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The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 2.00 p.m. and read prayers.

QUESTIONS WITHOUT NOTICE

Privilege: Senator Heffernan

Senator Faulkner (2.01 p.m.)—My question is directed to Senator Abetz, the Special Minister of State. Can the minister confirm the statement made by Senator Heffernan that he had made an FOI request for Comcar documents relating to Justice Kirby and that he had been refused access to those documents? Did Senator Heffernan ever formally or informally seek a review of any FOI decision on this matter and what was the result of any such review? Can the minister confirm that Senator Heffernan did approach the then secretary of the department, Dr Peter Boxall, asking him to obtain copies of departmental documents for him? What actions did Dr Boxall take as a result of this request from Senator Heffernan? What did Dr Boxall know about any documents which form the basis of Senator Heffernan’s allegations against Justice Kirby and when was he first made aware of any documents, whether they be from the department or elsewhere?

Senator Abetz—As the Leader of the Opposition would be aware, this matter is now in the hands of the New South Wales Police. They have received, as I understand it, information from Senator Heffernan and, until such time as the New South Wales Police have completed their investigations, it is my respectful suggestion to the Opposition that it is not appropriate to pursue the course and line of questioning Senator Faulkner is trying to pursue.

Senator Faulkner—Madam President, I ask a supplementary question. I respectfully suggest to the minister that these are process questions about an FOI request. My supplementary question is this: given that at least some of these documents were leaked to a Sunday newspaper before they were provided to the New South Wales Police, can the minister confirm that the documents waved about by Senator Heffernan in this chamber last week and which form the basis of the allegations he passed on to the New South Wales Police are definitely not documents provided pursuant to any FOI request? Minister, that is my question. It does not go to operational matters; it goes to the question of the status of these documents and whether or not they were provided pursuant to an FOI request.

Senator Abetz—I think there is a slightly different question being asked now by the Leader of the Opposition. I understand in the normal course of events, when FOI requests are made, if people do not object et cetera, certain information may or may not be made available. The department did respond and act appropriately in relation to FOI requests made by our friends in the gallery or by individual senators and/or citizens. In relation to the document that I think Senator Faulkner is referring to, namely, the purported Comcar docket, I understand from my department that is a document the department cannot authenticate.

Economy: Growth

Senator Watson (2.04 p.m.)—My question is directed to Senator Hill, the Leader of the Government in the Senate. Will the minister inform the Senate how Australian families are benefiting from the Howard government’s responsible economic management?

Senator Hill—The coalition government continues to provide the good economic times Australia is currently enjoying. There has been more good news today. The building industry is booming. ABS figures out today show commencement of new private sector houses rose 18.6 per cent in the latest quarter. The trend estimate for the total number of dwelling units commenced rose 17 per cent in the December quarter in the year 2001. This of course means more jobs, greater consumer confidence and more retail spending.

We all remember the now Leader of the Opposition, Mr Crean, saying in March 2001:

We are in a severe downturn. The GST has mugged the Australian economy. They have given us the slowdown we did not need to have, and how could this government get it so wrong.
It is now blatantly obvious Mr Crean got it so wrong. The Australian economy has shown considerable resilience to the international economic downturn and the outlook continues to be positive. The Australian economy grew by a strong 1.3 per cent in the December quarter and 4.1 per cent through the year—faster than the major OECD economies. The latest business surveys, including those of the National Bank, ACCI, Dun and Bradstreet and Yellow Pages, show that business conditions have recovered significantly since the terrorist attacks on the US of 11 September and the collapse of Ansett. Interest rates continue to be at their lowest levels in 30 years. Today the average home buyer is saving more than $370 each month on their interest bill. We have created more than 950,000 new jobs, or 430 jobs per day, since coming to office. The unemployment rate is down from seven per cent to 6.6 per cent.

It is all good news for Australian workers and Australian families—news that Labor does not want to hear. Why would it when the Labor legacy is so embarrassing? A high taxing, high spending, high deficit government; nine budgets in successive deficit; a $10 billion black hole when it left office; tax increases when it promised cuts; interest rates up to the level of 17 per cent; and small business tax, under Labor, of over 20 per cent. And it seems it is proud of it! Unemployment was at its highest rate since the Great Depression—over one million unemployed at its height under Labor; $96 billion of government debt was run up between 1990 and 1996, $57 billion of which this government has repaid, and average inflation was 5.2 per cent.

This is the comparison: good economic times under the Howard government; bad economic times under Labor. This was the primary distinction on which the Australian people voted at the last election, and they will vote again for a government that can give good economic outcomes, a government which is good for Australian workers and good for Australian families.

Privilege: Senator Heffernan

Senator CONROY (2.08 p.m.)—My question is to Senator Abetz, the Special Minister of State. I appreciate the point that the senator made earlier, so I will try to stick to process issues. When was the Department of Finance and Administration first made aware of the existence of the document purporting to be a Comcar record, on which Senator Heffernan has based serious allegations against Justice Kirby? When was the department first provided with a copy of this document and by whom? What action did the department take to assess the authenticity of this document? How was such an investigation carried out? What was the result of the investigation? When was the minister first informed of the result?

Senator ABETZ—I am sure Senator Conroy would appreciate that I was not able to take all of those questions down, but what I can do for the honourable senator is take those questions on notice and provide him with a response.

Senator Carr—How weak!

Opposition senators interjecting

Senator ABETZ—We get the predictable cacophony from the opposition, but I do not think anybody would anticipate that I would know the dates and times when DOFA were first advised. Indeed, in relation to the authenticity, I have already indicated to his leader—and that is a problem, isn’t it, when the opposition have their question time tactics worked out but then do not listen to the answer given to the first question—that the department have been unable to indicate the authenticity of the document. That is my advice, that is what I said to your leader, and I will say it to the deputy leader. Senator Conroy makes certain conclusions, and that is for Senator Conroy to do. My advice from the department is that they cannot authenticate the document.

Senator CONROY—I have a supplementary question, Madam President. I draw to the minister’s attention that in the other place the acting leader of the Liberal Party has indicated that it is a fabrication. I ask again: when was the minister first informed of the result of his department’s investigation into the authenticity of the purported Comcar document? Who in the department was told of any such assessment of the document’s
authenticity? Were current or former ministers told? Which other departments were told?

Senator ABETZ—In relation to the answer that was given in the other place, the honourable senator would know very well that he is parroting what Mr Costello said in relation to Senator Heffernan’s personal conclusions. He has indicated to the other place that is what Senator Heffernan has concluded. As the responsible minister, all I can comment on is the conclusion that my department have come to—and that conclusion is that they cannot authenticate the document that was provided.

Opposition senators interjecting—

The PRESIDENT—Order! There are too many people shouting.

Senator ABETZ—In relation to the question as to all the people who were consulted and at what time they came to certain conclusions, I will take that on notice and get back to the honourable senator as soon as I can. (Time expired)

Workplace Relations: Policy

Senator COLBECK (2.12 p.m.)—My question is to the Minister of Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of any new policy proposals regarding workplace relations that have been initiated under the strong leadership of the Howard government? Is the minister aware of any alternative proposals in this area that are worthy of consideration?

Senator ALSTON—I thank Senator Colbeck, and he would know as well as anyone else in the chamber just how important it is for small businesses to have the unfair dismissal laws repealed.

Senator Jacinta Collins—That’s not new. He is asking for new ones!

Senator ALSTON—No, it is not new—exactly. But what is new is that Mr Crean is out there pretending he is on a modernisation path. No-one knows what it means—he has not been prepared to spell it out—but, presumably, it means standing up to the trade unions. They are walking away because they think Labor is irrelevant. So what has Mr Crean said? Mr Crean says, ‘ Basically, the factions are our biggest problem.’ And does he give a few people a serve on the way through? He says:

Labor’s factional system was rewarding mediocrity and promoting candidates with few life skills and little understanding of the community.

Well, there is the proof. He is absolutely right on that count, isn’t he? It is not good enough for Mr Crean to say, ‘I’ll set a 1,000-day deadline for change, and change is about culture, attitudes and commitment,’ because serious and meaningful change is about policies and legislation. If you are fair dinkum about wanting to help small businesses, ordinary Australians and those whose real incomes declined under your accord and have gone up dramatically under our workplace reform initiatives, then you would be out there supporting that legislation, not pretending somehow ‘The factions are the problem’; ‘We’ve got to modernise’—whatever that might be—and ‘I’ll give myself a three-year timetable to basically do nothing but mouth slogans’. You had Knowledge Nation—that was a three-year slogan—and that did not work very well. You have to do a lot better than that.

Of course, while Mr Crean is busy wringing his hands, you have the part-time shadow minister for communications, Mr Tanner, who is of course much more interested in getting up the factional pole—a classic case study. He says, ‘As a trade unionist, we have got too many trade unionists in the parliament. I’ve got there, so enough is enough.’ I can understand him saying it if he is an example of what happens when you go that one step too far. He is probably right. But, again, he says, ‘The party is in serious decline. The organisation needs an overhaul. Branch stacking has made a mockery of the branch system. There is a lack of diversity in Labor’s parliamentary ranks. Too many of its MPs were drawn from the Labor movement.’ Need I say any more? He is almost pinching my words, isn’t he? The fact is that it is all reflected in policies and initiatives and knowing what you have got to do to win back middle Australia. That is what it is all about; it is not about going along and talking about changing the culture or reforming
branch stacking. Branch stacking has got nothing to do with having good policies.

We have got people here, most of whom have had at least a primary education, who ought to be capable of understanding what issues are about. They ought to know the benefits of the initiatives that we have introduced that Senator Colbeck was referring to: addressing the excessive burden of current unfair dismissal laws, ending these service fees from non-union members, secret ballots before you can embark on a lawful strike—what on earth is wrong with that?—enhancing the IRC’s powers to promote genuine bargaining and facilitate dispute settling, and restoring the previous termination agreements. Why does Labor simply go out there and say, ‘We are going to change all that; we will review all our policies except Telstra’? Because the public sector unions do not want them to touch Telstra. Why are they not prepared to reform IR legislation? Because the unions do not like it. Why do they say they are opposed to modernising the media laws in this country? Because the unions do not like it. So, if you are serious about this, stand up for them. Do some decent things on the policy front. Do not just get out there and think that you will be able to get away with another three years of talking the talk, because you will not. You have the perfect opportunity right now to do something that is in the interests of ordinary Australians and I suspect that once again you will flunk the test. (Time expired)

Privilege: Senator Heffernan

Senator Faulkner (2.17 p.m.)—My question is directed to Senator Hill, Leader of the Government in the Senate and Minister representing the Prime Minister. Does the Prime Minister have even more information about other aspects of Senator Heffernan’s allegations and what is that information? Most importantly, when did the Prime Minister receive that information and who provided it?

Senator Hill—I do not know what the ‘certain information’ was.

Senator Bolkus—Ha, ha!

Senator Hill—How would I know? The Prime Minister indicated at a press conference he had certain information, upon which he therefore asked the senator to take a particular step. The senator agreed to do so and that was the end of the matter. What the additional information was I am not aware.

Senator Faulkner—Madam President, I ask a supplementary question. In that element of my question about the ‘certain information’, I would ask if the Leader of the Government in the Senate, Senator Hill, could take that on notice and report back as soon as possible. And, further, could I ask: what action did the Prime Minister himself take? Did he demand documents from Senator Heffernan? Did he seek confirmation from the ministers responsible? Did he have his own department consider the claims or did he have his own staff thoroughly examine the allegations before any abuse of parliamentary privilege occurred? What action did the Prime Minister take in exercising due diligence in this matter and when did he do it?

Senator Hill—I think the Prime Minister has indicated he was unaware that the speech was to be made last Tuesday. That is when the detail came to his attention and to the attention of all of us. Subsequent to that, the Prime Minister obviously learnt that there were significant shortcomings in material that was provided to the New South Wales Police, as a result of which he has asked Senator Heffernan to resign, which he has indicated he will do. And that really is the end of that matter. I will ask the Prime Minister if he wants to provide further detail on the ‘certain information’ aspect, but it really seems to be exploring the past rather than catching up with the future.
Howard Government: Discrimination

Senator GREIG (2.20 p.m.)—My question is also to Senator Hill representing the Prime Minister. I ask the minister: given that the Howard government discriminates against gay and lesbian people and their relationships in and with superannuation, taxation, family law, the Commonwealth Public Service, the Australian Federal Police, the defence forces, immigration, veterans’ affairs, industrial relations, social security and parliamentary entitlements, and given that the government and the opposition have blocked or stymied every attempt by the Australian Democrats to remedy this situation with legislative reform, how does the minister explain the Prime Minister’s recent assertion that the government is not homophobic?

Senator HILL—I missed the last few words, but I think I should advise the honourable senator that laws are made by the parliament, not by the government, and if he wishes to object, arguing that Australian laws are discriminatory, he can do so but he is very much part of that process that determines the laws under which we act. We do not seek to be discriminatory, particularly on the ground of sex, and that is our driving influence in this particular matter.

Senator GREIG—Madam President, I ask a supplementary question. I acknowledge that peculiar answer, but I would ask the minister if he is aware of the fact that Australia is one of the few Western countries in the world that has no national antidiscrimination laws whatsoever to protect gay and lesbian people from harassment and discrimination. And, given this is the case, why does the government prevent moves by the Australian Democrats to progress the sexuality discrimination bill to address this and which has been on the Notice Paper since 1995?

Senator HILL—Antidiscrimination laws have been basically implemented at a state level because that is where the occurrences of discrimination that were seen to require a legislative response were found. If Senator Greig wants to continue to promote legislation of the Commonwealth to cover the field, that is his business and he is certainly entitled to do so, and it may be one day that the national parliament as a whole supports him. But, basically, we do not seek to be discriminatory in our legislation and as we approach our legislative task that guides us in that direction.

Privilege: Senator Heffernan

Senator SHERRY (2.22 p.m.)—My question is to Senator Hill, representing the Prime Minister. Can the Leader of the Government confirm that the Prime Minister only demanded Senator Heffernan’s resignation from his frontbench after Labor demonstrated that the purported Comcar documents relating to Justice Kirby were false and likely to be fraudulent? Given the seriousness of the allegations made by Senator Heffernan, what action had the Prime Minister himself taken to verify the authenticity of Senator Heffernan’s documents, either before or subsequent to Senator Heffernan’s statement to the Senate last Tuesday? If he took no action to verify their authenticity, why then was the Prime Minister ramping up the political heat on Justice Kirby on radio last Friday?

Senator HILL—As I understand it, the Prime Minister caused his own inquiries to be conducted and when, as a result of those inquiries, he believed there were significant shortcomings in documentation that had been provided to the police by Senator Heffernan he asked Senator Heffernan to resign. I would have thought the opposition would think that was the appropriate thing to do.

Senator SHERRY—Madam President, I ask a supplementary question. Who carried out the inquiries on behalf of the Prime Minister, and does the Prime Minister have information shedding further doubt on the authenticity of the purported Comcar document, including doubts from other persons allegedly travelling on the same day? Can the minister confirm, for instance, that John Dawkins has claimed he was in Fremantle preparing for his daughter’s christening on that day or that Ian Sinclair has also cast doubt on any suggestion that he used a Comcar in Sydney on that Easter Saturday, a fact confirmed by an examination of his TA records which show he was not claiming TA for Sydney at that time?
Senator HILL—The opposition seem to be missing the vital fact that, when the Prime Minister determined yesterday that the document in question was not authentic, he asked Senator Heffernan to resign and Senator Heffernan agreed to do so.

Telstra: Services and Sponsorship

Senator HARRIS (2.25 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. Has Telstra incorporated a use-by date into phone cards or do they intend to insert a use-by date? If a person purchases a phone card for emergency use, would that use-by date ultimately have the potential to make it unavailable in an emergency? Is it true that Telstra shut down the Easymail service as of 13 March 2002, and is it correct that Telstra is providing quite considerable sponsorship for racing cars?

Senator ALSTON—I am not sure I can give precise answers to any parts of those questions. They do not consult me about sponsorship, for example. I would have thought that they should be sponsoring Collingwood, but there is probably a conflict of interest there.

Senator Conroy—Shows you what a judge you are.

Senator ALSTON—One can only advise in these matters. Whether they are sponsoring some racing car event, I can find out for you, Senator Harris. As far as expiry dates on phone cards are concerned, all I can think of is that there are pre-paid cards that you can purchase which expire when you run down the stored value of that card, but I do not see why there would be a card that would simply expire by a fixed date irrespective of use. I will check it out, but it sounds unlikely to me. As for shutting down Easymail by a particular date, I recall that, as a result of a fairly lively media debate, Telstra extended the closure date of that service by about six weeks. I think we also required them to make inquiries about the number of small businesses and people operating from home who might be affected by the fact that it would not be possible to relay an email through to a new email address. I think that matter was also dealt with in a satisfactory way, but I will see if I can find some more information for you.

Privilege: Senator Heffernan

Senator LUDWIG (2.28 p.m.)—My question is to Senator Hill, Leader of the Government and Minister representing the Prime Minister. Can the Leader of the Government confirm that the Prime Minister has demanded Senator Heffernan’s resignation only as Parliamentary Secretary to Cabinet? Can the Leader of the Government also confirm that Senator Heffernan undertook his speech slandering Justice Kirby under privilege and based on fraudulent documents as a senator representing the Liberal Party, not in his role as Parliamentary Secretary to Cabinet? Shouldn’t the Prime Minister’s demand for Senator Heffernan’s resignation go to the role under which he committed the breach of parliamentary standards, that is, as a Liberal Party senator? When will the Prime Minister, or indeed the Leader in the Senate himself, take action in regard to the Liberal Party’s endorsement of Senator Heffernan in this place?

Senator HILL—If I had been in opposition for six years and still had not developed an economic policy, I would be looking for a diversion. So, lucky Labor Party, they have a diversion. So for today you do not have to face up to your own shortcomings—shortcomings which, after six years, failed to deliver to the Australian people an alternative economic policy; shortcomings that meant in the last election they had no alternative but to vote for the Howard government, because it was only the Howard government that gave them the economic credentials of a prosperous future.

Opposition senators interjecting—

Senator HILL—Okay, then, let’s talk about slander. Let’s start with Senator Faulkner. When is Senator Faulkner going to apologise to the Baillieu family? This is the old double standard of the Labor Party. When he came in and slandered the Baillieu
family—actually slandered a dead man—did he apologise? No; he said, ‘I will never apologise.’ The Labor Party never apologises. So, yes, he used the coward’s castle. He came in here and defamed a dead man, years ago, and he still has not apologised. Perhaps we could start this debate today with clean hands. Senator Faulkner could get up and say, ‘I apologise to the Baillieux for defaming them under parliamentary privilege,’ and then we could hear what comes from the other side.

Opposition senators interjecting—

Senator HILL—I could give examples of Labor defaming judges who have retired—even deceased judges. When I took that point of order, did Senator Ray leap to his feet and say, ‘I will not stand the Labor Party defaming under the privilege of parliament’? Did he say, ‘I will not use the coward’s castle; I will not allow my colleagues to do this’? Of course not, because of the same old double standards from the Labor Party that we always get.

Senator Heffernan has made an error, and he has suffered a significant penalty as a result of it. He has lost his position as Parliamentary Secretary to Cabinet—a significant penalty for a mistake that was made, even though it was a mistake that was clearly unintended. Senator Heffernan was not aware that the document in question was false. He was not aware of it. On that basis, I think the penalty he has suffered is more than enough for the offence that has been committed.

Senator LUDWIG—Madam President, I ask a supplementary question. Given Senator Heffernan’s failure as yet to comply with the Prime Minister’s belated instruction to make a statement to the Senate apologising to Justice Kirby and to the Senate, what action will the Prime Minister—or Senator Hill, as Leader of the Government in the Senate—take to ensure that Senator Heffernan begins to set right the incalculable damage he has done? Why doesn’t the negligent peddling of fraudulent documents under parliamentary privilege mean the removal of Senator Heffernan’s Liberal Party endorsement and, preferably, his resignation as a senator altogether?

Senator HILL—Did the honourable senator ask Senator Faulkner to resign? Did his colleagues ask former Senator Walsh to resign? Of course not, because it was different: it was the other side of the chamber!

Honourable senators interjecting—

The PRESIDENT—Order! There are senators shouting on both sides. It makes it difficult to hear, and the behaviour is disorderly.

Senator HILL—Senator Heffernan has suffered a significant penalty in this regard, and the fact that he is prepared to take that penalty is the first step towards putting the mistakes right; in other words, demonstrating to the honourable judge that mistakes have been made and Senator Heffernan will apologise for those mistakes.

Economy: Rural and Regional Australia

Senator EGGLESTON (2.34 p.m.)—My question is directed to the Minister for Forestry and Conservation, Senator Ian Macdonald. Would the minister outline how the government’s strong economic management is delivering benefits to rural and regional communities, and is the minister aware of any alternative approaches to rural and regional policy?

Senator IAN MACDONALD—Senator Eggleston, coming from rural Western Australia, is very much interested in what the Howard government’s good economic record has done for rural and regional Australia. In the last six years, the Howard government have been concentrating on economic management to the extent where we now have what has been described as the economic miracle economy of the world. That has meant real benefits to rural and regional Australia. Rural and regional Australia has been part of the reason for the economic increase and it is certainly a beneficiary. There has been 4.1 per cent growth, which is even more remarkable when you consider this is against a background of recession in the US and in Japan. The agricultural outlook remains positive and there are good signs ahead for rural and farming areas. Future agricultural projections show that exports are forecast to rise by some five per cent to $30 billion this financial year and that gross farm
production is forecast to increase by five per cent. Milk prices, for example, are also forecast to rise by seven per cent.

The good economic work of the Howard government has meant we have been able to remove $3.5 billion of taxes from exports. That has been fabulous for the rural sector. Increased productivity in transport and across the wharves has also helped rural and regional Australia. We have a lot to thank Peter Reith, Chris Corrigan and Patrick’s for, for the good work they have done across the wharves, because it allowed our exports to be exported much more productively. The good return from the economy has meant that Australia can invest $1.5 billion in the first part of the Natural Heritage Trust, which helps in rural and regional Australia, and can invest an additional $1 billion, which was announced last year as part of our election commitment to the Natural Heritage Trust.

The Commonwealth have given $700 million for the National Action Plan for Salinity and Water Quality. We have been able to use Australia’s good fortune in the economy to open up rural transaction centres, to have programs like the Regional Solutions Program, and to invest almost $500 million in helping medical facilities in rural and regional Australia. This has all had an impact. Our unemployment figure was down to 6.6 per cent last week. You only have to compare that with what Labor had, which was unemployment up into the 10 per cent, 11 per cent and 12 per cent range.

I was asked by Senator Eggleston whether I am aware of alternative policies. Of course, the Labor Party has no policies whatsoever in the federal sphere, but you can look at its state counterparts and see what they are doing. Australia’s newest Labor government, the Bracks government in South Australia, has announced this morning that it is slashing regional development programs in that state. So the bush will fail under a Labor government in South Australia, and that is the same as you get from the Labor Party here. The Bracks government had a concerted attack on timber communities in Victoria and that will cost jobs and livelihoods in Victoria. The Western Australian Labor government similarly slashed hundreds of jobs in the timber industry in that state. The Labor Party opposed all the good things that the Howard government has done. It opposed our productivity gains across the wharf and, of course, it could not do anything about that. *(Time expired)*

**Committee Membership: Senator Heffernan**

**Senator O’BRIEN** *(2.38 p.m.)*—My question is to Senator Hill, Leader of the Government in the Senate and the Minister representing the Prime Minister. In the light of the comprehensive discrediting of Senator Heffernan in recent days, does the Leader of the Government in the Senate propose to maintain Senator Heffernan’s position as one of his nominees on the Senate Select Committee on a Certain Maritime Incident?

**Senator HILL**—Senator Heffernan has indicated to me that he wishes to stand down from that position, and we will accord with his wish.

**Environment: Paradise Dam**

**Senator BARTLETT** *(2.39 p.m.)*—My question is to the Minister representing the Minister for the Environment and Heritage. The minister would be aware that the Burnett River is recognised as a priority river under the National Action Plan for Salinity and Water Quality and will receive part of the $162 million allocated for Queensland under that program. Given that construction of the Paradise Dam along this river in conjunction with amendments to the Queensland Water Resources Act will lead to a major reduction in environmental flows in the Burnett River and a doubling of the amount of available irrigation water, on what basis did the federal minister decide that the Paradise Dam would not increase the severity of the salinity in this priority catchment and would not cause unacceptable degradation to fisheries and to lungfish habitat?

**Senator HILL**—There have been a number of environmental studies on this particular matter which I presume are the basis for a conclusion in the form that has been stated by Senator Bartlett. In relation to the detail of that matter it is probably better that I get Dr Kemp to respond and give the honourable senator exactly what he is seeking.
Senator BARTLETT—Madam President, I ask a supplementary question. I appreciate that commitment from the minister. Why is it that the federal government is giving money to a state to address salinity whilst at the same time approving major proposals that will increase salinity in the same area? Is it the case that irrigators have thus far failed to pay for water derived from the Walla Weir in the same region as they have been required to do? What steps will the Commonwealth take to ensure that irrigators pay for the infrastructure and water costs associated with the Paradise Dam? Will the federal minister require that such payments are made before permission for the dam is given?

Senator HILL—I cannot see that the irrigators would be making payments to the Commonwealth, but I will add that issue to the question. I think it should be understood that this is a government that supports economic development, including rural economic development; it is just that the government wish that this be achieved on a sustainable basis. We do see scope in parts of Australia for further economic development that can achieve the win-win outcome of the creation of wealth at the same time as conserving our natural systems. I guess that is one way in which we distinguish ourselves from others in this chamber. I think it should be understood that that is a government that supports economic development, including rural economic development; it is just that the government wish that this be achieved on a sustainable basis. We do see scope in parts of Australia for further economic development that can achieve the win-win outcome of the creation of wealth at the same time as conserving our natural systems. I guess that is one way in which we distinguish ourselves from others in this chamber who have never believed that you can achieve both of those objectives. We have been strongly committed to good environmental outcomes but also, as the record shows, strongly committed to economic growth, jobs and all of the benefits that that brings to all Australians.

Privilege: Senator Heffernan

Senator MACKAY (2.42 p.m.)—My question is to Senator Hill, Leader of the Government in the Senate and the Minister representing the Prime Minister. Does the Leader of the Government in the Senate agree that the actions of Senator Heffernan in the past week in attacking a judge of the High Court under parliamentary privilege while relying on the statements of discredited so-called rentboys and apparently fraudulent Comcar documents have done immeasurable harm to the very cause that Senator Heffernan claims to have been pursuing? What has this debacle done to the credibility of efforts to bring public attention to the incidence of paedophilia in Australia?

Senator HILL—Labor would be more legitimately in this debate if there had been one person on their side who stood up to the then senator Peter Walsh when he was defaming former Chief Justice Barwick. How many on the Labor side stood on their feet and said, ‘As a matter of principle, I deplore what is happening’? Not one. And now they come into this place wringing their hands. They are so precious; but with what credibility? With very little. What I will say about Senator Heffernan is that he is committed to fight against the abuse of children. He is absolutely committed, and I would have thought that every honourable senator in this place would recognise that fact. In this instance he has made an error and he has suffered a significant price for doing so: he has lost his job as a parliamentary secretary. He has lost, if I might say, a lot of credibility from this experience and he will apologise to the judge today, which is more than any Labor person was prepared to do in relation to Chief Justice Barwick.

That is the distinction: when someone on this side of the chamber makes a mistake, they will accept the consequences; when someone on the other side—that is, Labor—makes a mistake, they say, ‘Too bad.’ Senator Faulkner said: ‘Never will I apologise to the Baillieu family. I might have alleged that they got money from this government’—when they were already dead—‘but I will never apologise.’ The Labor Party do not apologise—that is the distinction. A mistake has been made and the senator will say how much he regrets the damage that has been done. He will start a process of trying to right that wrong. He has accepted a penalty for himself. The Labor Party ought to take a lesson from that experience.

Senator MACKAY—Madam President, I ask a supplementary question. In light of the damage done by both Senator Heffernan’s actions and the insensitive comments by Governor-General Hollingworth, what action will the Howard government now take to address the serious issues at the heart of the scourge of child sexual abuse in Australian
society and the very separate issues of discrimination and vilification based on sexual preference as demonstrated by Senator Hefernan in this instance?

Senator HILL—This government will continue to fight child abuse in every way that is open and possible for it to do so. But it will also attempt to judge individuals fairly—which is more than the Labor Party were ever prepared to do with the Governor-General. A whiff of an opportunity and Mr Crean was on his feet, ‘Resign, resign, resign,’ because he saw a short-term political gain. There was no respect for the individual in that circumstance—just another illustration of double standards. When the Labor Party face up to their own failures in this regard and start to adopt standards that apply across the board rather than when it suits them for a short-term political gain, then they will start to earn credibility in the eyes of the Australian people. But all signs are that they still have a long way to go in that regard.

Australian Tourist Commission: Funding

Senator BARNETT (2.46 p.m.)—My question is to the Special Minister of State, Senator Abetz, representing the Minister for Small Business and Tourism. What benefits to the Australian tourism industry are expected to flow from the provision of an additional $24 million over five years to the Australian Tourist Commission? What else is the Howard government doing to support Australia’s tourism operators?

Senator ABETZ—I thank Senator Barnett for his question and his ongoing interest in matters of small business and tourism, both of which are important employment generators for Australia, especially for our home state of Tasmania. All senators would be aware that it has not been an easy six months for our tourism operators. The Howard government has recognised this fact and responded promptly and effectively. During the election campaign the government made a commitment to provide an additional $24 million over five years to the Australian Tourist Commission. This commitment is aimed at protecting Australia’s market share of international travel, restoring and increasing visitor numbers to regional areas hardest hit by recent domestic and international events, attracting large conference and convention business, and converting the record awareness of Australia into actual sales. Key elements of the strategy made possible by this additional funding will include specific marketing campaigns, working with key industry partners and focusing on leisure travel in Asian markets, a business tourism marketing program to attract large conferences and convention business to Australia, and a campaign in key markets focusing on specific market segments once conditions are favourable.

The ATC has already developed plans to allocate the additional $6 million to be provided this year to maximise benefits to the inbound tourism industry. In accordance with the Howard government’s commitment to ensuring the ATC’s activities are targeted effectively, the minister has met with the chair, deputy chair and managing director of the ATC to discuss ways in which the commission can maximise the benefits to Australia from the additional funding over the next four years. I would also remind senators that the Howard government has previously allocated to the ATC a record $361 million over the four years to 2001-02. So the government’s commitment to the tourism industry and to thousands of small businesses which rely on tourism is not new; it has been a constant feature of this government.

Another example of this commitment was the establishment of the tourism industry working group—a body convened to advise the government after the terrorist attacks in the United States and the collapse of Ansett. The group reported back to the government barely a month after the September 11 terrorist attacks. Acting on the thrust of the working group recommendations, the Howard government announced $20 million in assistance for the tourism industry—$15 million to be used to assist small to medium tourism enterprises and $5 million to be used to promote tourism. It was announced on 30 October that the $5 million would be used to establish the Holiday Incentive Program. This program encouraged people, by means of a $150 rebate, to travel within Australia. To ensure that the program was not simply
about rewarding people who happened to be travelling anyway, travel over the Christmas-New Year period was not eligible, nor was business travel. There was also a requirement that travel be booked through a travel agent. Over 29,000 Australian households took advantage of the rebate offer in order to holiday at home and support our local tourism industry. That indicates just some of the initiatives we as a government have taken to promote tourism and especially the small business sector within tourism.

**Defence: Ordnance**

**Senator CHRIS EVANS** (2.50 p.m.)—My question is directed to Senator Hill, the Minister for Defence. Can the minister confirm that an Army report identifies critical shortages in ammunition and raises concerns of accidental deaths as a result? Doesn’t the report note that the Army has been receiving just 50 per cent of the ammunition it needs to train properly, which represents a shortfall of up to $80 million a year? As a result, doesn’t the report raise serious concerns about the risk of fratricide or accidental deaths? Why haven’t Australian soldiers been given the support they need to attain the skills vital to their safety and effectiveness?

**Senator HILL**—The Chief of Army commissioned an ammunition study in December 2000. That study is not yet finalised. It is due to be considered by the Chief of Army in May this year. A thorough study of that nature was last conducted in the early 1990s. So that which is reported on today is an interim report still under development. When the report is finalised and reviewed by the Department of Defence, it will be considered by the government.

The ammunition study deals with the Army’s operating stocks to raise, train and sustain units. The Australian Army currently has sufficient ammunition to support the training for and the conduct of current operations and to meet anticipated contingency requirements. Every soldier on operations or on high readiness notice has enough ammunition to do their job and is properly prepared and highly trained. The ammunition study is being conducted to develop and confirm the detailed ammunition requirements of Army. The study will determine the optimal levels of ammunition required for training purposes and will also evaluate where recent advances in technology and simulation might support live firing. The results of the study will be benchmarked against the practices of our major allies, the United States and the United Kingdom.

The study is the first step in determining the way Army will acquire, manage and use ammunition in the future. Army acknowledges that a small number of specific ammunition natures are currently in short supply for either technical or supply reasons. Some of these technical issues are being resolved through a rigorous and enhanced testing regime. Ammunition stock levels are determined by considering many factors including resource priorities, delivery lead times, shelf life, training requirements, and operational and contingency demands.

Ammunition is allocated based on clearly defined priorities to those units and soldiers who most need it. The most recent example was the allocation of additional resources to support the increased readiness of the 1st Brigade in 1999. Troops training for imminent operational service receive a priority for ammunition. Army actively risk manages the allocation of ammunition. Indeed, the figures in the newspaper today detail the ammunition allocated against internal Army bids. Additional stocks are held above those allocated. Army soldiers are properly trained and have enough ammunition to do their job on operations. This is clearly demonstrated by the performance of our soldiers on operations.

**Senator CHRIS EVANS**—I ask a supplementary question, Madam President, and I thank the minister for his answer. Doesn’t the detail of the report directly contradict the assurances the minister has just given the Senate? The report actually details complaints from senior Army personnel about the fact that there is not enough ammunition to ensure proper training and preparation for deployment. The assurances the minister gave are quite contrary to what is contained in the report. I also ask the minister when he became aware of the report and what action he has taken in response to the report.
Senator HILL—I responded to the newspaper reports and what I have advised the Senate is today’s advice from the Department of Defence—so that is the authentic position. As I said in my answer, the report to which the honourable senator was referring is a work in progress and its conclusions do not seem to be those of the Department of Defence as a whole today. In conclusion, in the 20 years that I have followed the foreign affairs and defence debate in this country, I have lost count of the number of times when an individual service has said that it would wish to have more ammunition. It seems to be part and parcel of the process of defence that all units would obviously like to have more ammunition. The task of government is to ensure that the ammunition they have is adequate in order for them to do their job effectively and safely. Our troops in the field have demonstrated how that works in practice.

Law Enforcement: National DNA Database

Senator CALVERT (2.56 p.m.)—My question is directed to the Minister for Justice and Customs, Senator Ellison. Will the minister provide the Senate with an update on the progress being made to establish a national DNA database to assist law enforcement agencies with catching the guilty and protecting the innocent?

Senator ELLISON—Senator Calvert has asked a very important question in relation to law enforcement in this country. As part of the Safer and Stronger Australia program, last year the Prime Minister launched the CrimTrac initiative. That $50 million initiative was for a DNA database and it has been in place since June last year. I am pleased to say that a number of jurisdictions have made progress in relation to this matter. Victoria has reported that, out of 2,800 prisoners tested, 99 have been linked or charged with 238 serious offences. This is a very important national tool in crime fighting.

Progress has been made across a number of jurisdictions because, after all, this can only work with the cooperation of the states and territories. I was therefore surprised to hear that the New South Wales DPP, Nicholas Cowdery QC, suggested that the matching of DNA profiles in the CrimTrac database had been held up by the Commonwealth. Mr Cowdery should be the first to know that this requires the cooperation across the board of all states and territories. In fact, whilst uniformity across the board does remain to be achieved, I have written to the Queensland and the Northern Territory governments to see whether further progress can be made in those jurisdictions. We are working with other jurisdictions to advance this further. But, so far, there has been progress, and people should recognise that.

This is an initiative which will see a DNA database working on a national basis so that police in regional, suburban and metropolitan centres can have access to this world-class database not only to detect the guilty but also to exonerate the innocent. This initiative is at the cutting edge of law enforcement. It is something to which the Commonwealth government are totally committed. We are driving it from a national level and we will see the benefits in relation to law and order at a local level across Australia.

I reject totally the claim that the Commonwealth have held up progress on this matter in any way. We are attempting to develop uniform legislation across Australia and to ensure that there are also safeguards for the individual. Safeguards are an important part of this and we are working with the Privacy Commissioner and the Ombudsman in this regard. These are important aspects and we want to see that in all the jurisdictions across Australia this is protected and respected.

The initiative that I am talking about will take the cooperation and the efforts of state and territory governments. I ask those jurisdictions which still have a way to go to move apace in implementing this initiative in their own jurisdictions so that other jurisdictions in Australia can have access to that database. As I say, there has been great progress made, and I point to Victoria, which has already got some runs on the board. But there are some jurisdictions, of course, which have a way to go. But certainly the Commonwealth reject entirely any allegation that we are holding this matter up; indeed, we are pushing it forward.
Defence: Ordnance

Senator HOGG (3.00 p.m.)—My question is to Senator Hill, the Minister for Defence. I note, Minister, your answers to an earlier question by Senator Evans. Is the minister aware that the training of SAS troops over the last few years has been potentially compromised because of a lack of different forms of ammunition? Given the dangerous nature of roles they carry out and the high level of readiness they must maintain, why have they not been given the ammunition they need? Hasn't the SAS been allocated far less ammunition than their equivalent units in the US and UK? Is this not an issue for those troops that are currently deployed in Afghanistan?

Senator HILL—Madam President, I visited our SAS troops, who have been deployed in Afghanistan, in Kuwait. I talked to them about their equipment and readiness. I visited our SAS troops in Perth at their headquarters and talked to them about similar matters. I visited our SAS troops who were helping guard CHOGM in Queensland and they demonstrated to me their undoubted capability in that task, and I met with some of our SAS troops who are helping with the upgrading of capability of our commandos in Sydney. In no instance have I been told by any of those troops that there is a shortage of ammunition in their training. Instead, what they have done is say that they are pleased with their level of training and their competitiveness in terms of other operating units of a similar type. That has been illustrated very well in Afghanistan where our special forces have been commended for doing an outstanding job, at least as capable as any other special force currently operating in that region. I can only suggest to the honourable senator that he go back and reconsider the source of his information. Perhaps he might like a briefing from the SAS commanders or from other senior Defence personnel but, certainly, I would not rely just on a work in progress. I invite the honourable senator to explore the issue further and I am sure that he will then be satisfied that our special forces are in fact very well trained and very effective in their task.

Senator HOGG—Madam President, I ask a supplementary question. I will take up the minister’s request there. Will the minister undertake to provide information on levels of ammunition provided to the SAS for training over the last two years compared with the ammunition requested by that organisation?

Senator HILL—I do not think that that is appropriate, Madam President. What I have said is that I am satisfied and it is confirmed by the brief that I have read to the Senate today that the Australian Defence Force in general and our special forces in particular are well trained. They cannot be well trained unless they have sufficient opportunity to use their weapons. I am satisfied with the assurances that I have been given and I invite the honourable senator to be likewise satisfied. I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Privilege: Senator Heffernan

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) and the Special Minister of State (Senator Abetz) to questions without notice asked today relating to remarks made by Senator Heffernan concerning a judge of the High Court of Australia.

We are aware that the Prime Minister has requested that Senator Heffernan apologise both to the Senate and to Justice Kirby as a result of statements that Mr Howard made at a doorstop interview yesterday evening. He has suggested that this occur because of Senator Heffernan's gross breach of parliamentary standards last Tuesday night in this chamber. I think the Senate needs to be very clear about this issue. Senator Heffernan, I suspect, is only going to apologise because of the belated direction of the Prime Minister. I suspect he would not be doing this if he were left to his own devices. But it was the Prime Minister who finally was left with no choice on these matters. It was the Prime Minister who took the only possible course of action at the last possible time in sacking Senator Heffernan as Parliamentary Secretary to Cabinet and requiring him to apolo-
gise to the Senate and Justice Kirby. His problem is that it took the Labor Party’s revelations about the false claims in the Comcar documentation to force the Prime Minister to make the statement he did at the airport last night.

You have to ask yourself the question: why didn’t the Prime Minister act earlier on this matter? Why didn’t he act earlier to force Senator Heffernan to retract his claims and apologise for what he said in the Senate a week ago? Why did the Prime Minister act in such a blatantly political way last Friday when he deliberately ramped this issue up and ramped up the heat on Justice Kirby during a radio interview? Why does the Prime Minister, who self-styles as the most conservative Prime Minister this country has ever had—who calls himself a conservative—fan the flames of Senator Heffernan’s attack on a High Court judge?

The public deserves now to know the full extent of the Prime Minister’s knowledge of the allegations that Senator Heffernan was so intent on making. In question time today, I asked about this information and Senator Hill said that the Prime Minister caused investigations to be made. Senator Hill also said we could ask for another month and we still would not be told who conducted those investigations and when they were conducted. The situation here is that the Prime Minister has told the parliament he knew of the nature of the allegations some considerable time ago. The Labor Party has been attempting to establish when he knew of these allegations, when he became aware of any documentary basis for the allegations and what action he insisted on, if and when that information was available to him. If the Prime Minister had been exercising the due diligence you would expect of a Prime Minister, why didn’t he stop Senator Heffernan making those attacks under parliamentary privilege way back then, instead of allowing what occurred last week and the events since last Tuesday? Why didn’t the Prime Minister instigate a comprehensive investigation into those serious allegations when they were made to him? We are entitled to answers. (Time expired)

Senator HILL (South Australia—Leader of the Government in the Senate) (3.09 p.m.)—I am disappointed, because I thought that Senator Faulkner would take this opportunity to apologise to the Baillieu family for having defamed them in this place and therefore put himself in a position where he could participate in this debate with a touch of credibility. He chose not to, but rather to again demonstrate the double standards of the Australian Labor Party in these matters. Apparently, he now seeks to attack the Prime Minister for the fact that an individual senator in this place made allegations that have turned out to be unsubstantiated. As the Prime Minister has said, he was unaware that Senator Heffernan was going to make that speech on Tuesday night and it logically follows that he was unaware of the content of that speech.

In relation to Senator Heffernan’s broader concerns on the issue of child abuse, and in particular his concerns that principal safeguards within our system have failed Australian children and that important institutions that have that primary responsibility have failed to provide that protection, I would think that we are all aware of Senator Heffernan’s views and that Senator Heffernan believes certain individuals have a lot to answer for in that regard. It has been a mission of his for years. There is no secret about his concern that the major institutions of our society have failed Australian children and that all of us, including this parliament, have been inadequate in our efforts to stamp out child abuse.

In following that mission, he has now taken an action in this place which I indicated the other day was the final resort of a senator: the opportunity to use privilege to make allegations when all other opportunities have failed. He has done so and, regrettably, he has failed to meet the standard that I also talked about the other day; that is, if an honourable senator takes that last resort, they must do so with due care. They must have made every effort to ensure that the argument that they were going to put or the material that they were going to provide was valid and accurate. In this instance, we now learn that a primary document which was a basis
of Senator Heffernan’s allegations was not what it purported to be, and when this came to the attention of the—

**Senator Conroy**—He knew about that!

**Senator Hill**—No, he didn’t. He thought it was a valid document; he thought it was exactly—

**Senator Conroy interjecting**—

**Senator Hill**—That is the point, Senator Conroy. He thought it was what it purported to be, and yesterday, when it came to his attention and the Prime Minister’s attention that it was not what it purported to be, he was asked to resign and he resigned. He accepted the price and he paid the penalty for having made a mistake—which, as I said during question time, is more than other honourable senators have been prepared to do when they have been found to be in error.

It is all right for the Labor Party to huff and puff today, but when they have been found to be in error, such as—I know they laugh about it—when the Baillieu family were defamed by Senator Faulkner, the Labor Party have not been prepared to accept responsibility. At least Senator Heffernan is prepared to accept that responsibility: he has resigned from his position of parliamentary secretary and he has suffered a very considerable price for making an error, and it is a price that is fair to pay because of the damage that has been done to the other party. That is the balance that I spoke about the other day. When an honourable senator believes that, in the public good, a step should be taken that is injurious to an individual, he or she must be very sure of their facts and must be very sure that they have taken every avenue and every opportunity to validate the basis of their information. In this instance, it was found that Senator Heffernan had not done that task well enough, the document was in fact found to be wrong and the penalty has now been paid. *(Time expired)*

**Senator Conroy (Victoria)** (3.14 p.m.)—Senator Heffernan in his speech last Tuesday said that over a period of years he had interviewed young male prostitutes. This is a man obsessed. The Prime Minister also said that he had had discussions with Senator Heffernan. Surely, as everybody in this chamber knows, the Prime Minister must know he was dealing with an obsessed man, because what has come out today is that we have found that Senator Heffernan went through the FOI process, as any Australian citizen is entitled to do, and came up with nothing. Despite this, he went to Dr Peter Boxall, the head of the department, and he sought Dr Boxall’s assistance. What we are trying to establish today is what Dr Boxall did. We have a situation where it appears, according to Mr Abbott in the other place, that there was an investigation and no impropriety in Comcar use came to light. When did it happen?

How long has the government known that Senator Heffernan has been waving around a fabricated document? The department have looked at this. The department rejected this as evidence, and in the other chamber Mr Costello has said that the Minister for Justice, Chris Ellison, will conduct an inquiry into the document, but the right thing to do in these circumstances is to give an unqualified apology. But what we want to know is why, when DOFA received these documents and established that they were fabrications of Commonwealth documents, they did not refer it to the police for investigation. Fabricating Commonwealth documents is a serious offence, and yet this government sat on its hands. We have asked Senator Abetz, ‘When did you find this out?’

**Senator Robert Ray**—He covered up.

**Senator Conroy**—Senator Abetz covered up. That is right, Senator Ray. Why, you have to ask, does Senator Abetz have his fingerprints on this shabby little exercise by Senator Heffernan? What did Senator Abetz know? Why couldn’t he tell us today that he received a brief? Are we to believe that Senator Abetz did not have a briefing today on this matter, that he could not just open the brief, like he does every other day, and tell us when the department received this bogus document, what they did about it, when they decided it was bogus, when they referred it to the police and when they advised the minister? These are all questions that have to be answered, and taking them on notice and stonewalling on this will not get the minister through this, because this goes to the heart of
the corruption in the heart of this government. They are prepared to do anything, to say anything.

They debauched the High Court in the last week. They debauched the Department of Defence. They have humiliated the Chief of the Defence Force. They lied to the Australian public before the election and after the election about their role in the ‘kids overboard’ affair. They have defended the right of staffers to mislead and not supply information. This is a government that is getting more and more rotten to the core, and this is more evidence. Why is it so hard to simply give the answer as to when the department first received this document? When did the department decide it was bogus? When did the department pass this information on to the minister, Senator Abetz? When was this information passed to the Prime Minister, or is this another case of the Prime Minister saying, ‘Nobody told me’?

It has been a live issue; he has even discussed these issues with Senator Heffernan—but nobody told the Prime Minister that the department of finance had actually investigated the document and knew it was a fabrication. We have yet again this government pretending it knew nothing. Senator Heffernan may take the fall today, but there is a rotten core in evidence here and the truth will come out. The departmental officers will appear before estimates and have to answer those questions if the minister does not want to. The truth will come out, so come clean today and tell us what really happened. (Time expired)

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.19 p.m.)—Senator Conroy and, I suspect, Senator Faulkner seem to be labouring under a massive misapprehension, and that is that the document that has now been demonstrated to be false was one that other people, including the department, were aware was false some time ago.

Senator Robert Ray—Are you denying that?

Senator ALSTON—I do not know on what basis you make that allegation.

Senator ALSTON—Are you denying it?

Senator ALSTON—I am not here to pass judgment; I am simply here to find fault with your logic. If you put in an FOI request, for example, Senator Ray—

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

Senator ALSTON—Through you, Madam Deputy President, if a document does not come to light, that does not necessarily mean that this document was fabricated or that someone took a view on this document. In fact, there is no evidence that this document was made available to the department that was the subject of the FOI request. If, for example, the answer to the FOI request was that all documents had been destroyed, does that mean that this document must necessarily be a fabrication? It may mean that this document was one of those that was not destroyed, that this document somehow managed to avoid the destruction that was supposed to have occurred—

Senator Robert Ray—Except that Peter Costello said it was bogus today.

Senator ALSTON—we now know, as a result of what occurred on Friday, that the document is bogus—

Senator Robert Ray—What happened on Monday?

Senator ALSTON—Sorry, Monday. Time flies, doesn’t it? Mr Brereton was out there demonstrating that some of the notations on it were on their face wrong as far as he was concerned. The Prime Minister made certain inquiries and came to a similar conclusion. None of that for a moment suggests that anyone was aware prior to yesterday that the document was a fabrication. Yet most of these contributions we have just heard seem to proceed on the basis that somehow people have known for days or weeks or months. I know it is the laziest form of political debate to allege a conspiracy and then run around pretending that somehow everyone is trying to cover up. There is not a skerrick of evidence to suggest that anyone, including Senator Heffernan, believed this document to be a fabrication prior to yesterday afternoon.
Senator Carr—he didn’t check anything, did he?

Senator ALSTON—you can argue quite separately about the extent to which he made reasonable inquiries. But whether he had knowledge or reason to believe that is a different issue. Again, there is no evidence to indicate that Senator Heffernan had other than an innocent view which involved taking this document at face value.

Senator Carr—Bit of a problem there, Easter Saturday.

Senator ALSTON—Senator Carr does not seem to be following this debate too closely either because, again, the premise is that the Prime Minister should have acted earlier—meaning that the Prime Minister must have known about this document being a fabrication. The Prime Minister has told us as recently as yesterday afternoon that, following inquiries made by him, he took certain action in relation to Senator Heffernan. In other words, that tells me that the Prime Minister, for the first time, became aware that the document was likely to be a fabrication. So, on what basis does anyone want to presume that that knowledge existed prior to that time?

Senator Carr interjecting—

Senator ALSTON—you can speculate as much as you like, but that does not get you very far.

Senator Robert Ray interjecting—

Senator ALSTON—Senator Ray is really complaining that we will not get up here and say that we knew that this document was fabricated a lot earlier than yesterday afternoon. Normally, one reason you have difficulty being able to do that is if it is not true. If you did not in fact know, it would make it very difficult to be able to satisfy your yearnings on the subject. But the fact is that you do not have any basis for making that allegation. It might be wishful thinking. You may love to think, in your heart of hearts, that somehow there is evidence out there to suggest or demonstrate that everyone knew this document was false so many days or weeks ago. But there is not, and that is the fault in all of this argumentation. You could go on as much as you like about who investigated what, and when, and who was there, and how much did they pay, and how many cups of tea did they have—

Senator Schacht—who did he speak to?

Senator ALSTON—What has that got to do with it?

The DEPUTY PRESIDENT—Order! Senator Schacht, come to order; and Senator Alston, address the chair.

Senator ALSTON—Once again, it is suggested that somehow, unless we tell you who, you do not take it at face value; you disbelieve the Prime Minister or you think he is lying. It is just not good enough. (Time expired)

Senator ROBERT RAY (Victoria) (3.24 p.m.)—Listening to Senator Alston and Senator Hill defend Senator Heffernan last week, I got a sense of déjà vu: it reminded me of their vociferous defence of Senator Colston, with the same two suspects being sent into the chamber. Guess what has happened in both cases? With both Colston and Senator Heffernan, it was the PM who pulled the rug just a few days later. Senator Hill last Wednesday kept on referring to Senator Heffernan’s contribution as a ‘technical breach’. That is what he described it as—‘just a technical breach of standing orders’. This was a premeditated, calculated assault on standing orders. This was the assassination, in political terms, of a High Court judge, delivered in such a sneaky way that there could be no intervention by any senator in this chamber, let alone a Presiding Officer, because Justice Kirby was only named in the very last paragraph.

Let us see what Senator Hill said last week. He said, ‘I trust that Justice Kirby has not been unfairly maligned.’ What trust could you have in Senator Hill’s judgment? Then there is Senator Alston, himself, quoted last week. He says—and he is right in this—‘there has to be evidence to make us comfortable that the person making the allegations has done his or her homework’. Oh dear, oh dear, oh dear. The extent of the homework apparently is: accept the forgery, talk to a couple of rentboys, buy one of them a car—and this constitutes pristine research.
Today there has been a variety of suggestions floating around that Senator Heffernan should be dealt with by this chamber by the Privileges Committee, that he should be fined, that he should resign his seat. The fact is that responsibility for Senator Heffernan is no longer in this chamber; responsibility for Senator Heffernan is with the Liberal Party of Australia—and no-one else.

We have been in this position before, I admit it, when Franca Arena went out and made unsubstantiated attacks on a judge and other people in regard to paedophilia. What was our reaction to that? We expelled her. When the case collapsed, we dismissed her—and in circumstances at that time where we had very rubbery figures in the Legislative Council, where we were vulnerable to all sorts of numerical attack; but we expelled Franca Arena. So the message is clear to the Liberal Party of Australia: they can deal with their own. It is a great political philosophy: hunt and kill your own—and it applies in this particular case.

This is not a mere technical breach, as Senator Hill would have us believe; this is a massive failure of process. Today the government has closed the issue down both here and in the other place. It will not answer the technical questions as to whom the Prime Minister asked to investigate this, not even which department did the investigation. We are not entitled to be told any of this, apparently. We would like to know those details. It does not necessarily draw the conclusion that any of the ministers involved in this are guilty of anything in particular. We would just like the facts on the table so that we know.

I am most concerned that Senator Heffernan on two occasions went to interview the Secretary of the Department of Finance and Administration on an FOI matter—because we all know that an FOI officer has discretion in these matters, not a head of department. I am sure, knowing of the integrity of that particular secretary, there would have been no downward pressure—at least I would hope so, but I am pretty certain—on that FOI officer to change their decision. But it is pretty poor form that you take up FOI matters with the department rather than appeal it to the AAT, which is the only alternative left to the rest of us.

I would also like to know before this day is out whether Senator Heffernan remains the Prime Minister’s nominee on the New South Wales branch administrative committee, because that is another place where he has represented him. The fact is that Senator Heffernan’s circus in the gallery last Friday really was disappointing. Here is someone who for five years has trawled through that gallery with media spinning and now suddenly objects to getting his photo taken. I have to say to Senator Heffernan that there was no need for him to wear a yellow shirt: we are all quite well aware of what he is like. In conclusion, I also say this: the day I have to sneek over to the House of Representatives car park and sneek into this building is the day I will leave politics.

Question agreed to.

**Howard Government: Discrimination**

Senator GREIG (Western Australia) (3.29 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Greig today relating to sexuality discrimination.

I noted with interest that, just in standing to ask the question, there was a hostile chorus of interjections from government benches. It is not the first time I have experienced that—and nor in this place. What I find intriguing is the question as to why just raising these issues, why just talking about discrimination against gay and lesbian people particularly in a Commonwealth context, angers those who are in power. I think the answer is because they do not like having that raw nerve prodded. They do not like acknowledging and accepting the fact that this discrimination is real, ongoing and persistent and that we Democrats have tried repeatedly to repeal the legislation that causes the discrimination which has been vehemently opposed by the government.

When I mentioned in my question that the Labor opposition had also never joined the Democrats in legislative reform, there were some angry interjections from this side of the House, most notably from Senator Sherry.
But I phrased my question specifically. I talked about legislative reform. Senator Sherry interrupted me to say, ‘We supported your last motion,’ and he was referring to a matter of urgency or MPI or the like where we Democrats were calling for federal reform in terms of sexuality antidiscrimination laws. Yes, I acknowledge Labor supported that; but that is not legislative reform. That is symbolic; it is iconic. It is important and it is a small step in the civil rights movement for the gay and lesbian movement in Australia, but it has not changed the law.

Most alarmingly, when Senator Hill tried to address, but failed to adequately address, my question he said, ‘This is a matter for state jurisdictions. Discrimination against gay and lesbian people should be dealt with on a state basis.’ I point out to Senator Hill, who is clearly ignorant in this matter, that if you are suffering discrimination in social security or the defence forces or superannuation or the Federal Police or veterans affairs or immigration or taxation, under the Commonwealth umbrella there is absolutely nothing you can do about it at a state level. States can address these issues only if there is discrimination within state based jurisdictions or private sectors within those jurisdictions. That is why we need federal reform.

Senator Sue Mackay asked in part of a question to the government: what is the government doing about vilification and discrimination against gay and lesbian people on the grounds of sexual preference? It is a good question—it is one we Democrats have been asking for many years—but I point out to Senator Mackay that on each and every occasion when we Democrats have attempted reform, either through the introduction of a comprehensive bill or on a case by case amendment to legislation, it has been opposed by Labor—each and every case. Yes, you support symbolic reform; yes, you support iconic reform; yes, you have made gestures of support—but not legislative reform. So I give notice to Senator Mackay and to other Labor senators that it is my intention that, as soon as practicable, I will be moving a contingency motion to bring on the Democrats sexuality discrimination bill which addresses all of these areas of discrimination under Commonwealth law, as well as antivilification provisions, and it will then be the litmus test for Labor as to whether they are going to support this.

In conclusion, I would reiterate that the government clearly fails to understand there is ongoing comprehensive Commonwealth discrimination against gay and lesbian people and it is furthered and fanned and perpetuated by the rising temperature of homophobia we now experience in this country. I have had anecdotal reports already of increasing levels of violence against gay and lesbian people in Sydney and Melbourne as a direct result of the homophobia which Senator Heffernan, through his now infamous speech, spewed into this chamber. We need Commonwealth reform. The best way to achieve that is through the passage of the Democrats’ sexuality discrimination bill, and I call on both the government and the opposition to support it and to support it soon.

Senator HARRADINE (Tasmania) (3.34 p.m.)—I do not know how long we have.

The DEPUTY PRESIDENT—Twenty-nine seconds!

Senator HARRADINE—Then there is not much one can say. But I think Senator Brian Greig should look at his own actions and those that put the taxpayer to great expense. Because a certain group was arguing quite objectively about the matter, he or his office sent material to that body—weighty material—on a reply—

Senator Greig—Madam President, on a point of order—

The PRESIDENT—It should be done at the end of the speech but, as it happens, the time for the debate has expired.

Question agreed to.

BUSINESS
Rearrangement

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.35 p.m.)—by leave—I move:

That, on Tuesday, 19 March 2002:

(a) the hours of meeting shall be 2 pm to 6.30 pm, and 7.30 pm to midnight;
(b) the routine of business from 7.30 pm to 11.20 pm shall be government business only; and

(c) the question for the adjournment of the Senate shall be proposed at 11.20 pm.

As discussed with all leaders and whips and the Manager of Opposition Business, the intention of the government is to progress only second reading debates of bills on the Notice Paper on the basis of no divisions and no quorums. The longer-term plan is to ensure that the government’s program is finished on time by Thursday and that we have second reading debates at night and the detailed committee stage during the day. I appreciate the indications of support from all honourable senators for that schedule.

Question agreed to.

PRIVILEGE

Senator HEFFERNAN (New South Wales) (3.37 p.m.)—by leave—I rise today to make a statement to the Senate regarding allegations I made in this place last Tuesday evening about the Hon. Mr Justice Kirby AC, CMG. At the outset, I want to extend to Michael Kirby my sincere apology and deep regret for the allegations I made in this place: I withdraw them unreservedly. I know that, with the recent widespread media coverage of my speech, his personal standing has been harmed. I do not expect him to accept my apology but, nonetheless, I give it, because I recognise the personal hurt that must have been suffered.

I also apologise to the Senate and the whole parliament. In addition, I want to extend an apology to the Prime Minister and my coalition parliamentary colleagues. I want to make it clear that I did not speak to the Prime Minister about these matters from before the last election until I made the speech in the Senate on Tuesday of last week. As I have already indicated, and as the Prime Minister has publicly confirmed, in the past I have generally discussed my concerns with him and have done the same thing with others. John Howard has previously told me that he should not raise in the parliament allegations that could not be substantiated, that I ought to take great care about allegations I received about public figures and that parliamentary privilege should always be used with the greatest of care.

I did not discuss with him or his office the timing or the text of my speech to the Senate last Tuesday night. I wrote the speech, and I take full and complete responsibility for it. I think all members of the Senate know that I have a strong—indeed, passionate—concern for the rights of children. Despite some speculation in some quarters to the contrary, I do not believe in discrimination against homosexuals. I do not think there is an automatic link between homosexuality and paedophilia. The physical abuse of children—whether by heterosexuals or homosexuals—is an appalling crime.

I want to give to the Senate an account, particularly of the matter relating to the Comcar records. In doing so, I want to emphasise that, at all times until late yesterday afternoon, I believed and had what I thought good reason to believe that both documents I had been given and the source of those documents were authentic and credible. I was deeply distressed late yesterday afternoon when the individual concerned told me that the primary record, the driver’s log, was not authentic. I immediately contacted the office of the New South Wales Police Commissioner to report that the document I had sent him was not authentic. I have today written to the commissioner confirming that fact and indicating my willingness to cooperate with any New South Wales Police Service inquiries into the matter.

I have also written to the Minister for Justice and Customs, Senator the Hon. Chris Ellison, providing him with a copy of the statement and to indicate my willingness to cooperate with any Australian Federal Police inquiry. Late yesterday I also immediately rang the Prime Minister’s office to alert him to this fact. As the Senate knows, the Prime Minister subsequently required me to resign my position as a parliamentary secretary, and I have written to the Prime Minister to that effect today.

In 1998, a Commonwealth car driver generally known to me as a longstanding and experienced driver told me that he and other drivers had a concern about a judge. He made various general allegations about the
conduct of that person several years beforehand. He told me that, after discussions with some other drivers at the time, he subsequently raised the matter with the judge but the issue was not resolved to his satisfaction.

On the basis of these allegations, which were put to me with sufficient detail to oblige me to take the matter further because the behaviour of the kind asserted by the driver would be of public concern, I contacted the New South Wales Police Service. I then told the driver that he should take these matters to the police. He did so. A relevant New South Wales police officer subsequently confirmed to me that the driver had done so. In a subsequent discussion with the driver, I said that, if he had any records that would substantiate the allegations, he should make them available. Subsequently, after the Olympics in late 2000, the driver handed to me what he purported to have obtained from Comcar sources. This consisted of one complete page of a driver’s log from 1994 and several extracts from other purported drivers’ logs from 1992.

After I received that material, I put in an FOI request in order to attempt to verify the documents given to me. There was a long and involved process in which I sought access to various information. During that process, I was advised that documentation for the period including 1992 had been destroyed but that there were records covering the period from 1993 onwards. I was also told that a document would not be released to me on the basis—and I quote here from the FOI decision maker’s ruling—that:

... information contained in the document concerns travel of an individual in a Comcar vehicle. The purpose of the journey is not mentioned and it could be said that the information concerns that individual’s private affairs.

I was further advised that the disclosure would:

... be an unreasonable disclosure of his personal information.

There was subsequent correspondence but, while I was variously told that some records had been destroyed and that other records did not match material I had held, I had been told that there was at least one document relating to a judge’s Comcar usage, including the period in question, for which I was denied access under FOI rules.

In summary, a driver made allegations to me. I alerted the New South Wales Police. I asked the driver to speak to the New South Wales Police. He did so. Subsequently I told him that, if he had any documentation to support his allegations, he should provide it. After the Olympics he gave me certain material. I put in an FOI request and attempted to ascertain if the material was genuine. I was told that other material, particularly that from 1992, could not be authenticated because the original logs had been destroyed. I was told that access to other records did not allow the material to be authenticated, but I was also told that a document relevant to the judge’s travel, including 1994, could not be released to me under FOI regulations for the reasons cited above. The driver continued to assert to me the information he had previously provided. At no time before late yesterday afternoon did the driver ever intimate to me even the slightest suggestion that the material he had provided to me was anything other than completely authentic.

Nothing in this explanation detracts from the fact that it is now apparent that the 1994 driver’s log and possibly the other extracts are simply untrue; indeed, that the 1994 document was manufactured—it was not manufactured by me. Although I believe I was acting in good faith, on the basis of information which appeared completely genuine from a source which appeared credible, and although I had made inquiries to attempt to verify the material, I now fully accept that the key document is not authentic and that there is grave doubt about the credibility of the other extracts. Accordingly, I again extend to Michael Kirby an apology and an unreserved retraction of my allegations. I have resigned from my position as parliamentary secretary and have apologised to this chamber, to the Prime Minister and my colleagues and to the parliament as a whole.

SENATOR HEFFERNAN
Censure Motion

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.44 p.m.)—by leave—I move:
That the Senate—
(a) notes that:
(i) on 13 March 2002 the Deputy President (Senator West) 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, and
(ii) the ruling recorded 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; and
(b) censures Senator Heffernan for:
(i) breaching standing order 193 by his reckless and highly disorderly attack on a judicial officer,
(ii) making such serious allegations on the basis of insubstantial evidence,
(iii) failing to refer all the alleged evidence in his possession to the proper authorities for investigation prior to making his allegations in the Parliament,
(iv) recklessly disregarding resolution 9 of the Senate’s Privileges Resolutions (of 25 February 1988) which require senators to balance their responsibilities with the rights of others, and
(v) abusing the trust of senators by speaking in such a manner that neither the chair nor senators could detect that he was in the process of breaching standing order 193.

I do not move that censure motion lightly—

Senator Ian Macdonald—You should not.

Senator Faulkner—Nor should I. In fact, I believe this is the most deserved of all those censure motions I have heard proposed and debated in my time in the Senate. I do believe that Senator Heffernan has used the Senate recklessly to pursue a personal vendetta. I said that last week. In doing so, I think he has grossly defamed a respected member of the judiciary, Justice Michael Kirby. Nothing could be more deserving of censure by this Senate. For the record, I think it is appropriate that I should recap what Senator Heffernan has done. Senator Heffernan took these matters to the New South Wales Police some time in 1998 and then referred them to the Wood royal commission. Justice Kirby was interviewed by the police in 1998 after allegations by New South Wales MLC Franca Arena, who was later forced to resign from the Labor Party by Premier Carr because of these matters. The allegations against Justice Kirby were found to be baseless. Then the Wood royal commission investigated allegations of a cover-up. Again, they were found to be baseless. At some point during this time, Senator Heffernan was also referring matters about Justice Kirby to the police.

We understand, at some time prior to the attack on Justice Kirby that Senator Heffernan made in the Senate, the Department of Finance and Administration looked at the Comcar documents and found those documents to be fraudulent. Senator Abetz confirmed in answer to a question I asked him in question time today that those documents could not be authenticated. His representative in the House of Representatives, Mr Abbott, went further and said the department had found no evidence of the misuse of Comcars. But the truth is that this did not stop Senator Heffernan. He tried to interest journalists in these documents and this story, but I think it is fair to the press gallery in this building to say that they refused to be influenced by this behaviour which I previously described as obsessive—and I stand by that description. The Prime Minister admitted on the 7.30 Report last night:

Oh, he—

I interpolate he as Senator Heffernan—would have talked to me a number of times about this.

Kerry O’Brien, the compere, asked him:

Over a long period of time?

Mr Howard said:

Over a period of time, yes, and the last time he spoke to me was last year—probably September or October, but the actual speech he delivered was without warning. But, in having come into the public domain, I have to try and deal with it.

When Kerry O’Brien pressed the Prime Minister on the documentation surrounding
the allegations, Mr Howard did seem to become very uncomfortable. Of course he was: his closest political confidant had exploded a bomb in the Prime Minister’s own camp. The questions about what the Prime Minister knew and when he knew still remain unanswered, although they were asked in question time today. On 12 March at 8.45 p.m. during the address-in-reply debate, Senator Heffernan launched a cowardly attack on Justice Kirby, claiming:

I refer to a judge who has put himself at grave risk of blackmail, entrapment, compromise and hypocrisy.

Senator Heffernan meant that the judge in question, whom he did not name until the last portion of his speech, was not a fit and proper person to serve on the High Court. As we know, he accused the judge of picking up male prostitutes in a Commonwealth car. In his speech he said that he had:

… personally interviewed at great length, and obtained statutory declarations from, former rent-boys from Sydney and Wollongong who worked the Wall at Darlinghurst as young male prostitutes.

He went on:

I am informed New South Wales Police can confirm these activities. I also have in my possession Comcar driver records …

Note the use of the plural in the speech. When Senator Heffernan finally came up with documentation, it was very much in the singular and it was false. It was false.

The next day, on 13 March, Mr Howard stated in parliament that Senator Heffernan had made the speech off his own bat. He said that his colleague Senator Heffernan felt that he was justified in using parliamentary privilege to air the matters which he did. He said in earlier discussions, amongst other things, ‘I counselled him against any improper use of parliamentary privilege.’ So while Mr Howard realised that Senator Heffernan was intent on airing this material, the Prime Minister did not categorically forbid this senior member of his own inner circle from taking such a reckless course of action. Nor did he require Senator Heffernan to exhaust every avenue to both have his so-called evidence authenticated and have his allegations properly investigated and dealt with by the police. As Senator Heffernan is, we know, a close confidante of the Prime Minister, you would expect the Prime Minister’s influence over him to be very strong but Mr Howard, on the occasions available to him, chose not to exercise his influence. Instead, he seemed to follow his standard operating procedure of ‘hear no evil’.

After the allegations were made in the Senate, Mr Howard shamefully, in my view, gave Senator Heffernan succour. It was a disgraceful act of fanning the flames. He aired extra material which was detrimental to Justice Kirby’s reputation. He tabled Senator Heffernan’s letter which, in part, stated:

I was advised by a senior officer that, because the allegations provided in a police statement involved a person aged 17 years and six months and although of serious concern for the police, there was no prosecution undertaken because, in their assessment, it would not meet the technical prosecution guidelines of the New South Wales DPP.

That day, Mr Howard announced that Senator Heffernan had decided to stand aside as parliamentary secretary until the allegations were investigated. At the same time—as we have heard before in this chamber—in the New South Wales parliament the police minister, Mr Costa, said:

I am advised that police have previously investigated information provided to them by Senator Heffernan. I am advised that these investigations did not warrant the laying of any charges in connection with the matters recently raised by the senator.

On Thursday of last week, Mr Howard brought the shutters down in question time in response to several questions about Senator Heffernan’s behaviour. He refused to answer the questions of the Leader of the Opposition, Mr Crean, in question time.

The Attorney-General also gave succour to Senator Heffernan by damning Justice Kirby with faint praise and by failing to express his confidence in Justice Kirby. Of course, by 3.36 p.m. last Thursday, in this chamber, Senator Heffernan waved around what we now believe is a completely discredited and fraudulent Commonwealth car record, failed to table it and stated:
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.

He posted the letter—this so-called evidence—to Commissioner Ryan. It seems quite possible that that was an action deliberately designed to delay the receipt of the evidence because at some point between that time and Sunday we had some of this material being supplied to the *Sun-Herald* newspaper, and it was published. On Friday last week, Mr Howard said:

A person is qualified to be a High Court judge under our Constitution unless they are guilty of what is called ‘proved misbehaviour’.

That is what he said on the John Laws show. He continued:

A proven misbehaviour under the Constitution can take many forms and cover a lot of conduct. It is not defined. It doesn’t necessarily have to be behaviour of a criminal kind, but I don’t want to stray further.

This insight had not been in the script for that week. Mr Howard was certainly hinting that he was considering what action to take against Justice Kirby if any criminal investigation failed.

We had the extraordinary situation that same day, in the afternoon, where Senator Heffernan tried to background the ABC on these allegations. He was caught in the press gallery pack on the second floor and, quite hypocritically, tried to use parliamentary privilege to stop the press gallery filming him. He then started to act in the press gallery as if he had completely flipped out.

On Sunday, the document was published. Within 24 hours of its publication, the Labor Party—the opposition—was able to blow the documentation out of the water and cast serious doubts on its authenticity. This is the same document that Senator Heffernan had been aware of for many months and that the Prime Minister had been aware of for months, but no-one had done anything to check it. No-one had taken their responsibilities seriously and checked that document. That is a complete indifference to the truth.

We know that by yesterday afternoon Mr Howard had sacked Senator Heffernan, his parliamentary secretary. He had belatedly reached the conclusion that the evidence on which Senator Heffernan had based his claims was bogus. Had he been concerned to establish the truth, he would have reached that same conclusion months ago, and he should have acted on Senator Heffernan’s allegations months ago. I think Senator Heffernan has got a lot of form when it comes to people who are dealing with dodgy documents. I have not forgotten the *Four Corners* program of July last year, which revealed the close links between Senator Heffernan and Mr Seyffer, and the allegations, according to *Four Corners*—

**Senator Hill**—This is what it is really about. This is the Labor Party in revenge.

**Senator Faulkner**—It is about documents and how you deal with documents, Senator Hill.

**Senator Hill**—Like Keating and piggeries.

**Senator Faulkner**—We know that the mysterious Mr Seyffer used the senator’s office to copy the documents. You know that too, Senator Hill. Mr Seyffer laundered the documents and made them look as if they had been received from Indonesia by faxing them using some old letterhead of an Indonesian mining company—

**Senator Hill**—You are degrading the quality of your own argument now.

**Senator Faulkner**—I am afraid, Senator Hill, that the point is valid. Senator Heffernan does have form on this; he has done it before. That was another example of a deliberate attempt to deceive people as to the true origin of material. The truth of the matter is that there are many questions that remain unanswered. Where did Senator Heffernan get the Comcar document from? What steps did Senator Heffernan, or anyone in the government, take to authenticate that Commonwealth car document? Did he provide it to Senator Abetz or the Department of Finance and Administration and have it authenticated? Was he informed by anyone at any stage that the document was fraudulent or that there were at least doubts about the
document’s authenticity? If so, when was he informed? What action did he take as a consequence of this information? What action did government ministers take as a result of this? What information, precisely, did Senator Heffernan convey to the Prime Minister, and when did he tell the Prime Minister that the allegations were based on nothing more than a fraudulent Commonwealth car document and the statement of a rentboy who apparently has been discredited in other judicial forums? These are reasonable questions.

I asked Senator Hill today about providing certain information that the Prime Minister referred to and about the investigations that we were told the Prime Minister had conducted. By whom and when were they conducted? These are very reasonable questions. But the truth of this matter is that we know, it is a matter of fact, that on 13 March the Deputy President—in your absence, Madam President—ruled that Senator Heffernan’s speech to the Senate the previous day was in breach of standing order 193 in that it contained offensive words, imputation of improper motives, and personal reflections on a judicial officer. That is a fact. In breaching standing order 193, Senator Heffernan was guilty of highly disorderly conduct. That is another fact.

It is a matter of fact also that Senator Heffernan’s speech was so deliberately structured that it was impossible for the chair presiding at the time, or for any senator in the chamber, to detect that that speech was in breach of the standing orders until the very end of the speech. That was a cowardly way to deliver such an undeserved attack on such an eminent Australian. I suppose now, when Senator Heffernan looks back, he wonders if that was indeed so clever. A different speech may well have protected Senator Heffernan from such extreme embarrassment. But I say there is nothing clever about it. It is deviousness and cowardice. It is creeping up on your enemy from behind and plunging a knife into their back. The truth is that Senator Heffernan has been reckless, he has been disorderly, he has been cowardly and he has been grossly negligent. This is a deserved censure. (Time expired)

Senator HILL (South Australia—Minister for Defence) (4.05 p.m.)—We on this side of the chamber trust that the wrong that has been done to Justice Kirby can be put right. We recognise that it is not going to be easy, but we believe it can be done. The clear and unambiguous apology from Senator Heffernan today is a significant step in that direction. For the Labor Party, the debate has moved on; it is now interested in extracting political pain. As one would have gathered from question time today, from Senator Faulkner’s contribution in this debate and from the motion itself, it is really no longer an issue of how to right the wrong done to Justice Kirby. It is really no longer an issue that relates to the error of judgment by Senator Heffernan. It is now an issue of whether the Labor Party can get the Prime Minister into this and whether it can extract further pain from the Howard government as a whole. That is disappointing, but I guess it is in the nature of politics.

It is evident by the way in which the press gallery cleared as soon as this censure motion started that this was the inevitable next step in the political process. If the Labor Party were so upset by the breach of standing orders—and we do not dispute that it was a breach of standing orders; it was determined by the Deputy President—they should have moved the censure motion at the time. But they did not, because they were not so upset. When the breach was determined by the Senate, the Labor Party did not believe that it deserved a censure motion at all.

So what is the difference now? The difference now is that it has been found that a key document upon which Senator Heffernan relied was false. Somehow they now wish to censure Senator Heffernan for that fact. But in actual fact it would seem that Senator Heffernan did make efforts to authenticate the facts. Senator Heffernan did, in fact, undertake freedom of information processes to seek to obtain the records that were held by the then Department of Administrative Services in order to authenticate the documents he held. In other words, he did try to authenticate the documents before he went public with those documents in the delivery of them to the police.
Senator Conroy—You do not even believe that yourself.

Senator HILL—It is convenient for the Labor Party to overlook that because it does not help them in their debate today. What this debate really is all about is not the breach of a standing order—which is what a censure motion would normally relate to—but rather whether or not the senator, in exercising what everyone would accept is a legitimate right, exercised that right with reason-able care. That gets into the argument of what effort Senator Heffernan did make to satisfy himself that the documents he was relying on were valid. As we all now know, the document turned out to be false. Justice Kirby has suffered as a result of that.

Senator Conroy—When did the government first know that it was false?

Senator HILL—Yesterday, Senator. Senator Heffernan has suffered a significant penalty in that regard and we on this side of the chamber therefore think that it is time to move on.

Senator Conroy—You will be back in here within 24 hours to retract that.

Senator HILL—Yesterday, Senator. Senator Heffernan has suffered a significant penalty in that regard and we on this side of the chamber therefore think that it is time to move on.

Senator Conroy—You will be back in here within 24 hours to retract that.

Senator Jacinta Collins—What about DOFA’s evidence? Table that.

The PRESIDENT—Senator Conroy, cease chattering.

Senator HILL—I will take the interjection, because it is important. What I am relying on is the Prime Minister becoming aware yesterday that the document was invalid, and Senator Heffernan indicating that he found, for the first time, yesterday that the document was invalid. I have seen no evidence to the contrary. I therefore accept those facts on the basis of the knowledge that is currently before all of us.

The Labor Party for their purposes, as I said, are obviously trying to wring the last ounce of political blood from this matter not because they have any particular interest in Justice Kirby, not because they have any particular interest in further inflicting pain on Senator Heffernan but because they are interested in the attack on the Prime Minister and the attack on his government. In this instance, what we do know and what we all accept is that Senator Heffernan is on a mis-
sion in relation to combating child abuse. He is fanatical about the subject—he will not apologise for that. Probably, we need more people in the community who are fanatical about it. We know he believes that child abusers have been protected by institutions that should be doing otherwise and that should be the protectors of the children.

Senator Jacinta Collins—What is the source of that fanaticism?

Senator HILL—If you have not seen evidence of that, Senator, then I regret it, because you have obviously closed your eyes to this issue as well.

Senator Jacinta Collins—You said that he is fanatic.

The PRESIDENT—Order! This is not the time to be asking questions.

Senator HILL—The institutions have not done well enough in combating child abuse, and that upsets Senator Heffernan; we know that. He is committed to doing more than most of us to right that wrong and to do his bit to protect Australian children. He utilised a power that was open to him but he made an error in doing so, and that was his mistake. He took evidence that had been provided to him by a Comcar driver and which he believed—and which he had no reason not to believe—was, in fact, true. He made efforts to authenticate it, but that did not work either because under the freedom of information processes he was not given the documents.

Senator Jacinta Collins interjecting—

Senator HILL—He was unable to authenticate it in that way.

Senator Jacinta Collins interjecting—

The PRESIDENT—Order! Senator Collins, you can have an opportunity to speak later. It is not appropriate to be shouting during a speech.

Senator HILL—Having said all of that, he did make a mistake. He acknowledged that he made a mistake, he acknowledged that it has caused pain and suffering to the judge, he has apologised to the judge, and he hopes the wrong will be righted. He has taken a very significant penalty for doing so. I have been censured in this place—I might have found it temporarily upsetting but I can
say to you, Madam President, that it does not linger—but, if I had my executive position removed from me so publicly by the Prime Minister, that would be a real penalty. That is a public penalty of consequence.

Therefore, for not taking an extra step—whatever that step might be—to satisfy himself that the document was authentic, Senator Heffernan has paid a high price. It is the submission, therefore, of the government side that Senator Heffernan has been punished for the wrong that he has done. The wrong was that he did not take sufficient care and did not take every opportunity that was open to him to satisfy himself that the document was factually correct. He has apologised to the judge, and from there we believe that the Senate should move on. I could talk about, as I said earlier today, the double standards that have been illustrated by the Labor Party.

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy, you are out of order.

Senator HILL—I could talk about the double standards that have been illustrated by the Labor Party for a long time in these matters. They condemn when it suits their short-term political gain but, when it is embarrassing politically, they turn a blind eye. That has been the Labor Party standard for many, many years. That is why I say that there is no real concern about the values of the Senate in this motion from the Leader of the Australian Democrats to also support this motion of censure. However, we recognise that its purpose is purely symbolic, in the sense that it does nothing to address the underlying problems associated with the abuse of parliamentary privilege and it does nothing to penalise Senator Heffernan for the outrageous allegations that were made last week. The Senate must ensure that its response to this matter is more than mere symbolism, and as a chamber we must address the broader issues raised by this sorry affair.

Last week, in response to a request by the Leader of the Australian Democrats, the Deputy President ruled that Senator Heffernan’s speech in which he attacked Justice Kirby was in fact in breach of the standing orders. The government’s response was essentially that there are countless technical breaches of the standing orders and that this should not be of concern to the Senate. This was, in my view, an entirely inadequate response. It ignored a number of crucial factors that set this scurrilous attack apart from the minor and technical breaches of the standing orders that occur from time to time.

First, Senator Heffernan’s speech was structured in such a way as to suggest that the breach of the standing orders was in fact premeditated and deliberate. The standing orders, relevantly, provide that:

A senator shall not use offensive words against... a judicial officer, and all imputations of improper motives and all personal reflections on those... officers—that is, judicial officers—shall be considered highly disorderly.

Had Senator Heffernan indicated earlier in the speech that he intended to attack Justice Kirby, I have no doubt that the standing orders would have been enforced and that he would have been prevented from making his outrageous allegations. Instead, he revealed only at the conclusion of his speech that Justice Kirby was in fact the subject of the attack.

The Deputy President has indicated that this was the reason the chair did not intervene: that it was not clear until the end of the speech that Senator Heffernan was in fact making serious allegations against an identi-
fiable and serving judicial officer. It would appear that Senator Heffernan was mindful of the restrictions in the standing orders and structured his speech to deliberately defeat them. Not only did he seek to defeat the standing orders but he also disregarded resolution 9 of the Senate’s privilege resolutions, which sets out a number of matters senators must take into account when speaking in the Senate. These matters include:

(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—
and, most relevantly—
(e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.

Clearly, these matters were not taken into account by Senator Heffernan. He failed to ensure that his evidence was true. He failed to take into account the damage that could be done to the institution of parliament by abusing its processes and privileges. He was indifferent to the damage his actions would do to the standing of one of Australia’s more eminent jurists.

The question is: what action must now be taken by the Senate? The Labor Party have proposed this censure motion—which, as I have said, is an exercise in symbolism. I do not want to detract from the importance of a condemnation by the Senate, but we should not be under the impression that it addresses the underlying issues themselves. The Australian Democrats were today to move that the Senator Heffernan affair be referred to the Senate Privileges Committee to inquire as to whether the senator committed a contempt of the Senate. We have postponed this motion until tomorrow to allow for a considered response and a considered debate of the broader issues to take place here today.

It is important that this matter does go to the Privileges Committee for proper consideration. We need to ensure that the existing checks and balances are indeed appropriate. We need to ensure that the existing penalties and remedies are also appropriate. Some of the members of the Privileges Committee may not want to consider the matter—and I note Senator Ray’s recent comments in that vein—but it is the Privileges Committee’s responsibility to deal with issues of this type, and it must discharge its duties on behalf of the entire Senate. Behaviour such as that of Senator Heffernan cannot help but detract from the standing of parliament as an institution. Parliamentary privilege exists to allow senators to raise matters of public interest without fear of reprisal; it is not an opportunity for senators to make slanderous and unsubstantiated allegations against individuals, whomever they may be.

I would also like to express dissatisfaction with the manner in which the government has handled this matter. Senator Heffernan has raised these allegations with the Prime Minister in the past and, having known of the allegations, it appears that the Prime Minister took no action to determine whether they were baseless; he merely discouraged Senator Heffernan from raising them in parliament. By the time these allegations came to parliament, the Prime Minister should already have considered the substance of the claims and have been in a position to offer a swift rebuttal. Instead, he appeared not to know whether the allegations were true and was defensive of Senator Heffernan’s right to use parliamentary privilege, even though his speech was a clear abuse of that privilege.

The Prime Minister even flagged the issue of proved misbehaviour in relation to Justice Kirby, indicating that a judicial officer could be dismissed for misbehaviour that is not strictly limited to criminal behaviour. The message that came through was that he tended towards supporting Senator Heffernan over Justice Kirby. The Prime Minister’s comments enhanced the standing and remarks of Senator Heffernan at a time when the Prime Minister should have extended the benefit of the doubt to an eminent High Court judge. There is no question that the claims need to be investigated, but the Prime Minister should not have further fuelled that fire. The Attorney-General, Mr Williams, drew an artificial distinction between attacks on a member of the High Court and attacks
on the institution of the High Court. He went so far as to say:

While I understand the reaction, particularly within the legal profession, to Senator Heffernan’s allegations, there can at the same time be no credible suggestion that the High Court as an institution is under challenge. High Court judges have both the right and the ability to address any personal criticisms addressed against them.

While the Attorney-General appears to acknowledge that it is his role to defend the High Court as an institution, he claimed that this was merely a personal attack on a member of the High Court. This is an artificial distinction by which the Attorney-General avoided taking responsibility for this matter. The point of Senator Heffernan’s allegations was that a sitting member of the High Court was open, in his words, to ‘grave risk of blackmail, entrapment, compromise and hypocrisy’. He went further and said:

I believe that most Australian families would have the view that this judge fails the test of public trust and judicial legitimacy as set out by the Chief Justice of the High Court in his New York speech and clearly is not fit and proper to sit in judgment of people charged with sex offences against children.

In my view this is clearly an attack on the High Court as currently constituted. The Attorney-General’s claim that this is purely personal is a claim that is unfounded. It is an attack on Justice Kirby in his capacity as a justice of the High Court and it relates specifically to his fitness to serve in that capacity.

The government has only belatedly directed Senator Heffernan to apologise. This follows a Senate resolution last week moved by the Democrats that Senator Heffernan make that apology. Senator Heffernan will need to make up his own mind about how he is to address the misconduct. In addition to the necessary steps of making an unqualified apology to Justice Kirby, the High Court, the Senate, his colleagues, the Prime Minister and the entire parliament—as we have seen today—perhaps Senator Heffernan ought to consider the proposition of resigning from the Senate. He has had the honour of serving as a senator for the Commonwealth of Australia and has had access to all the privileges that attach to that office. He has abused those privileges and has to consider the implications of that abuse. His credibility, in my view, will forever be tarnished and his ability to discharge his duties on behalf of the Commonwealth will forever be diminished. The Senate has no power to force Senator Heffernan to resign from the Senate. We can only ask him to reflect upon his conduct and make a principled decision about this matter in the future.

The Australian Democrats support this motion but do not consider it to be the end of this matter. The Senate must take action to ensure that parliamentary privilege is not abused in the future in order to make unfounded allegations against any individual. It is therefore incumbent upon us to refer this breach to the Privileges Committee to determine what action is to be taken. When it comes to dealing with processes in this place, there are two important tests of the integrity of an institution such as the Senate. In the first instance, I remind the Senate that when this debate started the Democrats pursued a ruling from the Deputy President that Senator Heffernan had breached standing order 193. In the second instance, the Democrats amended a motion so that Senator Heffernan would be required to apologise to Justice Kirby and to the Senate for his breach of that standing order. At the time, the Prime Minister dismissed that as politicking. Senator Hill said last week that it was a technical breach. Today, we even heard that it was a simple error, a mistake. Today, we also have Senator Heffernan making the apology.

Finally, the important matter is our ability to address the misconduct when it occurs. That is the last test we now face and it will not be resolved simply by moving a censure motion. We will be revisiting this issue tomorrow when the Democrats move to refer this matter to the Privileges Committee and I would urge the government and the opposition to support that motion.

Senator BROWN (Tasmania) (4.26 p.m.)—Last Tuesday was a day of infamy as far as parliamentary behaviour and precedent were concerned. Like Senator Faulkner, I cannot ever remember a worse and more damaging piece of parliamentary misbehaviour and disorderly conduct than occurred
with Senator Heffernan’s false accusations. I know from my many contacts with the Australian public that good Australian citizens everywhere are aghast at the events that unfolded then and have unfolded since then in the Australian parliament. Not only were the proper protections of the parliament abused by Senator Heffernan but also the safeguard systems that we would expect in such circumstances failed.

Justice Kirby was traduced by false accusations. Those came from a senator who had an enormous amount of time to investigate and find those accusations to be false and the evidence upon which he based those accusations to be false. That has now happened within a matter of days of documents becoming available to the public. It does not pass anybody’s observation that had Senator Heffernan phoned Mr Sinclair this terrible series of events would have been avoided.

When an obsession overtakes any member of parliament there are likely to be untoward consequences. There are safeguards—particularly in the parliamentary system for the big parties—and the safeguard on this occasion was none other than the Prime Minister. It has to be said that Senator Heffernan did seek advice. On a number of occasions he spoke about his concerns on this matter with none other than his friend the Prime Minister. The Prime Minister should have taken action to prevent these awful circumstances unfolding. It is very clear that he had time not only to advise and counsel Senator Heffernan not to proceed without proof but also to absolutely forbid the senator from doing so.

Both the senator and the Prime Minister had access to an enormous array of legal opinion. If they could not read parliamentary history, they could have sought advice to make sure that in a matter so enormously important as this they did not make a mistake. One could possibly understand that Senator Heffernan, in his obsession, could not see that. But how does one forgive the Prime Minister? The alarm bells should not only have been ringing; the Prime Minister’s judgment should have been immediately to defend not only the parliament and the High Court but his friend Senator Heffernan.

Senator Lightfoot—I raise a point of order, Madam President. Senator Brown is reflecting on the Prime Minister by suggesting that he was not defending parliament or the High Court. I would say that that is contrary to standing orders.

The PRESIDENT—I do not think there is a point of order. I am listening carefully.

Senator BROWN—I will proceed. Senator Heffernan did seek the advice and counsel of the Prime Minister. The question is: did Senator Heffernan check the documents? The answer is no, he did not. The question then arises: did he insist on independent legal advice about those documents? No, he did not. The question is then: did he understand that he would abuse privilege in this place if he presented his case to the Senate? I believe he did; the format of his speech showed that. But he did seek the counsel of the Prime Minister.

Then I ask the question: did the Prime Minister check those documents? No, he did not. Did the Prime Minister seek and insist upon independent legal advice and certainly political advice? Clearly, he did not. The question then is: did he forbid the use of privilege to prosecute a case which could not be prosecuted safely outside? The answer is no, the Prime Minister did not. The Prime Minister, instead of defending the privilege of the parliament—and in so doing, incidentally, his friend Senator Heffernan—not only failed to be the safeguard of the parliament and the High Court and the standing that politics should have in the public eye; he compounded the damage done by Senator Heffernan.

On the day following Senator Heffernan’s false and malicious statement to the Senate, the Prime Minister was asked a question by the Leader of the Opposition in the House of Representatives which, in itself, in no way breached privilege. I would remind those who have seen the defence from the Prime Minister’s office—that the Prime Minister was in effect responding to a question—that that question did not invite the Prime Minister to breach privilege. Mr Crean asked his question to the Prime Minister:

Is the Prime Minister aware that his parliamentary secretary made comments prejudicial to
a judge in the Senate last night? Is the Prime Minister aware of the foreign minister’s comment reported by AAP at 12.40 today that—

that is, Wednesday—

I think when people use the parliament and use parliamentary privilege they should always remember that privileges bring with them responsibilities and if you are going to attack people who are out of the political sphere it’s very important to have evidence to back that up.

Prime Minister, do you agree with your foreign minister and, given that there is no credible evidence to support Heffernan’s allegations, when will you sack him?

Rather than inviting the Prime Minister to breach privilege, that question was loaded with caution that the Prime Minister should not breach privilege. It was a question concerning the Leader of the Opposition’s own trouble and certainly the Minister for Foreign Affairs’s concern about the defence of privilege in the parliament. Nevertheless, Mr Howard, ignoring all of that, proceeded to extend the case that Senator Heffernan had put to the Senate the night before.

Madam President, I seek the leave of the Senate to incorporate into Hansard the opinion of Mr Brian Walters, Senior Counsel from Melbourne, on the matter of privilege. It is titled In the matter of an attack upon a member of the judiciary in the House of Representatives.

Leave granted.

The opinion read as follows:

In the Matter of an attack upon a member of the Judiciary in the House of Representatives

Memorandum of Advice

We are asked to advise as to the propriety, both constitutionally and in terms of the Standing Orders of the House of Representatives, of the statement made by the Prime Minister, the Honourable John Howard, to the House of Representatives on Wednesday 13th March 2002, and the tabling of two letters at that time.

The statement of the Prime Minister was made after a statement the previous evening by Senator the Honourable Bill Heffernan, Parliamentary Secretary to Cabinet (“Senator Heffernan”). That statement is reported at pages 402 to 404 of Senate Hansard for 12 March 2002. The statement makes a number of allegations concerning Justice Kirby, a serving Justice of the High Court of Australia. The name of the justice is only provided at the very end of the speech.

The Prime Minister’s statement is recorded at pages 1056-7 of Hansard for Wednesday 13 March 2002.

The Prime Minister’s statement was made in response to a question without notice. It was not made pursuant to any substantive motion.

At the time of making his statement, the Prime Minister tabled two letters. The first, from Senator Heffernan to the Prime Minister and dated 13 March 2002, appends the second, a letter from Senator Heffernan to the Commissioner of the New South Wales Police Force.

The letter to the Prime Minister, and tabled by the Prime Minister, refers to Senator Heffernan’s allegations “against a senior member of the judiciary” (which can only be taken to refer to Justice Kirby) and contains the following words:

As my letter to the Commissioner indicates, I have previously provided background information relating to the potential commission [sic] of criminal offences. That information was subsequently assessed by the NSW Police Service and I was advised by a Senior Officer that because the allegation provided in a police statement involved a person aged 17 years and 6 months, and although of serious concern for the police, there was no prosecution undertaken because in their assessment it would not meet the technical prosecution guidelines of the NSW DPP.

The imputations in this passage, (mirrored by a similar passage in the letter to the Chief Commissioner of police) are as follows:

(a) that Senator Heffernan had made allegations of the commission of criminal offences by Justice Kirby;

(b) that the allegations Senator Heffernan had made about Justice Kirby were “of serious concern for the police”;

(c) only the failure to fulfill technical guidelines prevented the commencement of a prosecution.

None of these matters were stated in the speech of Senator Heffernan.

The tabling of these letters by the Prime Minister therefore seriously extended the allegations which had been made by Senator Heffernan.

It is trite law that to publish the statement of another is to publish that statement oneself. This has been expressed in the Parliamentary context as follows:
A member is not allowed to use unparliamentary words by the device of putting them in someone else's mouth, or in the course of a quotation.1

The fact that the letter tabled by the Prime Minister was authored by Senator Heffernan does not lessen the responsibility of the Prime Minister himself in tabling it. In so doing, there can be no doubt that the Prime Minister used Parliament to substantially extend the attacks on a member of the Judiciary which had been made in the Senate by Senator Heffernan.

By long tradition, Members of Parliament may criticise judgments of the courts, but never the judges—unless such criticisms are in speaking to a substantive motion for the exercise of the functions of the parliament, as with a motion to remove a judge. A classic formulation is that of the Speaker in the House of Representatives Debates in 1937:

From time immemorial, the practice has been not to allow criticism of the judiciary; the honourable member may discuss the judgments of the courts, but not the judges.2

The reason for this practice lies in the Westminster system of government, upon which our constitutional system rests.

One aspect of this system of government is the doctrine of separation of powers (although in different contexts this can have different meanings). Section 71 of the Constitution (which creates the High Court of Australia) as well as Ch III of the Constitution, give effect to the doctrine of the separation of powers by divorcing judicial from executive and legislative power.

A useful statement in relation to the doctrine of separation of powers is to be found in the observations of McHugh J in Nicholas v The Queen, in which his Honour held:

Moreover, as I pointed out in Kable v Director of Public Prosecutions (NSW) a basic principle which underlies the distinction between judicial and legislative or executive power aid the doctrine of the separation of powers premised on that distinction “is that the judges of the federal courts must be, and must be perceived to be, independent of the legislature and the executive government”.3

As his Honour went on to say:

If the doctrine of the separation of powers is to be effective, the exercise of judicial power needs to be more than separate from the exercise of legislative and executive power. To be fully effective, it must also be free of legislative or executive interference in its exercise.

The Court was there considering the question of whether legislation interfered with the proper exercise of judicial function, but the principle also applies to criticism of the Judiciary by other arms of government.

It will be readily apparent that the criticism of judges in Parliament has a very real likelihood of politicising the Judiciary such that the Judiciary is no longer perceived to be independent of the legislative and executive arms of government. Such a situation has the capacity to fundamentally undermine the effectiveness of the constitutional system of government enjoyed by the people of Australia.

This restriction on the Parliament, which is a recognition of its proper constitutional role, in no way restricts Members of Parliament making such statements as they see fit outside that institution.

The practice of the House, and the constitutional principles underlying that practice, have been recognised by the House of Representatives in its Standing Orders, notably Standing Orders 75, 77 and 78.

Standing Order 75 (not inserted until 1950) provides:

No Member may use offensive words against either House of the Parliament or any member thereof, against any member of the Judiciary, or against any statute unless for the purpose of moving for its repeal.

The term “offensive words” is not limited to mere bad language: it includes offensive allegations. This is made clear by numerous rulings of the Chair in relation to parliamentary practice.

It follows that the Prime Minister’s attack upon a member of the Judiciary in Parliament on 13th March 2002:

(a) was a serious breach of longstanding parliamentary practice;
(b) lacked propriety constitutionally in that it undermined the fundamental doctrine of separation of powers;
(c) amounted to a breach of Standing Order 75.

Brian Walters SC
Andrew Palmer
16 March 2002

1 Harris, House of Representatives Practice p 489, citing 22nd edition of May and HR debate 5 May 1978, at 1894-5
2 Reported in Hansard (HR) 28-9 June 1937, quoted in Harris at p 493
3 (1998) 193 CLR 173 at 220, but see all of his Honour’s discussion from 218-222.
Senator BROWN—I thank the Senate. The second page of this opinion from Mr Walters reads as follows:

The letter to the Prime Minister, and tabled by the Prime Minister, refers to Senator Heffernan’s allegations “against a senior member of the judiciary” (which can only be taken to refer to Justice Kirby) and contains the following words:

_As my letter to the Commissioner indicates, I have previously provided background information relating to the potential commitment [sic] of criminal offences. That information was subsequently assessed by the NSW Police Service..._

That paragraph goes on to detail allegations about events in Sydney. The opinion from Mr Walters continues:

The imputations in this passage, (mirrored by a similar passage in the letter to the Chief Commissioner of police) are as follows:

- that Senator Heffernan had made allegations of the commission of criminal offences by Justice Kirby;
- that the allegations Senator Heffernan had made about Justice Kirby were of “serious concern to the police”;
- only the failure to fulfil technical guidelines prevented the commencement of a prosecution.

None of these matters were stated in the speech of Senator Heffernan.

The tabling of these letters by the Prime Minister therefore seriously extended the allegations which had been made by Senator Heffernan.

It is trite law that to publish the statement of another is to publish that statement oneself. This has been expressed in the Parliamentary context as follows:

_A member is not allowed to use unparliamentary words by the device of putting them in someone else’s mouth, or in the course of a quotation._

Mr Walters goes on to say:

The fact that the letter tabled by the Prime Minister was authored by Senator Heffernan does not lessen the responsibility of the Prime Minister himself in tabling it. In so doing, there can be no doubt that the Prime Minister used Parliament to substantially extend the attacks on a member of the Judiciary which had been made in the Senate by Senator Heffernan.

Madam President, we are dealing in this situation not only with the failure of the Prime Minister—to prevent his friend and Senate colleague from producing the awesome attack on false evidence in this place but also with the Prime Minister—without checking documents, without seeking legal advice and with months of time to consider this beforehand—deliberately extending that attack, based on false evidence, in the House of Representatives. This is a matter not just for censure of Senator Heffernan but for censure of the Prime Minister himself. He has let down not only his friend Senator Heffernan but also, far more importantly, he has let down the Senate, the parliament, the High Court and the people of Australia who regard those institutions as important and as requiring safeguarding by everybody but, most importantly, by the Prime Minister of this country.

Therefore, I move an amendment to Senator Faulkner’s censure motion:

At the end of the motion, add:

(c) censures the Prime Minister (Mr Howard) for not preventing Senator Heffernan’s reckless and abusive actions in the Senate and for not acting immediately, after 12 March 2002, to reverse the effect of those actions.

Finally, before I finish, I want to express my personal grief to two entities in this matter. The first is to His Honour, Justice Michael Kirby, who is a great Australian, a distinguished citizen, a person who has added greatly not just to public life but also to the furtherance of ideals which Australians themselves hold in high esteem, both within this country and beyond. It is a remarkable reflection on the honour of the gentleman that only a simple, short statement branding the accusations against him as false and absurd came from His Honour, Mr Justice Kirby; there has been no further entry into the public arena in his defence.

One of the things we have to understand here is that when one is accused in this way it is so difficult to defend oneself. The more one enters into the melee, the more difficult it is and the more vulnerable one becomes to false attack. Nevertheless, I want to express my admiration—as a citizen who has only met Mr Justice Kirby in passing—not only for his life and his contribution to this country but also for the forbearance he has shown in these extraordinary, harrowing, and one
can only guess how difficult, times of the last week.

Secondly, I want to express my admiration for the people of Australia. The feedback I have had on this issue has been very wise. People have been shocked, and Australians were horrified that the defences of their institutions and a citizen like Justice Kirby were so easily eroded by both the actions of Senator Heffernan and the failure of action by the Prime Minister. This is a wonderful, democratic nation, which depends on long-held institutions and the defence of those by all of us in this place. It is enormously troubling that that defence has been breached—despite all the safeguards, despite the history and despite the forbearance that all of us must show—in such an egregious fashion, based on the word of a falsifier, a person who was able to con a senator and a Prime Minister and therefore those false accusations went into the public arena where they should never have been allowed to trespass. Thank God for the Australian people and for the institutions we have.

Senator Conroy—You’re an atheist. You can’t thank God.

Senator Brown—I still can thank God in the person of the Australian people in this case, for their wisdom and for the way in which they have rallied to take part in this debate. It is a case of the people, I believe, safeguarding the parliament at a time when at least one or two parliamentarians had failed to safeguard them.

Senator Conroy (Victoria) (4.44 p.m.)—Senator Heffernan prides himself on being known around the building as ‘the phantom: the ghost who walks’. The truth is that Senator Heffernan has always been the ghost who stalks—he stalks around the corridors. I am sure many in this chamber, many in the gallery and those who have dealt with Senator Heffernan have experienced the conspiratorial ‘come over here’. He pulls you aside in the corridor, reaches into his jacket and half pulls out the information, offering to show it to you. He gives you a teaser of what is contained in it. Many have experienced that. I have said to him at times, ‘If that is the information you have, Senator Heffernan, go to the police. If you want to make those allegations against members of the Labor Party, please take it to the police. Take that little piece of paper you have tucked inside your lapel and give it to the police.’ But no, Senator Heffernan has never once had the courage to do that. He has never once followed through. I see some nods around the chamber and I know some senators have experienced what I have described. Senator Heffernan has also been known to say to both his colleagues and the gallery, ‘When John Howard goes, I’ll not be far behind.’ Basically, he has not got a friend in the place. He has survived on patronage. Senator Lightfoot, you were defending him last week; maybe he had you as well. But he did say, ‘When John Howard goes, I’ll not be far behind him.’ Well, Senator Heffernan, the Prime Minister has said for you to go, so why do you not take your own advice and do the honourable thing? Do not just walk off the front bench; just keep walking.

Senator Payne was here and has listened to much of this debate; I am sorry that she is not here now. Last week there was a test about whether or not senators felt that Senator Heffernan had stepped across the line and there was a tight vote. Perhaps Senator Payne has experienced Senator Heffernan at his lowest. Perhaps she has experienced Senator Heffernan’s smear campaigns, half-truths and falsified documents before. Maybe she smelled a rat, because when the motion calling for an apology from Senator Heffernan came to the vote last week it was carried. It was carried because Senator Payne, a member of the New South Wales Liberal Party, chose deliberately to walk out of the chamber, giving the numbers to the opposition and minor parties to carry the motion. So Senator Payne is the only member on the other side of the chamber who can hold her head up today because she smelled a rat last week. The rest of the government all voted like sheep just to back up Senator Heffernan without ever trying to get to the bottom of what was really going on.

The conduct of Senator Heffernan does raise questions. It is now apparent that Senator Heffernan’s attack on Justice Kirby last week was based on fabricated evidence. Given the seriousness of the allegations
made by Senator Heffernan, this is a serious breach of the responsibility he owes to the Senate, to the judiciary and to the Australian people. His actions are evidence again of this government’s complete disrespect for democratic institutions and for the rule of law in Australia. We have a government that is quick to make false claims and slow to reveal the truth. We are still to conduct the inquiry into the ‘children overboard’ incident, but it was established at estimates that the photographs used by the government were deliberately released in that form to mislead the Australian public. I am sure all those in the gallery and those who are listening today saw the photographs in the newspapers. The government released the photographs of its own volition—it was not forced by anyone—to prove the story that kids were thrown overboard. But we now know they did not represent the full picture—and a pun is intended.

Senator Lightfoot—You are not suggesting that the government manipulated those photographs?

Senator CONROY—I am afraid the photographs were issued by the minister’s office but not in the form in which they were supplied by the departments. It is all on the public record. When the photographs came across, they contained captions to describe what was going on and they contained the date—just a small, insignificant issue—being the day after the alleged ‘children overboard’ incident; that is what these photographs show. During the election campaign, did the truth come out of the government’s duplicity in this matter? No it did not, and more will come out during the Senate inquiry into this disgraceful performance. The government misled the electorate during the election campaign over the children being thrown overboard. They have misled the parliament in their attempts to cover it up. They have misled the press. They have abused the honour of the defence forces. They have sought to set—

Senator Boswell—Is this a censure motion on the government or on another senator?

The PRESIDENT—We are dealing with a censure motion in relation to Senator Heffernan, to which Senator Brown has moved an amendment to censure the government and the Prime Minister. The amendment has been circulated. Senator Conroy is, at this stage, free to speak to the motion and to the amendment.

Senator CONROY—Hopefully, you will get a chance to have a look at it in a moment, Senator Boswell. The government has sought to set Defence officer against Defence officer. It is the government and its actions that led to Admiral Barrie’s humiliation at the hands of his own officers. As he said, ‘If you think this press conference is going to be tough for me, I’ve just faced my harshest critics,’ because Defence officers know that there is no greater duty than to serve the Australian public to ensure that the truth be known—not just to serve the government of the day, but the Australian public. The government has undermined the independence of the Public Service and now has attacked the highest court in the land.

Senator Lightfoot interjecting—

Senator CONROY—I have not stacked the parliament with my girlfriend, Senator Lightfoot. We need to discover exactly by whom it was known and whether the Prime Minister chose to deliberately mislead the Australian electorate. A similar cover-up has been employed recently by the Treasurer. He has lost almost $5 billion on currency trading, but continues to hide behind the defence that his departmental officers did not tell him, despite the fact that the Treasurer received a report every year from Treasury—The Treasury Annual Report—containing the information, which he then signs and tables in parliament—yet again, standards overboard. Yet he wants us to believe that he did not know the losses were being suffered. The Treasurer does hold a position of privilege and, with that position, comes responsibility—a responsibility to ask questions. This is not being done by this government, and the Australian electorate is being cheated.

In relation to the allegations made by Senator Heffernan last week, we do not yet know how much information the government and the Prime Minister had regarding Senator Heffernan’s allegations and the insubstantial, fabricated evidence those allegations
were based on. Today, in the House of Representatives and in the Senate, we asked questions—simple questions which were not about operational matters, as Senator Abetz tried first to hide behind. Did Senator Heffernan seek a review of his original or any other FOI decision? You would not have thought that was a matter that had to be answered by saying, ‘It’s a police inquiry; I can’t tell you that.’ Did Senator Heffernan approach the then Secretary of the Department of Finance and Administration, Dr Peter Boxall, a former Liberal staffer, and ask him to obtain copies of departmental documents? What did Dr Boxall do in this set of circumstances?

But the key question was: when did DOFA first see the fabricated document—a document which, at the time, had been purported to be a real document? When did they first receive Senator Heffernan’s document and who gave it to them? What action did the department take to check the authenticity of this document? How was this carried out? What was the result of this investigation into the very document which is now admitted, even by Senator Heffernan, to be fabricated? When was the minister first informed that a check had been done and a document could not be substantiated? Who else was told? Who else in the department knew about this investigation? Which current or former ministers were informed? Which other departments were informed?

Today, in the other place, the Minister for Employment and Workplace Relations, Mr Abbott, said there was no illegal use of Comcar—they did look at this issue and there was no illegal use of Comcar. How was this established? Somebody supplied information to DOFA on the matter of Justice Kirby’s Comcar travel. Yet today you were able to say that an investigation was conducted and he was cleared. Where was that last week? Have you been able to do it in the last 72 hours, 48 hours, 24 hours? When was this investigation done? This goes to the heart of who knew and when did they know. It is a common theme; senators may have heard that saying a few times in the last couple of weeks. There is a lot of ‘who knew, and when did you know?’ about this government.

We are told that the Minister for Justice and Customs, Senator Ellison, is conducting an investigation. What form will this investigation take? Will it be conducted by Senator Ellison himself? Will it be conducted by the AFP, the New South Wales police, the Prime Minister’s office? Perhaps the officer who conducted the investigation into kids overboard has some spare time and she is conducting another investigation. What is the form of this investigation? Is it independent? Is it at arm’s length? Is it just another cover-up?

All of those questions, one would have thought, were pretty simple. Yet Senator Abetz chose basically to plead the fifth, as they say in the US: ‘I’ll take them on notice and get back to you.’ What has Senator Abetz been doing? All he had to do, just as he does every other day he gets a question without notice, was reach down, pick up his brief, supplied by the department, and read the answers. Does Senator Abetz expect the Australian public to believe that, with all the intense media scrutiny in the last seven days, the department did not supply him with a brief for today’s question time? Does any senator on the other side believe that Senator Abetz was not supplied with a brief to argue his case, to provide information, to answer questions—the purpose of question time?

All of those questions that I have mentioned are still outstanding and must be answered. There is no use trying to hide; there is no use running away, hiding behind the words, ‘I’ll take it on notice and get back to you.’ They are questions that the Australian public want an answer to and deserve an answer to. If, as is suggested, this information was kicking around inside the department some considerable time ago, you would have to ask: why was there no correction last week? Why didn’t somebody say something last week?

Mr Brereton saw the documents in the media on Sunday, saw his name, and immediately checked to see whether the document was correct. He asked questions. When Senator Heffernan went to see the Prime Minister, and when he went to see the Attor-
ney-General, Mr Williams, did they think to ask why Senator Heffernan was pursuing this, where he got the information from and whether he really believed it? Did Senator Heffernan tell them the source of these documents? If he did not, why would you let Senator Heffernan proceed? Why wouldn’t you say, ‘Don’t you dare raise these issues because they’re not of substance; the information you have to support them is not of substance’?

Why were the documents so believable to the Prime Minister and Mr Williams? It is a good question, Senator Herron; you might want to ask somebody. Why was the source of these documents so credible to Senator Heffernan? I suggest that you take that one up, Senator Herron. It is a very interesting question. But Mr Brereton discovered the document was, at the very least, incorrect, and he acted appropriately. It took him less than 24 hours to prove it was a fraudulent document.

Senator Lightfoot—That was quick for him.

Senator CONROY—‘Danger Man’ found out in 24 hours, Senator Lightfoot. That is the truth of this. What did Senator Heffernan do to check the accuracy of the document? We have heard his pathetic excuse in his attempts today, and he still came up with the wrong answer. What did the Prime Minister do to check the accuracy of these documents? What did the Attorney-General do to check the accuracy of these documents? We are still to find out the complete story.

Senator Heffernan has just indicated that the source of his Comcar document never indicated that it was a false document. Why did this person have so much credibility with Senator Heffernan? We are still to establish what inquiries were made to ensure that this was the case. That is what should have happened—not a week later, when members of the opposition smelled a rat and Laurie Brereton was able to find the truth. Questions and inquiries need to be made.

Senator Heffernan has said that he made an FOI request and that it was refused. He needs to explain. He was silent today; there was no mention from Senator Heffernan about going to Dr Boxall, no mention of who the person was who supplied him with the documents. The FOI legislation has been drafted by this parliament to balance all the interests of the relevant parties. Why did Senator Heffernan not respect those laws?

We know that Senator Heffernan is obsessed. Even Senator Hill described him as passionate—some might say a zealot. He admitted as much when he said in his speech on Tuesday last week that he had been interviewing male prostitutes for a number of years. What a good use of a senator’s time! A number of years! We know that the Prime Minister knew of Senator Heffernan’s obsession. The Prime Minister and Senator Heffernan were confidants. The Prime Minister also knew of Senator Heffernan’s tenaciousness. Why else did he appoint the senator to the ‘children overboard’ inquiry?

Senator Ferguson—What a load of rubbish.

Senator CONROY—Welcome, Senator Ferguson. The Prime Minister had an additional responsibility to keep a check on Senator Heffernan, because he knew his objectivity in this area. He is his best mate. He knew how obsessed Senator Heffernan was. He had an added responsibility to keep Senator Heffernan in check and to try to verify Senator Heffernan’s allegations.

We know that Senator Heffernan rarely speaks in the Senate, but when he does it is often dirty. A quick search of ParlInfo indicates that since 1996, when he was appointed a senator, his performance in this chamber has been a joke. Many times we have been in a position of calling on Senator Heffernan to enlighten us. In five years, he has made 12 adjournment speeches.

Senator Ferguson—I bet you’ve only made 12.

Senator CONROY—Thank you. Senator Ferguson. We know also that the Attorney-General, Australia’s legal officer, knew of Senator Heffernan’s obsession. Why did the Prime Minister and the Attorney-General not inquire into the basis of Senator Heffernan’s claims and ask for the evidence on which he was basing his claims? Like Senator Heffernan, Mr Williams, did they think to ask why Senator Heffernan was pursuing this, where he got the information from and whether he really believed it? Did Senator Heffernan tell them the source of these documents? If he did not, why would you let Senator Heffernan proceed? Why wouldn’t you say, ‘Don’t you dare raise these issues because they’re not of substance; the information you have to support them is not of substance’?
nan, they had a responsibility to ensure that the allegations against the judiciary—against anyone, in fact—were not raised without proper investigations being made. Proper avenues of inquiry should have been exhausted. They were not.

Indeed, the Prime Minister added to Senator Heffernan’s allegations. When he did not need to, the Prime Minister hitched his coat-tails to Senator Heffernan last week when he read into Hansard a letter from Senator Heffernan further slandering Justice Kirby. When he could have given a High Court judge the benefit of any doubt—and there must have been doubt—he backed his mate Senator Heffernan. The Prime Minister also helpfully pointed out that Justice Kirby needed only to be guilty of ‘proven misconduct’ to be removed from the High Court. We can see which side of this debate the Prime Minister has been on. It is no good trying to back away and dumping your mate last night. The Prime Minister was quick to defend the integrity of the thoroughly discredited Senator Heffernan. Further, the Prime Minister defended Senator Heffernan’s use of parliamentary privilege to air his obsession. Only yesterday, he defended Senator Heffernan’s right to use ‘the ultimate safety valve of democracy’ to make his allegations against Justice Kirby. Parliamentary privilege is, as the name suggests, a privilege. Senator Heffernan has acted recklessly. He has disregarded the resolutions and procedures of the Senate to pursue an obsession, and he did that intentionally. He deserves to be censured.

Senator Herron (Queensland) (5.04 p.m.)—We have just heard an abuse of parliamentary privilege from Senator Conroy. In his general spray about this motion, he has maligned the reputations—and I took note of it—of the Prime Minister, the Treasurer, Mr Abbott, the Attorney-General, Senator Ellison and Senator Abetz. The facts of the matter are that Senator Heffernan made an error of judgment and that he came into the Senate this afternoon and apologised to the Senate, to the Prime Minister and to his colleagues. End of story. But I understand the ALP. This is a tactic—one might say a legitimate political tactic—to attack the government. That is really what is behind it. This is not definitively a censure motion of Senator Heffernan; the motion has been amended by Senator Brown to include censure of Prime Minister Howard.

The Prime Minister has made perfectly clear he was unaware that Senator Heffernan was going to make his speech in the Senate. He had not seen the document that Senator Heffernan referred to and that was made available to the media. He counselled Senator Heffernan not to use parliamentary privilege. But one of the great virtues of the Liberal Party, and the reason that I am here, is that the Liberal Party has a great respect for the importance of the individual. I have the perfect right, as an individual, to exercise my right of parliamentary privilege. I have the right, as an individual, to cross the floor and vote on a motion that I feel strongly about—as I did when I had been in parliament about six months: I supported a Democrat motion in relation to the advertising of tobacco. I am pleased to say that 18 months later my party changed its view on that. It is an important right that we on this side of the chamber have—to exercise our rights as individuals. And if Senator Heffernan felt that he had the privilege to use that right in parliament, so be it. I would defend that. He has a perfect right as an individual to take whatever action he believes—albeit incorrectly in this case—and to exercise that privilege.

The ALP are now into parliamentary tactics, which dictate that when you have got an issue you ask the questions how, what, when, why and by whom so you can pursue that debate as long as possible rather than the things that are really affecting the country, like our unemployment rate, our outstanding economic achievements, and all the things that are important. The Australian public knows this is going to deteriorate during the remainder of this particular week in relation to an attack on the Prime Minister and an attack on the government. It was asked, ‘Why didn’t the Prime Minister stop him?’ The reality is that the Prime Minister cannot stop him. He cannot stop any member of the party from exercising his right. He can advise him, he can counsel him and he can tell
him that it is not in the best interests of the party, but ultimately it is up to the individual.

For their own reasons, the ALP interpreted the refusal of the Freedom of Information Act to allow Senator Heffernan to authenticate his records as indicating the records were not authentic. Perhaps it should have been allowed, and then he would have been aware that they were not authentic Comcar records. But no, the ALP is saying, ‘We interpret that to mean they were incorrect.’ How could Senator Heffernan know they were incorrect if he was not allowed access to the authentic records? It may equally be interpreted that it confirmed his beliefs that somebody was protecting those records so they were unavailable to him.

It is obvious that the action should be referred to the Privileges Committee—as has been suggested by somebody—but, I would refer to the hypocrisy of the ALP too. I refer particularly to my state of Queensland where we have a minister of the state Labor Party who is in jail as a convicted paedophile. The rumours were around about that gentleman for many years, and were in the press. What did the ALP do? Nothing. A former state leader of the ALP in Queensland was also in jail, and has now served his term, for the same offence. What did the ALP do about that? Nothing. It was obvious that nobody had the courage to speak up about him in a public manner. It was gossip around the state for many years as well. I think there is a reason for that, and that is they do not have the opportunity to do that as we do in the party.

I commend an ALP senator for asking a question today about paedophilia in general. That question is far more important than the individuals concerned, far more important than Senator Heffernan or the distinguished judge. It is a question that needs to be further addressed because there has been a failure of institutions—and I believe in a sense that that may have been part of Senator Heffernan’s reasons for doing what he did—and I can give you a direct indication of that. South Australia, and it is on the public records, has the worst conviction rate in Australia for paedophilia—both heterosexual and homosexual. Only two per cent to three per cent of reported child sex offenders have been convicted and punished there, and usually only the ones who plead guilty.

In 1998, in South Australia, the police handled 621 cases—227 involving the rape of a female child—and only 348 went to the Magistrates Court, 10 per cent of those went to the Supreme Court and only two offenders were convicted and both of those, I believe, pleaded guilty. It is no good saying that there is not a failure of institutions. If that is the record of institutions, then that needs to be looked at. I believe that Senator Heffernan may well have been motivated by his hatred of paedophilia and paedophiles and that obscured his judgment in this particular case. There is a case there for further debate about the particular issue because ultimately I think it is incumbent on all of us in this chamber to protect innocent children—that is the bottom line—not institutions, not individuals as such, but to protect innocent children from predatory paedophiles. And that question is still to be addressed.

I do not think this issue will go away. It is something that needs to be addressed in the community. I know that in my previous portfolio of Aboriginal and Torres Strait Islander Affairs, it is an enormous problem in some communities and I had investigations done into that. The facts are there and they need to be addressed.

Madam President, it is all very well to play the politics of this out, and I understand the ALP to do that, but there are greater issues involved here than a meaningless censure of the Prime Minister. The Prime Minister has made his position perfectly clear. I have known him for over 20 years and he is on the public record and private record of telling the truth. It is no good attacking his credibility; it stands. Senator Conroy and Senator Faulkner have dragged in other issues—Senator Brown as well—so the amendment accepted by the ALP is that the motion censures the Prime Minister for not preventing Senator Heffernan’s reckless and abusive actions in the Senate and for not acting immediately after 12 March to reverse the effect of those actions.

The only issue I have not dealt with is the idea of ‘immediately’ addressing the senator. How was the Prime Minister to
know that that record was false? He obvi-
ously did not. He was not aware until Sena-
tor Heffernan himself, as he said in the Sen-
ate this afternoon, notified him that it was so. 
Others then attested to that as well. Senator 
Heffernan has unreservedly apologised this 
afternoon, unreservedly. His apology should 
be accepted and Justice Kirby will, I believe, 
accept that apology in the spirit in which it is 
given. And that is the end of the matter as far 
as all of us should be concerned.

There may be motivations there we are 
not aware of. I think Senator Heffernan has 
made his position perfectly clear. I support 
him for the courage it took him to stand up in 
front of us, and it does take a lot of courage 
to unreservedly apologise for your actions in 
this place. It is an action I commend him for. 
It is an action that was warranted in light of 
the events that have transpired and I believe 
there is no place to try and link this thing 
with the Prime Minister, as the ALP is doing, 
and obviously I think we should oppose the 
motion.

Senator BARTLETT (Queensland) (5.14 
p.m.)—I would like to speak briefly to this 
motion. I will not take up too much time of 
the Senate but I think it is appropriate to put 
further on the record some aspects of the 
Democrats views in relation to this censure 
motion. It is worth emphasising 
those things the Senate has done since that 
speech was made to try and reverse the 
wrong that occurred and to lead us to this 
stage we are at today in debating this censure 
motion.

Firstly, the motion we are debating does 
start by noting the ruling of the Deputy 
President, acting in the President’s role last 
week, that the speech by Senator Heffernan 
was in breach of standing order 193. That 
ruling was made following a request for a 
ruling put to the Deputy President by the 
Leader of the Democrats, Senator Stott 
Despoja. That is the ruling that is noted at 
the start of the motion. The censure of 
Senator Heffernan is put forward for his 
braching of that standing order in a reckless 
and highly disorderly way. It is one that is 
particularly relevant in relation to the content 
of that speech and the fact that it is not just a 
technicality or a run-of-the-mill, everyday 
breach of standing orders but a very funda-
mental and serious one involving obviously 
very serious allegations. It is hard to think of 
many allegations more serious than those 
one against anybody, let alone a High Court 
judge.

The terms of the censure motion put for-
ward reflect very closely the content of the 
motion that is on notice that was put forward 
again by Senator Stott Despoja, the Demo-
crats leader, in relation to referring this mat-
ter to the Privileges Committee. As Senator 
Ridgeway, the acting leader this week, said 
in his contribution, that is something that the 
Democrats will continue to pursue because 
we should make this more than just address-
ing the issue of the moment. If we think that 
is all finished with and we move on, we will 
be doing ourselves a disservice and to some 
extent might leave ourselves open to the ac-
cusations made by some on the government 
side that this is all about politics. I think it is 
important that we not just recognise the 
wrong that has been done and censure Sena-
tor Heffernan accordingly but also look at 
ways to address all this in a longer term 
fashion to try and get better understanding, if 
you like, of what is appropriate and inappro-
priate use of parliamentary privilege in this 
chamber and what sorts of mechanisms we 
should have to try to minimise the prospect 
of its happening again and to deal with it if it 
does happen again. I am sure all senators 
would hope that it does not happen again.

This motion follows on from Senator Hef-
fernan’s apology that he gave to the Senate 
just under a couple of hours ago. It is worth 
noting that, according to reports on the AAP 
wire, that apology has been accepted quite 
graciously by Justice Kirby. He has made 
some very positive comments, I think, which 
I will not go into in detail because I under-
stand that some brief comments of his will 
be tabled in the chamber after this debate, so 
it is probably not appropriate to mix them up 
with the censure debate about Senator Hef-
fernan. But it is appropriate to mention in the
context that this is not just about Senator Heffernan being censured and that is that; there are broader issues here that we should not forget, because there are lessons to be learnt from this unfortunate episode. If we could do that, that would be all the better.

It is worth reflecting on the comments that my colleague Senator Greig made earlier today in response to an issue raised in question time. In his statement today Senator Heffernan said that he does not believe in discrimination against homosexual people and sees no link between paedophilia and homosexuality. I am certainly glad to hear him say that. We have had similar comments from government members, including the Prime Minister. What is needed, if they are genuine in removing the stigma of homophobia that has been perceived as a consequence of Senator Heffernan’s comments, is that they really need to be moving proactively to remove the widespread discrimination that occurs across a whole range of legislation at Commonwealth level and to provide national protection against discrimination on the grounds of sexuality and gender status. If the government is genuine in saying this is not about homophobia, that is the way they can demonstrate it. Otherwise, I think the doubt will still be there. I think there are positives to be gained from this very unfortunate episode if we look beyond just making this a political activity and look at the lessons we can learn from it. As with the unfortunate episode with the Governor-General, if this serves to focus on the reality of child sex abuse as opposed to false allegations and smearing of people, perhaps there are some positives that can come out of it.

The apology that Senator Heffernan gave follows a motion by this chamber last week calling on him to do just that. As was stated earlier in the debate today, when that motion was passed by the Senate calling on Senator Heffernan to apologise, the Prime Minister dismissed that as politicking. It seems that when the Senate does that it is politicking and when Mr Howard requires Senator Heffernan to apologise that is just him behaving appropriately. I think it is quite clear that the politicking in this over the last few days has been predominantly on the Prime Minister’s part. It was the government senators that opposed in this chamber the motion and the amendment that was put forward by the Democrats that called on Senator Heffernan to resign. You have to wonder why the government members thought it was inappropriate last week for the Senate to call on Senator Heffernan to apologise but think it is appropriate today for Senator Heffernan to provide that apology. I think there is a lot of inconsistency there. It again calls into question the genuineness of some of the government statements in relation to that. It was, of course, Mr Howard, and a few others—Senator Lightfoot springs to mind—who opposed that call by the Senate for Senator Heffernan to resign, and the motion and amendment were moved by the Democrats.

It is worth noting and it is probably particularly ironic, given the amendment moved today by Senator Brown, that Senator Brown also opposed the Democrat amendment to call on Senator Heffernan to apologise. Then there was the curious scenario of Senators Brown, Heffernan and Lightfoot and Mr Howard all agreeing that it should not be Senator Heffernan who should apologise. I found it a bit perplexing that Senator Brown opposed the Democrat amendment calling on Senator Heffernan to apologise, but certainly we are pleased that he has done so today. It was an appropriate resolution of the Senate last week and an appropriate amendment moved by Senator Stott Despoja, despite the attacks made upon her at the time for moving that way. Indeed, Senator Brown went so far as to put out a statement criticising the decision of the Senate, and the Democrats in particular, to move an amendment that Senator Heffernan resign—sorry, apologise; Freudian slips keep occurring. But it is justification for that resolution of the Senate that today we have seen this apology. The response from Justice Kirby, following that apology, is a positive one as well and provides as good a resolution as you could get of what is a very unsavoury matter.

The other aspect that is appropriate is the censure motion, which of course the Democrats support. It mirrors, as I say, in many ways, the motion of referral to the Privileges
Committee that was put forward by Senator Stott Despoja. In a way, it is an almost inevitable outcome of a range of actions by the Senate, including many actions by the Democrats, highlighting the need for redressing the wrong that occurred in relation to Senator Heffernan's speech. I hope that positive aspects come from this sad and unfortunate circumstance. Then, perhaps we will all learn from it and try to avoid such things happening again in the future.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.24 p.m.)—The opposition has given consideration to the amendment that Senator Brown proposes, and I indicate to the chamber we will be supporting it. We do so on the basis that it is absolutely clear that the Prime Minister failed to take effective action to ensure that Senator Heffernan did not air his damaging accusations before having them thoroughly investigated.

But it is not just a case of the Prime Minister failing to exercise due diligence in this matter. He actually added to the accusations against Justice Kirby by tabling the correspondence between Senator Heffernan and the New South Wales Police Commissioner, which of course contained new information. What the Prime Minister did was to give comfort to Senator Heffernan and give no comfort to Justice Kirby. Neither the Prime Minister nor the Attorney-General was willing to express confidence in Justice Kirby. I believe that the Prime Minister has shown an abysmal lack of leadership on this matter, as he has in relation to the 'children overboard' deception.

I note—and it would be churlish not to—that Senator Heffernan has come into the chamber and made an apology to Justice Kirby. I note that Senator Heffernan has also apologised to the Senate. I know that Justice Kirby has accepted the apology that has been proffered by Senator Heffernan. I suspect that nothing can be done to rectify some of the damage that has been done to Justice Kirby's reputation by the airing of the allegations themselves. I think Senator Heffernan, regrettably, has succeeded in smearing the name of Justice Kirby, and everyone in public life knows how difficult it is to shake off those sorts of smears. So it is appropriate, at the very least, that Senator Heffernan be censured for this reprehensible behaviour.

Frankly, I think this is even more important given the actions of the government in the House of Representatives this afternoon in refusing, as I understand it, to allow the censure motion moved by the opposition to proceed. I suspect that was probably due to a lack of confidence by the coalition leadership that their troops would line up with the government side when a vote came on this particular issue.

The question for the Senate to determine today is whether it is appropriate to censure Senator Heffernan for his behaviour. As I have said before, apart from the breach of standing order 193 and apart from the Deputy President having found that Senator Heffernan was guilty of highly disorderly conduct, it is a fact that Senator Heffernan
structured his speech so effectively he could not be drawn to order by either the chair or any senator concerned at a possible breach of standing orders. I think that is a devious way to attack an eminent judge—a devious way, frankly, to attack anyone—but it is a cowardly way also. It is a matter of fact that Senator Heffernan failed to exhaust the legal avenues available to him to have his allegations against Justice Kirby properly investigated. It is a matter of fact that Senator Heffernan failed to take proper action to have his so-called ‘evidence’ authenticated. As I said before—and I stand by it—Senator Heffernan has been reckless, he has been disorderly in his conduct, he has been cowardly in his attack, and he has been grossly negligent. He has defamed the good name of an eminent judge of the High Court of Australia. He ought to be censured by the Senate.

Question put:
That the amendment (Senator Brown's) be agreed to.

The Senate divided. [5.36 p.m.]
(The President—Senator the Hon. Margaret Reid)

AYES

Noes............
Majority........

AYES

PAIRS

* denotes teller

Question agreed to.

Original question, as amended, agreed to.

PRIVILEGE

The President—(5.37 p.m.)—I wish to report that this afternoon I have received a letter and a short statement from the Hon. Justice Michael Kirby AC, CMG, a justice of the High Court of Australia. The letter states:

Dear President,

I have the honour to attach a copy of a statement which I am releasing following the speech in the Senate by Senator the Hon. Bill Heffernan. If you consider it appropriate and the Senate gives permission, the statement might be tabled.

With the leave of the Senate, I will incorporate the statement, and I will table the originals of the letter and the statement when they are received.

The statement read as follows—

ST ELAMENT BY JUSTICE MICHAEL KIRBY

My family and I have suffered a wrong. But it is insignificant in comparison to the wrong done to Parliament, the High Court and the people. I have been sustained by my innocence, by the love of my partner and family and support and prayers from all sections of the community. I accept Senator Heffernan’s apology and reach out my hand in a spirit of reconciliation. I hope that my ordeal will show the wrongs that hate of homosexuals can lead to.
Out of this sorry episode, Australians should emerge with a heightened respect for the dignity of all minorities. And a determination to be more careful in future to uphold our national institutions—the Parliament and the Judiciary.

**LUCAS HEIGHTS: NUCLEAR REACTOR**

**Returns to Order**

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.41 p.m.)—by leave—I rise to make a statement in relation to a return to order about the Lucas Heights reactor, due today. It relates to a matter handled by the Minister representing the Minister for Education, Science and Training, Senator Alston. Pursuant to order of the Senate agreed to on 14 March 2002 relating to the Lucas Heights reactor-INVAP contract, I table documents.

With regard to paragraph (a) of the order, as part of the technology transfer provisions of the contract with INVAP, ANSTO officers are regularly in Argentina. However, these officers have not had any responsibility in relation to the matters raised in this paragraph and have not reported on them. Hence, ANSTO holds no documents relevant to this paragraph. The ANSTO executive director and the replacement research reactor program manager have visited Argentina to monitor the implementation of the contract and have provided verbal reports on the outcome of these visits to the ANSTO board and to project staff. The executive director, Professor Garnett, has also provided an oral briefing on these matters to the Minister for Science.

With regard to paragraph (b) of the order, there have been no discussions on renegotiated financial agreements for the contract, nor on 'repeated applications for Argentinian government loans'. All commercial and technical discussions between ANSTO and INVAP are covered by the commercial-in-confidence provisions of the contract, and documents relating to such discussions are commercial-in-confidence. Other documents falling under this head cannot be tabled, as they are classified confidential or above and, consequently, their release would prejudice Australia’s national security.

With regard to paragraph (c) of the order, these documents have already been supplied to the Senate Committee for an Inquiry into the Contract for a New Reactor at Lucas Heights and would be available in the committee’s records. They are described in detail in paragraphs 7.5 to 7.6 of the committee’s report, *A new research reactor?*, and are provided for the information of the Senate.

With regard to paragraph (d) of the order, advice on the Argentine economy is reported to the government by our embassy in Buenos Aires in classified cables, the release of which would prejudice Australia’s national security. The minister has been briefed verbally on matters concerning INVAP and the Argentine economy by officials, the Argentine Ambassador to Australia and the Australian Ambassador to Argentina.

With regard to paragraph (e) of the order, since formal negotiations with INVAP commenced, there have been no significant variations to the specifications or capacity of the reactor and no amendments to the provision of neutron beam assemblies. This can be seen by a review of the Preliminary Safety Analysis Report, which was submitted to ARPANSA in May 2001 and which has previously been provided to the Senate. Accordingly, there are no corresponding project cost revisions and the research capacity and potential of the reactor have not changed. There are therefore no documents under this paragraph, but for the information of the Senate we provide a summary of the PSAR.

The second return to order relates to the area administered by Senator Patterson, the Minister for Health and Ageing, and is pursuant to the order of the Senate agreed to on 12 March 2002 relating to the proposed nuclear reactor at Lucas Heights. I table documents.

With regard to paragraphs (a), (b) and (c) of the order, the remainder of the documents falling within the scope of this paragraph cannot be tabled, as they are classified confidential or above and, consequently, their release would prejudice Australia’s national security.

With regard to paragraph (d) of the order, the remainder of the documents falling
within the scope of this paragraph cannot be
tabled, as they are either classified confiden-
tial or above and, consequently, their release
would prejudice Australia’s national security
or they are commercial-in-confidence.

With regard to paragraph (e) of the order, I
indicate that the documents sought were the
subject of a Senate committee inquiry and an
earlier Senate return to order, pursuant to
which documentation has previously been
tabled by the Minister for Industry, Science
and Resources on 8 February 2001 or pro-
vided by ANSTO. The publication of docu-
ments relating to the evaluation and com-
parison of tenders would directly breach the
undertakings made by ANSTO to all four
tenderers in the request for tender. Clause 4.5
of the request for tender reads:

4.5 Confidentiality
Subject to the provisions of the Freedom of
Information Act 1982, information relating to the
examination, clarification, evaluation and com-
parison of tenders and recommendations for the
award of a contract shall not be disclosed to ten-
derers or any other persons not officially con-
cerned with such process other than to the Minis-
ter for Industry, Science and Resources, officers
of the Minister’s department and the Com-
monwealth Auditor General.

With regard to paragraph (f) of the order, I
indicate that the remainder of the documents
sought either were the subject of a Senate
committee inquiry and an earlier Senate re-
turn to order, pursuant to which documentation has previously been
tabled by the Minister for Industry Science and Resources on 8
February 2001 or provided by ANSTO, or
cannot be tabled as they are either classified
confidential or above and, consequently,
their release would prejudice Australia’s na-
tional security or they are commercial-in-
confidence.

Senator BARTLETT (Queensland) (5.48 p.m.)—by leave—The Australian Democrats
will examine the statement of the Parlia-
mentary Secretary to the Minister for Agri-
culture, Fisheries and Forestry, but the re-
peated resort to commercial-in-confidence,
national security and confidentiality
throughout all of these documents highlights
a major flaw in this whole approach and an
ever growing degree of secrecy by this gov-
ernment in particular. I think it has been a
trend for a while, including the previous
government, but it is getting worse and
worse. These two returns to order—one
originally put forward by Senator Stott
Despoja, the Leader of the Democrats, and
the other by Senator Carr—both deal with
substantial documents relating to a very sig-
nificant issue of major public importance:
the new Lucas Heights reactor. With the new
information that has come to light from Ar-
gentina on the state of the Argentinian econ-
omy and the state of the relevant organisa-
tion which has tendered for the new reactor,
to continually say ‘national security’, ‘com-
mercial-in-confidence’ and ‘confidential’,
from the Democrats’ point of view, simply is
not good enough.

This is an issue that my colleague Senator
Murray has pursued in recent times to try to
get a better standard of the application of the
principle of commercial-in-confidence. The
Democrats recognise that there are legitimate
occasions where that may apply, but it seems
quite clear that, more and more, it is being
applied inappropriately and as an excuse for
keeping things from the public eye. That is
completely inappropriate. It is appropriate to
remind the Senate, and the public more
broadly, that returns to order—or orders for
the production of documents—by the Senate
are not idle things that people do when they
have a bit of spare time; they are very sig-
nificant orders. To require a document to be
produced before the Senate is a significant
order and to refuse to comply, as the gov-
ernment has done predominantly in relation
to these two returns to order, is a serious
matter. It is not an FOI application; it is an
order of this house of parliament. It is a sig-
nificant one with significant weight, and for
it to be dismissed so flippantly or easily by
the government sends a very bad signal
about how seriously this government takes
the institution of parliament and the Senate.
Perhaps, given everything we have seen in
the last couple of months about this govern-
ment, it is possibly no surprise that the gov-
ernment’s respect for the institution of par-
liament is about as low as its respect for
every other institution in this country.
Certainly the Democrats still hold the Senate and the parliament in high esteem. We believe that orders like these should be complied with except under exceptional circumstances. We are very dubious about whether this rationale as put by the government is adequate in a matter as important as this. It is worth looking at the list in the Notice Paper on page 23 onwards that lists all the orders for production of documents still current from previous parliaments. They go right back to 1995. There are about 14 or 15 different areas where, basically, those orders have not been complied with. Then we have ones like this where probably in a technical sense it would be said it is complied with, but the amount of loopholes and exemptions that the government has given to itself means that—at least as I heard the minister’s statement—it has fairly much gutted the whole intent of the orders made by the Senate.

A matter of concern to all senators in this place should be the principle, the powers and the responsibilities of this Senate and this parliament in representing the people and representing legitimate and serious public concerns. It is a matter of concern in relation to this issue, which is of major concern particularly to the residents of Sydney where the reactor is planned to be but also to those of us around the country who are concerned about further expansion of the nuclear industry. It is a concern, and given that one of the two orders was generated by the Democrats, by Senator Stott Despoja, it is one that we will continue to pursue.

Senator Troeth—And important.

Senator CARR—A very important research exercise. There are serious questions, however, about whether or not this is the appropriate way to spend the money. Serious questions are being raised in the scientific community about whether or not it is appropriate to invest this level of expenditure in this particular project. There are real safety concerns about waste disposal.

However, putting all of that aside, there are real worries about the capacity of this company to fulfil its contractual obligations. Those concerns have been expressed in a number of places. I expressed those concerns with a question in this place about the loan of some $10.5 million that the bankrupt government of Argentina is extending to this state owned company in Argentina. I was told that as far as the government is concerned this had now been confirmed. What really troubled me was that the government has said repeatedly that it is constantly monitoring the implementation of this contract. In fact, as the terms of the return to order point out, the Minister for Science, Mr Peter McGauran, said, ‘We are constantly monitoring the situation, through our ambassador specifically. We are alert to any flow-on effects from the difficulties in the Argentinean economy, but INVAP is insulated to all intents and purposes from these problems.’ The government has said repeatedly that there was no financial support being extended by the Argentinean government to this contractor. We now discover that that is simply not true. The Argentinean budget papers on 1 March this year indicated that a loan had been extended by the Argentinean government to this contractor. When I put
those facts together—the government saying that it is constantly monitoring the situation and that there is no support from the Argentinean government—and we discover that there is support, we have to ask ourselves: how effective has the monitoring process, the due diligence process, been in regard to this contract? I would say on the evidence, since we now know that the project manager involved with the construction of the new reactor did not know about the loan, and furthermore that Mr John Loy, the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Agency, did not know about this loan, and that this particular contract is the subject of quite extensive investigation by ARPANSA in regard to the licence to proceed, these are significant events.

When we put in a return to order, we hear from the government, ‘There are no documents. We’ve got no idea what is going on.’ I find that an extraordinary matter. That is what troubles me. There is this issue, as I say, about the appropriateness of the investment in this particular site, but when we discover that there is such a shoddy approach to the contract compliance issues then I have real cause for concern. I am not satisfied with the government’s response that we cannot have access to the documents that we do have because it is in the national interest that this parliament not be told. A lot of the concerns about the contract could be clarified if the government took the parliament and the people of this country into its confidence and discussed the terms of that contract and tabled the contract. There is no commercial-in-confidence in this issue. We have a monopoly provider in regard to the reactor. There is only one in the country. There can be no competition to it. The issue that concerns me here is about whether or not the tender process was appropriate or was effective in producing the best result. That is the issue that now comes to the fore. We can only presume that the government’s reluctance to deal squarely with these issues stems from its internal administrative failure to produce an appropriate response in terms of the construction of this reactor. That is the suspicion I am left with. What has it got to hide is the issue that comes to mind. It could clarify a number of real concerns that are being expressed about the nature of this contract.

It does not end there. What we are now discovering is that the Rio Negro state government in Argentina is pressing the national government, in regard to a company that they control, about the legal process around this contract, particularly the issue of bringing the nuclear waste back from this plant to Argentina. I understand that this is quite a significant matter, given that the French have pulled out of the arrangements entered into to reprocess the nuclear waste from this particular site. That seems to me to be a significant matter in relation to this contract because, as I understand it, the contract was actually signed in Argentina, which makes the matter a question of Argentinian law, not Australian law. If I am right about that, then I think a whole series of other matters flow from that. The government refuses to provide information, which I think is quite basic and it is reasonable to ask for, about the monitoring process and about all the officers we are supposed to have in Argentina keeping an eye on the situation, who do not seem to know what is in the Argentinian budget on a matter of such significance to Australia.

Now we have other issues of concern with this contract. You say there are no significant technical changes to the contract. How would we know? Serious rumours are being spread about significant changes to the technical specifications of the contract. You are denying them flatly: ‘That is not true.’ You did not know about the $10.5 million loan from a bankrupt government to a struggling company that is supposed to be building this new facility, so how can we accept your assurances that there are no significant technical changes to the terms of the contract itself? Remember, the basic question about this issue, in terms of research capacity, was that this facility was going to do new and wonderful things. What if it emerges that it is not able to do that?

I think there are some significant issues and I am not satisfied with the parliamentary secretary’s answer today. Frankly, these are matters that will be pursued further. We would like to study the documents that the minister is tabling today. I am deeply con-
cerned that the most significant issues are being ignored in this cavalier way. We will not be put off by this rebuff today; this matter will be pursued. I will seek leave to continue my remarks so that I have an opportunity to discuss this matter further after I have seen the documents the minister has tabled. I understand that a statement was to be made straight after taking note of answers, and the government has responded appropriately. It would have been helpful to have been given access to that statement and to have had more opportunity to give a considered response to the government’s statement today. If I had more opportunity to study the statement, I could add to what has been said today but, on the surface, this is a totally inappropriate response. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PETITIONS

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

Telstra: Privatisation

To the honourable the President and the members of the Senate in Parliament assembled:

The petition of the undersigned shows our concern that:

(1) the Howard-Anderson Government plans to fully privatise the Australian people’s 50.1 percent share of Telstra as stated in the Government’s own 2001 Budget papers;

(2) a fully privatised Telstra will focus on profits not people; and

(3) services will suffer under a fully privatised Telstra, particularly in outer metropolitan, rural and regional Australia.

Your petitioners request that the Senate oppose the Howard-Anderson Government’s plans to fully privatise Telstra.

by Senator Hogg (from 109 citizens)

Petition received.

NOTICES

Presentation

Senator George Campbell to move on the next day of sitting:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 19 November 2002:

Small business employment, with particular reference to:

(a) the effect of government regulation on employment in small business, specifically including the areas of workplace relations, taxation, superannuation, occupational health and safety, local government, planning and tenancy laws;

(b) the special needs and circumstances of small businesses, and the key factors that have an effect on the capacity of small businesses to employ more people;

(c) the extent to which the complexity and duplication of regulation by Commonwealth, state and territory governments inhibits growth or performance in the small business sector; and

(d) measures that would enhance the capacity of small businesses to employ more people.

Senator Chris Evans to move on Thursday, 21 March 2002:


Senator Robert Ray to move on the next day of sitting:

That the following matter be referred to the Committee of Privileges:

The desirability and efficacy of engaging counsel to represent the Senate in court and other tribunal proceedings on questions involving parliamentary privilege affecting the Senate or senators.

Senator Ian Campbell to move on the next day of sitting:


Senator Ian Campbell to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend legislation relating to health, and for related purposes. Health Legislation Amendment (Private Health Industry Measures) Bill 2002.

Senator Allison to move on the next day of sitting:

That the Senate—
(a) notes that:
(i) Sane Australia, a national charity helping people affected by mental illness, said in the week beginning 17 March 2002 that despite two national mental health plans and a 30 per cent increase in funding in the 1990s, there has been very little real progress in the care of people with mental illness,
(ii) many Australians are not receiving effective treatment from public mental health systems, often leading to tragic situations,
(iii) there is no coherent Australia-wide system of rehabilitation for people with a psychiatric disability,
(iv) there are few specialist programs to help those with a mental illness and coexisting alcohol and drug problems,
(v) family and other carers are not routinely provided with education and support,
(vi) Australia still has eight different Mental Health Acts not in harmony with each other, and
(vii) Australia spends only 5 per cent of its health budget on psychiatric services while other Organisation for Economic Co-operation and Development countries allocate closer to 10 per cent; and
(b) urges the Federal Government to take a national approach to seriously address these issues.

Senator Ian Campbell to move on the next day of sitting:
That on Wednesday, 20 March 2002:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to midnight;
(b) the routine of business from 7.30 pm to 11.20 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 11.20 pm.

Senator Crowley to move on the next day of sitting:
That the Community Affairs References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 21 March 2002, from 3.30 pm, to take evidence for the committee’s inquiry into nursing.

Senator Bartlett to move on the next day of sitting:
That there be laid on the table, no later than 4 pm on Thursday, 21 March 2002, all documents used by Environment Australia as part of the assessment under the Environment Protection and Biodiversity and Conservation Act of the proposed Paradise Dam, including:
(a) a copy of the report, ‘Ecology and demographies of lungfish: Neoceratodus forsteri and general fish communities in the Burnett River Queensland with reference to the Impacts of Walla Weir and future water infrastructure developments—Draft lungfish scientific report’ (Queensland DPI, SG Brooks & T Kind, 2001); and
(b) a copy of the Queensland Treasury Department report, ‘Treasury comments on economic viability of water allocation scenarios for the Burnett Basin’ (Queensland Treasury Department, 2000).

Senator Bartlett to move on the next day of sitting:
That the Migration Legislation Amendment (Transitional Movement) Bill 2002 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 22 April 2002.

Senator Kemp to move on the next day of sitting:
That the Senate—
(a) recognises the outstanding success of the Australian Winter Olympic and Paralympic teams competing at the 2002 Salt Lake City Olympics and Paralympics;
(b) congratulates the Australian Winter Olympic and Paralympic teams for their outstanding effort in achieving the best ever result for Australian teams in these competitions;
(c) conveys, on behalf of all Australians, the nation’s pride and congratulations for the performances of all athletes who represented Australia at these games, particularly the outstanding performances of our medal winners;
(d) expresses thanks and gratitude to the Australian Olympic Committee, the Australian Paralympic Committee and the team support staff and others who have worked so hard to prepare Australia’s most successful Winter Olympic and Paralympic teams to date; and
(e) notes the role of the Commonwealth in supporting the preparation of Australian athletes for the Winter Olympic and Paralympic Games, through the Australian Sports Commission and the Australian Institute of Sport.

Senator Cook to move on the next day of sitting:
That the Senate—
(a) notes:
(i) that Princess Margaret Hospital is the only major children’s hospital in Australia without a magnetic resonance imaging (MRI) machine,
(ii) the unsatisfactory situation in which 200 Western Australian children are awaiting MRI appointments at another public hospital without specialist services for children,
(iii) that the Western Australian Government has agreed to fund the purchase of an MRI machine at a cost of $2 million, provided the Commonwealth provides a Medicare licence for it,
(iv) the refusal of the Minister for Health and Ageing (Senator Patterson) to provide a Medicare licence for an MRI machine at Princess Margaret Hospital, and
(v) that the Commonwealth has provided four Medicare licences for MRI machines to private health providers in Western Australia and only two to public hospitals, none of which provide specialist paediatric services; and
(b) calls on the Minister to alleviate the chronic need for the provision of an MRI machine at Princess Margaret Hospital by immediately providing a Medicare licence for such an MRI machine.

Senator Brown to move on the next day of sitting:
That the Senate does not require media representatives in the Senate gallery, or senators’ advisers, to wear coats.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.04 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Migration Legislation Amendment (Transitional Movement) Bill 2002, allowing it to be considered during this period of sittings.
I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.
The statement read as follows—
MIGRATION LEGISLATION AMENDMENT (TRANSITIONAL MOVEMENT) BILL 2002

Purpose of the Bill
The Bill is to allow for the lawful transfer of certain non-citizen asylum seekers into and out of Australia, if necessary in exceptional circumstances. These non-citizens will have previously attempted to enter Australia unlawfully and been removed to a third country for assessment of their status.

The Bill also ensures that these non-citizens have a designated status in Australia so that they cannot apply for any visa except at the discretion of the Minister, nor institute legal proceedings in relation to their status.

Reasons for Urgency
The Bill is an integral part of the Government’s strategy to preserve the integrity of Australia’s borders and the migration and humanitarian programs.

The amendments deal with matters that are urgent, as some of these non-citizens may be required to enter Australia in exceptional circumstances, including to receive urgent medical treatment or to provide evidence in people smuggling prosecutions.

(Circulated by authority of the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP)

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.05 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
Appropriation (Parliamentary Departments) Bill (No. 2) 2001-2002
Appropriation Bill (No. 3) 2001-2002
Appropriation Bill (No. 4) 2001-2002
Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002
Quarantine Amendment Bill 2002
Taxation Laws Amendment (Baby Bonus) Bill 2002
Taxation Laws Amendment Bill (No. 1) 2002
Therapeutic Goods Amendment Bill (No. 1) 2002
Therapeutic Goods (Charges) Amendment Bill 2002
Therapeutic Goods Amendment (Medical Devices) Bill 2002
Veterans’ Entitlements Amendment (Gold Card Extension) Bill 2002
Veterans’ Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 2) 2001-2002
APPROPRIATION BILL (No. 3) 2001-2002
APPROPRIATION BILL (No. 4) 2001-2002

Purpose of the Bills
The Appropriation Bills request legislative authority for additional expenses to be incurred in 2001-2002. Passage of the Bills in the Autumn sittings will allow funds to be made available to agencies, thereby ensuring the continuity of Government activities as the financial year draws to a close.

Reasons for Urgency
The bulk of funding for Government programmes in 2001-2002 was provided by the Appropriation Acts passed in the Budget Sittings. These Bills seek authority for expenditure on activities which require additional funding and new activities agreed to by the Government since the last Budget.

Unless new expenditure authority is in place in a timely manner, some activities of Government agencies, some activities administered on behalf of the Government and some activities of the Parliamentary Departments may not have sufficient funds to continue to the end of 2001-2002 and new activities will not commence.

(Circulated by authority of the Minister for Finance and Administration)

FINANCIAL CORPORATIONS (TRANSFER OF ASSETS AND LIABILITIES) AMENDMENT BILL 2002

Purpose of the Bill
To extend the date for a foreign subsidiary to be eligible to transfer to a branch status and to transfer its assets and liabilities without incurring a tax liability

Reasons for Urgency
The banking industry (including the International Banks and Securities Association of Australia (IBSA) and Australian Banking Association (ABA) members) are anxious for the Bill to be passed. Passage of the amendments would remove any doubt that the change from foreign bank subsidiary to foreign bank branch status would not incur a tax liability for the associated banking operations in Australia. If this amendment is not passed by the critical date a case could be mounted for the foreign bank to be liable for tax obligations when changing status.

This amendment was to be included in the Financial Sector Legislation Amendment Bill 2001 to be introduced in August last year. Due to the election the Bill was not passed.

(Circulated by authority of the Parliamentary Secretary to the Treasurer, Senator the Hon Ian Campbell)

QUARANTINE AMENDMENT BILL 2002

Purpose of the Bill
The Bill will introduce a complementary range of measures intended to improve Australia’s capacity to prevent or control and eradicate an outbreak of an exotic disease such as foot and mouth disease such as that which occurred in the United Kingdom. Any outbreak in Australia would be severely economically and socially debilitating, particularly in terms of our exports of beef, sheep and dairy products, and Australia’s reliance on the tourism industry. In the event of an outbreak, appropriate response measures would be vital to limit the economic and social impacts. Reducing the extent of the disease and the length of an outbreak would result in corresponding reductions in impacts on the economy.

In particular, the Bill will:

• enhance Australia’s national emergency powers by allowing the Minister for Agriculture, Fisheries and Forestry, upon proclamation by the Governor-General to authorise certain State and Territory officials to undertake appropriate measures in response to an
emergency animal disease outbreak, such as foot and mouth disease; and

• deter commercial smuggling of quarantine risk material by introducing a new offence with a maximum penalty of 10 years imprisonment and/or a fine of $1,000,000.00.

Reasons for Urgency

National emergency measures. Animal production and health issues are regarded as the responsibility of the States and Territories and it is predominantly the State and Territory animal health acts (with support from emergency management legislation) which will be utilised in the event of an emergency animal disease outbreak. States and Territories are reasonably well prepared in terms of legislative powers, but there are some gaps in their acts that may hamper critical response measures in the event of a major animal disease emergency such as foot and mouth disease.

Amendments to the Quarantine Act 1908 would allow for the executive heads of national response agencies, which include State and Territory agencies, to take appropriate actions when authorised by the Minister for Agriculture, Fisheries and Forestry to do so.

If these powers are not able to be transferred to State and Territory officials in the event of a major disease outbreak, any response to an outbreak would be found wanting.

New offence of commercial smuggling. This proposed new offence is the Government’s response to those cases where the penalties imposed by the courts have not reflected the strong community view that illegal importations of items of quarantine concern for commercial gain should be punished severely. (Our Future Action Plan: Australia’s Rural Industries—Growing Stronger). Given the disastrous impact of the foot and mouth disease outbreak in the United Kingdom, it is important that a strong message be given to potential offenders about the serious consequences of such behaviour.

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry)

TAXATION LAWS AMENDMENT (BABY BONUS) BILL 2002

Purpose of the Bill

The Bill implements the Government’s election commitment to introduce a First Child Tax Refund or ‘Baby Bonus’. It will provide a parent (primary carer) with a capped refund of tax paid on income earned in the year prior to the birth of the first child. The repayment will occur over a 5 year period. Low income taxpayers will be guaranteed a minimum annual credit of $500.

Reasons for Urgency

The Government’s election commitment was that payment of the Baby Bonus would commence on assessment for the 2002 year of income. It is therefore important that the legislation be in place before 1 July 2002, so that issues about taxpayers’ eligibility for the Baby Bonus and administrative issues surrounding its delivery can be resolved before then.

(Circulated by authority of the Treasurer)

TAXATION LAWS AMENDMENT BILL (No. 1) 2002

Purpose of the Bill

The purpose of this Bill is to amend various parts of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 which have particular impact on the plantation forestry sector. The amendments introduce a new ‘12 month rule’ allowing an immediate deduction for certain pre-paid expenditure when invested in a plantation forestry managed investment agreement.

The Bill also allows the Commissioner to exercise his discretion in relation to the non-commercial loss rules past a point in time at which a profit was made or one of the objective tests was passed, if this is consistent with the nature of the business activity.

Reasons for Urgency

These measures were announced on 2 October 2001 and since this time industry has had an expectation that they will apply in the current financial year. However, new investment in the industry will be limited in the absence of legislative certainty and sufficient planning and setup time. Therefore, the Bill needs to be passed as soon as possible.

(Circulated by authority of the Treasurer)

THERAPEUTIC GOODS AMENDMENT BILL (No. 1) 2002

Purpose of the Bill

The Bill will amend the Therapeutic Goods Act 1989 to give the Minister power to allow certain essential unregistered therapeutic goods (such as antibiotics, vaccines and chemical antidotes) to be imported and supplied in Australia in the event of a bioterrorism incident.

Reasons for Urgency

The recent bioterrorist activities in the United States have highlighted the need world-wide for
preparedness for chemical, biological and radiological disasters. The nature of these terrorist threats is such that some of the recommended treatments may not be registered in Australia but may need to be supplied with minimum delay.

The creation of a national emergency capacity for therapeutic goods is consistent with the Commonwealth’s national responsibility in coordinating public health protection.

The Government places a high priority on the need for such measures to meet emerging and unknown threats.

(Circulated by authority of the Minister for Health and Ageing)

THERAPEUTIC GOODS (CHARGES) AMENDMENT BILL 2002

目的

这些法案将修改《治疗商品法》1989年版和《治疗商品（费用）法》1989年版，以协调澳大利亚的医疗设备监管要求，使之符合国际最佳实践，即全球协调化工作组的原理，并借鉴欧盟方案，允许赞助商电子化地提交申请，以将医疗设备录入澳大利亚《治疗商品注册》。这些修改将更好地保护公共卫生，同时促进新技术的使用。

原因

2001年3月29日引入的立法在议会休会前未能通过。《治疗商品法》的修正案响应了消费者团体、行业和政府机构的呼吁，要求消除医疗设备行业的监管重复，并提高医疗设备监管质量。澳大利亚目前的监管要求对医疗设备是独特的，被认为是贸易中的一个显著障碍。消费者通过不愿与澳大利亚独特的繁琐手续打交道，而错过了使用新兴医疗设备的机会。澳大利亚制造商对必须满足其他国家不同的监管要求而感到沮丧。

该系统将为澳大利亚行业提供更快、更高效的进入欧洲市场的途径，并将为澳大利亚社区带来更快的新医疗设备的访问。行业和消费者团体认为，新监管制度有显著优势，而利益相关者对延误感到失望。现在有强烈期望，新系统将尽早实施，以便满足这些期望，并在国际市场上保持相关。

(Circulated by authority of the Minister for Health and Ageing)

VETERANS’ ENTITLEMENTS AMENDMENT (GOLD CARD EXTENSION) BILL 2002

目的

该法案将实施一项关于扩大到所有年满70岁或以上的二战后服务资格的澳大利亚退伍军人的黄金卡资格的竞选承诺。

原因

此措施对退伍军人和其家庭有益。预计将有约4000名退伍军人在第一年获得黄金卡。如果在秋冬会议期间通过和通过法案，将为所有预期的合格退伍军人提供黄金卡，并在2002年7月1日之前申请和收到他们的黄金卡提供充足的时间。如果在秋冬会议期间通过法案，可能不会为所有预期的合格退伍军人在2002年7月1日开始之前提供黄金卡。

(Circulated by the authority of the Minister for Veterans’ Affairs)

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (FURTHER BUDGET 2000 AND OTHER MEASURES) BILL 2002

目的

该法案将实施2000-01预算案中的一项和其他一项议案在退伍军人事务部门。这些预算案对退伍军人和其家庭有益。

(Circulated by the authority of the Minister for Veterans’ Affairs)
The Budget measures will:

- provide for more generous treatment of the effect of periodic compensation payments on partner pensions;
- provide for the direct recovery of certain compensation debts from the compensation payers and insurers;
- exclude financial assets determined to be unrealisable under the hardship rules from the deeming provisions; and
- streamline the operation of the income streams rules.

The other measure will align the Veterans’ Affairs rounding rules with those of social security law.

**Reasons for Urgency**

The Budget measures are beneficial and have a retrospective commencement date of 20 September 2001. These measures cannot be implemented until the Bill receives Royal Assent. Early passage of the Bill will directly benefit veterans and their partners.

(Circulated by authority of the Minister for Veterans’ Affairs)

**Postponement**

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Bartlett for today, relating to the reference of matters to the Legal and Constitutional References Committee, postponed till 21 March 2002.

General business notice of motion no. 1 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to a request to the Inspector-General of Intelligence and Security to investigate certain actions in relation to the MV Tampa, postponed till 14 May 2002.

General business notice of motion no. 24 standing in the name of Senator Bourne for today, relating to measures to resolve tensions between India and Pakistan, postponed till 20 March 2002.

General business notice of motion no. 14 standing in the name of Senator Harris for today, relating to the establishment of a select committee on the Lindeberg grievance, postponed till 20 March 2002.

Business of the Senate notice of motion no. 3 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to the reference of matters to the Standing Committee of Privileges, postponed till 20 March 2002.

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 20 March 2002.

General business notice of motion no. 10 standing in the name of Senator Murphy for today, relating to the establishment of a select committee on forestry and plantation matters, postponed till 20 March 2002.

Business of the Senate notice of motion no. 2 standing in the name of the Chair of the Economics References Committee (Senator Collins) for today, relating to the reference of matters to the committee, postponed till 20 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 Defence (Senator Hill), postponed till 20 March 2002.

**Leave of Absence**

Senator **BARTLETT** (Queensland) *(6.07 p.m.)*—by leave—I move:

That leave of absence be granted to Senator Stott Despoja for the period 19 March to 21 March 2002, on account of ill health.

Question agreed to.

**National Library of Australia:**

**TREASURES FROM THE WORLD’S GREAT LIBRARIES EXHIBITION**

Senator **TIERNEY** (New South Wales) *(6.08 p.m.)*—I move:

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.

Question agreed to.

**BASSLINK: TRANSMISSION LINES**

Senator BROWN (Tasmania) (6.08 p.m.)—I move:

That the Senate considers that, if Basslink proceeds, the associated power lines in Victoria should be placed underground.

Question negatived.

Senator Brown—I would like it recorded that only I and Senator Bartlett supported that motion.

The DEPUTY PRESIDENT—There was only one voice in support of that motion, Senator Brown. That is noted.

Senator Brown—I note that I was the only voice in support of that motion.

**COMMUNITY DEVELOPMENT EMPLOYMENT PROJECTS ACHIEVEMENT AWARDS**

Senator BARTLETT (Queensland) (6.09 p.m.)—I wish to record that I was in favour of the last motion but did not want to call for a division. On behalf of Senator Ridgeway, I move:

That the Senate—

(a) recognises the Community Development Employment Projects (CDEP) Achievement Awards as highlighting individual and organisational achievement in a scheme which now covers more than 36,000 Indigenous people working in urban, rural and remote locations on a diverse range of projects and enterprises right across Australia; and

(b) congratulates the following recipients of National CDEP Achievement Awards for the outstanding contributions they have made to their communities and to the nation:

- Workforce Aboriginal Corporation, Launceston, Tasmania—Training Award
- Elimatta Housing Aboriginal Corporation, Coonamble, New South Wales—Community Development Award
- Ngunawal Aboriginal Corporation, Canberra—Employment Award
- East Gippsland ACDEP Co-op Ltd, Bairnsdale, Victoria—Business Development Award
- Barriekneal Housing and Community Ltd, Lightning Ridge, New South Wales—Business Development Award
- Yarnteen Aboriginal and Torres Strait Islanders Corporation, Newcastle, New South Wales—Innovation Award
- Kurrachee Co-operative Society Ltd, Coraki, New South Wales—Cultural Maintenance Award
- Lombadina Aboriginal Corporation, Lombadina, Western Australia—Capacity Building Award
- Glen Oliver, Tangentyere CDEP, Alice Springs—Individual Participant Award, Male
- Rosemary Lennon, Bungala CDEP, Port Augusta—Individual Participant Award, Female
- Wunan Regional Council, Kununurra, Western Australia—Regional Council Award for increased training opportunities; and

(c) recognises that unemployment is an inter-generational problem in most Indigenous communities and that CDEP projects play a key role in restoring pride in Indigenous communities and individuals as they see the tangible results and benefits of their work.

Question agreed to.

**HUMAN RIGHTS: BURMA**

Senator BOURNE (New South Wales) (6.10 p.m.)—I move:

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.

Question agreed to.

DOCUMENTS

Auditor-General’s Reports

Report No. 37 of 2001-02

The DEPUTY PRESIDENT (6.10 p.m.)—Pursuant to standing order 166, I present the following report of the Auditor-General: Report No. 37 of 2001-02—Performance Audit—Purchase of Hospital Services from State Governments: Follow-up audit—Department of Veterans’ Affairs. This was presented to the Temporary Chair of Committees, Senator Hogg, on 15 March 2002. In accordance with the terms of the standing order the publication was authorised.

Auditor-General’s Reports

Report No. 38 of 2001-02

The DEPUTY PRESIDENT (6.11 p.m.)—In accordance with the provisions of the Auditor-General’s Act 1997, I present the following report of the Auditor-General: Report No. 38 of 2001-02—Performance Audit—Management of Australian Defence Force deployments to East Timor—Department of Defence.

BUDGET

Consideration by Legislation Committees

Report

Senator CALVERT (Tasmania) (6.11 p.m.)—Pursuant to order and at the request of the chair of the Economics Legislation Committee, Senator Brandis, I present the report in respect of the 2001-02 additional estimates, together with the Hansard record of the committees proceedings.

Ordered that the report be printed.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The President has received letters from party leaders seeking appointments and variations to the membership of various committees.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (6.13 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Economics Legislation Committee—

Substitute member: Senator Allison to replace Senator Murray, for the consideration of the Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002 and a related bill

Employment, Workplace Relations and Education Legislation Committee—

Appointed: Senator Barnett

Discharged: Senator Brandis

Employment, Workplace Relations and Education References Committee—

Appointed: Senator Barnett

Discharged: Senator Brandis

House—Standing Committee—

Appointed: Senator Colbeck

Discharged: Senator Brandis

National Capital and External Territories—Joint Standing Committee—

Appointed: Senator Colbeck

Discharged: Senator Watson

Rural and Regional Affairs and Transport Legislation Committee—

Appointed: Senator Colbeck from 25 March 2002

Discharged: Senator McGauran from 25 March 2002

Senators’ Interests—Standing Committee—

Appointed: Senator Barnett

Discharged: Senator Brandis
**Superannuation—Select Committee—**

Appointed: Senators Buckland, Hogg and Sherry.

Question agreed to.

**STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) 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 CARR (Victoria) (6.13 p.m.)—I have a number of amendments to this bill which are standing in my name and which have been circulated in this chamber for consideration. The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 seeks to provide an increased allocation of establishment grants for newly established non-government schools. It plans to do it in a new way: by specifying a formula based method, based on enrolments, for the channelling of funds from this program to eligible schools. As a consequence, the funding for this particular program will be open ended. The opposition have never had any intention to deny funding under this program to genuinely deserving new non-government schools. However, we are, and have been for some time, gravely concerned about several aspects of the establishment grants program as introduced and implemented by this government.

This bill in various forms was introduced twice in the last parliament, and of course now it is before us a third time. We were concerned, and remain concerned, about this bill. That is why, in the government’s mind, it was rejected twice. Because of our concerns, the government withdrew this bill twice in the last parliament. It was due to the government’s actions that this bill did not become law in this country. The government chose not to proceed with it. Our concerns remain. Firstly, we are concerned about the administration of the program, about the eligibility of the schools to receive the funding and about their accountability for the use of extra public money supplied to them by this Commonwealth government. Secondly, we believe that the program should be equitable—but it is not. It provides funds on the same per capita basis for rich and poor schools alike. Thirdly, we are concerned that the legislation should contain provisions for the review of the program after 12 months. Later on I will come back to the amendments I will be moving.

The bill takes us back, unfortunately, to that controversial and deeply divisive debate, engendered by this government, over private schools funding which raged throughout the last parliament and since the government announced that it was moving to this new socioeconomic status method of allocating money. Nobody, least of all the opposition, wants to return to the bitterness of that debate, which has wrought such damage to the body politic since that time. We are firmly of the view that the government has engineered the debate and encouraged widespread concern within the community about the government’s schools funding policy by throwing millions and millions of dollars in handouts to the wealthiest private schools in this country. The government has been about encouraging division and greed.

We want to put before this chamber our concerns about the government’s clear intention when it comes to schools. By its actions, this government has shifted public resources into private schools. A senior official of the Department of Education, Science and Training told the Senate estimates committee just a little while ago:

One of the objectives of the new regime was in fact to increase private investment in education.

Of course what has happened is that there has been an increase in public investment in a particular brand of school—the elite, the wealthy, the privileged schools. If this is an accurate depiction of the government’s intentions, as stated by the departmental officials, it seems that the government is quite opposed to the concepts that we have traditionally known in this country about the role of the government with regard to the provision of assistance for education. Our goal ought to be the provision of free, universally available public education but we also should be providing an equality of opportunity for all children in this country. That
clearly is not happening under this government.

We are particularly concerned that this particular program hands out money in an undifferentiated manner—at a flat rate—to new schools, both rich and poor. It has no means of assisting genuinely needy schools which require extra help. I am deeply concerned about the way in which there are extraordinary numbers of small schools mushrooming over the country that are not able to provide a proper, broadly based, high quality education for the children who participate in them. The government is seeking to provide encouragement for the start-up of new private schools—any new private schools—irrespective of the financial or the educational cost to the Commonwealth budget.

I have a range of examples to put before this chamber, as I did through the Senate estimates. There has, of course, been extensive discussion on previous occasions, but I would like to take one example which was recently described by a Channel 9 journalist who said:

It may look like an upmarket hotel with its sophisticated reception area, marble bathrooms and ultra modern décor but it’s actually a school with a difference.

There’s the student café, the radio station and the relaxed uniform policy ... not to mention the early morning surfing and golf lessons.

This school is known as Reddam House and the fees are $11,500 per year. The students have a broad based education. They learn table etiquette and how to write a cheque. They learn how to get on in the world. There is a music centre, a ballet dancing studio and a state-of-the-art computer centre. On its web site, this school describes itself as being ‘set in the beautiful surroundings of the world famous Bondi Beach’.

I am not saying that people are not entitled to send their children to schools of that description—in fact, all schools should have that capacity. What concerns me is whether or not the Commonwealth should be providing additional resources to a school like that particular one, which has an SES score of 122 and charges $11,500 per year per child. It seems to me that under any reasonable assessment—and the Labor Party proposes reasonable changes to this legislation—consistent with the principles of genuine need, Reddam House would not be eligible for an establishment grant.

The Reddam House school is associated with three companies that are registered on the ASIC register: Reddam House Ltd, Reddam House Pty Ltd and Reddam House Holdings Pty Ltd. None of these companies is listed as not for profit. Not-for-profit schools are, of course, not eligible for Commonwealth recurrent establishment grants assistance. During the last estimates hearing a detailed discussion took place about these matters in relation to another school, Murdoch College. There was good reason for surmising—the department’s assurances notwithstanding—that Murdoch College is essentially a for-profit enterprise. It is operated by Murdoch University in Perth in conjunction with a private company, Alexander Education Group. It is clearly associated with the Murdoch University’s commercial operations.

I believe the government should take a long, hard look at the way in which its schools funding policies are being administered by this department. I believe there are good grounds for thinking that for-profit schools are in receipt of financial subsidies—both recurrent subsidies, which are sizeable and ongoing, and establishment grant funds. If that is the case, then the Commonwealth is in breach of its own guidelines and regulations. This is the sort of thing that concerns me about this type of open-ended legislation. This is another example where the guidelines appear to be openly flaunted.

We had a detailed debate about establishment grants in the last parliament, and we raised a number of examples of the so-called newly established registered schools in receipt of establishment grants which are in fact nothing more than new campuses of existing schools. They are clearly outside the guidelines. These schools are registered, technically, by the states. That registration process is not set up for the purposes of administering Commonwealth programs, yet this Commonwealth government has clung to the absurd notion—which is quite contrary to
all the evidence and all reasonable public administration—that the states are registering schools in an appropriate way: that the schools are established under state government legislation and are therefore automatically entitled to access this money.

For instance, there was a large school—a school with 837 students—in Perth which was not a new school but the result of a restructuring of the existing multicampus school, and this school was deemed eligible for an establishment grant. There was another one in Geelong in Victoria which essentially did the same thing: a Christian college at Highton split its year 10 to year 12 to a new campus adjacent to the existing campus. They registered that new campus as a separate school and, of course, automatically got an establishment grant.

Another example is the Sommerville Baptist College in Perth. It has not appeared on the list of eligible schools even though it was newly registered in 2001. This school has been created as a result of a split. The Winthrop Baptist College is right next door; the college was split into two smaller schools on the same site. Why has the department not seen fit to hand out an establishment grant to Sommerville College following this new fashion in the guidelines that are now in place in regard to so many other examples. If it was not new, why were the two other schools already mentioned deemed by the department to be new?

It strikes me that it is possible that the opposition, which drew this to the attention of the decision makers over the last couple of years, may well have drawn this anomaly to the government’s attention. The problem remains: why was the government enforcing the rules in such an inconsistent way? This legislation is in need of quite substantial renovation. As indicated by my colleague Ms Macklin in the other house, a series of amendments are needed. My amendments will seek to improve this legislation in terms of its stated purpose, the administrative procedures that underpin it, the accountability and transparency provisions and its lack of equity.

The indiscriminate targeting of funds to all new non-government schools, both rich and poor, is wrong. There is a need for a review process because so many people are now using this device and getting access to Commonwealth money as a business incentive scheme, not as an education program. It troubles me that the Commonwealth Department of Education, Science and Training seems so incapable of standing up to the task of protecting the Commonwealth’s interests and the public’s interests in the administration of not just this program but what goes beyond it: a $24 billion schools program.

There is a need for this matter to be discussed properly and in detail. We have an opportunity tonight to hear speeches in the second reading debate and an opportunity to consider these amendments in detail tomorrow. I will be arguing those cases fully and I will expect answers from departmental officials in the committee stage on a number of quite serious issues that concern me.

The Minister for Education, Science and Training, Dr Nelson, in a low-rent, scurrilous manner, in a dorothy dixer today raised my concerns about this bill. This followed an invitation by this government to a briefing this morning—just this morning—on consideration of a matter of this importance. We have considered this bill three times now and I get offered a briefing this morning. When I told him that I think it is probably too late in the process and that what we should be doing, if this government was serious about education reform, was discussing the amendments, I find my remarks—which I thought were part of a private conversation—distorted and misrepresented in the other chamber.

This minister is essentially a lackey of the Prime Minister—he is a doormat—and he makes Senator Alston look quite mild. He is not able to discuss those amendments because the Prime Minister said that he is not allowed to. We should discuss the capacity of this minister to actually do his job, and I will be exploring that in some detail. This minister thinks he can play a game in this way: he can say that our amendments are worthy of consideration and debate, then we find out that he has been given orders by the Prime Minister and he is not allowed to discuss them. He acts his part as the Prime Minis-
ter’s doormat. He then seeks to misrepresent conversations, made on his request to me, in the other chamber. He will find that there will be plenty of opportunity to discuss this Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 in detail in this chamber.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator CARR—The opposition is concerned that the government’s schools program is not predicated on some of the most fundamental principles that we in this country have come to accept as being the bedrock for education policy. We have argued in this country for 30 years that there ought to be equality of opportunity for all Australians. What we see under this government is a policy that rewards the rich and the privileged, a policy that gives particular encouragement to particular groups in our society that are already very well off. We are not satisfied that this government understands the concept of equity; we are not satisfied that the government appreciates that schools that charge fees way above the average level of government expenditure per student in government schools—if you take the AGSRC, the index that is used, which stands at the moment at $5,378 for a primary school student and $7,101 for a secondary student—ought not receive establishment grant funding.

Many schools are charging fees way in excess of those amounts of money. The opposition wants to see a sliding scale introduced to ensure that needy schools, those that serve the neediest school communities, receive a higher level of assistance than do the less needy. We argue that schools that serve populations above the SES level should not receive the same degree of Commonwealth assistance as those serving the poorest members. To do this, we would argue that the overall recurrent support for non-government schools needs to be re-examined in that regard, and that in general recurrent grants should be adjusted on the basis of need. That is why we say that the establishment grants as proposed in this bill do not meet the task.

We are not acknowledging the legitimacy of the SES measure in assessing need. We do not endorse that SES formula as a satisfactory measure. We say there needs to be consistency in the approach and the principle. In the absence of a genuine, satisfactory, up-to-date method, we have to use the tools that are at hand.

I am very concerned that this bill is not able to meet the criteria of reasonable public administration, of reasonable public policy in regard to the administration concerns that have been expressed, the eligibility of schools that are receiving moneys under this program and the accountability provisions. We say that this program is not equitable. We are, however, particularly concerned about the failure of the government and the Minister for Education, Science and Training, Minister Nelson, to show political leadership. This minister has not demonstrated a genuine seeking of a constructive solution to the disgraceful shemozzle that is this government’s administrative arrangements in regard to these establishment grants. The minister said that he wanted to consider our amendments properly. He made it very clear in a press statement on 20 February, when he said that they would give consideration to those amendments. What we now hear is that the Prime Minister will not let him. What a doormat! (Time expired)

Senator ALLISON (Victoria) (7.34 p.m.)—The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 proposes to change the establishment grant funding arrangements from a special appropriation to a standing per capita appropriation. This will increase the amount of funding available for the establishment grants program.

The government argues that this change is needed in order to address the shortfall in the original estimates, which has meant that certain new non-government schools have not been able to receive their full entitlement for the 2001 program year. In other words, the government failed to properly estimate the demand for establishment grants in 2001 and failed to make the changes to the 2000 legislation, even though the shortfall was
known at the time. Because of this, it needs to amend the existing legislation.

This is now the third time this issue has been dealt with in the Senate, and the Democrats’ position has not changed. If anything, we are even more concerned by this bill, because of the open-ended funding arrangements in it. At least with the previous bills we knew how much additional money the government was going to spend. The Democrats do not support the government’s establishment grants program, which both the government and the ALP created when they supported the states grants bill at the end of the year 2000.

Our chief concern is the lack of strategic planning associated with the provision of these funds. While some of these schools may be needed in order to provide adequate educational services in particular areas, there is no proof to say that they are needed. This, we think, is not good enough, particularly for a government that prides itself on being a good economic manager. There is no test that a school needs to pass before it is granted Commonwealth funding except that it is registered at the state level. No proof of meeting an educational need or proof of financial viability are asked for by the Commonwealth. As has already been pointed out on a number of occasions, there are very limited accountability requirements in this whole package. This is more than a system open to abuse; it is a system that invites abuse. One has to wonder how many more new campuses of existing schools will receive establishment grant funding over the coming years.

It is interesting to compare the government’s laissez-faire approach on this issue with an approach to the payment of people on any form of income support. These people have to jump through hoops—hardly a phrase that comes to mind when describing funding arrangements under the establishment grants program.

In view of this unacceptable situation, I move the following second reading amendment:

At the end of the motion, add “but the Senate calls on the Government to undertake that from 2003 the Commonwealth will establish a Planned Educational Resource Allocation Committee to assess applications for funding for the establishment of new schools in each state and territory, and this committee:

(a) will comprise representatives of the Commonwealth Department of Education, Science and Training, government and non-government school employing authorities, parents and teacher unions;

(b) shall advise the Minister on the funding of new schools, taking into consideration the following:

(i) the duplication of educational services in an area,

(ii) the impact of the establishment of the new school on surrounding schools,

(iii) the willingness of the school to cooperate with other schools in the sharing of resources,

(iv) the level of determined community need for the new school,

(v) the financial viability of the new school,

(vi) the size of the new school, and

(vii) specific local, community or educational needs; and

(c) shall provide an annual report to Parliament on its assessments”.

It is my hope that both the government and the opposition will support our second reading amendment, which will at least bring some legitimacy to the public funding of these new schools. In her speech on the bill, the Deputy Leader of the Opposition spoke at some length about the lack of equity considerations in the funding arrangements. Like the opposition, the Democrats are also concerned that under the program, new non-government schools receive the same amount of funding regardless of how wealthy they are—or will be. The amount of income derived from fees and other sources is simply not taken into consideration.

We believe that funding should be distributed on the basis of need in both the public and private school sectors. We would therefore much prefer to see a resource-poor school, in an area where there is a need for a new school, receive more of the establish-
ment grant funds. To me, this sounds like a very logical and sensible approach but, unfortunately, it seems the government is not interested in needs based funding arrangements for the school sector. While the Democrats were pleased to hear the Deputy Leader of the Opposition speak on this point, we are disappointed that the opposition seems to have dropped the issue of equity concerns, vis-a-vis the government sector. Last year, the opposition vowed that it would not support this bill unless an extra $30 million was allocated to the government sector’s capital grants program. In the shadow minister for education’s press release last year, he said:

Labor is simply asking that a fair and balancing increase of $30 million over the same four year period be provided to public schools which teach twice as many children.

Mr Lee went on to say:

How can he—meaning Dr Kemp—argue that new private schools need extra funding for additional costs they face when they start up, but public schools face no costs at all? All we are seeking is equal and fair treatment for public schools.

But, as far as I understand it, this year the ALP is not moving this request so the Democrats will do so for it. We hope the ALP will reconsider its position and support the request because it is a good one. Government schools are critically underresourced and are desperately in need of more funding. Anyone who visits schools in the government sector on a regular basis, as I do, will know this. They will recognise it because so many schools—in fact, I would argue all schools I have been into—rely on portable classrooms, and there is a very different environment in those schools compared with many non-government schools which have, it seems, far better access to funding.

If the government is able to introduce an open-ended funding stream for new non-government schools, then surely an extra $30 million in capital grants for cash-strapped government schools is not too much to ask, especially when we know that the funding is genuinely needed. We will be moving amendments that reduce per capita establishment grants to 60 students in a primary or secondary school for both the first and second year of funding, and to 90 students for a combined primary and secondary school. We hope that this amendment will limit the extent to which new schools take students from existing schools. We also hope it will mean that new campuses of existing schools will not receive the funding windfall that they should not, if the government properly enforced its funding guidelines. At this point, I would also like to flag that the Democrats will be supporting the amendments the ALP is moving this time around in order to bring, as they describe it, discipline, accountability, transparency and equity into the funding model, although we believe that some of them could have been made more rigorous.

The other matter I wish to raise in this speech in the second reading debate tonight, is to indicate that the Democrats will be moving a separate group of amendments to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 regarding child abuse. The amendments will require states and relevant authorities in the government and non-government school sector, as a condition of funding, to submit a detailed plan that sets out the procedures for and responsibilities of schools in dealing with the abuse of students either within or outside the school, ways in which schools will seek to create an anti-abuse environment, the means by which schools will communicate with students about their rights in relation to abuse and how the state or relevant authority will implement the plan in schools under its jurisdiction.

Our amendments will require that the plan be approved by the minister and be consistent with the standards set out in the regulations to the act. The current laws of the state must also require the mandatory reporting of abuse by teachers. I ask the Senate to note that this is not currently required by legislation in Western Australia. It is in other states, but not WA. This amendment is needed to ensure that there are minimum standards for the protection of children in our schools, and I will speak on that matter further in the committee stage of the bill.
Senator TIERNEY (New South Wales) (7.43 p.m.)—I also rise to speak on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. One thing we have to give the Democrats credit for is being consistent. They are consistent in their opposition to parent choice, which comes out again in the amendments that they put to this bill. We have particular disappointment in the ALP because, when the original bill went through in December 2000, the ALP supported the objectives of the bill. The ALP supported the replacement of the ERI system of allocating money to private schools with the SES indicator model, and put this legislation through.

So one wonders why we have such opposition to this bill, particularly when it comes on top of opposition over the last year in relation to this bill. We could understand before November why they were opposing it: they were just playing political games and they were trying to score political points in the lead-up to an election. Unfortunately, there were a lot of casualties to that political game they were playing—the schools out there, the students trying to get an education and the parents trying to support that. But they were not able to do this because, quite unreasonably, the ALP was blocking the establishment grant to the school. There had been no change in government policy. The Labor Party were not objecting to government policy; the policy was consistent. The department of education federally had made an estimate on the number of schools that were going to be established and in need of a capital grant and the size of those schools—in other words, the number of students.

They always do those estimates based on what has been happening in recent times. They do not have a crystal ball and cannot project exactly over the next 12 months how many people across Australia will set up schools and how big those schools will be. The result of the exercise was that in reality there were more schools established in the private sector than they expected and those schools were larger than was expected. Therefore, the amount of money allocated under this program per student was no longer enough. The reason the government went back to the parliament for more money was that more parents made a choice—more parents decided to send their children to a private school—more schools were being set up and those schools were of a larger size. That is what this whole debate is really about.

The Labor Party originally supported the principles and supported the system and then, halfway through the next year, to gain political points, they reneged on that. It is unfortunate because 5,000 students have been affected by that decision and 58 schools are owed $1.5 million because of the intransigence of the Labor Party. Senator Carr was saying that these are rich schools but 60 per cent are from the poorest socioeconomic groups. They include independent schools, Christian schools, Catholic schools, Aboriginal schools, Steiner schools, Lutheran schools, Anglican schools—a plethora of schools across a wide range of the socioeconomic spectrum is affected by this legislation. They are certainly not all rich schools.

Let me give you one example: an Aboriginal school in Western Australia, the Nyikina Mangala Community School. The students here are amongst some of the most educationally disadvantaged students in Australia. They only received half the money for their establishment grant because the Labor Party had blocked as of June last year the additional money that they needed. This Aboriginal school is owed money, and it has not been paid because of what the Labor Party has done. Twenty-five families have been affected in that school—they are not receiving the education they deserve because of the way in which the Labor Party has held this matter up.

Senator Carr raised the point about whether these new schools are legitimate. It is claimed that in terms of the corporate structure there is some sort of fiddle going on here. What has to happen is that this has got to go through and be approved by the different state authorities, that they have management structures and the financial structures that are separate. But Senator Carr and the Labor Party seem not to be prepared to accept what the various states have raised. So this objection is a total furphy. Another thing the Labor Party want to do is to renarge
on the original principle and set-up of this bill with the SES system. They now want to create some sort of sliding scale for schools that have an SES score in excess of 100. Because of their support for the original bill, I believe they are morally obliged to continue to support the system without such a sliding scale.

Let us go back and look more broadly at the picture of what is happening in the funding of private and public schools in this country. It is a pity that the ALP, in conjunction with the Democrats, has turned this into a public-private school debate. If we have a look at what the Democrats have suggested for amendments, it shows where their colours are firmly nailed. It shows the fact in this public-private debate they are totally opposed to parent choice at all. If you go through the amendments, as moved by Senator Allison, they suggest that we create a planned education resource allocation committee—only the Democrats could come up with a name like that. This committee is supposed to have a look at these schools being established in a particular area.

The first thing they have to take into consideration is the duplication of educational services in an area. So on that basis assume that, if there is already a public school there, they would rule there is a duplication of educational services, and that if some classrooms at the local school are not full that they would not allow the private school to establish. That totally overlooks the point that many of these private schools are not suburb based. They might exist in a suburb but they draw students from a wide range of areas and quite often some pupils will travel 30 or 40 kilometres a day to a particular school. They are not in any sense a local school. What Senator Allison and the Democrats are trying to do with these amendments is to actually recreate the discredited new schools policy of the last Labor government. We used to call that the no new schools policy, because the aim of Labor’s new schools policy was to stop the creation of new schools.

But parents should have choice. If parents are prepared to put up their own money for their child’s education and if, in conjunction with teachers, they are prepared to follow the state curriculum, why shouldn’t they be able to create these schools? The federal government is prepared to back their doing that, just as it is prepared to back public schools in this country. All we have to do is look at the figures—figures that the Labor Party chooses to ignore. Since we came into government in 1996, the populations in public schools have gone up by one per cent while, over those six years, federal funding has gone up by 43 per cent. In Australia, we have public schools with 69 per cent of the students but 78 per cent of the federal funds; we have private schools with 31 per cent of the students but only 22 per cent of the federal funds. In total, for the year 2002, our government has put $5.9 billion into this system. It has increased money to private schools and it has increased money to public schools—and it is increasing money to public schools in my state, in particular, much faster than the local state government is doing.

So, when we look at the broader picture here, we have a situation where the federal government is supporting both private and public schools and it is increasing funding for public schools ahead of growth in those schools’ populations. Therefore, we are supporting choice in education in this country. This bill, which this opposition should be supporting, will help enhance that choice. But the opposition—that is, Labor and the Democrats—is trying to stop parent choice in this country. If people want to make a choice between private and public schools, they certainly have the right to do so.

Senator Carr—You didn’t go your full time.

Senator CROSSIN (Northern Territory) (7.54 p.m.)—It is amazing, isn’t it. Senator Carr. I rise this evening to contribute to the debate on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. I am very surprised that Senator Tierney, the proponent of education on the government side in the Senate, is—

Senator Carr—The only one.

Senator CROSSIN—Of course, Senator Carr—the only one who has not been able to go the full 20 minutes; I am very surprised at
that. But let us get back to the purpose of this bill. The bill seeks to amend the States Grants (Primary and Secondary Education Assistance) Act to alter the provisions for the granting of establishment assistance to new non-government schools. We well know that this bill has been before the parliament twice before and has been rejected by this chamber—and for very good reasons, which I will outline now. The third time the government tried to send this bill through both houses, it did so in a somewhat different format. You might remember that it was part of a bill that had three sections to it. It was a bill that was designed to look at research and the new postgraduate loans scheme, and then this was rolled into it.

It failed to pass at that time because of concerns that not only this party had but also other parties in this chamber had to do with the eligibility and accountability criteria for the grants that seek to be established through this bill. We argued at the time—and we would still argue—that there needed to be equity for government schools. With this bill, of course, the goalposts have somewhat changed now. In trying to determine the amount of money to be given as an establishment grant to new non-government schools, there is the argument that the same amount of money should be provided, on an equity basis, to government schools. Why are we looking at increasing the bucket of funding which non-government schools are able to access to establish new schools when the same kind of assistance is not provided to new government schools when they seek to establish in this country?

The earlier bills sought to increase the total amount available for establishment assistance by amending schedule 7 of the original act. This new bill inserts a new section 75, and schedule 7 is repealed. The grants would be paid in a similar manner to general recurrent grants—that is, on a per capita amount rather than on a special determination. It is necessary to ensure that there are always enough funds to meet the demands for establishment assistance, but we know that that did not happen with this government. The original bills before this parliament sought to increase the allocation for the grants from $4.7 million for 2001-2004 to $14.260 million. That is nearly a $10 million increase. Why did that occur? That occurred because of the incompetence of the department and the minister at the time to accurately calculate the amount of money needed to meet the increase in demand for new schools in the non-government sector. This was an increase in demand of more than 200 per cent. This amount was to be allocated to schools that had applied from October 1999.

But the government did nothing to act on that when the budget came around in the following year. In fact, it continually refused to do something about it, until finally it realised it needed to shoot a bill through this parliament in whatever form it took—and it took a number of forms—to increase that allocation. The problem is that the original estimates back then did not allow for new non-government schools that lodged applications after May of 1999 and those that were subsequently approved for funding in 1999 and the year 2000. There was also an unexpected increase in the number of students who would be attending these new non-government schools as they were established.

There are a number of major issues that need to be explored and addressed in debating the bill this evening. As I said, the goal posts have now changed. The grants will now be paid automatically to eligible schools, as they have been in the past, and there are no requirements for schools to apply for the grants. But there is no defined bucket of money from which this amount of money will come. There is an increase in the allocated amount of $10 million until the year 2004, but after that one would assume, once new schools apply for funding, that money will become available and will not be confined by any restricted amount—that is, of course, if we can expect the department to get their projected numbers for new established schools accurate in the years after 2004.

But once the money is actually paid to these new non-government schools and they have passed the state or territory process for registration there is no accountability for the money, and that needs to occur. There has
been a major debate—and the Senate looked at this when it last examined these bills—as to what constitutes an eligible school. We have seen examples where there has just been an extension of existing schools. We have seen where existing schools have sought to re-establish themselves under another name but in fact are another campus of the existing school and have become eligible, and had money paid to them, under this grant. The Australian Education Union has suggested one way in which some form of eligibility may be confined is to have a minimum enrolment in the establishment of new schools which is monitored as a way to keep those schools accountable as opposed to enrolment numbers coming under the same heading of existing schools.

But fundamental checks of the applications for these new schools to be established are not conducted and, in some cases, have been ignored by the department. As I said, there have been examples of schools registered under a similar name where they have simply sought to extend their buildings or to upgrade their facilities or they have re-registered as another campus of that same school. As the criteria now apply, the money can be used for advertising purposes. One would say that is not an unusual use of funds under an establishment grant, but it is. Once you get a new school established, part of that money would be for advertising and part of that would be for staffing, but part of that is not providing for excursions. Therefore, at this stage there are no criteria under which the money can be used. The money can be used for excursions. It can be used for all manner of things that are part of the day-to-day activities of a school, whether about to be established or not, and there is no accountability for the way the money is used. There should be checks and balances to ensure the money is used for establishment and set-up purposes of that school.

Unlike the major general recurrent grants, these establishment grants are not scaled according to needs. They should actually provide a balance of money to the government schools. We advocated previously when this bill came before us that, on a pro rata basis, an additional $10 million to the non-government sector for establishment schools would equate to an additional $30 million for the government sector. The share of federal funds going to public schools has severely diminished since this federal government came into power. Since 1996 there has been a decline from 41.5 per cent to 33.6 per cent. Clearly, the philosophy and policy of this federal government is that public schools should not be funded on an equity and needs basis. There is a huge emphasis by this government on propping up the non-government and private sector of education in this country. Over the period 1998-99 to 2004-05 funding to non-government schools will have increased by 68 per cent, but government schools will have experienced an increase in their funding of only 37 per cent.

These establishment grants are conferred without an examination of the school or of its circumstances. There is nothing from the Commonwealth, as I said earlier, in similar assistance to new government schools. New government schools that need to be established and seek to be established—and a number of those have opened recently in the Northern Territory, particularly in the rural area because of the growth in population—do not get a similar handout or hand-up from this government in the way non-government schools do. Money is provided to those new non-government schools only to assist with set-up and establishment costs.

This leads us to our amendments and why our amendments to the bill have been formulated as they have. We moved in the House of Representatives through our shadow spokesperson for employment, education, training and science, Jenny Macklin, that the way the grants are used needs to be clarified and, therefore, the purpose of the establishment grants and the link to the conditions of funding for meeting this purpose need to be specified, monitored, evaluated and regulated by the department.

Money should be allocated on the basis of need. Of the 39 or so new non-government schools assisted by this funding, a number have an SES score over 100. A number of those charge fees way in excess of the average government score by which funding is calculated. Where a school is charging in
excess of $12,000 for fees, one wonders why they would need the same amount of funding for set-up costs as would some schools that have a lower SES score and a greater need.

Regardless of the fees being charged, this bill allocates money as flat per capita grants with no regard for the status of the school and for the kind of need that exists or whether any real need exists in relation to the funding for that school. The administration of this scheme needs reforming. We have suggested that there is a need to improve the accountability and transparency provisions of the bill by including an application process to replace the automatic conferral of grants following state or territory registration—that is, a non-government school should apply for these grants and there should be some sort of accountability and transparency as to why this school needs this money and what it intends to do with it. A definition of Commonwealth eligibility criteria for new schools needs to be established, and that goes back to the point I made about existing schools simply applying for these grants to set up an additional campus for their school or just trying to get some money to improve existing conditions.

We have suggested that there needs to be an established sliding scale of per capita grants for new schools with an SES score exceeding 100. As I said before, once a school that has an SES score of more than 100 applies for this money, surely those that have a score far greater than 100 could not justify the funding that they would get under this bill in relation to a school which may have a greater need with an SES score of far less than 100. Surely a school with an SES score of 85, in being established, would need far greater funding than a school that has an SES score of, say, 119.

There is a need to ensure that, once this bill is established, only truly new schools actually get the funding. Our amendments go to improving the accountability and the transparency provisions of these public, government funds to the non-government schools sector. There is a need to clarify the purpose of the establishment grants and to make sure that these grants are handed out on the basis of need. We have also suggested that, as I said, there is a need for this government to make sure that schools that derive income from student fees in excess of the per capita average government school recurrent costs are ineligible for establishment grant funding. In other words, those schools that are able to charge exorbitant fees should not be eligible for this sort of funding at all. Finally, we have suggested that there needs to be a review of this establishment grants program and a report to the parliament within 12 months of it being put in operation.

In essence, we believe that grants to non-government schools should be allocated on the basis of need. The allocation of those grants needs to be transparent and accountable. On application by those non-government schools, the government needs to satisfy itself that they are genuine new schools and those schools need to be accountable for the use of the funds. Finally, those schools that currently are able to derive income in excess of the average funding and to charge exorbitant fees should not be eligible for this sort of funding at all.

This government talks about practical reconciliation in relation to indigenous people. While I recognise and acknowledge that the minister two weeks ago provided funding to a non-government school at Woolaning in the Northern Territory, that is only the second postprimary school that has been established and funded in the Northern Territory. Under the Country Liberal Party for 27 years, the provision of secondary education and postprimary education in the Northern Territory outside the major regional centres was severely neglected. It has been severely neglected since 1996 by this federal government, although there has been recognition that money under the IESIP program by all states and territories will now incur only a 10 per cent administrative on-cost rather than a 48 per cent administrative on-cost.

I want to take this opportunity to pay tribute to the new Northern Territory government, the Clare Martin government, for finally doing something about indigenous education and for finally acting on the report compiled by former senator Bob Collins, which has now become renowned nationally as the ‘Learning Lessons’ report. This was a
report commissioned by the CLP during its time and completed by Bob Collins in 1999, but it was never acted on. There was one recommendation, out of many, that was acted upon, and that was simply a name change to the Indigenous Education Branch.

The Martin government have decided to take on this challenge, and I want to congratulate them for doing that. They have set up a committee to implement the recommendations of the Bob Collins report. That committee met for the first time in the last few days. It has a huge task ahead of it, trying to do what the CLP government could not do and refused to do for 27 years and trying to do what this government has failed to do since it came into office. It is a committee that has a lot of expertise. Many people from the indigenous community are represented on that committee: the indigenous principal from Numbulwar, a teacher at Yipirinya Primary School, people from Melville Island and Kim Hill, the ATSIC commissioner. Peter Buckskin, representing the Commonwealth, sits on this committee, and that is certainly welcome.

If this government were serious about practical reconciliation, we would not have before us a bill that gives an additional $10 million to the non-government sector for new schools and then a blank cheque after 2004. We would have a bill before us that provides millions of dollars for the establishment of secondary education in the Northern Territory out bush.

Senator LUDWIG (Queensland) (8.14 p.m.)—I rise to speak in this evening’s debate on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. I would like to make it completely clear to those senators sitting opposite that the Australian Labor Party has no problems with providing financial assistance to genuine newly established schools. The Australian Labor Party has always believed in the proper, fair and equitable funding of all our educational institutions, both public and private. Indeed, since its inception the Labor Party has always regarded a good education to be a basic right of all Australians and not just something to be made available to those wealthy few—which is something those on the other side of the chamber should take cognisance of.

Let us also make it equally clear, so as not to be fooled by the rhetoric of the Minister for Education, Science and Training, why this legislation is before the Senate. All members of this chamber are well aware of why this legislation is needed. It is needed simply because this government has failed to correctly estimate the amount of funding that was required to meet the demand for establishment grants. Indeed, this is just another bucket of money that the government has allowed, through its mismanagement, to run dry—perhaps through maladministration or even an inability to administer the education bucket of money. Now we find that the government’s only solution for this problem is to introduce legislation that creates an open-ended funding stream that has few safeguards, minimal accountability standards and little to commend itself in the way of funding fairness and equity. In short, it could really only be summarised as poor legislation—poorly thought out, poorly considered and poorly drafted. In fact, one wonders why they have not taken a little bit more time to ensure the safe passage of this legislation in a fair and even manner.

As I have already stated, the Labor Party is committed to education funding for all our educational institutions that is based on fairness and equity. Therefore, in order to save this bill, we need to introduce into this chamber a number of amendments that we believe will give the proposed legislation the accountability, the transparency and the equity that it currently lacks. Those amendments have been circulated in the chamber. They go to those various issues that I have indicated. I understand that the shadow minister with carriage of the bill here will move those in the committee of the whole. In fore-shadowing those amendments, I did want to speak to some of them just briefly to highlight the issue that I have been talking about, which goes to the lack of accountability, the lack of transparency and the lack of the insight that a department as large as the federal Department of Education, Science and Training requires to be able to deal appropriately with the diverse needs of educational
institutions across Australia, to be able to deal widely with the needs and aspirations of educational institutions themselves and their students.

Before I continue on with the substance of those amendments, I would like to draw the attention of the chamber to a press release from the Minister for Education, Science and Training, Dr Nelson, accusing the Labor Party of neglecting or not supporting our poorer non-government schools. I am sure—in fact, I almost can say without checking—that Dr Nelson has raised in the other chamber against Queensland members and senators, probably even me, our ‘apparent’ lack of support for educational institutions or new establishment grants. A press release dated 14 February 2002 details a number of schools, including the Pacific Lutheran College in Caloundra, Queensland, and the Faith Lutheran in Plainland, Queensland. Dr Nelson seems to suggest that a number of schools or all of those schools which are part and parcel of the claim, because of the non-passage or perhaps delay of the bill, may have funding shortfalls. But it really does not expose the whole issue.

Senator Lightfoot—But you would admit that the delay causes harm?

Senator LUDWIG—We seem to have this view about harm in education that attaches from the other side. What they fail to recognise, what they fail to fully understand, is that in many instances the fault lies in the maladministration and the inability of the department to administer these, not in the process. You have to look at the legislation itself. You cannot simply take a broad brush and come to that conclusion, Senator Lightfoot. I find it a very short-sighted argument that Senator Lightfoot raises. It is an argument that Dr Nelson seems to consider has some merit, but it does not. It does not for a number of reasons. Let us look at one school, All Souls St Gabriel School, an Anglican school in Charters Towers, Queensland, which had in the order of 197 enrolments when it opened in 2000. It was formally known as the All Souls and St Gabriel’s School, which went bankrupt, as I understand it, in 1999 and actually closed for a time. Teachers were, as I understand it, made redundant and obviously had to find other careers or other teaching posts. But within a very short time—in 2000—it reopened. It reopened after it was bought by a number of former students. It was located in the same premises, with the same phone numbers and, one suspects, the same administration. Many of the same students re-enrolled. I suspect they were from the catchment area. It is possible that the teachers might have been re-employed or some of them might have come back, one would hazard a guess. On the outside we have a situation here where a school closes, changes ownership and reopens and is eligible for an establishment grant because it has to be reregistered under the name of the new owners.

Senator Lightfoot—Are you saying it should never have reopened?

Senator LUDWIG—This happened despite assurances given at the Senate inquiry hearing relating specifically to examples of this type. A further question remains: did the ailing school in 1999 receive an emergency grant or loan from the government? Perhaps we can explore some of these issues during the committee stage. But during a second reading it is appropriate just to go to the issue itself. These forms of assistance are available to private schools in financial difficulties. What it underscores—and this is where Senator Lightfoot seems to really miss the point—is perhaps an administration that has not got its eye on the ball, that is just not looking hard enough at all of these things.

Senator Lightfoot—You are picking on the Anglicans, are you, not from your own experience? You are partisan in the schools you choose.

Senator LUDWIG—I could take the opportunity of explaining to Senator Lightfoot that I am perhaps now ecumenical in my upbringing. I am married to an Anglican. I am a Catholic. I got married in an Anglican church, but don’t tell the bishop. So I find the interjection that I might be picking on Anglicans a little bit unusual really. I do know them well and respect their position. But I do not need you to actually pass it on to the bishop.
I find the press release truly amazing at two levels. The first is that, as I have pointed out, the Labor Party have always believed that funds should go to those most in need and we are prepared to back that with legislation. I think and the Labor Party believe that the foreshadowed amendments in the committee stage make for a better outcome. Hence we are seeking to amend, with the foreshadowed amendments, this current piece of legislation that creates a flat per capita grant irrespective of the relative affluence of the school into one that takes into consideration the financial needs of the school and that will deliver a greater level of funding to those poorer non-government schools that the minister for education purports to be so concerned about. If you were genuinely concerned, Senator Lightfoot, for poorer non-government schools, then you would pick up our amendment. In fact, I would expect you to speak to it and, if you were allowed to speak freely, in support of it. I would be surprised if that was not the real basis of your belief in any event. I also find it amazing that the minister for education accuses the Australian Labor Party of not supporting poorer, non-government schools when it was his predecessor in government who was so determined to introduce SES, or socioeconomic score, in the first place.

I remind the Senate that the Australian Labor Party is not necessarily in favour of the SES as a means of determining a school’s socioeconomic status and, therefore, its level of funding. The reason for this is that we feel that this system of scoring may well disadvantage the poorer non-government schools in favour of the affluent category 1 schools. But we have had that debate, haven’t we, Senator Lightfoot? We have had that debate about the affluent category 1 schools. However, I am perhaps being too harsh on the new minister for education and it just may be that he intends to introduce amendments to the SES legislation that will redress these funding disparities.

Returning to the legislation at hand and Labor’s amendments to make this funding model far more equitable for poorer non-government schools, the first and second amendments we have foreshadowed that we will be moving during the committee stage seek to clarify the purpose of the establishment grants, link conditions for funding to meet this purpose and improve accountability and transparency provisions in the bill. It is clear that there has been some confusion as to just what these grants can be used for, with reports of funding being used for advertising and, according to the minister for education’s press release, running excursions. It has also been reported that some established schools have successfully obtained new funding to establish a satellite campus when this has clearly not been the case. They really highlight some of the problems that come about, and the amendments seek to flush out those issues and encourage the department to look more closely, to scrutinise and to administrate its portfolio in a way that ensures equity, fairness and I think you can even translate it into a fair go all round to ensure that non-government schools do get the proper establishment grants and the proper administration from the department and they are not ignored.

Our third amendment seeks to make the funding far more equitable for poorer non-government schools by establishing a sliding scale of per capita grants for new schools with an SES exceeding 100. I do not want this amendment to seem to be some form of tacit support for the SES. It is simply that we must work within the confines established by the Howard government. In simple terms, we are proposing to link establishment grants to the same index that determines the level of per capita grants. We believe that this will go some way to providing some degree of internal consistency and will help provide some equity in the funding model.

Our fourth amendment is intended to make those schools that obtain their income from student fees in excess of per capita average government school costs ineligible for establishment grants funding, which seems sensible, quite frankly. This is clearly aimed at those few schools with fee levels exceeding $14,000 per annum, schools such as Scots College—which we have heard so much about and, frankly, I do not hear Senator Lightfoot defending that—and Sydney Grammar that would operate in excess of
200 per cent of average school recurrent costs. In the interests of equity, it would be quite inappropriate for the Commonwealth to increase the financial advantages of new schools charging this level of fees by nearly doubling their recurrent grants in their first year of operation.

Our fifth and last amendment will insert a legislative requirement for the review of the establishment grants program that will report back to parliament 12 months after it has come into effect—another sensible proposal that I am surprised the government has not picked up. No-one can be certain of all outcomes when a new program is established and it is a device used often by the government, often found in committee reports, often in suggestions which the government picks up itself, where it puts the process of review of the legislation in the legislation itself. This means that if issues do arise then matters can be addressed and there is confidence from the opposition’s perspective that the government understands that any new legislation may require amendments in the future and has a bedding-down period and recognises that, in some respects, it is worth ensuring that the review process is legislatively based. No-one can be certain of all the outcomes when a new program is established. Therefore, the Labor Party believes it is only prudent to review this program and have that review brought before parliament.

These five amendments are all intended to improve the bill’s accountability, fairness and equity, as I said earlier. Given the rhetoric and false accusations levelled at the Labor Party by the new minister for education, whom I would have thought more highly of, I would be most surprised if these amendments were not supported by those opposite. However, it is always easier to take a few cheap shots in a press release than to back those sentiments with legislation. I hope that this is not the case in this instance and that the government can look favourably on those amendments in the committee stage and look past the rhetoric, look past the cheap shots and perhaps look at the merit of the amendments that are being proposed. In closing, I would like to remind those sitting opposite of what I said earlier: the Australian Labor Party has always regarded a good education as being a basic right and not just something for the privileged few.

Senator Hutchins (New South Wales) (8.29 p.m.)—This evening I have pleasure in following my colleagues Senator Ludwig and Senator Crossin in this debate on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. As you may be aware, Madam Acting Deputy President, Senator Crossin was a teacher and has hands-on experience in education. Senator Ludwig talked about the outrageous comments made by Dr Nelson in relation to the Labor Party’s position on this particular bill. In the House of Representatives, Dr Nelson has been working himself into a flap because he believes we are engaging in the politics of envy. He believes that we should be kowtowing to the government and allowing them to transfer lots and lots of Australian taxpayers’ dollars into the pockets of people in the education field who do not need them. In my previous occupation I have seen people, mainly men, whom I worked with who never had the opportunity to complete even their secondary school education let alone go any further. The talents of those men were wasted because they did not have the opportunities for education that should have been available to them.

I remember clearly years ago that, when I was an official of the TWU, a transport company, Rapid Transport, took over the distribution of an engineering company’s transport fleet. They approached this driver—I do not want to use his name—and said they wanted to reorganise the run so that they could achieve economies of scale in taking over that transport fleet. For some reason, there was a lot of resistance by the drivers in that yard to any changes that the company wanted to make. They were sometimes scalawags, but the bosses—Stephen Brown, whom I worked for at TNT, and Dickie Wyeth—were quite genuine men. After a lot of argy-bargy and discussion, we found out that one driver, who was expected to change his route to make the deliveries, was illiterate. He could not read the street signs where he was to make deliveries. This man, who subsequently retired from that company after
many more years, was one of the men—and women—who were abandoned in the middle part of this century because they did not have the educational opportunities that we now take as a right.

I remember when I used to go into the yards, when I worked at TNT, and men would get documents and they would say, ‘I have forgotten my glasses. Can you read this to me?’ I knew they had not forgotten their glasses; they could not read those documents. It is because we are now reverting to a very class based allocation of education funds that men and women like them, and their children and grandchildren, are now going to be penalised by the government. I am sick and tired of hearing the government say, ‘This is the politics of envy.’ As has been so articulately outlined by our spokesman, that is not the case.

The only people who we believe should be disadvantaged—I will use that word and you can take it anyway you like—are those category 1 schools: the King’s, the Newingtons and the Sydney Grammars. On the way to the airport to come to Canberra, I have to pass Newington. They have fine tennis courts there, ready for the boys to play on—I do not know if it is a co-ed school or not. I do not see tennis courts at some of the government, non-Catholic education institutions in Western Sydney. For all I know, they may have squash courts and swimming pools. I imagine that the kids at King’s have a polo set where they can train and play polo. There is no reason why the children at these schools should receive additional government funding. Their parents, no doubt for good reasons, have decided to make the commitment to send them to those schools. They have decided to pay school fees, but there is no reason why we should be diverting money that should be going to either the government or the non-government sector into these schools.

This reiterates another terrible period we went through in Australia when we had sectarianism in the distribution of education funding. One of the big reasons why the conservatives opposed any form of state aid in the early 1920s was that they did not believe that Catholic schools should have any access to government funding. It was based on their sectarianism. I suppose it is to his credit that Sir Robert Menzies changed that in the 1960s, but that was a long time in coming. They were motivated by terrible prejudices that we hope have now been dispatched, but the education minister, Dr Nelson, has said that we are motivated by the politics of envy.

During the committee hearings, it was identified that a number of schools have been shonky enough to close and start up again. I hope I have not defamed them or anything, but Senator Ludwig has gone through a school at Charters Towers, there is another school in Kewdale in Perth I gather, and there is another school in Highton in Victoria where this has happened. People have looked at how you can scam the scheme. They have put the applications in and got the additional funds. I am sure that that was not the intention of the government when they introduced this change in funding. I am sure that, in their own way, they felt that they were going to continue to fund the growth in non-government schools. Yet I do not believe that they had any intention of seeing these things happen, and I hope that, with our amendments, we will be able to make sure that is reversed.

As my party have said, we do not necessarily believe in advantaging one group over another, and I genuinely feel that those category 1 schools will be enjoying additional funds from the Commonwealth that could be better placed in non-government and government schools. There are many areas in Australia that are calling out for additional funds—particularly the area that I come from in Western Sydney—because of the number of children that are being born and raised there. I know that the Catholic Bishop of Parramatta, Kevin Manning, is going even more grey in planning for the number of schools that he is being asked to develop in the burgeoning suburbs of Western Sydney. I know that this is of great concern to those educators who want to provide the best education they can to children. This is being subsumed by the fact that the government is making a class based decision to allow category 1 schools to have access to money, and I think that decision is a disgrace.
It is a disgrace particularly in this new century, after we struggled for over 150 years to make compulsory education available for children. In New South Wales it was only in 1880 that public education was made compulsory up to primary school level for children. It was only in the 1920s that it was made compulsory, in some form or another, for children to attend secondary school. We are talking about, for people like me, the generation of my grandparents and how they had to get an education. How sad it is to look at documents from that period and earlier, when people were asked to sign either their marriage certificates or the certificates registering their children’s birth, and see that they were signed with a cross. We cannot allow that to occur again. We cannot allow this class based allocation of funds somehow to continue to advantage category 1 schools that I do not believe are entitled to it. This is not the politics of envy; this is the politics of fairness and equity, as Senator Ludwig said. It is up to us to make sure that this generation of children has opportunities equal to those that we and our generation have held so dear.

I would not be on my feet this evening saying these things except for this experience. During the last federal election campaign—and it would not surprise you, Madam Acting Deputy President, to hear that I was involved in the electorate of Lindsay—I saw the misleading signs that the Liberals put up in relation to Labor’s education policies. These signs were on the back of cardboard—they were not authorised—and they said: ‘Labor will take away your funding’. The signs were out the front of the Penrith Anglican College, the Orchard Hills Preparatory School and the Nepean Christian Community College. None of these schools are category 1 schools; all of them would have received funding under the position that Labor is prepared to support. However, the Liberals were doing this in the electorate of Miss Kelly, the member for Lindsay. It was a campaign of downright lies. I am told that it was only after school had finished that those signs were taken down; those signs were not there the next day when parents dropped off their children. However, it had its desired effect: it made people concerned about where the funding was going. We still believe, and still hold dear, the idea that in fact this money should be distributed to those schools that are in need of it.

As I said earlier, I recall clearly the sectarian debates within the Labor Party during the sixties about per capita or per head grants and needs based grants. There was a lot of division in my own party. Fortunately, we were able to put that behind us, move ahead and make sure that children whose parents made the decision to put them into non-government schools for religious or other reasons have access to quality education and that funding is available for that. That is not the case in the legislation which is before us this evening. I find it strange that some members of the Liberal Party, who I am told have some kind of egalitarian streak in them, could get up here this evening or get up in their party room and support this legislation that diverts money from what we believe are the needy and the disadvantaged to those people that may, for all I know, be training their ponies for polo.

I believe the amendments put forward by the opposition will go some way to ensuring that, as I said earlier, the funds to educate our children are put into those areas that are most in need of them, that we will not have a generation of people who have talents that are not used and that we will be able to give our children the best quality education this Commonwealth can provide to them. It is the duty of the government, the opposition and the Senate to make sure that those provisions are made so that our children are educated in the best manner possible.

Debate (on motion by Senator Ellison) adjourned.

MINISTERS OF STATE AMENDMENT BILL 2002
Second Reading

Debate resumed from 14 March, on motion by Senator Ian Campbell:

Senator MURRAY (Western Australia) (8.45 p.m.)—The Ministers of State Amendment Bill 2002 increases the annual amount payable for the salaries of ministers from $2.3 million per annum to $2.8 million. The
government indicates that these additional funds are necessary to give effect to the determination of the Remuneration Tribunal. The Australian Democrats support the proposed increase in the salaries of ministers. My personal view is that ministers of the Commonwealth continue to be underpaid. The bill amends the Ministers of State Act and comes amidst controversy surrounding the conditions of employment of ministers. Lucrative consultancies obtained by former ministers Reith, Wooldridge and Fahey have brought the issue of post-ministerial employment into sharp focus.

When ministers and their senior advisers leave office, they take with them different sorts of information. On the one hand, they take a general understanding and insight into the workings of government; on the other hand, they take specific, confidential information about programs, policies, needs of the departments and agencies and proposed budgets. Where ministers and their advisers take into the private sector merely an understanding of the workings of government, there can be no complaint. That can only promote effective and efficient relationships between the private and public sectors, and the greater the private and public sectors understand each other’s processes, the better. However, when ministers and their advisers go into an area of the private sector directly related to their former duties, a very different set of considerations arises. They may well have a conflict of interest arising from the clash between their duty of fidelity to their new employer and their duty to the public to safeguard confidential information about government departments and agencies.

The public is justifiably concerned about the misuse of a position of privilege to secure employment in the private sector with an organisation that stands to benefit from confidential information possessed by the former office holder—and, might I say, the former office holder is often privy to commercial-in-confidence information that even the parliament is not privy to. The public is justifiably concerned about the independence of the decision making processes of government when there is no specific legislative protection to prevent decision makers from being influenced by the prospect of future employment. Whatever the motivations of former Minister Wooldridge to grant $5 million of public funds to the Royal Australian College of General Practitioners prior to leaving office, his later employment with that same organisation inevitably generated perceptions and doubts as to the basis on which those funds were allocated. Furthermore, the public is justifiably concerned about former ministers and advisers being used to facilitate preferential or privileged access to government. It certainly appears that the reason many private organisations hire ministers or their top advisers is for their connections and their ability to obtain access to government at the highest level.

These matters have caused great public concern. The Democrats are taking the first opportunity we have to address these issues. Since this bill directly relates to ministerial employment and the salaries being paid, this is the appropriate time to do it. Very seldom will there be other bills that would make this possible. I will be moving amendments on behalf of Senator Stott Despoja, Leader of the Australian Democrats, to address these concerns. The amendments reflect the substance of the Ministers of State (Post-Retirement Employment Restrictions) Bill 2002—a private senator’s bill introduced by Senator Stott Despoja and me last week. The amendments would prevent ministers and ministerial advisers prior to retirement allowing themselves to be influenced in the conduct of their official duties and responsibilities by plans for or offers of employment or other remuneration when they leave office. This would prevent a minister from allocating funds to or making decisions in favour of a particular organisation prior to leaving office, with a view to securing employment with that organisation.

If these amendments are successful, ministers and their advisers would know that they would face the full sanctions of the criminal law if they allowed themselves to be influenced in their duties by the prospect of future employment. Favouritism from a minister in return for post-ministerial employment would be corrupt. These amendments would substantially lessen the poten-
tial for such behaviour and perceptions of such behaviour by impressing upon ministers and their advisers how seriously such conduct is taken by the community. In addition to these pre-retirement restrictions, there is a range of post-retirement restrictions. The amendments provide for a two-year cooling-off period after ministers and their advisers cease to hold office. During this time they are prohibited from engaging in three broad classes of activity. First, they must not provide advice for profit or commercial advantage on the work of their former department and its agencies. Second, they must not accept employment or enter into consultancy agreements with any entity with which the department had significant dealings in the previous two years. Third, they must not make representations for profit to the relevant department and its agencies on behalf of any person.

There are a number of important exceptions which allow former ministers and their advisers to work for a range of organisations. They can work for charitable organisations, the Commonwealth, political parties and, with the approval of the Minister for Foreign Affairs, international organisations and foreign governments. The restrictions in these amendments are carefully measured to strike the right balance between allowing former ministers and their former advisers to make an ongoing contribution to public life while not acting improperly in terms of their position of privileged information relative to their former employment with the Commonwealth. Failure to comply with these restrictions will constitute an offence punishable by two years imprisonment or a fine not exceeding $250,000. These penalties are a reflection of the very serious nature of this issue and are within the scope of international precedent. It is perfectly appropriate that the integrity of our political system be defended by the full force of the law.

I would now like to refer to the international precedents for the approach proposed by the Democrats. Firstly, the United States is particularly strong in the limitations it places on former members and officers of the executive branch. Section 207 of the United States code provides for a two-year cooling-off period for ex-employees and officials of the executive branch. During this time they are subject to a range of restrictions as to lobbying and other activities in which they can engage. They are also subject to permanent restrictions on making representations on behalf of a person or entity in a matter in which they personally participated in their capacity as an officer or employee of the executive. The punishment in the United States for breaching this provision is set out in section 216 of the United States code. The maximum penalty for wilfully committing any of the offences is five years imprisonment. So one can see that the United States adopts an even stronger approach than we are proposing.

In Canada, the Conflict of Interest and Post-Employment Code for Public Office Holders sets out restrictions on ministers and some ministerial staff during their tenure and after leaving office. Before leaving office, the key obligation is that public office holders not allow themselves to be influenced in the pursuit of their official duties and responsibilities by plans for or offers of outside employment. This provision is mirrored in the amendments I will be moving on behalf of the Australian Democrats. After leaving office, public officials in Canada are forever restricted from switching sides in any ongoing proceedings, transactions, negotiations or case where the public official acted for or advised the government.

Canadian public officials also face a total ban on giving advice to their clients using information that is not available to the public concerning the programs or policies of the departments with which they were employed, or with which they had a direct and substantial relationship during the period of one year immediately prior to the termination of their service in public office. In addition, Canadian public officials are subject to a two-year cooling-off period where they are restricted from doing two things. Firstly, they must not accept appointment to a board of directors of, or employment with, an entity with which they had direct and significant official dealings during the period of one year immediately prior to the termination of their service in public office. Secondly, they
must not make representations for or on be-
half of any other person or entity to any de-
partment with which they had direct and sig-
nificant official dealings during the period of
one year immediately prior to the termina-
tion of their service in public office. A more
minimalist approach applies in the United
Kingdom whereby an obligation is imposed
to seek advice from a committee, the inde-
pendent Advisory Committee on Business
Appointments, about offers of employment
they propose to accept within two years of
leaving ministerial office. The United States,
Canada and Great Britain have all dealt with
this matter and have realised what a public
problem it is. The precedents established in
those jurisdictions should be respected in
Australia.

The Australian Labor Party have also put
forward a minimalist proposal in relation to
this issue in response to public concern. La-
bor propose a 12-month restriction on certain
postministerial employment to be outlined in
a code of conduct. I agree that that would be
a great improvement on the present situation.
As I understand it, though, the code would
not have legislative force. I am sometimes
asked why we put into legislation prescrip-
tive matters relating to people’s conduct.
When you discover that you can no longer
trust people to do the right thing, which I am
afraid we are discovering more and more in
Australia, self-regulation or an unenforceable
code will be found to be worthless and you
will need legislation. I urge the Labor Party
to reconsider their approach and to direct
their minds to ensuring that their restrictions
would have some credible enforcement
mechanism. We would obviously support
any improvement on the existing situation.
It is difficult to assume that former ministers
will always comply with a code of conduct
that is essentially voluntary.

In conclusion, I would like to stress to the
Senate the need to support the Democrats’
amendments or to put up amendments with
some equivalent force. The Democrats’
amendments draw on credible international
precedents and are necessary to enhance
public faith in Commonwealth ministers and
the decision-making process of government.
Public focus on recent controversies sur-
rounding postministerial employment may
pass, but they will come again. They have a
history in other jurisdictions in Australia and
if the underlying problems are not addressed
we will be confronted with similar scandals
in the future.

Senator Faulkner (New South
Wales—Leader of the Opposition in the Sen-
ate) (8.57 p.m.)—The Ministers of State
Amendment Bill 2002 is one of a series of
annual bills which appropriate the funds nec-
essary for the payment of salaries of minis-
ters and parliamentary secretaries. We note
that this bill will provide an extra half a mil-
don dollars this year, increasing the appro-
priation from $2.3 million to $2.8 million.
This flows from the Remuneration Tribunal
determination of 5 July 2001 with effect
from 1 July 2001 which increased salaries
for the principal executive officer band by
3.9 per cent. Since 1999, again pursuant to
Remuneration Tribunal determination, the
annual salary for parliamentarians has been
linked to a reference salary in the principal
executive officer classification. Ministers
and parliamentary secretaries are paid an
additional salary that is expressed as a per-
centage of parliamentarians’ base pay.

The opposition will be supporting this bill.
But this bill, as Senator Murray notes, pro-
vides us with an opportunity to reflect on the
responsibilities of ministers and the stan-
dards that should be applied to ministers.
The flip side of higher levels of remuneration
for those in public office is commensurate
higher standards and higher levels of per-
formance. But that is not what we are getting
from the Howard government.

Take, for example, the case of the three
recently retired members of the Howard
ministry: former defence minister Peter
Reith, former health minister Michael
Wooldridge and former finance minister
John Fahey. We all accept that, over the past
20 years, there has been a growing trend for
people to leave or to be driven from office at
a younger age. At the same time, the growth
of the lobby or government relations industry
has been exponential. The Australian econ-
omy has become more complex, with higher
competing demands from the finance, IT and
manufacturing sectors. Government has had
an increasing role in the regulation of many kinds of industry. It is safe to say that the interface between government and industry has changed significantly. As society changes, standards too change.

The three aforementioned Howard government ministers all started working within a very short time after their retirement from the parliament, and they started working for companies and organisations that can benefit from their insider knowledge and personal contacts at the very highest level of government. Even if they zip their lips about commercial-in-confidence issues brought up in cabinet when they were ministers, there is still a very smelly perception that lingers. Who knows what is said when the doors of the boardroom click shut and who knows what information is shared when former ministers meet colleagues who might be current senior ministers of government?

Former defence minister Mr Peter Reith shifted almost immediately to Tenix, a defence equipment manufacturing company. We do not know what level of remuneration or other conditions of employment Mr Reith enjoys from his new employer. What we do know is that Mr Reith has a superannuation payout of more than $2 million that he can access immediately—a lump sum of $430,000, not to mention the very large pension he might receive immediately. Mr Fahey, a former finance minister, now working for merchant banker JP Morgan, served for only two terms in the federal parliament but, after rolling in his pension from his years as a New South Wales government politician and premier, he is also on a very comfortable wicket. Steve Lewis, a journalist from the Australian Financial Review, wrote on 18 February:

Mr Fahey, who retired at the last election, confirmed yesterday he had signed on with JP Morgan three weeks ago. The bank’s head of investment banking, Mr Trevor Loewensohn, said the former minister would assist JP Morgan in securing government deals as well as providing broader government relations advice.

JP Morgan acquired one of Australia’s oldest broking firms, Ord Minnett, last year. Ord Minnett, in turn, played a significant role in the sale of the first two tranches of Telstra. JP Morgan is also a member of the AMP-led Gateway consortium—one of three bidders for the $4 billion Sydney Airport sale.

The sale of Sydney airport and the sale of Telstra were central to Mr Fahey’s time as minister. If—God forbid—legislation were passed to sell more of Telstra, Mr Fahey would be on the other side, trying to access and extract as much Commonwealth money as possible on behalf of his new employers.

And we have the case of a former health minister, Dr Wooldridge, who offered himself as a part-time consultant to the Royal Australian College of General Practitioners three months after he had signed a departmental minute to clinch a deal between the college and the health department to fund a commercial venture in the Barton precinct. The amount of $5 million was funnelled from existing health programs on asthma prevention and rural health, as has been discussed at some significant length in this chamber.

Probably Dr Wooldridge does not have the same level of superannuation entitlements as the longer-serving former minister Peter Reith. Still, if he wanted to, I think he would himself be able to access about $85,000 a year in pension payments for the rest of his life. This is not unique to these politicians; as everyone knows, there is a generous parliamentary superannuation scheme. But think of this. On Wednesday, 13 March, broadcaster John Laws grilled Dr Wooldridge about his new job and the GP House scandal. I try to be fair about these things, as senators know, but it was a very oily performance from former minister Dr Wooldridge. He said this:

Now it would be very nice if at forty-five years of age I could retire but I haven’t become rich in politics. I can’t go back to training and surgery. I’m fifteen years out of date. I have a wife who is not in the work force, I’ve got young kids and I have to work. Prior to leaving politics I actually took written advice from the Secretary of my Department as to what should apply to a senior public servant if they left their job. Although not required to do so I actually applied those same standards to myself. I’d suggest no Minister’s ever done that before ... But I am a doctor, I was working in health before I went into politics and I do have to work to support my family.
These standards did not last too long. He was snaffled by the Royal Australian College of General Practitioners and his new part-time job was announced on 16 January this year. This is what Dr Wooldridge went on to say to John Laws:

I’ve voluntarily chosen to apply a standard that applies to a senior public servant even though … I’m not required to do so. I’ve done that at substantial financial cost because a lot of work I’ve knocked back and a lot of money I’ve knocked back even though I’m not required to knock it back I just thought it proper to do so.

Senior public servants have to cool off for a year. Dr Wooldridge cooled off for a month. That is what he did: he cooled off for a month. John Laws said:

Do you think that there should now, given the stir that’s been caused by this and by Peter Reith and to a degree by John Fahey, do you now think that there should be a cooling off period for your people’s sake as much as anybody’s?

Dr Wooldridge said:

Well that’s what I have observed myself …

He knew the rule for senior public servants, and then he disregarded the rule for senior public servants.

There is more. This is an extraordinary interview. During the next part of the interview you would really think you would be hearing violins in the background as Dr Wooldridge was speaking to John Laws. He said:

… you have to earn a living. So if the public doesn’t want MPs to get their super that’s fine but how are they actually going to live? It’s not like a plumber who loses their job and can get another job as a plumber. If you’ve given up a career for fifteen years to go into parliamentary life, you know I can’t go back to my surgical training and I can’t pick up where I left off. So you do actually have to earn a living somehow.

This is a situation where Dr Wooldridge is trying to peddle some sort of perception to radio listeners that he is getting a piddling amount from the Royal Australian College of General Practitioners and that he cannot access his $2 million worth of superannuation.

In this case, the radio interviewer called Dr Wooldridge’s bluff. He said:

But you could’ve applied for your super because that change only applied to new MPs. Then it wouldn’t have applied to you?

Dr Wooldridge says:

Sure and any law that’s passed about work after politics won’t apply to me because it can’t be retrospective. I’m talking about the future and if you want good people to go into politics you have got to find a way for them to earn a living once they leave.

That is a bit of a surprise, isn’t it? You have Dr Wooldridge talking about the future, although I think until then you could have taken it as read that the impression was that he was talking about himself. So Dr Wooldridge, in this particular interview with John Laws, was badly sprung.

I want to say this: some of the arguments that Dr Wooldridge mounts are valid, although the context they were being put in was entirely self-serving. There ought to be cooling-off periods for ex-ministers, along with the capacity for young retired politicians to continue working. Of course, we say that trying to fudge your own circumstances, like Dr Wooldridge was doing on the John Laws program, is beyond the pale. These two conflicting elements have to be sorted: a right to a profession beyond politics and the public’s right to be satisfied that a former minister is not advantaging a company with some insider knowledge.

Senator Murray indicates that the Democrats will be taking advantage of the fact that this particular bill is before the Senate by attempting to entrench in legislation their own remedy: a two-year cooling-off period during which ex-ministers and senior ministerial staff would not, to quote the Democrats, be able to:

… provide advice for personal profit or for commercial advantage on any aspect of the work of any department or agency for which the former minister had ministerial responsibility for any period of time during the last two years of service as a minister.

Last week, the Senate dealt with a motion, standing in the name of Senator Brown, that put forward the Greens’ remedy to this same problem: a five-year cooling-off period, as I recall, during which an ex-minister would be...
banned from taking an appointment that is directly related to his or her portfolio.

I accept that these are all worthy attempts to try to fix the problem. They are brought about in the face of inaction from the government. But, as Senator Murray said in his speech during the second reading debate, just a few moments ago, the opposition have their own remedy. We believe it is more balanced and more appropriate to Australian circumstances. It was announced by the Leader of the Opposition, Mr Crean, on 20 February this year. We believe that the appropriate cooling-off period is 12 months. This means that ministers, for a 12-month period after ceasing to be minister, could not take employment with, nor act as advisers or consultants to, any company or business interest with which they had had official dealings as minister in their last 12 months in office. Ministers would also be required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a minister, where that information is not generally available to the public.

We also believe that this new standard, the need for which has been drawn starkly to the attention of the Australian public because of the examples of Mr Reith, Dr Wooldridge and Mr Fahey, is more appropriately entrenched in the so-called prime ministerial code of ministerial conduct. It is for the Prime Minister to determine the standards of conduct required of his or her ministers. It is then for the electors who put the government in office to hold ministers to account for their observance of those standards and, importantly, to hold the Prime Minister to account for his or her willingness to enforce the standards.

I am aware that we will have a further opportunity to debate these issues at a later stage. It is still not entirely clear to me whether we will be doing that in the committee stage of this bill or when Senator Murray, perhaps as soon as Thursday of this week, brings forward the private member’s bill—

Senator Murray—We have circulated the amendments to this bill.

Senator FAULKNER—I was not sure whether you were going to bring your Ministers of State (Post-Retirement Employment Restrictions) Bill 2002 forward, because I think we all understand there is pressure on general business time in the chamber. In that situation, as we are going to have a further debate, I am happy to elaborate on these important issues later in the week. But I have indicated what the opposition’s constructive approach on this issue is. We will be progressing our views and, as I indicated in my opening remarks, the opposition will be supporting this legislation.

Senator COONEY (Victoria) (9.16 p.m.)—I begin my contribution to the debate on the Ministers of State Amendment Bill 2002 by saying that while I have been in parliament I have seen many people become ministers, and many of them have been great ministers. Ministers are paid very modestly, given the responsibility they have and the work they have to do. When you compare what they do with what people outside get for what they do, it is clear that ministers are not paid enough by that standard. But I think there is a concept in the community that the office of ministers and, indeed, the office of members of parliament have sacred dimensions to them. I mean by that that it is expected that what motivates a member of parliament, what motivates a minister of the Crown, is more than the remuneration or the glory which they might gain from those career paths: what motivates them, or should motivate them—and I think in most cases does motivate them—is a desire to see the country better governed and the country advanced at all levels and that the citizens who they are elected to represent are properly represented in the sense of gaining good laws and good administration.

Ministers are kept honest, if you like, to use that expression, by the operation of the parliament from which they are taken. This is a system where we have responsible government. It is proper that there be between the executive, the ministers, and members of parliament who are not ministers a proper respect. I think things function only if there is a level of respect and a level of acknowledgment that each has a function to perform.
That goes as well for the other arm of government, the judicial arm. It is proper that this place pays proper respect to the judiciary and that the judiciary pays proper respect to the government and to parliament.

A good example of that is the discussion or exchange of letters that took place between Mr Tim Fischer, a person for whom I have the greatest of respect, and the then Chief Justice of the High Court, Sir Gerard Brennan, when there was loudly proclaimed criticism of the High Court over the alleged delay it took in producing the judgment in the Wik case. I think it became clear at that point that there has to be, for the proper governance of this country, a respect paid by and between all arms of government. Sir Gerard Brennan made that clear at the time. He is a person who has had a great and lasting effect on good government in this country, together with two of his children that I know: Frank Brennan, the eminent reformer in Australia of government in general, ought to be acknowledged on this occasion; and another person who is not as often acknowledged but ought to be acknowledged, Mr Tom Brennan, a jurist in this town.

When we are discussing the issues of what should happen to ministers once they leave here and what should happen to ministers while they are here, the point I want to make is that when we are discussing those things we have to discuss them in a context of some expectation that as a parliament, as an executive and as a judiciary we are about high and noble tasks. We might laugh at that expression because oftentimes it is the grim part of the processes in this place that we look to—the tough riposte, the tough question and answer and the exchange across the chambers. All of these are needed, but at the same time there should be this underlying regard and respect in the system; otherwise I think we do get to problems where there is insufficient regard had to the system, and that is a bad thing. It would be over-dramatic to say that that was a problem at the moment, but it could become a problem, and I think it is worthwhile talking about it at this stage.

Given matters that have occurred here recently and, indeed, in the past, I got up to contribute to this debate. There has been a discussion here tonight about whether or not people who have been ministers should take on work related to the portfolio they held for two years or 12 months, or what have you, and it is proper that the appropriate laws are passed. But in the end laws, written laws or black letter laws, do not bring to a system what is fundamentally needed. What is always fundamentally needed, I believe, is a particular approach to things, an ethical attitude to things, a realisation that we are about the noble function. Those sorts of attitudes, those sorts of realisations, those sorts of insights I think are what are more likely to bring the sorts of results we want in this place.

Senator Faulkner said that, in the end, it is the Prime Minister who decides whether a minister comes or goes and what happens. That is true, and I have seen that happen over the years. Some people I think are very harshly dealt with by that system. Two people who have sat in this chamber who I feel were over-harsly dealt with were Senator Short and Senator Gibson; other people have had much greater latitude allowed them. But, in any event, this is the point I want to make tonight: the concept that, to get a system working as we want, laws are important. The laws we pass tomorrow when we come back here into the committee stage are important. But, overall, unless there is a particular approach to things, a realisation of what we are on about, we really will not get to the point we would like to get to.

Senator MURPHY (Tasmania) (9.25 p.m.)—I want to say a few things about the Ministers of State Amendment Bill 2002, but also I want to give more focus to the amendments proposed by the Democrats. I take Senator Cooney’s point: you can make as many laws as you like; but unless those laws are applied, and applied properly, then they are of no real consequence. I think that is a very important fact in all of this, when considering what the Democrats are suggesting by way of their amendments concerning people not being able to take up employment in other areas that might be directly linked to their role in the public sector.

Looking at the administration process generally, we see that certain people are re-
sponsible for oversight of public administration, whether in finance or other areas. That is one of the major problems we have, and that has always seemed evident to me during my time in the Senate and in the inquiries with which I have been involved regarding public administration or problems associated with public administration. Cutbacks occur in the resources, the financing of bodies that are responsible for public administration and oversight in various areas. Here I am talking about authorities such as ASIC and APRA, even some aspects of the Reserve Bank, and areas such as telecommunications and taxation. As a result of problems associated with taxation, we saw the Prime Minister during the last federal election campaign make an announcement about having an inspector-general of taxation; that has yet to come to fruition. It is clear to me that many of these authorities have insufficient resources to check on what is really happening.

Even if we were to put the Democrat amendments in place, and I support their general thrust, we in this chamber and those in the other place are not to know, necessarily, whether a former minister, a former adviser or, indeed—I think, equally importantly—people who have worked within some of the departments have transferred into the private sector, and we cannot and should not stop them from doing so. We live in a democracy and, if people who are expert in a particular field are offered an opportunity with a substantially increased salary arrangement in the private sector, we should not be denying them that. But we must have in place checks and balances that allow us to ensure that the public interest is protected. I think that is one of the greatest problems we are confronted with at this point in time with the people to whom we give the responsibility for oversight of public administration—in terms of ASIC and APRA—and private administration. Many reports, including media reports, have highlighted problems with the failures of insurance companies, telecommunications companies and a number of others, and there is the need for a strong public administrator that can ensure the potential for ‘insider trading’, for want of a better description, does not occur.

I have dealt with one inquiry in respect of the Taxation Office where a senior tax counsel came and gave evidence on behalf of the tax office but who subsequently went to private sector employment. It is not difficult to envisage the sorts of problems that might arise as a result of that transfer in employment. By the same token, you cannot deny a person the opportunity of remuneration to take up that opportunity. We know there are a significant number of laws in place that deal with these matters, including the Crimes Act, and we know most public servants are required to sign and enter into secrecy provisions of employment, but at the end of the day I think the responsibility of ensuring all this actually works is going to fall on the administrators of the law. They are just a few comments I was seeking to make in respect of the Ministers of State Amendment Bill 2002 and the amendments that the Democrats are proposing to move.

Debate (on motion by Senator Coonan) adjourned.

DISABILITY SERVICES AMENDMENT (IMPROVED QUALITY ASSURANCE) BILL 2002

Second Reading

Debate resumed from 13 February, on motion by Senator Ian Campbell:

Senator BUCKLAND (South Australia) (9.31 p.m.)—I rise to speak on this important bill, the Disability Services Amendment (Improved Quality Assurance) Bill 2002—and indeed we are supporting this bill. However, there are some comments I would like to make tonight about it. The bill seeks to improve disability services for Australian people, those people who are suffering from disabilities of many types, and to provide funding for services under section 14K of the Disability Services Act 1986, requiring monitoring quality against standard of the services—something we often do not think very much about at all. We often set standards for things like services for people with disability, but whilst there is a standard there is not necessarily a service that can really deliver the standard in real terms. I trust,
from reading through the bill, that it will be able to provide those things required.

The bill's primary aim is to establish a new quality assurance system for specialist disability employment services and rehabilitation programs. Perhaps what really brings me to my feet tonight is a desire to get those people into the workplace. On that basis the bill is good. It seeks to improve services to, and treatment of, people with disabilities. The bill is very similar to the Disability Services Amendment (Improved Quality Assurance) Bill 2001 which lapsed before the most recent federal election. As it stands now, this bill is the outcome of the recommendations of the 1997 Disability Quality and Standards Working Party report. The report was called Assuring quality. The bill represents the open consultation that has occurred.

It is interesting to look at disability services provided today and compare them to disability services provided when I was a younger person. When I walked around the streets I was told not to look at a cripple because that was rude. If someone was in a wheelchair, it was very hard as a child not to notice them. Your parents, or those you were with, did not want you to really notice them: there was something wrong with them. Sadly, I grew up in an environment that related disability through some body malfunction with disability of the mind. Of course we know now that is not the case. I think we should count our blessings daily it is not the case. We now find people with a multitude of disabilities to be an integral and important part of our everyday society. I think this bill will strengthen that. I trust that will be the case.

The Labor government in 1993 introduced the disability services standards. It was the right thing to do then. It was the right time. It was a good thing to do and, as we now know, it was a very decent thing to do. As our society moves forward, decency is becoming more an important part of our daily living. The standards set out in the 1993 bill were important standards, but they are standards that need constant revising, upgrading and adding to. Some 11 standards were set out in relation to service access; individual needs; decision making and choice; privacy, dignity and confidentiality; participation and integration; valued status; complaints and disputes; service management; employment conditions; employment support; and employment skills development. We often overlook those things, and indeed they should not be overlooked, particularly employment conditions, employment support and employment skills development.

As a child, I remember a young lady whose age at that time I could not tell you. I always thought she was quite old, but apparently she was in her late 20s or early 30s. At that time, of course, anyone over 16 or 17 was old to me. I remember that this young lady was picked up each morning by a special bus and taken to a special school. She was locked away from society. As I said, I grew up in a time and in an environment that did not encourage too much interaction with this type of person, but I actually got to talk to this lady at one stage. I found that her mind was not affected at all — she could have a conversation — but she had some difficulties with handling the stresses of life with her physical handicaps. Today it is a joy, in my view, to visit some of those places that we have set up to help train and integrate people with mental and physical disabilities into our mainstream society.

In the late eighties and early nineties, particularly around the 1994-95 period, I was very pleased to help workers of the Commonwealth Rehabilitation Service map out programs for a number of people in Whyalla to be integrated into the mainstream workforce. It was a wonderful thing to see people who, in the past, would never have been considered suitable to go into places such as steelworks or manufacturing plants or to go into heavy industry situations. By our standards, much of the work was quite menial but, by their standards, they were having a chance at life that has developed quite significantly.

I was also pleased, in the not too distant past, to visit the new facilities of one of the disability services in the Upper Spencer Gulf region. There I saw young ladies—who again in the past would have been put out to pasture, left at home or locked away—car-
ry out for industry in the area quite complex cutting and sewing operations, setting machines and putting names on workers' shirts. Again, many of us would think these quite menial tasks, but setting these machines is quite complex—knowing how to set them, knowing how to spell the names and copying things that in the past they would not have got a chance at—and they are happy in their work.

I was also quite interested to see that one of the contracts this particular company with people with disabilities has is that they—and we all take advantage of this, I would suggest, in our roles here in the Senate—clean, pack, reset and service the headsets that Qantas gives you to listen to videos or radios on the plane. There are not too many among us who would like that for a job, but these people are learning the various skills associated with that, and I think it is quite wonderful to see them develop. The good thing with those types of things is that they can develop into other regions or areas of the work force. That is something quite wonderful. It is quite wonderful too to see young people who in the past had very little opportunity to communicate or to be communicated with, using computer-aided technology to bring them into the parts of our society that we so sadly have neglected but are addressing now.

It is those types of things, providing those services to get them into the work force to make them a part of the community, that are so important in the concept of this bill. But there are other areas, as there always are. We must monitor some of those other standards that continue to be there, such as individual needs. Rather than cater for a group of people with disabilities, we must look at the individual, look at the individual needs and cater for those individual needs separately so that each person is treated as a human being with single needs and single provisions.

To provide dignity and confidentiality when dealing with these people, to include them in the negotiations or the discussions about their care, about their treatment, about their future, to have them a part of it and to help them develop is quite a wonderful thing. I applaud the drafters of legislation that provides these things. I have talked a bit about integration and participation, but I think it is an area that we need to address in a very real way.

My understanding is that the Senate Community Affairs Legislation Committee received some 20 written submissions on the 2001 bill and took verbal evidence at hearings in September of last year. Evidence was given by representatives of ACROD, a peak body for disability services, and the National Caucus of Disability Consumer Associations. I think ACROD expressed their support very well. Its CEO stated his belief that this bill: … will make a very significant contribution to improving the quality of employment services provided to people with disabilities and will improve the consistency of those services across the country.

I have described just a few examples of how I have seen changes occur. I was very proud, as I said, particularly in the nineties, to be a part of developing pathways with the CRS for these young people, to put them into jobs that in the past, God forbid, we would not let women work in, let alone people with disabilities. It was a wonderful thing to work through that process of bringing another part of society into important roles in manufacturing in particular. I think the CEO of ACROD really summed it up in quite marvellous words. He said:

It may be that after that three-year period there are some that cannot reach the required standards—that is, the providers. He said:

The bottom line as far as ACROD is concerned is not the survival of any one organisation but the survival of a service to people with disabilities. I think that sums it up. It is not the survival of the organisation. It is the survival and care of the individual. I think they are quite beautiful words in the context of this bill and they are words that I think can ring around for some time.

As is my wont, I keep going back to employment situations because I do not think that any person contributes to society fully until they are in that paid work force, until they themselves feel they are contributing. I have a son who spent a period of time not able to gain employment in his chosen field. He and some friends took up voluntary and
part-time work until the right job came along that they could manage and use the skills they had been trained for. For a person doing that and knowing that in themselves, despite them not telling you, they are not worthy to be a part of that, it is very hard. I guess that is why many of us feel so much for those who are unable to gain employment. But, looking at people with disabilities, the payment of award based rather than award wages, the mooted implementation of the supported wage system and the special difficulties faced by people in negotiating and understanding workplace agreements were discussed as part of the inquiry. We do often discuss these things. I remember, when I was in negotiation in the nineties with the groups that were going to go into the work force, a damned lot of discussion taking place—but not until I had convinced the group that we did not actually have any of the potential workers with us while we were making quite significant decisions for them. We had not even showed them what we might be doing to get their views. I think that, in promoting a bill like this, we should be ensuring that these people are involved in each and every step of the way so that they do take a part in their future. Seeing a person who has got severe disabilities does not mean that they have disabilities of the mind and they cannot do things. There is a differentiation there. I have been guilty myself in the past of not realising the real potential that exists.

If we are serious about a bill such as this—and I believe that we are serious about it—not only do we need to pass this particular piece of legislation but we have to be diligent in monitoring it carefully, amending it as needs be and continually talking to the people in the system to get feedback from them and investigating better ways because, whilst this is as good as we can do now with the knowledge we have, in five years time we may find it is not the best way. (Time expired)

Senator ALLISON (Victoria) (9.52 p.m.)—I rise to speak about the Disability Services Amendment (Improved Quality Assurance) Bill 2002. The primary goal of the Disability Services Act 1986 is its recognition of people with a disability as people with the same rights as other Australians. A key principle of that act is the integration of people with a disability as valued members of the community, and that includes the right to participate economically. There is a clear need for reform. Sixteen years after the introduction of the Disability Services Act, many organisations continue to provide employment terms and conditions that are much less favourable than those enjoyed in the general work force. Many do not have a legal workplace agreement; many pay wages well below the federal award wage—the award safety net enjoyed by others in the Australian work force by the use of pro-rata wage assessments but which do not take into account the capacity of the individual compared to productivity and conditions of employees without a disability. Some employers seek to take advantage of the intellectual impairment of employees by negotiating workplace agreements that they cannot understand or where they cannot bargain with any power.

The present system of compliance is being monitored by a combination of annual self-assessment by the service provider, and an audit by the Department of Family and Community Services has not ensured service provision of adequate quality.

The bad-news reports and lack of compliance continue to undermine the principles and objectives of the Disability Services Act. The Australian community, rightly I think, expects that taxpayer funding should not be directed to any organisation that discriminates against the rights of people with a disability. The basic precept of the Disability Services Act is to treat people with a disability as people, as Australians with the same rights to grow and participate in the community, including in the work force. Quality assurance is an integral measurement tool of the degree to which those rights are being met. We have an obligation to prevent people who are least able to stand up for their own rights from being exploited by being employed under appalling employment terms and conditions. At the same time, we recognise that consideration must be given to the viability of enterprises that employ people with a disability. To have people with a disability in non-viable businesses provides
neither decent wages nor decent employment.

I recall the story in a recent disability sector publication of Mr Gary Partridge, who single-handedly decided to fight the exploitation of workers with a disability. Mr Partridge had worked at the same factory in New South Wales for 13 years for 73c a day. In addition to being paid this pittance, Mr Partridge was not receiving any superannuation. He sought help from the relevant union but received no help from them. The Democrats asked questions on notice in this place regarding the employment conditions, pay and superannuation of employees at Gary’s workplace. Additionally, he approached television media. The preparation and airing of employment conditions at this workplace subsequently shamed them into ensuring that employees were being paid the lowest pro-rata rate under the award and also superannuation as per the award, backdated to October 2000. Later, Mr Partridge was successful in making retrospective payments for wages and superannuation to him and other employees back to 1996.

It is all too clear that the present Disability Services Act and standards, despite the well-meaning rhetoric therein, did not help Mr Partridge. There are many more consumers in the work force who do not have his determination or are too afraid for the security of their jobs to question the legality and the discrimination of their own positions. The quality assurance system proposed by this bill is tough in a number of ways, particularly on identifying and punishing non-compliance. Organisations which fail to comply after the implementation period face being defunded. However, as much as we are in the business of ensuring the rights of people with a disability, we cannot disregard the viability issues that organisations will face as a consequence of this bill. In this regard, I am particularly concerned that one organisation that currently employs 1,100 people with disabilities indicated at the introduction of this bill last year that it would not be able to continue to employ about 440 of its current work force. We certainly do not want to see people with a disability put out on the street because of a bill that purports to assist them. I am particularly concerned for the vulnerability of isolated rural and regional services in this respect. The Democrats recognise that employers who take on employees with a disability do so with good intentions or that those whose businesses comprise wholly or mainly of people with a disability have good intentions. Accordingly, if we are to move the goal posts of compliance standards, it is essential that employers be given encouragement to provide practical, workable strategies to help them improve the quality of the services they provide.

If there is one thing that strikes me about this bill and the means it intends to introduce, it is the inordinate delays that surround it. The Disability Services Act has been around for 16 years. For nine years we have had had the disability services standards, which introduced the three levels of performance within that legislative regime with the intention of improving the standard of services being offered. The bill before us arises from an announcement from the government in the 1996-97 budget that it intended to reform the quality assurance processes for disability employment assistance services. Five years later, we finally have the bill before us, although we still do not have tabled the disallowable instruments to be utilised in assessing whether the standards have been met or not. I can only hope that these are tabled with a bit more speed than this bill which provides for them. At the same time, however, it has proven critical that we dedicate the necessary time and effort to the bill to ensure the interests of consumers are being served. We recognise that a genuine effort has been made to gain consensus from the sector, and this is demonstrated by the inclusion of the key performance indicators in the disallowable instruments. The issue of performance indicators as part of the KPIs, as they are known, has dominated industry debate on the bill since it was heralded over the last six months. Certainly there was dissatisfaction within the sector over that period with the way the KPIs were progressing.

Currently the standards of the Disability Services Act do not have performance indicators. While the primary act contains well-
meaning words and phrases and good intentions, it nonetheless fails to provide the framework for fair wages for people with a disability. It is essential therefore, whatever performance indicator is set by the standards—whether it is a one size fits all or a multilevel model—that it is specific and not one which, by its transparency or lack of it, fails to protect the rights of Australians with a disability. While it is easy to talk about people with a disability as a whole group, the reality is that true integration does not assume that all people with disabilities are the same. Levels of disability range from low to very high, and support needs and relative productivity in employment have exactly the same variable range. The instrument must have regard for this.

I remarked earlier that the current self-assessment and annual departmental audit have not worked. This bill provides for the introduction of a system of accreditation and certification for service providers, comprising audit teams to be monitored by the Joint Accreditation System of Australia and New Zealand, and it is pleasing to note that each audit team is to include a person with a disability.

The Democrats have not taken lightly our decision to support this bill. Inasmuch as we do not want to see people with a disability deprived of employment, it remains that there is a clear need for reform. It remains of concern that some organisations will not, after the three years allowed for compliance, be able to satisfy the accreditation process and will lose funding. However, we do not want to promulgate the attitude that change in the sector of disability employment cannot be possible without loss of employment. We strongly encourage the government to dedicate sufficient assistance to those organisations which, in the early process, reflect symptoms of inability to comply and maximise early and full compliance of other organisations well within the three-year period.

We support this bill in the belief that it will make a very significant contribution to improving the quality of employment services provided to people with disabilities and that it will improve the consistency of those services across the country. We eagerly await the tabling of the disallowable instrument and a closer scrutiny of the key performance indicators. We foreshadow that we will disallow these if they do not do the job at hand; that is, the key performance indicators must, after consultation with the disability sector, significantly improve the rights of people with disabilities in all aspects of employment and economic participation.

Senator MARK BISHOP (Western Australia) (10.02 p.m.)—I wish to make a few general remarks before I speak about specific elements of this bill, the Disability Services Amendment (Improved Quality Assurance) Bill 2002. We have come a long way since the early 1980s in our treatment of people with disabilities. The Commonwealth-State Disability Agreement, introduced in 1986, has provided an important framework for the delivery of services to people with a disability. While there is a notional division of responsibility under the agreement, which facilitates the efficient administration of services, the Commonwealth retains a funding responsibility across both employment and support services.

As we approach the negotiation of a new five-year CSDA, it is important that the Commonwealth does not walk away from its commitments. Two years ago, the Commonwealth and the states recognised significant levels of urgent unmet need for disability support identified by the Australian Institute of Health and Welfare. This financial commitment must be maintained over the next five years. Over and above this, the Commonwealth must show funding leadership in recognising that over the next five years the need for services will continue to grow. This growing demand must be met with appropriate levels of growth funding in the new five-year agreement. I am sure people with disabilities, and their families and carers, do not want to see a game of blame between levels of government on the issue of funding. They know improvements to services have come over time, though not as quickly as demand has risen. They will be looking for some leadership from the Commonwealth and from Senator Vanstone to ensure the next CSDA is a further step forward for people with a disability—not a backward one.
The purpose of this bill is to introduce a new quality assurance system in the area of employment services for people with disabilities, and I believe it represents a step forward. The previous Labor government was instrumental in reforming disability services—and today’s bill builds on those reforms. The disability reform package introduced by the Hawke government in the early 1990s revolutionised services for people with disabilities and recognised their right to participate actively in society. Some no doubt believe that the changes begun at this time did not go far enough and that, since then, further reform has not progressed quickly enough. Both claims are probably true. That said, we must look at this bill as an opportunity to move forward to ensure that people with disabilities who are participating receive quality services.

The Disability Services Act 1986 proposed a self-assessment process against the disability services standards, with five-yearly audits of services by FACS. This has not been successful for many reasons, including lack of funding, limitations of the self-assessment process, radical changes in our understanding of disability, and our attitudes towards people with disabilities. Some organisations have not been able to meet the challenge. The bill proposes a new system of quality assurance. It arises as a response to the recommendations of the 1997 Disability Quality and Standards Working Party report, *Assuring Quality*. It proposes the introduction of a system of accreditation managed by an external body, the Joint Accreditation System of Australia and New Zealand. The revised bill has benefited from a lengthy consultation process that included the involvement of a Senate committee and discussions with disability groups. I think the bill reflects the honest consultation that occurred. However, we have a couple of lingering concerns about the bill, and these relate to the key performance indicators that will drive the new quality assurance process.

The government have separated out the KPIs from the bill, and they will now be tabled as a disallowable instrument. The opposition view this as a sensible decision for two reasons. Firstly, the KPIs will inevitably need to change and adapt over time, and this is an efficient means for facilitating this. Secondly, and more importantly, there remain some concerns, which we share with the sector, that the draft disallowable instrument could be improved. This means that, while we are happy to support the bill, we would like to see some further work to address these deficiencies before we are prepared to endorse the disallowable instrument.

It is very clear that the changes evident in this bill result from the consultative process discussed previously. It is equally clear that the detail contained in the disallowable instrument must also go through a similar process of full and honest determination. Any determination from the government to do otherwise would jeopardise the outcome. A great deal of dedication and hard work have gone into the process so far. That process must be allowed to continue in the same fashion. As I have already said, the opposition believe that this bill represents a step forward. We look forward to that initiative continuing in a similarly positive manner.

Debate (on motion by Senator Abetz) adjourned.

**CRIMINAL CODE AMENDMENT (ANTI-HOAX AND OTHER MEASURES) 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 Faulkner** (New South Wales—Leader of the Opposition in the Senate) (10.09 p.m.)—I do hope that this is the second reading debate on the Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002. If it is, I would like to commence my contribution by indicating that the opposition supports the bill because the bill is consistent with commitments made by the opposition in the lead-up to last year’s election. At that time, Labor welcomed the coalition government’s announcement that, if re-elected, it would introduce strong legislation to deal with the people who prey on insecurity by sending hoax material through the post, by courier or by other delivery means. The bill is part of the government’s fore-
shadowed package of antiterrorism laws. Other parts of the package include enhanced powers for ASIO, a general offence of terrorism, an offence of preparing for or planning terrorist acts and a statutory scheme to allow certain property to be frozen and seized. I will deal with those broader matters a little later in this contribution.

I do think it is important to see this bill in its full context. Following the attacks on the World Trade Centre and the Pentagon on 11 September 2001, there were a number of incidents involving the use of anthrax. Most of these incidents involved contaminated mail. Amid concerns about bioterrorism there was considerable public alarm about suspicious postal items in Australia, and a number of hoaxes were perpetrated involving letters supposedly contaminated with anthrax. One of those hoaxes was, in fact, perpetrated on the ALP’s national campaign office. Indeed, in the period 15 to 16 October 2001 there were 131 suspicious packages or letters reported to the police in Australia.

Public alarm about anthrax was not confined to postal articles. In late October 2001 white powder was found at the University of Canberra, the National Gallery of Australia and the Qantas baggage handling area at Canberra Airport. This resulted in evacuations, decontaminations, quarantining and other such disruptions. Between 11 September 2001 and February 2002 it is reported that Australian police investigated more than 1,000 anthrax hoaxes. Given the manipulation of information by the Howard government over the course of the 2001 election, I take considerable comfort from the fact that this legislation is a response to independently verified and corroborated events.

Of course, it is a sad day, as my colleagues would acknowledge, when you doubt the veracity of the government over matters of national security. But that, of course, is the sorry state of affairs we now face following the government’s handling of the now infamous ‘children overboard’ affair. The irony of the Howard government legislating to punish those who perpetrate hoaxes is not lost on the opposition. This bill proposes to amend the Criminal Code Act 1995 by adding new offences relating to the sending of dangerous, threatening or hoax material through the post or similar services. The new offences would replace the existing outdated postal offences in section 85S, 85X and 85Y of the Crimes Act 1914.

This bill targets the use of postal or similar services to harass, threaten or menace people. The amendments would ensure that federal offences cover the use of all postal and other like services, not just Australia Post, which is the case at present. Services that would be covered by the proposed amendments include commercial courier and parcel and packet carrying services. The amendments would also increase the penalties for the offences to reflect the potential harm that can be caused by the sending of threatening, dangerous or hoax material. The new offence regime falls into two distinct parts. The first part operates retrospectively and commences on 16 October 2001—the date on which the Prime Minister signalled his intention to introduce such new laws. The government has said that it does not lightly pursue retrospective legislation. It justifies its proposed retrospection on the grounds that the Prime Minister’s announcement received widespread media coverage.

One of the criticisms that can be directed at retrospective criminal legislation is that people will be unaware that their conduct may be an offence. Generally, the rule of law is undermined when citizens are unable to make choices and conduct their lives in reliance on the law as it stands at any particular point. However, in this case, the government’s statements were in clear terms and received immediate and widespread publicity. Further, the perpetration of a hoax by sending a dangerous thing could never be considered a reasonable action that a person was entitled to do before these amendments. As such, the bill does not retrospectively affect a legitimate right and does not contravene fundamental principles of fairness or due process. In these circumstances, Labor is prepared to support the retrospective application of this provision. The retrospective provision will be a new offence to deal with hoaxes involving explosives and dangerous substances. A person will be guilty of that
offence if they intentionally send an article by a postal or similar service.

The second part of the proposed amendments covers those offences commencing on royal assent. These are: firstly, using a postal or similar service to make a threat to kill or cause serious harm; secondly, using a postal or similar service to menace, harass or cause offence; thirdly, causing a dangerous article to be carried by a postal or similar service where there is a danger of death or serious harm; and, fourthly, causing an explosive or dangerous or harmful substance to be carried by post. The opposition believes that the offences and penalty levels set out in this amendment to the Criminal Code are appropriate.

While this bill is in line with Labor’s commitment to fight terrorism, it is only one piece in a larger scheme of legislation that the government proposes to introduce in this session. Labor will be keeping a very close eye on these new laws. Labor are committed to dealing with terrorism. We believe it is important to protect the safety of the Australian community and to play an informed role in the international effort against terrorism. We are committed to responding to the threat of terrorism because we want to protect the very systems and institutions that set us apart from the terrorists. The reason for the war on terrorism is to protect the rights and privileges that we all enjoy in a functioning democracy. It is about protecting such principles as the rule of law, freedom of speech and the right of free movement.

I am concerned that the freedoms we cherish could be threatened by some elements of the government’s package of antiterrorism laws—the biggest raft of security legislation since World War II. An example of a potential threat to our freedom was the government’s proposal to label public servants and journalists as spies, prosecute them and throw them in jail—ironically, by a government that itself has shown a propensity towards the spying game. Those provisions were to be contained in the Criminal Code Amendment (Espionage and Related Offences) Bill 2001. But, as my colleagues would acknowledge, as a result of pressure from the opposition and the community, those provisions have been excised from that bill—at least for the time being. Public servants and journalists should never be treated as spies. A free press, an independent Public Service and protections for whistleblowers are important safeguards against heavy-handed abuse of power by governments. Labor will be careful to ensure the espionage legislation does not have the consequence, intended or otherwise, of creating new offences or increasing penalties for whistleblowers who communicate information that does not prejudice national security.

Parliament ought to be smart enough to write laws that differentiate between, on the one hand, spies who are acting against the national interest and our national security and, on the other hand, whistleblowers whose actions may well be in the national interest. A public servant may well act in the public interest when they provide information on government wrongdoing or rorts. Of course, those who have received that information, whether it be members of parliament, journalists or others, can also act in the public interest by exposing it. We are also very sceptical of the proposed powers to be given to the Attorney-General to unilaterally ban organisations. That proposal, along with the whole of the government’s antiterrorism package, will of course be reviewed—I hope exhaustively—by a Senate committee.

The Labor Party are about balancing security and freedoms. We are about protecting the freedoms that terrorism seeks to take away from us while at the same time making sure the systems are in place to tackle terrorism head on. That is a tough balancing act, but it is a necessary balancing act for this parliament. It is important to keep our sense of reality when dealing with these matters and to make sure that we strike a balance that does not forget important civic traditions.

To preserve liberty we must preserve the rule of law. Of course, the rule of law is the alternative to the rule of terror. Labor will not be writing the government a blank cheque on antiterrorism laws. We will work with the government to tackle terrorism but the government must proceed with caution and work with Labor to ensure that we protect the freedoms that are the signposts of
our democracy. I know that Senator Bishop in his second reading contribution will explain in some detail the opposition’s approach on the provisions of this bill. In summary, the opposition support the bill.

Senator COONEY (Victoria) (10.24 p.m.)—As Senator Faulkner has said, the opposition supports the Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002. I have a particular concern with this bill in terms of the retrospectivity which it will enact. It will make a particular act a crime back to 2 p.m.—by legal time in the Australian Capital Territory—on 16 October 2001. Retrospectivity in criminal law is a bad thing, and I am not the first one to have said that.

Thomas Hobbs wrote the *Leviathan* in 1651 and at the time he was moved to say: No law made after a fact done can make it a crime. He goes on to say: Harm inflicted for a fact done before there was the law that forbade it is not punishment but an act of hostility.

Over 110 years later, Sir William Blackstone, who Senator Bishop would know about, in his commentaries on the laws of England—Senator Mark Bishop—I don’t know him.

Senator COONEY—You should have heard of him if you have any regard for the law. Sir William Blackstone said: All laws therefore should be made to commence in futuro and be notified before their commencement, which is implied in the term prescribed. When this rule is in the usual manner notified and prescribed, it is then the subject’s business to be thoroughly acquainted with it. I also quote from an earlier part of Sir William Blackstone’s statement: There is still a more unreasonable method than this which is called making of law ex post facto when after an action is committed the legislature then for the first time declares it to have been a crime and inflicts a punishment upon the person who has committed it.

What has been said tonight is this: if a Prime Minister, a minister of the Crown or indeed anybody with any authority says something is wrong, then it is all right for the state to punish that person even though the matter may not be made a crime until months later. Are we going to have a declaration made now for which a person can be later punished, even though at the time the declaration is made the matter is not a crime? Anyone who committed an act that is going to be made a crime under this legislation could not have been punished between October last year and now—that is, for the past five months. But now, because of this retrospective legislation, a person is going to be punished for actions which were not a crime when they were taken.

The only justification for this retrospective legislation is that the Prime Minister has declared—as said by Senator Faulkner in fairly precise terms—that it would be a crime. Are we going to have criminal law made by declaration? I can understand civil law being made retrospective, but civil law does not do what criminal law does. Under this retrospective legislation, criminal law can lock you up for 10 years. It can take away your reputation, it can take you away from your family, it can take you away from your job. Criminal law can inflict upon you all those disadvantages. The basis of our laws are the great documents like the Magna Carta, the Bill of Rights and so on—and they have underpinned the law not only in England but also here and in America—where constitutional rights are embedded to enable people to be treated as they should be treated. Crime has always been with us.

I now want to quote a statement by Mr Frank Vincent, as he then was, made at the Crimes Commission Conference in the old Senate chamber, where I began my career in this parliament. Mr Vincent was at that stage an eminent silk; he went on the become a Supreme Court judge in Victoria and is now a judge in Appeal of the Supreme Court of Victoria. He is an eminent jurist, a person who I would declare to be—who I do declare to be—a man with more knowledge and experience of the criminal law and more feel for the criminal law than any other lawyer in Australia. I do not make that statement lightly, but it is true. Mr Vincent made this statement on 28 July 1983, which is now almost 20 years ago:
It was made perfectly clear this morning, as you will all know, that there is no new problem of organised crime—

they were talking about organised crime at the time—

This and every other community have suffered from crime, organised and disorganised, throughout their entire histories. Yet, we are being subjected at the present time to an amazing amount of propaganda which has been introduced in the media in the form of assertions, all of which are likely to engender considerable fear and apprehension in an already fearful community.

I am concerned because this community is as much in danger from those who wish, in their attempts to protect its members, to limit rights and freedoms as I am concerned with the problems of organised crime. Both of these philosophies, based on greed—in that case he was talking about people who rob and steal, but it is comparable to what is going on here now—

on the one hand or, on the other, on some attempt in the interests of the community, have the practical effect of subverting the very society in which we live. That cannot be tolerated on either basis. That has to be emphasised and re-emphasised again. We do not want the arbitrary power of the criminal inflicted upon society; nor do we want the arbitrary power of government. Both can destroy the sort of society we want. And if we want a society where the criminal laws are made by declaration, months before a bill is enacted, and where people are punished for that, the rule of law in this society is under serious attack.

I want to be very much on the record tonight as showing my great concern, my disappointment and my apprehension at this legislation in so far as it is made retrospective to 16 October 2001. Criminal law is needed to ensure that this society is the sort of society we want to live in, but the proper enactment of criminal law—

the proper processes by which criminal law is to be made—is also absolutely necessary for the sort of society we want to live in. It is very worrying that this parliament can get up and say, ‘That seems fair enough. Yes, we’ll tick off on that.’ Why have a parliament? Why have an institution dedicated to making laws if all we are doing is rubber-stamping what is said? What would happen if we rejected this legislation? What would happen to all the people that Senator Faulkner spoke about who have done these deeds? Does that mean they do not go punished? And if they do not go punished, why do they not go punished? Because parliament has not made the law.

Where does that get us? If a statement is made by a Prime Minister or a senior government official—the Attorney-General, for example—what do people do? Are they going to be able to act in a particular way? If one lot acts in a particular way and the other says, ‘No, I’m going to wait to see what happens,’ that means one lot do deeds for which they are not punished, because the law ultimately is not passed, whereas the other lot are put at a disadvantage because they have desisted from doing things for fear of something becoming criminal which in fact never does.

The sort of thing talked about here is criminal, you would have thought, in the
sense of being a bad thing. I fully acknowledge that. I acknowledge that the sort of thing that is being done here is bad. But I am saying that just because things are bad does not mean that they ought to automatically attract punishment. Why is that? Because that is how our democratic system works. We in a democratic society say, for better or worse, that we are going to have a process and that, although there are downsides to that—perhaps people are not punished when they should be—there is a much greater upside, because we say that there should be a process so that people are not wrongly oppressed, wrongly punished, for what they do.

Should we suddenly say one day that statements people made six months ago are now punishable because we say that they should have known they were going beyond a joke when they made those statements? Is that fair? Senator Faulkner said that we will make sure the media are not punished. But what if a prime minister says, ‘I am going to punish the media for past deeds as soon as I get legislation through.’ It might be a year later that he gets it through. Are the media then going to be punished because the Prime Minister made a statement 12 months prior to that?

Senator Faulkner says that he trusts the Prime Minister in these circumstances and he understands what the Prime Minister says. Senator Faulkner says, ‘I am going to go all the way with the Prime Minister on this because the Prime Minister made it clear.’ What if you think that the Prime Minister should not be accepted on this occasion because he did not make it as clear as he should? If you are going to be punished with a 10-year jail term, shouldn’t you be entitled to have a law so that you can look at it and see exactly what is prohibited? If you simply leave it nice and vague and say, ‘We are going to punish anything that people ought to have a problem of conscience about’ then where do we end up? We can come in here and say, ‘Oh well, you should have known that this might become a criminal act, you should have known that this is a bad sort of a thing to do, therefore we are going to punish you.’

The interesting thing is—and I keep coming back to this—that the sorts of things I am talking about are by no means new; they have been the tradition in the law that we have followed for hundreds of years. But now people have gone ahead and done something and suddenly we say, ‘Look, this is bad and we are going to retrospectively pass a law that punishes it, and we are going to do that from now on.’ Is this the proposition, that from now on whatever we find to be against conscience or to be wrong, or whenever we think something ought to be made criminal, we simply make a retrospective law? At this stage, at least, somebody has to declare that they are going to make that law, but are we now on the slippery slide so that the next step is you do not even have to talk about making the law? Is the next step the proposition Senator Faulkner put forward that, if we should have known it was wrong, that is near enough?

The opposition is supporting this legislation. You have probably gathered that I have some difficulties with part of that approach. I do think that it would be a dereliction of duty on my part not to raise these problems at this time. If we had a sense of what this society is all about, a sense of where we ought to be going, a sense of the preciousness of the democracy we live in and if we had a true appreciation of the sort of society we want—a secure one certainly, but also a free and open one—then we would be very troubled by this particular clause. I hope Senator Crane is going to speak on this. I can see he is. I am glad there are a couple of other senators who are going to speak on this, and so they should. I will sit down and let them at it. But before I do I indicate that this is a bad law and as Edmund Burke said in 1780, ‘Bad laws are the worst form of tyranny.’ This particular legislation fits the category that Edmund Burke was talking about.

Senator CRANE (Western Australia) (10.42 p.m.)—I rise tonight to speak on the Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002. My interest in this was fuelled, as was the interest of the previous speaker, Senator Cooney, by my work on the Scrutiny of Bills Committee. There are two or three points I would like to
make. I am not opposing this legislation, because I believe it was made in exceptional circumstances. As I understand it, the statement was made by the Prime Minister with the full knowledge and support of the opposition—that is what I am informed. My concerns are these: one, the retrospectivity of it and, two, the issue of the making of law, particularly criminal law, by press release. Even though this has been done, and I understand the necessity of it being done, I would like to see a very clear statement that neither the opposition nor the government will use this as a precedent setting mechanism. We see consistently in tax law and finance law, legislation being made by press release. When you get into the area of criminal law, you are looking at something very different. It would certainly be a very dangerous precedent if this were used by whoever might be in government in the future. One of the reasons I raise this is to try to extract a clear statement.

I have spoken to our Attorney with regard to that and I have asked him to do this. I wish to quote some comments that I made in the letters that I have sent to him. Some of them are taken from our report. In the Attorney’s letter back to us he says:

It has been accepted that amendments to taxation law may apply retrospectively where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law—

I make the point that he acknowledges that it has been used in tax law and other forms of finance law. He continues:

and the Bill is introduced within six months after the date of the announcement (Senate Resolution of 8 November 1988). The new hoax offence was introduced within four months after the date of the Prime Minister’s announcement.

That is a very long period of time to have sitting out there what is in effect a criminal offence law when it has to be debated and discussed, and run the gauntlet of the House of Representatives, of this place and the committee system. It could create some very interesting and very embarrassing situations for any government if they were to make this a normal process. So my first comment is that I want to see a very clear commitment that it will not become the norm or even happen every now and then. We had extraordinary circumstances on September 11. I do not think anybody would deny that. We had a situation where we were in the middle of an election and there was need to take action. I can accept it on that basis. But I think that we should make it very clear as a parliament that we do not want it to become part of the normal process of making criminal law.

I further quote from my letter, which refers to this part of the committee’s response:

In addition, while it is undeniable that perpetrating a hoax cannot be considered a 'legitimate' activity, what this bill proposes to do is retrospectively declare it to be ‘criminal’ activity—again, a different, and more serious, issue of principle. Not every ‘illegitimate’ activity is ‘criminal’ activity. Declaring something ‘illegitimate’, and then retrospectively declaring it to be a crime, would seem to establish an unfortunate and undesirable precedent. A crime may be created by a simple announcement. The Committee asks the Attorney-General to reconsider these provisions

I add to that the necessity for a very clear statement here now in the Senate.

I received a reply back from the Attorney. I do not intend to quote the whole letter but I am quite happy for anybody to have a look at the correspondence. He says:

In your letter you outline your objections to the retrospective application of the new hoax offence in the Bill.

He goes on to say:

Secondly, your letter states that retrospectivity in this instance is wrong, unnecessary and sets a very dangerous precedent.

I stand by those particular statements as far as this is concerned, and into the future, because we really are talking about the setting of criminal law in this nation in terms of this particular legislation. I have since written back to the Attorney and I have said this:

Unfortunately it contained no reference of the agreement by the Prime Minister with the Labor Party—

I had been told absolutely clearly that there was an agreement between the Labor Party and the Prime Minister in terms of the release of it—
to the announcement by press release of the changed or new penalties.

I feel it is important that it is publicly stated during the debate in the Senate that it is not the Government’s intention in the future to introduce new provisions in the criminal code by press release or retrospectively, except in exceptional circumstances, such as in the period of election, and then with the full support of the opposition.

I have no doubt about our responsibilities on the committee that I referred to and which I serve on and many distinguished senators have served on—I believe Senator Abetz, the minister at the table, may have done, and Senator Ellison, who will be handling this legislation, certainly did. It is my view and that of the committee that this legislation does trespass unduly on personal rights and liberties in breach of principle 1(a)(i) of the committee’s terms of reference. I think it is important that I acknowledge that in this debate. I realise that from time to time there are situations where some of these terms of reference may have to be stretched a little—may have to be broken, if you like—but I would be alarmed if we cannot get a very clear position from both the opposition and the government that we do not intend in the future to use this for a precedent setting mechanism when it is not necessary.

There were many terrible things in the follow-up to September 11 such as the anthrax hoaxes, and I cannot think of anything quite as horrific as the scenes that we saw, with the impact that had and the fear that was engendered. You can stretch the limits of your principles to deal with those particular aspects of it. But, in terms of lesser things and changing the law, I do not think that we should find ourselves waking up one morning—regardless of who the Prime Minister is, regardless of who the Attorney-General is and regardless of who the government is—and find this type of change becoming the norm, as it has become in taxation law, finance law and some other areas.

My appeal to both the opposition and the government is to recognise the issue that I have raised in terms of the precedent setting nature of this legislation both in its retrospectivity and in the nature of the fact that it is making law by press release. They should both make it quite clear that it is not intended to use this into the future.

**Senator GREIG (Western Australia)**

(10.51 p.m.)—I echo much of what Senator Barney Cooney has said tonight and some of what Senator Crane has said. I guess the point of difference, the voice of dissent, as it were, between me and the previous two speakers is that it is my intention on behalf of the Australian Democrats to seek to amend this legislation so that retrospectivity does not apply. Given Senator Cooney’s strong argument in that direction, I look forward to him joining us in support of that amendment.

The purpose of the Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002, as has been articulated by some here tonight, is to extend federal offences to cover the use of all postal and other like services, not just Australia Post, as happens at present. The bill also increases the penalties for the offences of sending threatening, dangerous or hoax material through postal or similar services. As I have said, and other speakers have said, the most contentious feature of this legislation is that the new hoax offence will operate retrospectively, that is from 16 October 2001, which is the date on which the Prime Minister announced the government’s intention to create the new offence.

The new offence differs from the existing offence in two parts. Firstly, the existing offence is limited to articles carried by Australia Post, whereas the new offence extends to commercial, postal and similar services—and I am sure that we are all familiar with that kind of parcel/postage availability. Secondly, the penalty for the offence is increased from a maximum of five years imprisonment to a maximum of 10 years imprisonment; in other words, doubling it.

The retrospective creation of criminal offences is almost always inappropriate. In particular, the practice of backdating the operation of offences to the date of a press release should not be encouraged. The Scrutiny of Bills Committee made the following comments in relation to this bill:

Notwithstanding the seriousness of the conduct at which this bill is directed, the retrospective crea-
tion of a criminal offence is similarly a serious matter. The bill itself is a very clear example of “legislation by press release” —

and Senator Crane has spoken on that —

a practice which the Committee has consistently brought to the attention of Senators. As the Committee has previously noted, “the fact that a proposal to legislate has been announced is no justification for treating that proposal as if it were enacted legislation”.

So the committee then drew the senators’ attention to this provision, as it argued:

it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) —

as Senator Crane has outlined —

of the Committee’s terms of reference.

I would argue that the Scrutiny of Bills Committee is quite right to make these observations.

The government asserts in its explanatory memorandum that “there is no circumstance in which the perpetration of a hoax that a dangerous or harmful thing has been sent could be considered a legitimate activity in which a person was entitled to engage pending these amendments”. It is the view of we Democrats that this does not provide a solid basis for supporting retrospectivity. It is true that hoaxers may not have regarded their activity as legitimate, but that is quite different from saying that they must therefore have regarded it as unlawful.

It is particularly significant that the precise terms of the legislation were not available at the time of the press release. A person whose conduct just barely falls within the proposed retrospective offence provisions may have been under the impression that their conduct was lawful; that is, they may not have thought the offence would be constructed so broadly. The parliament from time to time does pass retrospective laws, but they generally relate to administrative or regulatory matters. For example, a bill passed last week with retrospective effect was designed simply to correct a drafting error. The bill was backdated to the time of the passage of the legislation containing that error, to ensure that the principal act operated properly throughout the period in question — and I have no argument with that. That is an appropriate situation in which to use the power to pass retrospective laws.

Passing laws creating serious criminal offences is a much more serious proposition and one which should not be encouraged. The International Covenant on Civil and Political Rights offers a strong condemnation of retrospective criminal offences in the following terms, and I will read here from within one section of the ICCPR. It states:

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby. There is however an important exception in the ICCPR to this proposition. In the same article setting out the general prohibition of retrospective offences, the ICCPR states also:

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.

So one context in which retrospectivity has arisen under this second head of the ICCPR article is that of war crimes and genocide. These are crimes that are clearly criminal, according to the general principles of law recognised by the community of nations. Retrospective criminal laws dealing with war crimes were debated in relation to the War Crimes Bill 1987, which created retrospectively criminalised war crimes committed by Australian residents during World War II in the European theatre of war. This bill then went on to become the War Crimes Amendment Act 1988. In supporting the bill at that time, then Democrat Senator Jenkins said — and this is from Hansard of 15 December 1988:

I have listened to the arguments put against the legislation — that it is unprecedented, retrospective and selective; it could produce show trials ... I admit that it will cause difficulties if it is passed, just like any potential murder trial. But I do not
believe that those are reasons for us not to aim at justice.

Also at that time, then Democrat senator Michael Macklin also supported the bill. He said, in Hansard of the same date:
The injustice which can lie in retrospective legislation is that the actor can be punished for acts which, at the time of their commission, did not entail any moral responsibility or guilt. Who dare assert that those who performed the acts which I have mentioned should not have to bear any moral responsibility or guilt? The concept of war crimes is not a new one.

Mr Acting Deputy President, in terms of antigenocide legislation, I have taken this one step further. You may be aware that, through a private members bill, I have endeavoured to progress antigenocide legislation in the current parliament and through this chamber. In doing so, I framed a private members bill that did not include retrospectivity, and yet I argued passionately for that. Perhaps I can refer for a moment to the report entitled Humanity diminished: the crime of genocide, published in June 2000. Following the processing of the report through the Legal and Constitutional References Committee, in part I said the following—and I was talking about the issue of retrospectivity:

If Parliaments and the community are to engage in a meaningful discourse about the prevention and punishment of the crime of genocide—then it cannot be done in isolation of the historical facts. Indeed to do otherwise is to condemn the memory of countless peoples and the worst expressions of inhumanity to irrelevance. In the Australian domestic context, this has been reflected in some antipathy towards the issue of possible retrospective application of this legislation. For the record, the Australian Democrats support the retrospective application of Anti-genocide legislation. We believe that fundamentally, the Convention for the Prevention and Punishment of the Crime of Genocide—anticipates a retrospective (i.e. punishment) and the prospective (i.e. prevention) of genocidal effect and actions. Many if not all experiences of genocide will precede the creation of this Bill. We cannot in all conscience deny those realities.

What I was aiming to do there was to make the point that, while passionately believing in retrospectivity in relation to genocide, I was prepared to forgo that to win government and opposition support for the bill more broadly—although, sadly, the bill has not progressed. So I find a certain, if not hypocritical, extraordinary contrast in the government saying, ‘We will ignore the international precedent which says retrospectivity is acceptable in genocide, although the precedent is there, but we want to breach that understanding in other areas of criminal sanction.’ I also find an extraordinary contrast between a government saying, ‘We do not want and we do not accept retrospective legislation to prosecute somebody involved in genocide who may have killed or slaughtered hundreds if not thousands of people,’ and not supporting retrospectivity for that and a government supporting retrospectivity for somebody who might have sent an envelope with some talcum powder in it. I think that is worth reflecting on.

In the past I have spoken against retrospective legislation, not just on antigenocide legislation but also in the debate we had some time ago on the National Crime Authority—in fact, an amendment bill from 1999 which retrospectively validated NCA activities back to 1984. I expressed concerns at that time at the number and nature of the NCA’s activities that would retrospectively be validated. I said at that time:

We (Democrats) are not opposed to retrospective legislation per se, but as a party we have historically argued that retrospective legislation is best dealt with on a case by case basis and in accordance with clear need. This legislation is wholesale, not case by case, and is not founded on any clear need. Our serious concerns with it remain unchanged.

We therefore opposed the legislation at the time on the basis of its retrospectivity. The circumstances in which the Democrats will support retrospective legislation are very limited. As I said, only last week we supported a bill retrospectively, simply correcting a drafting error. We are open to supporting retrospective legislation that is purely procedural. We support retrospective legislation also in relation to the issue of genocide on which I have spoken. However, in this case, we readily and happily support the broad thrust of the legislation but do not support it to the extent it seeks to operate retrospectively. We will be moving an amendment to provide that the bill operates
purely on a prospective basis—that is, that it will commence on royal assent, as is usually the case.

The creation of retrospective criminal offences is justified only in extraordinary circumstances, and we do not believe the creation of such an offence is justified in the current context. We believe, therefore, it is a very bad precedent, notwithstanding Senator Crane’s plea to the chamber. As a rhetorical device that may be well meaning, but I fear it does not set anything in concrete. It does not and cannot ensure this kind of precedent is not used in the future, despite the senator’s strong words. I worry about strong words being used in a way which leaves people with the impression they might have some kind of legislative effect. Of course they do not.

After the events of September 11, as horrible and horrifying as they were, there were numerous commentators and civil libertarians around the world who said that the events were horrifying and that we needed to talk about them and analyse them but that we should also be very much on the lookout for governments swift to introduce what might be considered harsh or draconian legislation they might otherwise never get away with under different, normal and civil circumstances, and my fear is that this is one of those. Senator Crane has said this issue happened during an election period and felt there was some justification for the application of retrospectivity. I would argue that the maelstrom of an election period, of a campaign period, is a very dicey, very insecure and unbalanced environment in which to progress legislation, let alone legislation which provides retrospective criminal sanction.

I was aware in the media over the campaign period of the many anthrax hoaxes, including the one which affected a staff member in Minister Ruddock’s office. I remember being particularly appalled by that because it was the first instance I think when a parliamentary staffer had been subject to this. I felt for my own staff and I thought it would be really awful if that were to happen in my own office. I sent the minister a letter of moral support and he was kind enough to send a reply. But, despite the issues of September 11 spilling into the Australian community through death threats or bomb threats or opportunities for anthrax or hoax anthrax, we Democrats still do not believe it is any foundation on which to base retrospective legislation because of the serious criminal nature of it. As I say, in the committee stage of this debate we will be moving an amendment to ensure that the bill is entirely prospective. I understand at this stage the motion does not have support from the government or the opposition and so the amendment is likely to fail. On that basis we Democrats will not be supporting the bill as a whole.

Debate (on motion by Senator Abetz) adjourned.

**ADJOURNMENT**

Senator ABETZ (Tasmania—Special Minister of State) (11.06 p.m.)—I move:

That the Senate do now adjourn.

Zimbabwe

Senator SANDY MACDONALD (New South Wales) (11.06 p.m.)—I wish to speak briefly tonight on Zimbabwe. It is a country that I have an interest in but, also, a number of Zimbabweans have come to this country and have made Australia their home. There are a lot of Australians who also have an interest in Zimbabwe and in what has been occurring there over the last few years, particularly with the election which all senators would know was held the weekend before last. Our colleague Senator Alan Ferguson was there as a Commonwealth observer, and I understand he will report to the Senate more formally later in the week. I look forward to that, but I wanted to make some comments about the election as I see it.

It was an election held by a government that had failed to address the irregularities of the electoral roll, which is quite extraordinary in a country where it is compulsory to have an identity card. It was also held in circumstances where the number of polling stations available in the June 2000 election, at which I was a Commonwealth observer, had been reduced for this particular election—which was, again, a most unusual occurrence. From reports, only in some districts were the polling booths open on Monday as
well, despite the Zimbabwean Supreme Court order that all the booths be reopened. This contravention of a Supreme Court order is only a small part of a 25-year history of an increasingly desperate ruling party, ZANU-PF, to retain power by any means as the once abundant grain bowl of southern Africa is degraded and starved.

What is happening in Zimbabwe is wrong and should not happen, and we should say so. People who do not know the country may be excused for asking why we are concerned about what happens in Zimbabwe. The cynical might say, ‘It’s just another tin-pot African country: why should Australia be concerned?’ Australia should be concerned because Zimbabwe is a wonderful country full of decent, educated people with a commitment to the churches, to civil society and, traditionally, to the rule of law. These exist in a wealthy country that has been systematically wrecked by the paranoia of a leader and ruling party which came to power 22 years ago, substantially as a result of Commonwealth pressure. They have devalued Zimbabwe’s heritage through their rhetoric about race and land. President Mugabe’s racism is quite unusual, putting aside tribal loyalties, because over 99 per cent of the 12 million population is black. President Mugabe falsely claims this is a black versus white issue, and he has been successful in making it seem that way—at least to the Commonwealth—but it is wrong.

There have always been very high expectations for Zimbabwe because it has been seen as a real hope of much of the African continent. South Africa’s apparent weak response to the outcome is hard to understand, because a destabilised Zimbabwe has cost South Africa dearly already. It has cost it dearly in direct costs of assistance—because of the increasing costs of supplying its power and fuel—in the increasing number of political and economic refugees from its small northern neighbour and, of course, in the value of its currency. We have seen the rand being consistently devalued over the last few years. The question you must ask is: why is this so?

It is because in future the world—the West, especially—will hardly be bothered with southern Africa if Zimbabwe, a country with such a great start, goes down so quickly. The European Community, the Americans and almost all observers, with the exception of some of the observers from SADC—the southern African countries—have said that the violence and intimidation on the weekend before last have prevented the election being free and fair and have prevented the will of the people being properly reflected. I read today a very telling report in the Australian by Ms Julie Bishop, who was also a Commonwealth observer. She said:

Zimbabwe has been holding elections since 1980. But the quality of its democracy was exposed by this election. It was nothing more than an all-out campaign to crush the opposition by whatever means were available to ensure the re-election of the President and the dominance of the ruling party.

But the tragedy is that the hardworking polling officials who turned up in their thousands to supervise the polling booths and the millions of voters who turned out to cast their vote should not have bothered. This was an election that was fatally compromised before a single vote was cast.

What now? Some question the influence of the Commonwealth. But I believe that the Commonwealth’s response will be of grave concern to Mugabe. The Commonwealth Observer Group stood virtually unanimous in its condemnation of the election. Among the group were eminent people and serving or former members of parliament from southern African states. Mugabe longs for peer group approval and respect from those countries.

I think that encapsulates very strongly the feeling of many people who observed the poll and also of the great majority of the Commonwealth observers who were there. The reports that have been coming out of Zimbabwe from the election are also most concerning in relation to the prospect of the ruling ZANU-PF systematically paying back the opposition and its supporters. Many of the opposition—the Movement for Democratic Change—and electoral observers have been imprisoned, and people have been beaten and killed.

Australians do not approve of these kinds of things, however far away they are. As somebody lucky enough to have been to Zimbabwe both before and since I entered the Senate, I wonder at the bravery and
commitment of the decent people of the MDC who wish to make their country a better place. They have certainly got their work cut out now.

Tonight as I speak, the Prime Minister, as the chair of the Commonwealth working group, is in London with the President of Nigeria and the President of South Africa determining the Commonwealth’s response to the election. I very much hope that they can bring all the pressure to bear that is available to the Commonwealth. I can only see one option and that is that Zimbabwe is suspended from the Commonwealth. One must remember that Zimbabwe was substantially—and President Mugabe himself was substantially—a creature of the Commonwealth. It was the immense pressure that was brought by Commonwealth countries in the late 1970s that pushed hard for the Lancaster House agreement, and the Commonwealth observed and basically ran an election in 1980 that brought President Mugabe to power. Unfortunately it is not possible for Australia to unilaterally bring a lot of pressure to bear on Zimbabwe. After all, we might talk about smart sanctions, but we do not have substantial trade with Zimbabwe. We do not have substantial Zimbabwe investments in this country that we might be able to impound. It is unlikely that the ZANU-PF leadership would like to come to Australia, and of course we do not have extraterritoriality of our laws, so whatever crimes might have been committed by the leadership of ZANU-PF, however strongly we may feel about those issues, we certainly do not have a capacity to bring any pressure to bear apart from a theoretical desire to impose smart sanctions. AusAID, which does good work in Zimbabwe of course, has found over recent times difficulty in finding aid projects which have legitimacy. That is another problem that we face. We have great difficulty in finding things that can bring home the message from the unilateral point of view of Australia. But we certainly can play a part in the Commonwealth, and I hope that the Prime Minister is able to effect that tonight in London.

France: Australian War Graves

Senator MARK BISHOP (Western Australia) (11.17 p.m.)—I rise tonight to address the issue of Australian war graves in France being moved for the sake of an airport, and the failure of the Australian government to do anything to date about that move. As the Senate knows, 330,000 Australians fought in the First World War and many did not come home. Of those who perished, almost 54,000 died in battle, most in faraway Europe, buried in graves that many families never saw, or were simply lost in the mud forever. Throughout northern France and Belgium, these fearless young Australians lie in cemeteries cared for by the Commonwealth War Graves Commission and by the grateful citizens of France and Belgium whose countries would otherwise have been overrun. Those cemeteries are today a stark and chilling reminder of their bravery and of the sheer waste of war which we should never forget. Similarly the green fields and pastures are a reminder of those who were never found, the sight of which alone can hold our memory of them.

The peace of this scene has been interrupted before, of course, under the feet of invading armies again in World War II, but the graves in whatever form survived until last year when on 15 November the French Prime Minister announced that a new airport would be built 125 kilometres from Paris at Chaulmes in the Somme. The new airport, Mr Jospin said, was necessary because the existing Paris airports of Orly and Roissy were at saturation point. The new site, he said, would be complementary to the autoroute system, the TGV fast train and the chunnel to the UK and would assist Air France in handling its growth in air traffic. Its cost was then estimated in the order of $A16 billion. The new three-runway airport was intended to be completed within 15 years.

This sounds like good forward planning of a kind we are not used to anymore as we watch the rest of the world pass us by on infrastructure investment, but that is not the point tonight. This site, according to reports, would have covered cemeteries containing the graves of 22,000 Germans—many of
which had already been exhumed and relo-
cated to Chaulmes, which is 24 kilometres
east of Amiens near the village of Vernan-
dovilliers—and 6,590 French dead as well as
some British and Canadian. Unfortunately,
the site for this forward thinking investment
would have covered many graves of those
who fell in the Great War. In fact, 370,000
Commonwealth troops are said to lie beneath
the black soil of the Western Front, and re-
mains still continue to be dug up as land is
developed. In the past 50 years, 2,100 sets of
bones have been recovered, of which only 65
have been identified.

For reasons not clear at this stage, but
perhaps as a result of many French villagers
enraged at the prospect of losing their vil-
lages to this proposal, not to mention the
reaction of the Royal British Legion, the
French government changed the site to the
town of Rossiers. This new site is in fact
worse as it covers eight Commonwealth
cemeteries, three of which, so we have been
told in a Senate estimates hearing on 6
March this year, contain at least 61 Austra-
lians. In one named Fouquescourt there are
49 Australian graves and there are six more
in each of the other two. That does not in-
clude 12,000 others who will probably never
be found.

We have been told that war cemeteries
such as these have been granted in perpetuity
to the Commonwealth and that the commit-
ment of the French government to the pro-
tection of these very sacred sites is contained
within an international convention. That
cemeteries should be moved in itself is no
great offence in normal terms, and we are
told that reinterment is a common enough
occurrence and, if managed sensitively,
should cause little concern. The trouble sim-
ply is this: we seem to have a government
which has done nothing about this—nothing
at least until the estimates hearing in the
Senate last week when a joint press release
emerged in a flurry from the offices of the
Minister for Veterans’ Affairs and the Min-
ister for Foreign Affairs and Trade, de-
manding over the public media that the
French government consult. Nothing, it
seems, was said to the French government—
which one might have expected—except by

the Commonwealth War Graves Commission
which, from what I can make out, outranks
the Australian government. Perhaps it
should! Then came the confirming evidence
that this Australian government has abdi-
cated. In a general business notice drafted in
the office of the Minister for Veterans’ Af-
fairs, the Member for Cook, Mr Baird, has
moved that the parliament of Australia ‘do
everything in its power to ensure that Aus-
tralian war graves are not disturbed’. I have
to inform the member for Cook and his min-
ister who drafted the notice of motion that
the Australian parliament does not have
diplomatic relations with the government of
France. The responsibility in fact rests with
the minister. The responsibility for relations
with the French government on matters such
as this rests with the Australian government.
But not a word has been said except that, as a
late breaking initiative after all this, the Amb-
assador to France has now been directed to
speak—five months after the first an-
nouncement.

We are entitled to ask what this govern-
ment is doing to protect these Australian
graves or to ensure that proper process is
followed. It seems it is doing little. Firstly,
we have sat back like colonials and allowed
the Commonwealth War Graves Commission
to represent us to the government of France.
Secondly, the government gave a notice of
motion to have the parliament protest to the
government of France, which of course
should be supported, where the government
seems to be paralysed—inappropriate and
ineffective as it may be. Throughout, the
minister responsible has done nothing until
prompted by concern at this inaction. The
Australian people deserve better.

The instant the French government made
their announcement on 15 November last
year, the government and the minister re-
sponsible should have weighed in to register
concern and to demand that, if so many
Australian war graves were to be affected, as
a minimum the Australian people needed to
know the facts and that standing processes
would be observed. We can only hope that
the Australian ambassador, now that he has
his directions, can make known to the French
government what should have been commu-
nicated five months ago: Australians need to have an assurance that the memory of all those Australians buried in France who died protecting that country continue to be respected in the same way they have been for almost a century.

**Australian Labor Party: Minutes**

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.23 p.m.)—I rise to speak in the adjournment debate tonight about a debate that has raged in the Australian Labor Party for some 25 years, and I am able to indicate to the Senate tonight that that debate is now over. The debate has been about the question of what happened to the minutes of the federal parliamentary Labor Party for the period 1952 to 1969. Those minutes of the federal parliamentary Labor Party have literally been missing for a quarter of a century, and it has been of some considerable interest to historians what the fate of those particular minutes has been. Who stole the caucus minutes? Who had the motive to steal the caucus minutes? Who had the means to steal them? Who had the opportunity to steal the minutes?

The truth is that suspicion often fell on Gough Whitlam because, historically, the minutes had been placed in the custody of the leader in his office. Some suggested that they were held for 75 years in a steel trunk in the leader’s office; others suggested that, after Old Parliament House became the site for sittings of the Australian parliament, they were in a safe in the leader’s office. Whatever the situation, there is no doubt that they were held in custody for the federal parliamentary Labor Party by the leader—it was the leader’s responsibility to look after them. In the confusion that followed the turbulent events of 11 November 1975, when the contents of the then leader of the federal parliamentary Labor Party’s office—that is, Gough Whitlam’s office—were transferred, holus-bolus, to the national secretariat of the Labor Party, a lot of things were lost. From that day onwards—literally from 11 November 1975 until a couple of weeks ago—the minutes of the federal parliamentary Labor Party that had been missing, covering that extraordinary period of 7 September 1952 to 24 February 1969, had not been sighted. This is all the more remarkable when you consider that they are contained in one absolutely enormous volume of 768 pages.

Anyway, the suspicion fell on Gough Whitlam. It fell on some other senior former federal Labor figures, caucus figures, but the suspicion on Gough Whitlam was often promoted by some quite embittered critics. The truth is, as so often is the case in politics—everyone knows that given the choice between a conspiracy and a stuff-up, go for the stuff-up every time, and that is the case in this situation—it was a stuff-up. It was not a conspiracy, because the minutes have been discovered. They happened to be in the wrong box with the wrong label in the wrong place, but they were safe and sound in the National Library, so they certainly were being looked after, though no-one actually knew they were there. Because of some efforts that a number of us have undertaken over recent years to track these minutes down, including many hours of searching through dusty archive boxes and the like, they have finally been located.

I can report to the parliament that this is something that has been received with great pleasure by the federal parliamentary Labor Party, and it will be something that is going to be very significant as far as historians in this country are concerned. The discovery of these minutes means that we now have an authentic record of some very significant events. This will be of material assistance to historians. When you look at the period from 1952 to 1969, you will say that the federal parliamentary Labor Party was in opposition for the whole of that time. That is true: it was a period of repeated electoral defeat. It was a period when we saw a lot of growing internal criticism and recrimination in the Labor Party; we saw the disastrous split of 1954 and 1955; we saw many more years in the wilderness. But at the end of this period we start to see the rebuilding and recovery of Labor’s fortunes at the federal level.

Labor has spent much time trying to ensure that its history is properly recorded and that we make available these important records from our past and our history for those who are interested in them. In fact it was
Gough Whitlam, when he was Prime Minister of this country, who drove the publication of the caucus minutes from 1901, when the federal parliamentary Labor Party was established, to 1949. I need not say, in this particular chamber, that the Australian Labor Party is our oldest and greatest political party in this country.

Gough Whitlam drove the publication of those minutes, which was undertaken by Pat Weller, assisted by Bev Lloyd. I spoke very recently in the chamber about Bev’s contribution in that regard. Pat Weller, Bev Lloyd and a young Kim C. Beazley were probably the last people to see the minutes book before it was mislaid in the National Library. In late 1974, Dr Pat Weller and Bev Lloyd completed their three years of painstaking editing of the caucus minutes, and they were published in three volumes. It was Pat Weller, along with his research assistant, who undertook that task in the leader’s office, where the minutes were kept. The Prime Minister at the time was very generous in allowing access to the minutes for their publication. A young postgraduate student from Murdoch University, Kim C. Beazley—who, of course, later to lead the party—also painstakingly recorded, longhand, all the caucus foreign affairs and defence motions for a thesis that he was completing for his postgraduate studies. After that time, we did not see those minutes, but it is worth recording tonight that they have been found. It is worth recording tonight the words of Gough Whitlam, from his foreword to the Weller and Lloyd published volumes of the caucus minutes of 1901 to 1949. He stated:

From the beginning, the Australian Labor Party has had a deep sense of history and has attached the greatest importance to the written record of its proceedings. Its founders never doubted the enduring meaning of their work. Early struggles inside as well as outside the movement invested the written record of those struggles with fundamental significance. The importance of keeping full and accurate records was inherent in the very nature of the Labor Party. The principle of majority rule made it so. Thus, from the outset it was fundamentally important to record exactly what the majority had decided. There could be no question of leaving the carriage of some presumed decision or consensus to the judgment of the leadership. Given the nature of the party rules and constitution, this would have invited continuing chaos and quick disaster.

I am very pleased tonight that Gough Whitlam can be declared innocent in relation to the charges that have been levelled against him, for over a quarter of a century, that he stole the caucus minutes. He did not, nor did any other individual. It was, as I have said, a stuff-up, not a conspiracy.

New South Wales: Education

Senator TIERNEY (New South Wales) (11.33 p.m.)—I rise tonight to highlight the current deplorable state of education in the New South Wales education system, after seven years of the Carr Labor government. With the removal last year of John Aquilina as the Minister for Education and Training in New South Wales, we were certainly hoping that we might see some real education reform in the state and that we might see, at long last, some sort of financial commitment to the children in New South Wales public schools from the Carr government. But, alas, we have not seen that. The run-down in the public education system that has occurred in New South Wales over the last seven years will see a continued drift from public schools to private schools. New South Wales stands out across Australia in terms of this drift. Indeed, last year’s 10,000 student increase in private schools was the 11th consecutive increase in the state.

If you go back to the unfortunate time in history when Mr Carr became the Premier, you might recall that he wanted to be remembered as the education premier. Unfortunately, that will now be considered ironic. In terms of the programs he has developed, the percentage of the state budget he has delivered to education, and the run-down in public education, he certainly will not be remembered as the education premier. I am trying to figure out at what point in time he decided to renounce this commitment to education. What did happen to the education premier? Why did he turn a blind eye to increasing class sizes across the state? Why did he turn a blind eye to increasing pupil-teacher ratios? Perhaps most disgraceful of all, when did he make the deliberate decision to cut resources to education in New South Wales—as shown by the percentage of the
budget devoted to education, which has declined over the last seven years from 25½ per cent of the New South Wales budget to 22 per cent of the budget?

When you put these facts together, you have a picture of education after seven years of a state Labor government in New South Wales. By any major measure in education, New South Wales is running last—and this is happening within the context of a considerable increase in federal funding over that time. We have put another $812 million into the state education systems across Australia since we came into office in 1996. Federally, we are contributing only 12 per cent of the education budget to the state. The state puts up 88 per cent. They are not putting in their share and that is why the state of education in New South Wales is declining.

If we are only 12 per cent of the budget, they are 88 per cent, and their increase is going up at only 2½ per cent a year compared to our 5½ per cent on a much smaller proportion of the total budget. This shows why, despite federal resources, the state of education in New South Wales is certainly in decline. This is despite the fact that we have given them the resources to increase their funding in education if they only had the will. We have actually given the states all of the GST revenue: $29 billion goes back to the states. New South Wales have about a third of Australia’s population so their share is about $8 billion. What are the Carr government doing with that money? They are certainly not spending it in the area of education. The changes that have come about and the starving of the budget for education is best shown by what is happening with staffing numbers and the number of people going into teaching in New South Wales at the moment. This shows the likelihood of great shortages. The government cannot even support the number of casual teachers that they need to fill in for the times when they do not have full-time teachers.

In the year 2000, the Carr government created what they called a mobile teacher system, where they put up 350 teachers who were supposed to do relief teaching. Within a very short period time, because the system was so short of teachers, these people found full-time positions and, therefore, we again faced a crisis in finding casual teachers to fill these positions. The Carr Labor government have now become so desperate for teachers that they actually advertise quite widely in newspapers in Adelaide, Brisbane and Melbourne for teaching jobs in New South Wales. They are trying to poach teachers from the other states as a result of their failed policies in staffing and in training enough teachers. They cannot find enough teachers, particularly in the vital areas of maths, science, business studies and music. Despite the large amounts of money being spent federally, you will find that 60 per cent of New South Wales public schools are having difficulty in finding enough casual relief staff for their children.

It is quite common for school principals to spend each Monday morning making up to 30 calls in a day to try to find enough teachers to staff their school; that is some measure of the growing shortage of teachers and the crisis that we face in New South Wales. Even if the school can find a teacher, a report by the New South Wales Teachers Federation on class sizes from kindergarten to year 3 shows that these teachers, when they are found, are likely to be facing classes that are of much greater size than in any other state in Australia and that have all the education and discipline problems that that brings with it.

The report from the New South Wales Teachers Federation shows that 32 per cent of kindergarten classes have 27 or more students, with frightening examples of class sizes of up to 37 students. That is a situation which the union admits will only get worse. Year 1 classes are only marginally better off with 21 per cent of classes exceeding 28 students. Even worse, 22 per cent of year 2 classes have more than 29 pupils. These figures will most certainly further deteriorate as the year unfolds and the usual work transfers occur, pushing class sizes even higher.

Yet another blight on the New South Wales education department, these figures would never have come to light without the work of the New South Wales Teachers Federation, simply because the department do not collect this data on individual class sizes. Surely the department that are responsible
for ensuring the education of our children should be monitoring such a fundamental issue as this. The fact that they do not means that we are probably headed for more overcrowded classrooms. If we need verification of the Carr government’s arrogance, the Premier still refuses to acknowledge the report and the concerns that it raises, even though it comes from his former ally the New South Wales Teachers Federation.

It is quite shocking when you actually look at the figures for New South Wales on class sizes compared to the other states. New South Wales runs last right across the country. This will mean more education problems and more discipline problems, and we will find a decline in education in our state compared to other states. New South Wales has long been labelled the premier state; we cannot say that anymore when it comes to the field of public education. Not only is New South Wales dragging the chain when it comes to matching the federal government’s commitment to education; it is also being shown up by other states and territories who are giving a much higher priority to education, spending more funds and, therefore, getting better outcomes, particularly in terms of such vital measures as class sizes.

Senate adjourned at 11.43 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Airservices Australia—
Equity and diversity program—Report for 2000-01.

Sydney Airport—Maximum movement limit compliance statement for the period 1 July to 30 September 2001.


Environment Protection and Biodiversity Conservation Act 1999—

Product Stewardship (Oil) Act 2000—


Table

The following documents were tabled by the Clerk:


Class Ruling CR 2002/12.


Environment Protection and Biodiversity Conservation Act—Instruments under section 303DC amending list of exempt native specimens, dated 5 February 2002 [3].

Fisheries Management Act—

Southern Bluefin Tuna Fishery Management Plan Amendment 2002 (No. SBT 04).

Native Title Act—Recognition of Representative Aboriginal/Torres Strait Islander Bodies (No. 4: 2001).

Ozone Protection Act—Notice of Grant of Exemptions under section 40, dated 20 February 2002.


Indexed Lists of Files

Indexed lists of departmental and agency files for the period 1 July to 31 December 2001—Statements of compliance—

Centrelink.
Comcare.
Department of Family and Community Services.
Department of Veterans’ Affairs.
Industry, Tourism and Resources portfolio.

**Departmental and Agency Contracts**

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

Departmental and agency contracts—Letters of advice—

Australian Electoral Commission.
Commonwealth Grants Commission.
ComSuper.

Department of Finance and Administration.

Department of Veterans’ Affairs.