question now is that schedule 1, items 3 and 4 stand as printed.

Question agreed to.

Sitting suspended from 6.41 p.m. to 7.40 p.m.

Senator BARTLETT (Queensland) (7.40 p.m.)—by leave—I move Australian Democrats amendments (1), (2) and (3) on sheet 2443:

(1) Clause 10, page 7 (after line 5), after subclause (2), insert:

(2A) An RFA is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(2) Clause 10, page 7 (after line 12), after subclause (3), insert:

(3A) An amendment of an RFA is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(3) Clause 10, page 7 (after line 29), after subclause (6), insert:

(6A) Upon the tabling of an RFA review report in each House of the Parliament, the RFA that was reviewed is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

The intent of the amendments is to ensure that an RFA is a disallowable instrument in the Senate. I am sure all senators are aware—but perhaps those listening to the debate are not—that disallowable instruments basically allow the Senate to further scrutinise something that is adopted and, if it is dissatisfied with it, to reject it. It applies already to many areas of legislation. Perhaps a parallel to this type of thing would be fishery plans that are adopted regularly around the place, usually after a lot of consultation. Most of them, if not all, are open to being disallowed by the Senate, if the Senate believes they are unsatisfactory for any particular reason. I do not know whether that action has ever been taken. Certainly there have been motions of disallowance moved at least against one plan that I can recall, but it was unsuccessful. It would be fairly rare. As I say, it may never have been used. Obviously it is a significant thing to disallow a plan a long time after it has gone through all the processes of being developed. But I think it is important, in maintaining that reserve power and also because it provides an appropriate mechanism for the Senate, to review an agreement with meaning behind it—not just looking at it for the sake of it and passing comment but actually having some power at the end of it. I am sure the same rationale is why many fishery plans are disallowable instruments.

A case that I recall I was a participant in—in fact, I might have even moved the referral of the plan to the committee myself—was with the Northern Prawn Fishery plan that was adopted a few years ago. There was a lot of controversy about that plan and we had quite a good Senate inquiry into the adequacy of the plan. It provided a good opportunity for public submissions, for public hearings and for senators to question witnesses, to exchange information, to obtain further details and to get more on the record about the substance of why the changes were made. Whilst obviously some people were not happy with the outcome, which was not to disallow it, I think it was a useful mechanism for pulling out a lot of issues and identifying some further actions that needed to be taken. From memory, it was conducted by the Senate Rural and Regional Affairs Committee very constructively. And, again from memory, it was chaired by Senator Crane and he performed that role in a very objective and constructive manner.

It would be the same applying to RFAs. Under the bill as it stands the minister must cause a copy of an RFA to be tabled in each house of the parliament within 15 sitting days after the RFA is entered into. But that is all it does: he tables it. That is still useful. It provides the information to the Senate. It enables it to be publicly available. I am certainly not arguing against that provision. But
what is much more important, in the view of the Democrats, is that the Senate then have some power if it is dissatisfied with that RFA. It is my recollection—although I am sure Senator Ó’Brien will correct me if I am wrong—that the ALP moved a similar amendment to this originally to the 1999 bill. At that stage, of course, there was a Liberal government in Western Australia and there was a lot of controversy about the ongoing operations of native forest logging in Western Australia. It seemed pretty clear, to me anyway, that part of the aim of the Labor amendment then was to provide an opportunity for the Senate to intervene if it was unhappy with the RFA that the then Liberal government adopted. Of course, now we have a Labor government in WA who have, to their credit, moved to phase out native logging, and the key election that is coming up now is Tasmania where we have a Labor government with a different attitude to native forest logging than the Western Australian Labor government—or the Queensland Labor government, I might add.

The principle that applied back then of enabling RFAs to be disallowable still applies now, in the Democrats’ view. As I say, it would be highly improbable for an RFA to be disallowed, but it provides that power, and I think that power is needed. There have been issues raised about the adequacy or otherwise of some of the existing RFAs. I think it is appropriate to have that sort of level of oversight. It would give the Senate—and the House of Representatives, if they ever chose to actually oversee anything, which they usual do not—a level of oversight of the RFAs that it currently does not have.

One of the more unsettling aspects of the RFAs is the extent to which they remove oversight and accountability from the Senate and the Australian public. In effect, they are contracts between the state and the Commonwealth. That means that the parliament and the Senate is cut out of that operation and that activity, and so is the public. For instance, if there is a breach in an RFA it is up to a party to the RFA to enforce the provisions of the RFA. A third party can bring a breach to the attention of the minister. The Senate, any senator, any member of the public, an association or whatever can bring that breach to the attention of the minister, but there is absolutely no mechanism for public enforcement of the agreement. As I commented earlier today, there is such a mechanism in the Environment Protection and Biodiversity Conservation Act, which has proven to be effective already, despite it only being in operation for 18 months, but that does not apply in the RFAs.

This amendment would also ensure that, when the five-yearly reviews are tabled, the RFA could be brought up again to be disallowed.

Senator Ian Macdonald—What did you say was in the EPBC that is disallowable?

Senator BARTLETT—I was not talking about things in the EPBC as being disallowable; I was talking about the power of third parties to enforce the act. Just to specify what these three amendments do, because they are slightly different: firstly, they make an original RFA disallowable, again within 15 sitting days of it being first tabled. They would also make any amendment to an RFA disallowable; so if there was a change that change would also be monitored. They would also, upon the tabling of the RFA review report, bring the original RFA up again for consideration. I think that is important as well, because the review reports, the five-yearly reviews, are obviously a mechanism to see how the RFA is operating—whether it is flawed, whether it could do with amendment, improvement or change of any sort. The review may bring that up, but there is no mechanism, again from the parliament side of things, to act upon the findings of that review and make those changes to the RFA. It would be left to the political will or whim of the government of the day. From the point of view of the Democrats, we do not think that is necessarily a satisfactory arrangement. If a five-yearly review that was tabled here found there were flaws in the RFA, this provision would bring that original RFA back into the Senate’s oversight for a 15-day period to review and potentially disallow.

I think it is an important accountability mechanism. It would not undermine other aspects of what the government is seeking to do with this legislation. Whilst the Demo-
crats may not support those other aspects either, I think it is important to emphasise in terms of this specific amendment that it does not undermine the other aspects of what the government is wanting to do. It is simply ensuring that the parliament maintains some ongoing ability to not just have oversight but have meaningful input into both the development and the ongoing operation of regional forest agreements. It is an important accountability mechanism and it is one that I would urge other members of the Senate to support.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (7.51 p.m.)—I have a substantive objection to the amendment which I will come to shortly, but can I just query with Senator Bartlett a legal issue, because I am not quite sure what Senator Bartlett intends by the amendment and the two subsequent amendments. It may be that there has not been adequate thought given to the drafting or the consequences of these clauses. Section 46A of the Acts Interpretation Act—which, as Senator Bartlett mentioned, refers to instruments and disallowable instruments—relates to laws that confer a power to make an instrument. It could be argued that nothing in the Regional Forest Agreements Bill 2002 confers a power to make an instrument. RFAs are made under the executive power of a government and the Democrat amendments under section 46A of the Acts Interpretation Act may not, therefore, be fully effective.

Furthermore, it would be completely inappropriate. I suggest, to make a contractual agreement between two parties—which is what the RFAs are: a contractual agreement between the Commonwealth and the particular state involved; it is giving rights and responsibilities to others but the agreement itself is between two parties—subject to parliamentary disallowance. Far from providing legislative support for the RFAs, those amendments would introduce absolute legislative uncertainty. If the RFAs could be considered instruments, then the first amendment proposed by Senator Bartlett could have devastating consequences for the 10 RFAs already concluded.

I remind the chamber that there are 10 RFAs in operation. Some of them have been in operation now for five years. In consequence of those agreements, people and governments have made decisions, have altered their positions and have abided by, in the main, the agreements that have been concluded. If Senator Bartlett’s amendment were passed, those agreements, when they are tabled in the parliament, could be disallowed. So you would have a retrospective disallowance of an agreement that has been in effect now in some cases for five years and in other cases for two years. I am sure, if you thought through in a logical way, that would not be what had been intended, but that would certainly be the impact of this amendment. So, for that reason and for the legal reason as well, the government would oppose the first amendment that Senator Bartlett has moved.

The second amendment states:

An amendment of an RFA is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

An amendment of an RFA made between two contracting parties—say, the government of the Commonwealth of Australia and the government of Tasmania—is somehow to be made a disallowable instrument. That is not really what the Acts Interpretation Act is all about. So, from a purely legalistic point of view, the amendment simply does not make sense. Also, from a substantive view, amendments are at times made between the two contracting parties. In fact, we are in the process of amending a couple of the early RFAs to make them more meaningful now. They are amendments to contracts made some years ago and they will be made by agreement between two parties. Again, I would suggest that it would completely inappropriate to make that contractual agreement between the Commonwealth and a state government subject to disallowance. If you do that, you are introducing uncertainty into all RFAs and, of course, that runs directly contrary to the objects of the bill, which are to provide certainty for the forests, the forest products industry, conservation, investment and jobs. That is what the RFA Bill is all about. Amendment (3) moved by the Australian Democrats says:
Upon the tabling of an RFA review report in each House of the Parliament, the RFA that was reviewed is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

I would submit to the committee that this amendment provides even greater uncertainty. It enables one house of the Commonwealth parliament to unilaterally disallow an RFA negotiated between two Australian governments on the basis of an RFA review report that comes five, 10 or 15 years after the agreement was entered into and had been acted upon by the parties, by people in the industry and by people in the conservation area—people who have relied upon the agreements made on occasions some 15 years ago. Just because a report comes in, the report being tabled is said to make the original RFA an instrument which can be negated, a disallowable instrument. That would be just plain and simply unworkable. Even if you agreed with the principles of it, which I do not, it would make the amendment unworkable.

This amendment takes the implementation of the RFA outside the control of the two contracting parties. That is unacceptable, given that it is only the parties to the RFA who can apply the appropriate remedies if either party is in breach of its obligations. I have said before that bona fide complaints over which the Commonwealth has jurisdiction will be considered fully by the Commonwealth and remedial action will be taken where appropriate. That is consistent with the coalition’s commitment at the last election to monitor and evaluate the RFAs and to investigate allegations of breaches of the RFA arrangements. Outside of that as well, I have indicated that even in the case of complaints that come up which are not the responsibility of the Commonwealth, which the Commonwealth has no real jurisdiction over, where there are suggestions that state governments are not abiding by their forest legislation—even though, as I say, we do not have any constitutional jurisdiction over those matters in all cases—I am happy to use whatever influence I have to address the problem, to bring it to the attention of the relevant state government, to ensure that the matter is fully looked at and to ensure that a response is given to those who have raised the issue. I have made that offer before and I continue to make it. On the basis that I mentioned previously, we will not be supporting amendment (3) either.

**Senator O’BRIEN (Tasmania)** (8.00 p.m.)—The three amendments that are the subject of debate at the moment are in many respects similar to one of the Greens amendments, although perhaps worded more efficiently. The effect at least of the first two is the same, and the third of the amendments introduces a dimension which has not been focused on hitherto in the debate, and I propose to do that. Suffice to say that I have addressed the reasons that the opposition will not be supporting the disallowance mechanisms contained in the Democrats amendments (1) and (2) on sheet 2443.

Amendment (3) seeks to insert a new sub-clause 6A of clause 10, which would have the effect of providing a mechanism for a disallowance procedure on each of the five-yearly reviews of the 10 RFAs. You only have to say that to understand that there would be at least 30 opportunities to disallow regional forest agreements for no other reason than that the Senate wished to disallow them and whatever the numbers were in the Senate at the time. The provision does not say that the agreements could be disallowed for good reason, it says that they could be disallowed. One can make the assumption that the Senate would not do it without good reason, although there are those in industry who would argue that the politics of the matter might lead to the situation where argument to disallow might override perhaps good policy decision from time to time for reasons that I do not think I need to canvass for anyone in the chamber at the moment. I think we all understand that sometimes politics delivers outcomes that are not necessarily the basis of good policy or good government.

We rely on the fact that for an RFA to comply with this legislation it must be and continue to be an agreement that was entered into having regard to assessments of certain matters. They are all set out in the definition of regional forest agreement in the legislation. Specifically, they must provide for
comprehensive, adequate and representative reserve systems and they must provide for ecologically sustainable management and use of forested areas in the region or regions. The criteria of what is a regional forest agreement I think are a protection against capricious amendment, but it certainly would be, in our view, a legal requirement to allow anyone to be satisfied that a regional forest agreement continued to be one which met the tests which are laid down in the legislation.

I suppose that is a complicated way of saying that I do not think there is an easy way for a regional forest agreement to be operated in breach of the legislation in the sense of breaking down the basic tenets that are required to apply to a regional forest agreement. As I said, I think it is inappropriate, if an agreement is entered into and meets those tests or even if it is varied as long as it still meets those tests, that it should be capable of being disallowed in effect, that the executive’s role in making the agreement should be disallowed, on the basis that that is a political view at the time. So the opposition will not be supporting any of these amendments.

Senator BARTLETT (Queensland) (8.04 p.m.)—I note the comments of other senators. I think it is a great disappointment. The second amendment, which would provide oversight of any amendments to existing RFAs, is a particularly important one. I do not agree with the comments the minister made about the alleged problem of being able to disallow already existing RFAs, but at the very least amendment (2) provides for future potential disallowance—as I said before, it is probably very unlikely, but still potential disallowance—of any amendments that are made to RFAs. I think it is appropriate for the Senate to have that sort of oversight. The Democrats do not accept the arguments put forward by the minister that somehow, because it is a contract between the federal and state governments, the Senate and the public should just butt out. It is completely appropriate in these sorts of circumstances for the parliament and the Senate to have some oversight.

It is another sign of the growing attempts by the executive arm of government to increase its powers at the expense of the parliamentary arm of government. It is a common theme that has been continuing for many years now, unfortunately, that both the parliamentary arm and the judicial arm are regularly under attack and regularly being weakened and that the executive is grabbing more and more power for itself. I think it is starting to generate some imbalances in the underpinning structure of our democratic system. That is probably more the subject for a general discursive lecture on Australian politics, but I think this is another example of the parliament being cut out of what are extremely important ongoing activities and operations that the Commonwealth government is able to sign up to without any opportunity for review once it is done.

I acknowledge what Senator O’Brien said about the occasional decisions that the nature of politics can produce, and I think we would all acknowledge that can happen, but it certainly is far preferable to what politics can do to the decisions that governments produce. I think that is far more dangerous than the potential influence of such things on parliamentary decisions; there are at least far more balances. The Senate in particular is much more diverse and representative of the range of views in the Australian public. The government, on the other hand, and the executive in particular, is getting more and more power and is cutting the Senate, and therefore the people, more completely out of activities.

However, I will not press the point further on this particular amendment. It is fairly obvious where the numbers lie. I think the Senate has missed an opportunity to provide some sort of ongoing scrutiny of the unfolding operations of RFAs. It is quite clear from concerns across the community that it is not a small fringe on the edge. There are wide ranging groups of people, including forestry workers, farmers and many others, who are becoming more concerned about the operations of at least some of the RFAs that are in place. That indicates why it is important to have ongoing monitoring. However, given the time restrictions we are all under, I will not chew up any further time on this set of amendments because there are some other
issues I wish to raise in the time available to me.

Senator BROWN (Tasmania) (8.08 p.m.)—These Democrat amendments are good. They come forward again in an attempt by the crossbenches to have the parliament kept in the stream here, but the Labor Party is joining the Liberal Party to cut the parliament out, to put in review mechanisms that have no teeth, to deny the people the overview of $380 million of public money that has been poured into the logging industry under the RFAs, and even to deny the overview of such things as millions of dollars of potential compensation if, in the public interest, heritage forests or forests with rare and endangered species are protected in the future. It is a deplorable show of solidarity between the Labor Party, the Liberal Party and the National Party for the corporate interest.

In a newspaper article the other day about the new Senator Barnett, he claimed some role in his previous profession in drawing up this legislation in connection with the logging industry. It is, of course, a sign of the times that the corporate sector has such enormous influence over not only the executive but also the parliament through the two-party system that the public interest gets totally sidelined. The Green amendments were all voted down by the Labor Party before the dinner adjournment, even the amendment that sought to ensure that workers get compensated if the company sacks them.

Senator O’Brien interjecting—

Senator BROWN—Senator O’Brien, who interjects, was one of those who voted before dinner against the workers getting compensation through that mechanism. We see the Labor Party turning its back on 100 years of history as it goes for the main game these days, which is to support the corporate edifice. It does not matter what the people of Australia think. The important thing in this legislation is that it has been shaped by the woodchip corporations to cut the parliament out. And the Labor Party says, ‘Yes, we’ll go for that.’ In the first test of the Crean Labor opposition on the environment, which is here tonight, they side with the Howard government and the big end of town to cut out not only the environmental interests but also the workers’ interests. They have voted down the Green amendments; they will vote down the Democrat amendments because they have become part of the problem instead of part of the answer. They have become a hollow opposition. As I said earlier, we have senators here in the Labor Party, including Senator O’Brien, who have seen the breaches of the regional forest agreement with their own eyes but will not speak up about it in this place.

Senator O’Brien—The regional forest agreement?

Senator BROWN—Yes, the regional forest agreement because the Forest Practices Code is to be implemented in faith with the regional forest agreement. Senator Murphy has seen that with his own eyes, Senator Bartlett has seen it and I have seen it, but Senator O’Brien is the only one of the three who is not going to speak up about it. It requires a faith in what you see with your own eyes to come in here and talk about that, particularly when it is against the interests of what your party is doing; that is, turning its back on the environment and the public’s right to ensure that when hundreds of millions of dollars of taxpayers’ money—the public’s money—is fed into an industry like this the parliament remains the watchdog. The Howard government believes in executive avoidance of the parliament; so does the Crean opposition, not least when it comes to the national forest estate. I say this of every member of the government and the opposition who has an environmental bone in their body or who is concerned about workers’ interests: they should tonight have a deep and abiding shame in what they have voted for—a very deep-seated shamefulness about voting against the public interest in the way the Labor Party has done in turning down the amendments. The Democrats bring up a watchdog amendment that says the parliament itself can arbitrate as to whether a regional forest agreement should be disallowed or whether there should be some future amendment, and Senator O’Brien, the shadow spokesperson, joins Senator Macdonald, the government spokesperson, in unanimity in saying, ‘No, let’s cut the par-
liament out of this. Let’s cut the people out of this. Let’s cut the workers out of it. It’s the corporate interest that totally predominates in our approach to the future of logging of forests in Australia. Every member of the Labor Party in this place supports that contention, and acts to support that contention. I will not forget that and I am sure many other people in the country will not forget that as we try to turn around the vote for this legislation in the years ahead.

I am one of those who believe that public sentiment will ultimately out, that it will overcome. When you have a deliberation by an opposition to say, ‘We won’t keep a watch on the government, because the sectional interest that donates to our party coffers does not want that to happen,’ you reach a pretty low point in democratic responsibility. But that is what we are seeing in the parliament tonight. Senator Murphy has been taking a very constructive role in defence of the interests of better management of the industry and the workers, but there is not much that the Greens or the Democrats can do about it. So be it. But do not let any member of the Labor Party or the coalition say that they did not know about it, or if only they had been informed, or that they would not have supported this principle had they not heard debate. They know exactly what they are doing.

Senator HARRADINE (Tasmania) (8.16 p.m.)—I think Senator Brown would do better if he did not take the ad hominem approach all the time and impute motives to honourable senators that are unfair to them—and to do so to an honourable senator who is not in the chamber at the present moment. Senator Brown can take that advice or not, but certainly he should heed the advice that it would be better if he stuck to the facts and not impute motives to honourable senators for their actions in voting one way or the other.

I listened carefully to what Senator Bartlett had to say. I am concerned, frankly. I can see the point that the Minister for Forestry and Conservation made about amendment (1)—that is, that it would act as a retrospective approach if you made the RFAs disallowable instruments. But how do we, as parliamentarians in this national parliament, have a say about the future of RFAs? Do we have to just accept what is arranged by the Commonwealth and state executives? How do we, as a national parliament, have a say over the outcome of those arrangements in future?

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (8.18 p.m.)—Ten RFAs have been agreed to. Whilst I would like to see more, the reality of more being signed is fairly limited. RFAs have been signed to cover all of Tasmania. They have been signed to cover, I think I can say with accuracy, nearly all the forestry areas that have a conservation value or a forestry products value in Victoria. They cover all of the relevant native forests in New South Wales—which is what the Regional Forest Agreements Bill 2002 is about—and they cover the native forests in Western Australia as well. There was an attempt to have an RFA signed with the Queensland government, but they chose to go it alone. I guess that is their right, because forest management is a state responsibility. The only way the Commonwealth can get involved is if we are invited in, if there is something in it for the states.

In the other states, it has been the removal of export controls, the provision of money and the support by the Commonwealth in perhaps a patronage way, one might say, as a national government. We do have access to the CSIRO, the Bureau of Rural Sciences and the R&D groups that can help in the management and the future prosperity of the wood products industry and in the conservation values that are being conserved and made permanent as a result of the RFAs. The Queensland government chose not to do it. It was not quite as important in Queensland because exports were not a significant factor in it. As it turned out, the Commonwealth still put some money into support of the Queensland industry. There is little forestry in South Australia, mainly plantations.

Senator Harradine, whilst I would like to think there will be future RFAs, I doubt it. Looking to the future, I doubt that there will be any point in anyone having input into future RFAs. As I keep saying to Senator
Brown, this is not a political issue. You do not get brownie points. The fact is that the Labor Party and the government are really on the same side. It is not an issue where we are playing party politics. In fact, almost to the chagrin of some of my Tasmanian colleagues, I have been indicating that I think the state Labor government has done a pretty good job. I hasten to add that a state Liberal government would do equally as good a job and, because they are Liberals, they would probably do a better job. Having said that, I do not criticise the state Labor government.

The whole purpose of RFAs is to try to do something positive for conservation and for the forest industry. If senators have a good idea which should be incorporated in any future regional forest agreement, were there to be any, then there really is not any reason why we would not be involved. I know Senator Brown and Senator Murphy—in Senator Murphy’s case, genuinely—would say that RFAs should do lots of things that impose a Commonwealth power over what is constitutionally a state power. As I have also mused in this chamber, the longer I am here the more I think we could easily do without the states, but I am also realistic enough to know that that is a pipedream that will never happen under the Australian constitutional system. While Senator Murphy—I think genuinely—would like the Commonwealth to have more of a hands-on role in regard to forests, we cannot do it. If we were going to another RFA, no matter who the minister, we would certainly form a working party to do it because there are no politics in it. We want to do the right thing.

There is parliamentary review, and the bill makes that quite clear. The second reading speech that I made—or half made—and a reading of the bill and the explanatory memorandum show that there is quite substantial parliamentary oversight, with the ability for parliament to have a view, be involved and make a point. The RFAs are all tabled on pages 6 and 7, clause 10. Where any of the existing ones have not been tabled, they have to be as soon as this bill is passed. Any amendments are tabled. Annual reports are tabled in subclause (4). In subclause (6), the reviews that are set out in the RFAs—we have been speaking quite a bit about the reviews; the first review is coming up now—are tabled.

I do not need to tell Senator Harradine this because he knows the procedures of this parliament better than any of us, but once those are tabled there are opportunities and procedures where the parliament can debate them at length. The parliament—both houses but this chamber in particular—has never been reticent about setting up committees to inquire into any aspect of the RFAs. They do not need the tabling of all those documents to be the catalyst to do that; they can and in many cases do do it on their own account. So there is plenty of parliamentary scrutiny. I give an undertaking to Senator Harradine—and it is only mine, of course—that if there is an RFA in the future—I hope there will be, but I doubt that there will be—I will call together a multi-party group of senators and members of the House of Representatives who have an interest in this matter to give full input to whatever might happen.

Senator BROWN (Tasmania) (8.26 p.m.)—So there we have it. Under the legislation, the parliament can have a view, it can be involved, it can make a point—full stop. It will have no teeth, no power. The Senate and the House of Representatives can look at, can overview, can talk until the cows come home and can hold a committee inquiry to investigate but have no power because it is being emasculated by this process. It is up to Senator Harradine whether he continues to support that or not.

A while ago, Senator Harradine made an invidious reference to me after I had made a very great point of not making reference to him. If that is his way of carrying out the goodwill that he talks about in this place, so be it. What is much more important than that type of interpolation into the debate is that we call a spade a spade. We see what is going on here: it is the removal of parliamentary powers by the parliament itself. That is being carried out by the combined wish of the Labor Party supporting the Howard government in removing the power of the parliament, and the majority has that sway. We are debating it just to make the point that everybody in the Labor Party, as well as eve-
rybody on the government benches, knows what they are voting for. Senator Harradine may or may not choose to vote for that; we will see. But I commend the Democrats for making the amendments which would give some point to the oversight by parliament—that is, the point to disallow regional forest agreements which are not being honoured or which are not acting in the public interest.

Senator BARTLETT (Queensland) (8.28 p.m.)—I want to press on a little further with this partly because of some of the issues the minister raised in his response predominantly to Senator Harradine. Before I do that, it is worth putting on the record more formally—I indicated before that I thought this was the case, but I have just double-checked it—that, in part, at least one of these amendments is similar to what the ALP moved in this chamber back in 1999. I quote some comments from a Labor member at the time that the rationale for that amendment was that at the heart of the amendment was the ability of either house to disallow RFAs within 15 sitting days of tabling. Labor’s spokesperson at the time said:

... it is quite reasonable that the Senate and this House ask for better scrutiny. It is reasonable that the regional forest agreements be subjected to public scrutiny before their final ratification.

In Western Australia, the Regional Forest Agreement was signed off before anybody else saw it. There was no public scrutiny.

The Senate disallowance, in my view, is the best mechanism for making sure there is proper public scrutiny of these very important agreements.

That was a Labor spokesperson, the Hon. Carmen Lawrence, speaking in the other place on 13 October 1999.

Whilst I accept that more RFAs have been adopted, the fact still remains that there is potential for amendments. At least in relation to amendment (2), which I have moved, the principle that was expressed quite well by Carmen Lawrence applies just as validly now. I think it is unfortunate that Labor have backed away from that position. As I said before, I suspect it is as much to do with the fact that there are now Labor governments in all the states; so they do not wish to have them under that sort of ongoing scrutiny.

I would like to ask a couple of questions of the minister in this period. I guess his advisers can tell him what I am asking. Before that, though, I would like to acknowledge, support and highlight Senator Macdonald’s comments about the desirability of abolishing the states. While I acknowledge his comments about it being difficult, I hope he uses his great power and influence in the ministry and cabinet to pursue that objective. I am sure the Democrats will offer him support. I am sure he would welcome that. Nonetheless, there are some specific things to do with my own state of Queensland that I would like to ask him about. Seeing Queensland is not about to be abolished in the short term, I think they are still quite relevant questions.

The minister himself raised the situation of the South-East Queensland Regional Forest Agreement. He said that the Queensland government chose to go it alone. That sounds to me like the federal government was there willing to sign up, happy to hand over the support, but Queensland said, ‘Don’t worry about it, we’re doing our own thing.’ That is the impression I got from his comments. My knowledge of the South-East Queensland Regional Forest Agreement is that there was a very different situation. I would like to ask the minister about the background to that. Obviously it was when Minister Tuckey was the minister for forests. I would like to know what the current situation is. I did get some briefings from the minister’s advisers a week or so back—which I thank him for—which again basically said the same thing: Queensland is not interested and so it is not a live issue.

My understanding is that Queensland would be very interested, but the federal government under Minister Tuckey basically said, ‘This agreement is unsatisfactory. We are not interested in working with you if that is the agreement you are going to adopt.’ Minister, could you indicate to me what the current state of play is in relation to that—whether the federal government is actually interested in signing the Queensland forest agreement and officially recognising it as a regional forest agreement or whether you are basically saying that you do not support the
agreement that was struck, so there is no hope of any future signing of that agreement between the federal and state government?

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (8.32 p.m.)—Senator, you are quite correct: this predates my term as the relevant minister. But I do know that Mr Tuckey did a magnificent job in the portfolio, and I have absolute confidence in all of the decisions he made. As I understand it, the RFAs are all about a sustainable native forest industry. Of course, as you know, ‘sustainable’ means that you use it but you use it in a way that it regenerates forever and there is forever a native forest industry. That is what the purpose of the RFAs was. We had to set aside comprehensive, adequate representative reserves. We did that—and we did it at a standard higher than required by the world leading conservation organisations. We are better than their standard.

Senator Murphy—The IUCN.

Senator IAN MACDONALD—Yes, the IUCN. We are better than the IUCN and the WWF. They both have criteria. Our criteria are better than theirs. I have said that a number of times and it has not been challenged, and I think everyone accepts that that is correct. So that was one part of it. The other part was to make sure that there was forever a sustainable native forest industry so that people’s livelihoods, their jobs and their families’ futures could be secured and so that the small country towns like those in South-East Queensland and right throughout the forest areas of our nation could continue—so they had a future. That was the purpose of the RFAs.

In Queensland the state Labor government has come to this arrangement with the industry and the conservation groups. On the face of it, it does not seem to be a bad arrangement. I am not an expert on it—I am not sure that I have a briefing note, but someone will tell me if I am wrong—but, as I understand it, the Queensland arrangement is that for 25 years the processing industry, the sawlogging industry, can continue to harvest native forests in accordance with their permits, with their licences, and they can keep going for a fair while as they have been. But at the end of 25 years it comes to a dead stop—no more native forest logging; no more native forest timbers. The clever part about it is—and on face value this seems quite reasonable—that at the same time the government, the industry and the conservation groups have said, ‘Right, we will plant plantation hardwoods so that in 25 years when the native forests run out we’ll move straight over to the plantation hardwood.’

Senator Murphy—That’s a load of crap.

Senator IAN MACDONALD—A load of crap, is it?

Senator Murphy—Yes.

Senator IAN MACDONALD—As I said, it sounds nice, Senator Murphy. I bow to you. I am not here to defend the Queensland situation; I am telling you what I know of it. They have said, ‘In 25 years everything will be sweet and smelling of roses because, although you can’t log native forests, you’ll have all these plantation hardwoods grown to a sufficient stage that will allow you to have sawlogs and do woodchipping.’ By that time, it will be for Australian woodchipping plants, I am sure.

Senator Murphy—We should be so lucky!

Senator IAN MACDONALD—Senator Murphy, if we can get a bit of certainty and if we can get rid of the ridiculous sort of objections that we get from Senator Brown and his cronies then we will get people to invest in a state-of-the-art, environmentally sustainable pulp mill in Australia. That is what I want, that is what you want, that is what Senator Harradine wants. That is why it is so important to get this bill through the parliament—we need that certainty.

Getting back to the issue of Queensland—it is a long response but it is your time, Senator Bartlett—as I understand it, in 25 years everything will be sweet and smelling of roses because you will move straight from the native forests into the plantation hardwood. The sawmillers will keep going, conservationists will be happy because no more native forests will be being cut down, everybody will be happy. That does sound good, but there is the concern that in 25 years there will be no native forest industry and that was
contrary to the Commonwealth’s position and, from what Senator Murphy says, perhaps with good reason. That is why we have not gone into that agreement.

In all honesty, I am not sure that it makes all that much difference. Having an RFA gives the Commonwealth a say in an area where they would not normally have a say. It gives all of us a say in an area where perhaps we would not normally have a say. So we get a bit of a say in the state forests. The trade-off is that we give a bit of money to help create jobs, sustain families in small country towns and also remove export controls. My understanding is that there are export controls in Queensland but there are no products exported that need Commonwealth permits.

Senator Murphy—There are some.

Senator IAN MACDONALD—There are some. I am getting conflicting advice from my advisers. I am being told to back off and take it on notice. Let me say with some confidence that there is not a lot. So there was not a lot in it for the Queensland industry. To get the Commonwealth out of it was not a big drawcard for Queensland.

Senator Murphy—You’re right.

Senator IAN MACDONALD—We agree on that. The other element is that the Commonwealth—because we are a government that believes in jobs, believes in supporting industry, believes in supporting workers and their families in small country towns—puts in a substantial sum of money to help the industry. We are still doing that, I might say. Perhaps we always got there without an RFA in Queensland’s case. In the other cases where they are involved they are much more significant and much more important. That is my understanding in all truthfulness and in all honesty, Senator Bartlett.

If there is something that can take forward the interests of conservationists, the interests of a sawlogging industry or a timber industry or if there is something that will take forward the interests of workers, their families or small country towns, I am very open to looking at it. I would like to do something in my own state of Queensland, even though as ministers we are not parochial—we act for all Australians; I know all senators in this debate are interested not only in Tasmania but also in all areas, although the debate has certainly concentrated on Tasmania. If there were something we could do, I have an open mind to that. In the end, the government’s underlying principle is that we want certainty in the forest industries, we want to protect jobs, protect families, protect small country towns and we want to create certainty for conservation reserves as well.

Senator BARTLETT (Queensland) (8.42 p.m.)—I acknowledge your presence in the chair, Senator McLucas. It is the first time I have seen you there. I will not press the minister at length on this issue. There are a couple of aspects I would like to put on the record and pursue a bit further and possibly on an ongoing basis. I would also appreciate any input from Senator Murphy. He sounds like he would be well served taking up a spot in the minister’s advisers box, given the knowledge he is displaying. I would be interested in his assessment of this issue.

In terms of the explanation the minister has just given, there are a couple of points I want to raise. I will revisit in subsequent comments his issues about the federal government not being able to have a hands-on approach and there not being a constitutional role in this area. I will do that in speaking to my final amendments because I think the federal government’s responsibilities are pertinent to those. I will pursue him slightly further on his comments about the federal government’s approach being better than that of IUCN or WWF—the International Union for the Conservation of Nature and the World Wide Fund for Nature, for those who do not know.

I will stick to the Queensland situation. The minister described the phasing out of logging in native forests in Queensland as though it were a problem. Senator Murphy may contribute and say that the Queensland agreement is not going to be workable, I am not sure. From all I have seen of it, it has had very positive assessments not just from environmentalists but also from the timber industry and the Queensland Timber Board. I am sure the minister would acknowledge that most of the RFAs have involved quite a lot
of conflict—a lot of them still do involve a lot of conflict and division not just between conservationists and the timber industry but others within the community. The fact that we have a regional forest agreement in Queensland is an achievement. It did not get 100 per cent approval, but I think you could fairly safely say 95 per cent approval. There were a few small communities that were less than 100 per cent satisfied, but on the whole I think you would have to say that it was the most harmonious agreement that has been settled. It just seems perplexing that that is the one that has not got formal recognition.

One issue—and it is referred to in the Bills Digest, which is what made me think of it, although it is raised there in another context—is that the South-East Queensland Regional Forest Agreement is not recognised by the federal government. From what I can understand from the minister’s answer, this seemed to be basically because the agreement intends to phase out the logging of native forest on public land and replace that with hardwood plantations. Now, if that can be done sustainably, I would have thought that was ideal. I am not sure why that therefore means we cannot recognise this agreement—particularly seeing it is over a 25-year period. It would be quite easy to have an agreement ratified for that intervening period.

Senator Ian Macdonald—But what is the purpose of it?

Senator BARTLETT—You are putting in place this legislation and saying you have to talk about certainty for the industry, yet you are not providing it for Queensland because you do not like their agreement. Section 99 of the Constitution—and this aspect was raised by the Commonwealth government last time on advice from the Australian Government Solicitor in relation to the disallowance amendments that I moved before—is just as valid in this context in the Queensland agreement. That section provides:

... the Commonwealth shall not, by any law or regulation of trade ... give preference to one State or any part thereof over another State ...

It seems that other states are getting preference over Queensland in terms of having the benefit, if you like, of this legislation applying to their forestry agreements. It does not apply to the Queensland one, and I query whether or not it is appropriate in that context that Queensland is left out. I also think it is appropriate to put on the record some aspects of what the South-East Queensland forest agreement actually contains.

As senators would know, I am not in the habit of praising the Beattie government, particularly in relation to its environmental achievements—I think they have been few and far between, including in obvious cases like land clearing. But this particular agreement is one that needs to be acknowledged as a very positive one. It was reached with the Rainforest Conservation Society, the Queensland Conservation Council, the Wilderness Society and the Queensland Timber Board. Its features include adding over 400,000 hectares to the conservation reserve system; adding 70 per cent extra state forest and timber reserves in the last resort for logging category; no logging of old-growth or wilderness on public land; no clear-felling; no export woodchip industry based on native forest, and areas outside reserve logged once only, with a code of practice applied with habitat trees, stream buffers and the like. As the minister has said, all logging of native forest on public land is to cease by the year 2024, only three out of 30 mills are to be affected and there will be a guaranteed resource supply to the remaining mills for 25 years. That is what this whole regime is supposed to be about—the government keeps telling us that this is resource security, guaranteed resource supply—

Senator Ian Macdonald—Yeah, but not for 25 years—forever.

Senator BARTLETT—Guaranteed resource supplies for remaining mills at current levels for 25 years. There is plantation establishment, as the minister said, sufficient to provide alternative supply to all mills receiving allocation from public native forests, incentives for industry to move into value added products and a program of regional development to diversify the economic basis of regional communities. There is a range of conservation outcomes as well, in terms of the reservations of native forest, protections...
of old-growth forest and high-quality fauna habitat and more than that as well—major increases in existing reserves. It is a pretty good package, I would have thought. It seems perplexing, again, that it is the one agreement in the country that the federal government basically says is not satisfactory.

I would at least appreciate some indication from the minister of whether there is any possibility of at least revisiting the option if there is any interest shown from the Queensland government’s point of view. That was mainly commentary, unless the minister has any response to the aspect of section 99 of the Constitution, but I know Senator Murphy also wants to have some input into this matter, so I am happy to hear his contribution as well.

Senator MURPHY (Tasmania) (8.49 p.m.)—Minister, with regard to whether or not there are any export controls on Queensland timbers—I wanted to check my memory, so I went to my office to get a copy of the regional forest development plan for Queensland; as you know, there are a number of these nationally—in quickly looking at the plan I cannot confirm that there are any. I may not be right. I thought there were some, in terms of advice I had received, but that may not be the case.

Senator Ian Macdonald—Is that exports you’re talking about? I am told that there are exports of sandalwood.

Senator MURPHY—Yes, I thought there were some. I was not quite sure exactly what they were, but I thought there were some. I just wanted to try and check it with regard to this regional forest development plan for Queensland. That plan—which is supported by the Queensland Timber Board, the Australian Workers Union and the FPS, which is now Timber Communities Australia—was a proposition from those stakeholders, working towards a Queensland RFA. One of the very important points those parties made—and it is a view that is held strongly by them—is that they have an industry with no export woodchipping. That is a view that they maintain, as a result of what they have seen happen in the rest of Australia with hardwood industries and the introduction of woodchip exporting which has led to a demise of the sawmilling industry. I think that is a point worth considering in respect of the Queensland timber communities and the people that work within the Queensland timber industry—their view about what export woodchipping can mean to their industry.

I will touch on some comments that the minister made with regard to plantations and the issue of the 25-year time frame that will somehow move from native forest harvesting to plantations. What has happened in the development of the plantation industry in this country is quite interesting. In 1997, we had the launch of the 2020 Vision Strategy. That envisaged that, by the year 2020, we would increase the plantation area—that is, the area of land under plantation of hardwood and/or softwood trees in this country—to the extent of around three million hectares.

Of course, we saw a significant take-off of effort in respect of the plantation industry in the course of 1997-98 and 1998-99 and 2000. The objective has been purely area based. What has failed to take place is any real assessment of the capacity of the land to deliver a yield in terms of volume of timber to be produced off the land. For any reasonable person wanting to develop a downstream processing plant or industry in a particular area, one of the very important criteria would be: what is the capacity of the forest on the ground to deliver a volume of wood? They would not necessarily be interested in whether or not there were 500,000 hectares, one million hectares or two million hectares; they would be interested in the sustainable yield, the volume yield, of timber that could be produced from the particular area.

Even at this early stage, in respect of the development of the plantation industry under the 2020 Vision Strategy, we know that the yields so projected to come from the plantations in the prospectuses offered up to the retail investors—that is, the mums and dads around the place buying up their various hectares of blue gum or Eucalyptus nitens and various other types of plantations—by the prospectus based investment companies, the key participants in the development of the 2020 Vision Strategy, are nothing like the yields that are projected by the plantation
companies. That, in my view, is a very serious problem. That, in my view, constitutes a misuse of taxpayer dollars in this country.

The Treasurer, I think, on 14 February 1997 made a comment about a program commenced under a former Labor government to do with infrastructure bonds—that is, the issuing of bonds to attract retail investor dollars for the purposes of constructing major public infrastructure projects like roads, office buildings et cetera. He said that, because that program had come to be so rorted, it represented a poor return on the investment from the taxpayer's dollar. I think the Treasurer at some point in time will make the same statement in respect of the current approach to plantation development.

Perhaps I can say to you, Minister, and the government that the current approach to the development of the 2020 Vision Strategy in respect of plantations is wrong; it needs to be readjusted. It is a very important sector for this industry. But, if we are to realise the things that the minister has spoken of—for example, that in 25 years time we can step from native forests to plantation supplies—we will need to make those adjustments. But, unfortunately, at this point of time the government appears not to want to make, or even consider making, those sorts of adjustments. That is a very important part of this overall process, because RFAs do not stand alone. We have a long-term objective here. What is important is that we have a strategic plan that is achievable.

I cannot say that I have ever heard a public officer say a more ridiculous thing than was said when I attended a public meeting on the review of the 2020 Vision Strategy. An officer said, 'Oh look, it doesn't matter that we don't know whether or not we can sell the timber.' He did not even understand the question of yield. He said, 'Look, we did the same in the pine industry; we just put the pine trees in the ground and we worked the rest out later.' That is not how this industry can work in the future. The masses of investors who lost their money when they invested in the pine industry would be very intrigued by this public officer—who is involved in the forest industry; I will not say he was from AFFA—who made these comments. Ridiculous as those comments were, we as a country cannot afford to proceed down the path of developing a hardwood forest industry along those lines.

It should be drawn to the attention of the minister and the government that in Western Australia—which is one of the states where I suppose they have got ahead a little bit in the game of plantations, where they have commenced harvesting the plantations in that state—those plantations, in terms of yield, are delivering between 40 and 60 per cent less than the projected yields that were put into the prospectuses of the investment opportunities for investors at that time. It is also important to note that there is no state authority in this country right now that will provide you with an opinion supporting the claims of the yields contained in the prospectuses that have been out in the last three years or, indeed, those that will go into the marketplace as of next month for the next round of tax incentive investment schemes in plantation forestry—not one.

I challenge the government, as I have challenged AFFA, to come up with some evidence that there is an average capacity on any plantation in this country that can yield an MAI, mean annual increment, of 30. It is not possible except in extreme circumstances. Let me give you an example. There was a plantation in Western Australia that was fully irrigated for six years and just managed to scrape home a 30 MAI—that is, after a rotation of 11 years the plantation would expect to deliver to the harvester 300 cubic metres per hectare.

CALM, South Australian primary industry, Victorian primary industry, New South Wales primary industry and Tasmania—even Forestry Tasmania—cannot be that dishonest. CALM from Western Australia did an assessment, I think it was of 113 different plantation lots, and the average in their report—which is publicly available and I can provide a copy to the minister and his officers—was expected to be between 15 and 18 MAI. That is, 150 cubic metres and 180 cubic metres. Dependent upon the rainfall, that could reach a maximum of 25. That is, 250 cubic metres per hectare after an 11-year rotation. The relevance of my point is this:
no matter how many hectares you plant on the ground, if it does not deliver a yield in terms of volume then it is of no consequence to industry development.

If we are to move from native forest resource supply to plantation resource supply there is nothing more critical than ensuring that the plantations we put in the ground can deliver a volume yield that will support the long-term development of the forest industry in this country. That is what is important. As I said, I do not want to take up too much of Senator Bartlett’s time or anyone else’s—

Senator Lightfoot—You are not doing a bad job of it so far.

Senator MURPHY—I am pleased you are not in the chair, Senator Lightfoot, because you take up even more time.

Senator MURPHY—These are issues that need to be teased out and are why I have suggested that there should be a proper inquiry into this process. They are equally important, too, with respect to amendments the Australian Democrats are proposing. When we stand in this place we should try as much as possible to put forward the facts. Everything I have said here can be supported by fact. I am prepared to back that up and I am prepared to provide the information on the references I have given tonight to your officers if they do not have them.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (9.04 p.m.)—We have moved away from Senator Bartlett’s amendments somewhat, and none of what Senator Murphy just said has anything to with the amendments before us. In an effort to be helpful—so far as I can be, and I know my limitations—in relation to plantation timber, and the RFA is about native forests, so we really are off the track, you are saying that the government is at fault. But the plantation companies put out their prospectuses and they make it clear that everyone should make their own inquiries. If people do that, read the prospectuses and still want to invest that is not really a matter for the government—it is a matter for those investors.

Mr Murphy—The Australian Taxation Office has wasted hundreds of millions of taxpayers dollars.

Senator IAN MACDONALD—I will get to the tax matter shortly. You are suggesting impropriety on the part of the prospectus plantation companies.

Senator Murphy—I am not suggesting that at all.

Senator IAN MACDONALD—Oh, you are not, then I have misunderstood you. If you are not suggesting that then that is good. With the way the Labor Party has gone over the years, ministers can have no shares or investments in anything at all. So I have divested myself of any shares I had. I recently became aware of these plantation prospectuses and I have had a look at a few of them and, if I were able, I would love to invest some of my money—not that I have much; I am a poor person.

Senator Murphy—I would not if I were you.

Senator IAN MACDONALD—I take your advice, Senator Murphy, but from the inquiries that I have made I would like to put some of my money into a sustainable Australian forest business that will help Australia in the years ahead, and I would be pretty certain they would help me financially. But if they did not I would rest easy knowing that I had got a tax concession, that we were providing sinks for greenhouse gas and that my kids and my grandkids, if I had any, might benefit in the years to come from the produce from the business. I say, good luck to the plantation timber companies. Anyone wanting to invest in them should make their own inquiries. If I were able, I would put a few dollars of mine into it. I cannot do that— not until I am finished in this job anyhow.

The tax matter is for a future debate but it is not really like infrastructure bonds. If the establishment season coincided with the financial year in which you put your money, you get that as a tax deduction. This amendment says that if you put it in before that financial year, and it is done the following financial year, you still get the tax deduction from the time you pay it. There is a cost to the Commonwealth but it is not enormous. It
is not an ongoing one, as such, but that is a matter for debate when it comes up. Senator Coonan will run that matter very well.

Senator Murphy, you also raised woodchipping from Queensland and your interpretation of that. My advice as to why that state does not export woodchips is because it has been clear for a long time that Queensland does not have the timber of the quality that purchasers of woodchips require.

Senator Murphy—That is not true!

Senator IAN MACDONALD—That is my advice. That is what the industry in Queensland have told me and I accept that. Nothing turns on this, but it is an interesting debate. But you have raised that point and, for what it is worth, I give you that. If you do not accept it, then do not accept it—it does not really matter. It is not germane to this debate.

Senator Bartlett, coming back to your question about Queensland, as I have said a number of times in this debate, I have an open mind. If there is a proposition that comes to me, I will have a look at it. Our goal is really to establish a proper forest industry—native forests, plantations, whatever—to provide jobs and to provide security for small communities and to provide for good conservation outcomes. That is what we are about.

I hesitate to try to give a one-line summary of the National Forest Policy Statement and the RFAs for fear that Senator Brown, as always, will absolutely misrepresent anything anyone says that does not happen to agree with his strange view on life. The purpose all started for the Commonwealth when the then federal government and then Senator Richardson, doing what he admits to doing quite cheerfully—whatever it takes—took this to get Greens preferences back in those couple of elections way back then. He came in, overrode state legislation and took a hands-on approach to forests through World Heritage listing and through international powers. I think everyone realises now that governments of any persuasion should not be able to use these debates on forests for political purposes. They were very successful for Richo—good luck to him as a politician; not much good luck to him as a person with Australia’s future in mind—but this legislation came about and one of the Commonwealth contributions was to say, ‘We will not do this; we will not override the proper managers of the state forests, but if we have to for some reason then we will pay compensation.’ That is putting it very simply—and I hate to try to give these simplistic views.

You disagree with our goal, Senator Bartlett, and that is fair enough. But let me explain that the government’s goal or belief was that you needed a native forest industry in Queensland. You needed one that would continue and continue sustainably. There were going to be big reserves set aside—and they have been in Queensland—and we believe that you can sustainably manage some part of the native forest. In fact, we think that in many instances you need to harvest the native forest to continue their growth and to provide for various forms of native flora and fauna that need a growing forest to exist. So we have the belief that you should be able and Australians should be clever enough to be able in this day and age to manage forest industries sustainably. That is our view and you do not agree with it—that is fine—but that was the government’s view. When Queensland said, ‘We are not going to agree with this and we are not going to allow it after 25 years,’ that is where we had a divergence of opinion, a non-meeting of minds. That is why we did not go into that. I repeat: my mind is open. If there is some proposition that you have some time, I will be very interested to hear about it.

Question negatived.

Senator BARTLETT (Queensland) (9.12 p.m.)—by leave—I indicated when I was in the chair that I would not be pursuing amendment (4) and, as I recall, we have already had a vote as to whether clause 6, which amendment (4) relates to, should stand as printed, and that was passed. So I think it is a bit redundant to go through amendment (4) again.

Amendments (5) and (6) relate fairly much to the same topic, although they are different parts of the Regional Forest Agreements Bill 2002. One is opposing a
schedule and the other is an amendment, so the questions will need to be put separately. But I will speak to those two remaining ones together. We oppose schedule 1 in the following terms:

(5) Schedule 1, page 11 (line 1) to page 12 (line 14), **TO BE OPPOSED.**

I move:

(6) Page 5 (after line 24), after clause 6, insert:

6A Enforcement of RFAs

For the avoidance of doubt, the Environment Protection and Biodiversity Conservation Act 1999 applies to and may be used for the enforcement of an RFA and this Act.

I made some comments on this matter before, but the minister was talking previously about the role of the federal government versus the role of states and this being a state responsibility. I accept for better or worse that lots of aspects to do with land management are a state responsibility—and I could probably make a decent argument it is for the worse, but that is not really relevant. But there is still quite clearly a role for the Commonwealth. I am sure the minister would acknowledge that is the case, but I think the extent of the role he envisages is far less than the Democrats envisage as necessary and also envisage as appropriate with the existing structure of the Commonwealth Constitution. We would like to reform that and increase the environmental head of power of the federal government, and we have long called for a referendum to that end. But, even under the existing Constitution and the existing laws, there is not just a potential for federal government involvement and oversight in forestry operations in some circumstances; the Democrats believe there is an obligation and a responsibility for federal government oversight.

The two amendments that I am speaking to relate to this very issue, because they talk about the application of the Environment Protection and Biodiversity Conservation Act, which passed in 1999 and came into effect in July 2000. This act, which was a significant improvement on the previous range of environmental laws, highlights, specifically demonstrates, the responsibility that the federal government has on matters of national environmental significance. That act has a number of triggers, a number of areas that trigger the federal government’s responsibility as areas of national environmental significance. What these amendments seek to do—and I will speak to one of them specifically that is proposed to go after clause 6, which is still in the bill—is to provide that:

For the avoidance of doubt, the Environment Protection and Biodiversity Conservation Act 1999 applies to and may be used for the enforcement of an RFA and this Act.

Similarly, the schedule at the end of the bill, which is actually an amendment to that EPBC Act, also seeks to ensure that aspects of the RFA Bill do not apply. In particular, part 3 of the act is not to apply to an RFA forestry operation. There were other aspects of the EPBC Bill when it was first passed in this place where the Democrats moved amendments to try and completely remove the existing scope for this sort of activity from the EPBC but we were unsuccessful because they were opposed by Labor and the coalition. This schedule, which amends the act, also again seeks to ensure that part 3 of the EPBC Act does not apply to an RFA forestry operation. Quite clearly the reason that act was brought in—and this was the rationale presented by the government as well which the Democrats supported—was to provide better national oversight, a better, more cohesive regime and stronger Commonwealth powers. There is no doubt at all that that new Environment Protection and Biodiversity Conservation Act substantially increases the powers of the federal environment minister. What these amendments attempt to do is prevent the federal government from handing that power away again, particularly in areas of national environmental significance.

The fact is that the people can undertake RFA forestry operations without being subject to the requirement for environmental approvals under part 3 of the act. That, we believe, is undesirable, particularly when you have the aspect that relates to world heritage and Ramsars that are mentioned there, but there are other areas of national environmental significance, particularly threatened species and endangered species that the fed-
eral government themselves have identified as an area of national environmental significance. It was this Howard government—under the previous environmental minister, admittedly, but I am certainly not aware of any moves by the federal government to repeal or wind back the EPBC. It would certainly be strongly resisted by the Democrats. Indeed, I should note that despite the occasional criticism by a few in the environment movement about the EPBC Act there is no move at all from them to try and repeal the EPBC, either. So I think we can assume that that act will continue as a stronger set of environmental laws, and over time there is a good foundation for it to be further strengthened. That is a key objective of the Democrats and I note a key objective of a unified range of environmental groups across the spectrum who have identified a range of areas where the EPBC Act could be improved. In doing that they have also acknowledged that in many areas it has been a significant strengthening of previous national environmental laws. That statement is on the record by every major environmental group in the country. It is a statement the Democrats welcome. We certainly take on board their suggestions for further improvements and will seek to pursue every avenue to make those.

Unfortunately, what we have here with this RFA Bill, which is tangential but also relates to the EPBC Act, is an attempt by the federal government to continue to walk away from its responsibilities in relation to areas of national environment significance where they operate under regional forest agreements. I have already mentioned in this debate my experience in northern Tasmania in seeing some logging activity in Mount Arthur that quite clearly was very damaging, that quite clearly breached the code of practice. It was conducted in an area that had an endangered species of crayfish. That should trigger federal government interest and the interest of the federal environment minister, because they have responsibilities for protection of threatened species on a national level. That has been recognised and acknowledged through their own legislation.

It just seems absurd that for some reason or other if somebody does something inappropriate but they are doing it as part of an RFA or under the guise of regional forest agreement operations then somehow that is not a matter of interest or importance to the federal environment minister but if they do something damaging to a threatened species anywhere else in the country it is. I have mentioned earlier tonight the orchid grower in Far North Queensland, probably in Senator Macdonald’s own region or up in the part of the world where he lives, whose activities in electrocuting spectacled flying foxes was stopped because it was, in part, impacting on a threatened species as well as impacting on world heritage values. Why is it that the activities of loggers in northern Tasmania that impact on an endangered crayfish do not trigger the same activity of interest from the federal government or do not trigger the same scope for legal action? That is the great unanswered question in relation to why there is this need for an exemption under RFAs.

I know the government says that the RFAs were done so properly that there is now no need for a second level of assessment through EPBC but, quite clearly, RFAs are a living document. They are a contract under which activities are carried out, and if those activities occur in a way which impacts on matters of national environmental significance then they should incur the attention of the relevant federal minister. There is no reason, from the Democrats point of view, why people who operate under RFAs should be able to get away with being exempt from the much stronger scrutiny and the much greater powers under the new federal environment laws when nobody else in the country can. It seems, again, quite an unfair exemption. It means that others who do other activities throughout Australia, including forestry activities, are subject to the requirements of the EPBC but not those doing it under an RFA. There seems to be no logic at all in that to the Democrats and we strongly oppose that aspect to the way that RFAs work. So that is the rationale behind the two amendments that I have spoken to.

Finally, I would just like to follow up on a matter that the minister raised. I have indicated why his previous statements about the federal government not being able to have a
hands-on approach are not correct. If you remove this exemption in relation to the EPBC Act, you have got your hands-on approach and you are taking it away. You are taking your hands off. That is a conscious action by the federal government. The minister also mentioned the levels of environmental wonderfulness of the RFAs. He stated that they were better than IUCN and WWF guidelines. Is he actually stating that the WWF supports the RFAs that are being put in place? That may not be what he said, but it would be easy for someone to take that implication from what he said and conclude that the WWF supports these RFAs. I would be surprised if the WWF do, but I would like him to indicate that seeing he has said that nobody ever challenges him on his statements, I would like him to at least clarify that remark that he made.

Senator O'BRIEN (Tasmania) (9.25 p.m.)—I struggle to understand the rationale behind Senator Bartlett’s argument on behalf of the Democrats in relation to amendment No. 6. As I understand, that amendment is to insert a new clause, clause 6A, which says:

For the avoidance of doubt, the Environment Protection and Biodiversity Conservation Act 1999 applies to and may be used for the enforcement of an RFA and this Act.

But clearly you have abandoned amendment 4 which would have omitted subclause 6(4) of the RFA Bill which says:

Part 3 of the Environment Protection and Biodiversity Conservation Act 1999 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.

That sounds like a delightful area for lawyers to argue about and there is an absolute contradiction between the two provisions.

Senator Bartlett—You are probably right. I should move amendment 4 as well.

Senator O'BRIEN—I then fully understand that they are the same and we have clearly argued our position in relation to that and voted against Senator Brown’s amendments which would have taken out all of clause 6, including that provision. What I referred to at that time, and I will do it again, was the provisions of the explanatory memorandum, which says:

The provision in the Bill that Part 3 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) does not apply to an RFA forestry operation has no new implications for industry or the environment, since it reflects Section 38 of the EPBC Act.

As I understand it, subclause 6(4) together with other provisions is intended to make clear the provisions in the Environmental Protection and Biodiversity Conservation Act, which the Democrats supported but which has an incongruous reference to the wrong act in that it is a reference to the 1999 act which did not come into law. That made that a problematic reference. So this provision and other provisions are designed to correct that and reflect the situation which was in the EPBC Act, which was supported by the Democrats. So I really do not follow the rationale behind amendment 4 which I think has the same or a very similar effect to the proposed new clause 6A. We will not be supporting that.

The remaining amendment, No. 5, is to delete ‘Schedule 1, amendment to the Environmental Protection and Biodiversity Conservation Act 1999’. When this bill was before the parliament in 1999, before the election, it did not contain the provisions set out in the schedule. At that time, the opposition made it clear that it intended to move an amendment which would have the effect of specifically providing an exception for properties included in the World Heritage list, or a wetland included in the list of wetlands of international importance kept under the Ramsar convention, or forestry operations incidental to another action whose primary purpose does not relate to forestry so that they would not be threatened by the provision of this legislation.

The government has effectively but in a different form picked up the intention of our proposed amendment, which we considered pursuing again with this bill but, on taking advice and being advised that schedule 1 to this bill has the same effect, we were satisfied and did not pursue that amendment. Saying that, I would have to say that we are completely supportive of the provisions of schedule 1. We believe that they have the effect that we desired would apply to this act, that those areas which are so protected by the
Environmental Protection and Biodiversity Conservation Act and other measures would continue to be protected and that there would be no confusion. So we will not be supporting the amendment, which would take those equivalent references, that is the references in schedule 1, from the act and potentially cause what we see as a problem of interpretation of the act which might have negative implications for World Heritage listed areas or Ramsar wetland areas.

As other senators have ranged far and wide beyond the principles of particular amendments, I feel at liberty to do likewise. I really wanted to pick up on some points that Senator Brown made earlier in the debate. One would come to the view, from some of the comments that he made, that somehow the opposition’s position in relation to this legislation was a surprise. Let me say this: not only was it not a surprise to Senator Brown in reality but it was no surprise to the public. During the last election Senator Brown made comments critical of the opposition’s position in relation to forestry and approached the opposition in relation to support for regional forest agreement legislation. The opposition advised the Greens and Senator Brown that we were committed to supporting this legislation. That was the position we took to the electorate very clearly. There was a policy launch of our forestry policy which included a specific commitment to support this legislation. So nothing that we have done in this chamber is inconsistent with the position that we took to the people at the last election, but it is certainly consistent with our refusal, directly made to the Greens during the election campaign, to bargain support for regional forest agreements against a preference deal. We rejected that.

Senator Ian Macdonald—But you still got the preferences anyhow.

Senator O’BRIEN—Senator Macdonald suggests that we got the preferences anyhow. We did receive some preference allocations in some seats, as did the government in others. In seats where there were no allocations, even on the basis of our specific policy position on forestry, I would have to say that we received a very significant proportion of Greens preferences. The point I am making is that we are not setting out in our position here anything different from the position we set out at the last election.

Senator Brown sought to make some political capital in relation to our refusal to support one of his amendments which he says would have had the effect of providing some compensatory measures to employees and contractors. Firstly, we express severe doubt as to whether it would have had that effect, and the provision was in our view particularly poorly drafted if that was the intention. But the reality is that, when one looks at the range of amendments that Senator Brown moved, one would have to say that the main concern was to ensure that the Commonwealth would be in a position at whim, on a month’s notice, to withdraw from regional forest agreements without compensation to anyone. You cannot have it both ways in this debate. If you want to play political games and say, ‘I’m going to try and position you on a particular point,’ you cannot then have another position in the debate that says, ‘But really I want a position where RFAs are at monthly peril,’ which is precisely what one of Senator Brown’s amendments would have done. It would have had the effect of saying that the Commonwealth had as of right the ability to withdraw from agreements that it had entered into on a month’s notice, with no grounds required for that action. That is quite an unacceptable position if the Commonwealth has entered into contracts. I wonder how effective such a law would have been.

Senator Brown said himself that the CFMEU was not returning his phone calls. I wonder why. Every action that Senator Brown has taken in relation to forestry has been designed to withdraw the resource on which the members of the CFMEU forestry division are employed. Why would they seek to have a conversation about an amendment which is purely designed for political posturing and not at all an expression of the real position of Senator Brown and Greens in relation to employment in the forestry industry? As I said before, this legislation is about protecting significant areas of forest in this country. I gave the example of my state
of Tasmania where 40 per cent of the land mass of the state is contained in reserves. Within the reserve system, 85 per cent of old-growth forest available in public forest areas is protected; it will never be logged. The remainder of that old-growth forest and a significant amount of regrowth forest will be available to employ people in the industry as contractors and employees. Whilst there have been some criticisms about the management of aspects of those operations, the reality is that without that certainty this industry does not have a future.

The opposition is about establishing a regime in which this industry has a future, in which investment decisions can be made and in which employment security can, insofar as economic circumstances allow, be maintained and, hopefully, enhanced. At the end of the day, this industry has the period of the first cycle of regional forest agreements to make the investment and the changes needed to use the resource that is available to them under the regional forest agreement provisions to develop downstream processing industries that use the forest, preferably mostly for sawn, peeled and other value-added forestry timber processes, and to minimise over the life of the agreement and into the future the need to woodchip and export woodchip. That might mean that at some stage we are talking about things like pulp mills and, subject to the appropriate environmental and renewable resource assessments, the use of forest timber waste for power generation.

I had drawn to my attention some of the material produced by the environment trust from Tasmania at the time of the Gordon below Franklin dispute and the damming of Lake Pedder. Lo and behold, one of the alternatives to increasing hydro power generation opportunities in Tasmania was biomass power generation. How times have changed. That is now not acceptable to the green movement. So many things do change; so many of these arguments that are from time to time acceptable to the green movement become unacceptable and those matters that were put forward to justify a position at one time become unacceptable when it does not suit in the future. I do not want to unnecessarily use time in this debate, but I thought I should take that time—and that is the only contribution I will make in this section of the debate—to respond to some of the comments that were made earlier.

**Senator MURPHY (Tasmania)** (9.39 p.m.)—I want to make a couple of points. I want to make sure of something, and the minister might like to nod to me if I understood correctly what he said before. The minister made a comment that the timber in Queensland was not suitable for woodchip exports. Is that correct?

**Senator Ian Macdonald**—That has been the case in the past.

**Senator MURPHY**—So the trees have changed in the last couple of weeks?

**Senator Ian Macdonald**—There are plantations.

**Senator MURPHY**—Let us exclude plantations. Let us deal with native forests.

**The TEMPORARY CHAIRMAN (Senator Calvert)**—Order! I know we are in committee but, Senator Murphy, you know how this place works.

**Senator MURPHY**—Sorry, Mr Chairman, I do apologise. I say to the minister and his officers that is not true. It is a fact—and they might like to check this—that a number of companies have sought to export woodchips from native forest timbers from Queensland over a long period of time. The companies concerned are Haines and Sons, North, which no longer has an interest in the forest industry, and Boral. Indeed, in respect of North, they were so keen that they took the steps to purchase significant amounts of land at the port of Brisbane for the purposes of setting up an export woodchip facility.

Let us deal with the facts. The reality is that the Queensland Timber Board decided that they did not want to export woodchips. That was my point earlier: there was significant debate in that respect and they were opposed to it. I hope Senator O’Brien will take note of this—I think he mentioned Senator Brown being opposed to the use of woodchips for the purposes of biomass energy generation. I am sure he would be interested in Premier Beattie’s position as of two weeks ago when he, on behalf of the Queensland state government, took a position to say that
Senator Ian Macdonald—Okay, I give in.

Senator MURPHY—You do not have to give in, Minister. You have a whole team of advisers there to scurry off and do a bit of research for you. I suggest that they get on and do it. I think these are important matters. It is not the fault of Senator Macdonald. He has to rely on his advisers, who are from within a national department, to advise him as to what the state of play is in this industry. If they cannot advise you correctly, Minister, I suggest you ask them a few questions. That is what you should do. It is not Senator Macdonald’s fault. But if his advisers cannot advise him correctly then he should put the acid on them, because these are matters of fact. If I am wrong, I will stand in my place and apologise for that, as I will apologise to those opposite.

Senator Lightfoot—You’re wrong. You ought to get on with the substance before the chair.

Senator MURPHY—I take Senator Lightfoot’s interjection, and I note his contribution to the debate thus far—negligible. What is important in respect of this whole debate is that, as I have said before, we have an opportunity here, as the national government of this country, to put things in place that will ensure that correct outcomes are achieved. That is why we should seriously consider all amendments, and those amendments that have no adverse impact on the bill should be included in the bill. If it is not the case, what are people trying to hide and what do people have to fear? Does the amendment make the bill unworkable? No. Does the amendment actually change the approach of the legislation? No. So why shouldn’t the amendment be included in the bill? These are two fundamental issues that we, as a parliament and as a Senate, should consider. Surely it is our public duty to endeavour to enhance and improve legislation that comes before this chamber. I can see no reason why we ought not do that in this case and why we ought not support the Democrats’ amendments. I would seriously urge the government to do so.

Senator IAN MACDONALD (Queensland)—Minister for Forestry and Conserva-
Insofar as Senator Murphy and other senators—apart from Senator Brown—are concerned, this debate has proceeded in a mature and adult way. Senator Murphy, I would just indicate to you that, if I have done something wrong, that is my responsibility and my fault and the buck stops with me. I do not really appreciate your attacking advisers and departmental officials who cannot take part in this debate. If you want to attack something I have said, attack me; do not attack others. Otherwise, I will get annoyed.

Senator Murphy—Stroppy?

Senator IAN MACDONALD—It is just simply unfair, Senator. You should attack me. If I say something wrong, I am the one who takes responsibility. I have absolute confidence in my advisers and my departmental officials.

Senator Murphy—Mr Temporary Chairman, I rise on point of order. Maybe I am incorrect here, but I would not endeavour to attack in any way the personal integrity, Minister, of your officers. They also rely upon advice from other sources. All I am saying is that there are checks and balances that ought to be had here. You rely on advice and that advice may come from a whole range of sources. Mr Temporary Chairman, my point is that I would not reflect on the personal integrity of those officers at all.

The TEMPORARY CHAIRMAN (Senator Calvert)—I think that is more of a personal explanation than a point of order, but you have cleared that up.

Senator IAN MACDONALD—If I am wrong on that issue that has absolutely nothing to do with this bill—

Senator Murphy interjecting—

Senator IAN MACDONALD—Senator Bartlett asked me a question. I indicated that I did not know a great deal about the Queensland position, because it is not germane to this bill. There is no RFA in Queensland. In an attempt to be helpful to Senator Bartlett, I gave him the benefit of my limited understanding. Having said that, I have spoken to the Queensland Timber Board, and that was my recollection of what they told me. I also put to you, Senator Murphy, that the quality of the woodchips is not sufficient and that, where it is, it is not in economically sufficient quantities for people to want to export. If people have applied to export woodchips, why hasn’t it happened? It has not happened because it was not viable. Nobody wanted it, or the quality that they did want was not there in sufficient quantity. You can tell me your view, that is my view, and we can have the debate. But it has absolutely nothing to do with this debate. You say one thing, I say another, and we could spend the rest of the night saying that and achieving nothing. I want to get back to the debate. I appreciate the benefit of your advice on these issues, I will pursue them further and we will get on with it.

I have explained the position on amendment (6) before, and I think Senator O’Brien very clearly explained the position as well. The EPBC Act actually provides that it does not apply to the RFAs. This provision simply confirms what the EPBC Act already says, and that went through this Senate a couple of years ago with the support of the majority of senators. It provided in its own act that it did not apply to RFAs. The provision in this legislation simply corrects what has become an unintended consequence of the fact that the previous bill was not passed. It referred to the Regional Forest Agreements Bill 1999. We are changing that to make sure that it does refer to this bill, which is the Regional Forest Agreements Bill 2002. That is the only reason it is in here, otherwise we would not be debating this.

You did raise the question suggesting that because it was not in the EPBC Act, the Commonwealth was wiping its hands of it. With respect, I suggest that shows that you really have not looked at what the RFAs say and what it is all about. The Commonwealth, in each RFA, assessed the state legislation and the forest management practices for the protection of endangered species. Through this assessment, the Commonwealth was satisfied that the legislation and practices of the relevant states provided for the protection of the species listed as endangered or threatened, including any species which may be listed in the future as endangered or threatened. The RFAs also provided for specific
commitments to protect priority species listed in the RFAs and to consult on priorities for recovery plans for rare species, forest communities and threatening processes.

Priorities can change in the light of new information and science. This is anticipated in the RFAs and the provisions apply to whatever species are listed at any time—past, present or future. So all of that is covered. The sorts of the provisions in the EPBC Act are actually covered in the RFAs. That is why Environment Australia felt quite comfortable to say in its act that it would not apply to RFAs—the same provisions already applied in the RFAs. If a state failed to protect or remedy an illegal or accidental breach of the protection of threatened species, this would be contrary to the state’s commitments in the RFA. The Commonwealth would then enter into the process outlined in the RFA to ensure that the state fixes that failure and meets its commitments. If that fails—including the dispute resolution mechanism—then the Commonwealth could terminate the RFA.

Senator, you raised a specific question in relation to Mount Arthur and the threatened crayfish. The state Forest Practices Board assessed the incident, along with the Tasmanian environment department. Environment Australia also investigated the incident and were satisfied that there were no threatened or endangered species in the area. The contractor was pursued for an oil leak from a drum in the harvesting area, but the suggestion that there was danger to threatened crayfish was not substantiated in the investigations undertaken by the Tasmanian environment department and Environment Australia.

Senator BARTLETT (Queensland) (9.55 p.m.)—I thank the minister for those responses. I did ask him another question in relation to the WWF. I would be pleased if he could put the answer on the record while I have time remaining.

Senator IAIN MACDONALD (Queensland—Minister for Forestry and Conservation) (9.56 p.m.)—Sorry, Senator Bartlett. What I said, and repeat, is that, if WWF do not support the RFAs, they should because of the significant benefits to the conservation and reserve system that result from the RFAs. Under the RFAs, we have nationally agreed criteria and they are 15 per cent of pre-1750 distribution of each forest tribe, 60 per cent of existing old-growth forest and 100 per cent if they are rare or depleted—these are going into the reserves—and 90 per cent or more of high-quality wilderness forest. That level of protection exceeds the IUCN criteria and also exceeds the WWF criteria. Did I say the Wilderness Society?

Senator Bartlett—No.

Senator IAIN MACDONALD—It is the WWF. I am informed that their criteria is 10 per cent of existing distribution of forests. While the IUCN reserve criteria are based on existing distributions of forests, the CAR reserves, which follow from this RFA process, are well in excess of the IUCN and the WWF standards. I am not making the allegation that WWF support this, although I say they should for the significant reserves that have been set aside. What I am saying, though, is that the standards that apply because of the RFA in relation to reserves exceed those standards that the WWF say are their criteria world wide.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Calvert)—The question is that schedule 1 stand as printed.

Senator BROWN (Tasmania) (9.59 p.m.)—I take this opportunity to respond to what the minister had to say about Mount Arthur. A number of independent scientists have been to the area and have looked at the calamity as far as the burrowing crayfish is concerned—a rare and endangered species. They are at loggerheads with the bureaucrats and the people in the environment in Australia who have found otherwise. The listening public may take whichever direction they can from a debate in which both sides are put. But I have been there and I have seen the breaches of the Forest Practices Code in Tasmania which are involved, as have Senator Murphy and Senator Bartlett. But it is not going to make any difference. The problem here is that a massive perpetration of the lie that the regional forest agreements are going to protect the environment according to the parameters the minister just read out is obvi-
ous to any independent observer and to many scientists, but it does not matter.

The important thing about the Democrats amendments, as with the Greens amendments, is that they have tried to allow for scrutiny of this process in the future by the parliament. The very fact that that is being denied by the government and the Labor Party points to the way in which the independent arbiter—the watchdog of the people—the parliament itself, is being removed from the scene as far as watching over the forest environment in the future is concerned. The teeth are being extracted from the federal ability to protect the national interest in forests, and the responsible overview of the parliament for the more than $300 million that is going into the logging industry through this process is also being removed by the Labor Party. Earlier tonight we saw the Labor Party vote against the Greens amendment to secure the jobs of workers in the industry.

In a way the travesty here is that we have the plantation establishment in Australia to make all this debate unnecessary, to supply all of Australia’s wood needs and to totally remove the bulldozers and chainsaws from the native forests. But that is not going to be done because of the power of the profit making of the industry which has Labor backing for this Howard government prescription. The Democrats amendments are very worthy—I support them—but, as with the Greens amendments, they are about to be voted down by the combined weight of the Crean opposition supporting the Howard government and the big end of town against the interests not only of environmentalists and the economic benefit to the community but also of the workers in the industry.

Question agreed to.

**Senator MURPHY (Tasmania)** (10.02 p.m.)—I move amendment (1) on sheet 2457:

(1) Page 8 (after line 5), after clause 10, insert:

**10AA Establishment of RFA Breach Monitoring Authority**

The Minister must establish before the expiration of two months after the commencement of this Act an Author-

10B Function

(1) The function of the Authority is to investigate alleged breaches of RFAs.

(2) In carrying out its function the Authority must act in such a way as to maintain public confidence in the independence and integrity of its investigations.

10C Duties

(1) The Authority’s duties are:

(a) to receive any written notifications of alleged breaches of an RFA;

(b) to interview persons lodging notifications of an alleged breach of an RFA;

(c) to interview such agents as the Authority considers appropriate of a corporation operating in the area where the alleged breach of the RFA under investigation occurred;

(d) to hold public hearings into the alleged breach where the Authority considers it appropriate;

(e) to require persons lodging notification of an alleged breach of an RFA to provide full particulars of evidence of the alleged breach;

(f) to inspect the site of the alleged breach;

(g) to appoint experts to advise the Authority on matters where it considers it requires expert advice;

(h) to report the findings of its investigations to both Houses of the Parliament.

(2) The Authority is not to receive or investigate notifications of an alleged breach of an RFA which are of a frivolous or vexatious nature or lacking in substance.

10D Constitution of Authority

(1) The Authority is to consist of 5 members;

(a) one member nominated by the Australian Conservation Foundation;

(b) one member nominated by the Australian Council of Trade Unions;

(c) one member nominated by the Department of Agriculture, Fisheries and Forestry;
(d) one member nominated by the Department of Environment and Heritage; and

(e) one member nominated by the National Association of Forest Industries.

(2) Members of the Authority are to be appointed by the Minister.

10E Chair and Deputy Chair

(1) There shall be a Chair of the Authority who shall be a member elected by the Authority.

(2) There shall be a Deputy Chair of the Authority who shall be a member elected by the Authority.

10F Administrative Support

The Authority is to be provided with all necessary administrative support including accommodation, staffing and office facilities by the Department of Agriculture, Fisheries and Forestry.

10G Powers of Authority

The Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

10H Remuneration and Allowances

Members of the Authority shall be paid such sitting fees and allowances as shall be determined by the Remuneration Tribunal.

As I have said previously, this amendment is about setting up a process that will keep the states honest and keep the states to their side of the bargain.

I want to deal with one very important issue quickly. I heard the minister say, ‘We don’t have the constitutional power to do this.’ This is not about whether we have the constitutional power. I accept that, under the Constitution, the states have the right in respect of land management practices. But I am not proposing to enforce upon the states anything that would change their current land management practices. I am saying that, as part of the regional forest agreement, the state and the Commonwealth have agreed upon a range of matters. I am proposing a process that will allow the Commonwealth to monitor the states and territories in respect of what they have committed to. I have not proposed in this amendment any new regime in respect of land management, any new criteria in respect of the regional forest agreement or any other criteria that might constitutionally breach the rights of the states.

I will proceed to demonstrate why I believe this is an important amendment. I want to go back to 1995 when we had woodchip export controls in place. The purpose of my doing this is to demonstrate to the Senate the reason we need to have a monitoring process in place—that is, a monitoring process that has some teeth and some capacity to actually get out there and do some inspections.

I now want to go to the Woodchip Export Monitoring Unit report of 1995. Because time is limited, I want to be brief. This report goes to a number of factors with regard to breaches of the then, if you like, Forest Practices Act. On page 12 of the 1995 Woodchip Export Monitoring Unit report, it says at 4.1:

On August 25, 1995 North Ltd wrote to the Minister for Resources and issued a media statement advising that the company had inadvertently obtained pulpwood for export as woodchips from two separate logging coupes which were partly within the National Estate areas not approved for woodchip export operations.

The report goes on to say:

On August 25, 1995 North Ltd wrote to the Minister for Resources and issued a media statement advising that the company had inadvertently obtained pulpwood for export as woodchips from two separate logging coupes which were partly within the National Estate areas not approved for woodchip export operations.

I now want to go to the Woodchip Export Monitoring Unit report of 1995. Because time is limited, I want to be brief. This report goes to a number of factors with regard to breaches of the then, if you like, Forest Practices Act. On page 12 of the 1995 Woodchip Export Monitoring Unit report, it says at 4.1:

On August 25, 1995 North Ltd wrote to the Minister for Resources and issued a media statement advising that the company had inadvertently obtained pulpwood for export as woodchips from two separate logging coupes which were partly within the National Estate areas not approved for woodchip export operations.

The report goes on to say:

In addition, Forestry Tasmania—the keeper of the realm in respect of the public forests in Tasmania—advised the Department of Primary Industries and Energy on 5 September 1995 that it had inadvertently supplied North with a small tonnage of pulpwod from a non-approved National Estate area in the state forest which adjoins the Douglas Apsley National Park.

That is how good they were going. The Woodchip Export Monitoring Unit concluded that North, by exporting woodchips from the three National Estate areas, had breached a condition of its export licence.

I will now turn to a letter from the Commonwealth Department of Primary Industries and Energy to me dated 21 May 1998, which states:

Dear Senator Murphy,

As you requested at the hearings of the Senate Rural and Regional Affairs and Transport Legislation Committee on 26 February 1998, I am enclosing a copy of the report to the Woodchip Ex-
port Monitoring Unit (WEMU) by the Tasmanian Forest Practices Board on compliance by the Tasmanian hardwood woodchip exporters with aspects of their licence conditions between—note this—1 July and 8 November 1997.

I will now proceed to read the number of breaches that took place within that short period of time. Importantly, it should be noted that the assessments in respect of breaches covers only 15 per cent of the total harvesting operations in the state at any one time. This letter was signed by Mr Bob Schufft and dated 21 May 1998. Licence condition 3(b), which is set out in this report—and the departmental officers and the minister can check this—states:

The exporter shall take all reasonable steps to ensure that all operations comply with the State Forest Practices Code and management plans.

Then we go to possible breaches. The report states:

**Location:** Chain of Lagoons ...  
**Date of operation:** Jan 97—Aug 97 ...  
**Alleged breach:** Tree felled and extracted in class 3 streamside reserve. Streamside reserve not marked by—

the contractor is mentioned, but I will not use the name—
or nominated contractor as specified in THP—that is, the timber harvesting plan—

THP amendments not signed by landowner.

That means that the contractor amended the timber harvesting plan illegally. The report continues:

**Action:** Under investigation by the Forest Practices Inspector.

The next breach, as stated in the report, is:

**Location:** Chain of Lagoons ...  
**Date of operation:** Dec 1997  
**Alleged breach:** Contractor ... commenced harvesting operation prior to Local Government development application appeal period had expired. Contractor had not complied with THP fauna prescription.

**Action:** Subject to Resource Management and Planning Appeal.

The report continues:

**Location:** Cluan Tier  
**Date of operation:** January-March 1998  
**Alleged breach:** Machinery and trees felled within streamside reserve. Subsequent to harvesting
operation the landowner appears to have cleared a streamside reserve.

**Action:**
NFPs have terminated contractor ... breach.

| Location: | Dans Rivulet, eastern Tiers. Pyengana ... |
| Alleged breach: | Damage to cultural heritage values ... Possible harvesting beyond THP and PP boundary is also being investigated. |

| Location: | Irishtown Smithton ... |
| Alleged breach: | Crossing class 4 watercourse at point not marked on THP. Pushing debris into class 4 stream. Notice issued under section 41(1) of the Forest Practices Act not complied with. |

| Location: | Ben Nevis |
| Alleged breach: | A dozer illegally crossed a class 4 and class 2 watercourse and went through a wildlife corridor. |
| Action: | The Forest Practices Board recently inspected damage and is continuing its formal investigation. |

| Location: | Western Creek ... |
| Alleged breach: | Previously reported to WEMU. Harvesting without an approved THP on private property; harvesting without an approved THP on State forest; breaches of the existing THP. |

The previous action was that complaints were laid against the contractor. The report continues:

| Location: | Ellendale ... |
| Alleged breach: | Harvesting without an approved THP. |

| Location: | Coupe Mt Foster ... |
| Alleged breach: | Ten trees have been felled within a streamside reserve on a class 3 stream. The streamside reserve had been increased to 40m in the THP. |

| Location: | Biralee |
| Alleged breach: | Machinery incursion of swampy area contrary to point 4.3 of the Forest Practices Code and lack of consideration of threatened species. |

| Location: | Colebrook ... |
| Alleged breach: | Harvesting within an approved THP. |

| Location: | Coupe Wielangta ... |
| Alleged breach: | Harvesting within a class 3 streamside reserve. |

| Location: | Elderslie |
| Alleged breach: | Snigging within class 2 streamside reserve. Additional crossings on class 4 stream. Drainage inadequate. Rubbish at landing. Felling within class 2 streamside reserve. |

| Location: | Eastern Tiers ... |
| Alleged breach: | Wheel ruts created by logging by-pass culvert and direct water flow into a class 3 stream. Culverts partially blocked by harvesting operation. |

| Location: | Guildford |
| Alleged breach: | THP approved after start date on THP. Duplication of snig tracks between stream... |
crossing and central landings. Crossing of class 4 stream without temporary crossing. Streamside reserve widths less than prescribed in places.

........
Location: Circular Head ...
Alleged breach: Failure to cease operating in conditions too wet for Forest Practices Code standards. Poor or no landing restoration.

........
Location: Inglis ...
Alleged breach: No wood was sourced from the area in 1997. Older THP in which problems were detected in snig track restoration, landing restoration and treatment of streamside reserves.

This is what the report said:
Action: Beyond time limit for legal action.

........
Location: Goulds Country ...
Alleged breach: Some areas prescribed as selective harvesting have been clearfelled.

........
Location: Gowrie Park ...
Alleged breach: Adherence to prescriptions for selection and retention not as prescribed. Snig track not drained. Inadequate road drainage.

........
Location: Coupe Roses Tier ...
Alleged breach: Non-compliance with landing restoration conditions in THP; some sections of rutting not filled in.

........
Location: Coupe EP 061F
Tenure: State forest ...
Alleged breach: A landing was found on the road where the THP stated landings were not to be constructed.

Action: ... Warnings issued to parties involved.

........
Location: Mara Creek ...
Alleged breach: Harvesting within a class 3 streamside reserve.

I could go on, but let me say this: if ever there was evidence to demonstrate the need for having in place a process for monitoring the activities of the state authorities in meeting the criteria set down in a regional forest agreement, this alone—and I have not come to 1999 yet, and I will take the opportunity to do that—is condemnation enough. This alone indicates that we should put in place this type of amendment.

Senator BARTLETT (Queensland) (10.17 p.m.)—I will not speak at length on this because we are now in Senator Murphy’s time and I am keen for him to be able to not just contribute as much as he can but also ask further specific questions of the minister. I put on the record the Democrats support for this amendment. For those who have not ascertained what it is about, Senator Murphy, in reading out a selection of breaches that have occurred, was doing that to highlight the point that we do not have an adequate mechanism for monitoring and assessing those and for ensuring that proper follow-up action occurs as well as ensuring, obviously, the prime aim: that they stop, that they do not continue to happen. The real story behind a lot of what Senator Murphy has read out is not just highlighting the number of breaches but the very fact that they are continuing to happen time and time again. It really calls into question the adequacy of the monitoring that has occurred to date and the adequacy of follow-up enforcement action. It is no good after the effect to say, ‘Oh yes, that was a breach,’ but to not really do anything in a broader sense about trying to prevent it happening again.

The amendment Senator Murphy has moved is for an RFA breach monitoring authority to be established by the federal minister to receive any written notifications of alleged breaches and, basically, to follow them up. That authority would consist of five members, and I think it is a fairly good mix of membership that Senator Murphy has
chosen. The members would be appointed by the minister but nominated by different organisations: the National Association of Forest Industries, the federal Department of Environment and Heritage, the Department of Agriculture, Fisheries and Forestry, the ACTU and the Australian Conservation Foundation.

I think it would be a well-balanced tribunal. It would ensure that there was proper investigation of alleged breaches of RFAs. This is a federal act so we have an ongoing federal responsibility. It is an act that will lock the Commonwealth in to potential significant compensation, and that has financial consequences for the government. This mechanism that Senator Murphy has put forward would provide an approach and, to some extent, an apolitical approach as well. Two of those organisations are federal departments and obviously ACF, ACTU and NAFI might be seen as having their own political approach to things but, certainly in terms of a party political partisan approach, it would at least remove the breach monitoring authority from that arena, which is one of the concerns that others have raised during the course of this debate. There is always some substance in that, and this is a good way of addressing it. It would provide a place—and we have heard a number of times from Senator Murphy the difficulties he has had in getting adequate assessment or monitoring of alleged breaches that occur—and I think it would be appropriate in relation to this.

I put on record the Democrats support for this amendment. I will not speak much further to this amendment tonight to allow others to more fully address Senator Murphy’s amendment and also to allow Senator Murphy himself to put further details on the record about the range of breaches and the problems with them. The fact that I am not contributing further or that I might listen to the debate in my office should be taken as no indication that I am not interested in the issue or not participating in the debate.

To that point, I wish to correct the record in relation to some allegations that were made in this chamber during the debate yesterday—maybe it was the day before; it probably was the day before—about the Democrats and our approach to this bill. I try to operate in a reasonably cooperative way with other senators and other parties, regardless of whether or not we might agree with their approach, and I try to be reasonably nonabusive about it most of the time. All of us in areas that we can get particularly passionate about might get a bit more carried away, and I understand that, and I do understand the passion that some people have for this particular policy issue. But I do not think it serves much assistance, not just to the debate in this chamber but to the public debate, to gratuitously attack people, particularly when it is the Democrats being gratuitously attacked.

Senator Brown, a number of times in this place a couple of days ago, cast specific aspersions on the Democrats about our not being committed to this issue because we were not present in the chamber for some periods of time. So I think it is important to put on the record that the Democrats have had four different speakers on this bill in the second reading stage. We did seek to move an amendment last sitting week to refer this bill to a committee for full consideration. It was my amendment in this chamber, prior to the federal election, that prevented the bill from being able to be exempted from the cut-off order and thus being able to be brought on for debate before the election.

We have, of course, moved amendments here. I have, in part, not contributed more fully in some stages because I have been waiting for the Democrats’ own amendments to come on before expanding on those and seeking to pursue some other issues. There was one matter in particular in relation to Productivity Commission issues and competitive neutrality principles that I would like to explore further with the minister; but, because of the time restrictions that we now have upon us, I will not be able to do that. I did raise those to some extent in the second reading debate, but I have not been able to pursue them in the committee stage. I did go to the relevant estimates committees for both the forestry department and the Productivity Commission—two separate committees on two separate days—and followed up some
aspects of those issues with the government or the departmental representatives. I would like to follow those up further with some comments to the minister on the record here, but I shall not do that on this occasion because of the time restrictions now upon us.

However, I do reject categorically any assertions—and those assertions were quite clearly made and repeated a number of times—that the Democrats were not sufficiently interested in this issue or sufficiently committed to pursuing our approach of trying to prevent the bill’s passage as well as to move amendments. Along the way, of course, we have supported amendments that others have put forward, as we are supporting those of Senator Murphy and may well support at least some of the Labor Party amendments when we get to those.

But I do not think it helps ongoing cooperation between parties in this place to be deliberately attacked and deliberately misrepresented. Senator Brown well knows the contribution we have made to date and certainly, if he has had any desire for us to perform a particular role in a strategic sense, he has not communicated that to us—or, I might add, have any of the people in the group that were working with him; and, if they wish us to do that, it might be handy to let us know. Senator Brown has been absent for the last couple of hours, but I am not going to suggest that that in any way is a reflection of his lack of interest in this matter. I think it is quite appropriate that people also have to do other things here.

Also, I recognise the reasonable assumption that the Democrats and Greens have taken virtually identical approaches to this bill pretty much right back to 1998 and that Senator Brown would be able to enunciate a position similar to ours. Without necessarily associating ourselves with every single comment he has made, the general approach he has taken to the content of the bill and the amendments, when he has been addressing those, is one that we support, and so we have been quite happy to allow him to present those views. But when it gets to public attacks on the Democrats in the Senate to such an extent that we are getting people ringing up our office and abusing us for supporting the RFA bills because of what they have been hearing in the debate, then I do not think that is terribly helpful and I do not think it would be helpful for future conduct of debate in this place either. So I simply think it appropriate to correct the record in relation to that, even if it is done a couple of days later.

The Democrats’ longstanding commitment to this issue is public and well known, as are our attempts to get an outcome that, sadly, we are not going to be successful in getting. In some respects I guess we have managed, through a variety of circumstances, to prevent it passing for some four years, which is not too bad. Sadly, now it looks like we will fail in that objective, although there is still some scope for some improvement—and, again, I do urge other senators to support the amendments that are remaining. The Democrat amendments and Senator Brown’s amendments have obviously not seen favour for various reasons, but I hope that Senator Murphy’s amendments and some of those of the ALP at least may still find favour. Obviously, we will still be following those and indicating our views when they come up, if necessary.

But, beyond that, I think it is appropriate to clearly reiterate the Democrats’ position and ongoing commitment to this issue and also to signal that, whilst the bill may pass, our interest in the issue will not disappear with that fact. I am sure—as with Senator Brown and I am sure Senator Murphy and, from differing perspectives, other participants here—we will continue to follow up the ongoing operations of RFAs. I do not think by a long shot it is the last we will hear of this issue in this chamber, and nor should it be. It is an important issue. The Democrats do not support the approaches being taken by the government and the Labor Party, but clearly they have the numbers. In some ways they have had the numbers for ages and still this legislation has not got through; but this time it has or will, and that is a political reality. That might not be a desirable reality but it is a political one, and so we will simply continue to work to highlight the fact that that is a bad decision.

As Senator Brown said in a comment that I did agree with, public opinion will win out
in the end, as it often tends to do. It can take a long time, but the sooner it does the better because obviously in the meantime damage continues to get done to the environment and to various communities. But I do think public opinion will win in the end and there will be significant improvements from the current processes that are followed. Obviously the Democrats, in conjunction with others, will continue to do all they can to bring that day about sooner rather than later.

Senator Murphy (Tasmania) (10.29 p.m.)—Firstly, I would like to explain a few things about my amendment and to allay the question in Senator Bartlett's mind about the cost to the Commonwealth. It is not my intention for this to cost the Commonwealth anything.

Senator Ian Macdonald—Now you're talking.

Senator Murphy—Exactly. We have a Regional Forest Agreement Monitoring Unit that is sitting on its hands with not much to do. If you read my amendment—clause 10F, Administrative Support—it would be my intention, were my amendment to be adopted, that a body like the Regional Forest Agreement Monitoring Unit would have the responsibility for receiving complaints and for vetting complaints. The authority would meet following consideration of matters referred to it. Through this process, I am proposing that there be a mechanism for people or bodies to make allegations of breaches of the regional forest agreement or acts or codes associated with the regional forest agreement. That is not in place at the moment.

The minister has said to me previously, 'Go to the state authorities.' That is true, you can—but I will come back to that in a moment. It is simply not working and I will endeavour to demonstrate to you, Minister, and to other senators why it is not working. The reason I read out a number of those breaches which occurred a few years ago was to demonstrate that it is not working, that there is no process. Likewise, when I have endeavoured to bring those breaches to the attention of either the state or AFFA, including Rob Rawson—correct me if I am wrong but I think he was one of the senior figures in forestry in AFFA; he has now moved on or retired, I am not sure—there was an incapacity to do anything. I want to ensure the Commonwealth has the capacity to monitor what the states are doing. If breaches are brought forward to, for instance, the Regional Forest Agreement Monitoring Unit—who, in my view, has little role in this process—that unit could easily deal with these matters. Any alleged breaches with some substance of evidence can be brought forward and the unit would speak to the chairman and the deputy chairman of the authority about convening a meeting and looking at what should be done to investigate what has been alleged. That is a very simple, straightforward process. It does not impose any new criteria on the states. It has no impact from a constitutional point of view. This is a little insurance policy for the Commonwealth to ensure that it gets what it signed up for in the RFA, gets what it paid for in terms of the millions of dollars that it parted with. It is as simple as that; there is nothing untoward here. This is just to give the public involved in this debate—the public whose forests we are talking about—some confidence in this whole process, confidence that the Commonwealth has not ejected its responsibilities at the signing of the regional forest agreement. That is what this is about.

I read out some alleged breaches. Let me come to the question of whether some of the matters that I have alluded to constitute a breach of the RFA. I refer to a letter dated 24 February 1999 signed by Alan Grant, Assistant Secretary, Fisheries, Forestry and Industry Division. It was sent to Andrew Snedden, Secretary of the Rural and Regional Affairs and Transport Legislation Committee. It was in response to a number of questions I asked on 16 February 1999. I go to one question in particular. The answer was:

The RFA could potentially be breached if the undertakings and commitments made in the RFA are not met. Under the RFA the Commonwealth and the state agree on the state systems and processes which will be followed (and in some cases improved) to provide sustainable management of forests in the region. Such state systems may include provisions which prohibit certain classes of logs from being used in a certain manner and the principles under which ESFM, ecologically sustainable forest management, will be developed. In
these circumstances, if a state agency is not complying with state legislation the relevant forest management plan or the agreed system for delivering the ESFM or is allowing non-compliance to occur a breach of the RFA may eventuate. The RFAs set out the reporting, monitoring and consultative obligations to be met by both parties implementing the agreement. Possible breaches of the RFA could be identified by any of the reporting processes in the five-yearly review of the RFA or by any third party providing evidence to the Commonwealth or state at any time.

I emphasise that last part because that is in fact not correct. I have endeavoured to do that. As you will recall, Minister, I actually wrote to the RFA Monitoring Unit and I endeavoured to raise what I believe were breaches of the RFA. I invited the Regional Forest Agreement Monitoring Unit to visit Tasmania—not take my opinion that a breach existed—and to inspect. They said, ‘We cannot do that, Senator. We cannot inspect. We have to talk to the minister.’ So I said, ‘Okay, you talk to the minister.’ I waited two or three weeks and I then wrote to them and asked them why they had not responded. I got a letter back from the minister who asked whether I had any evidence. I wrote back to the minister and I invited the minister to come down.

That was back in 2000—no response. Last year I had officers from the department come and view videotapes et cetera. Shock, horror was the description. ‘Something has to be done. Why do you think they are doing this, Senator? Why did you think they are doing this to the forests? Why do you think they are treating the resource in this way?’ A good question, I thought. I had my own opinion about it, but I was hoping they had the capacity. They said they would go away and talk to the minister and see what they could do. There was no reply. Here we are, 14 March 2002, and there has been no reply. That is why we need to have an insurance policy for the Commonwealth. That is why we need to have this bill amended in such a way that it allows the Commonwealth of its own free will, as a result of receiving information and allegations, to conduct an inspection without having—as is stipulated in the regional forest agreement—to give the state three weeks notice and go through the whole dispute resolution process, which is totally ludicrous. You get down there and you get the sanitised visit around the forests—one that says, ‘Isn’t this a marvellous job?’ It is not one that will tell you even in the Forest Practices Board: Annual Report 2000-2001 that there have been 37 notices issued with but one prosecution. And who would that be but the keeper of the realm in respect of the public forests in Tasmania—none other than Forestry Tasmania itself—which was fined a measly $1,000 under section 47B of the act.

I have made a number of assertions. I just wish there was the opportunity for some of the officers of Forestry Tasmania and other public sector bodies to be able to come forward without fear or favour and give some of the evidence that they have given to me. That would even more clearly identify the need I am talking about. In all these assessments, I reiterate what I have said previously about the forest practices audit process and what I read into the Hansard. Good old Forestry Tasmania, despite being fined $1,000 for all the things it has done, if you go to the back of the annual report of the Forest Practices Board, seems to get the 100 per cent tick. It has not really done a thing! We know that not to be true.

I want to come to a letter to the editor in today’s Mercury by the Chief Forest Practices Officer, Mr Graeme Wilkinson, who alleges that I have made these accusations, which I have, and that if I have got any evidence, which I have, I should produce it. I took the opportunity to write to Mr Wilkinson today in response to his questions about that. I have asked him a number of questions and I will report the result of those inquiries to the Senate at some point in time. The sooner Mr Wilkinson answers my letter the better, and we will proceed to identify some of the very serious breaches that have taken place in Tasmania. Not for want of being cynical, the first sentence on page 18, ‘Forestry, Timber and Paper’, of the Industry Development Plan 2001, Tasmanian Government, says:

South African company, Kortas Veneer and Plywood has undertaken a study into the feasibil-
ity of a 120,000 cubic metre veneer mill in Tas-
mania.

I would like to convey to the Tasmanian
government that Kortas Veneer is not a South
African company; it is indeed a South Ko-
rean company. To me this raises the question:
do these people really know what they are
doing? This is a public document and I am
sure Kortas Veneer would not be overly
happy, given that they are South Korean, at
being called a South African company. Nev-
ertheless, let me further address this issue in
respect of breaches. This is a letter dated 6
March 1998 to Mr Paul Wilkinson, Envi-
ronmental Officer of the Forest Practices
Board, from the Managing Director of For-
estry Tasmania, Evan Rolley. The letter says:

Thank you for your letter of 26 February 1998
in which you seek confirmation that requirements
under clause 6 of the 1997 woodchip export li-
cences have been met in respect of crown land. I
am pleased to confirm that all relevant harvesting
operations on crown land during the period 30
June 1997 to 8 November 1998 were sawlog
driven.

It does not quite gel with what I read out
earlier. This is a public document. This came
from what was formerly AFFA, DPIE, so
you can get this and do all the checking.

(Time expired)

Senator O'BRIEN (Tasmania) (10.44
p.m.)—I was interested in the comment of
Senator Murphy that this would not cost
government anything. It did not seem to me
to stack up. I am not sure how much the gov-
ernment spends on the RFA monitoring
authority, but the implication of Senator
Murphy’s suggestion was that we should
scrap that and go with this. Maybe I did not
understand him correctly, but that is what I
thought he said.

Senator Murphy—What’s that?

Senator O’BRIEN—The RFA moni-
toring authority.

Senator Murphy—The monitoring unit.

Senator O’BRIEN—Unit, sorry. I do not
know how much that costs to run. From what
Senator Murphy is suggesting, perhaps more
should be spent on it.

Senator Murphy—Five people there; I
don’t know what they do.

Senator O'BRIEN—Five people.

The TEMPORARY CHAIRMAN
(Senator Forshaw)—Order! You might ad-
dress the chair, Senator.

Senator O’BRIEN—Well, we have been
a bit relaxed in this debate, Mr Temporary
Chairman, and I guess we have become ac-
customed to those latitudes. What we have
here is a body which will be constituted of
five appointed members who shall be paid
sitting fees and allowances determined by
the remuneration board. I am not sure how
often they would be required to meet. Apart
from the clerical administrative side which
would be performed by AFFA and come out
of AFFA’s budget—and I do not know how
much that would cost but perhaps not an in-
significant amount out of AFFA’s small
budget—to meet the terms of this amend-
ment this body of five would:

… interview persons lodging notifications of an
alleged breach …

They would:

… hold public hearings into the alleged breach
where … appropriate;

They would:

… inspect the site of the alleged breach;

They would:

appoint experts to advise the Authority—
one assumes at cost to the authority, and then
they would make some determination, one
presumes and report the findings of their
investigations to both houses of the parlia-
ment. At that point their function would end.
I take it from Senator Murphy’s nod that that
is the extent of the role of this authority.
These five people who are appointed, who
are paid sitting fees and allowances—the
cost of travel and accommodation, meals et
cetera, transport when they are in the state
that they are investigating—would then pre-
pare a report which would be given to the
parliament. My guess is that is about half a
million dollars, conservative.

Senator Ian Macdonald—Very conser-
vative.
Senator O’BRIEN—It is suggested that I have grossly underestimated the cost. Half a million dollars per year is not an inconsiderable amount of money for this body. It might be made by scrapping a unit which apparently could perform this function now, but the complaint that I understood Senator Murphy to be making was that they refused to or they have been directed not to by the minister. I do not know of any impediment that would exist for the RFA monitoring unit that would not exist for this authority. One presumes it can only operate with the cooperation of the states and the corporations. It would not have any powers or functions of the parliament. It would not have any power to compel attendance, unless we are going to amend the proposal before the chair in some way. I am really looking at the amendment as it is proposed. At the end of that it would bring reports such as the report that Senator Murphy referred to earlier, setting out whether they were 37 breaches or 37 alleged breaches of the—

Senator Murphy—Thirty-seven notices issued.

Senator O’BRIEN—So they were allegations that there were breaches and they were being further investigated, as I heard Senator Murphy’s comment. Presumably something else happened in relation to those things—or maybe not. Perhaps that is the nature of Senator Murphy’s complaint. That may be a fair complaint. But at the end of the day all this unit will do is report to the parliament.

On the other hand, the opposition will be moving an amendment for a joint parliamentary committee to review regional forest agreements:

to examine each RFA annual report and RFA review report …

and:

from time to time to inquire into and, as soon as practicable after an inquiry has been completed, to report to both Houses—

that is both houses of parliament—

on the extent to which regional forest agreements have—

and there are a number of points there and, I believe, sufficient breadth or depth of inquiry subject to encompass the question of examination of breaches of regional forest agreements. Yes, the parliament operates at a cost, but why should we spend, conservatively, half a million dollars and go through this process when some of the material is already available and when, in my view, this is a matter which ought be scrutinised by the parliament if allegations are made and in my view will be scrutinised by the parliament whether this amendment—my amendment—is carried or not? I really think that we have to accept that whilst there are concerns we have to come up with the most constructive way of dealing with them. It is the opposition’s view that the joint parliamentary committee approach is superior to the establishment of an RFA breach monitoring authority, considering that it will not do any more than report to the parliament and the parliament can make its own inquiries any way and considering that there is an RFA monitoring unit which could perform some of those functions now without setting up a body which one would suspect would be more likely to be political than officers of the department.

It may be that what Senator Murphy is suggesting is that the unit is being politically nobbled. I would hope that is not the case, but one would have thought that one way of pursuing that matter would be to pursue it at the estimates. Senator Murphy is at the estimates from time to time and I would have thought that that matter could be and should continue to be pursued at the estimates if that is the complaint. I accept that Senator Murphy’s concerns are genuine, I accept that there are matters which warrant inquiry from time to time, and I also accept that the role of the parliament might well be, from time to time, to say to states and to the industry, ‘We do not think that there is a fair dinkum attempt to operate under the forest practices arrangements and codes which have been promulgated to apply to the industry and which are the basis of regional forest agreements.’

In summary, we do not believe that this amendment is the best way to deal with this matter. The government may prefer it to our amendment and may support it on that basis,
but that is a matter for them. We are of the opinion that our amendment is superior in directly bringing the parliament into contact with these issues and, in addition, to pursuing the RFA Monitoring Unit to ensure that if there are deficiencies in the way that it is performing its job they are corrected.

Senator BROWN (Tasmania) (10.54 p.m.)—I support this amendment because it is a good one. It has the great advantage of ensuring that there is an independent authority outside the states. The states have an established record of undue interference by sectional interests. This has led to the notification of serial breaches that Senator Murphy has so cogently brought before the house tonight and that neither the government nor the opposition have satisfactorily answered. What you do get in the tenor of the opposition’s answer are further efforts to shepherd the industry, to protect them, and to take away from the parliament its independent opportunity at federal level to oversee these breaches at state level. With a fair deal of patronising, Senator O’Brien says that if there are breaches brought to the attention of the parliament we could actually say to the states that we do not think that there is a fair dinkum attempt to really implement the Forest Practices Code involved here. That is going to set them back in their tracks, isn’t it? All that is going to do is send everybody in the industry shortcuts to, naturally, foster the profit line as against their obligation to implement the Forest Practices Code as drawn up in several states. It is going to reassure them that they can keep breaking those rules because the Labor Party is extracting the teeth which the parliament ought to have. The Labor Party has voted down the provisions that the Greens put forward which would have meant that serial breaches of the Forest Practices Code by a state would see the regional forest agreement become null and void. The Labor Party has voted down a series of measures under which there would be independent monitoring by the federal parliament, which would have a penalty effect on the implementation of the code. But this is not about that. Senators all know this. Every one of us knows that this is about taking away federal authority. It is about the Labor Party, with the Liberals, transferring authority to the states away from the national government. That is in line, of course, with the industry’s own wish that it have to deal with the least potent form of regulation possible. The Labor Party goes along with the industry in that, and will continue to do so. That is not going to be remedied in the short term, but it will be in the medium short term.

Earlier on tonight, before he left the chamber, Senator Bartlett complained that he had been unfairly represented by me in the course of the debate. I stand by what I said on each occasion. He said that the Greens and the Democrats had voted the same way right back to 1998. That is not quite so. What we are seeing here tonight is the tragic outcome of the Democrats joining with the government to guillotine through the Environmental Protection and Biodiversity Conservation Bill in 1999. If you look at pages 62 and 63 of the act, you will see that, amongst other things, it removes the power of the federal minister for the environment to protect the environment insofar as forests are concerned. At the time when the Democrats did that I warned that the Senate on its own would not be able to overturn that provision in the act, that there was no way that this chamber itself could reverse the damage being done by removing federal authority to protect the environment in forests and that the opportunity would not come again for the Senate to insist that the federal parliament have that authority.

But the Democrats at that time voted to remove federal authority to protect forests, and that is now being enhanced by the legislation tonight. The Democrats have voted with the Greens on measures which would have the effect of remediying what they did in 1999, but we know that the government would rather shelve this bill than allow such an amendment to go through. In any event, the Labor Party has voted with the government to vote down those Green amendments.

I will not accept that the record of the Democrats on this issue is a good one. It is not. That vote in 1999, deliberated, was very destructive of the interests of forests and the environment around this country. It gave a
great satisfaction to the logging industry, but the logging industry is not the environmental custodian that most people want to see in charge of the forests of this country. The logging industry is not interested in the rights of the next generation of Australians to go to natural forests and to see forests untouched by the impact of modern industrial forestry. It does not matter that the plantation industry in this country is where we should be investing our legislative and monetary efforts to meet the future wood needs of this country, to give us a win-win situation. The native forest logging industry, which provides 25 per cent of the wood product these days, nevertheless has the majority of the power and sway over the big parties. That is to the detriment of the plantation based industry, it is to the detriment of jobs in this country and it is absolutely to the detriment of the environment. That is how history stacks up: that those who have had the power in the past are very slow to relinquish it.

We are seeing tonight a process whereby not only do we have inadequate legislation but we have inadequate enforcement and we have serial and repeated breaches of the forest practices codes in states like Tasmania. Senator Murphy has pointed that out and has brought forward a good amendment to allow there to be a Regional Forest Agreement Breach Monitoring Authority which would bring breaches of the regional forest agreement intent to the notice of the parliament. Labor is going to vote that down. The Greens earlier had even stronger measures which would mean that if a regional forest agreement was breached it would become null and void. Labor voted that down, just as earlier tonight it voted down a Greens amendment to ensure that workers who were sacked out of the logging industry were compensated by the big corporations who serially are depleting the workforce in rural and regional Australia. I might say they have been aided and abetted by the so-called Timber Communities group in Australia, which has been part of the job shedding phenomenon in regional and rural Australia right around this country and right around the state of Tasmania. It has sided with the big corporations against the interests of the workers and against the interests of rural and regional Australia. Even an attempt to monitor that put forward by Senator Murphy gets a certain degree of notice but very little support from those who should know better. But so be it.

We will see in the coming years the power of public opinion about this travesty manifesting itself. It is not going to go away because there is legislation going through the parliament. It is going to increase—that is the tide of history—and those who sit here tonight are going to be like some of those who sat in the Tasmanian parliament during the flooding of Lake Pedder and later lived to regret it. And some of those people attempted to be part of the push to flood the Franklin River, a river which is now a big job creator and, because we did not build the dam, a prodigious means of escaping debt in Tasmania. But it is a bit late to come back after the event if you had the power as a legislator and you go along with the old paradigm. It is the old paradigm that is being cemented by Labor and the government here tonight, to the point where they do not want to see what is going on on the forest floor; they want to shed that responsibility to somebody else other than themselves, and look smug about it as well. They do not want to take responsibility themselves.

Senator Murphy has a very mild amendment here but one which at least would keep this chamber informed, and I suspect it is going to be voted down. Then let that be recorded and let the big parties that go against the public interest with their sectional logging cohorts live with that. I am very happy to be living with the role I am playing tonight and I look forward to the vindication which will come in the years ahead for the stand that those of us on the crossbench who have made a stand on this issue have made.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (11.06 p.m.)—I have to say, Senator Murphy, that on a superficial reading of your amendment it looks fairly attractive. We could set up a body away from parliament and the government whose job would be to tour the country and belt up the state Labor governments and the way they are managing the forests. I would have thought on a
quick reading that perhaps there is some merit in what you are proposing. I even thought it might be a preferable proposal to Senator O’Brien’s proposal for a joint committee, which also would be horrendous. But on a closer look, whilst I do appreciate that you have pre-empted some of the concerns that might have been raised, there are still many flaws in what you propose. I guess in the end you get to a situation which is pretty much as it is now.

We will not be supporting the amendment for a number of reasons, one of which is that we believe the processes set out in the RFAs as they now stand are adequate and are appropriate for the monitoring of the RFAs. I have a concern that, even if it were worded a fraction better or more appropriately—that is not a criticism of you; I realise you get assistance to do this—in the finer details, it still sets up a whole new bureaucracy, a whole new group of bureaucrats to investigate things which the RFAs require the states to do at the present time, and we can pursue the states to make sure they do look at them as well.

Even if I were inclined to look at something like this, my good friend Peter Costello would be after my throat for the cost that this might involve to the Commonwealth. Senator O’Brien has a stab at the costs. I can tell you that the five-person section that we currently have costs over $500,000 by itself. I can also tell you that that could not be transferred to this because that unit is fully occupied, and in fact overoccupied at the present time, dealing with what it has to deal with under the RFA process as it now is. Part of their time is spent preparing ministerial responses for me for the huge amount of correspondence we get from these organised campaigns by people who cannot accept where these processes are going and what very good things they have done for conservation, the industry, jobs and small country communities. That unit would still have to stay to deal with the things it is currently dealing with and you would need another five-person—and I suspect more—unit before you even got to appointing the authority board. Senator O’Brien has made a guesstimate of what their costs and travel and arrangements might be.

As well as that, this would fall into the category of another tribunal, which would require people to come before it with evidence. It would do inspections. People in the industry, instead of getting on with their jobs and doing what they are supposed to be doing providing employment, wealth for the states and the country, would be providing wealth for lawyers who would all have to get involved in appearances before this authority. For any number of reasons, the proposal will not work in its present form or even in an amended form.

Perhaps the main objection we have is that it does override the processes I believe are already adequately in place. There are clear state government processes that the Commonwealth has accredited. Accredited state processes are themselves designed to deal effectively with allegations of breaches of environmentally sensitive forest management principles of the RFAs. Those processes, the legislation, policies, codes and practice have in some cases been amended and improved to meet new commitments undertaken by state governments in the RFAs. We believe that if the accredited state processes are not being satisfactorily applied then the Commonwealth has an obligation and will insist that the states do comply with the processes that they should be following. We have done that in the past and, as I have told you, I am determined to do that in the future. One of my goals is to ensure that the states do abide by their obligations under the RFAs in relation to these processes. Any breaches of the RFA should be reported in the first instance to the relevant state party.

Senator Murphy, I have indicated to you that I will help you follow some of these things, but I must say I was shocked to read the letter to which you have referred from the Chief Forest Practices Officer of the Forest Practices Board in Tasmania. He said, as you have acknowledged yourself, that for all your complaints you have not approached them with any evidence at all. I know you say to me that they are corrupt and they do not—

**Senator Murphy—I didn’t say that.**

**The TEMPORARY CHAIRMAN (Senator Forshaw)—**Order! Minister,
please direct your remarks through the chair. You are aware of that requirement.

Senator IAN MACDONALD—Certainly, Mr Temporary Chairman. This letter which Senator Murphy himself referred to does indicate that Senator Murphy has not made whatever evidence he has available to the board for examination. He has been invited by the board to produce that. Senator, through you, Mr Temporary Chairman, if you have not done that, I suggest that would seem to be the first step. When that is done, perhaps the processes would work a bit better. So for any number of those reasons we will not be supporting this amendment.

Senator Murphy’s amendment also seeks to take the monitoring of the RFA outside the control of the parties to the RFA. This, I suggest, is unacceptable given that it is only the parties to the RFA who can really apply the appropriate remedies if breaches are detected. As Senator O’Brien has pointed out, Senator Murphy’s proposal has the authority simply reporting back to parliament. If that is all it is going to do, Senator Murphy can do that at a much cheaper cost. We will not be supporting the amendment.

I would like to briefly comment on the matter that Senator Bartlett and Senator Brown raised about public opinion eventually winning out in these areas. My limited experience with this so far suggests that if public opinion goes a certain way it must go that way on the basis of facts. I suspect in the past some of the opinions of Senator Brown and his groups have been on the basis of the continual misstatements you get in this place and elsewhere by Senator Brown. I have only to run quickly through a few that Senator Brown has made in this debate. I want to highlight them to demonstrate clearly that almost everything Senator Brown says in relation to this matter or anything else is false and cannot be relied upon.

I have already demonstrated that Senator Brown’s claims about losses of jobs in Tasmania are wrong, and I have given the figures on that. I have already demonstrated that Senator Brown’s claims about the Mount Arthur coupes are wrong. We have given the facts, and they have just shattered the claims that Senator Brown was putting up as the truth. Senator Brown told us about the wedge-tailed eagle. Remember that? It was all the fault of the RFAs that these eagles were being firebombed. When I ask when this happened, I eventually got out of Senator Brown that it was 1992, before the National Forest Policy Statement, long before the RFAs came into being and long before states and all parties amended their practices as a result of the RFAs. But that does not stop Senator Brown telling everyone that, because of the RFAs and because of the practices in the forest, these fairly rare wedge-tailed eagles are being firebombed.

Senator Brown also said during the debate on a number of occasions that there is logging in national heritage listed forests. That sounds horrendous to anyone listening to the debate. They would think, ‘Gee whiz, isn’t that bad?’ But, unfortunately, too often Senator Brown’s misstatements go unchallenged. I challenged Senator Brown. I am still waiting for him to tell me which are the World Heritage listed forests where logging is occurring. I want to know, because it is a breach of Commonwealth law and we will come down very heavily on that. This is about the fifth time I have invited Senator Brown to list those national heritage listed forests where logging is occurring, but there is absolute silence from him.

Senator Brown also talked about peaceful protests in the Goolengook forest. If he calls stringing wire between two trees—a practice that can not only maim but kill people going through the forest lawfully—a peaceful protest, then it shows how warped his sense of common values is. I would not call stringing a bit of wire between two trees in a particular forest a peaceful protest.

Senator Brown says that he wants to promote tourism in the forests. I am told that, when the treetop walk was launched, Senator Brown’s compatriots were out there demonstrating to try to stop it. I have not seen that yet. I am desperately waiting for the opportunity to get down there to look at it, because I am told by all that it is a magnificent example of what can be done in the conservation area, set aside and enhanced as a result of the RFA process. I know what Senator Brown said about the sky-rail project
through the tropical rainforests in North Queensland. He opposed it all the way, and that now wins world-wide awards for ecotourism. Senator Brown says that he wants to promote ecotourism in the forest, yet his actions show that he has no interest in that at all. If this is what is going to change public opinion, Senator Bartlett, I feel sorry for Australia. If opinion is going to be changed, it has to be changed on the basis of accurate statements and facts, not these misstatements, only a few of which I have highlighted and will continue to highlight.

The government believes that, within the proposed Regional Forest Agreements Bill 2002, there is plenty of opportunity for parliamentary scrutiny. I would urge the Senate to adopt the bill and allow parliamentary oversight as provided. It provides for publication on information about the RFAs; it requires the minister to table RFAs; and it requires the minister to table amendments to RFAs, the RFA annual reports and the RFA five-yearly reviews. These clauses, along with the objective clauses, are a practical way of addressing the issues raised in the same type of debate in 1999. Every time those are tabled, there is opportunity for full parliamentary debate. As I have mentioned before, both chambers have processes to set up committees for particular areas. This chamber, in particular, has shown a great propensity to set up committees for any number of things. If that is needed in some instance then so be it. There are plenty of opportunities for that now. We do not need new committees, which Senator O’Brien is proposing, and we certainly do not need a new RFA breach monitoring authority that Senator Murphy has proposed.

Senator MURPHY (Tasmania) (11.20 p.m.)—Firstly, can I suggest with respect to Mr Wilkinson’s letter that Senator Macdonald referred to in the latter part of his contribution that he reads the documentation sent to me by the Commonwealth Department of Primary Industry and Energy dated 21 May 1998. With respect to Mr Wilkinson, I did indicate earlier that I had written to him today. I have asked him to provide copies to me of all field audits between the years 1999-2000 and 2000-01 and, indeed, copies of all reports on follow-up action in respect of these audits. Furthermore, I have also asked whether or not the Forest Practices Board has investigated any breach of the Forest Practices Code in the Tasman Peninsula area and the Bass district within the last six months; and, if they have conducted such investigations, could they please provide me with advice on the location and the nature of the breaches so investigated. If they provide me with that information, I will continue to provide them with a complete submission as to the breaches I believe they have never investigated or, indeed, taken any action on.

I will come back to the points with respect to my amendment (1). Senator O’Brien said that cost is a factor. I acknowledge that I said that there would be no cost to the Commonwealth. There may be some cost. But if you put in place a mechanism that has the potential to give the Commonwealth information that is accurate, relevant information that would enable the Commonwealth to pursue, through the regional forest agreement criteria, the relevant actions, then I would suggest that is a fairly big stick. I would sincerely hope that any such authority established under my amendment would never need to meet, but I suspect that it would need to meet. Bear in mind that my amendment (1) to clause 10C(2) states:

The Authority is not to receive or investigate notifications of an alleged breach of an RFA of a frivolous or vexatious nature or lacking in substance.

That is of critical importance. I would not like to see any organisation or authority established where it would be approached by every single person who feels there has been something wrong done in the forest or alleges a breach, or a group of people, whether it be the Wilderness Society or anybody else, unless there is substance to back up the alleged breach, in which case this authority would not be in the process of investigating it.

Senator O’Brien said that his committee can do the job. In reality, it cannot. We know that. What Senator O’Brien is proposing is nothing more than a new references committee. That is the net effect of his proposal. So I or anybody else could come to the Sen-
ate and, if we could get the numbers, we could propose a reference to that committee. That committee could investigate the matter pursuant to the standing orders of the parliament. That is the process.

Both the minister and Senator O’Brien inferred that I am talking about scrapping the RFA Monitoring Unit: I am not. I accept that the minister is telling me that the RFA Monitoring Unit is flat strap dealing with a whole manner of things. I have no evidence to the contrary, so I am not in a position to debate their workload. I would have thought that they were not flat strap and that, given the nature of what I am proposing, at the end of the day, even if there were some additional cost, the Commonwealth has parted with hundreds of millions of dollars in this process. So I think it is only fair that the Commonwealth has a mechanism through which it, independently, of its own free will, can proceed to conduct investigations if the breaches so alleged are of substance et cetera.

Senator O’Brien alleged that the only power and function this authority has is that it will report to the parliament. That is exactly right. It reports to the parliament, and the government of the day, on receipt of this advice, under the arrangements in place through the regional forest agreement, has the power to then enter into a dispute resolution process. That is what I said at the outset. I am not proposing a new set of rules. I am proposing that the Commonwealth have an insurance policy in its own back pocket to ensure that the states comply with the agreement that they have signed. That is the process. Therefore, its role is not only to report to parliament because the parliament has a responsibility over and above that. The parliament has a responsibility to ensure that the regional forest agreements are being adhered to, as does the government, as the minister said. That is the process.

With regard to the inspection of alleged breaches: could the Labor Party committee do that? I want to simplify this as much as possible. This is not in any finite detail of how this would operate. I suspect that the department, in consultation with the stakeholders, would determine a process of action. I suggest to the government and to the Labor Party that, with regard to the expertise that might be needed from time to time to make an assessment of an alleged breach, you will have to call an expert in one form or another. That might involve one person travelling to a state or territory to conduct an investigation and write a report. Again, I reiterate: for the purposes of the exercise, the money involved and the commitment that the Commonwealth is giving through its legislative program is a small thing to ask.

More than anything, this is about putting public confidence into the process. The very reason we have had debates about these issues for nearly 20 years and in some cases longer is that there has been no conclusive public confidence. We could say that in some quarters there will never be public confidence. There will be people who have a view that until such time as there is no logging in native forests nothing else will do. I accept that. I think that is, essentially, Senator Brown’s position. It is not my position, but I can accept his position. As legislators, we have a responsibility to ensure that we can accommodate the majority of the public with respect to confidence in the processes we put in place insofar as legislation is concerned. That is our responsibility.

Minister, you made a few points with respect to the processes in place being adequate. If that were the case, we would not be having this debate. If it could take evidence to the Regional Forest Agreement Monitoring Unit that suggested there was clearly a problem—and I am not in the process of making frivolous or vexatious complaints—and have that investigated, as I did to your department, then we would not be having this debate, but clearly I cannot. As I have demonstrated to you and the Senate, that is simply not the case.

Senator Ian Macdonald—Give me a try.

Senator MURPHY—With the greatest respect, Minister, I have been trying for almost 16 years in the process of my former life before I became a senator. So you will forgive me if I seem to be a little reticent about your request to give you a try.
Senator Ian Macdonald—You should see what I did for regional Australia.

Senator MURPHY—I suspect that you would probably endeavour more than your previous colleague to deliver, but I am not prepared—give that this legislation is so important—to risk my hand on your offer. And I say that with no disrespect to you personally. I think I have responded to that point and I think I have responded to the issue of costs. I take your point and reiterate what it says at 10C(2):
The Authority is not to receive or investigate notifications of an alleged breach of an RFA which are of a frivolous or vexatious nature or lacking in substance.

I would hope that the Regional Forest Agreement Monitoring Unit and maybe an additional person or two, when they receive notice of an alleged breach, would say, ‘What is the evidence supporting this allegation?’ and they would be able to make a judgment as to whether or not there was any real substance to the allegation and then proceed to determine whether there was a need to call together the members of the authority for them to meet and to determine what process is needed thereafter—whether there is a need for a public hearing, whether there is a need for them to employ an expert to go down and give them a report or whether they need to take that process upon themselves.

At the end of the day, all this amendment is seeking to do is to put in place a process that ensures the Commonwealth has its own right. Under the regional forest agreement it does not. It has a notification process and a number of other processes that it must go through if it seeks to go down and do anything. I think it has to give a state three weeks notice. So there are some serious problems.

I say to the Labor Party that back in 1998 there was a report on the Regional Forest Agreements Bill and there was a minority report signed by Senator Forshaw, Senator O’Brien and me. The minority report says:

Opposition Senators intend presenting a detailed minority report to the Senate on the Bill which will address the following issues—

and I go to point (c):

the need for the Bill and RFA’s to comply with the principles and commitments of the National Forest Policy Statement ...

I go to Environment Australia’s view of what the National Forest Policy Statement intended for the delivery of ecologically sustainable forest management:

Assessing the ecological sustainable forest management of Australia’s forests is a key component of the RFA process. It involves integrating commercial and non-commercial values of forests so that the welfare of society is improved, whilst ensuring that the values of forests, both as a resource for commercial use and for conservation, are not lost or degraded for current and future generations.

As I have said, I am not asking people to take my word for it; I have asked people on any number of occasions to come out and have a real look. Don’t get a Cook’s sanitised tour provided by Forestry Tasmania. Come and have a real look in the real world at what is happening.

Senator Ian Macdonald—A Murphy’s tour.

Senator MURPHY—No, it is not a Murphy’s tour. I am not involved in harvesting et cetera, but I will take you there and anyone else who wants to have a look so that you can make your own assessment. I am not a harvester. This is a tour of real issues. This is a tour of the real world. I want you to do that, Minister. In light of the things that I have said on the amendment I have moved, I hope that you might take my comments on board and further consider the options. As you said, you are part way there in considering whether the government might actually support such a proposition.

Question put:

That the amendment (Senator Murphy’s) be agreed to.

The committee divided. [11.39 p.m.]

(The Temporary Chairman—Senator A.J.J Bartlett)

Ayes…………. 9
Noes…………. 42
Majority…….. 33
AYES
Allison, L.F. Bartlett, A.J.J. Brown, B.J. Greig, B. Murphy, S.M. Ridgeway, A.D.

NOES

* denotes teller

Question negatived.

Senator O’BRIEN (Tasmania) (11.43 p.m.)—I move opposition amendments (1) to (4) on sheet 2449:

(1) Clause 8, page 6 (lines 2 to 8), omit sub-clause (1), substitute:

(1) The Commonwealth is liable to pay any compensation that:

(a) is in relation to actual loss or damage arising from the curtailment of legally exercisable rights; and

(b) is calculated as at the time of the curtailment; and

(c) the Commonwealth is required to pay to a State in accordance with the compensation provisions of an RFA, being those provisions as in force:

(i) at the time of commencement of this section; or

(ii) at the time the RFA comes into force;

whichever is later

(2) Page 8 (after line 5), after clause 10, insert:

10A Source of forestry information

(1) The Minister must cause to be established a comprehensive and publicly available source of information:

(a) for national and regional monitoring and reporting in relation to all of Australia’s forests; and

(b) to support decision-making in relation to all of Australia’s forests.

(2) To avoid doubt, subsection (1) does not, by implication, limit the sources of information that may be used for a purpose mentioned in paragraph (1)(a) or (b).

(3) Page 10 (after line 3), after clause 11, insert:

Part 2—Parliamentary Joint Committee on Regional Forest Agreements

11A Establishment and membership

(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Regional Forest Agreements, must be appointed.

(2) The Parliamentary Joint Committee must consist of 10 members, of whom:

(a) 5 must be senators appointed by the Senate; and

(b) 5 must be members of the House of Representatives appointed by that House.

(3) The appointment of members by a House must be in accordance with that House’s practice relating to the appointment of members of that House to serve on joint select committees of both Houses.

(4) A person is not eligible for appointment as a member if he or she is:

(a) a Minister; or

(b) the President of the Senate; or

(c) the Speaker of the House of Representatives; or

(d) the Deputy President and Chairman of Committees of the Senate; or

(e) the Deputy Speaker and Chairman of Committees of the House of Representatives.

(5) A member ceases to hold office:
(a) when the House of Representatives expires or is dissolved; or
(b) if he or she becomes the holder of an office referred to in subsection (4); or
(c) if he or she ceases to be a member of the House by which he or she was appointed; or
(d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.

(6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate.

(7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.

(8) A House may appoint one of its members to fill a vacancy among the members of the Parliamentary Joint Committee appointed by that House.

11B Powers and proceedings
Subject to this Part, all matters relating to the Parliamentary Joint Committee’s powers and proceedings must be determined by resolution of both Houses of the Parliament.

11C Duties
The Parliamentary Joint Committee’s duties are:
(a) to consult about the implementation and operation of this Act with:
   (i) industry and conservation organisations; and
   (ii) Commonwealth, State, Territory and local governments; and
(b) to report from time to time to both Houses on the implementation and operation of this Act; and
(c) to examine each RFA annual report and RFA review report tabled under section 10 and to report to both Houses on matters:
   (i) that appear in, or arise out of, that annual report or review report; and
   (ii) to which, in the Parliamentary Joint Committee’s opinion, the Parliament’s attention should be directed; and
   (d) from time to time to inquire into and, as soon as practicable after an inquiry has been completed, to report to both Houses on the extent to which regional forest agreements have:
      (i) used an integrated cooperative assessment and planning process to reduce uncertainty about outcomes and to reduce duplication between government requirements and processes in land use decision-making; and
      (ii) produced durable long-term decisions that meet the requirements of the governments involved, the community and industry, and that are consistent with the principles of ecologically sustainable development; and
      (iii) equitably balanced competing sectoral objectives and coordinated the policies and activities of governments; and
      (iv) maintained regional environmental, heritage and social values; and
      (v) provided secure access to resources for forest-based industries; and
      (e) to inquire into any question in connection with its duties that is referred to it by a House, and to report to both Houses on that question.

(4) Page 10 (after line 3), before clause 12, insert:

Part 3—Schedule(s)
The opposition proposes to debate the four amendments together. We would request that amendments (1) and (2) be put separately from amendments (3) and (4), which can be put together. Amendment (1) relates to an alteration to the compensation provision in the legislation. In our view, it places some constraint on the Commonwealth’s potential liability to pay compensation in relation to its actions that cause actual loss or damage arising from the parties being prevented from exercising their legal rights. The government’s bill states:

The Commonwealth is liable to pay any compensation that the Commonwealth is required to pay to a State in accordance with the compensation provisions of an RFA.
The compensation provisions in individual RFAs are extensive and complex, but I want to go to the compensation provisions of one RFA in particular, the Victorian Central Highlands RFA, to illustrate the way this amendment is required. That RFA imposes a compensation liability where the Commonwealth takes action to prevent the environment and heritage values that have the effect of preventing or limiting forestry operations or mining operations, the construction of roads for the transport of forest products, the sale or commercial use of forest products or the first sale or first use of mining products. In the case of forestry or forest products, the liability only applies to action impacting on land outside the RFA reserve system but, in the case of mining, the liability also applies to parts of the reserve system excluding only dedicated reserves in which mineral exploration and mining is prohibited. In this RFA, the compensation liability is not only extinguished simply because the RFA expires or is terminated—compensation is payable to the state, which is responsible for passing it on to the firm or firms that have been adversely affected. This RFA lists as relevant evidence for a compensation claim not just signed contracts but also documentation, management history or other records establishing clear intent to do something.

It is our view that this wording is too open ended. It is our view that, in this case at least, taxpayers are exposed to unacceptable risk. I am aware that it is the government’s intention to seek to rewrite this section of a particular RFA in agreement with the Victorian government, and I think there is another RFA which falls into that category. In my view, this planned action acknowledges the problem that we are seeking to fix with this amendment. It is our view that the problem can be addressed by this amendment now rather than relying on a commitment for some future amendment to an RFA. In terms of the terminology we use, I did obtain some advice to see where it had been used before. I have been advised by the Parliamentary Library legal service that, based on an electronic search via SCALEplus, the phrase ‘actual loss or damage’ only occurs once in Commonwealth legislation, and that is in regulation 95 of the Civil Aviation Regulations of 1988. So, although not common, it is not without precedent.

The phrase ‘reasonable loss or damage’ which, I know, is the subject of some amendments previously considered in the context of this legislation—and I think it is a term used in certain RFAs—does not occur at all in Commonwealth legislation, I am advised. I guess we are talking about terminology which is not commonly used in the legislation or regulation of this parliament. That is the advice that I have received. There was a question earlier, I think from Senator Brown, with regard to—if I recall correctly—expectation damages. I expect that, without the words ‘actual’ or ‘reasonable’, the term ‘loss or damage’ is reflected in the common law on contracts, where a person is entitled to recover damages from the defaulting party on the loss of profit that would have accrued had the contract been carried out—that is, damages for an expectation interest. In common law of torts, expectation damages may or may not be recoverable, depending on the circumstances.

It is our view that, on balance, the terminology in this legislation should be as we have outlined it in our amendment—that is, the Commonwealth liability for paying compensation is in relation to actual loss or damage arising from the curtailment of legally exercisable rights. I know there are differing legal views on this matter, but I am not convinced by the material put to the opposition so far that there is anything detrimental with the words that we propose as compared to the alternatives which have been canvassed. Having said that, obviously the wording of individual RFAs will come into focus in the case where a compensation clause is to be considered. As I have outlined, there are problems in existence in relation to the Central Highlands and one other RFA clause which could leave the Commonwealth liable for compensation, in our view, beyond what is reasonable in the circumstances.

The second amendment requires the minister to establish a comprehensive and publicly available information base for national and regional monitoring and reporting to support decision making in all Australian forests. This, in our view, is an important
amendment because it will enhance our ability to properly manage forests. There is already a range of information sources and databases relating to our forests. They vary in their coverage, their quality and their accessibility. This amendment will require the minister to act to ensure that this information is consolidated and made publicly available.

I understand there were some concerns expressed as to whether our words might have implications for any judicial review of the decision making process under RFAs, but subclause (2) of the proposed clause 10A seeks to remove that doubt by inserting the words:

(2) To avoid doubt, subsection (1) does not, by implication, limit the sources of information that may be used for a purpose mentioned in paragraph (1)(a) or (b).

We believe that not only does it enhance the legislation and not detract from its purpose but also it is good public policy and a mechanism that, as I understand it, will not impose great financial or resource burdens on the Commonwealth.

The third amendment provides for the establishment of a parliamentary joint committee on regional forest agreements, and its purpose is obvious. The opposition considers it important that this parliament properly consider the management of Australian forests and the implementation of regional forest agreements. After all, the Commonwealth gives certain guarantees by the passage of this legislation, and it would be unreasonable to expect that in the future this parliament will be required to devote further time to it.

We understand that the government does not favour the idea of a parliamentary joint committee on regional forest agreements and that it is happier with perhaps a Senate committee—perhaps it would be happiest with no committee but happier with a Senate committee. I am not sure. The minister will speak for himself in terms of what the government’s position is in relation to future scrutiny of regional forest agreements and matters arising from them. But we have heard significant debate this evening to indicate, I think clearly, that there are issues that senators at least—and, I suspect, also members of the House of Representatives—would wish to pursue in a way in which, without having the power to direct the executive, they might make recommendations, after taking evidence through the proper and appropriate processes of the parliament. This is desirable to the opposition, and we propose a structure for the committee. I must say that no-one has approached the opposition with any problem as to the structure of the committee at this point of time, and so my assumption is that there are no substantial concerns with the way that we propose that the joint parliamentary committee be structured.

In earlier debates I have touched upon the way that some of the concerns expressed by senators could be addressed in the processes laid down and the role and the powers of the committee. Of course, at the end of the day it
would report to the parliament. The parliament, in its forms, would have the power to take whatever decisions it could, obviously with the executive government having perhaps an overriding role in terms of the laws ultimately passed through both houses of the parliament. Nevertheless, we think this is desirable, we think it is in the public interest and we think it ought to be supported.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (11.57 p.m.)—As a lawyer, I have some real concerns with the first amendment moved by Senator O’Brien—although it is many years since I practised law, and some would say that I was never much good in any case when I was doing so. My real concern is that you are setting up a legislated procedure for compensation that is different from the compensation clauses provided in the agreement, which the legislation is supposed to be supporting. What we want to do with this bill is certainly to have the simplest, cleanest and most precise legal approach. We have referred to the various agreements, and our legislation simply says that the Commonwealth is liable to pay compensation and that the compensation is required to be paid to a state in accordance with the RFA.

As Senator O’Brien has pointed out, some of the RFAs are different, although they all approach the same end. There are some minor variations of wording and, as Senator O’Brien also says, as we have told him in briefings, a couple of the RFAs we think do need a bit of clarification and we are amending them with the relevant states to bring them into line with the general approach. The legislation proposed by the Commonwealth simply says that the Commonwealth is liable to pay compensation and that the compensation is required to be paid to a state in accordance with the RFA.

I cannot explain the law behind this, but I can assure you that that is what you will find in the future. I do not know, and our legal advisers, who are very professional, as people would know, cannot with any certainty say. The only people who can really give a precise determination on that are the High Court, once the matter has gone through all the processes and is fully argued by the best lawyers in the land. That is where it would end up. I do not think we should put the Commonwealth, the states or, more importantly, the parties who would be relying on the compensation clause to that uncertainty. That is why I appeal to the Senate, and particularly to the Labor Party and Senator O’Brien, to leave it as we propose it. It is precise and clean, everybody knows where it is going and you do not open the door for future technical challenges on which particular compensation clause applies—is it the compensation clause under the RFA or the compensation clause in the act of parliament? Normally you would say that parliamentary enactment would override an agreement, but I do not think that applies in this instance, because the agreements in all cases have been made long before the statute law, if it is passed in this form. There would be an ongoing dispute which would keep the lawyers in business for a long time to come.

I can understand some of the hesitation of the Labor Party in putting this proposal forward, but I hope it will stay as it is. If there is
an uncertainty as to whether this does adequately cover the situation, I think the worst outcome would be the one the Labor Party is proposing—that is, to require the legislation to talk about ‘actual’ damage. If there were to be an amendment, what I would suggest to the Labor Party is that it should be made to refer to reasonable damage rather than actual damage. I would prefer that there were neither but, if the Labor Party are uncomfortable with our proposal, I would ask that they look at perhaps inserting the word ‘reasonable’, as opposed to the word ‘actual’.

The reason I suggest this is that at least then we are using the same terminology in the act as we have in the RFAs. Senator O’Brien pointed out a couple that do not actually have that, but he also acknowledges that they are on the way to being amended. At least if you are using the word ‘reasonable’, you are using the terminology and it is almost exactly the same as the wording that is in or that will be in the RFAs. In that way, there will be no conflict between the two provisions: the provision in the RFA and that in the legislation. The word ‘actual’ can have different meanings, and I will mention them if I have time. The word ‘reasonable’ will at least have the clauses meeting, whereas the word ‘actual’ will really mean two different compensation clauses, and the lawyers will have a field day working out which one to abide by. I think I have made the legal advice from Minter Ellison available to Senator Murphy, but I just want to read from that advice again in relation to the proposed amendment. Our advice is:

If the proposed amendment is enacted, the basis for compensation under section 8 of the Act will be expressed differently from the basis for compensation set out in the RFAs. Section 8 will impose on the Commonwealth a liability to pay compensation ‘in relation to actual losses and damages arising from the curtailment of legally exercisable rights’, whereas the RFA provisions impose on the Commonwealth a liability to pay compensation in relation to ‘reasonable loss or damage sustained by reason of’ the prevention by Commonwealth Action of the use of the land or forest products concerned.

The lawyers say to us:

1. The best outcome would be for clause 8 to stand as drafted.

If there is an amendment to clause 8, they say:

2. ... the next best outcome would be to have the wording of clause 8 refer to the Commonwealth’s liability to pay compensation in relation to ‘reasonable’ loss or damage. While the insertion of any words in the clause describing the loss or damage that is compensable may not be seen as desirable because it raises questions as to what the Parliament intended by doing so, at least the
words, to the extent that they refer to ‘reasonable loss or damage’, mirror the way the loss or damage is described in RFAs.

So if it has to be changed, that is the next best. Lawyers tell me:

3. The third best outcome would be for the amendment to refer to ‘actual’—
   which is the proposal in this amendment—
   loss or damage. The divergence between ‘reasonable’ and ‘actual’ might lead a court or arbitrator to the view that the Parliament intended that the statutory basis for compensation be more circumscribed than the contractual basis of compensation. The court or arbitrator might then seek to establish an award of compensation on a narrower base than was contemplated by the parties when they negotiated the RFA terms. For example, the formulation ‘reasonable loss or damage’ under the RFAs might allow a claim for encompassing loss of prospective profits—
   and that was what was intended in the RFAs—
   whereas the statutory basis of compensation may not. Whatever the outcome, the inconsistency in wording increases uncertainty (and may cause delay) for potential claimants.

I urge the Labor Party not to proceed with that particular amendment. If they do, I would urge that they accept the legal advice, which we offer in the best spirit, and change it to ‘reasonable loss or damage’. In relation to the next amendment, dealing with the data collections, again I think what the Commonwealth government is already doing is appropriate. We are providing and spending a lot of money on data. I am going to run out of time, so perhaps I can only say this: whilst the government would oppose this, would prefer it was not put in place, we could probably live with the amendment if the Labor Party insists on it. I can develop that argument should anyone want to hear it. In relation to the parliamentary committee, the government is quite firm on this. We think that there is very adequate opportunity for parliamentary scrutiny. There are already existing processes available for scrutiny by the parliament and committees of parliament. We certainly do not support the establishment of yet another parliamentary committee, in this case a joint committee, with all the attendant costs and uncertainty. The whole purpose of this bill was to get the forest industries and the conservation of the forests out of the public area and create certainty. (Time expired)

Friday, 15 March 2002

Senator O’BRIEN (Tasmania) (12.12 a.m.)—I hear what the minister has to say with regard to the first of our amendments—that is, the amendment which deals with compensation and the wording of the clause. Our difficulty is that we have, on the one hand, a provision in the bill; on the other hand, we have a semicommon provision in RFAs and two RFAs that contain significantly different provisions. As well as that, we have the proposition that we advance. All of the advice available is hardly what I would call compelling in relation to the meaning of the words. If there is one form of words in the bill as it stands and another form of words in the RFAs, how is that different from the proposition that we advance? We are saying that there would be a different form of the words in the bill from the RFAs, just as there is now. One might go to the Bills Digest and have an argument and end up in the same place with the same uncertainty of outcome that the minister has described as being a possible, if not probable, outcome from our proposition.

We would certainly not be happy to cease to pursue our amendment. If the government are able to assure the Senate that the remaining two RFAs will be amended and the type of compensation clause that exists in the Tasmanian RFA is replicated as far as possible in the outstanding RFAs, there may be some sense in the middle path—if I can call it that—in the second option which the minister suggests in his order of merit, and that is to include in place of the word ‘actual’ the word ‘reasonable’ in our amendment but otherwise to pass it. Were the government to say that they would support such a proposition, we might be minded to consider and pursue that in lieu of our own amendment in the interests of a certain outcome on an amendment, and in the interests of providing at least what we would still consider to be a stronger form of words than appears in the bill.

As I said in opening, the words ‘reasonable loss or damage’ and ‘actual loss or dam-
age’ are rare or nonexistent in legislation, so I suppose we are in uncharted waters. However, I do not know of any area where one has, on the one hand, acts of parliament and, on the other, agreements against which they are interpreted that would avoid the possibility of legal argument being taken to the highest court in the land. One can never predict with certainty the outcome were that eventuality to take place. We are in the hands of others in terms of the ultimate outcome of this and we can only do our best in this chamber. I will leave that matter there.

For the reasons I have outlined, we will certainly persist with our amendment (2) on the source of information. If the minister is of a mind to support it if we persist—as we will persist—I ask him to indicate support for that. The minister may want some time to respond to the third amendment; he started but ran out of time.

Senator IAN MACDONALD (Queensland—Minister for Forestry and Conservation) (12.17 a.m.)—In relation to Senator O’Brien’s comments on his first amendment, I cannot give an absolute guarantee that the agreements will be amended. What I can give you is an absolute guarantee that, at officials level, the agreements to amend have been reached. I can give an absolute guarantee that if I were one of the parties to the agreement I would—it is not me, it is the Prime Minister, and I am confident enough to give an absolute guarantee that the Prime Minister will also—accept the advice which was given to me by my officials. From the Commonwealth side, we will definitely change them to accord with the Tasmanian clause.

I am not sure whether I should do this, but I will anyhow. My officials tell me that the officials of the Victorian government tell them that their government and their minister are very supportive of this amendment and have said, ‘Hurry the Commonwealth along and make sure that the Commonwealth get this fixed up straightaway. That is about as much as I can guarantee; I can sort of give three-quarters of a guarantee. I can only tell you that my advice is—that I am being told—that the Victorian government, who are the other party that I cannot of course make guarantees on behalf of, are actually more anxious than we are to change it.

Whilst I would still urge upon Senator O’Brien and the Senate that the bill stand as it is in relation to compensation, if it is to be changed—and I can understand the hesitation that the Labor Party might have—and if it can be changed in a way that refers to ‘reasonable’ loss or damage, in that way it would bring it into line with what will be said in all the RFAs. It also lessens the chance of conflict, in a legal sense, between what is said in relation to compensation under the agreement and what is said in relation to compensation under the act.

I hope that no-one will ever look at this again, because hopefully the Commonwealth will never have to take action that will cause loss or damage to anyone who has relied on the RFAs. But if in 15 years time someone does, I can only hope that I am a lawyer then. If the amendment goes through as proposed, as a lawyer I would think, ‘Here’s a good chance to run a case, because we have two different compensation provisions: one that was there originally when it started, and that was the intention; and another when it was amended in the parliament.’ As a lawyer, I would think that it would be great fun to run that case in 15 years time. But even though I suspect I will not be around then in this capacity, I hope that the legislation that we are dealing with tonight is in such a form that it is precise and clear, so I urge that upon Senator O’Brien and the Labor Party.

In relation to the second amendment, again I would rather it had not been moved. As I have said, I think the government are doing all they possibly can in relation to data collection. There is a cost involved. We would like to speed things up, but not only is the cost prohibitive but the ability to get the work done is a difficulty in itself. It is an amendment we would probably accept, reluctantly, and the government will do as we always have to do and make sure that we comply with the data collection provisions as amended.

In the current financial year, we have already invested $2.6 million in the national forest inventory. The proposed amendment gives legislative support for the work we
have done with the state governments on that inventory. The work was commenced in 1998 under the National Forest Policy Statement, and the inventory’s mission is to be the authoritative source of information for national and regional monitoring and reporting to support decision making regarding all Australian forests. Certainly, that is where we are heading and have been heading since 1998, in the time of the previous government.

We expect investment in the NFI to rise sharply over the next few years as the continental forest sampling gets under way in 2003. Depending on the negotiations with state governments and the decisions under the extended NHT, which commenced in July this year, Commonwealth expenditure on the NFI could average in excess of $2 million per annum for the next five years. The NFI work has led to substantial improvements in forest data maintained by a range of institutions. As I have said, we are heading that way. Perhaps we will have to speed up or relocate some of our resources to comply with this amendment but, if the Senate chooses to pass it, of course we will comply with it.

In relation to the parliamentary committee, I find that the proposal is unnecessarily heavy handed, perhaps, on forest management issues that are primarily state government responsibilities under our Constitution. If we set up this joint committee, it may well jeopardise the state and territory engagement in the process that has been established under the RFAs. I cannot say with any certainty that that will happen, but some of the states and territories may take offence at the suggestion that, although they have agreed to do this in the RFA, we do not believe them, we do not accept that they are going to do that and we are going to set up a whole new joint committee of the federal parliament to follow their every procedure.

I do not think that that is appropriate. It is certainly not what was intended with the RFAs. It is not the spirit that the contracting parties, the state and Commonwealth governments, entered into when we negotiated and signed the RFAs. It changes the whole basis upon which it was done. Importantly, I do not really think that it is necessary. One of the purposes of the RFA and the national policy statement was to bring certainty and to let everyone know exactly what they are doing, where they are going and what they have to do. In this instance, we are saying, ‘We will accredit state procedures, look at them and make sure that they are proper procedures,’ and then we will leave it to the states to do that so that we will not have the duplication and triplication which was once so much a part of government action in Australia. We want to do away with that. We want to be satisfied with the way the states are going to do this. We will investigate that. If we are satisfied, we will agree on it. In the agreement there are provisions for us to keep monitoring that the states are doing what they have said they will do. We have done that so that there is no duplication or triplication; people know where they are going; we can keep an eye on them—that’s what we do—and we do not have this committee perhaps imposing undue political or bureaucratic interference on the processes which may well undermine the state governments’ commitment to them.

I remind senators that the Commonwealth cannot make laws that bind state governments—perhaps I should say as an aside that more is the pity at times. We cannot make laws that bind them on matters that are their constitutional responsibility. What this bill is all about—I reiterate this yet again—is making sure that this Commonwealth government and future Commonwealth governments abide by the agreements that they have made in the RFAs but, if for some reason we do not abide by those, the bill provides legislative certainty for the ability of those affected by it to claim compensation.

At the last election we focused on ongoing monitoring and evaluation of the RFAs through annual reports and through very rigorous five-yearly reviews. We also committed ourselves, as I have done here, to investigate allegations of breaches of the RFA. I note Senator Murphy’s cynicism. I say to him: give me a try; let’s see where we go. Senator Murphy, this is not political—perhaps it should be. With all the state governments being Labor these days, perhaps I
should relish a joint committee on which the government would probably have a majority—who knows.

Senator O’Brien—We would have to work it out.

Senator Ian MacDonald—It could well be that we have a majority. What a great opportunity for us to go around and belt the daylights out of the state Labor governments! But that is not what we are on about with the RFA process. We really do want to make the forest industry work, ensure the conservation outcomes, and provide jobs and security. I suggest with the greatest respect to the Labor Party and the amendments they move, setting up yet another parliamentary joint committee is not the way to go.

Senator Murphy (Tasmania) (12.29 a.m.)—With regard to the first amendment, if I understood the minister to be correct in respect of what the Labor Party is proposing in its amendment (1) insofar as compensation is liable to be paid by the Commonwealth, he is moving to ensure that all RFAs reflect what is in the Tasmanian RFA, and that will be done. That is what the government and the state governments are jointly pursing at the officer level, and he envisages that coming to fruition in the not too distant future.

Senator Ian MacDonald (Queensland—Minister for Forestry and Conservation) (12.30 a.m.)—I will just absolutely confirm that. I said to Senator O’Brien that I can absolutely guarantee that at an officer level that has been agreed to. From the Commonwealth’s point of view—I am speaking on behalf of the Prime Minister here, which is a courageous thing to do, but I do that with absolute confidence—the Commonwealth will sign the amendments. I am told by my officials—perhaps in breach of confidence—that Victorian state officials have said that their minister will sign them. In fact, their minister has been pressing them to get on with the job. So, yes, as best as I possibly can—it is almost as close as I can get to giving an absolute guarantee when I cannot—Senator Murphy, that will be done.

Senator Murphy (Tasmania) (12.30 a.m.)—I assume from that answer that that will incorporate all of the clauses that are contained within the Tasmanian RFA, relevant to the respective state or territory. Minister, would you confirm that, because there are a number of clauses contained within the Tasmanian RFA compensation clause, which commences at 95(1) and continues on to 95(20)? While the minister is seeking advice in respect of that question, I will go to the second amendment proposed by the Labor Party—‘Source of forestry information’. The RFAs in existence do provide information to a reasonable degree, albeit some of it is more difficult than it should be to obtain. In fact, on the basis of investigations that I have conducted, it seems that some of the information is not available. It is difficult to then ascertain whether or not the tasks, be they objectives or requirements, have actually been met. If this amendment can at all strengthen the provision of information—and I think to a limited degree it can—I will support it.

The third amendment goes to the establishment of a parliamentary Joint Committee on Regional Forest Agreements. I am curious, given that the Labor Party voted against my proposition of having a monitoring authority with a very specific purpose, that they propose in this amendment to establish a joint parliamentary committee, which says, among other things, in relation to duties in clause 11C:

The Parliamentary Joint Committee’s duties are:
(a) to consult about the implementation and operation of this Act with:
(i) industry and conservation organisations; and
(ii) Commonwealth, State, Territory and local governments; and
(b) to report from time to time to both Houses on the implementation and operation of this Act ...
(c) to examine each RFA annual report and RFA review report tabled under section 10 and to report to both Houses on matters:

(i) that appear in, or arise out of, that annual report or review report; and

(ii) to which, in the Parliamentary Joint Committee’s opinion, the Parliament’s attention should be directed;

Anyone who has a reasonable interest in this issue ought to be studying both of these reports. With regard to the five-yearly review process of an RFA, the terms of reference as determined by the state minister were so limited in providing a capacity for the Resource Planning and Development Commission, which were designated to conduct the review, that, as far as I know, they held no public hearings and conducted no inspections of coupes and areas managed under the RFA criteria. As far as I know, the draft report has already been completed—and it was completed in a very short time—and will be put out for public comment. Public comment in that sense means that I can get the draft report and read it and, if I do not agree with it or there are matters in it that I think are deficient, I can write to the Resource Planning and Development Commission and tell them about that. They will take note of that, they might consider it, and then they will proceed to finalise the report. What is proposed in this amendment is that this committee, in addition to a number of other matters:

(d) from time to time to inquire into and, as soon as practicable after an inquiry has been completed, to report to both Houses on the extent to which regional forest agreements have:

(i) used an integrated cooperative assessment and planning process to reduce uncertainty about outcomes and to reduce duplication between government requirements and processes in land use decision-making; and

(ii) produced durable long-term decisions that meet the requirements of the governments involved, the community and industry, and that are consistent with the principles of ecologically sustainable development; and

(iii) equitably balanced competing sectoral objectives and coordinated the policies and activities of governments; and

(iv) maintained regional environmental, heritage and social values; and

(v) provided secure access to resources for forest-based industries; and

(e) to inquire into any question in connection with its duties that is referred to it by a House, and to report to both Houses on that question.

I will deal with (e) first. That is not unlike the process we have in the Senate—and the one they have in the House of Representatives—where, if the Senate decides for the purposes of an exercise that it wants to refer a matter to a committee of the Senate, it can so do and expect that that matter will be investigated. This committee really does not do anything other than that. It is a joint committee and, as we all know, senators and members all have major workload difficulties with respect to committees. How are we ever going to muster enough people together to make this thing function? I say this in all sincerity to Senator O’Brien, because I would like to see a few inquiries of this nature, but because of their nature it is going to be incredibly difficult to get people together to conduct some inquiries that might be required. That is why, in the amendment that I proposed, I suggested another process that is external to the parliament. That is why I believe that that would have worked better.

I would like to say something with regard to some of the matters in (d), particularly (i):

... used an integrated cooperative assessment and planning process to reduce uncertainty about outcomes and to reduce duplication between government requirements and processes in land use decision-making ...

That process is already in place and there are reports that have already been done, and so I cannot see what more this committee could do. If we needed to refer a matter to a committee of the parliament, we could do it. If your argument about costs in respect of what I proposed in my amendment does not carry in the same way what you propose here, I do not know what does. The establishment of a joint committee has a cost associated with it.

Senator O’Brien—You do not have to pay the people on it.

Senator Murphy—You do have to pay the people on it, and you also have to pay their costs. If they are to conduct themselves properly for the purposes of doing a reasonable investigation of some of the things that
you suggest they should investigate, there will be a cost. There will be a cost with respect to a secretariat for the committee and with respect to travel. I would suggest that, in a number of the matters you are talking about this committee actually being able to make a judgment about, there will be a need to call for experts to provide you with opinions about certain matters. I have been looking at forestry matters for a long period, and I know that I myself do not have the expertise in a whole range of matters and I do not think any other member of parliament has that expertise either, unless they have come directly out of the forest industry and are qualified in certain areas associated with the forest industry or, indeed, environmental aspects of the forest industry. So, no matter what steps you take in putting up a proposition of this nature, there is a cost.

As I said, I believe the committee I proposed which was independent of the parliament provided a much better process. I do not see how this committee can really achieve anything other than that which we might expect it to achieve through the normal parliamentary processes with a reference from the Senate to a committee of the Senate by getting it to be more focused in an investigation on your clause (e) for the purpose of conducting an investigation on, for instance, breaches or alleged breaches of an RFA. Therefore, I am not prepared to support the third amendment.

Senator BARTLETT (Queensland)
(12.42 a.m.)—I would like to speak to the amendments moved by the ALP and to put the Democrats position on them. I will just go through them again briefly for the benefit of those following the debate. There are probably a few still out there in radio land or on the Internet, and I commend the perseverance of the people in the gallery who have sat through this.

The first amendment the opposition has moved modifies the compensation provisions in the existing Regional Forest Agreements Bill 2002, which are for compensation for breaches of the RFA by the Commonwealth. The requirements in the bill as it stands make the Commonwealth liable to pay any compensation to a state in accordance with compensation provisions of an RFA basically from the time this act comes into force. The opposition amendment modifies that to say that the Commonwealth will be liable to pay any compensation ‘in relation to actual loss or damage arising from the curtailment of legally exercisable rights; and is calculated as at the time of the curtailment; and the Commonwealth is required to pay to a state in accordance with the compensation provisions of an RFA at the time that this bill basically comes into force. So, as I read the opposition amendment, it basically puts a bit of definition around the nature of compensation and does not make it quite so open-ended. To the extent that it does that, it is worth supporting, I believe. It is certainly not the outcome the Democrats would prefer, but it is at least a small improvement and, given that the bill is clearly going to pass anyway, it is worth making a slight improvement to what is otherwise a bad bill.

The second amendment is one I am more favourably disposed towards—that is, inserting into the act, after the section that requires the tabling of various reports, copies of RFAs and amendments and the like, the establishment of a comprehensive and publicly available source of information for monitoring and reporting in relation to all of Australia’s forests—and I presume that means not just ones covered by RFAs but all forests—and to support decision making in relation to all of Australia’s forests. I think it is a worthwhile thing as far as it goes. As has been said a few times in this debate, there is some difficulty in some circumstances in getting access to information relating to forests and forest related activities, particularly those under RFAs, and any mechanism that goes some way towards improving that is worth supporting. So the Democrats are happy to support the Labor Party’s second amendment.

The third and fourth amendments—and the fourth is a consequential one—relate to establishing a parliamentary joint committee on RFAs. I tend to speak fairly often in this place on the benefit of enhanced scrutiny by the parliament in the Senate of activities of government, and I have made comments along those lines already during this debate.
As a general principle, I think that is to be supported and encouraged wherever possible. The key issue is what is the most effective way of operating that scrutiny. I am not convinced at this stage that the proposal that the opposition is putting up is a particularly desirable way of doing that. I have been on a few joint committees in my time in this place. I think I am currently a member of three different ones, and it will probably mean that I will be on a fourth if this one gets established, assuming that I can get the numbers to be one of the five in the Senate—which is a bit up in the air, I guess, from the way it is written. I would not necessarily mind that if I thought it was appropriate to establish a separate committee in the way that Senator Murphy on another matter on the Notice Paper is seeking to establish a select committee, although there is some overlap in the plantation area. I think he has put a worthwhile proposal there.

There are a couple of concerns I have here. Another common theme I have is tending to be rather dismissive of the House of Representatives in its overall ability to scrutinise things, which I probably overdo because members I have worked with from the other house on joint committees are usually fairly conscientious and make good contributions. Nonetheless, I do think that Senate committees operate better than parliamentary committees. Obviously we have a range of Senate committees, including specialist committees, that cover this area—the rural and regional affairs references and legislation committees. I think it would be more effective to simply refer the sorts of matters that this joint committee is meant to establish where appropriate from time to time to the Senate Rural and Regional Affairs and Transport Committee rather than establish another joint committee which probably, at the end of the day, would be government controlled. The motion does not say that, but five members will be appointed by the House of Representatives and I think if the government thinks it is not going to get the numbers in the Senate it will make sure it gets the numbers in the House of Representatives, so it would probably end up government controlled. Not that that is the end of the world, but I think a Senate committee would operate more effectively. Whilst it will not be the end of the world if the amendment gets through and it may well do some useful activities, I personally think it would be better to simply refer matters like this to existing Senate committees or even establish a Senate select committee, for that matter, if that sort of specialist focus is considered desirable. I am not overly inspired by joint committees, where avoidable. Even though most of the ones I have been on have performed some valuable roles, I think the Senate committees as a rule are more effective. That would mean, of course, an impact on the Senate’s budget, but that is a separate issue.

So the Democrats are not persuaded about the desirability of establishing another joint committee, particularly a statutory one, which has its own issues involved with it. I think it is better to maintain the flexibility that we have with the current Senate committee processes. We always have the power at any stage to establish any committee we wish to if the majority of the Senate wishes it—budgetary constraints coming into play of course—and I think that would be the better way to go. The Democrats are not particularly favourably disposed towards this approach, which should not be taken as saying that we do not think the issues that are proposed in what is in effect terms of reference should be looked at, as I think they should, but I do think there are better ways to do it. We probably have the power to do that ourselves separate to this individual bill.

I think there are overlaps between RFA issues and other forestry and related issues that would be nice not to completely distinguish and cut off, particularly given that—even though this would have a specialist committee that looked at nothing but RFA issues—because of the failure of Democrat amendments earlier on, there is still no power for any committee or the Senate through any committee to do anything directly about it if it discovers problems, other than obviously to pressure the government to try to get some action, which can still be effective but which will not be as effective as having something entrenched, some more powerful oversight. So the Democrats support opposition amendment (1) and opposition amendment
(2) but are not overly keen on amendments (3) and (4) at this stage, unless there are some words of wisdom from Senator O’Brien that might turn us around.

Senator IAN MACDONALD (Queensland)—Minister for Forestry and Conservation) (12.52 a.m.)—I can now answer Senator Murphy’s question that he asked me and that I did not have the immediate answer for. Yes, the East Gippsland and Central Highland RFAs will be amended to read the same as the Tasmanian RFA as amended. There was an amendment to the Tasmanian RFA on 19 July, which I think you are aware of. So, as amended, the compensation clauses on those other two will mirror—mutatis mutandis, I think, is the legal thing—in all respects the Tasmanian one.

Senator MURPHY (Tasmania) (12.53 a.m.)—Is it the intention for the same clauses to be included in the new RFAs?

Senator IAN MACDONALD (Queensland)—Minister for Forestry and Conservation) (12.53 a.m.)—Yes, it is—although, as I indicated earlier, much as I would like to see more RFAs, I think that unlikely. But if there are, the same clauses will be included.

Senator HARRADINE (Tasmania) (12.53 a.m.)—Being the late hour that it is, I do not intend to elaborate but just to indicate to the Senate that I will be supporting opposition amendments (1), (2), (3) and (4).

Senator O’BRIEN (Tasmania) (12.54 a.m.)—My remarks in relation to amendment (1) go to the question of the proposition that I put to the government, which I do not think I have had fully answered yet—that is, if we amended it by replacing the word ‘actual’ with the word ‘reasonable’, would the government support that amendment? I think we need an answer to that. I took it, perhaps wrongly, that the government would reluctantly but nevertheless support our second amendment. I take the nod of the minister to indicate that that is the case. If I take the answer to both of those questions to be yes, then I seek leave of the Senate to amend my amendment (1) in the following terms:

Omit “actual”, substitute “reasonable”.

This will amend clause 8, subclause (1), sub-subclause (a).

Leave granted.

Senator O’BRIEN—In relation to the proposal for a joint committee, I guess I can take it, from the expressions of opposition from the government, the Democrats and Senator Murphy, that a joint parliamentary committee will not succeed. I take it Senator Murphy wishes to pursue the matter through Senate committees, as does Senator Bartlett—that is their preferred option. The opposition will look at proposals on their merits in that context. Neither Senator Bartlett nor Senator Murphy should assume that any particular proposition will attract our support. It may attract the government’s support, but the fact that they have chosen to have the matter resolved on the floor of the Senate on particular resolutions means that those matters will be considered on their merits.

I must say that I understand completely where those propositions are coming from. I did not understand Senator Murphy’s contribution about the limitations on a joint parliamentary committee from the terms of reference. I would have thought they were quite comprehensive, and I would have thought there were plenty of examples of joint parliamentary committees conducting extensive inquiries, taking evidence and conducting inspections. I have experienced that myself. We did put the proposition that it was desirable that this area ought be the subject of scrutiny by a committee of both chambers. That proposition obviously does not attract the Democrats or Senator Murphy—perhaps because they are not in the other chamber—but I can assure you that the opposition are, and remain, interested in involving both chambers in a scrutiny process for this area. But, as I say, we can count—and, on the basis of that advice, obviously we would be accepting the resolution of this matter on the voices.

Senator IAN MACDONALD (Queensland)—Minister for Forestry and Conservation) (12.58 a.m.)—I just want to put on the record my affirmation to questions that Senator O’Brien asked. Yes, whilst we are not particularly happy, we will reluctantly support amendment (1) if the wording is
changed to ‘reasonable’ and the same in relation to amendment (2).

The TEMPORARY CHAIRMAN (Senator Hogg)—As I understand it, Senator O’Brien moved his four amendments together. Because people will vote differently on amendments (3) and (4), I will therefore put the amended amendment (1) and amendment (2) together and then amendments (3) and (4) together. The question is that the amended amendment (1) on sheet 2449 and amendment (2) on sheet 2449 moved by the opposition be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that amendments (3) and (4) circulated on sheet 2449 by the opposition be agreed to.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator IAN MACDONALD (Queensland)—Minister for Forestry and Conservation) (1.00 a.m.)—I move:

That this bill be now read a third time.

In moving this motion, I take the opportunity of thanking all of those who contributed to the debate on the Regional Forest Agreements Bill 2002. I want to particularly thank Senator O’Brien, Senator Murphy, Senator Harradine and Senator Bartlett. I want to thank as well my Tasmanian Senate colleagues, Senators Calvert, Abetz, Watson, Colbeck and Barnett, all of whom, as you could imagine, gave me plenty of advice on forestry matters, as did my other colleagues from other parts of Australia—and there are other parts of Australia involved in forestry, although you would not know it from this debate. I do thank them, particularly my Tasmanian Senate colleagues, who have been a wealth of information and support. I particularly thank them for their contribution. I also thank others who have contributed. There are many but I mention the board of the National Association of Forest Industries, mainly because they persevered by sitting in the gallery to watch the end of this. That, for any reason, deserves thanks but I think it does show their interest in and commitment—and the government’s—to getting some certainty into the question of forests, their conservation, jobs and the future of small towns.

It is too late to continue too much further in a third reading speech, but I do simply want to take the opportunity of commending the third reading to the Senate. The government’s approach is supported by the Labor Party and, I think genuinely, by all other parties, including Senator Harradine, whom I perhaps forgot to mention. I do appreciate his contribution as well. Whilst we have different approaches to it, generally we are all heading in the same direction: what we want to see is a bill which will give legislative backing to the Commonwealth’s commitments regarding native forests. By doing that, and I thank the Senate for doing that, we do three things. We protect the conservation outcome—the reserves and the substantially increased reserves that have resulted from the RFA process. The bill provides legislative certainty for investment, and we desperately need further investment for state-of-the-art processing and research in the industry and for value-adding, which is so very important. Very importantly, the bill, in giving legislative backing to the RFAs, does provide security for people. Certainly, trees are important and this process conserves in reserves great comprehensive, adequate, representative forests, but people as well are terribly important—more important I would have to say—and people’s jobs and livelihoods, from the work that is available which sustains families and smaller country communities in our nation, all benefit from this process. So I think the Senate has done all of those people and all of those processes a great credit in agreeing to the bill, as it is soon to do.

Senator BARTLETT (Queensland) (1.05 a.m.)—I would like to put some final closing comments on the record in relation to the Democrats’ view of this bill. We will, and I am sure it will be of no surprise to anybody, be opposing the bill at its third reading. The bill has been slightly amended, although only in a very minor sense. It is a source of disap-
pointment to the Democrats that our amend-
ments and, indeed, those moved by other
senators on the crossbenches were not sup-
ported by either the government or the ALP.

Following up some of the comments that
the minister has just made: as was indicated
during the debate, this is not just about Tas-
mania, although I think it is worth noting that
it is probably fair to say that the danger to,
and the damage being done to, native forests
is greater in Tasmania than elsewhere, in my
assessment, but there are certainly still sig-
nificant problems in Victoria and New South
Wales as well. My own state of Queensland,
as I indicated during the debate, has, in my
view, the best forest agreement, an agree-
ment that has been developed and reached
between state governments and stakeholders
so that it is has broad support across the en-
vironment movement plus that of the Queen-
sland Timber Board and others in the timber
industry in Queensland. I say again that it is
a disappointment to me as a Queensland
senator that—a Queensland senator that, just because this one agreement
somehow or other commits the apparently
cardinal sin of actually phasing out all log-
ing of native forest on public land over 25
years, it does not get the so-called assistance
or security that the federal government says
it is providing for all these other forestry
agreements. I think that is most unfortunate.

If Queensland, in effect, has gone the ex-
tra mile and has found a way which many
people in Queensland believe will work—
and I certainly hope it will—of effectively
phasing out logging of native forests and
replacing it with logging of plantation timber
and hardwood timber, and increasing value
adding, maintaining employment and im-
proving sustainability and biodiversity in the
south-east Queensland region, then it is al-
most like they are being penalised for doing
a better job and I think that is very unfortu-
nate. I again urge the minister to reconsider
and revisit this issue and see if there are
other ways of providing extra support to the
Queensland government—in a sense, for
acknowledgment of the extra work they have
done. As I said during the debate, I am not in
the habit of praising the Beattie Labor gov-
ernment, particularly on environmental is-
sues. They are very flawed across the board
in many respects, not least in the area of land
clearing, but this is one area in relation to
vegetation where they have done a good job.
It should be not only acknowledged but sup-
ported and assisted.

As I said, the Democrats will be opposing
the bill at its third reading. It will obviously
still go through, but the issues will not go
away, not just in terms of RFAs, but in terms
of other aspects to do with the forestry in-
dustry. As with many other industries, par-
ticularly those involving natural resources,
the forestry industry is going through transi-
tion and there are a lot of problems occurring
through that transition and the changing na-
ture of the industry.

I think there are a lot of people with a lot
of willingness—across what might previ-
ously have been seen to be divides in the
community—to work together to get better
approaches. I do not think this bill is one of
those, but there is other work being done at
community level across organisations. Re-
cently in Victoria, in the Gippsland area,
there has been greater cooperation occurring
between conservationists and some in the
logging industry, and I think there are genu-
ine attempts around various parts of Austra-
lia, as we have seen in Queensland, to work
more cooperatively together to try and get
win-win outcomes. At the moment under
many of the RFAs as they operate we are
getting lose-lose outcomes, and that is a
great concern.

Those issues will continue to come to the
fore and obviously the Democrats and others
in this place will be continuing to follow de-
bate and continuing to try and influence
public debate in a more positive direction.
Nonetheless, as I said, the Democrats will be
opposing this. We have basically opposed it
for four years and, via various approaches,
have kept the problems of the RFA process in
the public arena, along with others. We have
tried to get greater scrutiny of this bill. We
were not successful in relation to getting it
referred to committees and getting greater
examination of some of the issues that have
been raised during the debate, and that is
partly why we have had a longer debate than
we would otherwise have had. I think that is
something to consider in the future when the
government is looking at its legislative planning. Having Senate committee inquiries can actually save time when we get to this stage of the debate in the parliamentary chamber.

I put on the record the Democrats’ opposition to this bill. I note the contribution of my colleagues who have also spoken in relation to issues in their own states and their opposition to the legislation, and who are obviously continuing with attempts through the course of the debate to get more of the facts on the record. I regret that we have had to end up having it pass through at about 10 past one, but that is what has happened.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! The time for the debate has expired. The question is that the bill be now read a third time.

The Senate divided. [1.16 a.m.]

(The Deputy President—Senator S.M. West)

Ayes............. 43
Noes............. 8
Majority......... 35

AYES
Abetz, E.        Barnett, G.
Bishop, T.M.     Bolkus, N.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.     Calvert, P.H. *
Campbell, G.     Carr, K.J.
Colbeck, R.      Coonan, H.L.
Cooney, B.C.     Crane, A.W.
Crossin, P.M.    Denman, K.J.
Eggleston, A.    Ellison, C.M.
Faulkner, J.P.   Forshaw, M.G.
Harradine, B.    Heffernan, W.
Herron, J.J.     Hogg, J.J.
Hutchins, S.P.   Lightfoot, P.R.
Ludwig, J.W.     Lundy, K.A.
Macdonald, I.    Macdonald, J.A.L.
Mackay, S.M.     Mason, B.J.
McGauran, J.J.J. McLucas, J.E.
O’Brien, K.W.K.  Patterson, K.C.
Payne, M.A.      Scullion, N.G.
Tchen, T.        Tierney, J.W.
Vanstone, A.E.   Watson, J.O.W.
West, S.M.      

NOES
Allison, L.F.    Bartlett, A.J.J.
Bourne, V.W.    * Brown, B.J.
Cherry, J.C.    Greig, B.
Murphy, S.M.    Ridgeway, A.D.

* denotes teller

In division—

Senator Brown—For the benefit of those who may not have done so in the earlier division, I draw the attention of the Senate to the fact that it is a requirement of the Senate that those who hold a pecuniary interest in the logging, woodchipping or other industries incidental to this should declare that now. That is a requirement of the standing orders.

Senator Vanstone—No, it is not.

The DEPUTY PRESIDENT—Thank you, Senator Brown. They are only required to do it once for each bill.

Question agreed to.

Bill read a third time.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 1.19 a.m., I propose the question:

That the Senate do now adjourn.

Economy: Debt Management

Senator W ATSON (Tasmania) (1.19 a.m.)—I seek leave to incorporate my adjournment speech on currency swaps in Hansard.

Leave granted.

The speech read as follows:

Yesterday the Senate Economics Committee continued its Estimate hearings focusing primarily on the management by Treasury of the Commonwealth debt.

Senators may recall that it was at Estimates hearings in 1992 that I conducted a similar questioning of witnesses, commencing with the adequacy of the monitoring programs.

It was not only through the Estimates processes that I have raised the issue of derivatives.

For instance, in the superannuation area where I discussed some limits of derivatives and raised the appropriate use of a geared product which opened up risk avenues if not properly controlled.
In that process I called on the Insurance and Superannuation Commission at the time to draw stringent guidelines about practices distinguishing between hedging and speculation activities.

Many observers were surprised that the ALP government at the time had jumped on this new currency swaps arrangement.

It was widely felt that the area of derivatives was best left to the private sector.

While the reasons given by Treasury officers pointed to the minimisation of risk, at the time they did not mention that the first 3 or 4 years had not proved positive, although by 1992 the position had changed.

The problem for government is that when there is an adverse currency movement, the Treasury and Reserve Bank operators, in terms of managing responsibilities, find themselves working in opposite directions, and this is not in Australia’s best interests.

Unfortunately, over the years, Treasury got locked into significant $US holdings compounded by an enormous, some say irresponsible, increase in government debt which rose under Labor from $16 billion to $96 billion.

The question of the swaps exposure also increased because of a strict adherence to the 15% swaps benchmark as recommended by external professional money managers of international repute.

The Coalition Government therefore found itself, in coming to office, in a difficult position in being locked into some pretty serious debt management situations.

To the credit of the Treasurer, he took the responsible and bold step in paying off the debt as quickly as possible with the result that the $96 billion debt that we inherited is expected to be down to just $35.5 billion by June this year.

Honourable Senators will know that I am no shrinking violet when it comes to questioning witnesses about accountability matters.

Unfortunately, the ABC Lateline program on Wednesday night took my reference to misleading the Senate Committee out of context.

I referred not to comments of present Treasury officers, but an overconfident response in the 1992 Estimates by their predecessors that I happened to challenge at that time.

At the end of the day, I was confident that more recent Treasury officers followed the thrust of the external advice, though not necessarily to the letter, but in so doing achieved the desired outcomes.

The outcome therefore was important.

I believe that some of the press reports were remiss in suggesting I was challenging government policy.

The day-to-day administrative discharge of policy is a proper function for a parliamentarian.

In no way was it an attack on government policy as some commentators would suggest.

Getting responses to satisfy an accountability issue often creates a charged environment.

If the officers felt my questioning unduly aggressive I apologise as I appreciate their situations where they were not responsible when the original problem was created.

Migration Agents Registration Authority

Senator TCHEN (Victoria) (1.19 a.m.)—I wish to draw the attention of Senators to the 2001 annual report of the Migration Agents Registration Authority which was presented to parliament on 12 November 2001 and tabled on 13 February 2002. The work of the authority is significant for the clients of the Immigration portfolio and I commend to the Senate the authority’s annual report on its activities. However, in view of the early hour, I seek leave to have my speech incorporated in Hansard.

Leave granted.

The speech read as follows:

Introduction

I draw the attention of senators to the 2001 annual report of the Migration Agents Registration Authority, presented to the parliament on 12 November 2001, and tabled on 13 February 2002. The work of the authority is significant for the clients of the Immigration portfolio and I commend the authority’s annual report on its activities to the senate.

Migration agents play an important role in informing potential migrants and other clients about Australia’s immigration and humanitarian programs. Many of these clients are in a vulnerable position—they often have limited English language skills and an imperfect understanding of processes and safeguards that the general community take for granted. Most importantly, their futures can be at stake and many will be required
to leave Australia if unsuccessful with their application.

They also depend on agents to advise them before they waste their time and money on applications that have no basis.

All this means that it is critical that all who work in the migration advice industry apply the highest ethical and professional standards to their work. Close attention also needs to be paid to the conduct of individual agents, since it is particularly important that agents should not be involved in presenting cases that are clearly unfounded, vexatious or based on fraudulent evidence.

Sadly, this has not always been the case. Before the Government established the authority in 1998, following the failure of the previous Labor government’s migrant agents registration scheme, the quality of service and the competence of practitioners in the migration advice industry were matters attracting constant consumer complaints.

Comments on the annual report

It is therefore especially encouraging to see in the authority’s 2001 report the emphasis that the authority has given to code of conduct issues, continuing education for agents and the complaints mechanisms.

Through mandatory participation in the continuing professional development programs there are promising signs of a rise in the professional standards of the industry as a whole.

The report shows that standard in the industry is continuing to improve, with the number of complaints made against agents from traditional sources dropping for the third year running. While nearly 600 new agents had joined the industry in 2001, the percentage of agents operating without attracting a complaint has remained at 95 per cent. This indicates that the authority’s registration process is achieving results in raising entry level standards for the industry.

Against this background, I am pleased to see that the authority is using its powers more actively against operators who do not meet standards. The total number of agents who have been cautioned, or had their registration suspended or cancelled has increased from 12 in 2000, to 20 in 2001. Together, these two notable trends—improving standards and proactive monitoring—reflect particularly well on the work of the authority.

It is also encouraging to note that the authority has streamlined its complaint procedure in 2001 and there has been an increase in the number of complaints finalised during 2001.

As I have already mentioned, in 2001 the authority processed almost 600 new registrations. During the same period it also processed over 1,800 re-registrations. This brings the number of registered agents to over 2,400, a 9 per cent increase. Nevertheless, the authority has done well to process most of registrations within two months.

The government expects high standards of the migration advice industry, and the industry has the right to expect high standards of the authority regulating the industry. If the industry’s performance is to improve, the authority must lead this improvement. It is central, therefore, that the legislative underpinnings for the authority are right, and kept right.

Future legislative proposals will give the authority the power to investigate agents who have become debate-registered, and apply sanctions to stop them from easily re-entering the industry. This will prevent agents from de-registering themselves to avoid sanctions, and then returning with a clean slate.

Other proposals will allow the authority to have expanded powers to act on integrity issues, and reduce uncertainty in the registration process for the up to 2,000 agents re-registering each year.

Recent changes to the legislation

These proposals will build on changes already implemented in mid and late 2000, following the 1999 review of the industry. These changes included:

- encouraging the holding of professional indemnity insurance by agents to protect clients if agents go bankrupt or their businesses go into receivership, or are wound-up.

- strengthening the code of conduct in several areas, including the requirement that the code be displayed in each agent’s office, that clients have a right to have their personal property returned, and in the management of financial accounts.

- greater protection for clients of agents operating on a ‘no win—no fee’ basis, whereby agents are required to be able to cover liabilities that may arise.

- strengthening the capacity of the authority to consider the character of a continuous professional development provider, and its ability to ensure that continuing professional development requirements are fulfilled.

Conclusion

The government, through the Migration Agents Registration Authority, is continually seeking to improve the framework within which the migration advice industry operates, to better ensure client protection and higher professional standards.
The authority, as the industry regulator, has met the expectation of the nation, the government and the industry, by continuing to set high standards and ensure that agents comply with those high standards.

I take this opportunity to acknowledge the commitment and efforts of the authority, its members and its staff in achieving this excellent outcome. I commend the report to the Senate.

Senate adjourned at 1.20 a.m.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Agriculture: United States Farm Bill
(Question No. 13)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 22 January 2002:

(1) In 2000 and 2001 what contact did the Minister or his office have with the United States of America (US) Administration regarding the US Farm Bill.

(2) In each case: (a) who initiated the contact; (b) when was the contact made; and (c) what was the nature of the contact.

(3) On each occasion contact was made with the US Administration, what follow-up action was taken by the Minister, his office or the department.

(4) In each case: (a) what was the nature of the follow-up action; and (b) what was the result of the follow-up action.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The Minister’s first direct contacts with the US Administration on matters related to the Farm Bill took place during his visit to North America in late 1999 when he met twice with former Secretary of Agriculture Glickman, once in Washington and also at a meeting of Quint Agriculture Ministers in Canada. At that time US assistance to its farm sector was rising rapidly through emergency packages and there were obvious implications for the development of the next Farm Bill.

The involvement of the Minister and his office in the Government’s response to developments concerning the new Farm Bill should be seen in the context of the process set in train to address this matter. The Government’s approach to the new Farm Bill was determined in close partnership with industry through the Agricultural Trade Consultative Group (ATCG), co-chaired by the Minister and the Minister for Trade. The ATCG at its June 2001 meeting, agreed to finalise and implement a Government / industry strategy that would be managed on a day to day basis by a Steering Group of the ATCG comprising senior representatives of both industry and both Ministers’ Departments in close consultation with the Washington Embassy. The ATCG Steering Group met regularly following the June 2001 meeting and provided advice concerning implementation of the strategy, including action on the part of Minister(s), Departments, industry organisations and the Australian Embassy in Washington.

As part of this broader strategy, the Minister:

- Wrote on 28 August 2001 to the Prime Minister about raising the Farm Bill during his September 2001 visit to the USA;
- Wrote to the Hon Ann Veneman, US Secretary of Agriculture, on 30 August 2001 with regard to the debate on future directions for farm policy in the US and in particular the Administration’s approach to the Farm Bill;
- Met with Secretary Veneman in Washington on 10 December 2001;
- Met with Mr Charles Connor, Special Assistant to the President for Agricultural Trade and Food Assistance on 11 December 2001 in Washington DC;
- Wrote on 18 December 2001 to Special Assistant Connor to follow up matters raised in the December meeting.

(2) (a) In each case the Minister and his office were an integral part of the decision making process outlined in (1).

(b) See answer to (1).

(c) See answer to (1).

(3) Actions taken on the Farm Bill, including those listed in (1), were part of the progressive development of the Farm Bill strategy in response to events as these unfolded in the USA. Lobbying activities in Washington particularly by the Ambassador and Minister Counsellor (Agriculture) have continued and the Minister for Trade raised the Farm Bill with Secretary Veneman and US
Trade Representative Zoellick during his recent visit to Washington. Australian concerns with the Farm Bill were also raised on a number of occasions by the Minister for Trade and AFFA / DFAT officials with Secretary Veneman and senior Administration officials during the Doha World Trade Organisation Ministerial Conference in November 2001.

It was intended that contact with Secretary Veneman by the Minister be continued at a meeting of Quint Ministers scheduled to be held in Japan in January 2002. However, this meeting has been postponed.

(4) (a) See answer to (3).

(b) Secretary Veneman responded to the 30 August 2001 correspondence with two letters to the Minister. Special Assistant Connor is yet to respond to the 18 December 2001 letter.

**Agriculture: United States Farm Bill**

(Question No. 15)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 22 January 2002:

(1) When was the Minister or his office first advised of a proposed increase in financial support to farmers in the United States of America (US) through the US Farm Bill.

(2) (a) Who advised the Minister or his office of the proposed increase in assistance to farmers in the US; (b) when was the Minister or his office advised; and (c) how was the Minister or his office advised.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The first concrete proposal for increased financial support to US farmers through a new Farm Bill occurred with passage by the House of Representatives of its version of the Bill on 5 October 2001. The Minister’s office was advised of passage of the House Bill in a cable (Diplomatic Communications Network) dated 6 October 2001 from the Washington Embassy.

(2) (a) See answer to (1). The advice from the Post was drawn to the attention of the Minister’s office by officers from the Trade Policy area of Market Access & Biosecurity, AFFA.

(b) The Washington cable and various publicly available reports from US-based Farm Bill web sites were widely distributed 8 October 2001 (the time difference with the USA meant that passage of the Bill through the House took place on Saturday 6 October AEST).

(c) See answers to (1), 2(a) and 2(b).

**Immigration: Request for Asylum**

(Question No. 19)

Senator Brown asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 13 February 2002:

Names have been excluded as a matter of policy.

(1) Have Mrs A and her son Mr A been in detention for more than 2 years.

(2) What is the difficulty and what has caused the delay in assessing their request for asylum.

(3) What are the options being considered for the two and when is a decision expected.

Senator Ellison—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) Yes, Mrs A and her son Mr A arrived at the Curtin Immigration Reception and Processing Centre on 25 December 1999.

(2) There was no delay or difficulty in assessing their request for asylum. Mrs A lodged a primary application for protection on 14 May 2000 and was found not to be owed refugee protection obligations on 15 September 2000. Mrs A lodged an appeal with the Refugee Review Tribunal (RRT) on 15 September 2000. The primary decision was affirmed by the RRT on 15 November 2000.

(3) Unless the Minister exercises his non-compellable powers to grant a visa or allow a further application for a visa Mrs A and her son will, pursuant to the provisions of the Migration Act 1958, remain liable for detention pending finalisation of removal arrangements.
Finance: Commonwealth Superannuation Schemes
(Question No. 79)

Senator Sherry asked the Minister for Finance and Administration, upon notice, on 12 February 2002:

With reference to submissions 197 and 216 by the Department of Finance and Administration to the inquiry into the benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes, by the Select Committee of Superannuation and Financial Services, which provide the following information:

(a) in submission 197 the department notes that, under AWOTE or MT AWE (as opposed to CPI) indexation of pensions, unfunded liabilities would increase by $6.6 billion assuming a positive difference of 1 per cent between the new indexation measure and CPI and by $4.1 billion assuming a positive difference of 1.5 per cent;

(b) in submission 216 the department provides a table outlining the fiscal impact, over the forward estimate period, of applying AWOTE indexation to the CSS and PSS schemes;

Can the following information be provided:

(1) What assumptions about the difference between AWOTE and CPI were made in these calculations.

(2) Are estimates available of the cost of MT AWE indexation of CSS and PSS benefits and pensions as opposed to CPI or AWOTE indexation.

(3) What is the estimated cost of changing to AWOTE or MT AWE indexation of CSS and PSS pensions while retaining CPI indexation of preserved benefits.

(4) Do these estimates include any offsetting increases in taxation revenue from AWOTE or MT AWE indexation instead of CPI indexation for both CSS and PSS pensions and preserved benefits or pensions in isolation.

(5) What is the expected increase in taxation revenue from AWOTE or MT AWE indexation instead of CPI indexation for both CSS and PSS pensions and preserved benefits or pensions in isolation.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) For the fiscal balance calculations in submission 216, a long term difference of 1.5 per cent per annum between AWOTE and CPI was assumed. This assumption takes account of past movements in AWOTE and CPI.

On the basis of a long term 1.5 per cent difference between CPI and another index, the increase in PSS/CSS unfunded liability in relation to pension indexation was estimated to be $6.6 billion (while on the basis of a 1 per cent difference, the impact has been estimated to be $4.1 billion). The estimates assumed a start date of 1 July 2001.

The impact on the underlying cash balance over the forward estimates period was based on the difference between annual CPI parameters and annual wages growth parameters set out in the Mid-Year Economic and Fiscal Outlook (MYEFO) 2000-01 released in November 2000. This took account of the CPI parameter being above the wages growth parameter for 2000-01.

Assuming that annual AWOTE growth would be 1.5 per cent above CPI over the long term, and that for the purpose of estimating the impact on the underlying cash, AWOTE will be 1.5 per cent a year above the CPI parameters set out in the MYEFO 2001-02 released in October 2001, with a start date of 1 July 2002, the revised estimated impact is:

<table>
<thead>
<tr>
<th>Year</th>
<th>Fiscal balance</th>
<th>Underlying cash</th>
<th>Operating balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-02</td>
<td>$0</td>
<td>$-605</td>
<td>$-595</td>
</tr>
<tr>
<td>2002-03</td>
<td>$-605</td>
<td>$-595</td>
<td>$-630</td>
</tr>
<tr>
<td>2003-04</td>
<td>$-595</td>
<td>$-65</td>
<td>$-105</td>
</tr>
<tr>
<td>2004-05</td>
<td>$-630</td>
<td>$-595</td>
<td>$-630</td>
</tr>
</tbody>
</table>

(2) The Budgetary impact will depend on the difference between CPI and the MT AWE measure used. If it is assumed that the long term difference between CPI and MT AWE index used will be 1 per cent for the purpose of estimating the fiscal balance impact, and that, for the purpose of estimating the impact on underlying cash balance, MT AWE growth will be 1 per cent above the CPI parameters set out in the MYEFO 2001-02, with a 1 July 2002 start date, the estimated impact is:
(3) The estimated Budgetary impact of changing the indexation arrangements for PSS and CSS pensions, while retaining CPI indexation of preserved benefits, assuming 1.5 per cent or 1 per cent indexation above CPI, with a 1 July 2002 start date, is:

<table>
<thead>
<tr>
<th></th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2004-05</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal balance</td>
<td>$0</td>
<td>$-370</td>
<td>$-365</td>
<td>$-385</td>
</tr>
<tr>
<td>Underlying cash</td>
<td>$0</td>
<td>$-20</td>
<td>$-45</td>
<td>$-70</td>
</tr>
<tr>
<td>Operating balance</td>
<td>$0</td>
<td>$-4670</td>
<td>$-365</td>
<td>$-385</td>
</tr>
</tbody>
</table>

(4) No. It is not the usual practice for second order effects to be taken into account in estimates of this kind due to the difficulties inherent in quantifying such effects.

(5) See answer (4).

Environment: European Fox

(Question No. 103)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 13 February 2002:

With reference to Environment Australia’s Threat Abatement Plan for the Predation by the European Fox, in particular relating to Tasmania, and with particular reference to page 8 of the report, dated June 1999, which refers to the threats posed by foxes on islands.

(1) What action (please provide dates) has the Government taken to fulfil the recommendation of the report.

(2) How much money has been spent by the Government on fox control in Tasmania, and when.

(3) (a) What specific requests have been made by the Tasmanian Government, or any other individual or entity, to the Government for assistance in fox control for Tasmania since 1996; and (b) what response did the Government make in each case.

(4) How many foxes are in Tasmania.

(5) What is the annual cost (in dollars and damage to the land and wildlife) of foxes to Australia.

Senator Hill—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

In response to the Senator’s questions, it is relevant to note that information relating to the recent fox incursions in Tasmania only became available to the Commonwealth in May 2001. The Commonwealth has been in contact with both Victorian and Tasmanian officials on a number of occasions since that time.

The Threat Abatement Plan for the Predation by the European Red Fox was developed by the Commonwealth in conjunction with relevant State and Territory agencies and many other stakeholders specifically to address the listing of foxes as a key threatening process pursuant to Section 33 (2) of the former Endangered Species Protection Act 1992. This Act has now been incorporated into the Environment Protection and Biodiversity Conservation Act 1999. The Plan provides an overarching strategic
document that identifies the problems caused by foxes, current and future management tools and objectives and actions necessary to better manage the impacts of foxes on native species.

(1) The Plan identifies six objectives to minimise the impacts of foxes on threatened native species and promote their recovery. These objectives are:

1. Promote the recovery of species and ecological communities that are endangered or vulnerable as a result of fox predation
2. Prevent foxes occupying new areas in Australia where they may threaten species or ecological communities with extinction
3. Improve the effectiveness and humaneness of fox control measures
4. Improve the knowledge and understanding of fox impacts and interactions with other species
5. Communicate the results of the threat abatement plan actions to management agencies, landowners and the public
6. Effectively coordinate fox control activities.

The Commonwealth has provided significant funding through the Natural Heritage Trust for projects directly relevant to achieving these objectives. The activities undertaken with this funding have addressed the broader issues relating to fox eradication, with potential benefits to be realised by all areas impacted by foxes.

In relation to objective 2 specifically, (ie. Prevent foxes occupying new areas in Australia), a number of steps have been taken to address the three priority actions identified in the Threat Abatement Plan.

(i) Identify islands of high conservation value and rank the level of risk of foxes being introduced and establishing populations on these islands.

Tasmania has been identified as an island of high conservation value. The level of risk has also been addressed, based on the known incursions that have occurred in Tasmania and recent investigations by Tasmanian authorities on possibly other illegal imports and releases.

(ii) Identify measures to ensure that islands known to be of high conservation value remain free of foxes.

Tasmanian officials have developed a State action plan titled the “Action Plan to Prevent the European Red Fox into Tasmania 2002-2004”, which identifies measures to eradicate foxes and reduce their impact in Tasmania.

(iii) Develop and implement contingency plans to contain and exterminate any incursion by foxes onto islands with high conservation values.

The Tasmanian action plan (“Action Plan to Prevent the European Red Fox into Tasmania 2002-2004”) contains a section titled Local Response Plan, which addresses the issues that would be required in a contingency plan.

(2) Refer to answer to Question 1. In seeking to implement elements of the Threat Abatement Plan for Predation by the European Red Fox the Commonwealth has been a major investor in fox control projects.

While the Threat Abatement Plan specifically provides that Environment Australia will provide funds from its operating budget to enable staff to work with relevant State authorities to implement [contingency] plans, until recently the Tasmanian government had not approached Environment Australia regarding such funding or the implementation of the contingency plan.

Since 1996/97, over $4.9 million from the Natural Heritage Trust has been spent on projects designed to produce better methods of fox control, and to improve the effectiveness and targeting of existing methods at a national level.

The following projects have been or are currently funded under the Natural Heritage Trust:

- Fertility control of foxes with Cabergoline including its registration for use on Phillip Island. (1999-2000)
• Pen ED 100 and Intervention time trials of Cabergoline for Fertility Regulation of the Red Fox. (1997-1998)
• The potential for habitat manipulation to limit fox density and reduce the need for intensive baiting. (1997-2001)
• Fox populations dynamics and control. (1996-1998)
• Assessment of the impact of foxes on brush-tailed rock wallabies and evaluation of the effectiveness of community involvement in fox control. (1994-2000)
• Assessment of the impact of fox baiting on tiger quoll populations. (1998-1999; 2000-2002)
• Preliminary Assessment of analgesic/1080 bait combination for humane predator control. (1996-2001)
• Endangered species protection through fox control at Sunnyside station (2001-2002)
• Development of a cheap and efficacious fox bait. (1999-2000)
• Control and Ecology of the red fox in Western Australia—Prey responses to 1080 baiting over large areas. (1993-1998)
• Effects on non-target species of 1080 baiting for foxes and dogs. (2000-2001)

(3) The Department has identified two requests:
(i) 27 August 2001—letter from Minister Llewellyn seeking Commonwealth assistance to support actions to keep Tasmania fox free, with a copy of the Action Plan to Prevent the European Red Fox into Tasmania 2001-2003; and
(ii) 30 January 2002—letter from Minister Llewellyn seeking an urgent meeting with Minister Kemp regarding the application to eradicate the European Red Fox.

(b) (i) The federal election was called before the Government’s response could be finalised.
(ii) The department is in active discussions with Tasmanian officials, and I expect to consider a funding proposal in the near future.

(4) Based on information provided by the Tasmania Parks and Wildlife Service, from 11 to 19 foxes may be present in Tasmania.

(5) No reliable estimates are available of the annual financial costs of damage that foxes cause to Australia. There is abundant evidence that fox predation is a major threat to the survival of native Australian fauna (Saunders et al. 1995). Those terrestrial mammals that weigh between 35 and 5500 grams (sometimes referred to as critical weight range species) and ground-nesting birds, many of which are endangered or vulnerable, are at the greatest risk from foxes. For these reasons ‘predation by the European red fox’ was originally listed as a key threatening process under Schedule 3 of the Commonwealth Endangered Species Protection Act 1992.

The Tasmania Parks and Wildlife Service has also advised that one estimation indicates that a single fox could eat about 400 gm of food each night [equivalent to one bandicoot] (Fox Free Tasmanian Action Plan 2002-2004). The fox is also a significant predator of domestic stock, in particular sheep and lambs, and can kill between 10% and 30% of lambs produced in one area (Managing Vertebrate Pests, BRS, 1995)

Environment: Coltan Mining
(Question No. 106)

Senator Brown asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 14 February 2002:

With reference to the use of coltan in mobile phones:
(1) (a) What is the availability of this mineral in Australia; and
   (b) Is this sufficient to meet domestic needs
(2) Is it a fact that mining for coltan in Africa is a major threat to the survival of the population of eastern lowland Grauer gorillas gorilla beringei graueri, a sub-species distinct from the mountain
gorilla; if so, what steps has the Government taken, or will it take, to ensure Australia is not importing, directly or indirectly, coltan from this region.

(3) What measures has the Australian Government taken otherwise to help avoid the extinction of gorillas in the wild.

**Senator Hill**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

(1) The information sought by the honourable senator does not fall within my portfolio responsibilities. I suggest that he direct question 1 to the Hon Ian Macfarlane MP, Minister for Industry, Tourism and Resources.

(2) Part 1

The majority of coltan mining in the Democratic Republic of Congo takes place in two World Heritage listed sites: Kahuzi-Biega National Park, and Okapi Wildlife Reserve. Kahuzi-Biega National Park contains a substantial proportion of the world population of the Grauer gorilla (Gorilla beringei graueri), also known as the eastern lowland gorilla.

Coltan mining is exerting pressure on populations of Grauer gorillas, in a number of ways:

1. Gorillas are hunted as “bushmeat”, to sustain the large human population that has moved into the forests to mine coltan;
2. Gorillas are maimed in traps set for other bushmeat species; and
3. The processes involved in extracting coltan are degrading gorilla habitat.

In the highland areas of Kahuzi-Biega National Park, I am aware of reports that half of the 258 Grauer gorillas have been killed for bushmeat over recent years. The IUCN considers the population of Grauer gorillas in the area to now be at a dangerously low level.

(2) Part 2

The information sought by the honourable senator in question 2, part 2, does not fall within my portfolio responsibilities. I suggest that he direct part (2) of his question to the Hon Mark Vaile MP, Minister for Trade.

(3) Trade in endangered species and products derived from them is regulated under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. This Act gives effect to Australia’s obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Grauer gorilla is listed on Appendix II of CITES, which means that although not threatened with extinction now, the species might become so unless trade in it is strictly controlled and monitored. A species listed on Appendix II can not be exported without a permit. Australia supports and enforces CITES import and export requirements in relation to gorillas, and other listed species.

During 2001, both Taronga and Melbourne Zoos participated in the European region’s zoological breeding program for gorillas. The Australian Government supported this participation by facilitating the exchange of gorillas (Western lowland gorillas Gorilla gorilla), from Australia to Europe for use in conservation breeding programs.

---

**Immigration: Occupations in Demand**

(Question No. 132)

**Senator Allison** asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 21 February 2001:

With reference to the Non-humanitarian Entry Program:

(1) What are the priorities for professional groups under the program.

(2) What is the current waiting time for teacher applicants under the program.

(3) How many teacher applicants are currently awaiting consideration under the program, broken down into specialist subject areas and country of origin.

(4) What advice, if any, has the department received regarding the demand for teachers.

**Senator Ellison**—The Minister for Immigration and Multicultural and Indigenous Affairs has provided the following answer to the honourable senator’s question:
(1) Occupations in demand are listed, following advice from the Department of Employment and Workplace Relations (DEWR), on the Migration Occupations in Demand List. The list, which is reviewed annually, contains the following occupations: Information Technology Managers, Child Care Co-ordinators, Electronics Engineers, Accountants, Computer Professionals in a variety of specialisations, Nurse Managers, Nurse Educators and Researchers, Registered Nurses, Registered Midwives, Registered Mental Health Nurses, Registered Development Disability Nurses, Hospital Pharmacist, Physiotherapist, Medical Diagnostic Radiographer, Radiation Therapist, Sonographer, Chef (excluding Commis Chef), Refrigeration and Airconditioning Mechanic, Cabinetmaker, Hairdresser and Furniture Upholsterer.

In addition, on 1 February 2001, the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP, announced new processing arrangements applicable to the processing of applications for migration from Information and Communications Technology (ICT) professionals. The new processing arrangements, which were specified under a direction given under section 499 of the Migration Act 1958 requires such applications to be given priority processing.

(2) As at December 2001, 75% of cases of applicants not afforded priority processing, including applications from those with teaching qualifications, are processed in approximately 12 months.

(3) As at 27 February 2002 there were 1023 skilled migration applications registered from applicants with teaching qualifications. More detailed information is contained in Table 1 below.

(4) Advice from DEWR does not include school teachers or any teacher qualification on the Migration Occupations in Demand List.

DEWR advice also notes that, in the July 2001 report Demand and Supply of Primary and Secondary School Teachers in Australia (released by the Conference of Education Systems Chief Executives in accordance with a decision by Ministers at the meeting of the 6th Ministerial Council on Education, Employment, Training and Youth Affairs), the authors found that the teacher labour market was broadly in balance. This finding applied to both the primary and secondary sectors. The authors also found that teacher graduations are expected to be sufficient to meet the demand for new teachers.

The report also noted that recruitment difficulties (as distinct from skill shortages) were being experienced in some teaching disciplines and in rural and remote areas.

Such vacancies unable to be filled from within the Australian labour market can be filled by regional employers sponsoring qualified migrants through visa categories such as the Employer Nomination Scheme and the Regional Sponsored Migration Scheme.

### SKILLED MIGRATION APPLICANTS—TEACHING OCCUPATIONS—PIPELINE—AS AT 27 February 2002

<table>
<thead>
<tr>
<th>Country of Birth</th>
<th>Pre-Primary School Teacher</th>
<th>Primary School Teacher</th>
<th>Secondary School Teacher</th>
<th>Education Officer</th>
<th>Vocational Education Teacher</th>
<th>Art Teacher (private)</th>
<th>Drama Teacher (private)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>1</td>
<td>93</td>
<td>132</td>
<td>2</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>239</td>
</tr>
<tr>
<td>India</td>
<td>1</td>
<td>82</td>
<td>137</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>230</td>
</tr>
<tr>
<td>South Africa</td>
<td>8</td>
<td>79</td>
<td>76</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>168</td>
</tr>
<tr>
<td>Fiji</td>
<td>0</td>
<td>1</td>
<td>32</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>39</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
<td>8</td>
<td>11</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>27</td>
</tr>
<tr>
<td>Malaysia</td>
<td>2</td>
<td>1</td>
<td>13</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>China (excl. HKSAR)</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>8</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Japan</td>
<td>0</td>
<td>3</td>
<td>13</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>2</td>
<td>13</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>USA</td>
<td>2</td>
<td>3</td>
<td>7</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Pakistan</td>
<td>0</td>
<td>4</td>
<td>9</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Philippines</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>North Korea</td>
<td>1</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Country of Birth</td>
<td>Pre-Primary School Teacher</td>
<td>Primary School Teacher</td>
<td>Secondary School Teacher</td>
<td>Education Officer</td>
<td>Vocational Education Teacher</td>
<td>Art Teacher (private)</td>
<td>Drama Teacher (private)</td>
<td>Total</td>
</tr>
<tr>
<td>------------------</td>
<td>---------------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
<td>-------------------</td>
<td>----------------------------</td>
<td>----------------------</td>
<td>------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>HKSAR</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Taiwan</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Rest of World*</td>
<td>1</td>
<td>32</td>
<td>64</td>
<td>2</td>
<td>13</td>
<td>0</td>
<td>2</td>
<td>114</td>
</tr>
<tr>
<td>Onshore*</td>
<td>1</td>
<td>21</td>
<td>35</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>65</td>
</tr>
<tr>
<td>TOTAL</td>
<td>21</td>
<td>335</td>
<td>558</td>
<td>30</td>
<td>64</td>
<td>10</td>
<td>4</td>
<td>1023</td>
</tr>
</tbody>
</table>

Source: MPMS and ICSE Reports, 27 February 2002

* Comprises 44 countries

* Estimate based on offshore applications. Main source countries are: UK (16), India (15) and RSA (11).